

## **THREE SHORTER ARTICLES**

## Introduction

The assignment includes three short articles on employment law. Three different areas of employment law are selected for three different articles. The focus of the articles is providing a significant perspective with the help of examples and statistics.

## ARTICLE 1

The regulation selected for this article is *the Equality Act, 2010*. It is an Act of Parliament of UK, and the goals of this Act are similar to the aims of the *European Union Equal Treatment Directives*. This act is a pure reflection of all the provisions as implemented by the directives. This act is considered to be an example of providing foundations of legal knowledge. The act deals with the anti-discrimination laws in the United Kingdom (Barrow and Lyon, 2018). It protects the employees from getting discriminated at employee workplace. According to the provisions of the Act, any discrimination or unfair treatment prevailing in the workplace based on personal characteristics such as race, colour, age or creed is against the law. The Act was transformed into a law in October 2010. The Act was legalised in place of the *Race Relations Act (1976)* and the *Disability Discrimination Act (1995)*. The Act ensures consistency in the workplace and lays the foundation on the requirements of the employers, as well as the employees to create a healthy workplace environment (Lewis and Sargeant, 2017). Equality Act, 2010 deals with the simplification, strengthening, and harmonisation of the present legislation for providing the nation with an improved anti-discrimination law for protecting the employees from unfair treatment in the workplace.

Even though this Act was legalised throughout Britain, it was applied only in a few countries such as England, Scotland and New South Wales (Rainnie, 2016). Northern Ireland was exempted from using this act. The Act was developed for protecting the employees on the grounds of age, marriage and civil partnership, sexual orientation, gender reassignment, physical disability, race, religion, caste, creed, and ethnicity. A campaign was conducted by the *Human Rights Organization* for creating a unified law by filling the gaps identified in previous laws. As a result, the Equality Act came into practice. For example, the case of *Lewisham v Malcolm* is considered in this aspect. The case had constrained the definitions for discriminations relating to physical disabilities in 2008 (Countouris, 2016). As a result, individuals who claimed for less

favourable treatment under previous legislation, had faced restrictions. The jury had declared that as long as the employer renders constructive justification, discrimination in the workplace would be allowed. Thus, the Equality Act was established for rectifying the muddled state of previous laws.

The anti-discrimination laws prior to the Equality Act were focused mainly on employment issues. Thus, the need to establish a regulation beyond employment was required. The Act came into effect for strengthening the efficiency of legal frameworks of Britain for the achievement of equality (Bently & Sherman, 2014). It streamlined previous laws and enhanced the level of protection the different characteristic groups could afford. The Equality Act of 2010 aims at harmonising the current legislation relating to laws of discrimination in Britain. The Act also focused on areas beyond employment.

The following nine major statutes of legislation were merged as a unit in this Act:

- ***The Equal Pay Act (1970)***
- ***The Sex Discrimination Act (1975)***
- ***The Race Relations Act (1976)***
- ***The Disability Discrimination Act (1995)***
- ***The Employment Equality (Religion or Belief) Regulations (2003)***
- ***The Employment Equality (Sexual Orientation) Regulations (2003)***
- ***The Employment Equality (Age) Regulations (2006)***
- ***The Equality Act (2006), Part 2***
- ***The Equality Act (Sexual Orientation) Regulations (2007)***

The changes in the legislation of anti-discrimination in the UK brought by the Equality Act (2010) have been highly commendable. It has been identified that no massive change has been witnessed as it conglomerates all the previous discrimination laws (Wheatley, 2017). It was founded on the same objective but with a different aim. The aim was to fill the existing gaps in the law. This Act has clarified the definitions of discrimination, victimisation, and harassment. The Act had widened the horizon and introduced new protected characteristics. This implied that there had been an increase in circumstances under which the authorities are expected to take strict actions. The Centre for Research in Social Policy and the International Centre for Public and Social Policy had conducted a survey across various organisations in Britain for analysing the impact of the Equality Act on the employees and the organisation. The survey was carried

out on behalf of the Office of Government Equalities (Andrews& Parsons, 2018) across 1800 organisations in Britain and the impact of Equality Act on the business was analysed. According to the results of the survey, the Act favoured 76% of businesses, and the reputation and honour of the company was considered as a significant driver for promoting equality in the workplace. 6% of the employers have had unfavourable experience with the Act. They had received complaints and grievances from the employees. The rest 19% of the organisations were found to be unaware of the existence of the Equality Act. For a few small-scale businesses, it has been difficult to gather authentic information on issues pertaining to equality.

For example, the case of *Smith v Pimlico Plumbers* could be considered. Mr Smith who worked as a plumber in Pimlico Plumbers from August 2005 to April 2011 had suffered a heart attack in 2010 and had appealed for making adjustments in his job. Since his appeal was not considered; therefore, he filed a complaint against Pimlico Plumbers on the grounds of discrimination related to physical disability. Later, his appeal was granted by the *Supreme Court* as Mr Smith's situation fell within conditions of employment put forward by the Employment Act (2010) and as per the law, he was provided with complete protection (Gould, 2016). Pimlico Plumbers had refused his request stating that he was self-employed. However, the Act protects those workers as well those, who are misjudged by organisations for being contractors. The Act ensures that the organisations follow their responsibility and provide complete protection and support to workers suffering from physical disabilities.

Another example could be taken in the case of *Essop v HomeOffice UKBA*. This case was registered under the equality act, 2010 — the commission joint funded with PCS Union in the Supreme Court. The case was brought against UKBA. The mentioned organisation discriminated Mr Essop and did not allow him to pass for promotion (Deakin *et al.* 2015). The pass rates were different for older and younger candidates. The court decided that Mr Essop was at a disadvantage for obtaining promotion. Thus, UKBA was found guilty.

The significance of Equality law is not only important as it ensures consistency of employees and employers, but also attributes their contribution to making a workplace, a fair environment in compliance with the law. Besides being anti-discriminatory, this law is significant as it helps to

understand and strengthen the protection of employees in employee workplace. Moreover, the law provides a comprehensive basis to ensure that employees are protected, and the necessary steps are taken for any derogatory actions in the workplace

### **Conclusion**

The Equality Act, 2010 promotes fair and equal treatment for the employees irrespective of gender or cultural background. All the examples considered in this act have showed that equality act can be anti-discriminatory as well as unbiased. The Act defines not only discrimination and victimization but also harassment. Another implication of the act is that it has widened the horizon and introduced new protected characteristics where it has included numerous acts under its jurisdiction. It works on the principle of establishing a democratic workplace. Thus, employer and employee both can properly work in an organisation. It came into effect for dealing with challenges related to discrimination in workplace and promotion of equality in a more comprehensive manner.

## ARTICLE 2

In this article, the case in focus is that of *Richmond Adult Community College v McDougall [2008] EWCA Civ 4*. The case was presented at the **Royal Courts of Justice** in London. The issue that was raised in this case was of discrimination related to physical disability. Miss McDougall used to suffer from certain psychological disorders. She had recovered after receiving medical treatment. Richmond Adult Community College had offered the job of database assistant to McDougall. However, the college withdrew the offer after learning about her medical condition. Thus, a disability discrimination complaint was filed by McDougall against the college (Davis *et al.* 2015). When the case was presented in front of the Employment Tribunal, it was found that McDougall was mentally impaired, however; she could not be considered disabled under *Section 1 of the Disability Discrimination Act 1995*. This is because the mental impairment issue did not have any significant adverse effect on the health of Miss McDougall. However, the *Employee Appeal Tribunal (EAT)* did not accept the decision of the tribunal. It stated that medical evidence between the time periods should be considered. Due to this factor, the Employee Appeal Tribunal reversed their decision.

The college had sent its request to the Court of Appeal stating that the employer's decision was based on the possibility of the occurrence of the condition. The decision was based on the condition of McDougall on that day and the circumstances following that, was not considered by the tribunal. Moreover, the Court of Appeal had approved the request based on the evidence and facts provided to them at the relevant time (Li, 2017). It was accepted that recurrence of the condition should not be considered.

The court of appeal holds the consent that employment tribunals are required to limit their assessment to the present condition of the client and not what it would be in the long run while evaluating the likelihood of occurrence of a specific condition. Thus, the impairment would be held as critical impairment if it had a substantial long-term effect on the health of the plaintiff. Ms McDougall is a physical disorder patient and suffering from persistent delusional disorder. Her case was registered at court of appeal following the guidelines based on Discrimination Act (1995). Here the act focuses on the likelihood that mental impairment would recur over a relevant time period.

The tribunal was indeed satisfied that Ms McDougall had been suffering from persistent delusional disorder, along with a schizoaffective disorder, leading to her being admitted at a hospital. However, the tribunal examined the evidence that schizoaffective disorder of claimant did not recur, after her discharge in February 2002. As a result, tribunal was not satisfied with the absence of any evidence illustrating probability of suffering any recurrence in April 2005. Naturally, it cannot be postulated that any type of mental impairment, capable of creating any substantial negative effect, could continue to exist for 12 months. It is quite evident that the tribunal did not give any consent to the report as there is no evidence that can prove that she could be suffering from the disorder again.

The Court of Appeal also highlighted the fact that situation of Ms McDougall was distinctive from a typical damage assessment situation. In the later type of situation, the court or tribunal should assess the extent of victim's loss and damage only on the basis of evidences, available during assessment scenario. As per stature of Disability Discrimination Act 1995, under paragraph 2(2), if availability of special facility due to disability of a person is liable to affect his regular life, the person is liable to be treated in a normal way to restrict probability of providing such facility of discrimination for disability.

In this case, the court of appeal stressed on the factor of **DDA 1995** and stated that, it was made a discriminatory act for employees when unlawful decisions are taken about them.

This implies the fact that employees must decide whether a particular employer is disabled within the meaning of **DDA 1995**. Based on evidence as well as circumstances prevailing during the time of decision making, employment tribunal should make its judgment to determine whether unlawful discrimination of employer has been established or not (App.croneri.co.uk, 2018).

The Court of Appeal restored the verdict provided by employment tribunal as the decision regarding probability of recurrence should be assessed based on circumstantial evidences. Since the Disability Discrimination Act 1995 emphasizes in the probability of recurrence at a specific time, and this legislation is not supportive of any otherwise suggestions, hence it is legally legitimate to surmise that subsequent events should have been taken into account for this inquiry.

## **Conclusion**

Disability discrimination Act enables protection of individuals who not only suffer from disability but also suffer mentally. In this case, The Act defines disability and gives a new dimension to Ms McDougall's case. The case example used in this article has provided ample evidence to show how the Disability Discrimination Act, protects the right of concerned disabled people. As per the Act, Ms McDougall, who has been suffering from physical or mental damage had a tremendous impact on the health and her ability to carry out daily activities. Evidence gathered from the above articles suggests that the Disability Discrimination Act (1995) had achieved significant status in the UK and brought about remarkable improvements in the legal framework of the country.



### ARTICLE 3

In this article, a proposal for reforming the existing employment law of UK has been produced to *prevent inequality and injustices within the workforce regarding the gender pay gap*. There is a strong and urgent need for reforming the legislation regarding the issue of gender pay highlighted in the Equality Act of 2010, which aligns with the Employment Act 2002 directly. The primary aim of making this reform is to practically prevent gender pay issues which are evident in several companies - Both Multinational Corporations(MNCs) and small businesses, throughout the UK. This reform will lead to a more equal and fair employment system that would ensure that a person, regardless of their gender, would be paid the same amount as everyone else and that if they are being underpaid (compared to their co-workers), they can launch anonymous complaints against their employers.

It is vital to note that the issue of gender pay is not merely rooted in the pay difference between men and women but also between cis-gendered and transgendered individuals. As per the latest amendment of the Equality Act regarding employment in 2017, the law demands companies to report their gender pay gap (legislation.gov.uk, 2018). This reform is highly effective in ensuring that people who work under the same position are paid equally. Conversely, the issue of discrimination against transgendered people can cause concerns. This prompts for reform in the equality act as it reviews the issues about employment and gap in pay.

The Equality act of 2010 has been amended various times with the latest reform occurring in 2017 where the concern regarding the gender pay gap was highlighted (cipd.co.uk, 2018). However, it should be noted that while this reform is theoretically useful, it fails however to address minute details and issues regarding the pay gap. For example, a company can submit a report of employee payment where the fixed salaries of their employees are highlighted. However, the organisation in concern can manipulate these numbers by not mentioning deductions and other considerations they may use to deduce pay from women or transgendered individuals (Lord, 2016). Reform should be made in the Gender pay section of the Equality Act under which it should be mandatory for the companies to send the real salary reports of their employees and not merely their salary packages. This includes reporting about deductions and additional payments to employees for failures and achievements respectively.

This reform would make an effective initiative to prevent any inequality between genders and gender identities. In terms of privilege given to male employees, reporting about additional

payments can help track loopholes within this section of the act; it should be obligatory for every additional payment to be explained or highlighted by companies. As per the issue of discrimination against transgendered people on the basis of their payment, reform in this act would also require that companies do not assess their employees' gender or gender identities and that there should be a separation between the administration and workforce in order to ensure that there is no difference in wage or salary packages. Initiatives of gender pay differences are essential to ensure that companies do not promote inequality and discrimination against women, men, trans-men or trans-women(Kozhimannile *et al.* 2016).

One vital point to consider is the reporting of unequal pay; often people within an organisation cannot report wrongdoing in fear that they might lose their jobs (Oliver, 2016). This issue can also be addressed in the reform by ensuring that employees have a way to report cases of unequal pay anonymously. This report can be sent directly to the government officials ensuring that their identity is kept safe and secure. Employees can only lodge a complaint if they have substantial evidence to back up their claims, for example, the payslip of another individual with the same position within a company. It should also be noted that there is always a possibility for an organisation to pay higher to men or any preferred gender and address the reason as better quality of work. Hence this act should be amended in a way that the quality of work is not considered a factor for higher pay. This reduces changes of loopholes within the act and helps equal pay within genders.

A primary concern of the Employment Rights Act (1996) is that each employee has equal rights in the same business(Doherty, 2018). However, there was a disparity among the rights of the employees of different organisations. Hence, this act should be complied with, by ensuring equal pay gap between men and women along with transgendered individuals. Practically, this reform seeks to change the Equality Act of 2010 where the section of equal pay should be aligned with the Employment Rights Act of 1996.

## **Conclusion**

This reform proposal was made due to the impending issue of the gender pay gap evident in the UK and various businesses around the globe. There is a significant difference between the pay and wages of men, women and transgender. This issue of unequal pay can also be linked to discrimination and segregation, and hence it is vital that this reform is taken into consideration. The reform was based on making amendments to the Equality Act of 2010; specifically, the area

of the gender pay gap and this was done in order to ensure that people from within every spectrum of gender are treated equally in terms of payment. Companies should be required to report about their payments to their employees; this should also include deductions and additions to the payment of every individual within the workplace. This will ensure that any privileges given to any specific gender in terms of their salary or wage are kept track of and that no person is discriminated based on their gender.

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