The First Pillar of Bluewashing: Human Rights

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Abstract

Human rights are a fundamental right that everyone should be granted within the workplace. Nevertheless, globally many employers have withheld their employee's fundamental human rights due to unethical reasons. Whilst a handful of corporations negatively affect their employees by tarnishing their rights, they mislead the public through a facade to cover their malicious actions that harm their reputation. These damaging concerns happen more often than expected in forms of discrimination and other areas protected by human rights. Additionally, this paper comprises critical areas against employees' human rights and how they feel suppressed when arguing their cases through tribunals.

Keywords: UN, human rights, bluewashing, UNGC, legislations, employment.

Introduction

Core labour standards are an international instrument in defining a range of human rights within the workplace. These labour standards provided a guide to how a workplace should be dignified, civilised and sustainable (Howard & Gereluk, 2001). Human rights have been breached into labour rights. The combination of human rights and employment relations relies on the idea that work is a vehicle that admits a person to the status of a contributing, productive member of society being engaged in something worthwhile (Beatty, 1980, cited by Mangan, 2010). Connecting labour rights and human rights in employment relations brings to the legal entitlements which incorporate social rights.

There are four key factors involved in the process of international economic activity for the protection of human rights, these being; the home state of a transnational enterprise, the host state(s) for the actions of the enterprise; the enterprise or individual investor; and the affected population of the host state(s). This law characterisation of these relationships has changed within the last century, reflecting political and economic transformations (Ratner, 2001). Human rights legal obligations are apparent to a state to restrain activities within its territory that violate human rights effectively. Transnational corporations (TNC) operating in more than one state have raised questions about how international law would deal with any issues.

International human rights law has developed to protect individuals from oppressive and abusive actions of the state. This, therefore, imposes the legal obligations to protect human rights on forms alone (McCorquodale & Simons, 2007). Although there have been acts to ensure that individuals have equal and fair rights within the workplace, there have been reports of individuals not being protected by these international human rights laws. There have been many reports from individuals who have said that they have been mistreatment in the workplace due to gender, race, sex or national origin (Cheung et al., 2016).

Human Rights in the Workplace

Safe and Healthy Work Conditions

Companies deceive the public by their success and blind them to the reality of the unsafe and poor working conditions, despite it being part of their human rights. Legislation has been introduced to prevent some of this bluewashing. Although there was earlier legislation, such as The Health and Morals of Apprentices Act 1802 and laws in 1842 stopping women and children working underground (Simpson, 1975), it was not until the 1970s that there was effective change.

The Health and Safety at Work Act 1974 was the turning point for legislation on conditions in the workplace. This Act details controlling dangerous substances, including the regulations and enforcement; medical advice; and amendments to the Building (Scotland) Act 1959. The basis for this legislation was that "it shall be the duty of every employer to ensure, so far as reasonably practicable, the health, safety and welfare at work of all his employees", as stated in s2. This highlights the concern over the welfare of employees and their conditions

New reforms were needed after this, though. As J. S. Humphrey (2007) infers, the Act only entails "broad objectives". In the Act, it is reasonable for the employers to do, but this is subjective, and each employer will have different standards on what is and isn't practicable to do in the workplace. It is all down to the individual employer. Reasonable also demonstrates that the working conditions have to be okay; as long as they are not horrific, the company is good. This is a way of bluewashing as people would believe that the conditions are good when in reality, they are just at a reasonable standard. He also notes how there are no definitions for terms such as health, so employers can get away with the corruption as there are no specifics to determine whether the employer's practices are good enough.

The Workplace Health, Safety and Welfare Regulations 1992 follows this and is also vague and up to the employers' discretion. Section 6(1) states

"sufficient quantity of fresh air," and section 7(1) illustrates that the workplace needs to be a "reasonable" temperature. Both of these determine that employers can get away with doing the bare minimum and escape being liable for the poor conditions. The Management of Health and Safety at Work Regulations 1999 states that there need to be risk assessments for health and safety to ensure that the other regulations are adhered to.

Moreover, The Deregulation Act 2015 replaces other legislation. This Act amends the 1974 act by discussing the requirements and conditions for those who are self-employed. By doing this, all areas are covered, and every person who works within the UK is owed the human right to healthy and safe working conditions. This Act also gives detail for when there can be exceptions to any health and safety regulations. For example, section 6 allows Sikhs not to wear the hardware that would interfere with their religious beliefs. This portrays that every other individual needs to correct health and safety regulations. The clarity on this prevents employers from getting away with not supplying the equipment and forcing workers to use it.

This legislation has had some impact over time, especially when you compare the 1900s to the present day in the UK. If these two time periods were to be differentiated, there would be a big difference in the safety of the workplace and the health of the employees. The conditions during the 20th century resulted from the Industrial Revolution leading to the increase in factory work. Consequently, the factories were overcrowded. Those with authority did not care for the worker's welfare as they were increasing their capital. As well as this, the work in the coal mines then inevitably caused health issues, primarily with the heart and lungs. Employees were constantly becoming ill due to the horrific conditions that they were in.

In contrast, according to Public Health England, the UK now has a longer life expectancy age of 78.7 for men and 82.7 for women (Public Health, 2020). The Kings Fund created a chart to show how life expectancy has increased over time. In 1900, the average life expectancies were about 30 or 40 years younger (Kings Fund, 2020). Although many factors contribute to this, life expectancy has increased partly due to the improved working conditions.

In terms of blue washing, this would have been an issue in both periods. During the 1900s, employees were not aware of health and safety regulations because there was no enforced legislation about employers' negligence in enforcing human rights. Bluewashing was high because nobody was concerned about the conditions they were working in being an issue. Working in a mine or a factory was attractive, demonstrating how the public was deceived into unsafe environments. Whereas, now people associate terrible working conditions with the horrific nature of past workplaces. People could be fooled into thinking that companies are not abusing their workers' human rights because the conditions are not as bad as they used to be when factory work was dominant.

However, even though most work now is not as dangerous, many people still work in unsafe environments. Big well-known brands such as Nike and Primark are exploiting their workers that work on the production line. It is easier for brands to put those manufacturing the goods in poor conditions as the public does not see them, so the public keeps buying from the brands and does not consider the production workers. For instance, Nike will pay the workers practically no money and make them sit in a crowded factory all day with overall poor conditions, such as a lack of fresh air. Despite this, people are willing to spend a lot of money on their products because they like them. This is why bluewashing needs tackling because people know about the treatment of the workers; yet are still customers of these brands. If boycotts or fewer people were using these companies, fewer people would be deceived by thinking that they are good brands.

Amazon is another company that does not provide safe working environments in some factories. The Guardian published an article about a warehouse in New York and how one worker had spoken about the number of injuries that occurred regularly because of the lack of enforcement of the health and safety regulations. According to this article, the workers had

signed a petition for better conditions, so Amazon installed monitoring systems as an attempt to prevent accidents from taking place (Sainato, 2020). This proves the lack of consideration for the employee's welfare, yet Amazon sales are soaring rapidly at the expense of those working in the factories and warehouses.

To signify the need for tackling this type of bluewasing, unions and solicitors represent employees if they have experienced working in harmful conditions. UNISON is an organisation that represents approximately 1.3 million people who work within the public services sector (UNISON, 2020). Due to so many people being represented by this singular union, tackling corporal issues does occur in the UK. This company publishes magazine articles on their website, and one of them is called 'We're here to save lives and talks about health and safety in the workplace'. Matheou, the writer, quotes that in 2017/18, poor conditions within the workplace led to around 5000 deaths (UNISON, 2018). Bluewashing is tackled by companies like UNISON fighting for safe working environments, and when companies are challenged, they are more likely to improve their conditions.

To conclude, it is clear that bluewashing needs tackling, and there are ways that this can be achieved by improving working conditions and publicising the issue. The Guardian article mentioned earlier features a quotation by Pam Sian. She said that the government believes that "health and safety [has] gone mad", portraying how the government has trivialised this issue (Sian, 2018). For bluewashing to be tackled, the authorities need to take it seriously and create more legislation. Furthermore, there needs to be a better deterrent for companies abusing human rights. Wealthy companies can afford to pay compensation and fines. Therefore, there needs to be something else to stop companies from bluewashing and more enforcement to tackle these corporal issues.

Freedom of Association

Freedom of association (FoA) is otherwise known as Article 11 of the Human Rights Act, which essentially allows individuals to hold demonstrations and meetings with other people (Gompertz, 2018). The UN states that 'businesses should uphold the freedom of association and the effective recognition of the right of collective bargaining' (Alzola, 2017). This is displayed within the ten principles of the UN Global Compact under labour. As quoted by Stuart White, "Freedom of association is widely seen as one of those basic freedoms which are fundamental to a genuinely free society. With the freedom to associate, however, there comes the freedom to refuse association. When a group of people get together to form an association of some kind (e.g. religious association, a trade union, a sports club), they will frequently wish to exclude some people from joining their association. What makes *their* association serve their purposes is that they can exercise this right to exclude" (Stuart White, cited by Wellman, 2008).

Worker rights to FoA can be used through nonunion community associations but are most commonly exercised through labour unions (Dawkins, 2012). Anner (2019) highlights that since FoA is a right and not a standard, that there is a lack of enforcement by companies. Employers can block unionization of employees; this can involve anything from harassment and intimidation, and detecting this happening is a problematic task. The UN has tried to deal with companies exploiting employees' rights to FoA through the Corporate Social Responsibility (CSR) initiatives, which is essentially designed to reduce labour abuse within factories. Dawkins (2012) points out that US employers do not follow FoA laws and have been seen multiple times to oppose these laws, and court filings have proved this to reinterpret labour law and challenge its fairness.

In addition to employers stripping individuals of their FoA, it happened in state governments in 2012. In essence, governors and legislators in Wisconsin, Florida, Ohio and other states removed public employees (e.g. teachers) of their collective bargaining rights. These public employees were blamed for budget shortcomings by their wages and benefits, with the legislature in North Carolina making it unlawful for public school teachers to contribute voluntarily to their union's legislative action through paycheck deductions. However, this legislation was blocked by a state court due to

violating the state constitutional guarantee of FoA (Compa, 2012). The US has been criticized multiple times due to its lack of regulating FoA law and has acknowledged that it has failed to protect workers' rights and bargain collectively (Gross 2003, cited by Dawkins, 2012).

Discrimination

The U.S. Department of Labor (2021) defines employment discrimination as when "an employer treats an applicant or employee less favourably merely because of a person's race, colour, religion, sex, sexual orientation, gender identity, national origin, disability or status as a protected veteran. It may also transpire if an employer disciplines, terminates, or takes adverse actions against an employee or job applicant for discussing, disclosing or asking about pay. Employment discrimination can be against a single person or a group."

Whilst there is discrimination, there are also laws put into protecting the employees. OFCCP has the following regulations to protect employees from getting discriminated against, "OFCCP enforces Executive Order 11246, Section 503 of the Rehabilitation Act, and the Vietnam Era Veterans' Readjustment Assistance Act. Collectively, these laws make it illegal for companies doing business with the Federal Government to discriminate against employees and applicants based on the protected bases listed above. Discrimination based on an employee or job applicant asking about, discussing, or disclosing their pay is also prohibited."

Similarly, in the U.K., the following are the types of discrimination shielded characteristics are age, gender reassignment, being married or in a civil partnership, being pregnant or on maternity leave, disability, race including colour, nationality, ethnic or national origin, religion or belief, sex, sexual orientation (GOV, 2021). In addition, you're legally protected from discrimination by the Equality Act 2010. You're also protected from discrimination if: you're associated with someone who has a protected characteristic, for example, a family member or friend, you've complained about discrimination or supported someone else's claim.

It is unfortunate that even with these robust laws to protect one from discrimination, the harsh truth is that it is still very existent. There might be company policies against the same, but everyday employees are discriminated against. The study of discrimination in the job market in the united states concluded that "A black applicant's race certainly has negative effects on their employment prospects on average. Resumes with white-sounding names received 50 per cent more callbacks than those with black-sounding names. But, regional differences are important to note - for example, employers in black neighbourhoods discriminate less against black applicants in Chicago. Yet, based on researchers' estimates, a white-sounding name yielded as many more callbacks as an additional eight years of experience" (Bertrand and Mullainathan, 2021).

We need to raise awareness about the same issue and go a step further and talk to the employers while interviewing and asking them about discrimination. Companies have been able to get away with prejudice and a toxic work environment because not every employee wants to talk about what is going on. Employees who speak up against discrimination are usually silenced or given the silent treatment. It is vital for us not to keep quiet as that will help us win half the battle.

Accommodation of Religious Practices

According to, U.S. Equal Employment Opportunity Commission (2014), "Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on religion". Whereas, National Secular Society (2021) affirms the following about the U.K. and accommodation of religious practices in the workplace, "The U.K. has some of the most comprehensive anti-discrimination laws globally and is lucky to be a generally tolerant secular society. Unfortunately, the media is generally poor at reporting on religious discrimination – some forms are ignored, while some religious groups feeling uncomfortable at not being privileged are sensationalized as discrimination."

Even though these strict laws exist to make workplaces safe for any religious individual, it is

unfortunate to see cases where bias and discrimination against religion still exist. For instance, the following is a case covered by the USA today, and it took place on April 5, 2020. Furthermore, the following was stated on USA today.com (Fritze, 2021):

"Jason Small was an electrician for Memphis Light, Gas and Water for more than a decade. His troubles began after an injury in 2013 required him to transfer jobs. Memphis Light offered him a position as a service dispatcher. Still, a Jehovah's Witness, worried the job would conflict with his desire to attend services on Wednesday evenings and Sundays and participate in community work on Saturdays. So small sued in 2017, alleging religious discrimination. A federal district court and the Ohio based U.S. Court of Appeals for the 6th Circuit found that he lacked enough evidence for most of his claims. But in a concurrence, appeals court Judge Amul Thapar wrote that the standard used to decide such cases since a Supreme Court decision in 1977 should be reconsidered. If and when the Supreme Court decides to consider that issue, its ruling could affect corporate dress codes, such as headscarves, turbans and beards, and schedules that permit employees to worship. The court did not explain its decision not to hear the dispute. Associate Justices Neil Gorsuch and Samuel Alito said it is time to take another look at the standard used to decide such cases."

While laws exist to protect one's religious practices, it is unfortunate that if there are cases against a corporations' malpractices, the court generally favours the company. This depicts a clear picture of how far we are from reaching equality.

Human Rights Tribunals

Human rights tribunals are specialised courts that adjudicate and monitor individual petitions concerning alleged human rights violations, generally within a specified region. Although they usually deal with cases within a designated area, these courts must be independent, meaning that no political or economic ties exist, which may influence the outcome of a case (Human Rights Careers, 2021).

Human rights laws commonly derive from international treaties, which, in turn, also tend to establish these particular tribunals to deal with human rights affairs. The issues reviewed in these tribunals are resolved with greater precision than general courts due to the expertise of the individuals ruling on the case; they are specialised within the area of human rights, rather than dealing with an array of different issues at once. Despite this, generalised civil courts are also competent to rule on alleged human rights violations (Pinto, 1999). For example, all courts within the United Kingdom must rule on cases in light of and giving effect to the 1998 Human Rights Act.

Many human rights tribunals exist worldwide; however, only a selection of these issues have legally binding rulings, allowing them to truly exercise their monitoring and oversight capabilities (Hillebrecht, 2014). The most predominant legally binding institutions include the European Court of Human Rights and the Inter-American Court of Human Rights. These tribunals, along with many others, were created because of the horrors caused by the Second World War as a mechanism to encourage and enforce international peace (Henriksen, 2017).

In the United Kingdom, disputes between employers and employees concerning statutory breaches are mainly dealt with by the Employment Tribunal and its corresponding Appeal Tribunal. As previously stated, these tribunals must affect the Human Rights Act (1998) upon deciding on the outcome of a claim. Since February 2017, both tribunals, as mentioned above, have taken a total of 79,849 decisions regarding employment claims (Ministry of Justice, 2021a; Ministry of Justice 2021b).

Workplace discrimination decisions amount to 32.5% of total decisions taken, corresponding to over 26,000 decisions. Within the context of "discrimination cases", selected types of discrimination can be seen to be more common than others. For example, over half of the decisions dealt with some degree of disability discrimination, totalling over thirteen thousand (Ministry of Justice, 2021a; Ministry of Justice 2021b).

In the 2019/20 financial year, this type of discrimination came in second place concerning compensation, compared to other types, with the average award being over £27,000 (Ministry of Justice, 2021c). In the *Barrow v Kellogg Brown & Root (UK) Ltd* (2021) decision, the second-highest ever award for disability compensation was awarded. In this case, the claimant was wrongly and prematurely dismissed on the grounds of poor performance and breakdown of trust and confidence while undergoing a cancer diagnosis, resulting in time off work being required to attend chemotherapy sessions.

Age discrimination is the type that receives the most compensation on average, amounting to a total average of almost £39,000 (Ministry of Justice, 2021c). Since 2017, over three thousand decisions have been made concerning age discrimination alone (Ministry of Justice, 2021a; Ministry of Justice 2021b). For example, in 2018, an 89-year-old NHS secretary was dismissed due to "being stuck in old secretarial ways" and was later awarded over £200,000 in compensation as it was found that the NHS Trust Foundation did not provide her with sufficient nor adequate training, meaning that the dismissal was ill-founded as a result of her age (*Jolly v Royal Berkshire NHS Foundation Trust* (2017)).

The cases above demonstrate so-called "career-long losses", where an awarded amount is based on several factors such as the claimants' age, disability and mental state, time dedicated to the respondent company and whether they are likely to work again in the future. Aside from age and disability discrimination, many other types are also prevalent, such as racial, sex and religious prejudice and discrimination based on sexual orientation. Decisions within these categories make up for a large proportion of decisions in the Employment Tribunals (Ministry of Justice, 2021a; Ministry of Justice 2021b).

As well as this, a total of 22 harassment decisions were decided upon between the two Tribunals in 2017 (Ministry of Justice, 2021a; Ministry of Justice 2021b). However, many harassment claims are categorised under different types of discrimination, namely sex or racial discrimination (Lockwood and Marda, 2014). This is the case in the *Barrow v Kellogg* decision, where the employer was successfully sued for harassment and discrimination.

Finally, a total of five decisions regarding human rights have been made since 2017. However, these were only taken upon Appeal of a previous decision by the Employment Tribunal. These decisions also concern other areas, such as discrimination, trade union rights and procedural rights (Ministry of Justice, 2021b). As can be seen, human rights tribunals, and in the case of the UK, employment tribunals, play a significant role in protecting human rights within the corporate sphere against employers to prevent a top-down abuse of power.

Overview

Overall, it is noted that human rights are damaged in specific workplaces and scenarios globally, and this issue does not seem to be reducing. Well-known corporations such as Nike, Amazon and Primark, and many more businesses, have been broadcasted through media outlets for exploiting their workers and making them work in poor and unethical conditions. However, the general public still purchases from these businesses after hearing the shocking news. The public funding of these businesses lead to the financing of these dangerous work conditions and does not punish their actions.

Multiple legislations and regulatory bodies have been established and adapted to ensure that workplace human rights are upheld. For instance, implementing the Health and Safety at Work Act 1974 was a turning point in the United Kingdom tackling human rights abuse. Since this legislation was passed, many have followed in the hope to protect vulnerable and minority groups whilst working and in many other settings such as the Equality Act.

However, it is still notable that certain employees are very outspoken and carry out discriminatory and human rights limiting actions that dehumanise and repress minority groups. Unfortunately, this primary concern seems to be still prevalent, and many minority groups feel like they cannot speak out about

these unethical matters. However, organisations like UNISON are around to assist individuals with these forms of human rights concerns regarding employment. Organisations like UNISON are around to tackle bluewashing under this pillar, but they can become overwhelmed and need extra assistance to ensure cases are dealt with to the highest standards.

Human rights tribunals are another way in which employees can take human rights disputes to be dealt with. Workplace discrimination amounts to 32.5% of total disputes brought through the human rights tribunals, with race and disability being ranked highly within this area. These tribunals allow employees to have a voice and be heard, and they play a significant role in ensuring equality is restored after damaging cases.

To sum up, human rights regarding bluewashing is still a significant issue across all workplaces, and it will always be an issue to some degree. However, reducing this issue through preventatives can be applied, such as educational workshops to tackle this concern, as unconscious biases will also play a vast role. These forms of seminars within the workplace would attack a small portion of this issue but chipping away at it in all directions is better than no workshops. In addition, further regulatory organisations would also benefit this area, such as helplines and other forms of employment support, which should be funded to some degree by the Government as this is a mass public concern that needs to be reduced.

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