

# **Institutionalized Discrimination against Men in England and Wales and its Merits and Demerits**

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## **Abstract**

This paper gives an objective analysis of Institutionalized Discrimination against men in England and Wales from the perspective of both direct discrimination and indirect discrimination. The direct discrimination includes: parental responsibility, maternity/paternity leave, quota system, and other areas. The indirect discrimination includes: the “Winner-takes-all” system, domestic abuse and other areas. The researcher attempts to analyze the merits and demerits of the legal Institutionalized Discrimination against men and suggests that England and Wales’s legal system overprotects women’s rights and neglects men’s rights, which has resulted in devastating consequences. It is proposed that the Institutionalized Discrimination against Men should be decreased if not prohibited in UK and other countries in the world should be aware of the hazardous effects that Institutionalized Discrimination may bring and take appropriate measures in fighting against social and cultural discrimination.

**Key words:** Institutionalized Discrimination, men, women, legal system

## **1. Introduction**

Discrimination is a widespread social phenomenon, which commonly exists in underdeveloped countries, developing countries and developed countries. In International law and national legislation, there is a principle of great importance, which is the prohibition of discrimination as a way to protect human rights. The modification of the laws in the legislation system may be relevant to the discrimination and the purpose of the modification is to bring more equality and justice to the citizens. However, there is controversy among whether this phenomenon for discrimination should be prohibited. Those people who take the view of preventing discrimination are in seek of equality and fairness, whereas equality itself is controversial. Those people who think that discrimination may exist in a positive way want to seek justice because some of the discrimination may be positive and justifiable.

Institutions provide material goods, opportunities, resources, services, and psychological satisfactions to people who work for them. While these

benefits are never distributed perfectly equitably, it is against public policy for them to be allocated on the basis of race, sex, religion or national religion. Despite the fact that laws clearly stipulate that equity should be upheld in the distribution of the countries' resources and services, the situation in institutions is rife with institutionalized discrimination. Institutionalized discrimination has negative influences on the group which is discriminated against in the sense that it results in decreased access to health care, suppressed attainment of wealth and decreased access to education among other disadvantages. Institutionalized discrimination refers to the unjust and discriminatory mistreatment of an individual or group of individuals by organizations such as the government and public institutions like schools, hospitals, or police. The discrimination is typically codified into the operating procedures, policies, laws or objectives of such institutions (Gift Rupande, 2015).

This paper discusses the legal situation in England and Wales regarding issues which appear to treat men and women differently. This is against a background of rapidly rising instances of children being brought up otherwise than in the traditional two-parent family. The high divorce rates and high prevalence of separated parents in UK is to some extent threatening the stability, prosperity, and development of UK. The author suggests that the following issues of direct and indirect discrimination contributes significantly to the causes behind this difference in the divorce and broken family rates.

### **1.1 Definition of “discrimination”**

According to Shapiro, (2004), prejudice refers to a positive or a negative attitude or belief directed toward certain people based on their membership in a particular group. The root word of prejudice is pre judging, which is a set of attitudes which causes, supports, or justifies discrimination. Prejudice carries with it the element of over categorizing. Discrimination refers to actions or behaviors against a group of people. (Gift Rupande, 2015).

According to Wikipedia<sup>1</sup>, “Discrimination is treatment or consideration of, or making a distinction in favor of or against, a person or thing based on the group, class, or category to which that person or thing is perceived to belong to rather than on individual merit. Discrimination includes treatment of an individual or group based on their actual or perceived

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<sup>1</sup> <https://en.wikipedia.org/wiki/Discrimination>

membership in a certain group or social category, ‘in a way that is worse than the way people are usually treated’. It involves the group's initial reaction or interaction going on to influence the individual's actual behavior towards the group leader or the group, restricting members of one group from opportunities or privileges that are available to another group, leading to the exclusion of the individual or entities based on logical or irrational decision making.” In other words, discrimination is when the members of one group are treated differently to the members of another group simply on the basis of the differences between fundamental characteristics of the members of groups. For example, gender, age, disability, nationality, race, color, sexuality. Discrimination is the practice of treating one person or group of people less fairly or less well than other people or groups.

In the paper, the researcher defines discrimination as follows: a person is discriminated against when they are treated less favourably than another person in the same situation simply on the basis of differences in one or more fundamental characteristics between them, such as gender, age, disability, nationality, race, color, sexuality. There are two basic categories of discrimination: direct discrimination and indirect discrimination. Direct discrimination is where a law or policy directly discriminates in favour of one gender. Either all of one gender can benefit or none of the other gender can benefit. The law is clear, specific and applies only to one gender; indirect discrimination is where a law or policy appears on the face of it to be gender neutral, but in reality far more of one gender than the other either benefit from the measure or suffer from its consequences. Within this, the researcher further categorizes specific examples of gender discrimination into two subgroups: institutionalized discrimination, and cultural discrimination. This paper is entirely about the legal and political system in England and Wales. First the paper objectively describes the current situation of Institutionalized Discrimination against men in the country, all of which are directly or indirectly in the legislative framework of the country. It then attempts to discuss the merits and demerits of Institutionalized Discrimination in UK. It goes on to explain the reasons and the justifiability of some measures theoretically. At last, the researcher gives some suggestions on how to deal with the Institutionalized Discrimination in UK and gives a warning to other countries that the extreme degree of protecting the interests of disadvantageous groups may lead to the loss of rights of other groups. In a word, this paper is about

legalized institutionalized discrimination against men in policies, procedures, laws, and other areas, and its merits and demerits.

## **1.2 Definition of “Institutionalized Discrimination”**

Garrett, (2008) is of the opinion that institutional discrimination is the adverse treatment of members of minority groups due to the explicit and implicit rules that regulate behavior including rules set and enforced by firms, schools, government, markets, and society. Institutional discrimination occurs when the rules, practices, or understandings of appropriate conduct systematically advantage or disadvantage members of particular groups. Albes also added that institutionalized discrimination is a denial of opportunities and rights to individuals or groups, resulting from the normal operations of a society. Institutional discrimination can be regarded as the policies of the dominant race, ethnic, or institutions and the behavior of the individuals who control these institutions and implement policies that are intended to a differential and harmful effect on minority race/ethnic/gender groups. (Gift Rupande, 2015).

## **1.3 The legal system and its influence**

This paper gives an objective analysis of the legal status of the balance of power between the genders. The researcher has found out that the legal system and change of the law does influence people’s way of life and affect the society as a whole.

For example, in 1970, the UK divorce law changed significantly. Before the divorce reform act 1969 became law, the spouse who caused the breakdown of the marriage was penalized in calculating the financial settlement after divorce. For example, if person A committed adultery then person B received more than half of the family assets in the financial settlement. From 1970 onwards, the concept of penalizing either spouse for causing the breakdown of the marriage was no longer a factor to be taken account of when calculating the financial settlement. According to the Office of National Statistics (ONS) between 1965 and 1975, the number of divorces per year tripled from approximately 40000 to approximately 120000<sup>2</sup>. The ONS state that the divorce rate in 2012 was 10.8 people divorced per thousand married population, which ranked one of the highest in the world.

According to BBC news, a million UK children are growing up without a father in their lives, says a news report on family breakdown. The Centre

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<sup>2</sup> [www.ons.gov.uk/ons/dcp171778\\_351693.pdf](http://www.ons.gov.uk/ons/dcp171778_351693.pdf)

for Social Justice report says lone parent families are increasing by more than 20,000 a year, and will top two million by the next general election. In some areas fatherlessness has reached such high levels that they are virtual "men deserts"<sup>3</sup>.

Why are there so many children growing up without fathers in UK? Why is the divorce rate in UK so high? Prime Minister David Cameron said that it was wrong to blame fatherless families for Britain's "moral collapse". The researcher thinks that there are a number of reasons behind, but there is a correlation between the legal system in UK and the rate of divorce and unmarried mothers. The institutionalized discrimination against men has given women a number of disproportionate privileges which women may take advantage of and want to get the benefits from. The overprotection of women's rights has gone to the extreme that influences men's rights and put some men in a disadvantageous position. The law gives women a great amount of freedom and benefits which the men could not get partly because men and women are biologically different and partly because the law wants to simply protect women's rights and partly to a great extent that the law may neglect or influence men's rights as a result. The institutional discrimination does not just affect a few isolated minority people, but instead, it affects large numbers of individuals. Institutionalized discrimination against men may be one of the factors which lead to the family break-down, fatherless families, and children of unmarried couples. The legislation in UK gives women so many rights and economic benefits that the women with children could raise the children up simply by claiming benefits without working. This phenomenon is not healthy for children's development and may bring a number of negative effects on children's mental health. Fathers' role in parenting is extremely important which could not be neglected. Some of the children of unmarried couples find it hard to know their real identity. The absence of father in children's growth is undoubtedly one of the causes which lead to juvenile delinquency.

Historically the protection of women's rights in the institutions was due to the need to reverse the imbalances which were created by the institutionalized discrimination, Aronson, Wilson, and Akert, (2010), submitted that institutionalized discrimination is now being allowed to be practiced under the banner of affirmative action, which involves working to assist society's less-advantaged members. One reason to promote

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<sup>3</sup> <http://www.bbc.com/news/education-22820829>

affirmative action policies is to remedy the effects of past discrimination. (Gift Rupande, 2015). It is true that in the past, women in the west were discriminated upon in some areas such as employment. However, at present women in the UK enjoy a great number of benefits which men could not enjoy. It is a latent rule in the UK that for most cases, the judge tends to be in favour of a woman when a woman is fighting for custody with a man, in which judges often take the motherly nature into consideration without fully consider which part is more qualified to nurture up the baby. With the “Winner-takes-all” system explained in the following chapter, women enjoy huge benefits whereas some men do suffer the economic loss and the separation from their children, which leads to a vicious cycle for the society. The researcher is not going to discuss the objectivity and social pressure on the judge and determine whether the judge makes a wise decision or not, but to discuss the legal status of balance of power between genders.

## **2. An objective analysis of direct and indirect discrimination against men in the legal system**

Alleged discrimination issues have been misused by organizations of extreme feminists for many years. For example, issues of “the pay gap” have been presented as discrimination, when in reality it relates to personal choice. Generally speaking, women are more likely than men to choose to work part-time rather than full time in UK, to take time off for babies, meaning they lose several years’ career progression and pay rises, plus a great number of women choose less well paid jobs. All these factors relate to personal choice and issues similar to these are not included in this article. In any case, the law prohibits pay discrimination on the grounds of gender and if any women were genuinely paid less than a man for the same job then there is a perfectly satisfactory legal route to get compensation. For all of the following anti-male issues and practices, there is no legal route to challenge these aspects as they are written into the law.

This paper is not discussing perceived cultural, biological, emotional or other personal prejudices or discrimination against men or women, which clearly exists in both ways, but are not yet written into the legislative framework of the country. These issues may break some of the following laws, but do not of themselves form part of this paper because they are not institutionalized by the legal or political system. For example, it is a biological difference that only women can get pregnant. This biological difference is not brought forward to be discussed in this paper. However,

the consequences of this as enacted in legislation are included in this paper because they are legalized and institutionalized direct gender discrimination.

According to the Equality Act 2010, the main piece of legislation regulating and prohibiting discrimination, DIRECT gender discrimination is always illegal. Indirect gender discrimination could be justifiable if it is a "proportionate means of achieving a legitimate aim"<sup>4</sup>.(Section 19 (2) (d)) The equality act also specifically legalizes "special treatment" in favor of women "in connection with pregnancy or childbirth". (Section 13 (6) (b))<sup>5</sup> Clearly, pregnancy and childbirth themselves are specific things that only women can do and are not therefore considered by this paper. However, some of the consequential benefits and other "special treatments" that flow from the pregnancy and childbirth which are opportunities provided by the government are considered as discrimination and discussed below.

## **2.1 Direct discrimination against men**

There exists direct discrimination against men in England and Wales's legislation. The research will explain the direct discrimination against men from a number of aspects in the legislation in England and Wales.

### **2.1.1 Parental Responsibility**

In this Children Act Section 3<sup>6</sup> "parental responsibility" means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property. In section 2, both mother and father when married automatically acquire PR on the birth of their child, but according to section 4, unmarried fathers do not. This section describes 3 ways in which an unmarried father could acquire PR in addition to marrying the mother, which would then place him in the category covered by section 2. An unmarried mother does not need to do any of these things and automatically acquires PR on the birth of the child. This is direct discrimination against unmarried fathers. Three of the four ways in which an unmarried father could acquire PR require the mother's consent. Clearly in order to marry the mother, she must agree to the

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<sup>4</sup> <http://www.legislation.gov.uk/ukpga/2010/15/section/19>

<sup>5</sup> <http://www.legislation.gov.uk/ukpga/2010/15/section/13>

<sup>6</sup> <http://www.legislation.gov.uk/ukpga/1989/41/section/3>

arrangement and then all married parents whether married before or after the birth of the child automatically acquire PR. According to Section 4 (1)(a), an unmarried father will acquire PR if he jointly registered the birth of the child with the mother. This also requires the consent of the mother as the law allows her to register the birth on her own, but then she can not name an unmarried father on the birth certificate unless she has a signed declaration of paternity in the name of the father. The third way in which an unmarried father can acquire PR is by signing a parental responsibility agreement with the mother ( Section 4 (1)(b)). Clearly any agreement requires the consent of the mother for this to be legally binding. The final way of acquiring PR requires the father to make an application to court for a parental responsibility order. This allows the court to override the mother's veto on the father's PR should it choose to do so. This court application costs a fee of 215 pounds unless the father is exempt from paying the fee as a result of either being in receipt of a qualifying benefit or on low income. There is then the additional stress of presenting his own case in court to justify his application for PR as being in the children's best interests. "the child's welfare shall be the court's paramount consideration." (Section 1 (1)) Legal aid is not normally available for this kind of application. Therefore, the unmarried father may also have to pay legal costs if he chooses to instruct a legal representative. Any application to court is uncertain as to the outcome and there is no guarantee that the father will acquire PR in this manner. Even though over 90% of applications to court for PR results in a parental responsibility order <sup>7</sup> ("debates in family law" Page 43) and 84% of births were jointly registered in 1984 (J Graham and G Britain, sole and joint birth registration: Exploring the circumstances, choices and motivations of unmarried parents, Department of work and pensions, 2007), nevertheless, the differential approach described above constitutes direct gender discrimination.

In a case, the court looked into this issue considering that this is an issue of discrimination between married and unmarried fathers rather than as an issue of discrimination between unmarried fathers and unmarried

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[https://books.google.com.hk/books?id=CEL\\_CAAAQBAJ&pg=PA43&lpg=PA43&dq=UK+parental+responsibility+meritorious+fathers&source=bl&ots=pYOgx9sS3A&sig=8gViARF\\_aC9WTJG13Lqz3-dRgYE&hl=en&sa=X&ved=0CDIQ6AEwAWoVChMI2qKH1dSCyQIVhZWUCh3EkA5E#v=onepage&q=UK%20parental%20responsibility%20meritorious%20fathers&f=false](https://books.google.com.hk/books?id=CEL_CAAAQBAJ&pg=PA43&lpg=PA43&dq=UK+parental+responsibility+meritorious+fathers&source=bl&ots=pYOgx9sS3A&sig=8gViARF_aC9WTJG13Lqz3-dRgYE&hl=en&sa=X&ved=0CDIQ6AEwAWoVChMI2qKH1dSCyQIVhZWUCh3EkA5E#v=onepage&q=UK%20parental%20responsibility%20meritorious%20fathers&f=false)



mothers. The court justified this discrimination by saying that it differentiated between meritorious and unmeritorious fathers. The court stated that in their opinion, a meritorious father would simply marry the mother, and obtain PR automatically. Therefore, the father clearly did not deserve PR, because he was non-meritorious by refusing to marry the mother. However, even if the father wants to marry the mother, it still needs the mother to agree first.

Since the unmarried mother has the veto on whether to cooperate with the child's biological father, the mother could decide whether the man has contact with his child. Though the man could bring the case to the court, there are a great number of obstacles for the man to make an application, which requires financial ability, energy, time and etc.

### **2.1.2 Registration of a child's birth**

Flowing on from the above, an unmarried mother can register the birth of the child and specify its name by attending at the register office on her own. An unmarried father cannot do so<sup>8</sup>.

Notwithstanding anything in the foregoing provisions of this Act, in the case of a child whose father and mother were not married to each other at the time of his birth, no person shall as father of the child be required to give information concerning the birth of the child, and the registrar shall not enter in the register the name of any person as father of the child except the following situations.

Child Act Section 10 lists a number of ways in which an unmarried father may have his name entered onto the child birth certificate as father of that child. The sub-sections all start with the wording "at the request of the mother" further emphasizing the power of the mother's veto over whether the father can be named on the birth certificate. For example, in section 10 (1)(b), two documents are required, namely a declaration from the mother that the man is the father of the child and a statutory declaration from the father that he is the father of the child. In this situation, the mother can register the birth on her own, but include the father's name on the birth certificate. In section 10 (1)(c), the positions are reversed and unmarried father does have the right to register the birth on his own, but he would need to provide a statutory declaration from the mother stating that

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<sup>8</sup> <http://www.legislation.gov.uk/ukpga/Eliz2/1-2/20>

he is the father. This is direct gender discrimination in that the unmarried mother has an unfettered right to register the birth but the unmarried father requires the consent and cooperation of the mother.

Australia has made progress in this aspect. In July 2006, the Family Law Amendment (Shared Parental Responsibility) Act 2006 came into force, making dramatic changes to Australia's child custody law, including the rights to the child to have a "meaningful relationship with both of [their] parents". Under the new legislation, the matrimonial status of the parents is irrelevant due to the fact that both parents, whether married or not, are required to register the birth of their child (Hannaley Palmer, 2014).

In England and Wales, one of the first major changes to the law was the removal of the distinction between legitimate and illegitimate children. This was necessary due to the shift in society, whereby more and more children were being born "out of wedlock", largely due to the shift in attitude whereby it is no longer essential to marry before having children. The percentage of children who are born outside of marriage has been steadily increasing since the 1970s, to the point where nearly half of all children born are to unwed mothers. The number of births outside of marriage in 1971 accounted for only 8 percent of all live births, but by 1996 this had increased to 36 percent and by 2010, just under 47 percent of births occurred outside of marriage (Hannaley Palmer, 2014).

Of all births which are to unmarried mothers, around eighty per cent are registered by both the mother and the father. There are however, around 45,000 births each year where the child is registered solely in the mother's name with no indication as to the identity of the child's father. Those children do not have a father named on their birth certificate because of the mother not wishing for them to appear. This is not desirable since every child has the right to know both parents.

In a word, unmarried mothers registering the birth alone cannot name the father. Only if he attends with them or signs a certified declaration of paternity can his name be included. If a lesbian mother wishes to name her lesbian partner then she is entitled to add this second female name in place of the father. Unmarried fathers cannot go to register the birth alone. This is different treatments people get according to the gender.

### **2.1.3 Circumcision/vaccination/change of name/choice of school/choice of religion/leaving the country**

All of these above actions require Parental Responsibility. An unmarried mother can do these things on her sole consent, without the father having any way of stopping them, other than applying to court, if he knows about them in advance. An unmarried father has no legal right to do any of these things, until he gets PR.

Female circumcision is also known as female genital mutilation (FGM) and was first made a specific criminal offence under the prohibition of female circumcision act 1985, which is now incorporated into FGM act 2003. Section one states that “A person is guilty of an offence if he excises, infibulates or otherwise mutilates the whole or any part of a girl’s labia majora, labia minora or clitoris.”<sup>9</sup> Section 5(a) states that the maximum punishment for this offence is 14 years imprisonment. There is no equivalent specific criminal offence against male circumcision.

The British Medical Association (BMA) advises doctors that there are no clear medical benefits in most cases for performing circumcision on babies. Non-therapeutical circumcision should only be carried out when all people with parental responsibility consents to the operation. It is therefore only carried out for cultural and religious reasons by people who have these beliefs or practices.

Section 4.1 gives an update of the current situation of the law. The BMA believe that circumcision is effectively actual body harm, which would be illegal under section (47) of the offences against the Person Act 1861 but there have been no prosecutions. Earlier in 2015, Lord Munby considered a case on FGM and categorized the various types of female circumcision into 4 groups based on seriousness. In his judgment, he compared FGM to male circumcision and concluded that some types of MGM are more serious than type 4 FGM. He then stated a quote ““In 2015,” he said in his judgment, “the law generally, and family law in particular, is still prepared to tolerate non-therapeutic male circumcision performed for religious or even for purely cultural or conventional reasons, while no longer being willing to tolerate FGM in any of its forms.

“Given the comparison between what is involved in male circumcision and FGM WHO Type IV, to dispute that the more invasive procedure

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<sup>9</sup> <http://www.legislation.gov.uk/ukpga/2003/31/section/1>

involves the significant harm involved in the less invasive procedure would seem almost irrational. In my judgment, if FGM Type IV amounts to significant harm, as in my judgment it does, then the same must be so of male circumcision.” “In 2015,” he said in his judgment, “the law generally, and family law in particular, is still prepared to tolerate non-therapeutic male circumcision performed for religious or even for purely cultural or conventional reasons, while no longer being willing to tolerate FGM in any of its forms.

“Given the comparison between what is involved in male circumcision and FGM WHO Type IV, to dispute that the more invasive procedure involves the significant harm involved in the less invasive procedure would seem almost irrational. In my judgment, if FGM Type IV amounts to significant harm, as in my judgment it does, then the same must be so of male circumcision.”<sup>10</sup>

According to a freedom of information Act request in 2012, two boys a week are admitted to the emergency department of Birmingham hospital as a result of male circumcision. This is because of the practice is often performed as part of a ritual ceremony by non-medically trained people away from hospitals or other safe locations. As a result, complications occur requiring urgent medical treatment. The practice of circumcising boys being legal and circumcising girls being illegal is direct gender discrimination.

Circumcision is an example of a procedure which is often performed on children for non-medical reasons. There are many other examples of non-therapeutic procedures such as cosmetic surgery which are not medically necessary but the parent or parents may decide that they want their children to have these operations performed anyway. The issue of consent on behalf of a minor child who is too young to express his own opinion falls to the people with parental responsibility. As the BMA state, “Clearly where a child has only one parent with parental responsibility, that person is responsible for decision making, although his or her views may not be determinative.”<sup>11</sup>. As has been stated above in the section on parental responsibility, all women get parental responsibility on birth automatically, whereas many unmarried fathers do not.

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<sup>10</sup> <http://www.inside-man.co.uk/2015/01/15/male-circumcision-can-be-worse-than-fgm-rules-senior-judge/>

<sup>11</sup> <http://jme.bmj.com/content/30/3/259.full#ref-4>

Since it takes unmarried fathers many weeks or months to acquire parental responsibility even if the mother consents and cooperates, this is often too late to stop circumcision occurring because many religious rituals require it to be carried out within a few days of birth<sup>12</sup>.

Therefore, non-therapeutic procedures such as circumcision can be performed on a child with the sole consent of the mother when the parents were not married.

Circumcision of male babies and children at the request of their parents is an increasingly controversial area and strongly opposing views about circumcision are found within society and within the BMA's membership. The medical evidence about its health impact is equivocal<sup>13</sup>.

The consent issue is direct gender discrimination against unmarried fathers. The circumcision itself is direct gender discrimination against boys.

#### **2.1.4 Maternity Leave/Paternity Leave/maternity benefits**

When a woman gets pregnant, there are many benefits that the government gives only to her. The Sure Start Maternity Grant is one-off payment of 500 pounds payable generally for the first child only. The mother becomes eligible from 11 weeks before to 3 months after the expected date of birth<sup>14</sup>. All pregnant women are entitled to free NHS dental care and free prescriptions while pregnant and until the baby is one year old. Only the mother is entitled to receive this. Eligible (low income or in receipt of qualifying benefits) pregnant women from the 10<sup>th</sup> of pregnancy until the child is four years old can receive weekly vouchers for milk, fresh fruit and vegetables, infant formula, and vitamins<sup>15</sup>. Women are entitled to take paid time off work for every antenatal appointments with doctors, midwives, and parenting classes; fathers are only entitled to a maximum of two unpaid attendances at these appointments<sup>16</sup>.

Eligible mothers are also entitled to receive statutory maternity pay from whenever they stop work immediately before the birth of the child

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<sup>12</sup> [http://www.chabad.org/library/article\\_cdo/aid/1472861/jewish/The-Circumcision-Ceremony-in-a-Nutshell.htm](http://www.chabad.org/library/article_cdo/aid/1472861/jewish/The-Circumcision-Ceremony-in-a-Nutshell.htm) [https://en.wikipedia.org/wiki/Khitan\\_\(circumcision\)](https://en.wikipedia.org/wiki/Khitan_(circumcision))

<sup>13</sup> <http://jme.bmj.com/content/30/3/259.full>

<sup>14</sup> <https://www.gov.uk/sure-start-maternity-grant/overview>

<sup>15</sup> <https://www.moneyadviceservice.org.uk/en/articles/benefits-and-entitlements-to-claim-when-you-have-a-baby>

<sup>16</sup> <https://www.moneyadviceservice.org.uk/en/articles/benefits-and-entitlements-to-claim-when-you-have-a-baby>

for the next 39 weeks. The first six weeks of this leave is paid at 90% of the mother's average weekly earnings and the next 33 weeks is paid at 139.58 pounds or 90% of the mother's average weekly earnings (whichever is less). Since April 2015, this final part of the unpaid parental leave can be transferred to the father if the mother consents<sup>17</sup>. The father is entitled to a maximum of two weeks paternity leave paid at the same rate as the mother's statutory maternity pay as stated above<sup>18</sup>. An employer may grant additional paid or unpaid leave to either or both parents as part of their employment contract.

Under employment Law whilst the parents are taking maternity/paternity leave, they are entitled to receive any bonuses, pay rises or other in-work benefits that their colleagues receive. They must be treated exactly the same as if they were still working for the employer throughout this leave period and their jobs must be protected until they choose whether to return at the end of their leave. Being dismissed whilst on maternity leave has been deemed to be illegal<sup>19</sup>. It is clear from this section that it is automatically dismissal to fire a woman who is on maternity leave for reasons connected with the pregnancy. Whilst employees do not normally have protection from unfair dismissal until they have been employed for 2 years, there is no such time limit for dismissal in connection with discrimination issues, such as pregnancy. This protection only starts once the employer is aware of the woman's pregnancy.

Section (72) further states that it is a criminal offence for an employer to require the new mother to work during the first two weeks after birth.

Until 2010, fathers got zero time off when they had a baby. This was increased to TWO weeks in 2012. Mothers can then receive a maternity allowance – equivalent to either 90% of earnings or £135.45 a week, whichever is the lowest – for an additional 33 weeks. Mothers have the legal right for their job to remain open for 1 year and to receive all bonuses and pay-rises and other benefits during this period.

### **2.1.5 Retirement age**

Women retire earlier than men. This is finally being equalized over the next five years, but is still unfair to men as men's life expectancy is less

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<sup>17</sup> <https://www.gov.uk/shared-parental-leave-and-pay/overview>

<sup>18</sup> <https://www.gov.uk/paternity-pay-leave/overview>

<sup>19</sup> <http://www.legislation.gov.uk/ukpga/1996/18/section/99>

than women's and hence men's retirement is significantly shorter than women's.

Objectively speaking, the age of which people retire should be related to life expectancy. Since on average women live several years longer than men, objectively speaking, it would make sense for men to retire earlier than women in order that both men and women had in principal similar periods of time to enjoy their retirement<sup>20</sup>. For many years, the retirement age has been 65 and for women 60. Finally, in 2010, the government announced that this discrimination will be slowly phased out by over the next 10 years, such that men and women will have the same retirement age of 65 by March 2019 rising to 66 in 2024, 67 by 2034, 68 in 2044. Thus over this long period retirement ages will be equalized. Nevertheless, women will still enjoy on average a longer retirement period owing to their longer life expectancy<sup>21</sup>.

### 2.1.6 Health screening

One of the reasons that women have a longer life expectancy than men is because the UK government has a policy of screening women for breast and cervical cancer on a regular basis but no equivalent screening programme for men. According to Cancer Research UK, 1300 women's lives have been saved per year as a result of screening for breast cancer<sup>22</sup>. The Independent Panel, therefore, concluded that the Breast Screening Programmes in the UK extend lives but at a cost. The Review estimated that while breast screening prevents around 1,300 breast cancer deaths in the UK per year, but it can also lead to around 4,000 women each year aged 50 to 70 in the UK having treatment for a condition that would never have caused them harm.

The NHS offers free cervical screening to all women aged between 25 and 64 every 3 to 5 years. For example, in 2014, 4.3 million were invited and 3.1 million were tested. A news report on Daily mail stated "The procedure - which has been credited with saving 5,000 lives a year - is used to detect abnormal cells which, if left untreated, could lead to cancer

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<sup>20</sup> <http://www.statista.com/statistics/281671/life-expectancy-united-kingdom-uk-by-gender/>

<sup>21</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/310231/spa-timetable.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/310231/spa-timetable.pdf)

<sup>22</sup> <http://www.cancerresearchuk.org/health-professional/cancer-statistics/statistics-by-cancer-type/breast-cancer/screening#heading-Eight>

in the cervix.”<sup>23</sup> Cancer Research UK stated that “According to Jessica Kirby, senior health information manager at Cancer Research UK, cervical screening saves around 5000 lives each year in the UK.”<sup>24</sup>

For information purposes, men can also suffer from breast cancer albeit in far smaller numbers. In 2012, 73 men died from breast cancer. Breast cancer accounts for less than 0.1% of cancer deaths in men<sup>25</sup>.

One of the possible causes of cervical cancer is believed to be the human papilloma virus (HPV). A vaccine has been developed to protect against cervical cancer and a vaccination program is an operation in the UK to give this vaccine to all girls aged 12 and 13 but not to boys. HPV has been shown to cause infections in both boys and girls other than cervical cancer, for example, cancer of the penis, genital warts, and other skin warts and verrucas. Since HPV is a gender neutral sexually transmitted infection, it is direct gender discrimination to only vaccinate girls. The Centers for Disease Control and Prevention (CDC) in USA recommends that all children aged 11 to 12 receive the vaccination<sup>26</sup>.

Over 10000 men a year die from prostate cancer and over 40000 new cases are diagnosed every year. In most cases, men do not ask for investigation until they have symptoms by which time the consequences of treatment are much more serious. A simple blood test for the enzyme prostatic specific antigen (PSA) has been shown to be 90% effective<sup>27</sup>.

In America where the PSA test was approved in 1986, and widespread screening was introduced in 1984, prostate cancer detection rates were massively increased during the initial introduction period of the screening. As many cases of early stage prostate cancer were detected before symptoms were noticed, as a result, the number of new cases diagnosed in American men peaked at 237 per 100000 in 1992, and the latest figures in 2007 are 166 per 100000. The death rate in 1975 was 31 per 100000, peaking at 39 per 100000 in 1994, and is now around 24 per 100000. The

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<sup>23</sup> <http://www.dailymail.co.uk/health/article-3311679/Alarm-cervical-screening-rates-continue-fall-women-aged-25-49-likely-miss-smear-test.html>  
<http://www.cancerresearchuk.org/about-us/cancer-news/news-report/2014-06-09-cervical-screening-boost-would-save-ps10m>

<sup>24</sup> <http://www.cancerresearchuk.org/about-us/cancer-news/news-report/2014-06-09-cervical-screening-boost-would-save-ps10m>

<sup>25</sup> <http://www.cancerresearchuk.org/health-professional/cancer-statistics/statistics-by-cancer-type/breast-cancer/mortality#heading-Five>

<sup>26</sup> [www.cdc.gov/vaccines/vpd-vac/hpv/downloads/dis-HPV-color-office.pdf](http://www.cdc.gov/vaccines/vpd-vac/hpv/downloads/dis-HPV-color-office.pdf)

<sup>27</sup> <http://www.cancerresearchuk.org/health-professional/cancer-statistics/statistics-by-cancer-type/prostate-cancer>



National Institute of Health (NIH) estimates that around 90% of all new prostate cancer cases are detected at an early stage as a result of PSA testing<sup>28</sup>.

### 2.1.7 Hormone Replacement Therapy

HRT is available to women for free after menopause. The benefits are massive for women. Men have to pay privately. The benefits to men are also massive - Dr Carruthers in Harley Street has been running a one-doctor campaign and test for 30 years and 2000 patients to prove the efficacy of the treatment.

Menopause is the period in a woman's life when her menstruation ceases typically between 45 and 50. As a woman gets older, her estrogen levels drop and typically at around 50 in UK, she goes through a period of change, known as menopause when her menstruation slows down and eventually ceases. This fluctuation in levels of estrogen is often accompanied by a wide range of symptoms including hot flushes, night sweats, mood disturbances/depression/forgetfulness, vaginal dryness/urinary infections/pain during intercourse<sup>29</sup>. The same website also indicates the benefits of taking additional estrogen supplements in dealing with the symptoms of menopause. The UK government was sufficiently convinced by the benefits in order to introduce free HRT for women on the NHS. Whilst the symptoms of menopause often pass within 2 to 5 years, the benefits of HRT continue for women in providing protection from osteoporosis, loss of libido, and vaginal dryness<sup>30</sup>.

The male equivalent of the menopause is known as the andropause but its existence is disputed and hence the refusal to treat the symptoms with HRT. The male equivalent of estrogen is testosterone. Testosterone levels decline with age in a similar manner to those for estrogen. Some men also suffer similar symptoms to women's menopause mainly night sweats, loss of libido, loss of motivation and energy, impotence. According to "Center for Men's health", a recent International web survey of 10,000 men indicated that 20% of the 10 million men across the UK over the age of 50 are likely to be suffering from Testosterone Deficiency Syndrome. Currently, in the UK, the only place that it is possible to obtain testosterone replacement treatment (TRT) is through a private clinic in

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<sup>28</sup> <http://report.nih.gov/nihfactsheets/ViewFactSheet.aspx?csid=60>

<sup>29</sup> <http://www.womens-health-concern.org/help-and-advice/factsheets/focus-series/menopause/>

<sup>30</sup> <http://www.nhs.uk/Conditions/Hormone-replacement-therapy/Pages/introduction.aspx>

Harley Street. This treatment costs 300 pounds per year for the consultation, 175 pounds for the comprehensive blood and urine test and 50 pounds per tube for the testosterone cream. Typically, 3 to 6 tubes of cream are needed per year depending on diagnosis<sup>31</sup>.

This difference in treatment between men and women with similar symptoms and equivalent causes is direct gender discrimination.

### 2.1.8 Army

There is direct discrimination in the front-line fighting troops - they can only be men. Dying for your country is something that only men are allowed to do. Look at the figures of deaths in Afghanistan - 349 men and 1 woman. This is direct discrimination.

As at 11<sup>th</sup> October, 2015, since 2001, 456 UK soldiers have died in the conflict in Afghanistan<sup>32</sup>. Only 3 of these were women. Women are not allowed to fight on the front line in the UK army<sup>33</sup>.

According to the newspaper article in December 2014, “The UK defense secretary, Michael Fallon, has announced he wants to end the army’s ban on women serving in frontline infantry roles.”<sup>34</sup> Since only men can serve in close combat frontline roles in the army, which is where most casualties occur, women have been protected in the army from the highest risk of death or injury. While this may change in the future as a result of this defense review, the current situation is direct gender discrimination.

### 2.1.9 All-Women shortlists

The Westminster Parliament consists of 650 MPs representing constituencies across the UK. Since Parliament began the overwhelming majority of these MPs have been male. The Representation of the People Act 1918 allowed the first women to vote and to stand as a member of parliament. And the first female MP was elected in that year. In order to become an MP, it is normally necessary to belong to one of the main political parties as very few independent candidates ever get elected. In order to be selected by a political party as their candidates in a particular constituency, it is necessary to go through a selection procedure, which

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<sup>31</sup> <http://www.centreformenshealth.co.uk/faqs>

<sup>32</sup> <http://www.bbc.com/news/uk-10629358>

<sup>33</sup> [https://en.wikipedia.org/wiki/British\\_Forces\\_casualties\\_in\\_Afghanistan\\_since\\_2001](https://en.wikipedia.org/wiki/British_Forces_casualties_in_Afghanistan_since_2001)

<sup>34</sup> <http://www.theguardian.com/uk-news/2014/dec/19/women-combat-roles-british-army-infantry-armoured-units>

varies slightly between the political parties. Applicants are shortlisted by committee before giving the members the opportunity to vote for their preferred candidate from that shortlist. Therefore, in order to ensure a female candidate has a chance of being elected, the political party wishing to use the legislation for all women shortlists has to ensure that only women appear on the shortlist selection ballot. It is this practice which directly discriminates against men in banning men from even having a chance of being chosen for the political party that uses this measure. ([https://en.wikipedia.org/wiki/All-women\\_shortlists](https://en.wikipedia.org/wiki/All-women_shortlists))

The above discriminatory practice was legalized by the Sex Discrimination (Election Candidates) Act 2002 which effectively excluded the operation of the sex discrimination act 1975 from applying to the selection procedures for members of parliament<sup>35</sup>. The sex discrimination act 1975 introduced the requirement into employment law for men and women to be treated the same in all matters relating to employment.

The provisions were introduced after the use of all-women shortlists by the Labour Party in the selection of candidates for the 1997 General Election was found by an employment tribunal to breach the Sex Discrimination Act 1975 (the Jepson case)<sup>36</sup>. The Labour Party were the first political party to use an all-women shortlist to select candidates for the 1997 election. Two men Peter Jepson and Roger Dyas-Elliott were denied the opportunity to stand as candidates in their respective constituencies and therefore made a claim to the employment tribunal on the basis that they had been discriminated against as a result of their gender. The Tribunal found in their favor and as a result further use of the all-women shortlist selection procedures was suspended for that election, but the female candidates who had already been selected using this procedure were allowed to stand in the 1997 election. The Labour government that was elected in that election then changed the law to legalize this discrimination in the form of the Sex Discrimination (Election Candidates) Act 2002. This Act originally was due to expire in 2015, but this deadline was extended to 2030 by the Equality Act 2010 further extending the legalized discrimination.

### 2.1.10 **Director Quotas**

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<sup>35</sup> [https://en.wikipedia.org/wiki/Sex\\_Discrimination\\_\(Election\\_Candidates\)\\_Act\\_2002](https://en.wikipedia.org/wiki/Sex_Discrimination_(Election_Candidates)_Act_2002)

<sup>36</sup> <http://researchbriefings.files.parliament.uk/documents/SN05057/SN05057.pdf>

The equality and human rights commission(EHRC) was set up by the government to have an overall view of the status of equality and human rights in the UK. The EHRC’s job is to issue advice on matters relating to these issues as well as to take on cases of institutionalized discrimination on behalf of large numbers of similar victims. In relation to the issue of quotas, they recently issued an advice note which stated “We do not believe that it is lawful to address under-representation by longlisting or shortlisting only female candidates to the detriment of male candidates.”<sup>37</sup>

In November 2012, the European Commission proposed legislation to legalize the use of quotas in selection for the Board of Directors of large companies throughout Europe. They chose to force publicly listed large companies to have a minimum of 40% female directors<sup>38</sup>.

The European Parliament voted to adopt this proposal in 2013. “The proposal requires publicly listed European companies to make sure that by 2020 at least 40% of their non-executive board members are female.”<sup>39</sup>

In the 2015 Conservative Party Election campaign, David Cameron announced that if reelected, he would introduce quotas for membership of the Board’s of Directors of large publicly listed companies. According to manifesto, he stated “[Women] represent a quarter of board members today and we want to see this rise further in the next Parliament. We also want to increase the proportion of public appointments going to women in the next number of female MPs.”<sup>40</sup>

### 2.1.11 Rape

Sexual Offences Act 2003 section 1 (1) states “A person (A) commits an offence if—

(a)he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis,

(b)B does not consent to the penetration, and

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[http://www.equalityhumanrights.com/sites/default/files/publication\\_pdf/Appointments%20o%20Boards%20and%20Equality%20Law%202022-07-14%20final.pdf](http://www.equalityhumanrights.com/sites/default/files/publication_pdf/Appointments%20o%20Boards%20and%20Equality%20Law%202022-07-14%20final.pdf)

38 [http://ec.europa.eu/justice/newsroom/gender-equality/news/121114\\_en.htm](http://ec.europa.eu/justice/newsroom/gender-equality/news/121114_en.htm)

39 <http://www.euractiv.com/socialeurope/meps-back-commission-gender-equa-news-531099>

40 <https://s3-eu-west-1.amazonaws.com/manifesto2015/ConservativeManifesto2015.pdf>

<http://www.theguardian.com/politics/2015/apr/14/conservative-party-manifesto-2015-the-full-pdf>

(c)A does not reasonably believe that B consents.”

This law specifically requires the perpetrator to use a penis as the offensive “weapon”. Clearly, only men possess a penis and therefore only men can be prosecuted for rape. Whilst women who force themselves on men can be prosecuted for the alternative offense under section 4 “Causing a person to engage in sexual activity without consent”, this is a lesser offence with a lower maximum punishment of 10 years in prison whilst rape carries a maximum penalty of life imprisonment. Section(1) requires that B does not consent to the penetration for this offence to be committed. B can be either a man or a woman, but A can only be a man. This is direct gender discrimination. It may be commonly believed that a man cannot be raped by a woman but the issue of rape is an issue of prior consent to sexual intercourse. If the woman was asleep, unconscious, intoxicated, or otherwise, unable to move or express an opinion, and the man penetrated her, this would clearly satisfy the conditions for a charge of rape. Reversing the genders and asking the question that if a man was asleep, unconscious, intoxicated, or otherwise, unable to move or express an opinion, and the woman forced his penis into her vagina, then this should also satisfy the conditions of rape. The victim in this case a man was unable to give prior consent and hence the woman has intentionally penetrated the vagina with the penis and she does not reasonably believe he consented even though in order for penetration to occur the man’s penis must be erect. It is unreasonable to equate an erect penis with implied consent. This would be equivalent to assuming a woman’s acquiescence to sexual intercourse was not rape. The other problem of consent is in relation to the situation where both people are intoxicated. Clearly neither can give “proper” consent as they are incapable and lack capacity to give this consent. In this situation, however, the man can still be prosecuted for rape and section (1) only requires the victim (woman) to be able to give consent.

In the UK, it is the crown prosecution service (CPS) that decides whether to prosecute a criminal offense on behalf of a state and then conducts that prosecution. The CPS issue guidance for the general public as well as the police on their definitions and interpretations of the law in deciding whether to prosecute an alleged offence. The guidance on rape prosecutions considers the issue of consent as a two-stage approach. Firstly, the alleged perpetrator must prove that he believes he has the consent of the alleged victim, and secondly, that belief must objectively be

viewed as reasonable. This two stage approach contrasts unfavourably with many other areas of criminal law relating to sexual offences where only the victims subject belief that they have been sexually assaulted or sexually harassed is required. This sole subjective requirement transfers the power of prosecution to the victim normally the woman in those cases as will be explained below. With the issue of rape, the two stage test unreasonably transfers the burden of proof to the alleged perpetrator always a man and is direct gender discrimination<sup>41</sup>.

### **2.1.12 Abortion**

Only the mother's consent is required to abort a baby. A baby is created when the mother's egg is fertilized by the father's sperm. Normally, this takes place inside the mother's womb. Once the fetus is securely attached to the lining of the womb, it will most likely develop into a fully grown baby over the next 40 weeks. Manually interfering with this process in any of a number of ways which cause the fetus to fail to fully develop is known as abortion. According to the legal situation related to human rights, the fetus has no individual rights at all until it is fully outside the mother's body even if it is still attached to the mother by the umbilical cord. Therefore, anything that is done to the fetus while it is still inside the mother is not considered as child abuse or assault, and can not under any circumstance result in the prosecution of the mother, for example, regardless what she does either directly to her baby or indirectly via her internal system through smoking, drinking, drugs or any other dangerous substances. The law on abortion has a time limit by which the decision has to be made and it is currently 24 weeks. In order to be consistent with the approach described above, the fetus has to die inside the mothers and be delivered dead, otherwise, medical practitioners have a duty to preserve life of any human being, and would have to make very effort to keep the baby alive. Since many fetuses are viable at 24 weeks, and the earliest premature baby to be kept alive in the UK is currently at 20 weeks, it is essential that the fetus is terminated before delivery. The decision to abort is apparently treated by the medical profession as no more serious than a decision to remove a wart in spite of the legislation requiring two GPs to confirm that the birth of the child would cause serious distress to the mother. At no stage in any of the above process does the father have any legal rights to say anything for or against the decision.

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<sup>41</sup> [http://www.cps.gov.uk/legal/p\\_to\\_r/rape\\_and\\_sexual\\_offences/consent/#a04](http://www.cps.gov.uk/legal/p_to_r/rape_and_sexual_offences/consent/#a04)

There is a further potential gender discrimination issue in relation to abortion. Since it is possible to determine the gender of the baby at about 8 weeks when the first scan normally occurs, it is therefore possible for the mother to decide to terminate the fetus if it is the wrong gender. Whilst this is not one of the prescribed reasons on the application form for the abortion, it is unlikely any way that the mother would actually say this was the reason for the decision to abort, but it is not specifically illegal to do this.

### **2.1.13 Government**

The UK parliament consists of 650 MPs. The largest party at the election becomes the government and the leader of that party becomes the Prime Minister. He then selects a team to run the country with him known as the cabinet. This group of people controls all aspects of the government machine, and through the civil service directs all of the various organs of the public sector, and hence the country. The UK parliament is currently elected on a fixed term 5 year cycle. The last election was in May 2015 which resulted in a small overall majority for the Conservative Party led by David Cameron. Since the largest single party grouping in Parliament is made up of Conservative MPs, if everyone attends to vote, and votes along party lines then clearly the largest party namely the Conservatives would win. In between elections, it is extremely rare to hold a referendum and hence the electorate have no direct influence over any aspect of government policy or decisions between elections. Thus whichever party is elected with an overall majority, can therefore do whatever it chooses throughout the 5-year term. In order to make laws in the UK, the normal procedure commences with a bill being proposed by a cabinet Minister. There are then 3 “readings” of the proposed bill in the House of Commons each culminating in a vote of MPs. Following each successful vote, there is a further debate in the House of Lords also culminating in a vote. Since the government has a majority in both Houses, it is very rare for the government to lose a vote. Since very few MPs actually attend the debates in the House of Commons, when it is time to vote, a bell rings throughout the building and the MPs head to the Common’s lobby where they are told by their Party Whips which way to vote. Clearly they may have no idea what they are voting on but are simply following party orders in order that the government gets to pass whatever legislation it has proposed. Once a bill has passed all 3 readings as above, it then goes to the Queen, to be approved. No monarch has ever refused to approve a bill of Parliament

which has passed the above procedure since the early 18<sup>th</sup> century and should the Queen refuse to “rubber stamp” the bill a constitutional crisis would almost certainly result. Thus the UK parliamentary system could be described as “an elected dictatorship”, controlled by the Cabinet.

Within the cabinet, each senior government minister controls one department of the public sector. For example, the most senior positions are Chancellor of the Exchequer who is responsible for the treasury, foreign secretary who is responsible for foreign office, and the home secretary who is responsible for Home office and Ministry of Justice. The rest of the cabinet are less senior and cover the rest of the public sector. There is a specific Minister for “Women and Equalities” and the position is currently held by a woman, Nicky Morgan. There is no specific Minister for Men. “The Minister for Women and Equalities has overall responsibility for: policy on women, and policy on sexual orientation and transgender equality, and cross-government equality strategy and legislation”<sup>42</sup>

Within government there are specific subcommittees, known as “Select Committees”, which discuss different areas of government policy and can advise Ministers on proposals for changes in the law. There is a specific sub-committee called “women and equalities”<sup>43</sup>. This sub-committee consists of eleven MPs 9 of whom are women.

In October 2015, MP Phillip Davies proposed that there should be a debate on men’s rights on international Men’s Day (19th November), one of the female members (Jessica Phillips) of the back bench committee considering whether to allocate time for this debate said “As the only woman on this committee, it seems like every day to me is International Men’s Day. When I’ve got parity, when women in these buildings have parity, you can have your debate”<sup>44</sup>. Thus it is clear that the opportunity to raise any of the issues contained in this paper and potentially change any of the laws is strictly limited because there is no specific select committee or minister who is charged with men’s issues at all unlike for women. This is direct gender discrimination against men.

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<sup>42</sup> <https://www.gov.uk/government/ministers/minister-for-women-and-equalities--3>

<sup>43</sup> <http://www.parliament.uk/business/committees/committees-a-z/commons-select/women-and-equalities-committee/>

<sup>44</sup> <http://www.independent.co.uk/news/uk/politics/tory-mp-wins-battle-for-international-mens-day-debate-in-parliament-a6730391.html>



In Wales in 2015, the Assembly has just passed a law known as “Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015”<sup>45</sup> “During Stage 2 proceedings on 22 January 2015, the Communities, Equality and Local Government Committee agreed to amend the short title of the Bill from Gender-based Violence, Domestic Abuse and Sexual Violence (Wales) Bill to Violence against Women, Domestic Abuse and Sexual Violence (Wales) Bill (amendment 82).”

This situation is mirrored in the European Union where they also have a specific sub-committee that advises the European Commission known as “Women’s Rights and Gender Equality”. (<http://www.europarl.europa.eu/committees/en/femm/home.html>) The United Nations have several branches specifically focused on women, for example, the main UN organization known as UN Women is dedicated to gender equality and the rights of women<sup>46</sup>. There are additional committees such as Human Rights of Women, WomenWatch and the Convention on the Elimination of All Forms of Discrimination against Women. In 1993, the UN adopted a declaration on the Elimination of Violence Against Women<sup>47</sup>. The United Nations General Assembly has designated November 25<sup>th</sup> as the International Day for the Elimination of Violence Against Women. (Resolution 54/134). Thus it will be seen that all of the various government bodies inside and outside the UK which directly or indirectly influence the UK parliament and government policy are focused, where gender is an issue, on women exclusively. There is no where and no body in any of these branches of the government system that have any direct or even indirect interest in men or men’s issues or men’s rights or discrimination against men at all.

### **2.1.14 Paternity testing**

Otherwise known as DNA testing. It is a specific criminal offence for a father to take a sample of a child's DNA without the mother's prior consent. It is also discriminatory that it is not a crime for a woman to lie about who is the father of the child, which is known as paternity fraud.

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<sup>45</sup> <http://www.senedd.assembly.wales/mgIssueHistoryHome.aspx?IID=10028>

<sup>46</sup> [www.unwomen.org/](http://www.unwomen.org/)

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[https://en.wikipedia.org/wiki/Declaration\\_on\\_the\\_Elimination\\_of\\_Violence\\_Against\\_Women](https://en.wikipedia.org/wiki/Declaration_on_the_Elimination_of_Violence_Against_Women)

When a child is born to a married couple, convention and culture presume that the child's father is the husband of the mother. When parents are not married, there is no equivalent presumption in law that the partner of the mother is the child's father. The legal rights to decide who is the father vest initially with the mother as has been stated above. Whether married or unmarried, if she knowingly decides that the wrong man is to be designated as the father, then this is known as paternity fraud. The only known case on this issue was decided in the civil courts as a claim for damages to repay the man incorrectly named as the father his costs of child-support payment and other money paid to the mother and spent on the child in the mistaken belief that he was the child's biological father. {A v B [2007] EWHC 1246 (QB)}<sup>48</sup>

Whilst in the past it was impossible to prove conclusively whether or not a man was the biological father of the children, technology has advanced to the point where today for 99 pounds it is possible to conduct a DNA test to determine this issue, by simply taking a hair strand. However, it is a specific criminal offense<sup>49</sup> to do so unless you have parental responsibility for the child. (section 2 (3))<sup>50</sup> Since all mothers get parental responsibility on birth but some unmarried fathers do not, depending on the consent and cooperation of the mother (as we have seen above), it is almost certain that this law only applies to unmarried fathers not unmarried mothers and hence this is direct gender discrimination against men. The contrast between the absence of a specific criminal offence for paternity fraud and the presence of a specific criminal offence for paternity testing without the consent of the mother highlights the discrimination against men in the legal system. Since paternity fraud is not a specific criminal offence, accurate statistics on the prevalence of misattributed paternity are hard to find. Wikipedia has combined studies from various sources to produce an article on this subject which indicates around 10% of births are possible paternity fraud<sup>51</sup>.

In cases of assisted reproduction known as in vitro fertilization (IVF), the issue of biological parentage becomes extremely important. In the

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<sup>48</sup> <http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/QB/2007/1246.html&query=%22paternity+fraud%22&method=boolean>

<sup>49</sup> <http://www.legislation.gov.uk/ukpga/2004/30/section/5>

<sup>50</sup> <http://www.legislation.gov.uk/ukpga/2004/30/section/2>

<sup>51</sup> [https://en.wikipedia.org/wiki/Misattributed\\_paternity](https://en.wikipedia.org/wiki/Misattributed_paternity)

situation where the couple are unable to have a child in the normal way, there are a number of possible combinations of sperm and eggs which create legal difficulty in defining mother and father. When a third party's sperm or egg is involved in the fertilization process and the resulting embryo implanted in the woman, there is a legal difference between the biological parents who supplied the sperm or egg, and the gestational mother who provided the womb. In surrogacy, the womb of another woman is used to allow the baby to gestate and then on birth, the baby is given to another couple to raise as their own. Thus there are three possible mothers and two possible fathers for each baby produced in the above scenarios namely the biological mother and father who provided the egg and sperm, the gestational mother who provided the womb, and the "emotional" mother and father who provided the home for the baby after birth. Currently, all legal rights to call yourself the mother and father reside with the "emotional" parents. The Human Fertilisation & Embryology Authority (HFEA) maintain control and a database of all the legally authorized activity in the UK. At the age of 16, a child born after 1<sup>st</sup> August, 1991, can apply for information concerning their donor history<sup>52</sup>. However, people make their own private arrangements, and in these cases, there is a risk that the sperm-donor will be treated as the father for the purpose of paying child support<sup>53</sup>.

## 2.2 Indirect Discrimination

This section of the paper considers various pieces of legislation and policies which, on the face of it, appear gender neutral but in practice disproportionately favor one gender over the other. This discrimination is known as indirect and according to the Equality Act 2010, could be legal if it is a "proportionate means of achieving a legitimate aim". After identifying the various issues of indirect discrimination, this paper will then consider what the researcher suggests might be the "legitimate aim" and whether it is a "proportionate means" of achieving it. Men pay 72% of income tax to the government, but as can be seen below, men yet receive far less as a percentage of the state benefits such as in "winner-takes-all" system<sup>54</sup>.

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<sup>52</sup> <http://www.hfea.gov.uk/112.html>

<sup>53</sup> <http://www.theguardian.com/money/2012/oct/26/gay-sperm-donor-pay-child-support-maintenance>

<sup>54</sup> <https://j4mb.wordpress.com/2014/08/20/womens-share-of-income-tax-receipts-declines-slightly/>

## 2.2.1 “Winner-takes-all System”

In the UK, there are many benefits, tax credits, and other “passported” “advantages” for the primary carer of the children, whether in or out of a relationship. These “advantages” can not normally be shared between the parents regardless of the relative percentages of shared care that the parents undertake. For example, even if separated parents share the care of their children equally, most of the following “advantages” are still given 100% to the person deemed to be the primary carer. Since this is overwhelmingly the mother, these “advantages” constitute indirect discrimination against men. This could be described as the “winner-takes-all” system.

The “winner takes all” system of benefits hugely favours women - 100% of all the benefits and tax credits that the government gives to parents must be paid to a single parent, never shared. They are paid to the “primary carer”, overwhelmingly the woman. The FOI figures supplied show that child benefit is 93% female, child tax credit is 91% female recipient and the Child Support Agency(CSA) collects money on behalf of women in 93% of cases. There are additional benefits of being the primary carer - Whilst the youngest child is under 5, you qualify for Income Support, which is paid at the same rate as Job-seekers allowance, but you do not have to be available and looking for work. The CSA payments are untaxed income and do not affect the means-tested benefits, nor eligibility for legal aid.

### 2.2.1.1 Child Benefit<sup>55</sup>

Family allowance<sup>56</sup> was introduced in the immediate post war period as a means of paying money directly to mothers. It was believed at the time that husbands would not willingly hand over money to their wives to spend on the children, and hence this was introduced to overcome that reluctance to share their income. The application form for this benefit is included in a “bounty pack” which is handed to women in the maternity hospital after giving birth. Not surprisingly therefore, this benefit has a very high take-up rate. According to a freedom of information act request, 93% of the claimants are female<sup>57</sup>.

Until 2012, this benefit was entirely exempt from means-testing. Regardless of the applicant’s financial situation, this benefit was paid at

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<sup>55</sup> <https://www.gov.uk/child-benefit/eligibility>

<sup>56</sup> [https://en.wikipedia.org/wiki/Child\\_benefits\\_in\\_the\\_United\\_Kingdom](https://en.wikipedia.org/wiki/Child_benefits_in_the_United_Kingdom)

<sup>57</sup> [https://www.whatdotheyknow.com/request/child\\_benefit\\_claimants#incoming-20874](https://www.whatdotheyknow.com/request/child_benefit_claimants#incoming-20874)

the rate of 20.70 pounds per week for the first child, and 13.70 pounds per week for all subsequent children, without limit. From January 2013, a form of means testing was introduced. If either of the couple were earning over 50 thousand pounds per year, then the amount paid in child benefit to the applicant was recovered from the person earning over 50000 a year through their tax code. Since the most likely situation is that the child benefit is paid to a mother on low income who is cohabiting with a man earning over 50000 per year, thus the government is giving the money to the mother and taking it back from the man whom she lives with regardless of whether he is the father or not. This is indirect gender discrimination against men.

### **2.2.1.2 Child Tax Credit (CTC)**

Prior to 2003, this benefit was paid to the primary carer for the first child and then to the secondary carer for the second child if they are not cohabiting. No payment were made for any subsequent children. In 2003, the rules were changed such that CTC was paid per child without limit only to the primary carer, 93% of the time to the mother<sup>58</sup>.

In 2013, the government introduced a “cap” of 26000 pounds per year on the total amount of benefits that any single parent household could receive. This effectively limited tax credits to the equivalent of around 4 children depending on the rate of receipt of housing benefit. There is an apparent correlation between these two inflexions and the birth rate in the UK as this chart shows<sup>59</sup>.

### **2.2.1.3 Working Tax Credit<sup>60</sup>**

In order to help working people on low incomes, the government introduced working tax credit. A primary carer needs to be aged over 16 and work a minimum of 16 hours a week in order to claim WTC, however, a secondary carer needs to be aged over 25 and work a minimum of 30 hours per week in order to claim. The primary carer is normally a woman and the secondary carer normally a man and hence there is indirect gender discrimination against men. Universal credit is gradually being phased in

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<sup>58</sup> [https://www.whatdotheyknow.com/request/child\\_tax\\_credit\\_information#incoming-20875](https://www.whatdotheyknow.com/request/child_tax_credit_information#incoming-20875)  
<http://webarchive.nationalarchives.gov.uk/20140109143644/http://www.hmrc.gov.uk/stats/personal-tax-credits/cwtc-dec08.pdf>

<sup>59</sup> [www.ons.gov.uk/dcp171778\\_371129.pdf](http://www.ons.gov.uk/dcp171778_371129.pdf)

<sup>60</sup> <https://www.gov.uk/working-tax-credit/eligibility>

across the country over the next few years and this will remove the 16-hour/ 30-hour difference and there will be no minimum number of hours required to claim this benefit. The introduction of “Universal credit” is an effort in trying to decrease the institutionalized discrimination in UK.

#### **2.2.1.4 Income support<sup>61</sup>**

This benefit is being phased out but is currently paid instead of job seekers’ allowance to primary carers who are working less than 16 hours a week whilst their youngest child is under age 5.

#### **2.2.1.5 Child support agency (CSA)<sup>62</sup>**

When unmarried parents separate, the primary carer can ask for maintenance from the secondary carer. In the absence of an agreement between the parents as to the amount to be paid, the primary carer can apply to the CSA for an assessment of the secondary carer’s income to calculate and collect maintenance payments. The assessment is based entirely on the secondary carer’s income and is calculated as a percentage of the net income based on the following formula. Under 100 pounds per week, maintenance is 5 pounds per week; over 200 pounds per week, 15% for one child, 20% for two children, 25% for 3 or more children. Between these income levels, there is a sliding scale of payments. In 2014, the government introduced additional charges on top of these payments for the initial application fee and a non-payment collection charges. In cases where the parents were married and a court decided the level of maintenance payment to be paid after divorce, the courts normally follow the CSA formula in their calculation. However, if the primary carer wishes to vary the court-ordered child maintenance figure, s(he) has the right to apply to the CSA after 12 months has elapsed following the date of the court order. According to CSA figures, 95% of primary carers making claims for maintenance are female<sup>63</sup>. The assessment figure is reduced by 1/7 for each overnight staying in contact per week with the secondary carer. Thus if the primary carer reduces the overnight contact between the children and the secondary carer, s(he) is rewarded with an increase in maintenance payments. However, there is nothing in the legislation requiring that the primary carer spends any of this money on the children.

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<sup>61</sup> <https://www.gov.uk/income-support/overview>

<sup>62</sup> <https://www.gov.uk/how-child-maintenance-is-worked-out>

<sup>63</sup> [https://www.whatdotheyknow.com/request/gender\\_breakdown\\_of\\_claimants#incoming-78331](https://www.whatdotheyknow.com/request/gender_breakdown_of_claimants#incoming-78331)

### 2.2.1.6 Housing Benefit

For privately rented accommodation, tenants can claim assistance with all or part of their rent up to a maximum known as the local housing allowance. Social housing tenants can also claim the full cost of their rent. However, in calculating how much housing benefit a claimant is entitled to, the assessment process depends on whether you are a primary carer or secondary carer. For example, a primary carer with a son and a daughter aged between 10 and 16 would be entitled to the housing benefit up to the maximum level for a three-bedroom property. The secondary carer of the same children if aged under 35 would only be entitled to the housing benefit up to the maximum level for a room in a shared property. Clearly the secondary carer in this example would not be able to have the children staying overnight as the accommodation is entirely unsuitable. However, the courts have not been sympathetic to secondary carers applying for social housing even when the primary carer changes as a result of an argument between the primary carer and the children causing her to tell the children to leave, as in the case in Bailii database<sup>64</sup>.

Similarly, if the secondary carer in this example was renting a three-bedroom property, then the “bedroom tax” would apply. The total received housing benefit is reduced by 14% for one “surplus” bedroom and by 25% for two or more surplus bedrooms. The definition of “surplus” in this example applies only to a secondary carer as the courts have decided that it is not necessary or reasonable for the local authorities to pay housing benefit for three bedroom properties to both separated parents. They only have a duty to pay full housing benefit to the primary carer, even where there is a 50-50 shared residence order from the court for the children to spend alternate weeks with both parents<sup>65</sup>.

When calculating the amounts of a person’s income to offset the housing benefit, there is a base figure before the offset begins. This amount is calculated in a different way for the primary and secondary carers. A primary carer starts with the basic single person’s allowance to which is added an amount for being a parent and then additional amounts

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<sup>64</sup> [http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWCA/Civ/2011/609.html&query=title+\(+Oxford+\)+and+title+\(+Bull+\)&method=boolean](http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWCA/Civ/2011/609.html&query=title+(+Oxford+)+and+title+(+Bull+)&method=boolean)

<sup>65</sup> <http://www.insidehousing.co.uk/bedroom-tax-court-ruling-blow-for-separated-parents/7008179.article>

for each child residing with that parent. The secondary carer is only allowed the single person's allowance. Above these allowances, additional income reduces the assessed housing benefit by 65 pence for every pound earned. It can therefore be seen that a primary carer and a secondary carer who are in receipt of identical salaries will receive significantly different amounts of housing benefit.

### **2.2.2 Homelessness**

Local authorities have a statutory duty to provide accommodation for some categories of homeless people. The government has defined a list of priorities for the local authorities to use to decide the order in which the scarce resource of social housing should be offered to homeless applicants. The Housing Act 1996 Part VII specifies the five tests that the local authority must apply when considering any homeless person for accommodation<sup>66</sup>. Test one is "the applicant actually or potentially homeless". In the common situation where parents either jointly own or jointly rent their accommodation, on separation it is normal for the secondary carer to move out. It would be reasonable to believe the secondary carer is now homeless but they are not. According to the legislation, they still have the legal right to occupy the former residence because they are still named on the title deeds or tenancy, and therefore they are not statutory homeless and the local authority owes them no duty under this legislation (Section 175(1)). If however, the primary carer were to leave the former residence, they would receive emergency accommodation immediately whilst their application was being considered (Section 188). This accommodation must be suitable for children to stay with the parent although in the initial phase, the local authority is permitted for a maximum of 6 weeks to house the primary carer and children in bed and breakfast hostel accommodation<sup>67</sup>. It is possible that after many months of investigation, that the local authority would conclude they owed no duty to this primary carer. But the discrimination is at least in the requirement to provide emergency accommodation immediately only to the primary carer. The secondary carer may in certain circumstances be offered emergency accommodation but it would be only likely to be in a hostel situation. This would be a single room with shared

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<sup>66</sup> <http://www.legislation.gov.uk/ukpga/1996/52/contents>

<sup>67</sup> <http://www.legislation.gov.uk/uksi/2003/3326/made>



facilities and in most cases these hostels have rules preventing children from even visiting the property, let alone staying overnight.

Test Two requires that the local authority considers whether the applicant has “eligibility” for homeless assistance. This is not normally discriminatory with respect to the parental status as it is related to nationality and whether an applicant has a visa with “no recourse to public funds” stamped in their passport.

Test Three specifies a list of categories known as “priority need” to whom local authorities must consider as requiring assistance under this legislation (Section 189). This list includes pregnant women and primary carers as well as vulnerable single people. A secondary carer who had no significant mental or physical disability would be unlikely to be considered as vulnerable and would therefore fail this test. Section 189 (1) (b) states “a person with whom dependent children reside or might reasonably be expected to reside”. On the face of it, this clause appears to include secondary carers as it could be argued that dependent children might reasonably be expected to reside with both parents after separation. The courts, however, have taken a different view when interpreting this clause. Since social housing is in scare supply, the courts have decided that the word “reasonable” in this clause should be interpreted to take into account the availability of social housing and have concluded that it is not reasonable for a local authority to provide two family-sized homes to both separating parents<sup>68</sup>.

Applicants who clearly pass these first three tests must be provided with emergency accommodation whilst the local authority considers tests four and five. If however the applicants might pass the first three tests then the local authority only has to exercise its discretion as to whether or not to offer the applicant emergency accommodation.

Test Four requires the local authority to look at the reasons why the applicant has become homeless. In the typical family breakdown situation and in the absence of domestic abuse, the local authority may conclude that a person who simply leaves the former residence at the end of the relationship is “intentionally homeless”, and therefore they owe no statutory homeless duty to the applicant (Section 191). An applicant would therefore have to argue that it is not reasonable for them to continue to

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<sup>68</sup> [http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWCA/Civ/2011/609.html&query=title+\(+Oxford+\)+and+title+\(+Bull+\)&method=boolean](http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWCA/Civ/2011/609.html&query=title+(+Oxford+)+and+title+(+Bull+)&method=boolean)

occupy the former residence in order to be considered for homeless assistance.

Test Five requires the applicant to show that they have a local connection to the local authority to which they are applying (Section 199). If the primary carer moves to a new local authority area following the breakdown of the relationship, the secondary carer cannot claim a local connection as a result of the children now living in the new area. A local connection to an area can only be established through work, or adult family connections and not through children. Therefore a secondary carer's application would fail as a result of this interpretation of local connection<sup>69</sup>.

### **2.2.3 Divorce**

There are many remaining legal differences between being married and cohabiting. The most significant difference between them is in relation to the end of the relationship. The law covering the financial settlement rules for divorcing couples is the Matrimonial Causes Act 1973 (MCA). When cohabiting couples separate, the common law applies and the parties simply recover their personal investments and no account is normally taken of any subsequent change in situation through personal contributions. The equitable ownership is presumed to match the legal ownership according to the name of the person or persons on the title document and is definitive. In the lead case of *Stack v Dowden*, an unmarried couple with 4 children separated after 18 years together. Their family home was registered in joint legal names. The presumption therefore is that the equitable ownership will follow the legal ownership, and hence they would each get 50 percent of the selling price. However, Ms. Dowden was unhappy with only getting 50% as she had sold her previous home which part-paid 65% of the purchase price of the joint home. The court confirmed the law but considered that this case was an exceptional case and overturned the presumption of 50-50 in favor of Ms. Dowden getting 65%<sup>70</sup>. This presumption can be overturned in exceptional circumstances or by the parties entering into a legally binding "separation agreement". This is in stark contrast to the presumptions in the

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/7841/152056.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7841/152056.pdf)  
Para 18.10

<sup>70</sup> [http://www.bailii.org/cgi-bin/markup.cgi?doc=/uk/cases/UKHL/2007/17.html&query=title+\(+Stack+\)+and+title+\(+v+\)+and+title+\(+Dowden+\)&method=boolean](http://www.bailii.org/cgi-bin/markup.cgi?doc=/uk/cases/UKHL/2007/17.html&query=title+(+Stack+)+and+title+(+v+)+and+title+(+Dowden+)&method=boolean)

MCA whereby the childless spouses are presumed to intend to share all combined family assets equally regardless of which spouse bought, earned, or paid for them. This presumption can be overturned by a pre-nuptial or post-nuptial agreement (PNA). However, the courts have been reluctant to simply accept the details of a PNA without an extremely thorough examination of the parties' financial situation, and there have been very few cases where the PNA has been fully upheld. The most common situation is that of a rich man marrying a poor woman. For example, in *K v K*<sup>71</sup> a PNA was signed and the court listed a number of factors necessary in order that a PNA could be upheld. In that case, however, and almost every other case involving a PNA, the court has found one or more factors unsatisfactory with the way the PNA was signed and had no problem in dismissing it and making their own decision. The main exception is the *Radmacher* case, where a rich woman married to a poor man and they signed a PNA before marriage. When they separated, the father became the primary carer for the children, and made a claim for maintenance and financial settlement, far in excess of the PNA. The case went all the way to the supreme court who simply upheld the PNA and the man only received the settlement specified in the PNA and no more<sup>72</sup>.

Whilst the starting point for the courts to consider the financial settlement between childless couples is equality, the situation is then modified in connection with parents. The primary carer receives an additional percentage of the family joint assets on top of the starting point of half. In addition, in the situation where the spouse's earning ability is significantly different, the primary carer can make an application for spousal maintenance and still has the additional right to claim child support maintenance either through the CSA or by a separate application through the court.

Since the majority of primary carers are women, this is indirect gender discrimination against men.

#### **2.2.4 Legal Aid**

When people have a need for legal advice, there are some areas that the government considers that it is reasonable for this legal advice to be provided for free to "poor" people. The decision whether to grant this legal

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<sup>71</sup> <http://swarb.co.uk/k-v-k-ancillary-relief-prenuptial-agreement-fd-2003/>

<sup>72</sup> [http://www.bailii.org/cgi-](http://www.bailii.org/cgi-bin/markup.cgi?doc=/uk/cases/UKSC/2010/42.html&query=title+(+Radmacher+)&method=boolean)

[bin/markup.cgi?doc=/uk/cases/UKSC/2010/42.html&query=title+\(+Radmacher+\)&method=boolean](http://www.bailii.org/cgi-bin/markup.cgi?doc=/uk/cases/UKSC/2010/42.html&query=title+(+Radmacher+)&method=boolean)

aid is a three-fold test. Firstly, whether the person is eligible to receive the legal aid. Secondly, whether the matter requiring the legal aid is within the limited range of categories still covered by legal aid. And thirdly whether it is a good use of public money based on the probability of success and the importance of the issue. The issue of eligibility is a controversial one and is part of the winner-takes-all system. An applicant is deemed to be eligible for legal aid if their earnings are less than a maximum figure. This maximum figure is calculated by adding an allowance of 291.50 pounds per child per month to the basic figure for a single person of 733 pounds per month. Therefore, a primary carer with one child is allowed to earn up to 1024.50 per month after tax and housing cost and still receive free legal advice, but the secondary carer of the same child would only be eligible for legal aid up to earnings of 733 pounds per month. In addition to this, any receipt of child support payments by the primary carer are not included in their income calculations<sup>73</sup>. As mentioned before, the majority of primary carers are women, this is indirect gender discrimination against men.

### **2.2.5 Police**

In a Home Office Study in 2003, monitoring thousands of criminal cases from stop and search, through arrest, charge and conviction by the criminal courts, they concluded: A Black and Minority Ethnic (BME) was six times more likely to be stopped and searched than a white person – this was sufficient evidence to show that the Police were institutionally racist. A man was twenty times more likely to be stopped and searched than a woman. The threshold for stopping women was much higher – 85% of those stopped and then arrested were men, but back to 95% when it was a decision to charge.

### **2.2.6 Criminal justice system/Courts**

The Home Office Study in 2003 concluded that for every crime, every severity of crime a man was more likely to be found guilty than a woman, that if they were both found guilty of the same crime, same severity of crime a man was more likely to go to prison than a woman and if they both went to prison, the man was more likely to get a far longer sentence than a woman. This was later raised by an MP Philip Davies in a Parliamentary debate in 2013. The following five facts concerning the criminal justice

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<sup>73</sup> <https://www.gov.uk/guidance/work-out-who-qualifies-for-civil-legal-aid>

system and the discrimination against men in England and in Wales have been taken from the debate in parliament on 16<sup>th</sup> October 2012<sup>74</sup>.

“In 2009, 58% of male offenders who entered a guilty plea for an indictable offence were given an immediate custodial sentence compared to only 34% of women.” “Of sentenced first-time offenders (7,320 females and 25,936 males), a greater percentage of males were sentenced to immediate custody than females (29% compared with 17%), which has been the case in each year since 2005.” “Women shoplifters were less likely than comparable males to receive a prison sentence...among repeat offenders women were less likely to receive a custodial sentence. Women first offenders were significantly less likely than equivalent men to receive a prison sentence for a drug offence”. “In 2009, women given an immediate custodial sentence for indictable offences received shorter average sentence lengths than men (11.0 months compared to 17.0 months for males).” That is not a minor difference. The figures show that the average male prison sentence is over 50% more than the average female prison sentence for indictable offences.

### **2.2.7 Domestic Abuse**

The discrimination here is to do with presentation – It is frequently presented as only a man beating woman issue. This is incorrect. Even the Police statistics show that typically 20% of reported cases are women beating men. However, even if they realize that they are a victim of Domestic Abuse (DA), men are far less likely to report being victims. They are also less likely to realize that they are victims – when a mother deliberately breaches a court order for contact, that is DA. When a man and woman shout at each other, the woman would report that as DA not the man. Clearly both are victims of DA. Emotional and psychological abuse includes nagging – men are not likely to report that as a crime of DA. According to Home Office and statistical bulletins and the British Crime Survey, “The 2008-09 bulletin states: ‘More than one in four women (28%) and around one in six men (16%) had experienced domestic abuse since the age of 16. These figures are equivalent to an estimated 4.5 million female victims of domestic abuse and 2.6 million male victims.’”<sup>75</sup> As can be seen, the issue of men being the victims of Domestic Abuse

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<sup>74</sup>

<http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm121016/halltext/121016h0001.htm>

<sup>75</sup>

<http://www.theguardian.com/society/2010/sep/05/men-victims-domestic-violence>

should not be ignored. Attention should be given to the male victims as well as the female victims.

### 3 Other areas of discrimination against men

There are a number of areas of discrimination against men, including Institutionalized Discrimination, social and cultural discrimination, and other areas. The researcher takes the preference and tendency of the media when they report victims of men and women as an example. In other words, how the media reports the incidents or casualties can show that men are neglected to some extent. At present the attention of the media is focused on women. It is reasonable to treat children as disadvantaged group or group which needs attention whereas men and women should be treated equally. Stories involving deaths are usually worded in such a way as to give priority to women victims – for instance “10 people killed including three women”. The death of either a man or a woman is devastating to family members. It does not make a difference as to the gender of the person who died. However, in the news in UK, the media always emphasizes women rather than men. Examples can be found easily online from BBC or other websites. For instance, “UN says 5,700 have been killed in Yemen conflict since March, including 830 women and children”<sup>76</sup> “In Glasgow, 17 of the cases involved women, including eight of the dead. In Dublin, only three of the cases were women, one of whom died.”<sup>77</sup> “Hundreds of people have held a protest in eastern Afghanistan about the deaths of up to 13 civilians, including women and children, in a Nato air strike.”<sup>78</sup> “Reports that two terrorists have been killed, including a woman with a suicide vest.”<sup>79</sup> “But the ‘women and children first’ rule is now seen as the normal way to behave in emergencies.”<sup>80</sup> “The cabinet in Bangladesh has approved tough new laws, including the death penalty, for

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<sup>76</sup> <http://www.metronews.ca/news/world/2015/11/18/un-says-5-700-have-been-killed-in-yemen-conflict-since-march-including-830-women-and-children.html>

<sup>77</sup> <http://news.bbc.co.uk/1/hi/scotland/769603.stm>

<sup>78</sup> <http://www.bbc.co.uk/news/world-south-asia-14063056>

<sup>79</sup>

[http://blogs.news.com.au/dailytelegraph/andrewbolt/index.php/dailytelegraph/comments/siege\\_in\\_paris\\_explosions\\_deaths/](http://blogs.news.com.au/dailytelegraph/andrewbolt/index.php/dailytelegraph/comments/siege_in_paris_explosions_deaths/)

<sup>80</sup> <http://www.bbc.co.uk/news/world-europe-17693480>

crimes against women and children.”<sup>81</sup> “Officials initially said 42 Taliban militants had been killed, but locals said more than 60 civilians were killed, including women and children.”<sup>82</sup> “Pakistan has condemned the killing of civilians in an attack by militants in Indian-administered Kashmir which left at least 30 people dead, including women and children and the three attackers themselves.”<sup>83</sup> “Total number of candidates: 2,514, including 406 women”<sup>84</sup> “A local official told the BBC on Tuesday that at least 73 civilians were killed, including women and children.”<sup>85</sup> “According to the Serbian authorities the majority of those killed and injured were women, children and the elderly”<sup>86</sup> “B'Tselem has counted 252 children under the age of 16 who were killed - the military puts that figure at 89 - and 109 women over 18.”<sup>87</sup> “When it finished, opposition activists accused the government of a massacre that left more than 200 people dead, including women and children”<sup>88</sup> “Reliance on these fuels disproportionately affects women and girls.”<sup>89</sup> “The UN says at least 2,104 Palestinian died, including 1,462 civilians, of whom 495 were children and 253 women.”<sup>90</sup> “Seven CIA agents were killed in a bomb attack in Afghanistan, the US agency's director, Leon Panetta, has confirmed. The dead include a mother of three who was the head of the CIA's base in Khost Province, near Pakistan, the Associated Press (AP) news agency reports.”<sup>91</sup> “The human rights' organisation wants to see a thorough examination of the circumstances both before and after the four recruits - including Cheryl James from Llangollen, north Wales - were shot dead at

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<sup>81</sup> [http://news.bbc.co.uk/1/hi/world/s/w\\_asia/71617.stm](http://news.bbc.co.uk/1/hi/world/s/w_asia/71617.stm)

<sup>82</sup> [http://news.bbc.co.uk/1/hi/world/s/w\\_asia/71617.stm](http://news.bbc.co.uk/1/hi/world/s/w_asia/71617.stm)

<sup>83</sup> [http://news.bbc.co.uk/1/hi/world/south\\_asia/1988100.stm](http://news.bbc.co.uk/1/hi/world/south_asia/1988100.stm)

<sup>84</sup> <http://www.bbc.co.uk/news/world-south-asia-11328903>

<sup>85</sup> [http://news.bbc.co.uk/1/hi/world/south\\_asia/8619716.stm](http://news.bbc.co.uk/1/hi/world/south_asia/8619716.stm)

<sup>86</sup> <http://news.bbc.co.uk/1/hi/world/europe/344548.stm>

<sup>87</sup> [http://news.bbc.co.uk/1/hi/world/middle\\_east/8245433.stm](http://news.bbc.co.uk/1/hi/world/middle_east/8245433.stm)

<sup>88</sup> <http://www.bbc.co.uk/news/world-middle-east-19391466>

<sup>89</sup> <http://www.bbc.co.uk/news/science-environment-34835435>

<sup>90</sup> <http://www.bbc.co.uk/news/world-middle-east-28439404>

<sup>91</sup> <http://news.bbc.co.uk/1/hi/world/americas/8436635.stm>

the Deepcut army barracks in Surrey.”<sup>92</sup> “They said nine women and three children were among the 25 killed.”<sup>93</sup> “Saying he was deeply saddened by any civilian deaths, the spokesman said insurgents were continuing to put women and children in harm's way.”<sup>94</sup> “At least 17 people died on Friday, including two women shot during the siege of a mosque in Beit Hanoun.”<sup>95</sup> “Children were later found dead in the women's toilets. They had been left there while their mothers danced.”<sup>96</sup> “The initial toll was thought to be 18 dead, including two women, but police reported the discovery of a 19th body late this afternoon.”<sup>97</sup> “Four marines were initially charged with killing of the 24 unarmed Iraqi civilians, including women and children, in Haditha”<sup>98</sup> “The wounded included women and children”<sup>99</sup> This news also reported that 13 "civilians" were also killed in the same attack. “A roadside bomb hit a passenger vehicle in north-western Pakistan, killing four people, including a woman and a child, police said.”<sup>100</sup> “On Tuesday, 12 of the dead were identified as Kenyan nationals - including one woman.”<sup>101</sup>

From these examples, we could find out that women are often considered as minority groups or disadvantageous groups, sometimes together with children. In a piece of news, it said “The wounded included women and children” although it also mentioned the death of 13 civilians. Readers can find out that civilians refer to the male, which is unfair for men to stay unnoticed. If the news wants to emphasize the gender issue, the researcher thinks it is more fair to mention both the male and the female rather than only emphasizing the female. From the above analysis, it can be seen that at present women are not at the so-called

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<sup>92</sup> <http://news.bbc.co.uk/1/hi/wales/2776433.stm>

<sup>93</sup> [http://news.bbc.co.uk/1/hi/world/south\\_asia/6231830.stm](http://news.bbc.co.uk/1/hi/world/south_asia/6231830.stm)

<sup>94</sup> [http://news.bbc.co.uk/1/hi/world/south\\_asia/6256458.stm](http://news.bbc.co.uk/1/hi/world/south_asia/6256458.stm)

<sup>95</sup> [http://news.bbc.co.uk/1/hi/world/middle\\_east/6119088.stm](http://news.bbc.co.uk/1/hi/world/middle_east/6119088.stm)

<sup>96</sup> <http://news.bbc.co.uk/1/hi/world/americas/4568648.stm>

<sup>97</sup> <http://www.theguardian.com/world/2004/feb/06/china.uk>

<sup>98</sup> [http://news.bbc.co.uk/1/hi/world/middle\\_east/7426429.stm](http://news.bbc.co.uk/1/hi/world/middle_east/7426429.stm)

<sup>99</sup> [http://news.bbc.co.uk/1/hi/world/south\\_asia/6255199.stm](http://news.bbc.co.uk/1/hi/world/south_asia/6255199.stm)

<sup>100</sup> <http://www.bbc.co.uk/news/world-south-asia-13708767>

<sup>101</sup> <http://news.bbc.co.uk/1/hi/world/africa/6991148.stm>



disadvantageous position since they have gained equal rights with men in most areas and they have enjoyed the disproportionate benefits in a number of areas.

#### **4. Merits and Demerits of Institutionalized Discrimination against men**

##### **4.1 Merits of Institutionalized Discrimination against men**

In the perspective of characteristics of Institutionalized Discrimination, the essence of Institutionalized Discrimination is inappropriate different treatments to different groups of people, but Institutionalized Discrimination is different from common discrimination behaviors. Institutionalized Discrimination has the special feature of “Identity Recognition”. The Institutionalized Discrimination is legal in the form, and justifiable under specific historical backgrounds. Institutionalized Discrimination is the enforcement of law or policies and it is under the protection of law or policies. Unless the Institutionalized Discrimination is abolished through legislation, it is under the protection of law. Citizens could use the Institutionalized Discrimination to either protect their rights or to take advantages of the Institutionalized Discrimination to get their rights. If it were allowed that any governmental body, social organization or individuals could negate the responsibilities or duties stated in the law or policies, then law and policies could not be effective, which may lead to the paralysis of law and policies, and turmoil of the society, which can be called anarchism. Institutionalized Discrimination can also be justifiable under the certain social background. The discrimination is not a law issue, but it is intertwined with complicated social background and traditions. Although fairness is a basic value of the human society, on some occasions, fairness must be sacrificed in order that justice is achieved. The institutionalized discrimination is compulsory and targeted toward a group of people rather than individuals. It is likely that a great number of men have healthy relationships, and haven’t been affected by the Institutionalized Discrimination. These men have not been deprived of their rights or been influenced. Not all members of the group have suffered from Institutionalized Discrimination. Institutionalized Discrimination is often being practiced under the banner of affirmative action.

Parker, (2008), pointed out that an important justification for affirmative action is the so-called diversity rationale. Advocates for the diversity rationale argue that society as a whole benefits when affirmative action is

used to maintain different backgrounds, and cultures. They say different genders bring complementary skills that collectively enrich the places where they work and learn. The quota system in work could achieve the balance of the ratio of men and women in work. It is said that if men and women could work and cooperate with each other, the working efficiency could be improved. Diversity is a desirable aim, but sometimes it won't be achieved if no law or policy helps to achieve it. Because of the biological differences and women's general devotion to the family life, the law or policies could favor female to some extent as a way to admit their role in the society. Affirmative action also helps to attract people to areas of study and work they have not dreamed of before. A greater number of men step into the career of nursing, and an increasing number of women hold the positions of judges or in technology fields. Affirmative action provides a way out from cultural discrimination or biological differences.

David (1993), said that the ideal society has been described by the commonwealth government as one; where groups would co-exist harmoniously, free to maintain many of their distinctive religious, linguistic or social customs, equal in their access to resources and services, civil rights and political power and sharing with the rest of society particular concerns and values which have national significance. In order for that this ideal society is created, the biological differences and cultural practices need to be taken into consideration when the legislation is made.

For instance, the practices of encouraging women into the profession of doctors and judges are trying to bridge the gap between male and female in these occupations. These practices may have the disadvantages, but the positive influences could not be underestimated. In the process, we need to ensure that it is not tilted to one direction but it is trying to achieve a comparatively more diversified and balanced world.

#### **4.2 Demerits of Institutionalized Discrimination against Men**

Institutionalized Discrimination is protected by law or policies. From the perspective of values, there exist good institutions and bad institutions. Institutionalized Discrimination refer to improper different treatments to groups of people, so it should receive negative evaluation. The social background justifies the existence of Institutionalized Discrimination. The victims of Institutionalized Discrimination could not get law support because Institutionalized Discrimination is legal discrimination. If there

are cases about Institutionalized Discrimination, they are often neglected or even ignored. However, Institutionalized Discrimination is sometimes caused by behavior discrimination and may lead to behavior discrimination. There are two ways to produce institutionalized discrimination, which are top-down way and bottom-up way. The top-down way refers to those policies or laws which are established directly. The bottom-up way refers to the establishment of policies or laws because of the cultural discrimination or behavior discrimination. Institutionalized Discrimination is often based on behavior discrimination, and the government only plays a role in institutionalizing, fixing, and securing the behavior discrimination. Some scholars think that the discrimination develops in several stages: 1. From difference to personal discrimination 2. From personal discrimination to social discrimination 3. From social discrimination to behavior discrimination 4. From behavior discrimination to institutionalized discrimination. Institutionalized Discrimination is often reflected by the behavior discrimination. People often find out the behavior discrimination in the enforcement of law and thus reflecting on the institutions themselves and finding out the institutionalized discrimination.

In UK, the feminists are making progress in their promotion of women's rights. The media and the government is gradually taken control by the feminists and pro-women politicians who take the discourse power in the society at present. The promotion of women's rights has won support from the majority of people. Because those who suffer from Institutionalized Discrimination do not form the majority, the voice said by these victims are unheard of. The Institutionalized Discrimination may lead to the cultural discrimination or social discrimination, and vice versa. For instance, if a judge makes a fair decision in passing the custody to a man considering that the mother is not a capable parent, the judge may be thought as not right or wise, which may be a stigma to his career. It is a vicious and harmful loop which deprives the rights of a great number of men, thus putting these men in a miserable condition. Though these men still form the minority of the society, they suffer and their children also suffer because of the absence of their parents, which will finally lead to a situation that the women also suffer because they could not get mental support from their male counterpart. All of the people related suffer to a certain degree.

If not controlled in a balanced way, affirmative action may lead to reverse discrimination. Reverse discrimination can be considered as a part of institutionalized discrimination. According to Wikipedia, “Reverse discrimination is discrimination against members of a dominant or majority group in favor of members of a minority or historically disadvantaged group. Groups may be defined in terms of race, gender, ethnicity, or other factors.”<sup>102</sup> From this perspective, we could classify the discrimination practices above as reverse discrimination. This reverse discrimination exceeds the proper level and goes to an extreme which lead to the discrimination of other social groups.

Affirmative action is designed to end discrimination and unfair treatment of a certain group of people, but it also may lead to the opposite because the overprotection of their rights may lead to the loss of rights in another group. Taking the quota system in companies for example, it gives women more chances than men. However, the companies should reward hardworking and dedicate employees regardless of the fact that they are male or female. If the quota system for the executive positions is forced into practice, it will discourage or demotivate the male workers. For another example, the unmarried father could not get the Parental responsibility on the birth of the child, which gives women a series of privileges. The benefits women get from breaking up of the marriage or having babies alone to some extent help some women to simply drive the men away, which lead to huge social problems of fatherless families in UK. The government should establish laws or policies which do not neglect men’s rights and encourage the father and mother to stay together and take the role of parenting together, thus enhancing the family relationships and improving the social stability.

Henry and Sears (2002) stated that once enacted, affirmative actions are tough to remove, even after the underlying discrimination has been eliminated. Positive discrimination in favor of any particular group may provoke dissatisfaction from other groups. If it goes to an extreme, it will certainly lead to more devastating results and the country will finally pay the price.

## **5. Conclusion**

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<sup>102</sup> [https://en.wikipedia.org/wiki/Reverse\\_discrimination](https://en.wikipedia.org/wiki/Reverse_discrimination)

This paper gives an objective analysis of the Institutionalized discrimination against men both from the perspective of direct discrimination and indirect discrimination in UK. Such Institutionalized Discrimination has already led to negative consequences. The existence of discrimination is largely due to the differences between different groups and the tendency that people tend to treat different groups in a different way because of the different intrinsic nature of groups. The elimination of prejudice should not just aim for fairness, but endeavor to limit the preference or different treatments in an appropriate range considering people's dignity and overall merits and demerits. When the merits outweigh the demerits, the Institutionalized Discrimination is justifiable to exist. When the demerits exceed the merits, the Institutionalized Discrimination should be reduced. As can be seen, the Institutionalized Discrimination has led to bad consequences that a great number of men, children and women suffer. Measures should be taken to diminish the Institutionalized discrimination in England and Wales. The fight against Institutionalized Discrimination takes time and effort through generations. This paper also gives China and other countries a warning that Institutionalized Discrimination should be kept at a certain range and not go to the extreme, otherwise, the society and the country will have to be penalized in different ways resulting in the reduction of people's happiness index and even the stagnation of the country's economy. UK is a typical example in Institutionalized Discrimination against men and the overprotection of women's rights thus leading to the loss of men's rights and influencing men's wellbeing.

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