Ensuring equality at the workplace by strengthening the law on prohibition against discrimination

Kola Odeku* and Sola Animashaun

School of Law, Faculty of Management and Law, University of Limpopo, South Africa.

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Nigeria is a liberal democratic society, a free market economy and a secular state. As such, it is vulnerable to invidious workplace discrimination. This article examines inequality and blatant discriminatory practices in the workplace in Nigeria. The paper explores extensively the jurisprudence of the workplace discrimination in Nigeria and makes a comparison with approaches from other jurisdictions. The paper argues for both the need to strengthening the law on prohibition culminating into outright elimination of discrimination in the workplace. Towards this end, the paper advocates for exploring both the civil and criminal responsibilities of discriminators and concludes that they should be brought to book.

Key words: Workplace discrimination by employers, vulnerability of employees, strengthening the law on prohibition of discrimination, outright elimination of discrimination in the workplace, exploring civil and criminal liabilities of perpetrators, bringing perpetrators to justice.

INTRODUCTION

Discrimination is defined as “any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation (DEOC, 1958). In recent years, various countries have enacted numerous legislations which have expanded the list to include disability, age, state of health (including actual or perceived HIV/AIDS status), trade union membership and family status, among other grounds (ILO, 2007). Jobs remark in the workplace, discrimination connotes the bigoted treatment of others regardless of the intricacies of their differences (jobs).

One of the reports of the international labour organisation (ILO) describes discrimination at work as a violation of a human right that entails a waste of human talents, with detrimental effects on productivity and economic growth, and generates socioeconomic inequalities that undermine social cohesion and solidarity and act as a brake on the reduction of poverty (ILO, 2007).

Agu (2009) argued that in order to eliminate the practice of discrimination in the workplaces there is a need to promote equality of opportunity and equality of treatment. Similar view was expressed by the European Social Fund: Equality and Diversity Good Practice (2007) by asserting that equal opportunities initiatives typically happen because the law has compelled organisations to create a ‘level playing field’ in the workplace or to ensure equal access to services (ECOTEC, 2007). This is achievable through the commitment of the government and employers to ensure that the law is implemented in order to combat discrimination and promote equal treatment and opportunities (ILO, 2007). This is reflected in the contemporary trends at the international level which has led, in the past years, to the steadily increasing number of ratifications by a lot of countries of the Equal Remuneration Convention, 1951 (No. 100), and the Discrimination (employment and occupation) Convention, 1958 (No. 111) (ILO, 2007). Against this background, this paper examines to what extent has equality been created at the workplace in Nigeria? What are the major obstacles

*Corresponding author. E-mail: kollykross@yahoo.com. Tel: 0152682718. Fax: 0152672904.
towards the realization of elimination of discriminatory practices in the workplace? The paper highlights that there is a need to proffer an enduring solution to these problems in order to have conducive environment devoid of invidious discrimination in the workplaces. More importantly, the paper highlights that employees need to be aware of their rights and the types of discrimination they are vulnerable to in the workplace (Beaton Consulting and St James Ethics Centre Survey). The reason for this is that if employees are aware of the invidious discriminatory practices in the workplace, they would be better equipped with the relevant knowledge and tools to protect them against workplace discrimination (Greenberg et al., 2007). This is because persistent discrimination may force an employee to leave the company under the inference of constructive dismissal (Bregman, 2012). Towards this end, it is an employer's responsibility to ensure the equal treatment of each employee by creating a conducive workplace environment that promotes equality and eliminates discrimination (Jobs, 2011).

The concept of equality cannot be separated from the concept of justice. Similarly, equality and discrimination are two sides of a coin (Goldstone, 2006). Once there is discrimination in any form, then the doctrine of equality is violated and vice versa (White, 1997). However, for purposes of this discourse, there is a need to separate discrimination from a mere differentiation. The reason for this is that, there could be a cogent reason to differentiate even in the workplace on some grounds but such grounds should be reasonable. Differentiation is an enduring feature of labour markets everywhere in the world provided it took place for a good reason. Nigeria is not an exception (Tomei, 2003). Consequent upon this, employers have the rights to determine not only the jobs that are available but the qualification that workers need in order to fulfill these jobs, the wages, working conditions, skills and capacities (Fudge, 2009). To some extent, these reasons are permissible provided the employer does this within the ambit of the law.

However, from an ethical perspective, differentiation will automatically becomes discrimination once that differentiation takes place for an unacceptable reason (Dupper and Strydon, 2004) such as employment based on race, ethnicity, gender and religion are unacceptable and they are prohibited in most of the liberal societies (Fudge, 2009). And as such, there are legal remedies available to employees who have been subjected to invidious discrimination or inequality (Fudge, 2009). However, McLachlin (2009) observed that the meaning of equality in labour relations has consistently been presented as the most conceptually difficult question for the courts. It is against this backdrop that McLachlin (2009) described equality as a Tantalus promising more than it can deliver. The reason for describing equality in labour relations like this is that: “there are competing understandings of which inequalities matter or what kinds of discrimination ought to be prohibited. The question of legitimate and illegitimate forms of inequality is particularly pertinent and controversial in the realm of work. Labour markets are the primary mechanisms for allocating income in liberal democracies and, in this era of globalization and neo-liberalism, tolerate profound differences in the treatment of individuals and generate profoundly unequal outcome” (McLachlin, 2009).

Pursuant to the preceding quotation, she cautioned and warned and said that absolute equality is impossible because of the diversity of the society and its foundation in the competition of marketplace (McLachlin, 2009).

Consequently, treating everyone the same is not necessarily going to work (ECOTEC, 2007). This is because different people will have different aspirations, expectations, opportunities, responsibilities and needs. Therefore, treating people fairly means recognizing their differences, respecting them and acting accordingly (ECOTEC, 2007).

According to Miller, diversity is about valuing differences and respect for people (Miller, 2009). The current trends is now to focus on the legal framework which underpins the prohibition against discrimination; not what the public authority is not doing but focus on what efforts they are doing to ensure gradual eradication of workplace discrimination (ECOTEC, 2007).

For the purpose of this paper, discrimination means unfair or unjust treatment of or decisions affecting an individual because of factors not related to the ability of such individual to perform the job such as sex, race, age, marital status, disability, union membership, personal activities and similar factors. In other jurisdictions, the definition of workplace discrimination has been widened to incorporate harassment, sexual harassment, bullying, and workplace violence.

The courts have been very proactive especially when the issue for determination before the court relates to invidious discrimination. Take for an example, in the American case of Brown versus Board of Education (1954) 98 L.ED 873 the Supreme Court held that it was unconstitutional to separate black children from others of similar age and qualifications solely because of their race. The court concluded that in the field of public education, the ‘doctrine of separate but equal, has no place because separate educational facilities are inherently unequal.

Similarly, in the case of regents of the University of California versus Bakke (438 U.S 265 1978), a white student sued the University for unjust discrimination because it admitted black and Indian students with lower qualifications, whereas he as a white student was denied admission.

The U.S Supreme Court disapproved of the admission policy of the University and held that the university discriminated against the white student. Adaramola (2003) critique this decision noting that this kind of reverse discrimination through creation of special opportunities for the less privileged citizens, in the light of existing equalities may be justified sometimes.
METHODOLOGY

This article concentrates on the observation and systematic processing of knowledge, hence the legal positivist research method was used to do a critical exposition of the need for promotion of equality and prohibition of discrimination in the workplace. The traditional method of citation, analysis of cases and other sources are the main scientific methods in legal scholarship. The methodology for this article involved the application of qualitative but not necessarily quantitative data that are illustrative of the concerns that form the crux of this study. Therefore, analysis of and engagement with contemporary literature in the field of law are used. The South African Constitution, commission reports and governmental initiatives formed the basis and the crux upon which the argument for the prohibition of discrimination in the workplace is advanced. Other relevant statutory, legislative and policy frameworks are also thoroughly examined and used. A legal comparative research method stimulates thought on legal research and can lead to a new insight and significantly contribute to new knowledge. This research method plays an important role in this paper.

DISCRIMINATION IN THE NIGERIAN WORKPLACE

In Nigeria, discrimination and inequality in the workplace are complex, overlapping and systemic. Untangling such composite inequalities and discriminatory practices is clearly a difficult task which has no predetermined answers (Fudge, 2009). However, the Constitution (The Constitution (CFRN), 1999) does provide a tool in chapter 4 section 42 for the right of the citizens to freedom from discrimination. It provides in section 42(1), that a citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion, shall not, by reason only that he/she is such a person:

“(a) Be subjected either expressly by or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin sex, religious or political opinions are not made subject, or.

(b) Be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, and places of origin, sex, religious or political opinions.

(c) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.

(d) Nothing in subsection (1) of this section shall invalidate any law by reason only that the law imposes restrictions with respect to the appointment of any person to any office under the State or as a member of the Armed forces of the Federation or a member of the Nigeria Police Force or to an office in the service of a body corporate established directly by any law in force in Nigeria.”

Although this provision is a blanket constitutional declaration not focused directly on employment related discrimination, it encompasses discriminatory practices in all forms. Consequently, the provision will undoubtedly have an impact on the employment sphere in Nigeria. It is the grundnorm against various discriminatory and inequality treatments. As a result, all laws in Nigeria must conform with the provision as it is bidding on all including the government of Nigeria. Arguably, it has been alluded that the Government of Nigeria is not interested in its working class because as a major employer, it is one of the greatest violator of the rights of workers and major violator of section 42 (Animashaun, 2007). The legislature in Nigeria are also perceived as dereliction of legislative responsibility as they usually preoccupied themselves in introduction and sponsoring of spurious and trivial bills in the legislative houses at the expense of very serious bills such as those that address discrimination and inequality in the workplace.

The Nigerian legislature therefore needs to learn from other jurisdictions such as South Africa. In this regard, take for an example, despite the dearth of legislation addressing discrimination and inequality in South Africa, recently, the legislature passed into law, The Promotion of Equality and Prevention of Unfair Discrimination Act of 2004 (PEPUDA) (2004) in compliance with section 9(4) of the Constitution (The Constitution of the Republic of South Africa (CRSA), 1996, Act 108 of 1996). This constitutional provision places a duty on the state to pass national legislation to prevent or prohibit unfair discrimination and to promote the achievement of equality (Dupper et al., 2004). PEPUDA is similar to comprehensive anti-discrimination legislation in other jurisdictions such as New Zealand's human rights act and the civil rights act in the US (Dupper et al., 2004). PEPUDA covers a wide range of practices and sectors, including labour and employment, education, health care services and benefits, housing, insurance services, pensions, provision of goods, services and facilities, clubs, sports and associations (Dupper et al., 2004).

However, in Nigeria, the only hope for the worker who had been discriminated unfairly is to approach the court for redress. It is pertinent to mention that, sometimes the judiciary is timid in the interpretation of the existing statutes. In most instances, simple cases take several years before they are finalized amounting to unnecessary protracted litigations. Most victims of workplace injustice who have lost their means of livelihoods are ill equipped financially to face the ordeal of embarking on a marathon legal excursion. Some of these ordeals are well explained through the cases of CBN and Ors versus Agnes Igwillo (substituted for Victor Igwillo); a case of unfair dismissal took 10 years before final judgment. In fact the plaintiff died before judgment was delivered thus had to be substituted by his wife. The dignity of the court has also reached the lowest ebb due to the behaviour of some judges. Recently, the then acting Chief Justice of Oyo State was accused of corruption, bias, and impropriety in an open court ((NSP, 2007).
Discrimination is rampant in the workplace in Nigeria and the situation is exacerbated as employers are most uncaring and ruthless. In fact, they trampled on the rights of the workers with impunity. This is further complicated and encouraged by outdated laws, corrupt trade union officials, illiteracy of the workforce, slow and inefficient judicial system, uncaring legislature, ruthless and conniving executive, oppressive and morally reprehensible law enforcement unit.

Furthermore, these complication and discrimination are best explained through the subsisting laws regulating some jobs in the country. Typical example is section 118 of the Nigeria Police Regulation (Cap 359 Law of Federation of Nigeria (NLF) (1990)), which provides for the qualification required by a female seeking employment into the Nigerian police force, the section requires that she must be unmarried before she can be eligible for enlistment as a recruit police constable in the Nigerian police force (Section 118(9) of the Nigerian Police Regulation).

In the same vein, section 124 provides that a woman police officer desirous of marrying must apply in writing to the Commissioner of Police of her command with the fiancée’s bio data. Permission may be granted if the Fiancée is adjudged to be of good character. Section 127 of the same regulation provides that an unmarried Police Officer who is pregnant shall be discharged from the force and shall not be re-enlisted except with the permission of the Inspector General of Police.

Section 55 and 56 of the Labour Act Cap 198 Laws of Federation (1990) prohibits women from certain employment. Section 55(1) provides that: “No woman shall be employed or might work in a public or private industrial undertaking or any branch thereof or any agricultural undertaking or any branch thereof”.

The aforementioned provision does not apply to women employed as nurses or holding responsible positions on management who are not ordinarily engaged in manual labour (Section 55 (2) of Labour Act).

Similarly Section 56(1) excludes women from being employed on underground works in any mine. It is our position that the discriminatory laws enumerated herein should be expunged from the statute books, because they do not serve any useful purpose.

It is important to state here that Nigerian Laws and institutions do not protect the citizens from discrimination in the workplace as such; incidents of inequality and discrimination are myriad, multifarious and multi-dimensional. Some of these are discussed as followed:

**Equal pay for equal work: expatriate against Nigerian**

Expatriates receive far more in terms of remuneration than their Nigerian counterparts for similar jobs who have the same qualifications. This practice is rampant and very common with the multi-national companies.

**Equal work for equal pay: the victor against the vanquished**

This phenomenon is a recent experience which came into the limelight during the consolidation and mergers in the banking sector. The Central Bank of Nigeria mandated that the 89 banks in the country should merge and be reduced to 25. After this exercise, 25 new banks emerged. The acquired banks were termed “vanquished”, while the dominant banks were known as the “victor.” This is predicated on the human resources practices. There are different pay scales for the staff of the “victor” and the “vanquished” in the same organization. An assistant manager from the victor banks enjoys more prestige and earns more than senior managers from the vanquished bank. What more, there were massive retrenchment of workers in the industry. The retrenchment severely affected the staff from the “vanquished” banks about 95% were retrenched whereas about 5% were retrenched from the “victor” banks.

**Equal pay for equal job: casual workers against permanent staff**

In spite of the huge profit recorded by different organizations in Nigeria, especially in the banking, telecommunication, oil and gas industries, the practice of making use of casual workers under the guise of outsourcing is still very rampant and appalling. The casual workers are usually paid a fraction of what their permanent counterparts, doing similar jobs earn. Worse still, the casual workers are not entitled to any fringe benefits or entitlements and have virtually no right. The strategy of most of the companies that engage in this sort of practice is to create a subsidiary employment agency that recruits staff and post them to work in the main organization. In most cases, these casual workers are also made to sign undertaking to the effect that they would not seek direct employment in the establishment as it was done in the banking industry (NSP, 2007).

Most of the companies have also devised fraudulent means to undermine and sideline the law regulating labour relations and in particular employer employee relationships. They perpetrate these illicit acts by employing casual workers for two months plus, dismissed them, ask for new applications and re-employ them ad infinitum (Section 7 of the Labour Act). A notable banker and union leader in Nigeria have strongly condemned this practice. According to Hass Adeleke, the President of national union of banks, insurance, financial institutions employee (NUBIFIE) vehemently condemned the practice by saying that “casualisation” is a means of exploiting poor job seekers and that their union (NUBIFIE) would expose any management that engaged in acts of enslaving Nigerians. Apart from this terrible discrimination and the effect on the psyche of the casual workers, the salaries of
casual workers are not subject to any form of taxation. This has a very serious implication on the economy in terms of the revenue drive and also the casual workers in terms of discharging their civil responsibility to the country.

**Marital status**

Marital discrimination is also very rampant in Nigeria. During the military regimes of the past rulers of Babangida and Abacha, some professional women soldiers were denied certain positions such as Military Governorship of the states due mainly to their marital status whereas their male counterparts were appointed as the state governors throughout the reigns of the regimes. As a matter of fact, some of the affected officers contracted ad hoc emergency marriages in order to qualify.

**Discrimination against people living with HIV/AIDS**

At the Lagos State High Court, Justice Caroline Olufawo withdrew from a case filed by a pregnant Nigerian Nurse, Georgina Ahamfeule who was tested without her knowledge by her employer. It was discovered “she was HIV positive and as a result of this, she was dismissed by her employer”. The learned judge called experts to testify in her court whether her presence as a witness would not cause the court audience to be infected. By so doing, the judge had shown prejudice against the Plaintiff. She later stopped hearing the case and thereafter withdrew from the case. However, In South Africa, in the case of Hoffmann versus South Africa Airways (2000) 21 ILJ 2357 (CC) the Constitutional Court held that it amounted to discrimination not to appoint a cabin crew who had succeeded in the training to work for the South African Airways. The court also pointed out that the policy of SAA to exclude applicants from appointment as cabin attendants on the basis of their HIV status was irreconcilable with the practice of not testing those already employed as cabin attendants regardless of the stage of their infection. Cameron (2000) commenting on the decision observes that in a decision of immense general significance not only to HIV discrimination, but to discrimination jurisprudence generally. The Court’s reasoning, particularly on the right to earn a living was very commendable, the court held that society has responded to the plight of persons with HIV with intense prejudice, subjecting them to systemic disadvantage and discrimination, and specifically that the impact of this discrimination is even more devastating when occurring in the context of employment as it denies them the right to earn a living.

The duties of the employers towards the employees living with HIV/AIDS were clearly spelt out (Komolafe, 2010) in the new international standards adopted at the 99th International Labour Conference, held in Geneva, Switzerland (Komolafe, 2010). Nigeria and other 438 countries adopted and endorsed the recommendations of the ILC. Consequently, the ILO spelt out general principles which recommend that: “workers, their families and their dependants should have access to and benefit from prevention, treatment, care and support in relation to HIV/AIDS and the workplace should play a role in facilitating access to these services, workers should benefit from programmes to prevent specific risks of occupational transmission of HIV and related transmissible diseases, such as tuberculosis; workers’ participation and engagement in the design, implementation and evaluation of national and workplace programmes should be recognized and reinforced”.

The ILO further recommends that: “no worker should be required to undertake an HIV test or disclose their HIV status”. Also “measures to address HIV and AIDS in the world of work should be part of national development policies and programmes, including those related to labour, education, social protection and health and the protection of workers in occupations that are particularly exposed to the risk of HIV transmission”.

The ILO also recommends HIV/AIDS prevention and treatment initiatives and particularly HIV prevention education and condom promotion, voluntary counseling and testing (VCT), care and treatment. The developing countries are welcoming workplace HIV/AIDS prevention and treatment initiatives. These recommendations and initiatives are very laudable. However, it must be pointed out that stigma and discrimination often present major challenges to the successful implementation of workplace HIV/AIDS programmes.

Employees may experience HIV-related stigma from their colleagues and supervisors, and may be fired due to real or perceived HIV status. A fear of negative reactions may discourage workers from undergoing VCT as an entry point to further HIV/AIDS services. Hence, managers and staff of workplace programmes need a better understanding of workers’ perceptions and experiences related to stigma and discrimination to develop appropriate responses (Julie et al., 2004). Privacy and confidentiality is another aspect of the new international standards it states: “testing must be genuinely voluntary and free of any coercion and testing programmes must respect international guidelines on confidentiality, counseling and consent”.

Also, “HIV testing or other forms of screening for HIV should not be required of workers, including migrant workers, job seekers and job applicants”. Equally important is that “the results of HIV testing should be confidential and not endanger access to jobs, tenure, job security or opportunities for advancement”. For migrant workers, it states among others that: “migrant workers or those seeking to migrate for employment, should not be excluded from migration by the countries of origin, of transit or of destination on the basis of their real or
perceived HIV status” (Komolafe, 2010). To make the aforementioned recommendations effective in Nigeria, a lot still needs to be done to create awareness. Many employees have had their appointments terminated by employers simply because they were confirmed HIV positive.

However, it must be mentioned that an employer may have an equal opportunities or dignity at work policy, what matters is how these policies are implemented in practice (Connolly, 2010). The employer has a duty to be sensitive to the culture and racial backgrounds of the employees as these are important elements of any process to ensure that the workplace is free of tensions due to cultural and racial mix (Connolly, 2010). At all times, employers must try to foster an atmosphere where regardless of cultural differences employees are working together without tension and stress caused by conflict (Connolly, 2010).

Age

It is usually very difficult for individuals above the age of 40 to secure jobs in Nigeria except at the highest levels, for instance, General Manager, Executive or Managing Director. Most of the jobs advertisements prescribe age limit as one of the requisite for the jobs as a result of this, individuals do falsify their ages in order to fall within the age limit required for the age. This has a huge impact on the jobs and those who ordinarily ought to have been employed. Moreover, if the job requires some physical roles, the person who falsified age will not be able to do the job expected for a 30 year old person. This is a major dilemma in Nigeria.

Race, tribe and state of origin

The distributions of both political and official posts/offices are based on tribal affiliations and state of origins in Nigeria (Section 15, 147(3) and 153; Part 1 Third Schedule of the 1999 Constitution) rather than on merit. These practices have massively promoted desperations; hence, people lie about their tribes and state of origins in order to be considered for appointments into different political and professional positions in the scheme of things in Nigerians. In the case of Adeyinka Badejo (1998) versus Minister of Education, CAL./405/88 (1990), 2 WBRN 48 (CA) the court held that an applicant to Federal Government College who scored 230 marks but was refused admission had no maintainable action despite the fact that those who scored 189 and below from other states of origins in the country were offered admission. According to the court, there was no discrimination against the Plaintiff. In fact the dictum of Oguntade is apt in holding that there was no discrimination against the Plaintiff. Oguntade stated that sympathy is not always the fore runner for justice, and a political problem cannot in any disguise be solved by judicial process. The question is, is it a crime to be born in seemingly advantageous states and local government areas of the country? Should the political setting continue to patronize demerits at the essence of merits and excellence? These questions continue to resurface in the scheme of things in Nigeria. And in most cases round pegs are usually put in the square holes. The overall implication of this is that outputs and productivities are severely affected.

Sexual orientation

Homosexuality and bestiality is a criminal offence in Nigeria, offenders are liable to up to 14 years imprisonment (Section 214 of the Criminal Code). The practice is abhorrent among the major religion beliefs in Nigeria such as Christianity, Islam and African Traditional Religion. Actually, there has not been any reported case on being discriminated against on the ground of homosexuality.

Termination of employment

The only protection of the Nigerian workers against unjust treatment, unfair dismissal and wrongful termination is well founded in the common law. This is aptly stated by the courts in these decided cases. In Daodu versus UBA (2004) 9 NWLR, the court held that the employer could bring the appointment of his employee to an end for any reason or no reason at all. Similarly, in Ben Chukwumah versus Shell (1993) 4 NWLR, the supreme court held that reasons such as malice, caprice, bad faith, the injured feeling of the plaintiff or inconveniences suffered are irrelevant for consideration so far the termination is in accordance with the terms of the contract. In Union Bank of Nigeria Limited v Ogbo (1995) 2 NWLR, the court reiterated its position and said that, it is not the policy of Nigerian Courts to foist a servant on an unwilling master. The only exception the Nigeria court has made is with reference to statutory appointments or those with statutory flavour.

These cases buttress the common law position that the employer is at liberty to terminate the employment of the employee provided it acted in accordance with the terms and conditions of the contract and the law of the land. The same reason is applicable to an employee. He/she is at liberty to bring to an end the employer-employee relationship by issuing appropriate notices as the case may be. If termination is done as explained in this regard, invocation of discrimination by the affected party is automatically vitiated under the common law.

WORKPLACE DISCRIMINATION: REFLECTIONS FROM OTHER JURISDICTIONS

The achievement of equality, even relative equality at the
workplace is still a mirage despite the wide advances made in legislation, monitoring and sanctioning the erring party. The advanced countries of the West have made giant strides in fighting the traditional forms of discrimination at work such as gender, race, marital status, even sexual orientation and religion or belief. However, the International Labour Organization (ILO) has discovered significant and widespread forms of workplace discrimination, under newer criteria such as age, sexual orientation, HIV/AIDS status and disability.

These days, there are novel and emerging trends in workplace discrimination, employers are now discriminating against workers on grounds of genetic conditions that could make them ill in future or because they smoke or are overweight or suffering or likely to suffer from hypertension, diabetes and the likes (Billings and Beckwith, 1992). The United States is very sensitive to this mode of discrimination; hence, it has taken a giant stride in ensuring equality at the workplace. This is due mainly because of its history as a nation of immigrants and the widespread violence that triggered the Negro demand for equal civil and economic rights in the 1960’s (Benach et al., 2007).

The US and the UK have promulgated laws specifically against some unlawful discrimination such as gender (The Equal Pay Act 1963), gender reassignment, marital status, sexual orientation, disability (The Americans with Disabilities Act (AWD) (1990)), race (Title VII of Civil Right Act (1964; 1991)), religion or belief and age (The Age Discrimination in Employment Act (ADEA) of 1967). Apart from these laws, there are also laws that forbid workers from being dismissed, or treated less favourable than other workers or working on a fixed time contract. Legislation in both the US and the UK protects employees from discrimination of different types, such as direct discrimination, indirect discrimination, harassment (NSW Anti-Discrimination Act, 1977 of Australia), victimization sexual harassment (Sex Discrimination Act (SDA), 1984 of Australia), and bullying and workplace violence.

In the US, a commission known as equal employment opportunity commission (EEOC) enforces the laws on discrimination at the workplace (A Doyle, Equal Employment Opportunity Commission (EEOC)). Any individual who believes that his or her employment right has been violated may file a charge of discrimination with the commission and can seek the following remedies: Back pay, restoration of their old job (if they were fired or reassigned), a court order to stop discrimination and compensation for pain and suffering. Also employer that is found guilty of workplace discrimination can face up to $300,000 in punitive damages (Newegg business). In addition, any company that has not offered equal employment opportunities in the past is required by law to take corrective measures. These may include “affirmative employment” initiatives that give members of persecuted group special access to the same opportunities that other employees traditionally enjoyed. However, the Federal law includes a statute of limitations for employment discrimination claims.

It is pertinent to mention that the costs of claims brought by employees have skyrocketed over the past 20 years. Consequently, employers in this jurisdiction tend to treat their employees with care and due respect as employees related lawsuits could jeopardize the future of the company. Majority of the cases were settled with significant pay off (Linus Lee versus ENPC Technology BC 196250). Apart from this, most of the erring companies were exposed to negative publicity by the media coverage. In order to avoid this, the erring company would be ready to settle the claims amicably and out of court.

It should be pointed out that the major shortcoming of the anti discriminatory law is that the key focus on individual and the sole plaintiff derives the benefits or the fruits of the judgments usually handed down by the courts (Fredman, 1992). Against this backdrop, the American class action is preferred because it expands the group complainants and thus improves the possibility of viewing discrimination as a patterned structure rather than as individual pathology (Dupper et al., 2004). The effect of a successful class action suit on an employer in the United States (US) has been described as follows: “The practical consequence is that an American employer adjudged to have discriminated will face a large bill for compensation to all those within the class. It therefore, often becomes cheaper and easier to obey the law: the employer is forced to bear the true cost of his illegality because its effect is fully taken into account rather than measured only in relation to the individual who has had the courage, persistence and patience to bring an action” (Lustgarten, 1986).

In the US, class action suits and heavier penalties imposed on employers have enabled anti-discrimination legislation to develop more teeth. It has become cheaper and easier for American employers to obey the law than to be threatened with the real costs of remedying an illegal practice (Dupper et al., 2004).

Recently, the Supreme Court of Nigeria followed the American jurisprudence in the case of Oluefagba versus Abdur-Reheem (2010) [All FWLR]. In this case, a suit was filed by 44 plaintiffs who challenged the unlawful termination of their appointments by the University of Ilorin, Nigeria. The Supreme Court of Nigeria held that: “In this action, it is clear that for convenience, avoidance of multiplicity of actions, the suit was filed by the 44 plaintiffs jointly while the benefits are to accrue to each of them severally.”

The aforementioned quotation reinforces the benefit of the class action suits. Hence, if discrimination claims are to have an impact broader than mere individual relief, it is vital for the recommendations to be translated into legislative reality as a matter of urgency. This would give due recognition to the fact that discriminatory practices
affect people by virtue of their membership of a group, and not merely as individuals (Dupper et al., 2004). It is no gainsaying that the US has one of the most sophisticated employment laws and enforcement mechanisms in the world. However, nowadays, each situation presents new discrimination, for instance, workplace discrimination against Muslims, Arabs and others since September 11, 2001 is now the common trends (Chon and Arzt, 2005). Others are sexual orientations, pre-disposition to certain diseases and unhealthy lifestyle. There is also veiled discrimination (Donald, 1997), whereby the disadvantaged group although may be present in large number in the organization but are only employed at low and very junior levels despite the fact that certain members of such group possess the requisite qualifications for higher placement.

In Ireland, statutory employment protections apply to all employees regardless of national origin, there are the enforcement powers of employment inspectors under existing employment legislation. A National Employment Rights Authority (NERA) was established in February 2007 on an interim basis and was established on a statutory basis in 2008. About ninety inspectors have been recruited to ensure compliance with employee protection legislation (Connolly, 2010). NERA’s role is to enforce more vigorously the existing powers set out in legislation such as the National Minimum Wage Act (to enter premises, review records and enforce legislation). These inspectors are in addition to the existing Health and Safety Inspectorate whose role includes assessing workplaces for compliance (Connolly, 2010).

THE UNITED KINGDOM

The United Kingdom also has an updated legislation against discrimination in the workplace (The Equality Act, 2010). It provides a new cross-cutting legislative framework to protect the rights of individuals and advance equity with regard to opportunity for all; to update, simplify and strengthen the previous legislation and to deliver a simple, modern and accessible framework of discrimination laws which protects individuals from unfair treatment and promotes a fair and more equal society (Government Equalities Office, putting equality at the heart of government). For the first time, all of the characteristics which are protected for discrimination purposes are distilled into one section of one Act, (Section 4 of the Equality Act 2010). They are: age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex and sexual orientation (Bartlett, 2010). The country has a very rich array of cases on discrimination at the workplace.

Another interesting thing about this is that their membership of the European Unions means that their municipal laws must conform with that of the EU and those employees are free to file complaints in the European Court of Justice.

The UK laws against religious discrimination present employers with seeming contradictions. On one hand, it is difficult to make employment decisions based on a person’s religion. On the other hand, there is a need to take an employee’s religion into consideration when making certain workplace decisions. There are rich arrays of court cases to illustrate this. In Azmi versus Kirkless Metropolitan Council, ET 1801 430/06, the tribunal had to consider whether or not an instruction to a female teacher not to wear veil when teaching is discriminatory. It was held that no direct discrimination occurs, but the indirect discrimination complained of was justified because the aim is for the pupils to be availed of the best teaching method.

In Khan versus Direct Line Insurance, ET 1400026/05, a practicing Muslim claim of discrimination by being offered an alcoholic beverage as a prize in a sales incentive scheme failed because a teetotal non-Muslim could be treated in similar manner. The plaintiff could ask for an alternative price. Conversely, in William Drabble versus Pathway Care Solution, ET 2601718/04. The tribunal held that the employer indirectly discriminated against a practicing Christian by imposing permanent change in her work roster requiring her to work on Sunday, thus preventing her from attending regular Sunday service. Similarly the same conclusions were reached in the case of Khan versus G and J Spencer Group t/a NIC Hygiene, ET 1803250/04, where Khan, a Muslim, asked if he could use his 25 days annual leave entitlement and take another week’s unpaid leave to make a pilgrimage to Mecca. His employer did not respond but his manager told him to assume that permission has been granted. However, on his return from Mecca he was dismissed for taking unauthorized leave. The tribunal upheld his discrimination claim.

The law however, provides for a very narrow exception called the bona fide occupational qualification (BFOQ) requirement. If the nature of the job absolutely requires that a person of a particular religion fill it, for instance an Imam of a Mosque must be a Muslim, the law provides for such exceptions.

The U.K Law also provides protection against discrimination on the disabled people. The cases decided under the Disability Discrimination Act (DDA) 1995 before the enactment of The Equality Act of 2010 are also very instructive. In Mid Staffordshire General Hospital NHF Trust versus Cambridge, 2003 IRLR 566 EAT, a disabled employee could work shortened hours and the physical features of her workplace were causing her health to deteriorate. She was unable to perform her work and was dismissed. The tribunal held that the employer has breached its duty to make reasonable adjustment and carry out a formal risk assessment with the disabled employee. Conversely, in Abbey National Plc versus Fairbrother, 2007 IRLR 320 CA, the Court of Appeal held that the failure of employee to prove that her discrimination was due to her disability, as others who
were not disabled were treated in similar manner and that the grievance procedure established by her employer was adequate. Thus the claim failed. From 1st October 2006, there is a legal protection against age discriminate-
ion in the UK known as the Employment Equality (Age) Regulation. This is now strengthened by the recently enacted Equality Act of 2010. This new law ensures that people are no longer denied jobs or harassed because of their age. Employees must make sure that any redundand policies do not discriminate against older workers. They must not discriminate indirectly, for instance, by selecting only part time workers for redundancy, when a large number of this may be older workers. Harassment and victimization on ground of age are also covered by these regulations. The only exceptions are where age requirement can be objectively justified. Under the new regulation the focus is on job requirement, that is, the skills and qualifications required to do the job and not the age. The emphasis is on the quality of experience and not the quantity. The regulation provides that employers can only retire their employees below 65 years where they can show that having lower retirement age is appropriate and necessary.

However, in Felix Palacies de la Villa versus Cortefiel Services SA, C–411/05 the European Court of Justice in determining a Spanish case whether default retirement ages are legal, ruled that setting a retirement age is justified because it serves a legitimate employment and labour policy aimed at promoting inter generation equality, effort must be made to prevent discrimination in employment with regards to women, the court stated that unfair dismissal in Great Britain could mean breaching dispute procedure, which attracts an automatic award of £1,160 and that unfair treatment or discrimination in employment with regards to women, disabled, minority, sexual orientation, religion or age is punishable. It is pertinent to state that in as much as the regulations protect the different disadvantaged groups such as women, old persons, believers in certain religion and so on; this is in consonant to bona fide occupational qualification (BFOQ). BFOQ cannot be used to justify race or colour discrimination. However, the law should make allowances for the followings: predominance of male prison guards at all male prisons or vice versa, teachers of the peculiar religious persuasion at parochial schools, several careers may have mandatory early retirement because of safety concern.

CONCLUSIONS

It is necessary to state that while it is not possible to achieve perfect equality, effort must be made to prevent arbitrary and unjust treatment of Nigerian workers. It is apt to state that employment related laws are not only outdated but also unjust and cruel, it is meant for the 18th century and not contemporary modern day. There is a need for the executive, legislature, the judiciary and the unions to turn a new leaf by focusing on a just package (not monetary only) for the Nigerian workers. Our position in this treatise is that discrimination at the workplace should be abhorred entirely. Emphasis should be placed on competence, diligence and ability.

The world is now a global village where healthy competition is encouraged in the scheme of things particularly in the areas that require exceptional skills. A country that encourages mediocrity such as Nigeria in the name of Federal character and the likes is certainly going to be at a disadvantage. For instance, if a football team is recruited on the basis of Federal character other than on merit, the result to be produced in this regard by the team is better imagined. Thus, we advocate for a minimum standard, which all Nigerians must attain and surpass, irrespective of their states of origins or where they are coming from. There should be equal opportunity as a yardstick for appointment to federal institutions or parastatals. There should be no exception because intelligence is not native of any place.

It is also our contention that for Nigeria to make any appreciable progress the following should become very imperative: There is a need to update the laws to conform with modern trends, specifically by eschewing discrimination especially on differential pay for same or similar works. With regards to workers with HIV/AIDS, there should be non-discrimination against the affected persons; rather full disclosure of such status should be encouraged as this may reduce the spread of the scourge. The disabled are part of the society and effort should be made to assimilate them in the workplace, and give them equal treatments and respect being accorded other workers.

With the recent escalation on religious related crisis in Nigeria, this is now creating a major problem in the workplace leading to discrimination especially in privately owned companies and sometimes in the government establishments. The constitution is explicitly against discrimination based on religion, hence there should be appreciable oversights on the side of the people with executive and managerial responsibilities to make sure that they are proactive in the fight against discrimination with religious undertones. It is our contention, that at all times the guiding principle at the workplace should be Bona Fide Occupational Qualification (BFOQ) and that where there is a need to deviate there must be a just reason as stated in the main body of this treatise.

From the gender perspectives, he/she that is willing to embrace the privileges, powers and benefits must also be ready to partake in the duties and responsibilities (Kimmel, 2001). Although an author (Ryland, 1999) using American model has argued that, women choices contribute more to their gender’s lower incomes rather than discrimination. It is our opinion that there should be equal opportunities and choices to all, this will make a woman to have a wide spectrum to choose from, not necessarily restricted to choices which are conceived to be meant for women (Vargas-Lundius and Ypeij, 2007). This will promote
promote a healthy competition and at the same time discourage discrimination based mainly on gender prejudice (Schmitt and Branscombe, 2002).

We posit that affirmative action being canvassed by some people is unfair unless certain stringent precautions are put in place ab-initio. In fact, the dictum of a learned author (Nicholas, 2004) commenting on the South African experience is apt here, sadly; the siren song of affirmative action has been irresistible for the ANC rulers of South Africa. They have chosen to replace one system of racial privilege with another.

As part of our conclusive recommendations, we shall rely heavily and extensively on the approaches recommended by the ILO Report, that in achieving equality at the workplace the best approach should be to complement conventional anti-discrimination policy measures such as coherent and comprehensive laws, have effective enforcement mechanisms in place and specialised bodies, with other policy instruments, such as active labour market policies (Tomei, 2003). While improving the functioning of labour markets, these can counter discrimination with comprehensive policies that enhance the job placement function in both the public and private employment services, and increase the employability of those who are vulnerable to discrimination.

New policies are also required to close the gender gap in employment and pay issues. Despite advances, particularly the considerable progress in women’s educational attainments, women continue to earn less than men everywhere and the unequal burden of family responsibilities places them at a disadvantage in finding full-time employment.

The report underscores the fact that further inclusion of fundamental principles and rights in regional economic integration and free trade agreements can play a major role in reducing discrimination at work. Where the parties to such agreements make commitments on non-discrimination and equality issues, attention needs to be paid to effective follow-up mechanisms. Development finance institutions have in recent years begun to require their private borrowers to respect the principles and rights laid down in the fundamental international labour standards. This will lead to the obligation for employers to institute equality-enhancing labour practices at the workplace.

More importantly, Nigeria should emulate the UK by offering protection to employees and strengthen the power of the court to make recommendation to the employer to eliminate or reduce the effect of discrimination on the whole of the employers’ workforce. Though, in the UK, such recommendation is not binding, but if not followed, could be used as evidence to support any future claims from other employees in the same workplace (Landau, 2010).

REFERENCES


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