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A CRITICAL ANALYSIS OF EMPLOYMENT LAW

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ABSTRACT*: This paper scrutinizes a simple outline of Employment rights, related disputes and liabilities under UK Employment law. In the terms of rational modification, it amalgamates basic rights, duties, work activities and limitation in workplace. In response of opinion, it exposes gender discrimination, and equal payments discriminates. This papers categorizes termination of work, unlawful and unfair dismissal during contract of service. Similarly, it refers rare legal dispute amongst the parties, where it establishes the factual backgrounds and responsibilities default parties. The paper argues about employment protection rights and data protection right during service of contract and near future. This papers concludes on the outlook of regulations of investigatory power which can stop and protect crimes.*

KEYWORDS*: work rights, discrimination, legal dispute, liability, UK Employment Law.*

INTRODUCTION

This is the Employment law where employee and employer get benefited. The national laws and European Laws provided many rules and regulation for the better advantage of employment. It discusses basic norms of employment like contract of employment, breach of contract, duties and liabilities, disputes and bargaining of disputes. The privacy of the employee and workplace also important subject. Most of the laws are much potential for the rights of employment and few of them violated the privacy and safety. Basically the relevant law's always giving priority to the employee. If employer follows rule and take initiative or focus on reasonable care during the working, as a result it gives benefit to the employers. Although laws always learn discipline about lawful activities but sometimes it creates extra bindings. In total the employment law and relevant laws are adjustable for work environment, also provide better advantages for employment.

Employment law

In the United Kingdom the Employment Law corresponding a statutory law. It deals about employment related activities, range, scope and limitation. The anti-discrimination legislation also upgraded where many of sensitive judgment altered the employment law year by year. New rules, regulations, directives and treaties always make some pathway over the national and international employment law. Recently, court decisions have been changed all traditional employment law practices. The court exercises their inherent powers for adopt new rules and modify old laws. This type of changes and employment related activities lead through tremendous bargaining actions between employees and employers. The Court decision provided opportunity in favor of employees and employer as well. Bowers (2009) On the other

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hand, the employment means any contract or services or any kinds of apprenticeship whether the contact is express or implied. The famous case William Hill Organization Ltd V Tuker. It was held by the Court of Appeal that the employer had responsibility to offer work at the time of work was vacant or available. Another case was like Scally V Southern Health Board; The House of Lord accept the minimum criteria regarding the employer obligation. The obligation on the employers was some particular steps like contractual terms to the employee's attention. The case Malik V BCCI, the House of Lords court long-established that the employers never hamper the mutual trust and self-confidence leading on the cooperation is made without valid reason or proper cause. Safe premises are one of the important issues. If we look the Case reference Latimer V AEC Ltd the workplace (factory) was flooded. The House of Lords decided that the employers had taken realistic and reasonable safety measure and they never expected to close down their workplace in order to stay away from a fairly silly risk of injury. Paris V Stepney Borough Council &White V Holbrook Ltd, both cases as related the health and safety issues. The common laws recognize that the employers should be liable that if they ignore the safeguard against the anything like reasonably foreseeable.

Who is Employee under Employment Law

According to the section 230 of the Employment Rights Act 1996 deals about the definition of employee. An employee means a persons or individuals who have entered in to the contract to perform any works under the contract of employment. A worker may be employee if the contract made by the express or implied, oral or written. If any individual works for the parties neither as a client nor a customer in a companies or any business institutes. The court explanation upon two basic components like personal and mutual obligations and also some minor factors regarding the meaning of employees. Which indicate as follows: Proper documentation, Tax, NI, Use ownership equipment and Design contract test.

- Whether the employers take into service anyone for his own helps?
- Whether the individuals prohibited to do work with others? Bell (2010)

Duties of the Employee

- Take reasonable care
- Cooperative with employer and colleagues
- Loyalty
- The obligation not to struggle the Employers
- The obligations make known confidential information

Contract of Employment

The contract of employment means when any company makes advertisement for the relevant vacancy and people can put their concentrate that he or she will join or entire in to contract for employment. If the employer call for interview or they make offer for that kinds of relevant job or the person who agree and accept that offer. The contract of employment made on the time of interview. Again the employers send appointment letters to the applicant home address. The employers negotiate about salary, starting time, availability, sing in the employment terms and condition, and declaration form. In these time employer also negotiates about membership of the relevant trade union for the collective bargaining. The employer also collects all kinds of private and confidential information as a data for future references. It is very important responsibility to protect the private and confidential data of their store for the security of the

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employees. The Employment laws provided the contract of employment and relevant facilities. The Equal Pay Act 1970 provide how to enter in to the contract of employment.

Express terms of the contract of employment:

Offer or Acceptance letters	Trade Union and Workforce agreement form
Contract of employment form	Notice and Memos provide to the relevant personnel
Handbook	Policy of the employment

Collins (2011)

According to the section 1 of the Employment Rights Act 1996 deals about the terms and condition of the contract of employment. The employee must provide some information to the employer. As follows,

Name of the Employee. Date of birth. Address. Employment experience. Method of rate about remuneration. Terms and condition regarding job hours. Holiday entitlement. Disabilities. Pension and pension schemes Notice required from the either parties. Job title and job description. Length of job either permanent or temporary, fulltime or par time	Place of work. Health and safety. Safeguards. Disciplinary rules. Termination / dismissal. Arbitration/ ADR. Others.

Equal Payment under Employment Law

Right to equal payment is one of the best facility for employees in the contract of employment. Every employment provided terms and condition regarding payment and equality between male and female. The international labour organization convention (1951) No. 100 deals that every employees requires their equal payment with same work value. Under Article 141 of the Treaty of Rome also acknowledged that every employee will get equal pay for their equal work value. Once male benefited more than female in their work place. But when the Equal Pay Act came in to force than its changed. The sex discrimination was one of the most vital issue getting pay from the work. The Equal Pay Directives 75/117/EEC pointed out that the equal pay. In modern life every state has own legislation over employment. Like European Union provides verities laws for better facilities of the EU national employments. United Kingdom and EU conjointly take proper step for the payment between male and female ratio. The case of Defrenne V Sabena, in this case it was held that the European Court of Justice point out under Article 141 the discrimination between male and female in same job. It is prohibited in employment law. This prohibition not only in relation between employee and employment but also individuals and giving out of the whole State. Her claimed effect national law and Article 141 of the ECJ under direct sex discrimination. Eredman (2011), Bell (2010)

Pickstone v Freemans PLC**,** in these case it was held that the claimant was an employee under Freemans PLC. The checkers who operate warehouse and claimant job position and work value

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were same according to the terms and condition of the contract of employment of that company. The House of Lords pointed out on the few grounds issue that any national law should be interpreted in accord with European Union law. Any candidate can select their own competitor. Also no employers can clarify to avoid by the law any issue related between genders. If the company provided valid job appraisal and any one aggrieved by any point of ground than the employee can arise any claim against the employers. Upex, Benny & Handy (2010 -2011)

Redcar & Cleveland Borough Council V Bainbridge and Others, it was held by the Court of Appeal that the equal payment is not only remedy but also its substitute rights for employees of their contract of employments. Bell (2010)

Jekins V kingsgate, The ECJ held that if any one made any claim under Article 141 and Directive cannot be proceed because the Directives of Equal Treatment and the Directive of Equal Pay are same things. It's mutually exclusive for equal pay for employees. Section 1(2) of the Equal Pay Act 1970 give right to female. Female can claim against male for equal pay and equal value. Gwyneth Pitt (2009)

Discrimination of Employment

According to the Equality Act 2010 mentioned that there are two categories of discrimination arise in workplace. These are

Protected characteristics: It means some attitude between employees and employers. According to the section 4 – 12 and 18 specifically mentioned about protected characteristics discrimination in employment under Equality Act 2010.

Section 5: Age
Section 6: Disabilities
Section 7: Reassignment
Section 8,18: Marriage and Pregnancy
Section 9,10: Race and Religious belief
Section 11,12: Sex and Sexual Orientation

Eredman (2011)

In every work places sex and race discrimination are very big problematic issue. Because the Case about Mandla V Dowell, the HL held that the Sikhs are ethnic group and there was a race discrimination between employees and employers. Another case was like Jepson and Days Elliot V the Labour Party, the court pointed out that there was discrimination between two groups and the discrimination favor only women groups. These types of sex discrimination totally unlawful in a political party. Bell (2010)

Prohibited conducts: It is also the main reason for employment discrimination. According to the section 13 – 17 under Equality Act 2010 mention that some discrimination arises from the following grounds like as

section 13: Direct discrimination.
section 15,16: Physical and gender disability.
section 19: Indirect discrimination.
section 26: Harassment.
section 27: Victimization
section 23: Comparator.

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The Employment Equality (Sex Discrimination) Regulation 2005 mentioned that sexual orientation, disability, age, religious belief those are main grounds of discrimination. Gwyneth Pitt (2009)

Brace Bridge Engineering LTD V Darby, it was held that the harassment done outside of the workplace. Only employer's liable if the employee work in the course of employment. In these case only physical conduct may constitute harassment. Coleman V Attridge Law, it was held by the EC that discrimination was the scope of the employment according to the Directive 2000/78. James V Eastleigh Borough Council, the House of Lords upheld that on the argument of Mr. James that the clarity of discrimination under the intention and motive never put aside the on the grounds of sex conflicts. Bell (2010)

The theories of employment discrimination

The employer's discrimination theories are follows:

- Over discrimination
- Disparate Discrimination treatment
- Disparate Impact Discrimination

Termination from Employment

Any employee can terminate from the contract of employment, because the terms and condition preserved those rights when the employee's signed in the contract of employment. The termination of the employment can by notice or breach of contract of employment without notice. The common law and statutory law prefer about termination notice, it may be weekly, monthly. The notice depends upon the nature of work and different circumstances. Grundy V Sun printing and Publishing Association, there was a year notice as a reasonable time gave to the employee that he will be terminated from the employment. Adams V Union Cinemas, there was 6 months' notice because there were 120 cinemas pending on that time. so reasonable time like 6 months for terminated. But according to the Statutory law like ERA (1996) under section 86, 87 provides that reasonable time may be week or month. Gwyneth Pitt (2009) Egg Stores (Stamford Hill) Ltd V Leibovici, the court taken few numbers of causes that the contract of employment has been aggravated. The common law also takes action by summery dismissal. Because of dishonesty, a series of indecent of intoxication, gross negligence, willful disobedience and gross misconduct in the course of employment. Laws V London Chronicle (Indicator newspapers) Ltd, the employee dismissal from the employment because of disobediences was past record of the employee.

Wrongful and Unfair Dismissal

The employee dismissals from the employment without reasonable and valid grounds. This type of wrongful dismissal makes more complexity in a job market. Under common law countries it's happen every times. But the employee can claim specific performance and injunction to the proper court jurisdiction to recover their right to work. The case Pepper V Webb, the instruction of the employer side was lawful and reasonable and the gardener willfully disobedience of the employers' instruction. That is why employee dismissed from his employment. Hill V C.A. parsons and Co. Ltd, the Court of Appeal held specific performance and injunction that the employee has been working last 35 years there is no reason only silly grounds he dismissed from the employment. There was wrongful dismissal by the employer.

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According to the section 95(1) (c) of the ERA 1996 deals about constructive dismissal. Western Excavative (ECC) Ltd V Sharp, Lord Denning M.R decided under contractual test and unreasonableness. The court confirmed that employees face a lot of pressure and stress about the permanence of employment. The court was argued on the ground of contract test that employees never breach any terms and condition on the course of employment so there was no dismissal.

Collective bargaining under Employment

In the present employment market job crisis one of the leading issue. The demand of job and employment vacancy too different from each and other. The rights of bargaining power also limited in every institutes. As a result, the trade union takes the responsibility to equalize the basic objective of the adjustment of collective negotiation dealing power on behalf of the all employees. The employers try to mitigate with trade union for the better solution regarding internal and external agreement and built up others relationship.

The main purpose of the trade union is negotiation. Employers can negotiate with single union or any agent or trade union. The Trade Union also performs like statutory recognition and compulsory recognition, volunteer recognition and de recognition by group discussion or consultation with individuals. Discloser of the data under the Trade Union and Labor Relation (Consolidation) Act 1992. Cunningham and Reed (2007), Gwyneth Pitt (2009) R V CAC ex P BTP Oxide Ltd, it was held in this case that the trade union and employer try to negotiate to solve their internal and external problems. Basically the dispute arises regarding employees' salary. The court held that there was no proper negotiation between trade union and company. Their employer only bargain about the holiday payment and others pay hours. According to the section: 178 of the TULRCA 1992 deals about collective agreements and collective bargaining. Section: 182 deals about restriction on general duty Section 183: deals about complaint of failure to disclosure information. The directive 94/46/EC also dealing about the trade union and employer's negotiation policies.

Industrial Conflict

The relation between employers and employee are very special trade to continue the course of works. A slow distinguishing factor engages both managerial and marketing relationship between employers and employees. In grounds of industrial conflict, the employer call for social dialogue with employees. If fails than they call for group discussion or agent based conversation. If fails again than they call for third parties to resolve these dispute by mediation, arbitration and conciliation. Basically the disputes are follows;

Termination	Discipline.
Unfair terms and conditions.	Trade union membership conflict
Suspension from the employment	Reasonable facilities from the employment.
Unlawful dismissal	Discrimination between race, sex, disability, age.

Faust v Power Packing Case Makers Ltd, the Court of Appeal held that if there is no relevant and reasonable action between employees and their employers, so the tribunal have no right to hear these dispute, because it's out of tribunal jurisdiction.

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Dc Thomson & Co. Ltd v Deakin, if any tort proven under the course of employment under following grounds like:

Breach of contract on the existence of course of employment.
If encourage to do any breach of contract
If anyone influenced.
Employees make a complained such breach.

The Court pointed out that there is no breach above mentioned tort. Kidner (2012 – 13)

Health and Safety

According to the government annul statistic said over 200 spot dead and 150,000 injured in the workplace. Every year government taking step to protect these types of problem. They are giving awareness to the workplace for the health and safety. The statutory regulation body taking action and giving criminal sanction for disregard the rules in a workplace. They also ensured compensation about injured persons. The UK legislative body and European Union considering new rules and regulation for health and safety awareness under course of employment.

Liability upon Employers

It mentionable that the employees can claim for damages or compensation against the employers on the grounds liabilities. In general employer duty means duty to take care for protecting injury in workplace. Most of the time employee injured outside the countries even he or she was on the course of employment. Mathews V Kuwait Bechtel Corporation, it was held that by the Privy Council try to find out that the liability under tort there was any contractual relationship between employee and employer. That relationship was existed in the course of employment. Emir (2012 -2013)

Under the Common law one of the famous case name Paris V Stepney Borough Council, the House of Lords said the employer should take proper duty of care each and every individual but the employer fails to take that way. The employer be obligated the duty. If we focus on the case Wilsons and Clyde Coal Ltd V English, it was held in these case The House of Lords decided all types of liabilities shall lie to the employers under the course of employment. But Bradford V Robinson Rentals, it was held by QB that employers also liable for unable to supply necessary and comfortable plant. Johnstone V Bloomsbury HA, the Court of Appeal held that the employers must have put into effect with observe that about employees' health and safety. These case are link between another 4 cases which based on the grounds of psychiatric illness and injury caused to stress at workplace. Those cases are Baker Refractory's Ltd v Bishop, Southerland V Hatton, Somerset CC V Barber, Sandwell Metropolitan BC V Jones. The court pointed out that several importance part of consideration of the employment. These are follows;

- Under reasonably foreseeable by the employer.
- Under stressful illness and injury.
- They know and ought to be known.
- The problems or weakness in a work place.
- Easy to take face value**.**

Defense Case about employers' liability like Hilton V Thomas Burton Ltd, in this case that the employee had a normal job to drive the van. But there was incident happen outside course of

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employment. That is why employer not liable for this kinds of occurrence. ICI Ltd V Shatwell, it was held by the HL that on the ground of volenti non fit injuria done that is why there is no liability upon employers. R v Gateway Foods Markets Ltd, employer's liable failure of reasonable precaution to safe guard for workplace safety. Barnard (2012), BPP (2012 – 2013) Human Rights Act 1998 under Article 5(3)(d) that the employer cannot impose and force any work to the employee in the work hour in the course of employment. X V Netherlands, Commission declared in the case that any obligation can impose on associations but not to footballers.

Employment Protection Rights Act 1975

According the EPR Act 1975 provides new rights for the trade union and employees. This Act also provides the good relationship via trade union. The Employment Protection Rights law dealing with as following subject matters;

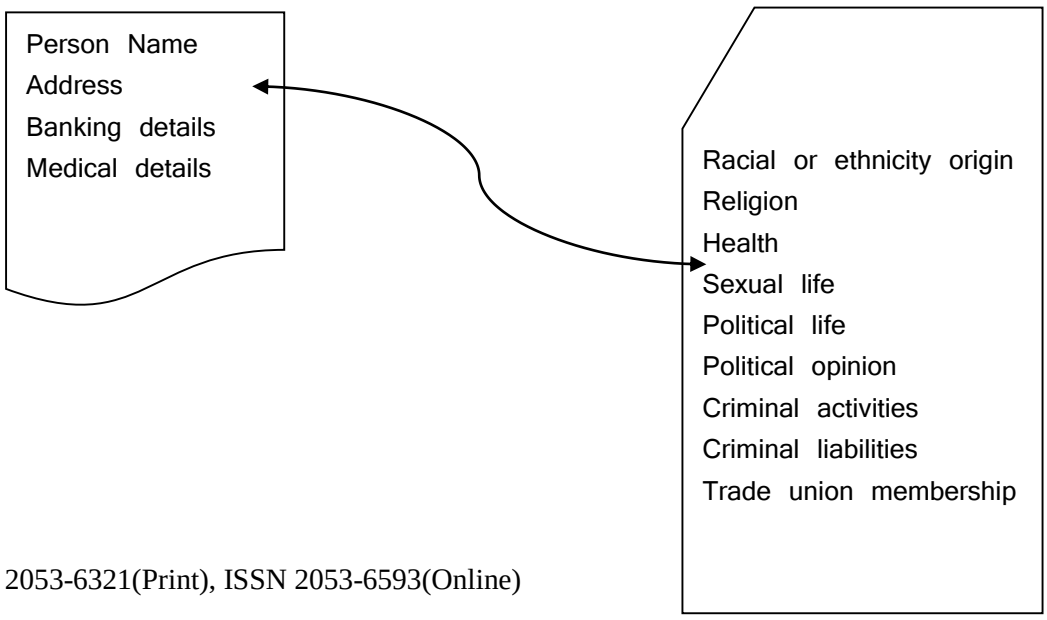
- Family rights.
- Maternity right.
- Flexible work.
- Paternity Right. The famous case Atkins V Coyle Personnel Plc, deals about paternity rights.
- Parental leave.
- Leave for dependent care. Directive 96/34/EC
- Time off rights.
- Suspension on medical ground.
- Annual leave: Directive 2003/88/EC. Robinson Steele V RD Retail Services Ltd**.**

BPP (2012 – 2013)

The Data Protection Act 1998

The Data Protection Act 1998 one of the applicable law planned to protect individual private information. It is also protecting the information or data store on computer. In 1998 the Data Protection Act was passed by the Parliament to supervise how the information can safe and to control by the Employers. The DPA provide two formulas like how can protect personal information as follows:

Personal or Individual Data **Most sensitive and Important Data**



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There are many more safeguards provided vis-à-vis privacy of the individuals and ordinary personal data. If anyone face any problem about his or her private confidentiality which one already given to the data controller for the purpose of employment. The law also gave the change to the private individuals that anyone can take action against any person who misuse that information has been given. In modern technology wave make more updated that the employers can get any information very easy. In the time of entry in the workplace or swipe their ID card for entry or by log in PC, text sending and receiving email, etc. on behalf of the company. Sometimes they communicate with either telephone or other technologies. All types of activities recorded for the companies monitoring purpose. The employer can monitor any time if need any evidence for the legal and necessary purpose. The employers have right to interfere the employees recorded file as relevant as necessary. This type of monitoring always helps the company's good services. Although monitoring is important job for company's purpose but sometimes it is sensitive activities. Because no one have right to interfere employees' private data.

The Durant V Financial Services Authority, clarify that some of the data is so sensitive for the privacy. Those personal data are used on the ground of race, color, criminal activities, criminal liabilities, sexual lie, ethnicity or origin, political opinion, membership of the trade union, commission, community, any allegation against the person.

The Regulation of Investigatory Powers Act 2000

The Telecommunications (Lawful business Practice), (Interception of Communications) Regulations 2000:

According to the Regulation of Investigatory Powers Act 2000 the Government controlling the public and private surveillance how to protect the crime and terrorist threat. The RIPA 2000 makes balance and protect between employments based criminal activities and terrorism. The RIPA 2000 takes action in following grounds;

- Telephone billing and subscribers' information that means the convicted person why, when and where communication with others.
- Internet access via email, online chat and others. Password and encryption for access electronic data protected.
- Public and private place, vehicles and premises related conduct covert surveillance.
- Purpose of Human Intelligence sources.
- Public and private securities, threats, terrorist activities, emergency.

If the employers think they needs information for monitoring purposes than they can exercise in course of employment. As a result, it is easy to find out any cause of theft, crime, terrorist threats in a job place. But it is very difficult to preserve the others employees' privacy. That means RIPA violates the Data Protection Rights under employment. On these ground any employee think they faced substantial damages regarding individuals' privacy or relevant dispute under law. If employers liable and bound to give compensation. IRPA 2000 an employer cannot exercise interception in a business place regarding any dispute without any lawful permission from the employees. This Regulation makes difficult situation for every employer for interception accessibility. The employers are prohibited to access the interception in private and public network without lawful authority. Am employers can get lawful authority under the Lawful Business Practice Regulation and Interception of communication Regulation 2000 to protect the crime and terrorism activities. RV Preston**,** it was happened in this case that

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the Government takes steps to interception communication to protect and detect the crime rather than prosecution.

Halford V the United Kingdom, in this case the complainant had right to exercise the telecommunication but there was no privacy in that system. According to the Article 8(2) m of the HR Act 1998 and the interception communication regulation gave right to private life.

CONCLUSION

In sum up it is clear the employment law and relevant laws are more applicable in workplace, because the privacy of individuals' like data collection is more secret as well as more sensitive issue for course of employment. The employees are aware about their rights and duties in the workplace. They also know how to protect their own rights. On the other hand, the employment laws and other relevant commandments giving best pathways for employers. If the employers avoid to take any step in respect of their obligation than they will face hard penalty or criminal sanction. Employer must take care their jobs otherwise they can liable as a employers liability or vicarious liability. Moreover, in a contract of employment the employer obligation more than employees. However, it is important for employment to modify the existing laws and Government initiatives.

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Appendix I

Trial & Title

Critically evaluate of the law on Privacy in the workplace. As part of evaluation, it needs to consider the statutory and common law protection of workplace communication and data about employee. Is the current law an unnecessary burden on employers?

The present globalization employers deal with employee's privacy, safety, data protection, payment, discrimination others relevant subject matters. And present statutory law and common law based how much applicable and comfortable for the employee rights protection and how much benefited. This topic also deals about employer's liabilities and burden to the employees. Telecommunications and interception right how much important for employees and employers also most important point for these research. Most of the cases gave some specific problem like employment related. Whether employees discriminated by employers, or employers liable for any kinds of duty of care, or employees terminated and wrongful dismissal from employment. The relevant laws how much flexible for employees and employers etc.

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James
Jepson and Days Elliot

Termination:
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