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## **Rights and Obligations: Commemorating the 30th Anniversary of the Americans With Disabilities Act of 1990**

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**RIGHTS AND OBLIGATIONS: COMMEMORATING THE 30<sup>TH</sup>  
ANNIVERSARY OF THE AMERICANS WITH DISABILITIES ACT OF  
1990**

*Sharon Shapiro-Lacks\**

**I. MY LIFE BEFORE THE ADA AND OTHER DISABILITY  
LEGISLATION**

My youngest years took place in the 1960s. I was a young girl with a speech disability who traveled by wheelchair and walked on crutches. At that time, one rarely saw a wheelchair user on the streets, streets that lacked any sort of curb ramps. People with a variety of obvious or hidden disabilities were generally either confined to their homes or sent away to institutions.

My father, Yisroel Dovid ben Aharon (Irving Shapiro), may his soul be remembered for good, would sometimes lament how rarely we saw other people with disabilities in public. Despite the physical barriers and limiting paternalistic attitudes all around us, my parents, Irving and Marcia Shapiro, ז"ל, were determined that I experience everything possible and good in life.

In elementary school, I was segregated in a class with other students with disabilities. We were not allowed even to eat lunch in the lunchroom with our able-bodied peers. I felt ostracized and stigmatized, and I yearned to break out and join the other students. I excelled in every subject as did several of my classmates. Why were we denied the opportunity to learn and mingle with the other stu-

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\* By Sharon Shapiro-Lacks, Executive Director, Yad HaChazakah-The Jewish Disability Empowerment Center. August 2020, Sunday, July 26, 2020, was the 30th anniversary of the signing by President George H.W. Bush of the Americans with Disabilities Act of 1990 (ADA). The disability community and our sub-communities fought long and hard and keep fighting to be recognized, respected and accommodated. I want to share some personal reflections on life before and after disability rights legislation enactment and some considerations for the future for the broader disability community and then specifically for the Jewish community.

dents? At nine or ten years old, I coordinated a successful advocacy campaign with my classmates to lower a public pay phone in school so that wheelchair users could access a pay phone. This success showed me the effectiveness of advocacy.

Though some of my fellow classmates and I enjoyed a close bond, I wanted out of my prejudicially imposed restrictive learning and social environment. I made this very clear to everyone. In 1973, my mother fought on my behalf for me to be chosen for a New York City pilot program to integrate a handful of middle-school-aged students with disabilities into typical middle school classes. Of course, I cherished that opportunity.

Beyond seventh grade and throughout high school, I was welcomed by my classmates, and I developed good friendships, but the buses and trains were not wheelchair accessible. Without public transit access, I did not have the choice to stay after school and join my friends. Also, how could I date if I could not travel on my own? I had no social life until I went away to Hofstra University, one of the very few wheelchair accessible colleges at the time. Thanks to the accessibility of Hofstra University, I was able to power-chair my way throughout the campus, take classes in different buildings, join the Hofstra Hillel and, in my Freshman year, meet my wonderful husband, Wayne (Yisroel).

We married in 1983. Life away from the Hofstra campus was very different. Accessible buses were few and far between back then in New York City. Only a handful of accessible subway stations were in place. None were near me and there was NO paratransit. Determined to attend Summer Torah shiurim (classes) in Manhattan four days a week in 1985 and 1986, I would patiently wait for working local wheelchair accessible buses and drivers with keys to the lifts. A trip to the Upper West Side from Riverdale in the Bronx would take me two hours one way on good days when the sporadic accessible buses were operational, and the bus transfer timing worked. Needless to say, I often endured two and a half or three-hour one-way trips, five to six hours two ways, and I kept a bus lift key in my purse in case bus operators claimed that they did not have one.

Bus travel was magical for me as one who was locked away at home after school until eighteen years old. But we needed better access to transportation, public accommodations, employment, communications, and state and local government. These areas were not

addressed in Section 504 of the Rehabilitation Act of 1973.<sup>1</sup> Section 504 focused solely on federally funded agencies. We needed a civil rights law that would mandate anti-prejudicial discrimination against and reasonable access and accommodations for people with disabilities and be applicable in the state, local, and private sectors. We could not rely on human good-will alone, as evidenced by centuries of prejudice, sometimes deadly prejudice, against people with physical, intellectual, mental health, hearing, vision, and other disabilities.

## II. LIFE AFTER THE PASSAGE OF THE AMERICANS WITH DISABILITIES OF 1990

The Americans with Disabilities Act of 1990<sup>2</sup> (ADA) was drafted to fill in many of the gaps that were left by Sections 503 and 504 of the Rehabilitation Act of 1973.<sup>3</sup> The following summary is copied from the Jobs Accommodations Network website:<sup>4</sup>

The Americans with Disabilities Act (ADA) was signed into law on July 26, 1990. Its overall purpose is to [prohibit prejudicial discrimination against people with disabilities and to] make American Society more accessible to [them]. In 2008, the ADA Amendments Act (ADAAA) was passed. Its purpose is to broaden the definition of disability, which had been narrowed by U.S. Supreme Court decisions.

The ADA is divided into five titles:

### 1. Employment (Title I)

Title I requires covered employers to provide reasonable accommodations for applicants and employees with disabilities and prohibits discrimination on the basis of disability in all aspects of employment. Reasonable accommodation includes, for example, re-

<sup>1</sup> 29 U.S.C. §§ 793794.

<sup>2</sup> 42 U.S.C. § 12111 (1990).

<sup>3</sup> 29 U.S.C. §§ 793794.

<sup>4</sup> *The Americans With Disabilities Act: A Brief Overview*, JOB ACCOMMODATIONS NETWORK, <https://askjan.org/articles/The-Americans-with-Disabilities-Act-A-Brief-Overview.cfm> (last updated July 26, 2012).

structuring jobs, making work-sites and workstations accessible, modifying schedules, providing services such as interpreters, and modifying equipment and policies. Title I also regulates medical examinations and inquires.

#### 2. Public Services (Title II)

Under Title II, public services (which include state and local government agencies, the National Railroad Passenger Corporation, and other commuter authorities) cannot deny services to people with disabilities or deny participation in programs or activities that are available to people without disabilities. In addition, public transportation systems, such as public transit buses, must be accessible to individuals with disabilities.

#### 3. Public Accommodations (Title III)

Public accommodations include facilities such as restaurants, hotels, grocery stores, retail stores, etc., as well as privately owned transportation systems. Title III requires that all new construction and modifications must be accessible to individuals with disabilities. For existing facilities, barriers to services must be removed if readily achievable.

#### 4. Telecommunications (Title IV)

Telecommunications companies offering telephone service to the general public must have telephone relay service to individuals who use telecommunication devices for the deaf (TTYs) or similar devices.

#### 5. Miscellaneous (Title V)

This title includes a provision prohibiting either (a) coercing or threatening or (b) retaliating against individuals with disabilities or those attempting to aid people with disabilities in asserting their rights under the ADA.

The ADA's protection applies primarily, but not exclusively, to individuals who meet the ADA's definition of disability. An individual has a disability if:

1. He or she has a physical or mental impairment that substantially limits one or more of his/her major life activities;
2. He or she has a record of such an impairment; or
3. He or she is regarded as having such an impairment.

As mentioned above, the ADA's definition of disability was broadened by the ADAAA, which went into effect in January 2009.

Other individuals who are protected in certain circumstances include 1) those, such as parents, who have an association with an individual known to have a disability, and 2) those who are coerced or subjected to retaliation for assisting people with disabilities in asserting their rights under the ADA.

While the employment provisions of the ADA apply to employers of fifteen employees or more, its public accommodations provisions apply to all sizes of business, regardless of number of employees. State and local governments are covered regardless of size.<sup>5</sup>

Both the passage of the ADA and the implementation of Section 504 of the Rehabilitation Act of 1973 required the disability community to place our bodies on the line and physically demonstrate the urgency to pass and execute these laws. We received a lot of resistance to implementation of Section 504 and the passage of the ADA. Even through to today, the strength of the ADA has been challenged in Court and its regulatory enforcement weakened.

Yes, we have much more access and acceptance in the U.S. than we did fifty years ago. We see many more people with different disabilities in the streets, at stores, and on university campuses. Wheelchair users can ride on Amtrak to and from most major cities; we can access most public buildings; we can file lawsuits when harassed at work due to our obvious or hidden disabilities; many Holly-

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<sup>5</sup> *Id.*

wood movies are captioned and audio described; and we have begun to publicly talk about mental health care and stigma. But we have a long way to go before the playing field is even.

Still today, too many disabled people, young and old, are placed in controlled and often sub-standard congregate care settings when, alternatively, they can create, control, and maintain their own lives in their own homes with support services and adaptive technology. Blind people still lack access to most digital, print and pictorial media and Deaf and Hard of Hearing people lack communication access to many live and virtual events. Autistic people and people with mental health conditions continue to face stigma and prejudice, and the unemployment rate for qualified job seekers with disabilities remains proportionally very high. We have much more work to do to actualize the vision that inspired the drafting of the ADA, and we need to continue to thwart any legislative or administrative attempt to dilute the ADA's application and execution.

### III. OBLIGATIONS OF JEWISH COMMUNITIES AND INDIVIDUALS

G-d, through the Torah, speaks to us through the prism of commandments and obligations, not rights. We are mandated, for example, to learn Torah, keep and remember the Sabbath, and to leave behind sheaves of wheat that we accidentally drop and designate a portion of our fields for the poor. We are obligated to care for the orphan and widow and to demonstrate respect for our parents, elders, and Torah scholars. The primary focus is on the obligated individuals, not on the beneficiaries or objects of the deed.

For instance, when we are commanded to chase away a mother bird before taking her eggs, the emphasis is on our deed, not on the mother bird's experience. Yes, as a result, the mother will endure less distress in that moment, but the thrust of the intended effects of the mitzvah is on the one taking care to shew away the mother. The commanded action reminds us that we are taking away a precious potential life from a mother. We must be sensitive to that fact and take appropriate action to concretize that sensitivity.

So too, we have several passages from our written and oral teachings that point to how we should respond to people with disabilities. Here are just three examples:

Every human being is created in G-d's Image.<sup>6</sup> Therefore, people with disabilities must be treated with respect and dignity. No one should shun or hide away people with disabilities for any reason. We as people with disabilities should not have to feel bad about our disabilities. We should embrace who we are with our disabilities and say the word disability. We should expect others to respect and value us for our full selves, including our disabilities, which help shape our characters and strengths.

“*Kol Yisrael arevim zeh l'zeh*”—“The entire Jewish people are responsible for another.”<sup>7</sup> Therefore, we are obliged to ensure that people with disabilities can do the mitzvot and fulfill their obligations. We must work towards ensuring that our children with disabilities can access yeshivot and day schools and their curricula; that wheelchair users can access mikvaot; that Blind people can access print and online source material; and that Deaf community members can benefit, via captioning and sign language, from Torah videos that feature our prized Rabbeim and teachers.

“*Al tifrosh min hatzibor*”—“Do not separate from the community.” Community alongside Torah learning is the lifeblood of Jewish life. Like the *arba minim*, the four species lifted and waved during Sukkot, we complement and supplement each other. That is why prayers said in a minyan bear more potency than when they are said privately. People with disabilities are part and parcel of our communities. It is in all of our interests to ensure that all men and women are able to *daaven b'tzibur*, pray with the community, without physical, communication, or attitudinal barriers.

#### IV. LOOKING AHEAD

The Jewish people have been a transitory people for two millennia. Jews with disabilities are currently able to rely on the laws of our host countries to guard them against prejudice and to promote disability access, acceptance, and integration. However, relying only upon host countries' legal protections is not sufficient. The laws and their applications can change according to the political winds of the day and possible faulty precedents and legal definitions.

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<sup>6</sup> *Genesis* 1:27.

<sup>7</sup> *Shevuot* 39a.



As a people governed by the parameters of Halacha,<sup>8</sup> we need a Torah based approach to examine:

(1) whether or not an employer might have Torah-based obligations to not discriminate based solely upon physiologically immutable characteristics when hiring, managing, accommodating, or promoting employees and

(2) whether or not governmental and private establishments and services that serve the public, including housing, education and transportation vendors, have a civic obligation to not prejudicially discriminate against and to provide access without undue hardship for the widest range of constituents, residents, students, and potential customers.

I look forward to the day when we can use Torah principles to advance day-to-day legal protections against prejudicial discrimination and for the promotion for increased access and accommodations for people with disabilities to everything that a Jewish community or Nation has to offer.

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<sup>8</sup> *Halacha: The Laws of Jewish Life*, MY JEWISH LEARNING, (last visited Oct. 21, 2020) (“*Halacha* is the ‘way’ a Jew is directed to behave, encompassing civil, criminal and religious law.”).