University of Huddersfield Repository

Omoyeni, Ireoluwakitan

Ethnic Discrimination in The United Kingdom Via Corporate Appearance Standards

Original Citation

Omoyeni, Ireoluwakitan (2022) Ethnic Discrimination in The United Kingdom Via Corporate Appearance Standards. Doctoral thesis, University of Huddersfield.

This version is available at http://eprints.hud.ac.uk/id/eprint/35789/

Ethnic Discrimination in The United Kingdom Via Corporate Appearance Standards

IREOLUWAKITAN OMOYENI

THIS DISSERTATION IS SUBMITTED IN FULFILMENT FOR THE DEGREE OF

DOCTOR OF PHILOSOPHY

AT

THE UNIVERSITY OF HUDDERSFIELD

Copyright Statement

Table of Contents

Abstract

This thesis draws upon the legal interpretations of racial discrimination to analyse the efficacy of the Equality Act 2010 in preventing indirect discrimination of ethnic minorities via dress codes in the workplace. A sociological perspective on race and discrimination demonstrates that the law, by itself, may not be efficient in producing substantive equality. Specifically, the reality of corporate dress codes, through both a legal and sociological perspective, is focused upon to ascertain whether the law has truly paved the way for visible minority expression and the freedom to present oneself in accordance with ethnic, racial, and cultural values. Using a socio-legal approach, the methodology of this thesis includes both a library-based study and a case study of British law firms.

The combination of the chosen methodological approaches led to the deduction that whilst British businesses and organizations are seemingly devoted to diversity, there remains an implementation gap; minorities are subjected to dress standards indicative of a bias towards the majoritarian social group. Furthermore, it is asserted, from the analysis of the collated data, that the lack of understanding of race as a social construct, with strong ties to, but not synonymous with, ethnicity has led to a scarcity of visible minority expressions. This is further revealed through the lack of accommodation of ethnic dress and cultural symbolisms in certain professional workplaces.

Ethnicity is presented as a legitimate characteristic unique to a group and with established traditions and shared values. It is asserted that ethnic dress is an essential aspect of manifesting ethnic group membership and should therefore be taken into account by corporations when dress policies are enforced. This is because ethnicity falls under the remit of Race in the Equality Act 2010. While it is accepted that employers have a valid interest in how their relevant brand is projected to the public, this thesis contends that the aesthetic goals of employers are not compelling enough to justify prohibiting the authentic manifestation of minority identity through ethnic dress.

In addition, through an appraisal of the Equality Act 2010, it is contended that there is a gap in the legal protection offered to ethnic minorities, particularly those who deviate from the stereotypical expectations of their ethnic identity. The lack of relief offered in situations of individualistic, intersectional, or compound discrimination is particularly disadvantageous as an ethnic expression is often influenced by other personal traits.

For ethnic dress to be fully accepted in professional settings, the social norms that favour secularity need to be addressed. Information and research are scarce on how official dress codes often clash with the traditional appearance standards of ethnic minorities. This poses a substantial threat to the establishment of substantive equality in the British employment scene and demonstrates that more effort is needed to ensure visible diversity within the workforce. In this regard, greater governance is recommended to regulate corporate dress policies to avoid the subtle coercion of ethnic minority staff into adopting majoritarian appearance norms.

This thesis concludes with the assertion that, concerning racial discrimination, sociological interventions are equally as important as legal instruments and that; further research is needed to comprehend how ethnic identity is affected by societal behaviour and normalized stereotypical bias.

1. INTRODUCTION

In a country whose collective moral identity is hinged mainly on the shared ideologies of unity, diversity, and equality,[1] the study of discrimination is of great importance. The essential nature of discrimination law is even more prominent when it is apparent that the Government actively seeks to promote the virtues of fairness and lack of bias in everyone under its jurisdiction, including school children.[2] As distinctly declared by the Equality and Human Rights Commission, 'fairness is important to us all in Britain. There are few things against which we react more strongly than a sense of unfairness or injustice'.[3] In the context of employment, the pursuit of equal opportunity and the tolerance of all people is critical to the healthy development of the general economy.[4] Hence, due to the implied need for in-depth research on discrimination in employment, this research seeks to close the gap in the current academic literature on workplace inequality in the UK by analysing the reality of race-based indirect discrimination perpetrated via workplace dress codes.

Discrimination can be defined as a situation, which may or may not be harmful, procured by actions and practices, or the lack thereof, which have the effect of distinguishing, precluding, depriving, or prejudicing a person or group based on perceived or actual characteristics and traits.[5] Discrimination as a concept can be differentiated from other similar social problems such as racism, religious intolerance, and sexism. Unlike the aforementioned social problems, discrimination is essentially an issue concerning behaviour and actions and not merely a matter

---

[1] David Shariatmadari, 'What are British Values? You asked Google – here's the answer' (*The Guardian,* Wednesday 3 February 2016)

[2] Department of Education, 'Promoting Fundamental British Values as Part of SMSC in Schools. Departmental Advice for Maintained Schools' [2014] DFE-00679-2014

[3] Equality and Human Rights Commission, 'Is Britain Fairer? The State of Equality and Human Rights' [2015], at page 10

[4] Vito Peragine, Flaviana Palmisano and Paolo Brunori, 'Economic Growth and Equality of Opportunity' [2013] Policy Research Working Paper 6599, The World Bank Development Economic Vice Presidency Partnerships, Capacity Building Unit, pp.247-281

[5] Sophia Moreau, 'What Is Discrimination?' [2010] 38(2) Philosophy and Public Affairs, pp. 143-179

of mental beliefs or ideologies.[6] However, discriminatory behaviour often stems from or is connected to one or a combination of other social problems.

The focus of this thesis is narrowed to the examination of economically active individuals domiciled within the UK. This research is socio-legal and primarily centres on the laws governing equality and employment. The approach in this research establishes a strong connection of employment discrimination to the sociological field of study. The aims and objectives of this research concentrate on an in-depth analysis of the phenomenon of race-based indirect discrimination against ethnic minorities perpetrated via workplace dress norms and appearance expectations. Hence, there is a combined critical review of legal documentation (legislation, binding regulations, case law and academic legal commentary); sociological data (research on identity politics, the social construct of race, ethnicity and dress and intra-group variations) and, to a lesser degree, psychological sources (findings on self-conceptualization and self-classification to an ethnic group; theories surrounding the development of individuality and the manipulation of perspectives through self-presentation and dress).

It is asserted and built upon in this thesis that race is substantially a social construct, Garner also categorically posits that the difficulty surrounding a legitimate definition of race is because it goes beyond phenotypical attributes but has been a historical means of group classification and categorization.[7] Furthermore, it is inferred that there is a sense of fluidity and impressionism that can be attributed to racial classification. Hence, this sense of fluidity affects societal acceptance and the relational experiences between categorized races.

Bhopal noted that there are inconsistencies in the classification of individuals to specific ethnic or racial groups.[8] Likewise, there is also controversy regarding ethnic labels, as many people may define their ethnicity differently from that of popular perception. Therefore, for accuracy, in the context of this thesis, the phrase 'member of an ethnic minority' refers to a person who does not traditionally possess British citizenship, White features or share in the

---

[6] Devah Pager and Hana Shepherd, The Sociology of Discrimination: Racial Discrimination in Employment, Housing, Credit, and Consumer Markets' [2008] 34 Annual Review of Sociology
[7] Steve Garner, *Racisms. An Introduction* (SAGE Publications Ltd, 2017)
[8] R Bhopal, 'Glossary of Terms Relating to Ethnicity and Race: For Reflection and Debate' [2004] 58(6) Journal of Epidemiology and Community Health, pp. 441 - 445

country's united cultural values.[9] Furthermore, Wrench and Modood's description of ethnic minority individuals as those living in the UK who "have distinctive cultural heritages and communities"[10] is also adopted. In this study's examination of indirect race-based discrimination, the interpretation of 'race' is adopted from the Equality Act 2010, which states that colour, nationality and ethnic or national origins are included in its definition.[11] This thesis acknowledges that in certain situations, Race is arguably intricately connected with religion and gender. Hence, the analysis of race-based indirect discrimination includes a critical review of the reality and influence of intersectionality.

This chapter serves as the foundation of the research study and highlights the research aims, objectives and questions. Also, the methodology utilised to fulfil the ambitions of this research and successfully answer the questions that it poses is discussed and justified. The investigation into indirect discrimination is vast due to the varying aspects of discrimination and the subtlety of some discriminatory actions. This thesis focuses exclusively on race-based indirect discrimination and its connection to workplace dress policies. The literature review relating to indirect race-based discrimination perpetrated via corporate dress codes is expounded in this introductory chapter. The study starts with a critical exploration of the sociological academic commentaries concerning the importance and influence of ethnic clothing and majoritarian appearance standards. It concludes with an evaluation of the law and the literature surrounding discrimination.

---

[9] R Bhopal, 'Glossary of Terms Relating to Ethnicity and Race: For Reflection and Debate' [2004] 58(6) Journal of Epidemiology and Community Health, pp. 441 - 445
[10] John Wrench and Tariq Modood, 'The Effectiveness of Employment Equality Policies in Relation to Immigrants and Ethnic Minorities in the UK' [2001] International Migration Papers 38, at page 1, International Labour Office Geneva, International Migration Branch
[11] Equality Act 2010, Section 9(1)

1.1 RESEARCH AIMS, OBJECTIVES AND QUESTIONS

AIMS

This research thesis endorses the questioning of the realities of racial discrimination and its connection with corporate dress codes. It aims to uncover if ethnic discrimination still occurs in the British employment scene, particularly through the enforcement of corporate dress policies, and to what degree minority employees are legally protected. 'Have we conquered the problem of racial discrimination? Or have acts of discrimination become too subtle and covert for detection'?[12] These questions, posed by Devah Pager, highlight the ambiguity and insecurities surrounding racial discrimination. Pager's questions infer the need for more research and a re-evaluation of the current stance and applicable laws on discrimination.

The workplace represents a conglomeration of a diverse group of people;[13] consequently, it is argued that a corporate dress code enforced to create physical uniformity whilst at work will invariably inhibit the visible expressions of minority workers. Hence, the subtle ways in which employers can unjustifiably curtail the manifestation of race and ethnicity is subjected to in-depth analysis.[14] In this thesis, the concept of ethnic dress, its importance and its impact on the employment scene are explored in detail. The justification behind such an explorative and in-depth review of ethnic dress lies in the need for a deeper academic understanding of some of the obscure limitations and hindrances endured by ethnic minority workers within the UK.

This thesis explores the intricacies surrounding self-discovery through dress, which include the awareness of racial and ethnic manifestation, and the limitations of corporate dress codes in this regard. It demonstrates that dress is a topic worthy of examination as ethnic groups, as well as individuals, showcase key aspects of their ethnic and racial perspectives, culture and

---

[12] Devah Pager, 'The Use of Field Experiments for Studies of Employment Discrimination: Contributions, Critiques, and Directions for the Future', [2007] 609 (1) The Annals of the American Academy of Political and Social Scienc*e*, at page 104

[13] Brian D'Netto and Amrik S. Sohal, 'Human Resource Practices and Workforce Diversity: An Empirical Assessment' [1999] 20(8) *International Journal of Manpower*; Ongonri Henry and Agolla

[14] Lisa Vanhala, 'Anti-Discrimination Policy Actors and Their Use of Litigation Strategies: the Influence of Identity Politics' [2009] 16(5) *Journal of European Public Policy*

tradition through the subtle ways in which they present themselves. Key to this discussion is the realization that people should not lose their distinctiveness and unique identities by merely being a member of a corporate workforce. Hence, strict dress codes that limit the expression of minority identities either exclude affected persons from employment or extinguish the manifestation of race and ethnicity.

<p style="text-align:center"><u>OBJECTIVES</u></p>

Firstly, it must be determined whether corporate dress codes can prohibit the exhibition of culture and racial symbolism in answering this question. Following this, the significance of such ethnic clothing is analysed. This analysis will invariably draw upon sociological and psychological approaches to discern the communicative properties of apparel and how dress relay information about the wearer to the viewer. In addition, to properly explore the justification behind the protection of ethnic dress, the conception of ethnic appearance norms and the cultural symbolisms of specific clothing and adornment items are reviewed.

Establishing the patterns of indirect discrimination is partly achieved through a visual evaluation of data derived from the social media images of three legal companies in the UK used as case studies. The use of the chosen three corporations is not intended to represent the entire British employment scene. Neither is it being asserted that the legal industry exemplifies or is the exact equivalent of other sectors. However, investigating the dress policies in place in the legal sector is valuable due to the reasonable expectation that law firms and legal personnel have a perceived understanding of the law. Furthermore, when analysing employer actions, employers who, by profession, are required to maintain the dignity of the law are fairly expected to have a more excellent grasp of legal requirements concerning substantive equality.

Whilst it may be highlighted that the chosen number of companies, three to be exact, may not be substantial enough to draw solid conclusions, they are used solely as illustrations demonstrating a preference for neutral dress in the employment sphere. Furthermore, the case study firms reveal the implementation gap in the law and indicate that ethnic dress is not duly protected from conflicts arising from rigid corporate dress policies. It should also be noted that the chosen firms have over 20,000 employees altogether; consequently, evidence of their dress

policies can serve as a valuable illustration of the working reality of some of the staff employed within the UK. Furthermore, as previously stated, the social media platforms of the relevant firms target job seekers and recent graduates. It is further evidenced by posts visible on the pages of the firms, which highlight job opportunities and offer advice on how to apply for positions within the respective firms. Also, each of the firms posts pictures demonstrating their presence in university job fairs and active endeavours to talent scout through the organization of competitions and challenges. Therefore, apart from the number of employees under a contract with the chosen firms, the volume of their collective audience and the fact that they consciously target job seekers are considered to determine their suitability as case study subjects.

QUESTIONS

The main question being answered in this research concerns the legal reality of indirect discrimination. This research's primary question and the central theme is '*Do the laws in force in the UK protect against race-based indirect discrimination perpetrated via corporate dress codes which prohibit ethnic manifestation in the workplace'?* This question is broken down into three sub-questions, and each sub-question requires a tailored means of being answered.

The first sub-question is '*Are the current anti-discrimination laws appropriate in preventing race-based indirect discrimination perpetrated through corporate dress codes'?* This question requires a thorough examination of both the legal statutes in place and their application in case law and will be elaborated upon in Chapter Four. Furthermore, to uncover the legal realities of race-based discrimination, in Chapter Two there is an evaluation of the inherent attitude in the UK employment sector concerning ethnic minority working-class individuals and the physical modes of ethnic manifestation. In addition, the pattern of workplace dress codes is analysed to map incidents of indirect discrimination through appearance standards.

The second sub-question asks, '*Should the law protect the clothing and appearance choices of ethnic minority workers'*? This question explores the issues around the justification for the protection of ethnic manifestation and will be discussed in Chapter Three. Following the first and second sub-questions, the third sub-question asks, '*Is the law the best way of reaching an outcome of substantive equality in the workplace for ethnic minority workers*?' This question is

answered in Chapters Four and Five, where the efficacy of the law is analysed, and potential reforms discussed.

Since this research is socio-legal, the research questions aim to uncover the legal protection of ethnic dress in employment and the conceptualization of ethnic dress and the social processes involved in affirming or rejecting appearance ideologies. Therefore, to support the primary legal question, this research also answers the question '*What are the collective social processes by which groups come to define their status and standing*?' The answers gleaned from this question explains the attitude behind the creation of discriminatory company rules and policies. When the sociological aspect of norm creation and the idealization of specific appearance standards are understood, it is easier to appreciate the pressures on employers to create rules that appeal to society.

1.2 METHODOLOGY

This research regarding the discrimination of ethnic minorities via corporate dress codes is socio-legal with in-depth sociological exploration included in the evaluation of indirect discrimination. Consequently, the research methods involve a mixture of both sociological data collection and doctrinal legal research. The primary means of analysis have been through a legal doctrinal approach which entails extensive library-based study. This research includes a comprehensive appraisal of key statutes concerning employment discrimination and an in-depth analysis of whether they have successfully protected vulnerable employees from adverse treatment from official dress policies. The study of case law is also utilized, particularly in Chapter Four, as the courts' reasoning in critical cases regarding discrimination via appearance requirements would aid in understanding the importance given to an employee's right to dress following their identity and awareness.

Moreover, socio-legal resources are used to examine the intricacies of the importance of an individual's appearance to their self-actualization and ascertain the correct value to be placed on the right to dress according to ethnic traditions and racial identity. The existing body of data discussing issues on equality and human rights in the workplace are capitalized upon and reviewed to aid in answering the research questions of this thesis. Information is gleaned from academic commentators and analyzed to examine the efficacy of the current discrimination law and determine the appropriate level of protection needed for vulnerable staff groups.

This research firstly delves into sociology to present a robust study on the relationship between indirect discrimination, ethnic minority workers, and the dress policies of UK-based employers. In answering the central question of this thesis, whether the current UK laws adequately protect against race-based discrimination perpetrated via corporate dress codes, examining the societal context of discrimination is necessary to bring a practical dimension to the analysis of legal sources. It is particularly relevant as both the topics of employment and discrimination are inevitably connected to societal attitudes and psychological perspectives because they concern human behaviour. Hence, to gain an accurate understanding of the value

of the law and its ability to regulate society and human conduct in situations of employment discrimination, there must be an exploration of the sociological context of the issue.

The sociological dimension of this research undertakes an extensive investigation on social mechanisms and development regarding appearance preferences and the creation of majoritarian clothing choices and inclinations. In this thesis, the sociological analysis seeks to identify trends of implicit discriminatory behaviour and appearance standards that societal expectations and bias may influence. Media resources, professional marketing, advertising strategies, and, social media networks, are used to fulfil this agenda. To further understand the reality of the potential conflict between minority appearance values and an assumed professional preference for secular and culturally neutral clothing, a case study analysis on ten law firms is undertaken. The results are used to bolster a key assertion of this thesis, which is; that race and ethnicity are not allowed full visual manifestation in the UK employment scene through the wearing of ethnic dress in the workplace.

Each of the law firms used for the case study was selected based on the size of the firm, the reported number of staff in each organization, and, most importantly, each law firm's public claim of the promotion of diversity and minority inclusion within their respective companies. In addition, the law firms chosen were amongst the highest ranked in the legal sector based on yearly turnover and revenue. A further, and vital, selection criterion was each law firm's active social media presence which displayed pictorial evidence of their staff's appearance at events and in the performance of their employment duties. Such pictures suggest the dress code policies established in the respective organizations and how staff, particularly those of minority descent, present themselves in accordance with these policies. Social media platforms have become strategic instruments for brands to gain loyal customers and to display their expertise in certain fields.

The social media network used for this project is Facebook due to the extensive visual images and the use of corporate bodies using the platform to promote brand image and values. Its use does not involve finding respondents or soliciting feedback but just as a tool for observation. Through posts on platforms such as Facebook, a company can exhibit their core

values and even its non-commercial beliefs. Primary data collection was not undertaken due to the limited potential for gathering substantial visual images from varying firms. Through an examination of the chosen firms' Facebook pages, corporate culture and the possibility of ethnic bias is better illuminated.[15]

In addition to using social media for observation purposes and mitigating the potential one-sidedness of using only law firms as case study subjects, the marketing and visual advertisements of corporations are also used as data. The examination of endorsed graphic marketing is used to draw an inference to the general understanding of visible diversity and identity politics and gain insight into how companies demonstrate acceptance of minority status. For instance, the use of visible minorities in official marketing can represent how a corporate body wants to be seen by the public and the values that they want to communicate. However, it is argued that the presence of minorities in media publications is insufficient in itself if there is a lack of corresponding minority ethnic markers. Ideally, it is posited that in official media marketing, the presentation of a member of an ethnic minority group should also depict the individual in ethnic dress rather than stereotypical clothing, chosen to appeal to a majoritarian audience.

The use of corporate marketing and media depictions cut across industries and encapsulates many socially active companies. The data used on marketing and advertisement is drawn from secondary sources to create a streamlined and accessible study. Official surveys and reports on identity politics and visual diversity is used to support the evidence from the case studies, which suggest an absence of ethnic dress in professional settings. An analysis of marketing strategies is particularly vital in this research. A significant number of the chosen companies declined to surrender their official dress policies and established corporate standards. The hesitance of such highly acclaimed corporations could signal both the sensitivity of dress rules and the broken relationship between employers and their minority and vulnerable employees.

---

[15] Ariel Knoebel, 'Ben & Jerry's and the Business of Brands Getting Political' (November 5, 2018) *Forbes*

Apart from sociological studies, the legal analysis is vital as the central theme of this research revolves around race-based discrimination and equality legislation. In this thesis, there is a combination of both doctrinal legal analysis and the exploration of legal reality. In answering the legal questions of this research, there is first a doctrinal examination of the laws surrounding racial and ethnic-based discrimination in the UK to determine their scope and the protection that they offer to workers from ethnic minority backgrounds.

It has been noted that modern legal research is not a fixed systematic way of resolving issues or answering legal research questions; rather, it is a flexible tool that can be adopted in creative ways to fulfil the unique requirements of understanding the law.[16] In this paper, there is a combination of both doctrinal legal analysis and an exploration of legal reality. Whilst studies based on legal doctrine tend towards an empirical presentation of statutes and case law, legal reality studies go further and seek to determine how the law works in practice.[17] In answering the legal questions of this research, there is a doctrinal examination of the laws surrounding racial and ethnic discrimination in the UK to determine their scope and the protection that they offer to workers from ethnic minority backgrounds with regard to dress code policies.

This research draws from the evaluative aspects of legal doctrinal analysis, and the law is placed under substantial scrutiny to ascertain its suitability and practicality. This doctrinal legal analysis includes the collation of UK normative sources, such as statutes, case law and binding international laws, and influential legal authorities, such as non-binding judicial decisions in case law and EU law. The law analysed chiefly in this study is the Equality Act 2010, and it is critically discussed analytically to discern its effectiveness and suitability. Furthermore, important employment law cases decided in the UK based on the aforementioned legislations are explored and tested as to whether they promote substantive equality or maintain ethnic bias and prejudice in employment.

Significant insight is drawn upon from academics and researchers who have written scholarly articles and textbooks on appearance standards, racism, bias against people presumed

---

[16] Issa Kohler-Hausmann, 'Discrimination' [2014] Oxford Bibliographies. DOI: 10.1093/obo/9780199756384-0013
[17] Mark Van Hoecke, 'Legal Doctrine: Which Method(s) for What Kind of Discipline?' in Mark Van Hoecke (ed) *Methodologies of Legal Research* (Hart Publishing, 2011)

to be 'different' and inequality in employment in the United Kingdom. This thesis focuses on the relationship between dress codes and discrimination against ethnic minorities in a profession in the UK. Therefore, although some literature written in the context of other jurisdictions and other forms of discrimination may be cited, every source used in this research is utilised primarily to analyse UK employment and discrimination based on ethnicity.

In addition, attention is given to the legal reality of anti-discrimination law. Hence, the influence of the law on ethnic minority employees and its effectiveness in governing the dress policies of employers is critically analysed. Such analysis is fulfilled through the examination of the case study companies. Through a realistic comprehension of the dress codes in force, it is evaluated whether such companies unknowingly create an avenue for discrimination through the appearance demands enforced. An inquisition of what is deemed appropriate and professional by varying employers demonstrates the appearance and physical standards that may be idealised in the UK employment sphere. Such a discovery of idealised workplace appearance standards may give credence to whether the impact and effect of official dress codes are discriminatory and alienating to ethnic minorities.

1.3 LITERATURE REVIEW

In order to answer the research questions underlined above, it is essential to explore general scholarly opinion on the issues of race-based indirect discrimination and the interest of ethnic manifestation via dress in the workplace. The study of Ethnic dress has been particularly overlooked, and a significant proportion of literature in the area of indirect discrimination and corporate dress codes concentrates on the spheres of indirect sexual orientation, gender and religious discrimination.

The right of religious employees to wear clothing and symbolic jewellery that reflect their chosen faith is also at risk of conflicting with official dress codes. As discussed in Chapter Three, religion is vital to a study on race and ethnicity because ideologies and beliefs influence cultures and can be the foundation for creating social groups. Freedom of religion was first recognized as a right under Article 9 of the 1950 European Convention of Human Rights. It became particularly relevant in the employment scene through Directive 2000/78/EC, which mandated the Member States of the European Union to protect citizens from religious-based discrimination. Even though it has been recognized that the freedom to manifest religion, including through apparel, is an essential factor in developing an individual's identity, it is doubtful whether proper recognition has been given to this right, particularly in workplaces that restrict physical, religious manifestation. According to Andrew Hambler, a key reason why an employee's right to wear religiously inspired clothing is frowned upon in the employment scene is the perception of many in the society that issues of religion are private and should be barred from the public sphere.[18]

The current UK legislation regulating discrimination issues is the Equality Act 2010, and it explicitly includes religion and belief as grounds upon which an individual cannot be discriminated against. Corporate dress codes, especially those that insist on employees wearing neutral and secular professional clothing, have been a source of discontentment for religious staff members whose convictions conflict with the requirement of neutrality. Cases such as

---

[18] Andrew Hambler, 'Neutrality and Workplace Restrictions on Headscarves and Religious Dress: Lessons from *Achbita* and *Bougnaoui*' [2018] 47(1) Industrial Law Journal, pp.149-164

Eweida v British Airways Plc,[19] *Azmi v Kirklees MBC*[20] and *Singh v Greater Manchester Police*[21] highlight that employees from all religious backgrounds can be negatively affected by a dress policy that insists on secularity. Nevertheless, the rationale behind such decisions demonstrates subtle deference of the courts to the discretion of employers in issues concerning the appearance of staff members.

The primary problem of dress codes is that it affects each member of the staff team differently; the ability of a corporate dress code to produce divergent reactions can be classified under the 'disparate effect' category of indirect discrimination. The study of indirect discrimination is vital in discussing the restriction of religious dress in the workplace. Under section 19 of the Equality Act 2010, indirect discrimination occurs when "a provision, criterion or practice" affects an individual in a discriminatory negative manner without a legitimate aim being fulfilled and without the rights of the affected individual being proportionately balanced against the legitimate aim. Due to the fact that the wearing of religious dress is considered a manifestation of religion (and in many cases is a direct manifestation of ethnic identity) which can be lawfully restricted, direct discrimination plays a limited role in the discourse of discrimination perpetuated via dress codes as it concerns the explicit bias against an individual due to their beliefs. On the other hand, indirect discrimination is solely concerned with manifestations and expressions of protected characteristics. It seeks to regulate seemingly neutral company rules capable of impeding the rights of the employees possessing or associated with the protected characteristics.[22]

Vickers noted that many company dress policies prohibiting religious expressions operate unfairly and are inherently biased against members of religions that have explicit rules on physical appearance.[23] This is a relevant observation in a study on ethnic dress because ethnic

---

[19] *Eweida v British Airways Plc* [2010] EWCA Civ 80
[20] *Azmi v Kirklees Metropolitan Borough Council* [2007] IRLR 434 (EAT)
[21] *Mr G Singh and others v The Chief Constable of Greater Manchester Police* 2404021/2018 and 2405640/2018
[22] Brian Willey, *Employment law in context: an introduction for HR professionals* (4th Edition. Harlow: Pearson, 2012)
[23] Lucy Vickers, 'Religious Freedom: Expressing Religion, Attire, and Public Spaces' [2014] 22(2) Journal of Law and Policy 591

identity often overlaps with religious convictions.[24] In the United Kingdom, the primary belief is Christianity, which has been classified as an orthodox religion.[25] Religions based on orthodoxy are primarily concerned with the believer's faith and allegiance to the doctrines of the religion. The other category of religions involves those whose theology is hinged on orthopraxy. In contrast to orthodoxical beliefs, the concept of orthopraxy entails that the believer adheres to the established rules and regulations vital for the correct observance of the faith.[26] An example of a religion based on orthopraxy is Islam; this is seen in the religion's robust control of its followers' lives, including dietary rules, regulations on marriage, and modest dress requirements. As discussed, beyond having the potential to negatively affect a religious employee's work experience and opportunities, dress codes based on a rigid concept of neutrality may indirectly force members of minority and orthopraxy religions to imitate the appearance of members of the majority religion, i.e., Christianity. As highlighted by Sandra Fredman, such subtle discrimination manifests as "pressure to assimilate to the dominant culture". This illegitimate coercion to involuntarily adopt the appearance of another religious group is arguably an infringement of the employee's human rights.

In the same vein, the reality of workplace racial discrimination has been reported by sources such as BBC News[27] and ACAS[28]. Furthermore, Harris and Ogbonna revealed that there had been a development of contemporary and novel forms of discrimination in the workplace against black and minority ethnic groups.[29] Their research focused on shop floor employees as they are the group that has the most interaction with service users. Due to the increased recognition and attention on racism, it has become progressively difficult for employers to

---

[24] Gerard Quinn, 'Reflections on the Value of Intersectionality to the Development of Non-Discrimination Law' [2016] 16 The Equal Rights Review, pp.63-72

[25] Lucy Vickers, 'Religious Freedom: Expressing Religion, Attire and Public Spaces' [2014] 22(2) Journal of Law and Policy 591

[26] Kristin Laurin and Jason E. Plaks, 'Religion and Punishment: Opposing Influences of Orthopraxy and Orthodoxy on Reactions to Unintentional Acts' [2014] Social Psychological and Personality Science, pp.835-843

[27] *BBC News*, 'Racial discrimination at work: 'Our abilities weren't valued'', 10 November 2019 < https://www.bbc.co.uk/news/av/uk-34769385 >

[28] ACA, 'Race discrimination: key points for the workplace', August 2018 < https://archive.acas.org.uk/media/4413/Race-discrimination-key-points-for-the-workplace/pdf/Race-discrim-keypoints-workplace.pdf >

[29] Emmanuel Ogbonna and Lloyd C. Harris, 'Managing organisational culture: insights from the hospitality industry' [2006] 12(1) Human Resource Management Journal, pp.33-53

discriminate against a particular ethnic or racial group overtly. However, with the implementation of dress codes, employers may be able to 'whiten' the appearance of their staff members.

The autonomy of the employer has been noted to be an essential consideration in the argument on the reality of discrimination via corporate dress codes. Bartlett highlights that employers have "appearance interests" and seek to project a positive image of their brand to the public, which highlights their business' motto and precepts.[30] She uses the examples of famous corporations who choose particular colours for their uniforms to convey a message to the public; for instance, hospital uniforms are mainly in white to project orderliness and cleanliness. Furthermore, in Beane *et al.*'s research, it was discovered that the physical expression of religious affiliation by a member of staff could negatively affect an organization's image, particularly if the relevant staff member is conceived to be a representation of the company, its ideals and brand philosophies.[31] Likewise, Freedland and Vickers discuss the importance of an employer having the freedom to regulate its internal affairs and highlight the necessity of a balancing exercise between the valid need of the employers and the inconvenience imposed on staff through regulations demanding or forbidding certain types of apparel, accessories or grooming.[32] Although such studies have undoubtedly added depth to the complex research on indirect discrimination, there remains a gap in the literature concerning the conflict between racial/ethnic identity and corporate dress codes or appearance standards.

Jennifer Craik adds to the critical examination of the study of fashion and the manipulation of the body through external adornments.[33] Crucially, her work seeks to establish the theory that clothing structures influence the consciousness and reality of individuals in society. Her work is relevant to answering whether clothing and physical appearance impact the presentation of one's social identity. The answer to that question is necessary to understand the

---

[30] Katharine T. Bartlett, 'Only Girls Wear Barrettes: Dress and Appearance Standards, Community Norms, and Workplace Equality' [1994] 92(8) Michigan Law Review, 2541

[31] David Beane, Ajay Ponnapalli and Chockalingam Viswesvaran, 'Workplace Religious Displays and Perceptions of Organization Attractiveness' [2016] 29(2) Employee Responsibilities and Rights Journal 73

[32] Mark Freedland and Lucy Vickers, 'Religious Expression in the Workplace in the United Kingdom' [2009] 30(3) Comparative Labour Law and Policy Journal, 597

[33] Jennifer Craik, *The Face of Fashion: Cultural Studies in Fashion* (Routledge, 1994), pp. 1 - 17

value of both ethnic dress and ethnic identity. The demonstration that ethnic dress constitutes a vital source of an individual's identity formation and presentation offers a basis for the technical method for both the composition and the manifestation of the inner self in a physical form. Hence, she conceives clothing to be akin to a stage where individual identities are performed. She emphasizes the need to abolish the thought that clothing is merely patterns of fabrics used for warmth and the covering of human nakedness but insists that it is a habitus. Habitus is defined as the unique personal element consisting of unconscious bias, internal perceptions and preferences.[34]

Craik's work is informative and explicitly explains an often-overlooked element of dress, that is, its role as an embodiment of civilization and visible majoritarian ideals. Her work critiques the formation of fashion as a whole and its subtle interaction with individuals and society. However, her analysis is not targeted at the creation of ethnic identity through dress and does not engage with the lived experiences of minorities navigating through a society with a variant fixed perception of appropriate fashion. Whilst her work demonstrates the technicality of clothing, it omits critical analysis of the collective societal practices that influence the technical role and impact of clothing. Furthermore, although Craik discusses the concept of fashion and habitus, she does not delve into the particularities of how specific designs and physical symbolisms translate into created identities and expressed behaviour.[35] It is noted that Craik's work is rooted in cultural studies; hence, while she incorporates elements of sociology, her analysis is unable to fully develop arguments on the sociological underpinnings of group differentiation and identification via dress.

Diana Crane also examines the multiplicity of fashion and its role as both a co-creator of identity and a communicator of that identity.[36] Crane's work on dress goes further than Craik's in its exploration of societal incentives in the creation of dress norms. An understanding of the social constructs behind appearance ideals adds value to the current thesis as it aids in the

---

[34] Jennifer Craik, *The Face of Fashion: Cultural Studies in Fashion* (Routledge, 1994), pp. 1 - 17
[35] Jennifer Craik, *The Face of Fashion: Cultural Studies in Fashion* (Routledge, 1994), pp. 1 - 17
[36] Diana Crane, *Fashion and its Social Agenda: Class, Gender, and Identity in Clothing*. (University of Chicago Press, 2000), pp. 1 - 67

consideration of the employer's desire to adhere to social rules on bodily appearance when establishing corporate dress codes. Hence, the legitimacy of an employer's aims that relies on a contentious dress code is better able to be assessed against the rights affected.

Crane highlights how clothing negotiates class, group and gender boundaries. The evolution of dress as a means of social stratification into a communication tool is demonstrated through an analysis of the experiences of working-class individuals. Crane established that the design of working clothes allowed for physical vigour and movement whilst the structure of elite clothing compelled the wearers to express a form of dignity and elegance expected of their social class.[37] Another critical observation gleaned from Crane's work is the ability of dress to be used as an agent of control, domination and manipulation within a diverse society.[38]

Concerning ethnic dress, Crane's commentary on how working-class dress reinforces social class expectation is essential in this thesis because it highlights the problem of majoritarian dress norms and its consequent inhibition of ethnic dress. From Crane's argument, it can be argued that corporates dress codes, which mimic majoritarian appearance norms, indirectly oblige ethnic minorities to act according to Eurocentric social rules. The theory of dress as a tool for social control emphasizes the importance of dress codes and could suggest that employers play a significant role in maintaining the social hierarchy. Suppose the dress patterns of the majority ethnic group are enforced on all workers with no option for the wearing of minority traditional dress. In that case, the employer in effect acts as an agent of social domination.

As Craik established, dress unwittingly goads the wearer to play out the identity of the costume; hence, corporate dress codes can lead to ethnic minority workers being subconsciously driven to perform the role of another ethnic identity.[39] The consequence of corporate dress codes in the UK could then be that all workers 'act white' to a certain degree whilst at work. Hence, the issue of ethnic dress being excluded from the workplace becomes an issue against dignity and identity rather than merely the refusal of a vain dress preference. Importantly,

[37] Diana Crane, *Fashion and its Social Agenda: Class, Gender, and Identity in Clothing*. (University of Chicago Press, 2000), pp. 1 - 67
[38] Diana Crane, *Fashion and its Social Agenda: Class, Gender, and Identity in Clothing*. (University of Chicago Press, 2000), pp. 1 - 67
[39] Jennifer Craik, *The Face of Fashion: Cultural Studies in Fashion* (Routledge, 1994), pp. 1 - 17

Crane's observation of dress as non-verbal communication begs the question of what ethnic clothing seeks to convey to observers. If the message being conveyed represents the key values and ideologies of an ethnic group, the refusal to permit the wearing of such clothing could suppress the relevant group's voice.

Eicher, like Crane[40] and Craik,[41] recognizes the social importance of dress.[42] However, her work is rooted in cultural anthropology and navigates the powers of clothing in direct relation to ethnicity. Eicher describes the phenomenon of ethnic identity and demonstrates how the intricate designs, symbolisms, fabrics, and patterns of ethnic dress are consciously chosen and created to represent ethnic values. It was indicated that group formation, assimilation, and differentiation from outsiders are heavily reliant on ethnic dress. Eicher and Erekosima discuss the use of dress in creating subtle effects of supposed superiority over neighbouring groups.[43] In effect, ethnic groups utilize clothing as a severing force that accentuates a group's otherness whilst simultaneously indicating a sense of moral dominance. The observations of ethnic dress in Eicher's work highlight that group members who desire to dress according to their ethnicity innately seek to be seen as different from others.[44] Hence, beyond the perception that ethnic dress communicates group values, it also expresses group pride and a passion for distinctiveness. Therefore, corporate dress codes which forbid ethnic dress also suppress the right to identify as different. Essentially, the stripping away of external ethnic manifestation dissolves the visible aspects of diversity and social orientation.

In addition, Eicher and Sumberg draw attention to the emerging phenomenon of 'global ethnoscape', which involves the interconnectedness of varying ethnic groups.[45] The increase of association amongst ethnic groups leads to a situation whereby groups can influence one another and pervade internal group values into the reality of outsiders. From the argument about global

---

[40] Diana Crane, *Fashion and its Social Agenda: Class, Gender, and Identity in Clothing*. (University of Chicago Press, 2000), pp 1 - 67

[41] Jennifer Craik, *The Face of Fashion: Cultural Studies in Fashion* (Routledge, 1994), pp. 1 - 17

[42] Joanna Bubolz Eicher, *Dress and Ethnicity: Change Across Space and Time*. (Oxford, 1995)

[43] Joanne B. Eicher and Tonye V. Erekosima, 'Why Do They Call it Kalabari? Cultural Authentication and the Demarcation of Ethnic Identity' in Joanne B. Eicher (ed), *Dress and Ethnicity* (Berg Publishers, 1995), pp. 139-164

[44] Joanna Bubolz Eicher, *Dress and Ethnicity: Change Across Space and Time*. (Oxford, 1995)

[45] Joanne Bubolz Eicher and Barbara Sumberg, 'World fashion, ethnic, and national dress'. In J.B. Eicher (Ed.), *Dress and ethnicity*. (Berg Publishing, 1995), pp. 295-306

ethnoscape, it can be inferred that the group with the most leverage in society could quickly effect social change and infuse society with their way of life. When dress is involved, the ethnic group most commonly perceived or in dominance of a region will most likely act as both the initiator and moderator of appearance standards. In this way, the dominant group does not use their prominence or familiar dressing style as a form of inclusion but as tools of manipulation and subjugation. In employment, the coercive nature of corporate dress codes fulfils this subjugation of ethnic minorities and creates a situation where such minorities are bullied into accepting the dominant dress standards for the sake of job security.

Eicher and Evenson delve deeper into the subject of ethnic dress by analysing how a sense of culture influences it.[46] They describe culture as a manufactured tool encompassing material elements of group belief. Their analysis shows that culture is not synonymous with ethnicity but an instrument designed by an established ethnic group. Hence, ethnic dress as a cultural mechanism comprises the deliberate behavioural patterns and innate beliefs that characterize a group. In this way, ethnic dress demonstrates the group's expected social interaction and reception based on their cultural codes. An appreciation of dress as a vehicle of culture should encourage its protection and influence the level of worth placed on it in a proportionality exercise.

Importantly, Eicher and Evenson highlight that the meaning of dress is equally dependent on both the message being sought to be conveyed and the interpretation and perception of the viewers.[47] Hence, it can be deduced that employers have a duty to regulate employees' dress to control the visually induced responses of clients. It can then be said that the wearing of ethnic dress in the employment sphere is an issue of importance to workers and affects the relationship between the business and potential customers.

---

[46] Joanne Bubolz Eicher and Sandra Lee Evenson, *The Visible Self: Global Perspectives on Dress, Culture and Society*. (Fairchild Books, 2015)

[47] Joanne Bubolz Eicher and Sandra Lee Evenson, *The Visible Self: Global Perspectives on Dress, Culture and Society*. (Fairchild Books, 2015)

Despite the relevance of Eicher and Evenson's work, there is sole concentration on the relationship between dress and society and the ambit of employment is omitted.[48] In the narrative of the societal significance of ethnic dress, employers who form a crucial class in society is paid no regard. Consequently, there is a gap in their study, particularly of a potential culture clash involving ethnic minority workers with different dress norms from that of the employer. In the balance of power between employers and workers, it is arguable that employers are markedly more advantaged and thus represent a significant band of social authority. In a society where the employers are more likely to be members of the majority group, the power dynamics between ethnic groups is even more pronounced and more demanding of legislative attention.

Strangleman and Warren, whilst not concerned about dress or appearance ideals, add a rich discourse to the understanding of the relationship between society and employment.[49] Their study examines workplace culture and how individuals shape or alter their expressed identity in conformity to their job role. Through their research, it is seen that work is essential to the productive participation of humans in society. Intrinsic to its nature, work offers the individual an opportunity to be valued and rewarded according to an appraisal of their abilities.

In essence, it can be said that employment can act as a societal tool in assessing the usefulness and beneficial attributes in people. This realization is vital as it puts into perspective the significance of work to the human experience. When considering the impact of indirect discrimination, Strangleman and Warren's work highlights that a negative experience in employment can change a person's self-worth and sense of meaning.[50] It is arguable that if the negative experience is linked to a suppression of ethnic identity, the affected individual also loses an essential aspect of identity.

---

[48] Joanne Bubolz Eicher and Sandra Lee Evenson, *The Visible Self: Global Perspectives on Dress, Culture and Society*. (Fairchild Books, 2015)

[49] Tim Strangleman and Tracey Warren, *Work and Society: Sociological Approaches, Themes and Methods* (Routledge, 2008), pp. 8 - 28

[50] Tim Strangleman and Tracey Warren, *Work and Society: Sociological Approaches, Themes and Methods* (Routledge, 2008), pp. 8 - 28

Pager and Shephard also concentrate on the relationship between employment and society but include the dimension of discrimination in their study.[51] Key in their research is the idea of discrimination becoming an increasingly subtle and covert sociological problem. This work is essential for understanding indirect discrimination as it highlights the underlying persistent negative perceptions about racial groups that reinforce biased attitudes. Pager and Shephard seek to establish a concrete and accurate means of discrimination. They discuss the use of individual perception, statistical analysis, and experimental approaches in the measurement of discrimination and conclude that no particular method is appropriate to tackle the complexities of discrimination. In the employment field, and particularly through standardised dress codes, employees could suffer discrimination but fail to accurately measure the impact of the discrimination. This suggests that laws should account for the ambiguous nature of discrimination by allowing individuals, to an extent, the ability to assert the level of disadvantage suffered.

Ethnic identity, it is posited, is a unique personal characteristic because it is influenced by other personal traits.[52] Furthermore, the physical manifestation of ethnic identity via ethnic dress is subject to internal and external influences and can be a symbol and testament of the convergence of multiple traits and characteristics.[53] Shreya Atrey evaluates the concept of intersectionality and how the combined effect of multiple grounds of discrimination could pose as a barrier to equality.[54] Atrey particularly argues that claimants are restricted in seeking relief from discriminatory treatments when the disadvantages created occur from the possession of two or more protected characteristics. Concerning the Equality Act 2010, intersectionality is not treated as a defined category; instead, claimants are required to base claims on singular protected characteristics. The requirements of group disadvantage are discussed by Atrey, who views it in a negative light. She introduces the notion of sameness and difference to suggest that individuals who share similar characteristics could have varying manifestations.

---

[51] Devah Pager and Hana Shepherd, 'The Sociology of Discrimination: Racial Discrimination in Employment, Housing Credit and Consumer Markets' [2008] 34 The Annual Review of Sociology, pp.181-209

[52] Alan B Anderson, 'The Complexity of Ethnic Identities: A Postmodern Re-evaluation' [2001] 1(3) Identity: An International Journal of Theory and Research, pp. 209 - 223

[53] Anna-Mari Almila, 'Fashion, Anti-Fashion, Non-Fashion and Symbolic Capital: The Uses of Dress among Muslim Minorities in Finland' [2016] 20(1) Fashion Theory, pp. 1 - 27

[54] Shreya Atrey, *Intersectional Discrimination* (Oxford University Press, 2019), pp. 1- 7

Hannett also highlights the complexities involved with multiple discrimination and notes the deficiencies of the anti-discrimination legal instruments.[55] Hannett's study was based on a critique of repealed legislation before the enactment of the Equality Act 2010. However, her examination of the reality of both intersectionality and multiplicity of social characteristics remains relevant due to the hesitance of legislators in establishing an avenue for claims based on multiple grounds. Notably, the impracticality of finding suitable comparators in cases where the disadvantage alleged is caused by a combination of factors still remains under the 2010 Act. Furthermore, Hannett draws attention to the change in society as people are growing in interconnectedness; hence, the law's fixed stance on an exhaustive list of protected characteristics and singular grounds could frustrate legitimate claims.

Ethnic dress is often a manifestation of a combination of cultural ideals, religious beliefs, gender and social values. A requirement of proving group disadvantage could be problematic as ethnicity is by nature subject to individualistic interpretations. Furthermore, dress demonstrates an individual's racial and social background and their personal tastes and relationship with their bodies. Hence, as ethnic dress can be expressed differently by members of the same group, a personal disadvantage may not always amount to group disadvantage.

Sandra Fredman's extensive study on discrimination law in the UK combines rich sociological discourse with a critical examination of legislation.[56] Fredman investigates the root causes of discrimination and analyses society's unique relation to personal attributes such as gender, race and religion. In the study of ethnic dress and corporate appearance standards, Fredman's work highlights the complexities surrounding dress and suggests that the preference of the majoritarian group in society influences discriminatory practices.[57] Like Shreya,[58] Fredman acknowledges the overlap of multiple grounds of discrimination and asserts that such overlap happens too frequently to be overlooked. Significantly, Fredman raises an argument that may justify certain interruptions of fundamental rights. She highlights the validity of business concerns

---

[55] Sarah Hannett, 'Equality at the Intersections: The Legislative and Judicial Failure to Tackle Multiple Discrimination' [2003] 23(1) Oxford Journal of Legal Studies, pp.65-86
[56] Sandra Fredman, *Discrimination Law* (Oxford University Press, 2002), 50
[57] Sandra Fredman, Discrimination Law (Oxford University Press, 2002), 50
[58] Shreya Atrey, *Intersectional Discrimination* (Oxford University Press, 2019), pp. 109 - 138

and claims that certain discriminatory acts are perpetrated to establish strategic and economic business policies. Such policies, she asserts, favour employers and are beneficial to the economy of the State. However, Fredman rightfully questions if and why economic concerns are given preference over individual rights.[59]

Fredman's study can be used to draw attention to the battle for pre-eminence between the conflicting rights of employers and employees. A key point of consideration is why there should be such a sharp conflict at all. It is posited that there is no sufficient proof demonstrating that substantive equality stands in the way of economic and financial progress. It can also be said that legitimizing discriminatory action on the grounds of profit-making or budgetary concerns belittles the severity of the diminishing of equality. This is more so when the discriminatory action affects the conceptualization and expression of innate identity and group membership.

Zschirnt and Ruedin present a comprehensive meta-analysis on ethnic and racial discrimination in the hiring process of OECD countries.[60] This is important because the prohibition against discrimination in employment is all-encompassing and starts from the hiring stage to the termination of employment contracts. The limits in their research include an absence of comprehensive data as to why the discrimination occurs. Furthermore, due to the fact that the research was carried out using auditing field experiments, there is also a lack of insight into the relations and behavioural patterns of employers and potential ethnic minority workers. However, Zschirnt and Ruedin's work displays the disparity among ethnic groups in employment attainment. They found that when other characteristics and qualifications were equivalent except an indication of racial or ethnic group membership, White job seekers were more likely to receive favourable correspondence.[61] Whilst not concerned about dress, their research is insightful as it both demonstrates the widespread hesitance to employ minorities and the inefficiency of the law to prevent such covert discrimination in its early stages.

---

[59] Sandra Fredman, *Discrimination Law* (Oxford University Press, 2002), 50
[60] Eva Zschirnt and Didier Ruedin, 'Ethnic Discrimination in Hiring Decisions: A Meta-Analysis of Correspondence Tests 1990-2015' [2016] 42(7) Journal of Ethnic and Migration Studies, pp. 1115 - 1134
[61] Eva Zschirnt and Didier Ruedin, 'Ethnic Discrimination in Hiring Decisions: A Meta-Analysis of Correspondence Tests 1990-2015' [2016] 42(7) Journal of Ethnic and Migration Studies, pp. 1115 - 1134

Malik *et al..* study the impact of dress codes and how they can restrict a particular group from seeking or gaining employment in certain sectors.[62] They focus on the health sector, particularly hospitals, and its dress policy requiring arms to be bare. Also, they discuss the uncertainty regarding the wearing of a headscarf in hospital theatres. Their findings suggest that female Muslim NHS workers are discouraged from pursuing a career in hospital medicine due to the current dress policies. Whilst Malik *et al..* focus on a specific portion of minorities within a particular field, the outcome of their research supports the argument that ethnic minorities are indirectly pushed out of certain professions. Malik *et al..*'s study is not explicitly concerning a racial or ethnic group but a religious one. However, a significant amount of those who identify as Muslims are members of ethnic minority groups. This was demonstrated in Malik et al..'s research, where it was found that 61.9 percent of the respondents were of Asian origin, 16.7 percent were Arab, whilst 7.1 percent were of African descent. Hence, the desire to wear a headscarf can be similarly linked to culture as it is to religion.

Hepple and Szyszczak's classic work on discrimination law discusses the law's insufficiencies in fulfilling its objective of adequately protecting vulnerable individuals domiciled within the State.[63] Whilst their work was undertaken before the enactment of the Equality Act 2010, specific criticisms and limitations of the legal system remain true. Key in their discussion is the failure of the law to change the reality and pattern of racial discrimination. Despite the arguably extensive provisions in the Equality Act 2010, there remains an unjustifiable gap in the employment attainments of ethnic minorities, as demonstrated in the study of Zschirnt and Ruedin.[64] As discrimination is a negative social pattern, it has been questioned whether the law is suited to tackle the problems it poses or whether the law is simply a symbolic and educative tool.

---

[62] Abida Malik, Hafsah Qureshi, Humayra Abdul-Razakq, Zahra Yaqoob, Fatima Zahra Javaid, Faatima Esmail, Emma Wiley, Asam Latif, ''I decided not to go into surgery due to dress code': a cross-sectional study within the UK investigating experiences of female Muslim medical health professionals on bare below the elbows (BBE) policy and wearing headscarves (hijabs) in theatre' [2019] 9(3) BMJ Open
[63] Bob Alexander Hepple and Erika Szyszczak, *Discrimination: The Limits of Law* (Mansell, 1934)
[64] Eva Zschirnt and Didier Ruedin, 'Ethnic Discrimination in Hiring Decisions: A Meta-Analysis of Correspondence Tests 1990-2015' [2016] 42(7) Journal of Ethnic and Migration Studies, pp. 1115 - 1134

If the law fails to effectively integrate into social consciousness, discrimination will not be eradicated but, as argued by Pager and Shephard[65], simply disguised and eventually presented as normalized activity. Hepple and Szyszczak highlight the difficulties created by the requirement to make singular claims under the now-repealed RRA. Although the 2010 Act allows for multiple claims based on differing characteristics to be simultaneously presented, it still fails to acknowledge personal disadvantage based on an intersection of grounds. As discussed by Hannet[66] and Atrey[67], this failure shows an artificial image of identity and leaves claimants who cannot establish a claim on any sole characteristic at risk of being unfairly prejudiced.

De Beco adds to the discourse of intersectionality by exploring how it can be accommodated in international law.[68] Although his study focuses on the experiences of disabled individuals, his work examines the limitations of domestic law, which is focused on singular characteristics. Smith also argues that a 'single-axis model' of identity in discrimination law is inept and unable to produce substantive equality.[69] Notably, Smith highlights the notion of domination as an influencing force in discrimination legislation. A shift in focus on incidents of domination rather than a variance in treatment allows for intra-group disadvantage to be mitigated against. Both De Beco[70] and Smith[71] denounce the ideology that human experiences and characteristics can be neatly and distinctly separated into identifiable characteristics. The very nature of humanity, social experiences and choices gravitate towards plurality and a fusion of several, sometimes opposing, factors. Quinn adds to the exploration of intersectionality by highlighting the insufficiency of requiring claimants to present themselves as singularly or chiefly

---

[65] Devah Pager and Hana Shepherd, 'The Sociology of Discrimination: Racial Discrimination in Employment, Housing Credit and Consumer Markets' [2008] 34 The Annual Review of Sociology, pp.181-209

[66] Sarah Hannett, 'Equality at the Intersections: The Legislative and Judicial Failure to Tackle Multiple Discrimination' [2003] 23(1) Oxford Journal of Legal Studies, pp.65-86

[67] Shreya Atrey, *Intersectional Discrimination* (Oxford University Press, 1988)

[68] Gauthier de Beco, 'Protecting the Invisible: An Intersectional Approach to International Human Rights Law' [2017] 17(4) Human Rights Law Review, pp. 633 - 663

[69] Ben Smith, 'Intersectional Discrimination and Substantive Equality: A Comparative and Theoretical Perspective' [2016] 16 The Equal Rights Review, 74

[70] Gauthier de Beco, 'Protecting the Invisible: An Intersectional Approach to International Human Rights Law' [2017] 17(4) Human Rights Law Review, pp. 633 - 663

[71] Ben Smith, 'Intersectional Discrimination and Substantive Equality: A Comparative and Theoretical Perspective' [2016] 16 The Equal Rights Review, 74

characterized by a feature for the purpose of litigation.[72] Key to his argument is the need for the law to acknowledge people's individuality rather than solely focusing on the variance between groups. These arguments are essential in a research on indirect discrimination via the limitation of ethnic dress as it can be inferred that the law fails to recognize the multiplicity of human identity. The single-axis model of identity impedes the pursuit of substantive equality as it cannot protect personal features that are complex and are a collective of other personality traits such as ethnic identity. A legal approach based on an understanding of intersectionality will help capture the essence of ethnic identity, which is asserted to be a unique amalgamation of features such as religion, cultural gender interpretations, and biological racial distinctions.

Chattaraman and Lennon bring a unique dimension to the study of ethnic dress. Their work investigates whether the consumption and use of visible ethnic symbolisms correlate to the strength of an individual's ethnic identification.[73] They found that people who felt strongly connected to their cultural backgrounds and developed their identity based on ethnic group affiliation were most likely to purchase and wear ethnic dress. To such individuals, ethnic dress is more than a choice of clothing but conveys a message of unanimity and belonging to a group.

Thompson and Haytko likewise discuss how consumers invoke personalized messages and their individualistic narratives through their choice of clothing.[74] While not explicitly relating to ethnicity, like Chattaraman and Lennon, they present a possible argument for the protection of ethnic dress. As dress and clothing are deemed instrumental in both the shaping of identity and the construction of social interaction, it can be inferred that its control in the employment field should be subject to a greater degree of judicial supervision.

Davina Cooper argues from a perspective acknowledging diversity politics on the understanding of discrimination.[75] The concept of diversity is of particular interest in the

---

[72] Gerard Quinn, 'Reflections on the Value of Intersectionality to the Development of Non-Discrimination Law' [2016] 16 The Equal Rights Review, pp.63-72

[73] Veena Chattaraman and Sharon J. Lennon, 'Ethnic identity, consumption of cultural apparel, and self-perceptions of ethnic consumers' [2008] 12(4) Journal of Fashion Marketing and Management, pp. 518 - 529

[74] Craig J. Thompson and Diana L. Haytko, 'Speaking of Fashion: Consumers' Uses of Fashion Discourses and the Appropriation of Countervailing Cultural Meanings' [1997] 24(1) Journal of Consumer Research, pp. 15-42

[75] Davina Cooper, Dominic Cooper, and Cooper Davina. *Challenging diversity: Rethinking equality and the value of difference*. (Cambridge University Press, 2004) pp. 3 - 14

exploration of ethnic identity. The narratives concerning identity, the creation of a system of differentiation and grouping, and the power dynamics influencing social bias are covered under the broad topic of diversity politics. Ethnic identity is a highly complex social creation that combines elements of biological, environmental and religious experiences to create a distinct entity. Hence, to understand the multiple layers involved in ethnic identity, which manifest in ethnic dress, attention must be given to the underlying struggles for dominance and subtle political agendas engaged in both the creation of social groups and the management of those groups in a diverse society.

In addition, Cooper draws attention to the conflicts existing within the pursuit of equality. The tension which the contrasting rights between employees and employers cannot be ignored in a study of indirect discrimination. For each claim, a decision of whose rights should prevail is made. Cooper questions this decision-making process and argues that the boundaries on diversity are not explicitly defined.[76] Diversity's limitations include the apparent hierarchy of rights discussed by Vickers and the need for a separation between acceptable social values and those undeserving of protection.[77]

The arguments surrounding the boundaries of equality and a hierarchy of rights are interesting as they demonstrate the influence that societal perceptions have on the law. Expressed differences of minorities are judged by the ingrained moral compass of the dominant group to determine its worthiness. Apart from deciding what social characteristics are acceptable or not, society unconsciously ascribes values to them. Hence, in cases involving ethnic dress and appearance standards, it can be inferred that the suitability of the dress and its value are imposed by the majoritarian group, who are usually outsiders of the ethnic group concerned.

Durham's anthropological study on the ethnic identity of the Herero tribe of Botswana, and its expression through dress, reveals the connection between group distinction and dress.[78]

---

[76] Davina Cooper, Dominic Cooper, and Cooper Davina. *Challenging diversity: Rethinking equality and the value of difference*. (Cambridge University Press, 2004), pp. 3 - 14

[77] Lucy Vickers, 'Religious Discrimination in the Workplace: An Emerging Hierarchy?' [2010] 12(3) Ecclesiastical Law Journal, pp. 280-303

[78] Deborah Durham, 'The predicament of dress: polyvalency and the ironies of cultural identity' [2008] 26(2) American Ethnologist, pp. 389 - 411

The Herero women wear ethnic clothing, mainly in the form of long dresses, which highlight group values and the desire for visible separation from the Tswana people. The Herero dress, by its design, is both modest and restrictive. Hence, the dress effectively communicates the perceptions of feminine morality and etiquette. The Herero community primarily focuses on women with regard to ethnic clothing. Consequently, it can be inferred that the symbolism of womanhood is a crucial signifier of the group's identity. Durham's work is narrow in its focus on a single tribe and extensive in its exploration of group behaviour concerning appearance.[79] It demonstrates the often-understated reality that for many ethnic groups, clothing and physical adornments are the tools that connect them to their ethnic roots whilst simultaneously expressing their innate, fundamental convictions to outsiders.

Furnham, Chan and Wilson take a human psychology approach to the study of dress and professionalism.[80] Their research focuses solely on dentists and lawyers in the investigation of client perception on the capacity of the professionals. Furnham *et al..*'s research demonstrates the reality of humans as intuitive scientists. Intuitive science refers to the art of instinctively making judgments about an individual's personality and competence through an observation of their outward appearance. In the world of business, client perception could either positively or negatively affect economic outcomes; hence, the control of employee appearance can be said to be justifiable.[81] However, there is a gap in available research as the perceived information gleaned from an employee wearing ethnic dress has yet to be adequately examined. Without a genuine appreciation of how ethnic dress impacts business outcomes, it is difficult to justify or condemn an employer's policy prohibiting ethnic dress. Understanding clients as intuitive scientists also demonstrates the role of society in shaping visual cues and acceptable clothing in the employment context.

---

[79] Deborah Durham, 'The predicament of dress: polyvalency and the ironies of cultural identity' [2008] 26(2) American Ethnologist, pp. 389 - 411
[80] Adrian Furnham, Pui Shuen Chan and Emma Wilson, 'What to wear? The influence of attire on the perceived professionalism of dentists and lawyers' [2013] 43(9) Journal of Applied Social Psychology, pp.1838-1850
[81] Marcia R F Campiolo, 'Professional Image and Client Perception' [2016] Medical Office Management, pp. 137-145

Karl, Hall and Peluchette's research also seeks to establish a prominent link between dress and the perceptions that it triggers.[82] Karl *et al.*'s research is unique because it does not measure the correlation between what an individual wears and the message gleaned by it from outsiders. Instead, their research focuses on how employees' perception of themselves and the roles that they are required to play instinctively changes based on what they are wearing. In the employment field, workers are expected to adopt identities in line with their job roles in order to perform effectively. If what they wear affects their ability to create suitable workplace identities, then the governance of personal appearance in the workplace is arguably legitimized. However, it remains to be determined whether the wearing of ethnic dress will inhibit an individual from imbibing and projecting an identity compatible with the relevant job description.

Van Laer and Janssens study identity and explore how ethnic minority professionals develop hybrid identities to survive the workplace.[83] Key to their study is the assertion that this hybrid identity causes tension due to the difficulties in integrating minority social values into a workforce dominated by mainstream ideals. Collinson also noted this tension in identity formation, arguing that whilst at work, an individual feels subconsciously obligated to manipulate their personality and the presentation of self.[84] Levi adds another dimension to the discussion of identity by highlighting how imposed dress codes could coerce conformity to stereotypical behaviour.[85]

The combined works of Van Laer and Janssens,[86] Collinson[87] and Levi[88] reinforce the importance of the workplace. For many employees, significant amounts of time are spent at work and in the presence of colleagues. Consequently, they have to navigate through the expectations

---

[82] Katherine A. Karl, Leda McIntyre Hall, Joy V. Peluchette, 'City Employee Perceptions of the Impact of Dress and Appearance: You Are What You Wear' [2013] 42(3) Public Personnel Management, pp.452-470

[83] Koen Van Laer and Maddy Janssens, 'Ethnic minority professionals' experiences with subtle discrimination in the workplace' [2011] 64(9) Human Relations, pp. 1203-1227

[84] David L. Collinson, 'Identities and Insecurities: Selves at Work' [2003] 10(3) Organization, pp. 527 - 547

[85] Jennifer Levi, 'Misapplying Equality Theories: Dress Codes at Work' [2016] Yale Law School Legal Scholarship Repository, 353

[86] Koen Van Laer and Maddy Janssens, 'Ethnic minority professionals' experiences with subtle discrimination in the workplace' [2011] 64(9) Human Relations, pp. 1203-1227

[87] David L. Collinson, 'Identities and Insecurities: Selves at Work' [2003] 10(3) Organization, pp. 527 - 547

[88] Jennifer Levi, 'Misapplying Equality Theories: Dress Codes at Work' [2016] Yale Law School Legal Scholarship Repository, 353

and experiences of the workplace in a persona that is false and sometimes incompatible with their ethnic identity. The censure of ethnic dress could also add to the dilemma by its underlying suggestion that a minority racial and cultural image projection is contradictory to a professional identity. Scott Plous also draws attention to the nature of prejudice as a pattern of preconceived beliefs about a group.[89] The link between stereotypes and prejudice is accentuated and demonstrates how generalized views of a group are nurtured. These generalizations eventually normalized into societal behavioural patterns. Plous argues that the elevation of such stereotypical perceptions into convention creates an exaggerated belief about group differences.[90]

Battu, Mwale and Zenou's research indicates that ethnic minorities who do not conform to the dominant White culture suffer poor employment outcomes.[91] Their results are significant in light of the research by Bisin, Patacchini, Verdier and Zenou, who found that ethnic identity is more pronounced and upheld in mixed neighbourhoods than in segregated ones.[92] This suggests that the desire for cultural distinction is increased in the presence of diversity. Hence, as Plous indicated, the differences between groups are heightened, resulting in an increased likelihood of prejudicial behaviour.[93] In the UK society, the presence of numerous ethnic groups habiting the same space means that non-conformist minorities feel more pressure to abide by their cultural norms. This argument is worth considering regarding ethnic dress in the workplace. The tension of contradictory identities evinces ethnic manifestation in its most simple form, which is ethnic dress.

---

[89] Scott Plous, *Understanding Prejudice and Discrimination* (ed. S. Plous). (New York: McGraw-Hill, 2003) pp. 509-528

[90] Scott Plous, *Understanding Prejudice and Discrimination* (ed. S. Plous). (New York: McGraw-Hill, 2003) pp. 509-528

[91] Harminder Battu, McDonald Mwale and Yves Zenou, 'Oppositional Identities and the Labour Market' [2005] IZA Discussion Paper No. 1852

[92] Alberto Bisin, Eleonora Patacchini, Thierry Verdier, and Yves Zenou, 'Ethnic Identity, Residential Segregation, and Labour-Market Outcomes of Immigrants in Europe' [2009] IZA Discussion Paper No. 4517

[93] Scott Plous, *Understanding Prejudice and Discrimination* (ed. S. Plous). (New York: McGraw-Hill, 2003) pp. 509-528

Although Nekby and Rodin's research is based on Swedish culture,[94] their results, which are strikingly similar to that of Battu *et al.*,[95] indicate a correlation between a refusal to adopt the majority culture and adverse labour market outcomes. This development accentuates the role of culture in employment. As cultural assimilation is linked to improved career chances, it can be inferred that the reverse is also the case. Suppose minorities are penalized for the exhibition of culture and the maintenance of their minority ethnic identity. In that case, it can be argued that greater legislative attention should be given to the manifestation of the related protected characteristic, which is race.

Visone articulates the tension of conflicting interests in cases regarding appearance in the workplace.[96] He evaluates the American legal systems and argues that immigrant workers, particularly those whose cultural norms differ markedly from that of the society, are especially vulnerable and in need of recognized protection. More importantly, he asserts that the fragile issue of personal appearance should be explicitly protected to avoid employment policies undermining the ideals of a different culture. Visone's arguments can be applied to the British legal system as there is no particular right to individualistic personal expression in the workplace.[97]

Bhavnani, Mirza and Meetoo evaluate the sociological evolution of the concepts of race and ethnicity.[98] Of particular importance is their assessment of the influence of social elites. They note that societal acceptance of groups, ideologies and lifestyles is rooted in the beliefs of those considered to be the elite. The concept of social elites has experienced change over the years. The previous voices of authority, such as royalty and the church, has been replaced by the media and famous entertainers. The flexibility of both race and the instruments of societal influence

---

[94] Lena Nekby and Magnus Rodin, 'Acculturation Identity and Labour Market Outcomes' [2007] IZA Discussion Paper No. 2826

[95] Harminder Battu, McDonald Mwale and Yves Zenou, 'Oppositional Identities and the Labour Market' [2005] IZA Discussion Paper No. 1852

[96] Bill Visone, 'Cramping Your Style: Personal Appearance in the Workplace' [2015] Georgetown University Law Centre, 359

[97] Bill Visone, 'Cramping Your Style: Personal Appearance in the Workplace' [2015] Georgetown University Law Centre, 359

[98] Reena Bhavnani, Heidi Safia Mirza, Veena Meetoo, *Tackling the Roots of Racism: Lessons for Success*. (Policy Press, 2005), pp. 1 - 55

demonstrate how discrimination can change to reflect pervading societal norms. Consequently,

laws that treat racial and ethnic discrimination as rigid concepts will fail to protect the vulnerable.

1.4 CONCLUSION

As highlighted in the literature review, academic research on the impact of racial discrimination disproportionately focuses on unemployment, poor housing and limited educational opportunities. Consequently, there is an absence of wide-ranging and in-depth analysis on the effects of racial discrimination on the current working members of minority groups. Apart from insufficient targeted studies on indirect discrimination affecting working minorities, it is posited that currently, the main focus is on religious discrimination. Thorough analysis on ethnic dress and the role of corporate dress codes in effective ethnic identification is also sparse. This may be due to either a state of ignorance on the vitality of ethnic manifestation to racial standing or a perception of ethnic dress as an unnecessary fashion statement. Suppose ethnic dress is not given the proper regard with respect to its function as an ethnic marker and a communicator of a group and its values. In that case, there is a risk of it being demoted to nothing more than fanciful whims and elaborate costumes.

The main issues surrounding the complexities of ethnic dress, indirect discrimination and corporate appearance standards have been introduced. These will be further developed and analysed throughout the thesis. The succeeding chapter delves into the academic discourse surrounding ethnic identity and racial conceptualization. Chapter Two is important in this regard as it sets up the basis of the thesis by investigating the value of ethnic manifestation to racial identification. Suppose it is properly established that ethnic manifestation is a vital aspect of racial construction. In that case, it then becomes appropriate for legal instruments to reflect the importance of ethnic identity by protecting ethnic manifestations in the workplace in the instance that a corporate policy inhibits authentic ethnic expression.

Chapter Three builds on Chapter Two's argument of the vitality of ethnicity to race and asserts that ethnic dress is key to physical ethnic identity. Once it is accepted that ethnicity is interconnected with race, it is then imperative to study the elements of ethnic identity and how that identity is primarily manifested through ethnic dress. Therefore, Chapter Three evaluates the core value of ethnic dress and argues that, because it is both a symbolism of group

membership and a means of communication of group values, it should be accorded greater value in proportionality exercises where there is a conflict between an employee's desire to wear ethnic dress and an official dress policy that insists on neutrality.

Chapter Four offers a legal dimension to the sociological debates on self-identification and group formation theories. It is written from the perspective that ethnic dress constitutes part of Race due to its role as a visual manifestation of a wearer's ethnic identity and should thus be considered under the ambit of protection of the Equality Act 2010 (2010 Act). In this chapter, case law is analysed to discern, in general, how cases of indirect discrimination are handled. Case law is used to determine judicial attitudes and to verify whether the interpretation of the 2010 Act allows for a subtle hierarchy of rights in judicial decisions. Importantly, Chapter Four states and sets out, based on research, the potential unsuitability of the 2010 Act in dealing with cases arising from race-based indirect discrimination perpetrated via workplace dress policies.

Once it is appreciated that ethnic dress should be protected, an evaluation of current dress codes and corporate dress standards brings a practical side to the academic study. Chapter five brings realism to the thesis by examining current practices of firms and using case study subjects to illustrate the weaknesses of the law and the potential loopholes that place the minority in minority groups at a further disadvantage. Finally, in the concluding chapter, this thesis concludes with an overall assessment of the 2010 Act and its efficacy in creating substantive justice by making it difficult for employers to develop indirectly discriminatory policies without legal reparations. Alternatives are offered to bolster the law and safeguard vulnerable minority workers whose ethnic identification may create unjust workplace sanctions.

2. THE SOCIOLOGY OF ETHNIC-BASED INDIRECT DISCRIMINATION

2.1 INTRODUCTION

> *"No one discipline can do justice to the wide range of issues relating to race and ethnicity … it is therefore essential, at a time when the boundaries between disciplines are becoming blurred, to draw on the contributions of a variety of disciplines"*[99].

Since this research is socio-legal in nature, it extends to sociology to present a robust study on the relationship between indirect discrimination and ethnic minority workers. An examination of the societal context of discrimination brings a realistic dimension to an otherwise artificial analysis of pure legal sources. Both the topics of employment and discrimination are inevitably connected to societal attitudes and psychological perspectives due to the fact that they concern human behaviour.[100] Hence, to gain an accurate understanding of the value of the law and its ability to regulate society and human conduct in situations of employment discrimination, it is vital that there is an exploration of the sociological context of the issue. This research uses secondary data to present a sociological dimension on the realities of ethnic inequality in the British labour market. Whilst such data may not pinpoint the indirect roots of employment disparity amongst ethnic groups, it highlights key factors that place minorities at disadvantageous socio-economic positions.

According to Kohler-Hausmann, the sociological study of discrimination is split into two approaches.[101] The first approach seeks to understand and determine the underlying causes of discrimination, whilst the other approach sees discrimination as an explanation for occurrences and societal behaviours. This thesis adopts aspects of both approaches and undertakes an extensive investigation of social mechanisms and development regarding preferences and the

---

[99] Andrew Pilkington, *Racial Disadvantage and Ethnic Diversity in Britain* (Palgrave Macmillan, 2003)
[100] Ananthi Al Ramiah, Miles Hewstone, John F Dovidio and Louis A Penner, 'The Social Psychology of Discrimination: Theory, Measurements and Consequences' *Making Equality Count: Irish and International Research Measuring Equality and Discrimination*. (The Equality Authority, 2010) pp. 84 - 106
[101] Issa Kohler-Hausmann, 'Discrimination' [2014] Oxford Bibliographies. DOI: 10.1093/obo/9780199756384-0013

creation of majoritarian choice and inclinations. In this thesis, the sociological analysis seeks to identify trends of implicit discriminatory behaviour and standards that societal expectations and bias may influence.

This chapter presents a framework of the underlying issues which unconsciously reinforce discrimination and maintain as status quo the domination of the majoritarian group. Vital to the research on the legal protection of ethnic dress is the critical analysis of whether ethnic dress, as a core factor of ethnicity and group membership, is worthy of legislative attention. Due to the fact that clothing is influenced by both the perceptions of others and self-identification,[102] an inquiry into the tension between ethnic dress and corporate appearance standards will be incomplete without the study of societal preferences, prejudicial beliefs, and social group behaviour. Furthermore, ethnicity cannot be understood in isolation from race; hence, an analysis of the dimensions of race and its relationship to ethnicity is presented.

In this chapter, the main research question being answered is '*What are the sociological underpinnings of ethnic-based indirect discrimination*?' Answering this sub-question is important as it demonstrates the often overlooked but significant link between society and the law. This then leads to an examination of how the dress codes imposed by employers can lead to indirect discrimination against minority staff members. Therefore, there is an in-depth and analytical exploration of the concept of appearance standards and the role of society in assigning moral and social worth on varying bodily presentations and dress styles. This chapter analytically reviews the literature demonstrating the sociological underpinnings of discrimination. In addition, to aid in understanding race-based indirect discrimination, in the form of ethnic manifestation, a scrutiny of race prejudice and social group behavioural patterns is undertaken.

---

[102] Michael L Slepian, Simon N Ferber, Joshua M Gold and Abraham M Rutchick, 'The Cognitive Consequences of Formal Clothing' [2015] 6(6) Social Psychological and Personality Science, pp. 661-668

2.2 THE RANGE OF DISCRIMINATION

According to Moreau, discrimination can operate in two primary ways.[103] The first is the deliberate and definitive exclusion of individuals with specific characteristics from beneficial treatment and opportunities. The second form of discrimination is the use of regulations that apply to everyone concerned but disproportionately affect a group with a shared distinguishing trait. It can also be said that discrimination is the treating of individuals with indistinguishable skill sets and capabilities and in similar scenarios in different ways due to the possession of particular characteristics in the discriminated persons, such as their sex, gender, race, or religion. The reverse is also the case, as discrimination can be found when people of differing abilities and capacities are treated alike simply because of the presence of certain personal features in particular individuals.[104] On the other hand, Jones, Arena, Nittrouer, Alonso and Lindsey argue that discrimination should not be divided into two distinct groups of direct and indirect discrimination.[105] Instead, they assert that all discrimination operates on the same basis but along varying levels of discretion. According to Jones *et al..*, Indirect discrimination is simply discriminatory treatment on a higher level of secrecy and ambiguity compared to direct discrimination.[106]

Irrespective of how indirect discrimination is conceptualized, it is posited that discrimination is increasingly characterized by subtlety and vagueness.[107] Jones *et al.* assert that subtle discrimination has become more common and more effectual than direct or overt discrimination.[108] In the employment context, discrimination can come from employers, general society, customers of an organization, and even colleagues. Also, an individual employee can be

---

[103] Sophia Moreau, 'What is Discrimination?', [2010] 38(2) Philosophy and Public Affairs, pp. 143-179
[104] Sophia Moreau, 'What is Discrimination?', [2010] 38(2) Philosophy and Public Affairs, pp. 143-179
[105] Kristen P Jones, Dave F Arena, Christine L Nittrouer, Natalya M Alonso and Alex P Lindsey, 'Subtle Discrimination in the Workplace: A Vicious Cycle' [2017] 10(1) Industrial and Organizational Psychology, pp.51-76
[106] Kristen P Jones, Dave F Arena, Christine L Nittrouer, Natalya M Alonso and Alex P Lindsey, 'Subtle Discrimination in the Workplace: A Vicious Cycle' [2017] 10(1) Industrial and Organizational Psychology, pp.51-76
[107] Devah Pager and Hana Shepherd, 'The Sociology of Discrimination: Racial Discrimination in Employment, Housing Credit and Consumer Markets' [2008] 34 The Annual Review of Sociology, pp.181-209
[108] Kristen P Jones, Dave F Arena, Christine L Nittrouer, Natalya M Alonso and Alex P Lindsey, 'Subtle Discrimination in the Workplace: A Vicious Cycle' [2017] 10(1) Industrial and Organizational Psychology, pp.51-76

discriminated against for various reasons apart from race, including sexuality, religion, and physical appearance.[109] In the United Kingdom, efforts have been made to curtail the reality of workplace discrimination through the establishment of statutes and legally binding directives.[110] Hence direct discriminatory acts have reduced in frequency and are generally considered to be offensive and inappropriate. With this change in societal perception, there has been a commensurate change in how people demonstrate their intolerant and racist internalized beliefs. Consequently, as overt discriminatory acts have become more widely condemned, there has been an increase in the use of vague and ambiguous tools to disadvantage certain groups within society.[111]

Deitch, Barsky, Butz, Chan, Brief and Bradley use the term 'everyday discrimination' to describe repeated indirect discrimination incidents against workers with Black Caribbean and African ethnicity.[112] According to Deitch *et al.*, everyday discrimination against people of colour is characterized by both subtlety and prevalence.[113] Their analysis infers that there has been a disproportionate focus on blatant acts of racism in the academic and research world. At the same time, the more obscure elements of racially motivated policies are largely ignored and unexplored. Therefore, a critical danger of indirect discrimination, and obscure acts of racial intolerance, is that perpetrators can masquerade their negative actions with seemingly legitimate and non-offensive rationales. This potentially makes it difficult for victims to recognize that discrimination has taken place and prove its existence. Deitch *et al.* reference this problem and note that victims are increasingly unable to identify and attribute disadvantageous treatment

---

[109] Equality Act 2010, Section 4

[110] Council Directive 2000/78/EC of 27 November 2000 Establishing a General Framework for Equal Treatment in Employment and Occupation [2000] OJ L303/16; Council Directive 2000/43/EC of 29 June 2000 Implementing the Principle of Equal Treatment Between Persons Irrespective of Racial or Ethnic Origin

[111] Christa Tobler, *Indirect Discrimination: A Case Study into the Development of the Legal Concept of Indirect Discrimination under EC Law*. (Volume 10, Intersentia NV 2005)

[112] Elizabeth A Deitch, Adam Barsky, Rebecca M Butz, Suzanne Chan, Arthur P Brief and Jill C Bradley, 'Subtle yet Significant: The Existence and Impact of Everyday Racial Discrimination in the Workplace' [2003] 56(11) Human Relations, pp. 1299-1324

[113] Elizabeth A Deitch, Adam Barsky, Rebecca M Butz, Suzanne Chan, Arthur P Brief and Jill C Bradley, 'Subtle yet Significant: The Existence and Impact of Everyday Racial Discrimination in the Workplace' [2003] 56(11) Human Relations, pp. 1299-1324

at work to their specific protected characteristic.[114] Furthermore, it was suggested that due to the prevalence of indirect discrimination and its everyday nature, sufferers might become so accustomed to the adverse treatment that they begin to regard it as normal.[115]

Furthermore, an employee can be negatively treated for possessing characteristics that are neither job related nor detrimental to their work performance, for example, physical attractiveness.[116] The workplace is often influenced by societal standards and internalized preconceptions and stereotypes. Hence, a major concern about the operation of standardized dress codes in the workplace is that they may be used, either intentionally or unintentionally, to enforce the notion that a specific appearance or mode of self-presentation is ideal. This could be particularly true when rules seem to favour the majority group in society, i.e. White Christian/non-religious individuals. The creation of an idealized worker is unsettling because individuals who do not conform to that image are instinctively considered outsiders.[117]

It is important to note, however, that indirect discrimination is not always perpetrated intentionally or consciously. An employer can be indirectly discriminatory even if ignorant as to the negative and disparate effect of the relevant provision, criterion, or practice on a protected group.[118] This aspect of indirect discrimination contributes to why the test for justification is largely objective. For an employer to justify an indirectly discriminatory act, the court objectively assesses whether the reasons procured in defence of the policy are justifiable, proportionate and for a legitimate aim, as discussed further in Chapter Four.[119]

---

[114] Elizabeth A Deitch, Adam Barsky, Rebecca M Butz, Suzanne Chan, Arthur P Brief and Jill C Bradley, 'Subtle yet Significant: The Existence and Impact of Everyday Racial Discrimination in the Workplace' [2003] 56(11) Human Relations, pp. 1299-1324

[115] Elizabeth A Deitch, Adam Barsky, Rebecca M Butz, Suzanne Chan, Arthur P Brief and Jill C Bradley, 'Subtle yet Significant: The Existence and Impact of Everyday Racial Discrimination in the Workplace' [2003] 56(11) Human Relations, pp. 1299-1324

[116] Andrew R Timming, Chris Baumann and Paul Gollan, 'Employee Voice and Perceived Attractiveness: Are Less Attractive Employees Ignored in the Workplace' [2021] 4(1) Journal of Participation and Employee Ownership, pp. 26 - 37

[117] Gwendolyn M Combs and Ivana Milosevic, 'Workplace Discrimination and the Wellbeing of Minority Women: Overview, Prospects and Implications' [2016] Handbook on Well-Being of Working Women, pp. 17 - 31

[118] Equality Act 2010, Section 19

[119] Equality Act 2010, Section 19(2)(d)

2.3 ETHNICITY AND RACE

Both the concepts of race and ethnicity are social constructs designed to enable humans to make sense of the world and their place in it. It has been suggested that humans are naturally wired to aggregate into groups and to use their membership in such groups to ascribe self-identity and worth to themselves.[120] Historically, the grouping of humans was necessary for the survival of the race.[121] In more recent times, the need for interaction, cognitive development and the fulfilment of basic human requirements have kept the practice of grouping relevant.[122] Due to the flexibility of human behaviour, advancement in technology and change in social attitudes, people can float between varying groups at will; for example, it has become relatively more straightforward for a person to change religion,[123] gender identity[124] and relationship status.[125] However, racial and ethnic groups have remained relatively stable. Most people remain fixed in the racial group ascribed to them via biological analysis and the ethnic groups whose cultural values and norms are appropriate.[126] Studying the concepts of race and ethnicity is necessary to understand their importance on personal identity formation and how individuals determine to physically manifest that identity through dress.

Willey suggests that the terms of race and ethnicity are separate and are not synonymous; however, he claims that both are characteristics within the broader concept of 'racial group'.[127]

---

[120] Richard D Alexander, 'The Evolution of Social Behaviour' [1974] 5 Annual Review of Ecology and Systematics, pp. 325 - 383

[121] Michael Gurven, 'Human Survival and Life History in Evolutionary Perspective' in John C Mitani, Josep Call, Peter M Kappeler, Ryne A Palombit and Joan B Silk (eds) *The Evolution of Primate Societies* (University of Chicago Press, 2012), pp. 293-314

[122] Michael Tomasello, *A Natural History of Human Thinking* (Harvard University Press, 2014), pp. 7 - 32

[123] Tad Stahnke, 'Proselytism and the Freedom to Change Religion in International Human Rights Law' [1999] BYU L. Rev, 251

[124] Kay Bussey, 'Gender Identity Development' in Seth J Schwartz, Koen Luyckx and Vivian L Vignoles (eds) *Handbook of Identity Theory and Research* (Springer, New York, 2011), pp. 603 - 628

[125] Lars Backstrom and Jon Kleinberg, 'Romantic Partnerships and the Dispersion of Social Ties: A Network Analysis of Relationship Status on Facebook' In *Proceedings of the 17th ACM Conference on Computer Supported Cooperative Work and Social Computing* (Association for Computing Machinery, 2014)

[126] Melody Manchi Chao, Ying-yi Hong and Chi-yue Chiu, 'Essentializing Race: Its Implications on Racial Categorization [2013] 104(4) Journal of Personality and Social Psychology, 619

[127] Brian Willey, *Employment Law in Context: An Introduction for HR Professionals* (2nd Edition, Pearson Education,2003), 3 - 70

Previously, race was considered part of biological science and was used to categorise human groups into positions based on a psychological perception of essentialism. Certain racial groups with foreign or undesirable features were considered inferior and less worthy of human dignity.[128] Willey argues that this conceptualization of race as a science led to the establishment of a 'hierarchy of superiority and inferiority between races.'[129] Historically, race was generally divided according to defined established racial classifications such as African, European, Semitic and Chinese.[130] The problem involved with creating a list of recognized races is that it omits the fact that there are indigenous people from tribes not fully explored, which could, by the possession of unique biological features, represent a new race. Furthermore, the reproduction of individuals possessing multi-racial characteristics could itself lead to the identification of a new race or serve to dislodge the idea that race can be categorized at all. The complications involved with defining race has led to commentators endorsing ethnicity as a more appropriate and better-suited ground for measuring indirect discrimination.[131]

Race has been a politicized tool used in many countries to maintain power dynamics and social order.[132] Racial politics largely involved the collective domination and oppression of racial groups socially deemed to be inferior. Such practices were seen in America with the enforcement of segregation,[133] in South Africa with its apartheid regime[134] and infamously in Nazi Germany with the attempted genocide of the Jews.[135] Whilst racial politics did not appear to be so extreme in Britain, its negative presence was still felt. Racial politics has been more prominently seen in

---

[128] Nick Haslam and Jennifer Whelan, 'Human Natures: Psychological Essentialism in Thinking about Differences between People' [2008] 2(3) Social and Personality Psychology Compass, pp.1297-1312

[129] Brian Willey, *Employment Law in Context: An Introduction for HR Professionals* (2nd Edition, Pearson Education,2003), at page 154.

[130] Siep Stuurman, 'Francois Bernier and the Invention of Racial Classification' [2000] 50(1) History Workshop Journal, pp. 1-21

[131] Nancy Krieger, 'Refiguring "Race": Epidemiology, Racialized Biology and Biological Expressions of Race Relations' [2000] 30(1) International Journal of Health Services, pp.211-216

[132] Jean-Frederic Schaub, *Race is about Politics: Lessons from History* (Princeton University Press, 2019), pp. 122-178

[133] Ron Johnston, Michael Poulsen and James Forrest, 'Ethnic and Racial Segregation in U.S. Metropolitan Areas, 1980-2000: The Dimensions of Segregation Revisited' [2007] 42(4) Urban Affairs Review, pp.479-504

[134] Kogila Moodley and Heribert Adam, 'Race and Nation in Post-Apartheid South Africa' [2000] 48(3) Current Sociology, pp.51-69

[135] Gisela Bock, 'Racism and Sexism in Nazi Germany: Motherhood, Compulsory Sterilization and the State' in K G Saur (ed) *The Final Solution* (Volume 2, 1989), pp. 575 - 600

the legal enactments made over time. An early example includes the Aliens Act 1905, which mirrored social concerns over the increasing ethnic diversification of the nation.[136] Apart from restricting vulnerable and needy immigrants from receiving welfare benefits, the Act formalized the common belief that foreigners unjustly took possession of social resources. The extension of the Aliens Act in 1914 displayed the growing animosity for foreigners and gave the Home Secretary the right to curtail the lived experiences of 'aliens extensively.' The Act allowed the designation of territories where immigrants were only allowed to live; therefore, it is suggested that this was enacted in reflection of public opinion that ethnic minorities could dilute Britain if given the freedom to intermingle and be domiciled wherever they please. Furthermore, it can be inferred that the 1919 Act, as well as the Aliens Order of 1920 and the Special Restriction Order of 1925, depicted the pervading belief that race was a tool for the measurement of societal value. The aforementioned laws allowed for Afro-Caribbean Brits to be registered as aliens forced minority seamen to register personal details with the police, thus creating the impression that though born or resident in the UK, being of colour designated you as a foreigner.[137]

The historical view of race perceives it to be primarily concerned with definite biological factors. Hence, groups are categorized based on shared physical features or common ancestry.[138] Schaffer notes that from a scientific point of view, the traditional notion of race is not valid.[139] Apart from the lack of credibility in human categorization based on physical appearance, the definition of race and the interpretation of racial groups can be affected by the perceptions of the individuals in a society.[140] Ultimately, the concept of race, or ethnicity, is not value-neutral as each racial group has socially embedded worth that is reproduced through everyday encounters and group relationship dynamics. The power of society in ascribing value and meaning to racial

---

[136] Helena Wray, 'The Aliens Act 1905 and the Immigration Dilemma' [2006] 33(2) Journal of Law and Society, pp. 302 - 323
[137] Laura Tabili, 'The Construction of Racial Difference in Twentieth-Century Britain: The Special Restriction (Coloured Alien Seamen) Order, 1925' [1989] 32(2) The Historical Journal, pp. 54-98
[138] Nancy Krieger, 'Refiguring "Race": Epidemiology, Racialized Biology and Biological Expressions of Race Relations' [2000] 30(1) International Journal of Health Services, pp.211-216
[139] Gavin Schaffer, 'Scientific Racism Again? Reginald Gates, the Mankind Quarterly and the Question of Race in Science after the Second World War' [2007] 41(2) Journal of American Studies, pp.253-278
[140] Gavin Schaffer, 'Scientific Racism Again? Reginald Gates, the Mankind Quarterly and the Question of Race in Science after the Second World War' [2007] 41(2) Journal of American Studies, pp.253-278

groups is seen in its influence on science and scholars. Schaffer argues that social contexts affect the objectivity needed for effective racial studies; consequently, scholars and researchers are subconsciously influenced by society's prevailing attitudes.[141] It can thus be argued that racial and ethnic studies are less of a scientific and analytic issue but are more concerned with social relationships and political agendas. These social and political influences underpin the law and the consequent protection offered to racial and ethnic manifestations. The traditional view of 'race' as a categorization of individuals based on biological characteristics is unable to survive over time due to a fundamental flaw in its framework.[142]

For race to be a continuing means of classification, there must be either a way to preserve the purity of each biologically distinct population or a means of accounting for all the variations of individuals resulting from interbreeding. Due to factors such as slavery, the forced impregnation of minority women, immigration and the proliferation of the ideology of love as a choice, there has been a significant increase in the number of people with no discernible backgrounds.[143] Indeed, irrespective of their skin colour or physical features, such individuals define themselves solely based on their roots in Britain. The term 'British' has replaced distinct racial groups in significant respects and now accounts for an increasingly diverse community.[144]

Pyke notes that the definition of race varies amongst academics and sociologists; certain commentators consider that race is an unfixed social construct influenced and shaped by pervading perceptions, group formation and the dynamics of categorization.[145] This perspective considers race to be both flexible and ever-changing in line with social values and norms. This argument was noted by Hannett, who argues that the combination of globalization, acculturation and intergroup intimacy blurs the lines of racial group membership whilst also creating a

---

[141] Gavin Schaffer, 'Scientific Racism Again? Reginald Gates, the Mankind Quarterly and the Question of Race in Science after the Second World War' [2007] 41(2) Journal of American Studies, pp.253-278

[142] Jean-Frederic Schaub, *Race is about Politics: Lessons from History* (Princeton University Press, 2019), pp. 122-178

[143] Michael Mark Smith, *How Race is Made: Slavery, Segregation and the Senses* (University of North Carolina Press, 2006), pp. 1 - 29

[144] Andrew Pilkington, *Racial Disadvantage and Ethnic Diversity in Britain* (Palgrave Macmillan, 2003)

[145] Karen D Pyke, 'What is Internalized Racial Oppression and Why Don't We Study It?' [2010] 53(4) Sociological Perspectives, pp.551-572

generation with more mixed and undiscernible heritages.[146] Consequently, the modern sociological understanding of race is heavily focused on group dynamics and structure. In effect, the term ethnicity has become almost synonymous with race as shared beliefs and cultures are increasingly being considered as necessary as skin colour and shared hereditary. Due to the limitations of the traditional view of race, social scientists have shifted to the study of ethnicity when seeking to understand group behaviour and individual classification.[147]

For instance, Pilkington undertakes a sociological analysis of race theories to assess the efficacies of equality and anti-discrimination policies.[148] He suggests that 'ethnicity', unlike race, does not primarily signal its presence via visual cues. He argues that whilst race can be seen in skin colour variations and physical features, ethnicity needs to be observed and discerned from social behaviour and norms such as culture. Furthermore, his research demonstrates that the critical differences between race and ethnicity are the elements of subjectivity and self-awareness resent in ethnic groups.[149] Whilst individuals who share physical features may deny a connection with each other, the very nature of ethnic groups is a recognition of shared traits and a conscious desire to belong to the group.[150]

A key advantage to the study of ethnic groups as opposed to that of race is that it avoids the neglect of invisible minorities. Social science and cultural research tend to focus on visible minorities who, by virtue of skin colour and physical features, differ from the dominant group. However, groups such as the Irish, the Romanian Travelers and other European immigrants domiciled within Britain share many physical attributes with the majoritarian group but are still subject to discriminatory practices because of their distinct cultures.[151] Unlike race, ethnicity is not based on biological factors but relies heavily on the sociological underpinnings of group

---

[146] Sarah Hannett, 'Equality at the Intersections: The Legislative and Judicial Failure to Tackle Multiple Discrimination' [2003] 23(1) Oxford Journal of Legal Studies, pp.65-86

[147] Devah Pager and Hana Shepherd, 'The Sociology of Discrimination: Racial Discrimination in Employment, Housing Credit and Consumer Markets' [2008] 34 The Annual Review of Sociology, pp.181-209

[148] Andrew Pilkington, *Racial Disadvantage and Ethnic Diversity in Britain* (Palgrave Macmillan, 2003)

[149] Andrew Pilkington, *Racial Disadvantage and Ethnic Diversity in Britain* (Palgrave Macmillan, 2003)

[150] Michael Tomasello, *A Natural History of Human Thinking* (Harvard University Press, 2014), pp. 7 - 32

[151] Jane Helleiner, 'Gypsies, Celts and Tinkers: Colonial Antecedents of Anti-Traveller Racism in Ireland' [2010] 18(3) Ethnic and Racial Studies, pp.532-554

membership and self-identification. The subjective nature of ethnicity and its non-reliance on biological attributes makes it more suitable for extensive analysis.

Despite the connection between race and ethnicity, it is asserted that there is an important distinction between them. Race, it is argued, is primarily an objective feature imposed on an individual based on biological factors and is therefore difficult to change, hide or dispute.[152] On the other hand, ethnicity has an aspect of subjectivity as it entails members not only submitting to group values but also considering themselves as belonging to the group.[153] In this way, when a policy prevents group manifestations or disadvantages those possessing the group's protected characteristic, the discrimination becomes less ambiguous but more targeted on the affected individuals as their race and their decision to identify and belong to the group is under attack.

While this research primarily uses ethnicity to describe and examine indirectly discriminatory behaviour, traditional elements of race are included in the understanding of ethnicity. It is implicitly argued that both race and ethnicity, whilst different, are inextricably linked. Racial studies are necessary for a proper understanding of ethnic realities. To ignore the biological aspects of race, there would be a continuation of the current gap in understanding and in the pursuit of fairness. If race is treated as nothing but a social construct, then substantive equality should be reached by simply treating everyone the same way. However, this is not the case, particularly as genuine and demonstrable physical features, such as hair texture, affect the needs and modes of expression available to each racial group. Furthermore, the shared beliefs which create ethnic groups can be influenced by biological factors and are shaped by the individual's perception of both his and his group's physical and visible characteristics.

---

[152] Andrew Pilkington, *Racial Disadvantage and Ethnic Diversity in Britain* (Palgrave Macmillan, 2003)
[153] Nancy Krieger, 'Refiguring "Race": Epidemiology, Racialized Biology and Biological Expressions of Race Relations' [2000] 30(1) International Journal of Health Services, pp.211-216

2.4 ETHNIC IDENTITY

Ethnicity has been mainly defined with reference to the possession of an identifiable and distinctive shared culture and norms amongst a reasonably significant number of people within a social group.[154] According to Willey, such distinctive features could be the possession of a unique language, patterns of marital contracts, relational connections or a shared sense of bodily expressions and physical appearance.[155] Key to the establishment of an ethnic group is that there must be a real sense of belonging to the group with a simultaneous sense of distinction and separateness from other groups.[156] However, this notion that ethnicity requires a sense of differentiation from other groups could prove problematic. When individuals such as immigrants and asylum seekers are considered, their desire to assimilate into the dominant society might suggest a weakening of the sense of differentiation, particularly when British norms, culture and values are adopted. Nevertheless, those individuals may still fully consider themselves part of their initial ethnic group whilst forging new connections with the majoritarian group.

If the concept of ethnicity does not involve, as an inextricable component, race, individuals who possess a sense of belonging to one group but do not practically differentiate themselves from another may be left without a concrete standing of identity. Furthermore, to attempt to understand race without an appreciation of ethnicity would lead to justifications of racism as discriminatory actions would be perpetrated under the guise of biological necessity.[157] Fortunately, the law recognizes the importance of both concepts being unified and adds 'colour' and 'nationality' as factors to also be considered when determining whether a group amounts to a racial one for the purposes of the Equality Act 2010.[158]

---

[154] Brian Willey, *Employment Law in Context: An Introduction for HR Professionals* (2nd Edition, Pearson Education,2003), 156

[155] Brian Willey, *Employment Law in Context: An Introduction for HR Professionals* (2nd Edition, Pearson Education,2003), pp. 132 - 172

[156] Jean S Phinney and Mary Jane Rotheram, Children's Ethnic Socialization: Pluralism and Development (SAGE Publications, 1986), 1

[157] Nancy Krieger, 'Refiguring "Race": Epidemiology, Racialized Biology and Biological Expressions of Race Relations' [2000] 30(1) International Journal of Health Services, pp.211-216

[158] Equality Act 2010, Section 9

It can be suggested that the mixing of groups and the consequent appropriation of culture nullify efforts to create distinct categories. The Office for National Statistics, in its research into ethnic groups, have leaned into the school of thought that identifies ethnicity in its surveys. The evolution in social awareness of ethnicity can be seen in the change of language used in the census over the years.[159] In 1991, the Census asked people to choose a category based on their 'descent'.[160] That was changed in 2001 when people were asked to self-categorize based on their cultural background.[161] By 2011, both the terms 'descent' and 'culture' were missing, and individuals were only required to choose their ethnic group or background.[162] The language used by the ONS surveys can be said to reflect official notions of how ethnic groups are formed. As suggested by Jivraj and Simpson, the categorizations used by the ONS is powerful as it becomes regarded as official with the listed groups becoming reified.[163]

Due to the fact that ethnicity relies on shared beliefs, ethnic groups are dependent on their differentiation from others in the social construction of their identity.[164] Consequently, ethnic identity has been likened to a conversation due to its ability to reflect the constant interactions between ethnic groups.[165] Ethnic identity corresponds to the perceptions of others, messages of hostility or acceptance and the social position each group is given. Since ethnic identity is easily and often internalized, individuals, through their everyday practices, reproduce the social dialogue capable of either fostering group cohesion or exacerbating group variance.[166]

---

[159] Peter J Aspinall, 'The Future of Ethnicity Classifications' [2009] 35(9) Journal of Ethnic and Migration Studies, pp. 1417 - 1435

[160] Office of National Statistics, 'A Quick Guide to 1991 and Earlier Censuses' (*ONS*) <https://www.ons.gov.uk/census/2001censusandearlier/aquickguideto1991andearliercensuses> accessed 23 June 2021.

[161] Office for National Statistics, 'Census 2001 Questionnaires. Sample Copies of the Questionnaires used in the 2001 Census' (*ONS*) <https://www.ons.gov.uk/census/2001censusandearlier/aboutcensus2001/census2001forms> accessed 23 June 2021.

[162] Peter J Aspinall, 'The Future of Ethnicity Classifications' [2009] 35(9) Journal of Ethnic and Migration Studies, pp. 1417 - 1435

[163] Ludi Simpson, Stephen Jivraj and James Warren, 'The Stability of Ethnic Identity in England and Wales 2001-2011' [2016] 179(4) Journal of the Royal Statistical Society. Series A (Statistics in Society), pp. 1025-1049

[164] Aune Valk and Kristel Karu, 'Ethnic Attitudes in Relation to Ethnic Pride and Ethnic Differentiation' [2001] 141(5) The Journal of Social Psychology, pp. 583-601

[165] Michael L Hecht, Mary Jane Collier and Sidney A Ribeau, *African American Communication: Ethnic Identity and Cultural Interpretation* (Sage Publications, 1993)

[166] Tiffany Yip, 'Ethnic Identity in Everyday Life: The Influence of Identity Development Status' [2013] 85(1) Child Development, pp. 205 - 219

Such everyday practices include the choice of primary language, the decision of who to socialize with and the choice of dress style. The decision to primarily socialize along ethnic identity will likely manifest outwardly through the wearing of ethnic dress; hence, the dress plays both the roles of a social segregator and an allocator. It can thus be argued that to a certain degree, ethnic dress reifies ethnic identity and group differentiation.[167]

As rightly identified by Bhopal, the perception of others in society has an impact on the classification of a group's ethnicity.[168] This means that it is likely for misunderstandings and misinterpretations of an ethnic group's beliefs and customs to influence society's relationship with its members. The objective nature of race, and in effect ethnicity, is based on the ascription of traits based on a perception of similarities amongst a group. This, in turn, leads to categorization, differentiation in the form of regarding outsiders as 'the other', and stereotyped beliefs.[169] The creation of stereotypes unveils that it is not necessarily designed to be negative; the history of human behaviour shows a propensity to understand the world by the creation of groups.[170] For the sake of the preservation of group purity and dominance, established social groups do not readily mix or socialize with non-group members. This voluntary isolation deprives members of gaining the knowledge and experience needed to make an accurate judgement on other groups.[171] There is also an individualistic element to ethnicity as self-designation is considered and can be utilized to join an established group.[172]

---

[167] Joanne B. Eicher and Tonye V. Erekosima, 'Why Do They Call it Kalabari? Cultural Authentication and the Demarcation of Ethnic Identity' in Joanne B. Eicher (ed), *Dress and Ethnicity* (Berg Publishers, 1995), pp. 139-164
[168] R Bhopal, 'Glossary of Terms Relating to Ethnicity and Race: For Reflection and Debate' [2004] 58(6) Journal of Epidemiology and Community Health, pp. 441 - 445
[169] James L Hilton and William von Hippel, 'Stereotype' [1996] 47 Annual Review of Psychology, pp.237-271
[170] Michael Tomasello, *A Natural History of Human Thinking* (Harvard University Press, 2014), pp. 7 - 32
[171] Frederik Barth, 'Introduction to Ethnic Groups and Boundaries: The Social Organization of Cultural Difference' in Marco Martiniello and Jan Rath (eds) Se*lected Studies in International Migration and Immigrant Incorporation* (Amsterdam University Press, 2010), pp. 407 - 416
[172] Barbara Kinket and Maykel Verkuyten, 'Ethnic Self-Identification and Social Context' [1997] 60(4) Social Psychology Quarterly, pp.338-354

2.5 ETHNIC DISCRIMINATION AND RACISM

'Discrimination is a moral issue, a question of social justice and human rights.'[173] Dickens' succinct assessment of discrimination recognizes that the phenomenon is made up of different elements and includes a significant aspect of social interaction. Key to the discussion on the sociological approach to discrimination is an understanding of how discrimination is impacted by other social problems. Pager and Shepherd explain that "a key feature of any definition of discrimination is its focus on behaviour",[174] which sets it apart from similar phenomena, such as racism and prejudice, which are both underlined by ideologies and mental beliefs. However, ethnic discrimination is inextricably linked to both prejudice and racism as it is usually borne out of a racist belief or prejudicial mindset.[175] Consequently, it is crucial to critically evaluate the racist and prejudicial factors underlying discriminatory behaviour to accurately appraise the effectiveness of the relevant laws in subsequent chapters.

Clair and Denis essentially define racism as a form of group domination and as an attitude that asserts racial superiority.[176] As race is not solely centred on biology but also identity, consciousness and culture, rules that seemingly prevent the sociological manifestations of race can be deemed to be racist and discriminatory, even though they do not categorize people by the colour of their skin. Treating discrimination as a subset of racism, the complexities of group differentiation and normalized or subconscious behavioural patterns increase in importance. As highlighted by Moreau, not all acts of racism are performed to cause harm.[177] Due to the historical relations amongst racial groups, certain ideologies regarding race have become

---

[173] Linda Dickens, 'The Road is Long: Thirty Years of Equality Legislation in Britain' [2007] 45(3) British Journal of Industrial Relations, pp. 463-494

[174] Devah Pager and Hana Shepherd, 'The Sociology of Discrimination: Racial Discrimination in Employment, Housing Credit and Consumer Markets' [2008] 34 The Annual Review of Sociology at page 182

[175] Devah Pager and Hana Shepherd, 'The Sociology of Discrimination: Racial Discrimination in Employment, Housing Credit and Consumer Markets' [2008] 34 The Annual Review of Sociology, pp.181-209

[176] Matthew Clair and Jeffrey S Denis, 'Sociology of Racism' [2015] 19 International Encyclopedia of the Social & Behavioural Sciences, pp. 857 - 863

[177] Sophia Moreau, 'What is Discrimination?', [2010] 38(2) Philosophy and Public Affairs, pp. 143-179

integrated into the society; consequently, there have been enacted laws, institutional policies and social patterns which are underpinned by the normalized racist ideologies.[178]

From the argument regarding racism, it can be said that discrimination is an agent that both creates and maintains a system of racial hierarchy. Discriminatory acts can subvert a group, reduce its visibility, silence its voice and eventually normalize the negative stereotypes which fuel the cycle of further discrimination.[179] Important in the discussion of discriminatory acts is the distinction between 'racism' and racialization. Racialization is simply the categorization and differentiation of groups based on their respective biological features and their shared ancestral descent; this is a result of the presence of diversity within a society.[180] People confront diversity in order to assess and stabilize their place in society. This conflict brought about by diversity leads to intensified grouping and categorizations, with terms like 'foreigner', 'alien', and 'other' increasingly used to identify non-group members.[181] Racism is a negative use of racialization to create erroneous links between racial features and moral or intellectual capacity.[182] In the same way, discrimination can be differentiated from the process of group differentiation. Group differentiation is not inherently discriminatory and only becomes so when treatment of group members is based on the racist views purporting that the relevant group is inferior.

A differentiation of ethnicity from race raises the question of 'what is the dominant ethnic group in Britain?'. Pilkington interestingly notes that the White group does not automatically amount to an ethnic group.[183] The similarities in physical appearance and skin colour do not

---

[178] Helena Wray, 'The Aliens Act 1905 and the Immigration Dilemma' [2006] 33(2) Journal of Law and Society, pp. 302 - 323

[179] Elizabeth A Deitch, Adam Barsky, Rebecca M Butz, Suzanne Chan, Arthur P Brief and Jill C Bradley, 'Subtle yet Significant: The Existence and Impact of Everyday Racial Discrimination in the Workplace' [2003] 56(11) Human Relations, pp. 1299-1324

[180] Rohit Barot and John Bird, 'Racialization: The Genealogy and Critique of a Concept' [2010] 24(4) Ethnic and Racial Studies, pp. 601 - 618

[181] Tony Kushner, *We Europeans? Mass Observation, 'Race' and British Identity in the Twentieth Century* (Ashgate, 2004)

[182] Tony Kushner, *We Europeans? Mass Observation, 'Race' and British Identity in the Twentieth Century* (Ashgate, 2004)

[183] Andrew Pilkington, 'Racism in Schools and Ethnic Differentials in Educational Achievement: A Brief Comment on a Recent Debate' [1999] 20(3) British Journal of Sociology of Education, pp.411-417

translate to the cohesiveness of belief and subjective convictions of mutual connection.[184] British culture has, arguably, become so intertwined with foreign practices and cannot be reduced to a discernible state of being. Consequently, national origin, skin colour and geographical proximity are seemingly the factors that forged the existence of the dominant group in British society.[185] An ethnic group can be likened to a parent group with varying subgroups within it. It is not heterogeneous but contains people who may differ in their religious convictions, socio-economic position, and geographical origin.[186] The relatively recent emergence of the South Asian community as a unified entity reflects this with its members' variance of religion, language, and historical background.[187]

The effect of skin colour in ethnic-based discrimination can be seen in how quickly immigrants with white skin are accepted into British society. Whilst White immigrants may differ culturally and do face some forms of discriminatory behaviour, their physical similarity to the dominant group has excluded them from the more intense forms of discrimination.[188] White South Africans, Australians, and Canadians, for example, might be considered culturally inferior but not intrinsically and biologically subservient. Hence, the ethnic manifestations of such groups are not met with as much opposition as that of those of colour.[189] When this occurs in a diverse community, though the social laws equally apply to everyone, they become indirectly discriminatory. The suppressed ethnic groups are then subtly coerced into acculturation, assimilation and/or a denouncement of visible variance such as ethnic dress.[190] Just as the concept of 'race' is open to varying interpretations, 'racism' has been noted to have varying

---

[184] Roxann Wheeler, *The Complexion of Race: Categories of Difference in Eighteenth-Century British Culture* (University of Pennsylvania Press, 2010), pp. 234 - 288

[185] Mike Savage, David Wright and Modesto Gayo-Cal, 'Cosmopolitan Nationalism and the Cultural Reach of the White British' [2010] 16(4) Nations and Nationalism, pp.598-615

[186] Zakiya Luna, '" Truly a Women of Colour Organization": Negotiating Sameness and Difference in Pursuit of Intersectionality' [2016] 30(5) Gender and Society, pp.769-790

[187] Pnina Werbner, 'Theorising Complex Diasporas: Purity and Hybridity in the South Asian Public Sphere in Britain' [2004] 30(5) Journal of Ethnic and Migration Studies, pp. 895 - 911

[188] Robert Ford, 'Acceptable and Unacceptable Immigrants: How Opposition to Immigration in Britain is Affected by Migrants' Region of Origin' [2011] 37(7) Journal of Ethnic and Migration Studies, pp. 1017-1037

[189] Will Kymlicka, 'Immigration, Citizenship, Multiculturalism: Exploring the Links' [2003] 74 The Political Quarterly, pp.195-208

[190] Robert Ford, 'Acceptable and Unacceptable Immigrants: How Opposition to Immigration in Britain is Affected by Migrants' Region of Origin' [2011] 37(7) Journal of Ethnic and Migration Studies, pp. 1017-1037

interpretations. Bhavani *et al.* argue that the varying and sometimes opposing views on racism make it difficult to assess its root and, therefore, makes solutions complex and ineffective.[191] Drawing from Bhavani,[192] Kushner[193] and Pyke's[194] discussions on race, it can be inferred that the concept is multifaceted, evolving and influenced by both objective and subjective elements. Consequently, for ethnic and racial manifestation to be appropriately encouraged in the employment sphere, corporate bodies need to be educated on the complexities of ethnic and race-based physical expression. As such, corporate dress codes and appearance standards should recognize the need for flexibility and re-evaluate policies that insist on secularity and neutral professional wear.

---

[191] Reena Bhavnani, Heidi Safia Mirza, Veena Meetoo, *Tackling the Roots of Racism: Lessons for Success*. (Policy Press, 2005), pp. 1 - 55

[192] Reena Bhavnani, Heidi Safia Mirza, Veena Meetoo, *Tackling the Roots of Racism: Lessons for Success*. (Policy Press, 2005), pp. 1 - 55

[193] Tony Kushner, *We Europeans? Mass Observation, 'Race' and British Identity in the Twentieth Century* (Ashgate, 2004)

[194] Karen D Pyke, 'What is Internalized Racial Oppression and Why Don't We Study It?' [2010] 53(4) Sociological Perspectives, pp.551-572

2.6 RACIALIZED UNDERCLASSES AND ETHNIC DISCRIMINATION

In some instances, ethnic minority individuals are treated as racialized underclasses in Britain.[195] In the employment scene, this manifests in segregation, with ethnic minorities dominating the informal sectors or in jobs considered to be distasteful while the majoritarian group occupy more professional jobs.[196] It can be inferred from this that bias against minorities can become concretized and manifest in established conditions such as the partitioning of job types. This can be said to stem from the historical reality of employment in the UK, whereby ethnic minorities were initially engaged in what were considered to be mean and downgrading jobs. Clair and Dennis assert that this was a result of racial categorization, which deemed non-Europeans as inferior and un-evolved, consequently forming the justification for slavery and enforced labour.[197]

The concept of a minority underclass in Britain focuses on the socio-economic status of minorities and analyses if and why they constitute a lower class likely to be exploited by others.[198] The theory of the minority underclass reveals the reality of how difference is dealt with in society. Whilst minorities no longer suffer total exclusion from the workplace, their presence tends to be unconsciously limited to less prominent positions.[199] Recent research into the academic attainments of ethnic groups substantiates this argument as it is apparent that a notable proportion of minorities are over-qualified and over-educated for the jobs that they do.[200]

---

[195] Tony Kushner, *We Europeans? Mass Observation, 'Race' and British Identity in the Twentieth Century* (Ashgate, 2004)

[196] Malcolm Brynin and Ayse Guveli, 'Understanding the Ethnic Pay Gap in Britain' [2012] 26(4) Work, Employment and Society, pp. 574 - 587

[197] Matthew Clair and Jeffrey S Denis, 'Sociology of Racism' [2015] 19 International Encyclopedia of the Social & Behavioural Sciences, pp. 857 - 863

[198] Ken Clark and Stephen Drinkwater, 'Segregation Preferences and Labour Market Outcomes' [2007] 94(2) Economic Letters, pp. 278 - 283

[199] Ken Clark and Stephen Drinkwater, 'Patterns of Ethnic Self-Employment in Time and Space: Evidence from British Census Microdata' [2010] 34(3) Small Business Economics

[200] Ron Johnston, Ibrahim Sirkeci, Nabil Khattab and Tariq Modood, 'Ethno-religious Categories and Measuring Occupational Attainment in Relation to Education in England and Wales: A Multilevel Analysis' [2010] 42(3) Environment and Planning, pp.578-591; Szilvia Altorjai, 'Over-qualification of Immigrants in the UK' [2013[No.2013-11 ISER Working Paper Series; Malcolm Brynin, 'Overqualification in Employment' [2002] 16(4) Work, Employment and Society, pp. 637 - 654

Regarding ethnic dress, the theory of minority underclass can aid the explanation of the dearth of ethnic attire in corporations. If the notion of ethnic minorities being suited for seemingly inferior jobs is internalized by society, institutional rules will reflect this by requiring the few minorities in professional positions to refrain from ethnic manifestations whilst performing job roles. It can be said that the barring of ethnic dress extends the belief prominent in the colonial era that skin colour is a determinant of value and status.[201] In the modern-day, measurements of a person's worth via skin tone is frowned on; however, allocation of status via a weighing of the cultural norms and values exhibited via ethnic dress persists. Indirect discrimination disadvantaging those with certain characteristics has replaced overt discrimination, which directly attacked personal identity. The underclass theory also signals a change in the way that the employment realities of minorities should be examined. Since minorities often occupy the lower stratum of the working-class group, analysis on the social distribution of benefits and availability of socio-economic opportunities may better aid understanding compared to a sole analysis of discriminatory beliefs and attitudes.[202]

Wallace and Joseph-Salisbury use media, particularly the filmmaking industry, to exemplify how such avenues can build or intensify discussions around racial issues.[203] Using an anthology series, the authors draw on the visual manifestation of the minority actors within the show to demonstrate that the Black community is physically diverse. Authentic ethnic appearances are broad and not limited to society's insubstantial understanding of a community's dress needs. Whilst Wallace and Joseph-Salisbury focus on Black pupils, their overall assessment indicates that social organisms, such as schools, set the stage for potential future bias of minorities.[204]

---

[201] Mike Cole, 'A Plethora of 'Suitable Enemies': British Racism at the Dawn of the Twenty-First Century' [2009] 32(9) Ethnic and Racial Studies, pp. 1671 - 1685
[202] Devah Pager and Hana Shepherd, 'The Sociology of Discrimination: Racial Discrimination in Employment, Housing Credit and Consumer Markets' [2008] 34 The Annual Review of Sociology, pp.181-209
[203] Derron Wallace and Remi Joseph-Salisbury, 'How, still, is the Black Caribbean child made educationally subnormal in English school system?' [2021] Ethnic and Racial Studies, pp. 1-27
[204] Derron Wallace and Remi Joseph-Salisbury, 'How, still, is the Black Caribbean child made educationally subnormal in English school system?' [2021] Ethnic and Racial Studies, pp. 1-27

Inferring from their work, if minority students are made to feel distinctly different from their White peers, it can be conjectured that there will be an increase in the desire to acculturate and adopt majoritarian norms as a means of both survival and an attempt to secure future beneficial opportunities.[205] Furthermore, their work explains how minorities, for example, Black Caribbean youths, are not biologically condemned to be inferior but are socially disadvantaged from the onset, thereby limiting their chances for professional prowess and confidence.[206] Key to this problem is the educational system's bias towards minorities by misinterpreting their cultural expressions as inherently less valuable.

The disproportionate presence of minority groups in working roles offering minimum wage and/or little authority can be described as a manifestation of systemic societal bias. Murji explains that this systematic bias manifested by social bodies, government and organizations could be termed as 'institutional discrimination'.[207] The term was widely used in the Stephen Lawrence case detailed in the McPherson report, and it can be likened to an expansion of individual racial prejudice.[208] When the dominant and majoritarian group in a society uphold discriminatory behaviour, that biased treatment naturally seeps into bureaucracies and the law. As the law often reflects the moral code of the majority, accepted prejudice will be justified and excused in legal instruments.[209]

Institutional racism can be considered as a form of indirect discrimination based on a social dominance orientation and occurs primarily in the sphere of establishments that operate by systematic general policies.[210] Institutional racism is partly the consequence of embodied biased beliefs and ignorance of how to govern a diverse group in accordance with substantive

---

[205] Cheryl Thompson, 'Black Women, Beauty and Hair as a Matter of Being' [2009] 38(8) Women's Studies, pp. 831-856

[206] Derron Wallace and Remi Joseph-Salisbury, 'How, still, is the Black Caribbean child made educationally subnormal in English school system?' [2021] Ethnic and Racial Studies, pp. 1-27

[207] Karim Murji, 'Sociological Engagements: Institutional Racism and Beyond' [2007] 41(5) Sociology, pp.843-855

[208] Eugene McLaughlin and Karim Murji, 'After the Stephen Lawrence Report' [1999] 19(3) Critical Social Policy, pp.371-385

[209] Reena Bhavnani, Heidi Safia Mirza, Veena Meetoo, *Tackling the Roots of Racism: Lessons for Success*. (Policy Press, 2005), pp. 1 - 55

[210] Karim Murji, 'Sociological Engagements: Institutional Racism and Beyond' [2007] 41(5) Sociology, pp.843-855

equality principles. Institutional racism demonstrates the influence of biased beliefs on key organizations within the society.[211] It can be inferred from this that policymakers in socially significant institutions tend to both be members of the dominant group and consciously or unconsciously supporters of racial prejudice.[212] This inference is supported by research that shows that White males are disproportionately more likely to occupy positions of authority in British companies and businesses.[213] Consequently, the complexities of the minority groups may be subconsciously overlooked as those with the power to meet their needs do not share their struggles or understand the intricacies needed for their effective contribution to society.[214]

Another significant and negative consequence of stereotype is the imbibing of the ideologies by the stereotyped groups themselves. This happens when stereotyped beliefs become marginalized in society, forcing the affected group members to take a defensive stance and adopt majoritarian norms to deflect bias.[215] An example of this can be seen when Afro-Caribbean women choose to manipulate their natural hair or avoid ethnic hairstyles to be seen as professional.[216] The negative stereotypes regarding Black hair, including its perceived filth, untidiness and association with frowned upon practices and religion (for example, the connection between dreadlocks and Rastafarianism), subconsciously influences Afro-Caribbean women to change their natural appearance in order to be acceptable.[217] The inculcation of the bias is so

[211] Eugene McLaughlin and Karim Murji, 'After the Stephen Lawrence Report' [1999] 19(3) Critical Social Policy, pp.371-385

[212] Karim Murji, 'Sociological Engagements: Institutional Racism and Beyond' [2007] 41(5) Sociology, pp.843-855

[213] Adrian Furnham and Emma Wilson, 'Gender Differences in Estimated Salaries: A UK Study' [2011] 40(5) The Journal of Socio-Economics, pp.623-630

[214] Peter A Heslin, Myrtle P Bell and Pinar O Fletcher, 'The Devil Without and Within: A Conceptual Model of Social Cognitive Processes Whereby Discrimination Leads Stigmatized Minorities to become Discouraged Workers' [2012] 33(6) Journal of Organizational Behaviour, pp.840-862

[215] Lena Nekby and Magnus Rodin, 'Acculturation Identity and Labour Market Outcomes' [2007] IZA Discussion Papers, No. 2826, Institute for the Study of Labour; Yvette M J van Osch and Seger M Breugelmans, 'Perceived Intergroup Difference as an Organizing Principle of Intercultural Attitudes and Acculturation Attitudes' [2011] 43(5) Journal of Cross-Cultural Psychology, pp. 801-821

[216] Ra'Mon Jones, 'What the Hair: Employment Discrimination Against Black People Based on Hairstyles' [2020] 36(27) Harv. B.L. Law J, 27

[217] Cheryl Thompson, 'Black Women, Beauty and Hair as a Matter of Being' [2009] 38(8) Women's Studies, pp. 831-856

strong that Black women often consider their natural hair to be 'nappy' and are known to spend significant resources and time to have a more Westernised looking hairstyle.[218]

Adeojo considers Black hair as both a tool to demonstrate ethnic pride and a political weapon to dismantle pervasive social bias for Eurocentric or White beauty ideals.[219] The idealisation of Eurocentric beauty standards is considered more than physical preferences but a potent act of suppression of the authentic reality of minority presence. Furthermore, her assessment of Black hair supports the argument that minority manifestations are considered unprofessional with minority workers subtly denied their rightful dignity unless assimilated to a Westernised mode of dressing. This negative belief system is so widespread that even Black people, in territories where they form the majoritarian group, still feel pressured into adopting an unnatural mode of dressing to be both externally validated and internally confident in professional roles.[220]

The suppression of minority expression can be argued to occur through the persistent profiling of minority cultures as inferior.[221] Adeojo cites the shame that many Black women feel about their hair; this is further evidenced through the deliberate decision to use chemicals, extensions or excessive heating tools to appear more Eurocentric.[222] To dismantle the negative connotations associated with minority appearances, there needs to be a rewriting of the narrative to present an authentic view of the cultural and ethnic values of minorities. It is vital that this retelling of the symbolisms associated with minority appearance is told by the affected communities. The conversation around hair cannot be ignored or even considered trivial as it represents the culture, ethnic roots and values of significant minority groups. Consequently, for

---

[218] Ra'Mon Jones, 'What the Hair: Employment Discrimination Against Black People Based on Hairstyles' [2020] 36(27) Harv. B.L. Law J, 27

[219] Mosunmola Omowunmi Adeojo, 'Weaving Through the Tresses: A Review of Emma Dabiri's *Don't Touch My Hair'* [2021] 33 (1) Journal of African Cultural Studies, pp. 115-117

[220] Mosunmola Omowunmi Adeojo, 'Weaving Through the Tresses: A Review of Emma Dabiri's *Don't Touch My Hair'* [2021] 33 (1) Journal of African Cultural Studies, pp. 115-117

[221] Reena Bhavnani, Heidi Safia Mirza, Veena Meetoo, *Tackling the Roots of Racism: Lessons for Success*. (Policy Press, 2005), pp. 1 - 55

[222] Mosunmola Omowunmi Adeojo, 'Weaving Through the Tresses: A Review of Emma Dabiri's *Don't Touch My Hair'* [2021] 33 (1) Journal of African Cultural Studies, pp. 115-117

the sake of true visible diversity, minorities must be freed from the expectation to change their dress choice for the sake of a professional role

The concept of inferential racism can also aid understanding of the problematic nature of the barring of ethnic dress. Pilkington discusses inferential racism with reference to the role of the media in spreading racist views.[223] Unlike overt racism, inferential racism occurs when the media displays subtle racist views in a positive frame, often with seemingly balanced debates, but with the racist assumptions treated as facts. An example of this may include news coverage of the importance to have secure borders or tough immigration laws, which implicitly infers that an influx of foreigners is dangerous and a threat to society.

It can thus be argued that society has a tremendous impact on the law as legislation responds to the perceived needs of the majority and can be manipulated following the level of pressure evoked by groups with particular needs. It has been noted that the establishment of group rights and the protection of certain characteristics are the direct consequences of public protests, media manipulation and widely expressed opinions.[224] The influence of society on the law can also be seen in the fact that laws change in accordance to change in popular opinion. This can be seen in the growth in the acknowledgement of LGBTQ rights over the recent years[225] and the development of safeguards to ensure people of colour and minorities receive fair treatment.[226]

Regarding dress, policies sexualizing women or placing unequal burdens on both genders have received mounting attention, and it is expected that such policies will no longer be acceptable.[227] In the same vein, endorsement for ethnic dress, which includes natural hair and ethnic hairstyles, has to be founded on societal values or considered to be an issue of worth in

---

[223] Andrew Pilkington, 'Racism in Schools and Ethnic Differentials in Educational Achievement: A Brief Comment on a Recent Debate' [1999] 20(3) British Journal of Sociology of Education, pp.411-417

[224] David P Baron, Maretno Agus Harjoto and Hoje Jo, 'The Economics and Politics of Corporate Social Performance' [2017] 13(2) Business and Politics, pp. 1 - 46

[225] Fiona Colgan and Aidan McKearney, 'Visibility and Voice in Organizations: Lesbian, Gay, Bisexual and Transgendered Employee Networks' [2012] 31(4) Equality, Diversity and Inclusion, pp. 359 - 375

[226] Lauri Johnson, 'Interpreting Historical Responses to Racism by UK Black and South Asian Headteachers Through the Lens of Generational Consciousness' in *Educational Leadership*, pp. 124-137 (Routledge, 2017).

[227] Charlotte Werner, 'To What Extent Should the Law Do More to Address Gendered Discrimination in Workplace Dress Codes?' [2017] 44 Exeter L Rev, 192

order to be legally protected. If there exists a bias against ethnic minorities and negative stereotypes related to the group members, it is unlikely that the law will change to accommodate the expressions and manifestations of the negatively perceived ethnic groups.[228] The connection between dress, society and indirect discrimination entails a critical review of the collective social processes by which groups come to define the status and standing of other groups.

---

[228] Ra'Mon Jones, 'What the Hair: Employment Discrimination Against Black People Based on Hairstyles' [2020] 36(27) Harv. B.L. Law J, 27

2.7 THE INFLUENCE OF DIVERSITY POLITICS AND GROUP DOMINANCE ON ETHNIC-BASED INDIRECT DISCRIMINATION

It is argued that the antipathy against visible manifestations of ethnic minority status is rooted in the belief that variance from the established norms threatens social stability and introduces uncertain changes.[229] A minority who is perceived as being resistant to assimilation is characterized as being hostile. This desire to maintain social norms may be a factor that underlies the corporate sector's hesitance to imbibe ethnic dress in established dress codes. Minority ethnic employees, in order to present a non-threatening image and induce feelings of shared patriotic inclinations, may be subconsciously required to abide by dress codes that reflect the dominant group's culture. It can be argued that corporate oppositions to ethnic dress and ethnic manifestations are based on the underlying notion that foreign identities are unsuited for the professional scene. Unlike outspoken criticisms against minorities, ethnic and racial bias now manifests in the restriction of cultural materialization and the subtle maintenance that only dominant norms are appropriate in professional settings.

A key sociological factor influencing race-based discrimination is race prejudice, and this was illustrated by Blumer, who asserts that race prejudice is to a large extent a product of a negative sense of awareness.[230] He argues that prejudicial actions do not stem primarily from individual antagonistic feelings or hostile emotions but from the relationship that racial groups have developed with one another.[231] Drawing from Blumer's assertions, it can be said that the bias behind some indirectly discriminatory actions is attributable to social group hierarchy and behaviours rather than to the feelings of the perpetrating individual. It is, therefore, necessary to dedicate attention to how racial groups identify themselves and characterize other groups.

---

[229] Tony Kushner, *We Europeans? Mass Observation, 'Race' and British Identity in the Twentieth Century* (Ashgate, 2004)

[230] Herbert Blumer, 'Race Prejudice as a Sense of Group Position' [1958] 1(1) The Pacific Sociological Review, pp. 3 - 7

[231] Herbert Blumer, 'Race Prejudice as a Sense of Group Position' [1958] 1(1) The Pacific Sociological Review, pp. 3 - 7

Groups can be said to formulate and revolve through a phenomenon that can be tagged as 'the science of ourselves'.[232] This involves analysing your own group to discover how its culture, ideologies and perception affect relations with others and deals with observed differences. The phrase was utilized by Madge and Harrison in their work on Mass Observation and referred to the need to study the impact of subjectivity in a diverse society.[233] It was discovered that an individual's subjective bias, partly induced by their social group membership, significantly interfered with his ability to accurately judge the behavioural patterns of others.[234] This demonstrates that there is a strong link between the internal beliefs of the individual and the collective actions of a group. Furthermore, studies have shown that the reverse is also the case as group action tends to influence the perceptions of an individual member.[235]

A person's understanding of what constitutes society will also affect their perception of ethnic minorities.[236] The most common conceptualization of society is that it is synonymous with the nation and represents a cohesive compatible unit that is distinct and separate from other collective bodies of people. Pilkington notes that problematic group relations abound when Britain is conceived as a White society.[237] That conception creates the impression that coloured individuals are intruders or beneficiaries of the accommodation of Britain. Consequently, individuals from ethnic minority backgrounds are not viewed as authentically British but are expected to assimilate and express gratitude at whatever social position that they are given.[238] Another problem with associating society with nationality is that it creates the impression that there are fixed and discernible boundaries preventing the flow of migration of insiders and

---

[232] Mark Toogood, 'Modern Observations: New Ornithology and The Science of Ourselves, 1920-1940' [2011] 37(3), pp. 348-357

[233] Charles Madge and Tom Harrison, 'Mass Observation: First Year's Work.' [1938] London: Frederick Muller Ltd.

[234] Tony Kushner, *We Europeans? Mass Observation, 'Race' and British Identity in the Twentieth Century* (Ashgate, 2004); Charles Madge and Tom Harrison, 'Mass Observation: First Year's Work.' [1938] London: Frederick Muller Ltd.

[235] Tony Kushner, *We Europeans? Mass Observation, 'Race' and British Identity in the Twentieth Century* (Ashgate, 2004)

[236] Tony Kushner, *We Europeans? Mass Observation, 'Race' and British Identity in the Twentieth Century* (Ashgate, 2004)

[237] Andrew Pilkington, *Racial Disadvantage and Ethnic Diversity in Britain* (Palgrave Macmillan, 2003)

[238] Lena Nekby and Magnus Rodin, 'Acculturation Identity and Labour Market Outcomes' [2007] IZA Discussion Papers, No. 2826, Institute for the Study of Labour

outsiders.[239] Unlike nations and sovereign states, which have marked borders and relatively monitored movement within their territories, society is flexible and can be influenced significantly by individuals considered to be non-members.

Another erroneous belief about society is the thought its members are analogous. An examination of British society indicates that even from historical times, there has not existed an agreeing and compatible body of people.[240] Even without the increase in the ethnic diversification of Britain, class hierarchy, family connections and religious beliefs separated the people into several groups. Furthermore, as individuals have multiple identities, people have always floated in and out of groups depending on circumstances.[241] It can therefore be informed that mere proximity or being domiciled within the same territory does not equate to a unified group. Hence, society is more intricately connected to bonding ideologies than to close proximity. Furthermore, society is a construct of humanity that cannot be neatly divided or demarcated into discernible and fixed groups.[242]

'Constructions of national and individual identity, inclusive and exclusive, set the boundaries for the articulation and practice of prejudice, discrimination and violence as well as determining opposition to them'.[243] Irrespective of ethnic group affiliation, research suggests that a majority of the individuals of ethnic minority descent domiciled in the UK consider their national identity to be British or English.[244] Furthermore, religious convictions which conflict with national norms may make it harder for adherents to develop a national identity. Jivraj and Simpson stated that Muslims, in particular, can find it difficult to merge religious beliefs to

---

[239] Tony Kushner, *We Europeans? Mass Observation, 'Race' and British Identity in the Twentieth Century* (Ashgate, 2004)

[240] Robert Ford, 'Acceptable and Unacceptable Immigrants: How Opposition to Immigration in Britain is Affected by Migrants' Region of Origin' [2011] 37(7) Journal of Ethnic and Migration Studies, pp. 1017-1037

[241] Tony Kushner, *We Europeans? Mass Observation, 'Race' and British Identity in the Twentieth Century* (Ashgate, 2004)

[242] Tim Reeskens and Matthew Wright, 'Nationalism and the Cohesive Society: A Multilevel Analysis of the Interplay Among Diversity, National Identity and Social Capital Across 27 European Societies' [2013] 46(2) Comparative Political Studies, pp.153-181

[243] Tony Kushner, *We Europeans? Mass Observation, 'Race' and British Identity in the Twentieth Century* (Ashgate, 2004), at page 187

[244] Tariq Modood, Richard Berthoud, Jane Lakey, James Nazroo, Patten Smith, Satnam Virdee and Sharon Beishon. *Ethnic Minorities in Britain: Diversity and Disadvantage* (No. 843, Policy Studies Institute, 1997)

societal expectations.[245] However, empirical data demonstrates that even conflicting religious ideals does not prevent a significant proportion of ethnic minority Muslims from affiliating themselves with British identity.[246] This demonstrates that individuals create their sense of Britishness and are capable of integrating preferred British norms with established ethnic culture. Interestingly, research also suggests that self-identification as British is not heavily dependent on ethnic background or cultural values but on the length of time spent in the UK.[247] It can therefore be inferred that these nationalistic values play a significant role in the development of British society. A focus on national identity could thus be a unifying force as it pays no regard to the variance in backgrounds or biological features but centres on the shared feeling of comradeship. The problem, however, is in each group's definition of what 'British' means. National identity is tainted and influenced by racial group membership and ethnic values; consequently, the British society is not uniform, but one noted for diversity and multiculturalism.[248]

---

[245] Stephen Jivraj and Ludi Simpson (eds) *Ethnic Identity and Inequalities in Britain: The Dynamics of Diversity* (Policy Press, 2015)

[246] Claire Dwyer, 'Negotiating Diasporic Identities: Young British South Asian Muslim Women' [2000] 23(4) Women's Studies International Forum, pp. 475-486; Tariq Modood and Fauzia Ahmad, 'British Muslim Perspectives on Multiculturalism' [2007] 24(2) Theory, Culture & Society, pp. 187-213

[247] Stephen Jivraj and Ludi Simpson (eds) *Ethnic Identity and Inequalities in Britain: The Dynamics of Diversity* (Policy Press, 2015)

[248] Tony Kushner, *We Europeans? Mass Observation, 'Race' and British Identity in the Twentieth Century* (Ashgate, 2004)

2.8 CONCLUSION

As previously noted, it has been largely accepted that the British society can no longer be considered as white but is now being accepted as diverse.[249] However, the presence of indirect discrimination means that diversity is dealt with through subtle insistence on integration. Policies designed to integrate minorities into the dominant culture also dilute noticeable variant norms and minority practices.[250] The societal attitude towards groups considered to be foreign has historically been reflected in the law.[251] For example, the immigration controls established within the UK, such as the 1905 Aliens Act, reflects social consciousness, which depicts immigration as inherently harmful. The employment rights of asylum seekers,[252] international students[253] and recent migrants[254] may be demonstrative of a subtle resistance by the dominant culture in allowing those considered to be threats to effectively participate in the economic realm of the country.[255] As claimed by Pilkington, when immigration laws and rules about foreigners are closely examined, underlying racist ideologies can be found.[256] Apart from immigration laws, rules concerned with governing group relations and the treatment of minorities are also developed on the foundation of social attitudes, an example of which is, arguably, reflected in laws such as the 1965 and 1968 Race Relations Act.[257]

Within the UK, irrespective of the differences in gender identities, personal convictions and background, certain principles have been accepted by the majority and shape the behaviour

---

[249] Tony Kushner, *We Europeans? Mass Observation, 'Race' and British Identity in the Twentieth Century* (Ashgate, 2004)

[250] Lena Nekby and Magnus Rodin, 'Acculturation Identity and Labour Market Outcomes' [2007] IZA Discussion Papers, No. 2826, Institute for the Study of Labour

[251] Helena Wray, 'The Aliens Act 1905 and the Immigration Dilemma' [2006] 33(2) Journal of Law and Society, pp. 302 - 323

[252] Lucy Mayblin, 'Asylum, Welfare and Work: Reflections on Research in Asylum and Refugee Studies' [2014] 34(5/6) International Journal of Sociology and Social Policy

[253] Joanna Howe, 'A Legally Constructed Underclass of Workers? The Deportability and Limited Work Rights of International Students in Australia and the United Kingdom' [209] 48(3) Industrial Law Journal, pp.416-446

[254] Violetta Parutis, '" Economic Migrants" or "Middling Transnationals"? East European Migrants' Experiences of Work in the UK' [2014] 52(10 International Migration, pp.36-55

[255] Rosemary Sales, 'The Deserving and the Undeserving? Refugees, Asylum Seekers and Welfare in Britain' [2002] 22(3) Critical Social Policy, pp.456-478

[256] Andrew Pilkington, *Racial Disadvantage and Ethnic Diversity in Britain* (Palgrave Macmillan, 2003), 378

[257] Andrew Pilkington, *Racial Disadvantage and Ethnic Diversity in Britain* (Palgrave Macmillan, 2003), 346 - 379

of the masses.[258] Examples of such widely accepted principles include democracy, individual freedom, and commercialism. The connection between the concept of society and discrimination against ethnic minorities is that minority beliefs that contradict the norms upon which the British society has been built will be treated as a threat.[259] Once minority beliefs are considered to be threats, discriminatory behaviour will abound to annul, dilute or restrict the manifestation of such beliefs. The threat of manifesting opposing beliefs is evident in the undermining of old traditions and their replacement with new ones.[260] The power of ethnic manifestation and dress is, therefore, better understood in light of its ability to change the structures of society by presenting alternative ways of living.

Social change is only possible because of human actions, but such action is in turn constrained by social forces.[261] The emphasis on social consciousness in this chapter regarding ethnic-based indirect discrimination is vital for at least two reasons. Firstly, the historical and current state of race relations is based on the social construct. Hence, the pervasive beliefs regarded as norms in society determines how minorities are treated and if and to what extent they are allowed to enjoy socio-economic benefits.[262] In a society like Britain, it can be said that the employment sphere is key in the regulation of the acquisition and maintenance of socio-economic privileges. Consequently, the professional and corporate entities domiciled in Britain are important in consideration of social attitudes. Lastly, it is posited that employment law is also reflective of dominant ideologies, thereby leaving minorities vulnerable. Research demonstrates that such vulnerable ethnic minorities can only achieve success in such a society by both suppressing their differences and adopting the dominant culture.[263] This reality places those who

---

[258] Tony Kushner, *We Europeans? Mass Observation, 'Race' and British Identity in the Twentieth Century* (Ashgate, 2004)

[259] Stephen Jivraj and Ludi Simpson (eds) *Ethnic Identity and Inequalities in Britain: The Dynamics of Diversity* (Policy Press, 2015)

[260] Tim Reeskens and Matthew Wright, 'Nationalism and the Cohesive Society: A Multilevel Analysis of the Interplay Among Diversity, National Identity and Social Capital Across 27 European Societies' [2013] 46(2) Comparative Political Studies, pp.153-181

[261] Reena Bhavnani, Heidi Safia Mirza, Veena Meetoo, *Tackling the Roots of Racism: Lessons for Success*. (Policy Press, 2005), pp. 1 - 55

[262] Jean-Frederic Schaub, *Race is about Politics: Lessons from History* (Princeton University Press, 2019), pp. 122-178

[263] Lena Nekby and Magnus Rodin, 'Acculturation Identity and Labour Market Outcomes' [2007] IZA Discussion Papers, No. 2826, Institute for the Study of Labour

refuse to dilute their ethnic identity or assimilate in a disadvantaged position where they are increasingly likely to be the victims of discriminatory practices.

This chapter establishes the theoretical framework for the succeeding chapter by focusing mainly on the sociological underpinnings of both race and ethnicity as a testament of their centrality in the understanding of the importance of ethnic dress. Ethnic dress can be used as a tool in the power struggle between dominant and minority groups. The wearing of ethnic dress in social situations previously dominated by the majoritarian White group initiates minority presence and dilutes an otherwise homogenous group. Hence, it will be argued that the enforcement of dress codes that deny ethnic manifestation is a form of internalized institutional discrimination to maintain the position of the dominant group. Furthermore, the fact that the law does not explicitly recognize ethnic dress as worth protection may be demonstrative of its adoption of societal biased views. The importance of a sociological study of group relations is based on the fact that social change cannot occur unless social beliefs and ideologies are redefined.[264] Such a restructuring of social values creates greater diversity and allows for the manifestation of ethnic identity without fear of repercussions to occur.

---

[264] Andrew Pilkington, *Racial Disadvantage and Ethnic Diversity in Britain* (Palgrave Macmillan, 2003)

3. ETHNIC DRESS AND INDIRECT DISCRIMINATION

3.1 INTRODUCTION

In this chapter, the main research question being answered is '*Should the law protect the clothing and appearance choices of ethnic minority workers?'*. In answering this question, the value of ethnic dress and ethnic identity is explored to determine the justification for its protection. From the critical observation of the sociological dimensions of ethnic dress, it can be determined whether the protected characteristic of race (which, as discussed in the preceding chapter, also includes ethnicity) is intricately connected with ethnic identity and dependent on physical manifestations. As clothing and appearance are powerful and explicit non-verbal means of communication, it is argued that depriving an individual of expressing the values and meanings of her ethnic group should amount to indirect discrimination if not adequately justified by the employer.

To explore the importance of clothing at work, the communicative nature of dress is discussed. In addition, the influence of societal ideals and expectations is scrutinized to determine if employers design and shape their dress codes to conform to socially determined patterns. The reverse of the issue, the impact of corporate dress codes in the shaping of such appearance standards in society, is also investigated to discover the fluidity of dress expectations and the flexible nature of fashion norms. The possibility that appearance regulations are used to erase ethnic minority symbolisms by demanding conformity to majoritarian dress norms is debated. This is done through an examination of the conceptualization of an ethnic or cultural image, with an emphasis on the subjective manner in which ethnicities manipulate and design their appearance and establish a pattern for identification. In addition, it is examined how dress and body presentation encourage individuals to take on roles representative of the image that they bear. These are used to demonstrate that ethnic dress, in particular, conveys information

about the group, their ideals, their position and what they represent. Consequently, it is argued that ethnic dress is an aspect of human consciousness that represents identity and showcases a person's perception about, and connection to, the society in which he/she is domiciled.

Drawing from the discussion revolving around the importance of society and group formation in the preceding chapter, this chapter demonstrates that appearance standards and expectations do not exist in a vacuum but evolve from what type of dress the general public consider right or wrong in a certain situation or environment.[265] Consequently, it can be inferred that, to an extent, society influences the type of dress codes adopted by workplaces. As such, research shows that appearance standards are more prominent and routinely enforced on employees working in customer-facing roles. This is due to the revelation that clientele create an impression of a brand's quality and efficacy based on their perception of the physical presentation of staff members.[266]

Furthermore, in this chapter, the link between dress and society is explored to examine the degree to which appearance standards are used as a tool for social control. This is important because the impact of discriminatory dress codes can only be fully appreciated when the manipulative potential of dress is understood. Unless ethnic dress is seen as an integral part of race and identity, there is little incentive for it to be protected and given precedence over an employer's alleged legitimate aim in a proportionality analysis. This chapter also discusses the impact of the media in establishing appearance standards and in setting social dress norms. The importance of the media is further elaborated in subsequent chapters as a tool for social control; it is, however, introduced here to demonstrate the link between public perception and visible representation.

---

[265] Todd Brower, 'What's in the Closet: Dress and Appearance Codes and Lessons from Sexual Orientation' [2013] 32(5) Equality, Diversity and Inclusion: An International Journal, pp. 419 - 502
[266] Chris Y. Shao, Julie A. Baker and Judy Wagner, 'The Effects of Appropriateness of Service Contact Personnel Dress on Customer Expectations of Service Quality and Purchase Intention: The Moderating Influences of Involvement and Gender' [2004] 57(10) Journal of Business Research, pp. 1164-1176

3.2 THE COMMUNICATIVE POWER OF DRESS

In the discourse involving the concept of dress in this study, it should be noted that dress is considered to be more than clothing. Shao, Baker and Wagner define dress as '*the total arrangement of material supplements (such as garments, jewellery and accessories) to the body and detectable modifications (for example, pierced ears, coiffed hair and tattoo) of the body*'.[267] Furthermore, Visone's interpretation of dress acknowledges that both the terminologies of 'dress' and 'appearance' are not limited to physical clothing items and accessories but include the total presentation of the human body.[268] Johnson, Lennon and Rudd also add that dress comprises of items that supplement the body, such as medicated eyewear (glasses and contact lenses) and hearing aids[269]. Like Shao *et al.*, Johnson *et al.* argue that modifications of the body impact a person's image so significantly that they should be considered in the definition of dress.[270] Body modifications include cosmetic surgery, the manipulation of the body via diet and exercise and creative expressions such as tattoos, piercings, and make-up. Hence, it is possible and common for individuals to use a combination of appearance modifications, clothing, and body supplements to express their cultural beliefs and ethnic origins.

> '*Dress is a coded sensory system of non-verbal communication that aids human interaction in space and time…As a system, dressing the body by modifications and supplements often does facilitate or hinder consequent verbal or other communication*'[271].

Eicher's assessment of dress is that it can be full of understated meanings, which may demonstrate an individual's codified distinctive personality as well as their observed or acquired

---

[267] Chris Y. Shao, Julie A. Baker and Judy Wagner, 'The Effects of Appropriateness of Service Contact Personnel Dress on Customer Expectations of Service Quality and Purchase Intention: The Moderating Influences of Involvement and Gender' [2004] 57(10) Journal of Business Research, at page 1165.

[268] Bill Visone, 'Cramping your style: Personal Appearance in the Workplace' [2016] 30(2) Georgetown Immigration Law Journal, 359

[269] Kim Johnson, Sharron J Lennon and Nancy Rudd, 'Dress, Body and Self: Research in the Social Psychology of Dress' [2014] 1(20) Fashion and Textiles, pp.1-24

[270] Kim Johnson, Sharron J Lennon and Nancy Rudd, 'Dress, Body and Self: Research in the Social Psychology of Dress' [2014] 1(20) Fashion and Textiles, pp.1-24

[271] Joanne B. Eicher, 'Introduction: Dress as Expression of Ethnic Identity' in Joanne B. Eicher (ed), *Dress and Ethnicity* (Berg Publishers, 1995), at page 1

awareness. The meanings communicated by dress often include an exposition of the wearer's social status. Durham notes that the meanings gleaned from dress are not definite but are transformed continuously by the prejudice, knowledge, and social group membership of the observers.[272]

'Clothing as one of the most visible forms of consumption performs a major role in the social construction of identity'.[273] As expounded by Crane, the vast majority of individuals in society utilize clothing as more than a covering for the body.[274] Irrespective of racial identity and ethnic group membership, people take advantage of the extensive choices of clothes to visually express aspects of their personality and to construct a social image. The varying parts of clothing, including fabric, style, colour, embellishments, and patterns, can be used to highlight, disguise, shape or modify the human body. Due to the vast opportunities available for the manipulation of dress, there is considerable room for interpretation by observers.

'Whether consciously or unconsciously, people convey in their appearance all kinds of information about their histories, their political ideas, their economic situation, their present ideals and their dreams for the future. As a form of communication, dress is powerful, flexible, and subtle'.[275]

Andrewes, who argues from the context of the relationship between dress and individuals from Western African communities, emphatically highlights the notion that dress has a voice.[276] She indicates that dress ought to be analysed by experts in the field of ethnography as it is both communicative of group membership and expressive of cultural inclinations. Andrewes goes

---

[272] Deborah Durham, 'The Predicament of Dress: Polyvalency and the Ironies of Cultural Identity' 26(2) [1999] American Ethnologist, pp. 389 - 411

[273] Diana Crane, *Fashion and its Social Agendas* (The University of Chicago Press, 2000) at page 1

[274] Diana Crane, *Fashion and its Social Agendas* (The University of Chicago Press, 2000)

[275] Janet Andrewes, *Bodywork - Dress as Cultural Tool Dress and Demeanour in the South of Senegal* [BRILL, 2004], at page 20

[276] Janet Andrewes, *Bodywork - Dress as Cultural Tool Dress and Demeanour in the South of Senegal* [BRILL, 2004], 260

further to demonstrate that a person's choice in clothing is as articulate as speech or language and develops a means of understanding between the wearer and the observer.[277]

Furnham *et al.*, like Andrewes, also indicate the interactive properties of dress and argue that clothing choice and physical appearance are sometimes used as a means of passing information of the wearer to viewers and the general public.[278] As an example, they illustrate that it is possible to communicate religious beliefs, education, social and marital status through clothing and accessories.[279] Helen Scholar's research also provides information as to how a specific group can use an awareness of their appearance to control the reaction of others.[280] The focus of her study was social work practice educators and students. In addition to finding that dress stimulates varying perceptions in the wearer and the viewer, Scholar's work demonstrates that employees (in this case, social workers) control their appearance to both demonstrate and embrace the value and worth of their profession.[281]

The communicative nature of dress can potentially be controversial as the message that the wearer hopes to be passed across could easily be misinterpreted or negatively misconstrued. Dolore Morondo Taramundi illustrates this through her research on women who choose to wear a face veil in connection to Islamic religious beliefs.[282] Her work demonstrates the varying messages that people receive from a woman wearing a veil. For instance, some interpret a religious face covering as female disempowerment and male domination, another group of people conceive the veil to be religious fanaticism, while there are still others who view it simply as a fashion statement or a deliberate appearance choice.[283]

---

[277] Janet Andrewes, *Bodywork - Dress as Cultural Tool Dress and Demeanour in the South of Senegal* [BRILL, 2004], 260
[278] Adrian Furnham, Pui Shuen Chan and Emma Wilson, 'What to wear? The influence of attire on the perceived professionalism of dentists and lawyers' [2014] 43 Journal of Applied Social Psychology, pp.1838-1850
[279] Adrian Furnham, Pui Shuen Chan and Emma Wilson, 'What to wear? The influence of attire on the perceived professionalism of dentists and lawyers' [2014] 43 Journal of Applied Social Psychology, pp.1838-1850
[280] Helen Scholar, 'Dressing the Part? The Significance of Dress in Social Work' [2013] 32(3) Social Work Education, pp.365-379
[281] Helen Scholar, 'Dressing the Part? The Significance of Dress in Social Work' [2013] 32(3) Social Work Education, pp.365-379
[282] Dolore Morondo Taramundi, 'Between Islamophobia and Post-Feminist Agency: Intersectional Trouble in the European Face-Veil Bans' [2015] Feminist Review, pp. 55-67
[283] Dolore Morondo Taramundi, 'Between Islamophobia and Post-Feminist Agency: Intersectional Trouble in the European Face-Veil Bans' [2015] Feminist Review, pp. 55-67

Communication is vital for both the creation and preservation of relationships, professional and otherwise. Consequently, it is important that a person is allowed to pass authentic information through his or her outward presentation. Furnham *et al.* included an argument that asserts that people form opinions about others within the first twelve seconds of face-to-face interaction.[284] From that assertion, it can be inferred that dress plays an important role in our perception of the nature, personality, and competency of others. Furnham *et al.'s* work also indicate that a significant proportion of people, inclusive of employees, employers, and customers, are substantially influenced by what an individual is wearing at any particular time.[285]

Mercedes Bengoechea indicates that depending on an individual's position and job role, his/her appearance may give different impressions and may be subject to varying interpretations.[286] This was evidenced by women in leading political roles who were found to create multiple identities showcased through their clothing. Whilst working, the women covered themselves in outfits meant to convey power and the identity of a leader. However, outside of the working environment, the women made a shift in identity signalled by the change of clothing and appearance. Bengoechea's research suggests that individuals are subconsciously pressured to adopt a stereotypical image presumed to be an ideal manifestation of their job roles.[287] The demand to communicate appropriate messages and to evoke the expected image of a specific position subdues the ability of individuals to be subjective and personal in their identity formation. This argument is also buttressed by Karl, Hall and Peluchette's evaluation of how people perceive themselves and others based on the items of clothing being worn.[288] Their research showcased the ability of individuals to effectively influence the impressions that others

---

[284] Adrian Furnham, Pui Shuen Chan and Emma Wilson, 'What to wear? The influence of attire on the perceived professionalism of dentists and lawyers' [2014] 43 Journal of Applied Social Psychology, pp.1838-1850

[285] Adrian Furnham, Pui Shuen Chan and Emma Wilson, 'What to wear? The influence of attire on the perceived professionalism of dentists and lawyers' [2014] 43 Journal of Applied Social Psychology, pp.1838-1850

[286] Mercedes Bengoechea, 'Media Interpretation of a Leading Woman Politician's Performances and Dress Code Challenges' [2001] 5(1) Journal of Interdisciplinary Feminist Thought, pp. 1 - 23

[287] Mercedes Bengoechea, 'Media Interpretation of a Leading Woman Politician's Performances and Dress Code Challenges' [2001] 5(1) Journal of Interdisciplinary Feminist Thought, pp. 1 -23

[288] Katherine A. Karl, Leda McIntyre Hall and Joy V. Peluchette, 'City Employee Perceptions of the Impact of Dress and Appearance: You are What You Wear' [2013] 42(3) Public Personnel Management, pp.452-470

form about them through a deliberate use of clothing or adornments and the manipulation of physical attributes (e.g. through hairstyles or the painting of fingernails).[289]

Any discourse of dress should include a discussion of the societal interpretation of acceptable image presentation, particularly in the context of the workplace. It is useful to delve into what is considered attractive and agreeable to the general public because such accepted yardsticks of attractiveness may influence the creation of dress codes designed to appeal to customers and investors of businesses and corporations. As part of their research, Cavico *et al.* analysed the impact of perceived attractiveness on the career outcomes of employees.[290] Interestingly, it was discovered that there was a pattern of subtle disadvantageous treatment aimed at employees or job applicants who were considered unattractive. Their research explains how employers use appearance standards and judgements on a person's beauty to determine their employability. The procedure of judging an applicant's suitability for a job based on their looks was found to be a strategic marketing instrument utilised repeatedly by various employers.[291] The crucial question then is, on what basis is 'attractiveness' measured in the employment scene of the United Kingdom? If a person is considered attractive or visually appealing primarily due to their conformity to majoritarian dress patterns, that could potentially pose a threat of negative feedback to individuals who choose to reject the customary dress conventions.

In connection to the questioning of the concept of attractiveness is the examination of the established meaning of the term 'professional' in regard to personal appearance. Is the word 'professional' simply defined as outwardly presenting oneself in line with one's expected duty and job role? For example, the professional attire of a barista in the coffee shop should be significantly different to that of a court official. While it is acceptable, and even necessary, for the barista to wear an apron, it may be inappropriate for the court official to do so. The notion of

---

[289] Katherine A. Karl, Leda McIntyre Hall and Joy V. Peluchette, 'City Employee Perceptions of the Impact of Dress and Appearance: You are What You Wear' [2013] 42(3) Public Personnel Management, pp.452-470

[290] Frank J. Cavico, Stephen C. Muffler and Bahaudin G. Mujtaba, 'Appearance Discrimination in Employment: Legal and Ethical Implications of "Lookism" and "Lookphobia"' [2012] 32(1) Equality, Diversity and Inclusion: An International Journal, pp. 83 - 119

[291] Frank J. Cavico, Stephen C. Muffler and Bahaudin G. Mujtaba, 'Appearance Discrimination in Employment: Legal and Ethical Implications of "Lookism" and "Lookphobia"' [2012] 32(1) Equality, Diversity and Inclusion: An International Journal, pp. 83 - 119

professionalism being defined following a job description is supported by Shao *et al.,* who argue that the conception of appropriate dress is largely hinged on the type of work being performed by the employee.[292] They stress the fact that what may be considered appropriate for one type of employee may completely undermine the efficacy of another.[293] Consequently, in line with the assumption that professional dress should simply reflect your job role and be practical for its performance, it is arguable if the restriction of the display of personal characteristics, such as ethnicity, within the workplace should be justified. If the court official happened to be an African woman, would the styling of her hair in ethnic styles, such as Bantu knots, be considered unprofessional?

Recent research demonstrates how the presentation of professionalism through the clothing style frequently associated with a particular job influences the level of trust that clients and patients have in the skill of the worker.[294] Furnham et al.'s research entailed the observation of a selection of male and female dentists and lawyers; they then measured the engagement of individuals to the professionals to determine if there was a variation when the lawyers or dentists wore traditional, smart or casual attire. They defined professionalism, regarding the lawyers and dentists, as a perception of capability, suitability, friendliness and the nature of being approachable. The result of their research showed that both lawyers and dentists are considered more professional, and in turn, more trustworthy and knowledgeable of their work when wearing traditionally formal attire such as the traditional dental tunic with face masks.[295] Equally worthy of note is their finding that the expectation of strictly formal attire is usually applied to workers whose jobs demand significant interaction with the public.[296]

---

[292] Chris Y. Shao, Julie A. Baker and Judy Wagner, 'The Effects of Appropriateness of Service Contact Personnel Dress on Customer Expectations of Service Quality and Purchase Intention: The Moderating Influences of Involvement and Gender' [2004] 57(10) Journal of Business Research, pp. 1164-1176

[293] Chris Y. Shao, Julie A. Baker and Judy Wagner, 'The Effects of Appropriateness of Service Contact Personnel Dress on Customer Expectations of Service Quality and Purchase Intention: The Moderating Influences of Involvement and Gender' [2004] 57(10) Journal of Business Research, pp. 1164-1176

[294] Adrian Furnham, Pui Shuen Chan and Emma Wilson, 'What to wear? The influence of attire on the perceived professionalism of dentists and lawyers' [2014] 43 Journal of Applied Social Psychology, pp.1838-1850

[295] Adrian Furnham, Pui Shuen Chan and Emma Wilson, 'What to wear? The influence of attire on the perceived professionalism of dentists and lawyers' [2014] 43 Journal of Applied Social Psychology, pp.1838-1850

[296] Adrian Furnham, Pui Shuen Chan and Emma Wilson, 'What to wear? The influence of attire on the perceived professionalism of dentists and lawyers' [2014] 43 Journal of Applied Social Psychology, pp.1838-1850

This emphasis placed on dress choice was further demonstrated through a poll that assessed the impact of an applicant's overall look for employment opportunities. In the 2012 Special Eurobarometer report, a person's manner of dress and presentation was ranked as the second most important factor capable of placing a job applicant at a disadvantageous position.[297] As succinctly stated by Jackie Jones, "the way we present ourselves, the way we wear our hair, our jewellery, our makeup and piercings as well as our clothes are vitally important social capital that we use in order to negotiate our human relationships both in private and in public".[298]

Furthermore, in an investigation into how city employees perceive their work attire and the value that they place on dress codes, it was discovered that the type of clothing worn influenced self-perception of capability and proficiency whilst at work.[299] Employees interviewed as part of the study expressed a negative view of dress deemed to be unprofessional, such as visible tattoos, unconventional hair colours and facial piercings. According to them, such an unconventional appearance gives the impression of poor service quality of the organization. They also highlighted the concept of 'impression management', which is defined as the subconscious way in which individuals attempt to control the perceptions others make about them by manipulating certain circumstances, for example, by adjusting their appearance and clothing choices.[300] Employees often choose their workplace attire as a tool to create the impression of their competency and reliability to both their employers and the organization's clients.

Shao, Baker and Wagner undertook vital research into the relationship between an employee's appearance and customers' perceptions of the organization in which the employee works.[301] Their work was focused on the banking sector, and experiments were carried out to determine the reaction and response of clients when they interacted with varying employees of

---

[297] Special Eurobarometer 393, Discrimination in the EU in 2012 Report, [November 2012]
[298] Jackie Jones, 'Trans dressing in the workplace' [2013] 32(5) Equality, Diversity and Inclusion: An International Journal, at page 504
[299] Katherine A. Karl, Leda McIntyre Hall and Joy V. Peluchette, 'City Employee Perceptions of the Impact of Dress and Appearance: You are What You Wear' [2013] 42(3) Public Personnel Management, pp.452-470
[300] Katherine A. Karl, Leda McIntyre Hall and Joy V. Peluchette, 'City Employee Perceptions of the Impact of Dress and Appearance: You are What You Wear' [2013] 42(3) Public Personnel Management, pp.452-470
[301] Chris Y. Shao, Julie A. Baker and Judy Wagner, 'The Effects of Appropriateness of Service Contact Personnel Dress on Customer Expectations of Service Quality and Purchase Intention: The Moderating Influences of Involvement and Gender' [2004] 57(10) Journal of Business Research, pp. 1164-1176

the relevant bank. The results from their experiments revealed that clients view an organization as more competent and are therefore more willing to enter transactions when the employees who represent the organization dress in what they consider appropriate and professional. Consequently, it was recommended that decision-makers of an organization pay close attention to the attire of staff and restrict the wearing of casual dress whilst at work.[302]

It is, therefore, reasonable to expect an employer to be concerned with the messages its staff members are spreading to actual and potential clients through what is worn whilst at work. For example, overly tight and revealing clothing worn by an employee could convey the message of sexual availability or interest. Such sexual signals are arguably inappropriate at most organizations and could potentially cause offence and discomfort to people who interact with the relevant employee. It is also equally significant that an employer reaches its consumers with the relevant information about its brand and ideals through the uniform or dress codes of staff members.

---

[302] Chris Y. Shao, Julie A. Baker and Judy Wagner, 'The Effects of Appropriateness of Service Contact Personnel Dress on Customer Expectations of Service Quality and Purchase Intention: The Moderating Influences of Involvement and Gender' [2004] 57(10) Journal of Business Research, pp. 1164-1176

3.3 DRESS AS A TOOL OF SOCIAL CONTROL

Janet Andrewes extensively investigates the many properties of dress, particularly in building relationships and in expressing personality. Her research is focused on the observations of individuals in southern Senegal and explores how indigenes navigate through social interactions via what they choose to wear. Of particular importance to the aims of this research is Andrewes finding that dress can be utilized as a tool for the inculturation of the norms and peculiarities of one group by another.[303]

Clothes as artefacts 'create' behaviour through their capacity to impose social identities and empower people to assert latent social identities.[304] Crane's assertions draw attention to the argument that people could be influenced and empowered to demonstrate aspects of their personality through what they wear. Karl *et al.* also profess that when a person is dressed in a way stereotypically linked to a certain personality, he or she may unconsciously adopt the stereotypical identity provoked by their dress choice.[305] These arguments advance the notion that people can have varying impressions of their selves depending on the type of outfit that they are wearing. The works of both Crane[306] and Karl *et al.[307]* demonstrate that there is a level of fluidity in an individual's sense of self-perception. It can also be inferred that physical appearance is intimately linked to groups, patterns of behaviour, orientation, and specific characteristics.

In the construction of identity, individuals innately have the freedom to suppress or modify aspects of themselves or to adopt the values and norms of others. Evaluating this in relation to the workplace, when the focus is placed on praising the physical ideals of a certain group of people, workers might be pressured to delete aspects of themselves that are not attuned to the norms of the glorified group. Adopting this theory to an analysis of race and ethnicity within the employment sector, if the glorified group represent the ethnic majority in the relevant society, it

---

[303] Janet Andrewes, *Bodywork - Dress as Cultural Tool Dress and Demeanour in the South of Senegal* [BRILL, 2004], 260

[304] Diana Crane, *Fashion and its Social Agendas* (The University of Chicago Press, 2000) at page 2

[305] Katherine A. Karl, Leda McIntyre Hall and Joy V. Peluchette, 'City Employee Perceptions of the Impact of Dress and Appearance: You are What You Wear' [2013] 42(3) Public Personnel Management, pp.452-470

[306] Diana Crane, *Fashion and its Social Agendas* (The University of Chicago Press, 2000)

[307] Diana Crane, *Fashion and its Social Agendas* (The University of Chicago Press, 2000)

is possible for coloured and ethnic minority workers to extinguish their cultural or racial dress principles in order to fit in or to create a false identity mirroring that of the majority.

Van Laer and Janssens discuss this process of an individual assembling his or her own identity in the high-pressure environment of the workplace.[308] They termed this phenomenon as 'identity construction' and explain that it depicts the manner in which individuals understand themselves and then interpret that understanding through the metaphorical eyes of others. When constructing an identity at work, an individual is very often influenced by external factors and the level of power those factors may have on him/her. They indicate that "identity narratives are not single-authored but are always the outcome of the interplay between different voices and processes of power".[309] This intimates that seemingly powerful voices, such as those belonging to employers and customers, may dominate or sway how employees self-identify.[310]

This process has also been demonstrated through the work of Kamenou and Fearfull, who studied ethnic minority women domiciled and employed within the UK.[311] Their research showed that the studied women felt a strong need to imitate the behaviour of their female counterparts of European origin and internally decided that at work, it was necessary for them to 'act white'.[312] The media have portrayed this tension faced by ethnic minorities to behave White whilst at work to be commercially successful and considered adept at their jobs. In the 2018 movie, titled 'Sorry to Bother You', the storyline includes the illustration that an African American character, Cassius Green, was required to adopt the stereotyped speech pattern of White individuals when speaking to clients over the phone.[313] The movie showed Cassius increase his telemarketing sales

---

[308] Koen Van Laer and Maddy Janssens, 'Between the devil and the deep blue sea: Exploring the hybrid identity narratives of ethnic minority professionals' [2014] 30(2) Scandinavian Journal of Management, 188

[309] Koen Van Laer and Maddy Janssens, 'Between the devil and the deep blue sea: Exploring the hybrid identity narratives of ethnic minority professionals' [2014] 30(2) Scandinavian Journal of Management, at page 188.

[310] Yvette M J van Osch and Seger M Breugelmans, 'Perceived Intergroup Difference as an Organizing Principle of Intercultural Attitudes and Acculturation Attitudes' [2011] 43(5) Journal of Cross-Cultural Psychology, pp. 801-821

[311] Nicolina Kamenou and Anne Fearfull, 'Ethnic minority women: A lost voice in HRM' [2006] 16(2) Human Resource Management Journal, pp.154-172

[312] Nicolina Kamenou and Anne Fearfull, 'Ethnic minority women: A lost voice in HRM' [2006] 16(2) Human Resource Management Journal, pp.154-172

[313] *Sorry To Bother You*, Boots Riley, Mirror Releasing, [2018]

dramatically when he abandons his natural speech pattern and adopts one considered to sound as belonging to a White male.[314]

Likewise, research focused on the experiences of an ethnic minority group reveals how the members reconstruct their personal images whilst at work.[315] Bell found that to confidently perform their professional roles, many Black female workers consistently create contrasting personalities. A significant proportion of Black women were found to operate in a personality that depicted White culture and ideals when working but were found to revert to their original image and identity outside of their working atmosphere.[316] Bell's work is significant as it demonstrates the reality that many ethnic minorities are capable of living with a double-consciousness and displaying multiple distinct personalities consistently. Certain questions are raised by both Kamenou, Fearfull[317] and Bell's research[318]: why do ethnic minority workers feel the need to present themselves as members of another race whilst at work? It is suggested that the multiple identities created are due to a subtle and indirect compulsion to blend and fit in or is the manifestation of subconscious beliefs that the presentation of the majoritarian image is synonymous with professionalism.

Individuals from every sphere of life do not exist in complete isolation; we are all, to varying extents, dependent on the societal structures built around or influential to our areas of residence.[319] Importantly, the societal structures on which we develop our individual identities are the products of dominating ideas and adopted patterns of behaviour and practice.[320] In a recent report, it is also claimed that individuals look to social cues to shape their perspective of

---

[314] *Sorry To Bother You*, Boots Riley, Mirror Releasing, [2018]

[315] Ella Louise Bell, 'The Bicultural Life Experience of Career-Oriented Black Women' [1990] 11(6) Journal of Organizational Behaviour, pp. 459 - 477

[316] Ella Louise Bell, 'The Bicultural Life Experience of Career-Oriented Black Women' [1990] 11(6) Journal of Organizational Behaviour, pp. 459 - 477

[317] Nicolina Kamenou and Anne Fearfull, 'Ethnic minority women: A lost voice in HRM' [2006] 16(2) Human Resource Management Journal, pp.154-172

[318] Ella Louise Bell, 'The Bicultural Life Experience of Career-Oriented Black Women' [1990] 11(6) Journal of Organizational Behaviour, pp. 459 - 477

[319] David L Collinson, 'Identities and Insecurities: Selves at Work' [2003] 10(3) Organization, pp. 527 - 547

[320] Mark Toogood, 'Modern Observations: New Ornithology and The Science of Ourselves, 1920-1940' [2011] 37(3), pp. 348-357

how they should present themselves.[321] Further research, undertaken by Fardouly, Pinkus and Vartanian, shows how women judge their attractiveness based on the appearance of their friends in social media pictures.[322] These studies indicate that when it involves appearance, people seldom instinctively trust their own opinion but rather assess their looks based on how others in their social group present themselves. This argument is also supported by Rafaeli, Dutton, Harquail and Mackie-Lewis, who evaluated how female employees in administrative positions determined what amounted to appropriate work dress.[323] Their research found that female staff resort to an examination of fellow female colleagues in their workplace to determine what was professional and acceptable wear.[324]

Hence, it can be argued that the perception that ethnic minority identities are unprofessional stems from societal interpretations which upholds the majoritarian image as the ideal.[325] Collinson argues that society uses normalization techniques to shape behavioural patterns and restrain individual expressions inconsistent with the norms.[326] This infers that the determination of what is socially acceptable or unacceptable is not usually shaped by an individual's inner convictions but are imposed through social learning. This is important as it gives credence to the thought that societal interpretations of appropriate dress are pervasive and shapes what is considered acceptable or worthy.

The reality of normalization was explored further by Van Laer and Janssens, who argue that the ultimate consequence of subtle discrimination is the sanctioning of unlawful behaviour, consequently causing it to become naturalized in the workplace.[327] Unfortunately, when a

[321] Rebecca Ratcliffe, 'Friends' pictures on social media have biggest impact on body image' (*The Guardian*, Sunday 5 March 2017)

[322] Jasmine Fardouly, Rebecca T. Pinkus, Lenny R. Vartanian, 'The Impact of Appearance Comparisons Made Through Social Media, Traditional Media, And in Person in Women's Everyday Lives' [2017] 20 Body Image, pp. 31-39

[323] Anat Rafaeli, Jane Dutton, Celia V. Harquail and Stephanie Mackie-Lewis, 'Navigating by Attire: The Use of Dress by Female Administrative Employees', [1997] 40(1) The Academy of Management Journal, pp.9-45

[324] Anat Rafaeli, Jane Dutton, Celia V. Harquail and Stephanie Mackie-Lewis, 'Navigating by Attire: The Use of Dress by Female Administrative Employees', [1997] 40(1) The Academy of Management Journal, pp.9-45

[325] Lena Nekby and Magnus Rodin, 'Acculturation Identity and Labour Market Outcomes' [2007] IZA Discussion Papers, No. 2826, Institute for the Study of Labour

[326] David L Collinson, 'Identities and Insecurities: Selves at Work' [2003] 10(3) Organization, pp. 527 - 547

[327] Koen Van Laer and Maddy Janssens, 'Between the Devil and The Deep Blue Sea: Exploring the Hybrid Identity Narratives Of Ethnic Minority Professionals' [2014] 30(2) Scandinavian Journal of Management, pp. 186-196

discriminatory attitude is naturalised into society, the subtle biases behind the discrimination are legitimated. In another research paper, both Van Laer and Janssens discuss how ethnic minorities deal with potentially discriminatory normalized workplace expectations set around the majority population in society.[328] They discovered that some employees who identify as part of an ethnic minority group often suffer from a psychological conflict between their true identity and the expectation of conformity to naturalised subtle racist standards.[329]

With a sole focus on ethnic minority workers, Van Laer and Janssens suggest that indirect discrimination imposes a duty on all staff to conform to the idealised societal norm, which is a manifestation of a White image.[330] This leaves the ethnic minority employee faced with three problematic choices; acculturation to the conventions and customs of the majoritarian group, refusal to assimilate with the consequence of suffering marginalization, or the relinquishment of his/her employment.[331] Therefore, certain standardised dress codes may be implicitly created to establish a workforce that mimics and clones the appearance of the average member of the UK's ethnic majority group.

---

[328] Koen Van Laer and Maddy Janssens, 'Ethnic Minority Professionals' Experiences with Subtle Discrimination in The Workplace' [2011] 64(9) Human Relations, pp. 1203-1227
[329] Koen Van Laer and Maddy Janssens, 'Ethnic Minority Professionals' Experiences with Subtle Discrimination in the Workplace' [2011] 64(9) Human Relations, pp. 1203-1227
[330] Koen Van Laer and Maddy Janssens, 'Ethnic Minority Professionals' Experiences with Subtle Discrimination in the Workplace' [2011] 64(9) Human Relations, pp. 1203-1227
[331] Lena Nekby and Magnus Rodin, 'Acculturation Identity and Labour Market Outcomes' [2007] IZA Discussion Papers, No. 2826, Institute for the Study of Labour

3.4 ETHNIC DRESS

Ethnicity, and the physical symbolisms used to define it, is uniquely both subjective and defined by the relevant group to outsiders.[332] Ethnic group members collectively determine their values and factors of demarcation. Outsiders to the group can draw meaning from the group's external presentation based on their own perspectives; however, they cannot undermine the subjective identity construction of the group. Eicher and Erekosima touch on this point in their discussion of the Kalabari dress.[333] They discussed how an expert rejected an item of Kalabari dress because it was made from Indian madras and not African textiles. They argue that the expert, a museum director, was wrong to state that the clothing did not amount to Kalabari ethnic dress. The Kalabari people alone have the right to choose what types of appearance presentations and clothing reflects their group identity.[334]

Also, Disele, Tyler and Power assert that dress is a significant cultural tool vital for the manifestation of cultural ideologies and the reflection of the unique social relationships within the group. Ethnic dress fosters a feeling of belonging, fellowship and camaraderie in wearers.[335] Disele *et al.* further discuss the impact of an identifiable ethnic dress by arguing that it may be used to promote estimation of the ethnic group by outsiders. They use the example of tourists being keen to both purchase and wear culturally symbolic items as souvenirs to evidence the respectability of ethnic dress.

Ethnic dress often represents values that are considered important to the group. Durham's research on Herero women in Botswana revealed that the wearing of the 'Herero' dress, a long Victorian-style dress made in local fabrics, embodied the community's views on modesty and feminine purity. Furthermore, the dress was used as a tool to express the tribe's subjective view

---

[332] Thomas Hylland Eriksen, 'Ethnicity' In G Ritzer (ed). *The Wiley-Blackwell Encyclopaedia of Globalization* [2012] < https://doi.org/10.1002/9780470670590.wbeog179> accessed 23 June 2021.

[333] Joanne B. Eicher and Tonye V. Erekosima, 'Why Do They Call it Kalabari? Cultural Authentication and the Demarcation of Ethnic Identity' in Joanne B. Eicher (ed), *Dress and Ethnicity* (Berg Publishers, 1995), pp. 139-164

[334] Joanne B. Eicher and Tonye V. Erekosima, 'Why Do They Call it Kalabari? Cultural Authentication and the Demarcation of Ethnic Identity' in Joanne B. Eicher (ed), *Dress and Ethnicity* (Berg Publishers, 1995), pp. 139-164

[335] Potlako L. P. Disele, David J. Tyler, E.J. Power, 'Conserving and Sustaining Culture through Traditional Dress' [2011] 23 Dept of Family and Consumer Sciences, formerly Home Economics Education, pp. 15 - 41

of themselves as more dignified and better composed than the Tswana tribe.[336] Durham reports that Herero women walked slowly as the complexities of the dress constrained their movements, thereby causing them to appear self-controlled and elegant. The Herero dress also communicates the belief of female modesty as the long sweeping design covers the legs and the thighs; parts of the female body are considered to be highly sexual by the tribe. In addition, the Herero dress gives insight into how ethnic appearance symbolisms convey the beauty standards of a social group. Traditionally, Herero women layer up fabrics and design their dress in a way that evokes the image of plumpness as thinness is considered unattractive by the tribe. Durham states that the Herero community 'conjoined physical aesthetics with social spaciality'[337] and that the act of losing weight was largely interpreted as 'a consequence of both spiritual depression and a curtailment of social life'.[338]

Malcolm Chapman notes a further interesting but often overlooked aspect of ethnic dress. He explains that ethnic dress is not necessarily the popular appearance style of an ethnic group but a collection of clothing and bodily arrangements used to represent the group and differentiate them from outsiders.[339] Chapman uses the example of the traditional Scottish dress for men, a kilt created from a tartan patterned fabric, usually wool, to explain the intricacies of ethnic dress. He explains that while the average Scottish man does not wear the kilt frequently or for everyday use, the dress is used to signify group membership and communicate a distinction from other groups.[340] To the Scots, the kilt represents a symbolism of independence and a refusal to submit to the prescribed societal rules of propriety.[341] Furthermore, the Scottish Kilt demonstrates that the Scots may adhere to their own rules of gender presentation and physical

---

[336] Deborah Durham, 'The Predicament of Dress: Polyvalency and the Ironies of Cultural Identity' 26(2) [1999] American Ethnologist, pp. 389 - 411

[337] Deborah Durham, 'The Predicament of Dress: Polyvalency and the Ironies of Cultural Identity' 26(2) [1999] American Ethnologist at page 392

[338] Deborah Durham, 'The Predicament of Dress: Polyvalency and the Ironies of Cultural Identity' 26(2) [1999] American Ethnologist at page 393

[339] Malcolm Chapman, 'Freezing the Frame: Dress and Ethnicity in Brittany and Gaelic Scotland' in Joanne B. Eicher (ed), *Dress and Ethnicity* (Berg Publishers, 1995), pp. 7 - 28

[340] Malcolm Chapman, 'Freezing the Frame: Dress and Ethnicity in Brittany and Gaelic Scotland' in Joanne B. Eicher (ed), *Dress and Ethnicity* (Berg Publishers, 1995), pp. 7 - 28

[341] Malcolm Chapman, 'Freezing the Frame: Dress and Ethnicity in Brittany and Gaelic Scotland' in Joanne B. Eicher (ed), *Dress and Ethnicity* (Berg Publishers, 1995), pp. 7 - 28

modesty. The example of the Scottish kilt highlights some of the values of ethnic dress to an ethnic group. Although the ethnic dress might not be popular or fashionable in the community, its presence demonstrates group values, a defiance to the social control of others and a sense of pride in the group's peculiarity.

It is common for the ethnic dress of a group to contain information relating to the core enterprise and activities of its members. The Kalabari dress, as indicated by Eicher and Erekosima, contained in its design and composition allusions to the group's primary source of livelihood, trade.[342] The location of the Kalabari people places them at a key point for local and international trade in Nigeria. Hence, they have historically enjoyed access to imported textiles and materials, which they have creatively combined to create a distinguished and unique style. Although some of the goods used to construct the Kalabari ethnic dress are not indigenous, they have nevertheless become the accepted traditional dress for the members of the group. For an appearance style or clothing to be considered as ethnic dress, it is not necessary for it to have been created by the relevant ethnic group. Through cultural authentication, an ethnic group, like the Kalabari, can use foreign materials or imported fabrics to create a unique method of dress. Cultural authentication can also be achieved by a group's adoption of a style of dress with repeated usage over a period of time.[343]

The process of cultural authentication happens in four stages: selection, characterization, incorporation, and transformation.[344] The first stage of selection usually occurs when a group chooses foreign material out of a vast array of choices, including local and indigenous offerings. The next stage is characterization and refers to the procedure of attributing cultural and symbolic meanings to the material. Examples of characterization include the renaming of the foreign material in the local language or using the material to portray aspects of the group's history. The

---

[342] Joanne B. Eicher and Tonye V. Erekosima, 'Why Do They Call it Kalabari? Cultural Authentication and the Demarcation of Ethnic Identity' in Joanne B. Eicher (ed), *Dress and Ethnicity* (Berg Publishers, 1995), pp. 139-164
[343] Joanne B. Eicher and Tonye V. Erekosima, 'Why Do They Call it Kalabari? Cultural Authentication and the Demarcation of Ethnic Identity' in Joanne B. Eicher (ed), *Dress and Ethnicity* (Berg Publishers, 1995), pp. 139-164
[344] Peggy C Mead., and Elaine L. Pedersen, 'West African Apparel Textiles Depicted in Selected Magazines from 1960 To 1979: Application of Cultural Authentication' [1995] 23(4) Family and Consumer Sciences Research Journal, pp.430-452; Joanne B Eicher and Tonye V. Erekosima, 'Why Do They Call it Kalabari? Cultural Authentication and the Demarcation of Ethnic Identity' in Joanne B. Eicher (ed), *Dress and Ethnicity* (Berg Publishers, 1995), pp. 139-164

third stage of incorporation involves the use of the material to meet a collective social need and being adapted into the unique way of life of the ethnic group. The final stage of transformation relates to the creativity and ingenuity of the group to redefine the material and modify it to the tastes of the collective body of members.[345] Through an understanding of how a group can use cultural authentication to make a non-indigenous item synonymous with its ethnicity, it becomes apparent that an exploration of ethnic dress should not be overly concerned by the origin of the items used but the level of integration of an appearance style in the relevant group. Apart from being ingrained in the ethnic group, items representing ethnic dress must demonstrate the position and status of the group.

Ethnic dress can be used as a political tool to demonstrate rankings and to identify aliens or intruders.[346] As a political tool, ethnic dress is a non-verbal cue to reinforce the social hierarchy of the group whilst simultaneously revealing outsiders or unwelcome foreigners.[347] Some aspects of ethnic dress can be very subtle and made with unique or delicately constructed fabrics and adornments. This makes it easier for the in-group to identify non-members who try to fit in by appropriating forms of the ethnic dress. An example of such subtlety is seen in Kalabari history as the indigenous people use both Indian madras and *pelete bite* (cut thread cloth) to create unique outfits.[348] The cut-thread cloth is slight and understated in its visual effect but serves as an important distinctiveness from migrant strangers and neighbouring groups.[349] It can therefore be inferred that ethnic dress is a means of establishing independence and visually abolishing the control of another group.[350] An example of this is seen in the South African struggle for freedom which often manifested itself through the explicit visual cultural expressions of the country's

---

[345] Susan J Torntore, 'Fashion, Tradition, and Cultural Authentication: Change in Hmong American Ethnic Textiles and Aesthetics at Hmong New Year' [2004} Textile Society of America 9th Biennial Symposium, pp. 118 - 126

[346] Jean Marie Allman, (ed) *Fashioning Africa: power and the politics of dress*. (Indiana University Press, 2004), pp. 13 -38

[347] Mani, Bakirathi, 'Undressing the diaspora' in Nirmal Puwar, Parvati Raghuram (eds) *South Asian Women in the Diaspora*. (Routledge, 2020.), pp. 117 - 130

[348] Joanne B Eicher and Tonye V. Erekosima, 'Why Do They Call it Kalabari? Cultural Authentication and the Demarcation of Ethnic Identity' in Joanne B. Eicher (ed), *Dress and Ethnicity* (Berg Publishers, 1995), pp. 139-164

[349] Eicher Roach-Higgins and Joanne B Mary Ellen, 'Dress and Identity' [1992] 10(4) Clothing and Textiles Research Journal, pp.1-8

[350] Martha Ndakalako-Bannikov, 'Changing Dresses: Owambo Traditional Dress and Discourses on Tradition, Ethnicity, and National Identity in Namibia' [2020] 57(1) Journal of Folklore Research, pp.73-110

indigenes.[351] As claimed by Eicher and Erekosima, 'agendas are woven around [cultural symbols], and leaders of ethnic groups use these agendas to embark on a strategy for declaring the supremacy of their own ethnicity'.[352]

An ethnic dress can grow beyond the scope of a single community in the face of increased globalization and integration. Certain societies, particularly that of the UK, are diverse and multicultural; hence,[353] a mix of dress styles and symbolisms could emerge with an increased sense of unification in the society. Therefore, an ethnic dress could mean more than the physical manifestation of ethnicity but could also identify an individual's area of primary domain, affinity to other cultures and other groups and a desire to create an identity that highlights membership of more than one group. Ethnic dress is thus an important aspect of both an individual and a group's sense of identity. As a symbol of group membership, values, cultural awareness and political independence, ethnic dress is arguably a key factor in ethnicity that warrants protection in the employment field.

[351] Juliette Leeb-du Toit, 'White 'Women In 'Black' Clothing: Overtures Towards Africanness in Dress In A South African Context' in Relebohile Moletsane, Claudia Mitchell and Ann Smith (eds) *Was It Something I Wore?* (HSRC Press, 2012)

[352] Joanne B Eicher and Tonye V. Erekosima, 'Why Do They Call it Kalabari? Cultural Authentication and the Demarcation of Ethnic Identity' in Joanne B. Eicher (ed), *Dress and Ethnicity* (Berg Publishers, 1995), at page 160

[353] Ludi Simpson, Stephen Jivraj and James Warren, 'The Stability of Ethnic Identity in England and Wales 2001-2011' [2016] 179(4) Journal of the Royal Statistical Society. Series A (Statistics in Society), pp. 1025-1049

3.5 THE CONSTRUCTION OF ETHNIC IDENTITY THROUGH DRESS

Ethnicity is not always an independent feature; rather, it is a characteristic built upon the foundations of race and nationality.[354] This argument is endorsed by Fredman, who argues that ethnic identity is often a complex mix of varying personal features; in addition, she asserts that the manifestation of such identity is usually influenced by gender, class and religion.[355] Hence, it can be said that although ethnicity is a discernible individual and group trait, it is open to varying interpretations and physical manifestations. Variance in ethnic manifestation stems from the fact that individuals are often free to determine how to communicate their ethnic group membership with regard to their relevant society, environmental factors, personal circumstances and beliefs.

Bedford and Johnson note that an individual's awareness and impression of herself is built upon the recognition of her external appearance.[356] In other words, they argue that the development of a body image is dependent on outer appearances. This thought conveys the impression that the visible presentations of people are merely physical manifestations of how they see themselves internally. In addition, Bedford and Johnson added that societal cues, cultural norms, bodily changes and the environment all play a role in how a person eventually understands her own image.[357] Their research explores the prevailing issue of body image dissatisfaction and argues that such dissatisfaction occurs when one's self-perception contrasts with the idealised image for someone of the individual's gender, age and ethnicity.

The construction of an ethnic image involves both a subjective and an objective element; consequently, whilst people are free to define their ethnicity in accordance with their personal intuitions, societal cues and expectations play an important role in the categorization of people into groups. Personal appearance and body presentation have been utilised consistently

---

[354] Marianne Gullestad, 'Invisible Fences: Egalitarianism, Nationalism and Racism' [2002] 8(1) The Journal of the Royal Anthropological Institute, pp.45-63; Erica Howard, 'The EU Race Directive: Time for Change?' [2007] 8 International Journal of Discrimination and the Law, pp.237-261

[355] Sandra Fredman, *Discrimination Law* (Oxford University Press, 2002), 50

[356] Jennifer L. Bedford and C. Shanthi Johnson, 'Societal Influences on Body Image Dissatisfaction in Younger and Older Women', [2006] 18(1) Journal of Women and Aging, pp.41-55

[357] Jennifer L. Bedford and C. Shanthi Johnson, 'Societal Influences on Body Image Dissatisfaction in Younger and Older Women', [2006] 18(1) Journal of Women and Aging, pp.41-55

throughout history as a visual means of ethnic and cultural expression. [358] Likewise, Fredman claims that 'dress is perhaps the most visible feature of cultural diversity'.[359] Although several types of ethnic dress and physical appearance styles can be modified to suit the individual wearer and member of the group, in essence, there should be a level of visual cohesion, complementarity and similarity amongst members of the ethnic group.[360]

In the identification of ethnic dress, regard must be had to the clothes and appearance styles which have a collective meaning amongst members of the ethnic group. Also, it is important to note that the respective dress or style should reflect the shared sense of identity of the group members.[361] Apart from demonstrating a sense of identity, ethnic dress should reveal both the implicit and explicit values and beliefs of the community. Furthermore, the shape, style, colour, adornments or fabrics used in the construction of ethnic clothing should demonstrate the key ideologies of the community. Such ideologies include the community's interpretation of modesty, gender differentiation, religious inclinations and class or caste rankings.[362]

Sertanya Reddy adds to discourse concerning the construction of ethnic and cultural identity. She highlights that the notion of identity includes an appreciation of 'individual and collective selves and individual and collective others.[363] In the construction of ethnic identity, individual members of the ethnic group define and classify themselves based on the similarities that they share with other members of the group. In addition, the differences that are observed in other groups also strengthen the sense of collective identity and enforce the subtle belief that group membership is dependent on the maintenance of similarities and the avoidance of the deviation of other groups. Hence, to fit into the ethnic group of one's choice, an individual might align their

---

[358] Preeti Kapur, 'Sharing Identity Through Dress: The Case of Sikh Women' [2010] 55(2) Psychological Studies, pp.101-107

[359] Sandra Fredman, *Discrimination Law* (Oxford University Press, 2002), at page 50

[360] Joanne Eicher and Barbara Sumberg, 'World Fashion, Ethnic, And National Dress' in JB Eicher (ed.), *Dress and ethnicity*." (Berg Publishing, 1995), pp. 295-306

[361] Potlako L. P. Disele, David J. Tyler, E.J. Power, 'Conserving and Sustaining Culture through Traditional Dress' [2011] 23 Dept of Family and Consumer Sciences, formerly Home Economics Education, pp. 15 - 41

[362] Deborah Durham, 'The Predicament of Dress: Polyvalency and the Ironies of Cultural Identity' 26(2) [1999] American Ethnologist, pp. 389 - 411

[363] Sertanya Reddy, 'Styling the Self: Fashion as an Expression of Cultural Identity in a Global World' [2018] Diakses Pada at page 2.

appearance to the symbolic or stereotyped image of the group.[364] For example, a Pakistani man may decide to grow a beard to conform to the assumptions that others may have about his ethnic identity.

Anna-Mari Almila focuses on the image of Muslim women and indicates that a majority of these women dress per a constructed yardstick designed to display their internal beliefs and their ethnicity.[365] She explains how the hijab is more than a religious symbolism but is often understood by wearers as a fashionable indication of cultural manifestation. Furthermore, clothing items, such as the hijab, which are primarily worn by a specific ethnic group, are used to demonstrate group allegiance. Almila illustrates how a significant proportion of Muslim women wear these items of covering to relay a message to others.[366] Apart from communicating ethnic identity, face and head veils, as well as other appearance symbols, can indicate cultural values such as marital status, class and a desire to keep gender roles and presentations distinct and separate from each other. The clothing choices of these women are strong means of broadcasting the groups they are aligned to and the groups that they are differentiated from.

Members of ethnic groups usually identify themselves through appearance symbolisms that eventually become synonymous with their ethnic groups. For instance, the use of a henna or mehndi tattoo has grown to be an appearance symbol attributable to an origin in the Arabian Peninsula, the Indian Subcontinent and Northern Africa.[367] Such appearance symbolisms may become so connected to an ethnic group that conflicts may arise when members of other groups display them casually. This reality of appearance symbolisms being possessively protected was noted by Maira, who discusses how individuals who identify as Southern Asian feel uncomfortable when people from other ethnicities wear henna tattoos for fashion purposes.[368]

---

[364] Sertanya Reddy, 'Styling the Self: Fashion as an Expression of Cultural Identity in a Global World' [2018] Diakses Pada.

[365] Anna-Mari Almila, 'Fashion, Anti-Fashion, Non-Fashion and Symbolic Capital: The Uses of Dress among Muslim Minorities in Finland' [2016] 20(1) Fashion Theory, pp. 1 - 27

[366] Anna-Mari Almila, 'Fashion, Anti-Fashion, Non-Fashion and Symbolic Capital: The Uses of Dress among Muslim Minorities in Finland' [2016] 20(1) Fashion Theory, pp. 1 - 27

[367] Carrie Griffin Basas, 'Henna Tattooing: Cultural Tradition Meets Regulation' [2007] 62 Food and Drug Law Journal, 779; Rachel Sharaby, 'The Bride's Henna Ritual: Symbols, Meanings and Changes' [2006] 11 Nashim: A Journal of Jewish Women's Studies and Gender Issues, pp. 11 - 42

[368] Sunaiana Maira, 'Henna and Hip Hop: The Politics of Cultural Production and the Work of Cultural Studies' 3(3) [2009] Journal of Asian American Studies, pp.329-369

Furthermore, non-invasive body modifications such as the manipulation of facial and bodily hair may be used to construct a specific ethnic identity as observers may grow to draw a correlation between an image and an ethnic or racial group. A notable example is the display of facial hair, particularly beards, on men of Southern Asian descent, many of whom identify as Muslims.[369] Interestingly, Saha notes that the media encourages the stereotyping of this image by persistently representing Southern Asians with a bearded image for men or a veiled image for women.[370]

Furthermore, ethnic dress evolves as it takes into account the history of the group, its present circumstances, and future aspirations so as to communicate the most accurate picture of the group's identity.[371] The concept of identity, particularly when expressed visually, has been argued to be a changeable phenomenon. In particular, cultural and ethnic identity has also been likened to a project which is always being worked on. [372] The changing nature of identity will lead to modifications of the meanings portrayed by ethnic appearance symbolisms, thus rendering ethnic dress and physical expressions fluid and unfixed.[373] As also indicated by Roach-Higgins and Eicher, appearance norms that manifest identities become uncertain and are in a constant state of evolution as times and seasons change.[374] When certain dress styles or body presentation patterns no longer serve the purpose of expressing a group's identity, the appearance custom loses its status as the ethnic dress of the relevant community and is abandoned or changed.

In addition, with each consecutive generation, the traditional values previously held by the community may be diluted or even disregarded.[375] The younger generations could develop a

---

[369] BBC News, 'Are Beards Obligatory for Devout Muslim Men?' (*BBC*, 27 June 2010)

[370] Anamik Saha, 'Beards, Scarves, Halal Meat, Terrorists, Forced Marriage: Television Industries and the Production of Race' [2012] 34(4) Media, Culture and Society, pp.424-438

[371] Barbara Kinket and Maykel Verkuyten, 'Ethnic Self-Identification and Social Context' [1997] 60(4) Social Psychology Quarterly, pp.338-354

[372] Sertanya Reddy, 'Styling the Self: Fashion as an Expression of Cultural Identity in a Global World' [2018] Diakses Pada

[373] Deborah Durham, 'The Predicament of Dress: Polyvalency and the Ironies of Cultural Identity' 26(2) [1999] American Ethnologist, pp. 389 - 411

[374] Eicher Roach-Higgins and Joanne B Mary Ellen, 'Dress and Identity' [1992] 10(4) Clothing and Textiles Research Journal, pp.1-8

[375] Annie Hau-nung Chan, 'Fashioning change: Nationalism, colonialism, and modernity in Hong Kong' [2000] 3(3) Postcolonial Studies: Culture, Politics, Economy, pp. 293 - 309

broad attitude towards community beliefs such as modesty and gender differentiation. A potential indifference towards the concepts that shaped the ethnic group could lead to a change in the type of dress that they choose to identify with. Likewise, with growing globalization and the intermingling of ethnic groups, future generations may not consider the wearing of an ethnic dress important but may rather seek to blend in and be visually cohesive to other ethnic groups. Climate change and relocation of members of an ethnic group to an environment with a significant variance from usual weather may also lead to modifications of ethnic dress. For example, members of the Herero tribe may find the wearing of the traditional dress appropriate for the usual Botswana weather but may choose to either abandon the outfit or modify it if in another country with much colder weather.

The use of clothing to convey identity means that ethnic dress is an important tool for the assertion of belonging to a particular group. Unfortunately, it is common for the intended meaning of dress or appearance style to be misrepresented or misunderstood. Durham uses the imagery of sparkles to demonstrate how a symbolic item could evoke varying responses depending on the viewer's perspective.[376] Outsiders to the group will invariably utilise their value judgement and understanding to interpret the intended meanings of the relevant group's ethnic dress. Observers of cultural manifestations through dress will endeavour to define the image diagnostically whilst considering a host of perspectives and individual discernment.[377]

Apart from the influence of perception, by its very nature, clothing is always subject to refinement and adjustment. This is due to the constant advancement of technological methods in cloth production, the importing and exporting of products and ideas to other communities and the far-reaching influence of the media.[378] It should be noted, however, that the evolving and somewhat unstable nature of ethnic dress does not deduct from its value, nor should it be used as a justification to curtail its expression. Individuals make up an ethnic group; hence, the ever-

---

[376] Deborah Durham, 'The Predicament of Dress: Polyvalency and the Ironies of Cultural Identity' 26(2) [1999] American Ethnologist, pp. 389 - 411

[377] Deborah Durham, 'The Predicament of Dress: Polyvalency and the Ironies of Cultural Identity' 26(2) [1999] American Ethnologist, pp. 389 - 411

[378] Karen Tranberg Hansen, 'The world in dress: Anthropological perspectives on clothing, fashion, and culture' [2004] 33 Annual Review of Anthropology, pp.369-392

changing frame of mind and emotional status of humanity is invariably present in collective identity construction. Nevertheless, as each person is deserving of respect and expects to be accorded with human dignity in respect to her personal choices and the way she chooses to construct her identity at any point in time, so also should ethnic groups. Irrespective of changes to ethnic identity expressions, due respect should be given to the current appearance symbolisms and manifestations.

The use of physical means of expressing identity, whether personal or collective, is indicative that a series of actions have been undertaken to construct an image that communicates the internal state of mind with observers.[379] Hence, the use of ethnic appearance symbolisms, dress styles and unique clothing designs should be understood as a carefully moulded instrument intended for the declaration of the ethnic group's core beliefs about its identity. Consequently, ethnic dress in all its manifestation should be accorded a degree of respect as its indifference can be interpreted as disdain of the relevant ethnic group.[380] It can be argued that strict dress codes do not afford workers the flexibility that may be needed to both navigate and express their cultural identity as it may fail to consider the evolving nature of ethnic dress. Hence, the employer may make allowance for a specific type of ethnic dress which may become insignificant and unconnected to the ethnic group in later years. To avoid this, it is posited that flexibility and the freedom to navigate individual appearances should be included in all work dress policies.

Ahdar and Leigh highlight the fact that in employment, there is a legal exchange of rights between the employer and the employee.[381] The worker implicitly relinquishes control of part of her freedom for the benefit of financial remuneration from the employer.[382] Depending on the job role and the employer, the employee may be required to submit aspects of her personal life to guidance and supervision. Employees who are the most likely to surrender to corporate control are those who work for employers operating under the 'organic approach'. Alvin Esau

---

[379] Sertanya Reddy, 'Styling the Self: Fashion as an Expression of Cultural Identity in a Global World' [2018] Diakses Pada.
[380] Sertanya Reddy, 'Styling the Self: Fashion as an Expression of Cultural Identity in a Global World' [2018] Diakses Pada.
[381] Rex Ahdar and Ian Leigh, *Religious Freedom in the Liberal State* (Oxford University Press, 2005) pp. 1 - 23
[382] Rex Ahdar and Ian Leigh, *Religious Freedom in the Liberal State* (Oxford University Press, 2005) pp. 1 - 23

distinguished between two types of staff: those under the instrumental approach and those under the organic approach.[383] Under the instrumental approach, the focus is solely on the expertise of the individual staff member and the tasks they are to perform as part of their job role. An employer operating based on the instrumental approach pays no attention to the private life of its employees; consequently, the issue of appearance and dress are, arguably, not strictly regulated.[384]

On the other hand, employers who function via the organic approach require their staff to be fully immersed in the organization's goals and to share in its philosophies.[385] Such employers, to an extent, police their workers' personal lives to ensure adherence to the company's standards. Organic approach employers may govern things that staff do while on duty, for example, their dress and apparel, and things that they do outside of work, e.g. comments that they make on social media platforms. Hence, the issue of workplace discrimination based on dress codes is important for employees whose employers operate primarily under the organic approach.[386] The supervision of staff's personal lives under the organic approach may be particularly disadvantageous to employees whose ethnic and racial identity differs from that of the majority in the society.

The idea of workplace appearance standards stripping a person of their ethnic identity is best conveyed when an ethnic minority is asked, indirectly, to disguise features that link them to their ethnicity. An example of this was cited by Dellinger and Williams in the written record of the comments of a Taiwanese woman that they interviewed; the interviewee claimed that she received positive comments when she wore eye makeup specifically because they made her eyes appear European and less Asian.[387] Dellinger and Williams go on to assert that many women of

---

[383] Alvin Esau, 'Islands of Exclusivity: Religious Organization and Employment Discrimination' [2000] 33(3) The University of British Columbia Law Review 719, 734

[384] Alvin Esau, 'Islands of Exclusivity: Religious Organization and Employment Discrimination' [2000] 33(3) The University of British Columbia Law Review, 720

[385] Alvin Esau, 'Islands of Exclusivity: Religious Organization and Employment Discrimination' [2000] 33(3) The University of British Columbia Law Review, 719

[386] Iain T Benson, 'Two Errors in Relation to Respecting Religious Rights: Driving A Wedge Between Religion and Ethics/Morals and Treating All Kinds of Religious Employers the Same' [2012] 9(3) Canadian Diversity, pp. 20 -23

[387] Kirsten Dellinger and Christine L. Williams, Makeup at Work: Negotiating Appearance Rules in the Workplace [1997] 11(2) Gender and Society, pp. 151 - 177

colour use makeup as a tool to subvert the negative assertion that ethnic minority women are not adequately womanly and feminine. This concept of suppressing one's ethnic and racial identity in favour of another has been likened to an execution. Brower explains that identity is terminated when one pretends to be like members of another ethnicity to fit in and avoid negative feedback.[388]

Battu and Zenou also discuss how minority workers who choose to embrace their cultural and racial identities suffer an employment penalty.[389] Their research found that ethnic minority individuals who did not adopt the British culture or integrate into the British society faced a higher risk of unemployment, unfavourable employment conditions and poor labour market outcomes.[390] They highlight the important point that very little research has been carried out in the UK which investigates the correlation between the expression of self-identity and economic achievements.[391] Nekby and Rodin's research established that to succeed in the economic world, an ethnic minority member must identify with the majority culture in society.[392] Clark and Drinkwater go further and examine the connection between being an individual from an ethnic minority background and self-employment.[393] They found that members of ethnic minorities may be pushed into self-employment due to the lack of equal opportunities and racial discrimination. It is therefore vital to evaluate the benefits derived by employers from dress codes and to ascertain whether these benefits justify the possible infringement of an employee's right to fashion himself/herself in a manner that mostly reflects his/her true ethnic identity.

---

[388] Todd Brower, 'What's in the Closet: Dress and Appearance Codes and Lessons from Sexual Orientation' [2013] 32(5) Equality, Diversity and Inclusion: An International Journal, pp. 419 - 502

[389] Harminder Battu and Yves Zenou, 'Oppositional Identities and Employment for Ethnic Minorities: Evidence from England' [2009], Institute for the Study of Labour (IZA), IZA Discussion Papers, No.4517

[390] Harminder Battu and Yves Zenou, 'Oppositional Identities and Employment for Ethnic Minorities: Evidence from England' [2009], Institute for the Study of Labour (IZA), IZA Discussion Papers, No.4517

[391] Harminder Battu and Yves Zenou, 'Oppositional Identities and Employment for Ethnic Minorities: Evidence from England' [2009], Institute for the Study of Labour (IZA), IZA Discussion Papers, No.4517

[392] Lena Nekby and Magnus Rodin, 'Acculturation Identity and Labour Market Outcomes' [2007] Institute for the Study of Labour (IZA), IZA Discussion Papers, No. 2826

[393] Kenneth Clark and Stephen Drinkwater, 'Pushed Out or Pulled In? Self-employment Among Ethnic Minorities in England and Wales', [2000] 7(5) Labour Economic, pp. 603 - 628

3.6 CONCLUSION

The argument that corporate dress codes are based on the appearance standards and preferences of society and the majoritarian group is supported by research. In historical times, professional jobs were mainly performed by White men.[394] Therefore, an inference can be made that corporate dress policies were created from the perspective of an employment scene dominated by White males. Society shapes the law, and the law often reflects the attitudes of citizens.[395] Policies governing the ways in which minorities are treated are influenced by international and internal pressures.[396] On an internal level, when there is a substantial outcry against an action, it tends to be prohibited by the law. As discussed, an examination of the current literature shows that the topic of ethnic dress has not received considerable attention within the legal sphere in the UK.[397]

Indeed, it is arguable whether the inherent values of ethnic dress and its ability to manifest racial identity has been fully contemplated by policymakers. Research suggests that the employment scene within British society does not appreciate the realities of ethnic identity.[398] Furthermore, physical manifestations of a minority identity are not routinely protected and correctly identified as an extension of racial belonging.[399] The everyday status given to Western clothing has not been extended to ethnic dress.[400] It can thus be argued that professional workwear has become an extension of Western appearance ideals and is a formalized version of everyday majoritarian clothing.

---

[394] Mary Corcoran and Greg J. Duncan, 'Work History, Labour Force Attachment, and Earnings Differences between the Races and Sexes' [1979] 14(1) Journal of Human Resources, pp. 3 -20

[395] Helena Wray, 'The Aliens Act 1905 and the Immigration Dilemma' [2006] 33(2) Journal of Law and Society, pp. 302 - 323

[396] Laura Tabili, 'The Construction of Racial Difference in Twentieth-Century Britain: The Special Restriction (Coloured Alien Seamen) Order, 1925' [1989] 32(2) The Historical Journal, pp. 54-98

[397] Frank J. Cavico, Stephen C. Muffler and Bahaudin G. Mujtaba, 'Appearance Discrimination in Employment: Legal and Ethical Implications of "Lookism" and "Lookphobia"' [2012] 32(1) Equality, Diversity and Inclusion: An International Journal, pp. 83 - 119

[398] Nasima MH Carrim, 'Minority Employees' Ethnic Identity in the Workplace' [2019] Oxford Research Encyclopedia of Business and Management, pp. 1 - 19

[399] Andrew Pilkington, *Racial Disadvantage and Ethnic Diversity in Britain* (Palgrave Macmillan, 2003)

[400] Matthew Vince, 'Neutrality, Muslimness and the Whiteness of RE Professionalism' [2000] 68(3) Journal of Religious Education, pp. 371-383

In addition, it is arguable that ethnic dress is viewed as elaborate, dramatic or as a symbolism for special events, and is as such, subconsciously regarded as unfit for the corporate sector. This is demonstrated in the fashion industry; whilst several brands have lines dedicated to professional wear, it is rare to find those clothing made of indigenous fabrics or in styles reflecting ethnic minority culture.[401] Instead, minority inspired clothing tend to be romanticized and used to create an 'exotic' or unique appearance intended for entertainment or performance.[402] Although employers are advised to take religious, gender and sexual orientation differences into account, the topic of ethnic dress has been given insufficient attention. It is suggested that the indifference and nonchalant approach of the legislator and official governing bodies to the issue of ethnic dress gives the erroneous impression that ethnic dress is an issue unworthy of attention and further protection.

It is suggested that in the employment sphere, individuals take on the role of intuitive scientists, which involves the critical observance of others so as to make an assessment and judgment of a person based on his/her type of dress. This is done by instinctively imposing an identity on a person drawn from stereotypical assumptions of the identity of certain people who dress in the same way as the individual does.[403] An obvious example of this is considering a Southern Asian man to be a Sikh simply because of the appearance of a turban on his head. The appearance of a staff member is therefore capable of setting the tone of the atmosphere of the workplace. A relaxed approach to dress may influence the perception that the organization is not efficient or diligent in their expected duties.[404] Furthermore, due to the complexities involved with allowing members of staff to manifest aspects of their identity that may be deemed controversial or is subject to negative interpretation, Visone acknowledges that employers are, and should be, entitled to create a visual environment within their organization that is acceptable

---

[401] Sue Omar, 'Is Fashion Finally Addressing its Diversity Problem?' (*Raconteur*, October 15, 2020) < https://www.raconteur.net/hr/diversity-inclusion/diversity-fashion/> accessed 28 June 2021

[402] Joanne Entwistle. *The fashioned body: Fashion, dress and social theory* (John Wiley & Sons, 2015).

[403] Adrian Furnham, Pui Shuen Chan and Emma Wilson, 'What to wear? The influence of attire on the perceived professionalism of dentists and lawyers' [2014] 43 Journal of Applied Social Psychology, pp.1838-1850

[404] Chris Y. Shao, Julie A. Baker and Judy Wagner, 'The Effects of Appropriateness of Service Contact Personnel Dress on Customer Expectations of Service Quality and Purchase Intention: The Moderating Influences of Involvement and Gender' [2004] 57(10) Journal of Business Research, pp. 1164-1176

to their clientele.[405] Likewise, Freedland and Vickers discuss the importance of an employer having the freedom to regulate its internal affairs without undue hindrance.[406] This is explored in greater detail in the succeeding chapter which analyses the intricacies of the conflict between business aesthetic goals and the ethnic identification of minority staff.

Due to the undisputed importance of allowing employers to have a level of discretion in determining the image of the staff team who represent the company, they emphasise that critical analysis needs to be undertaken to ascertain methods of balancing the rights of the employers with that of their employees.[407] However, ethnic dress is a key aspect of ethnic and racial identity and should be given the proper protection it deserves as an expression of individuality and group connection. Freeland and Vickers highlight the necessity of a balancing exercise between the valid need of the employers and the inconvenience imposed on staff through regulations demanding or forbidding certain types of apparel, accessories, or grooming.[408] From the discussion of ethnic dress and its role in the creation and sustenance of ethnic identity, it becomes more apparent that it is an overlooked issue that merits greater attention.

---

[405] Bill Visone, 'Cramping Your Style: Personal Appearance in the Workplace' [2016] 30(2) Georgetown Immigration Law Journal, 359
[406] Mark Freedland and Lucy Vickers, 'Religious expression in the workplace in the United Kingdom' [2008] 30 Comparative Labour Law and Policy Journal, 597
[407] Mark Freedland and Lucy Vickers, 'Religious expression in the workplace in the United Kingdom' [2008] 30 Comparative Labour Law and Policy Journal, 597
[408] Mark Freedland and Lucy Vickers, 'Religious expression in the workplace in the United Kingdom' [2008] 30 Comparative Labour Law and Policy Journal, 597

4. INDIRECT DISCRIMINATION AND THE LAW

4.1 INTRODUCTION

The research of Wrench and Modood is focused on the employment reality of ethnic minorities in the UK.[409] Their research emphasizes the employment gap between White workers and ethnic minority workers. Correspondingly, in its 2015 report, the Equality and Human Rights Commission retrieved data and analysed evidence from 10 categories, including education, the standard of living and productivity.[410] Their findings revealed that economically active individuals from ethnic minority backgrounds were significantly underrepresented in senior positions at varying organizations. In addition, their work proved that non-Whites have a disproportionately higher rate of unemployment. Although ethnic minorities are increasingly closing the employment and wage gaps, there remains a possibility of indirect discrimination if there is coercion to adopt a Eurocentric style of dress and appearance to be accepted.[411]

The current anti-discrimination law in force in the UK, The Equality Act 2010, prohibits disproportionate and unjustifiable employment policies which have an indirectly discriminatory effect. Race is a protected characteristic against discrimination, and the law includes ethnicity as an aspect of race.[412] However, it is unclear whether physical ethnic and racial manifestations via clothing and appearance symbolisms are also protected under the 2010 Act. This chapter is

---

[409] John Wrench and Tariq Modood, 'The Effectiveness of Employment Equality Policies in Relation to Immigrants and Ethnic Minorities in the UK' [2001] International Migration Papers 38, at page 1, International Labour Office Geneva, International Migration Branch

[410] Equality and Human Rights Commission, 'Is Britain Fairer?' [2015] <https://www.equalityhumanrights.com/en/publication-download/britain-fairer-2015> accessed 28 June 2021.

[411] Koen Van Laer and Maddy Janssens, 'Between the devil and the deep blue sea: Exploring the hybrid identity narratives of ethnic minority professionals' [2014] 30(2) Scandinavian Journal of Management, pp. 186-196

[412] Equality Act 2010, Section 9

focused on an analysis of the law and its interpretation of statutory guidelines for corporate behaviour.

As discussed in the preceding chapter, ethnic dress is a creation borne out of the ideologies, beliefs, and histories of a group over time.[413] Furthermore, it can also be said that standardised corporate dress codes are the products of the majoritarian social ideals concerning appropriate dress. To properly adjudicate issues concerning ethnic manifestation, the law is tasked with balancing the conflicts that arise. This chapter seeks to demonstrate that the enforcement of social ideals within employment is akin to coercing ethnic minorities to abandon identification with their ethnic group in order to integrate with the lifestyles of the majority. However, the design of the current anti-discrimination system is unsuitable to the idiosyncrasies of ethnic manifestation due to its focus on group membership and a lack of innate flexibility.

Research stipulates that the most common incidents of discrimination have largely become normalised, with victims unable to accurately pinpoint their occurrences.[414] It is suggested that this is partly due to the intersectional nature of ethnic-based indirect discrimination.[415] The link between ethnicity and other personal characteristics, particularly gender and religion, is highlighted to demonstrate the unique nature of ethnic identity. Apart from being a function of group membership and communal values, ethnic identity is subjective, individualised and often operates as a hybrid of other personal characteristics.[416] It is questioned whether the current legal provisions under the Equality Act 2010 are suited for the complexities of ethnic identity and its manifestation through ethnic dress.

---

[413] Joanne B. Eicher, 'Introduction: Dress as Expression of Ethnic Identity' in Joanne B. Eicher (ed), *Dress and Ethnicity* (Berg Publishers, 1995), page 1
[414] Koen Van Laer and Maddy Janssens, 'Ethnic Minority Professionals' Experiences with Subtle Discrimination in the Workplace' [2011] 64(9) Human Relations, pp. 1203-1227
[415] Sarah Hannett, 'Equality at the Intersections: The Legislative and Judicial Failure to Tackle Multiple Discrimination' [2003] 23(1) Oxford Journal of Legal Studies, pp.65-86
[416] Eicher Roach-Higgins and Joanne B Mary Ellen, 'Dress and Identity' [1992] 10(4) Clothing and Textiles Research Journal, pp.1-8

4.2 BACKGROUND OF ANTI-DISCRIMINATION LAW IN THE UK

In the United Kingdom, the approach to racial discrimination has evolved over the years. Historically, employers were given an extensive amount of discretion in the way employees were governed and in the running of their respective organizations. This attitude of deference to employers was demonstrated in the remarks of Lord Davey in *Allen v Flood*; "An employer may discharge a workman (with whom he has no contract) or may refuse to employ one from the most mistaken, capricious, malicious, or morally reprehensible motives that can be conceived, but the workman has no right of action against him".[417] Hence, even hiring procedures were left to the judgement of employers with little or no opportunity for judicial intervention or critique of arguably discriminatory practices. Likewise, in the case of *Weinberger v Inglis*[418], it was held that a Committee was free to discriminate amongst its business dealing members based on their nationality and country of origin.

The change in societal attitudes towards race-based discrimination in employment was slow in evolving; consequently, it was not until late in the 20th Century that legislation offered protection to ethnic minorities. The first significant legal instrument designed to protect ethnic minorities from adverse treatment was the Race Relations Act (RRA) 1965. This Act was focused on achieving formative equality, which entailed individuals in the community being treated alike. The scope of the RRA 1965 did not extend into the field of employment but was limited to public spaces such as hotels.[419] The RRA 1965 created the Race Relations Board to enforce the provisions of the Act; however, the Board was given minimal power and could only deal with infringements through conciliation committees.[420] If the committees were unable to stop the discriminatory treatment, the Board was able to refer the case to the Attorney General for an injunction.

---

[417] *Allen v Flood* [1898] AC 1, at page 172
[418] *Weinberger v Inglis* (No 2) [1919] AC 606
[419] Race Relations Act 1965, Section 1(2)
[420] Simon Peplow, 'The 'Linchpin for success'? The problematic establishment of the 1965 race relations act and its conciliation board' [2017] 31(3) Contemporary British History, pp.430-451

The 1965 Act was replaced by the Race Relations Act 1968, which extended legal protection to areas of employment, housing and the procurement of goods and services. Like its 1965 counterpart, the RRA 1968 was also focused on formal equality; hence, only cases of direct discrimination were under its ambit. However, the RRA 1968 gave the Race Relations Board more power and allowed it to take cases of direct discrimination straight to selected county courts if the conciliation committees proved ineffective. The 1965 and 1968 RRA's reflect the hesitancy of Parliament to create effective remedies for victims of race-based discrimination.[421] The insistence on voluntary procedures, such as the conciliation committees, arguably belittled the reality and significance of racial discrimination. By tackling the issue of race-based discrimination via encouragement to employers to voluntarily act with regard to fairness, employers were still placed in positions of substantial control and with wide discretion on how to create and enforce policies within their organizations. Furthermore, such voluntary measures were incapable of acting as practical deterrents against discrimination. In effect, the RRA 1968 was deemed to be a failed attempt at procuring equality for working-class individuals who were likely to be discriminated against on the grounds of race, nationality, skin colour and ethnicity.[422]

The Sex Discrimination Act (SDA) 1970 marked a shift in the way in which individuals were protected against the risk of inequality. Dickens argues that this shift in the law was influenced by the legal policies in place in the United States (US).[423] The US Civil Rights Act 1964 made allowance for disparate impact or adverse effect discrimination, and this swayed British policymakers to protect groups who may be more likely to be negatively affected by a general rule. Hence, the provisions of the SDA introduced the concept of indirect discrimination and recognized it as a legitimate threat to effective and substantive equality.

The Race Relations Act 1976 repealed the RRA 1968 Act and followed the format of the SDA 1970 by also including provisions prohibiting indirect discrimination. Hepple suggests that the delay in enacting a revised version of the RRA was because the protection of ethnic minorities

---

[421] Sandra Fredman, *Discrimination Law* (Oxford University Press 2002)

[422] Ian Smith, Aaron Baker and Owen Warnock, *Smith & Wood's Employment Law* (Oxford University Press, 2019), pp. 244 - 351

[423] Linda Dickens, 'The Road is Long: Thirty Years of Equality Legislation in Britain' [2007] 45(3) British Journal of Industrial Relations, pp. 463-494

was not considered a priority for legislators.[424] He claims that the 1976 Act was 'deliberately introduced later than the SDA because women's rights were more popular than those of ethnic minorities.'[425] Nonetheless, the 1976 Act represented a significant improvement in the legal protection for ethnic minorities. Apart from the fact that provisions were made for indirect discrimination, individuals were given access to the courts to enforce their rights under the Act rather than seeking legal redress through the Race Relations Board.[426]

The 1976 Act's definition of 'racial groups' was sufficiently broad and applied to groups 'defined by reference to colour, race, nationality or ethnic or national origins.'[427] This definition of the concept of race can be said to be positive as it was not confined merely to skin colour but also protected ethnicity and social group membership. In dealing with the presence of indirect discrimination, the RRA 1976 offered claimants possible relief in situations where 'a requirement or condition'[428] affected the relevant racial group disproportionately. In *R v Secretary of State for Employment, ex p Seymour Smith*,[429] the courts expanded on the term 'disproportionate effect' and interpreted that portion of the statute as indicating that 'the enquiry must focus on the proportion of the respective groups who can comply'[430] with the requirement or condition. Hence, for a claim of indirect discrimination based on race to have been upheld under the RRA, the courts needed to be satisfied that the racial group concerned was placed in a less favourable position than other comparable racial groups.

The 1976 Act made an important distinction between discriminatory acts of a direct or indirect nature. Unlike direct discrimination, all incidents of indirect discrimination can be justified by employers. The UK's membership in the European Union also had a significant impact on the development of laws designated to prevent indirect discrimination. The UK was compelled to adopt more specific regulations which offered protection to individuals susceptible to

---

[424] Bob Hepple, 'The New Single Equality Act in Britain' [2010] 5 The Equal Rights Review, pp.11-24
[425] Bob Hepple, 'The New Single Equality Act in Britain' [2010] 5 The Equal Rights Review, at page 12
[426] Erik Bleich, 'Institutional continuity and change: norms, lesson-drawing, and the introduction of race-conscious measures in the 1976 British Race Relations Act' [2006] 27(3) Policy Studies, pp. 219 - 235
[427] Race Relations Act 1976, Section 1 (1)(b)(ii)
[428] Race Relations Act 1976, Section 1(1)(b)
[429] [2000] 1 All ER 857
[430] Sarah Hannett, 'Equality at the Intersections: The Legislative and Judicial Failure to Tackle Multiple Discrimination' [2003] 23(1) Oxford Journal of Legal Studies, at page 73.

discriminatory treatment due to personal traits that made them vulnerable. The EU Directive 2000/78/EC (Employment Directive) required members to ensure that within their respective territories, the principle of equal treatment is strictly adhered to.[431] Furthermore, the EU Directive 2000/43/EC (Race Directive) stated that it is unlawful for a person to be discriminated against and exposed to disadvantageous treatment due to his ethnic and/or racial origin.[432] Furthermore, the Directive urges all "Member States to establish a legal framework to effect the principle of equal treatment and prohibit discrimination on the grounds of race or ethnic origin".[433]

The Directive is commendable because it creates a structure for the equal treatment of all people in the area of employment, education and training, social protection, and access to amenities generally available to the public, and its scope extends to both the private and public sectors. [434] The Race Directive was endorsed in 2000 and adopted into the domestic law via the Race Relations Act 1976 (Amendment) Regulations 2003. Also, the Employment Directive was implemented via the Employment Equality (Religion or Belief) Regulations 2003. However, both the RRA 1975 and the Race Directive, arguably, could not act as deterring forces from preventing incidents of indirect discrimination in the workplace. The requirement in the RRA 1975 that an indirectly discriminatory policy be 'justifiable' was eventually weakened by court decisions and judicial interpretations of the term. Furthermore, the only decisions of employees which could be challenged were employment requirements and conditions. In *Perera v Civil Service Commission (No.2)[435]*, it was explained that a requirement or condition should be an obligation or 'must' imposed by the employer. Consequently, informal or unofficially established procedures would not have been considered eligible for judicial review. Likewise, the limitations

---

[431] Council Directive 2000/78/EC of 27 November 2000 Establishing a General Framework for Equal Treatment in Employment and Occupation [2000] OJ L303/16

[432] Council Directive 2000/43/EC of 29 June 2000 Implementing the Principle of Equal Treatment Between Persons Irrespective of Racial or Ethnic Origin

[433] Tess Gill, 'Application of EU Directives 2000/78 and 2000/43 in the Member States and Consequences in case of Non-Implementation or Incorrect Implementation' [2006] < http://www.era-comm.eu/oldoku/Adiskri/01_Overview/2006_Gill_EN.pdf >, 1(2)

[434] Council Directive 2000/43/EC of 29 June 2000 Implementing the Principle of Equal Treatment Between Persons Irrespective of Racial or Ethnic Origin, Article 3(1)

[435] {1983} IRLR 166

of the Race Directive are rooted in the voluntary language it uses to express the expectation of proactive action. Although it intimates that member states are to ensure equality of treatment in their respective territories, the language the Directive uses suggests that discretion and flexibility are given to legislators. An example of this is seen in Article 6(1), "Member States *may* introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment… [Emphasis included]".

4.3 THE EQUALITY ACT 2010

Important in the history of the development of fairness laws in the UK is the enactment of the Equality Act 2006, which has now been repealed and superseded by the Equality Act 2010. One significant feature of the 2006 Act was its establishment of the Equality and Human Rights Commission to carry out research into social injustice issues and advance possible reforms. According to the Equality and Human Rights Commission, the Equality Act 2010 is, at the moment, popularly perceived to be the most efficient and protective equality framework in existence. The Equality Act 2010 is far-reaching and can be metaphorically described as a legal umbrella that shields individuals possessing the listed protected characteristics from unfair treatment. The exhaustive list of protected characteristics is found in Section 4 of the Act and are age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex and sexual orientation. The scope of the Act encompasses several domains of everyday life, including employment and education. However, there remains a strong possibility that ethnic minorities are marginalised or stripped of their ethnic identity in the workplace, so an in-depth analysis of the efficacy of the 2010 Act is needed.

Under the 2010 Act, the term employment is defined as 'employment under a contract of employment, a contract of apprenticeship or a contract personally to do work'.[436] Therefore, similarly to the Equal Pay Act 1970[437] and the Sex Discrimination Act 1975[438], the definition of employment under the 2010 Act can include certain self-employed workers within the ambits of the Act's protection. This was done to ensure that self-employed individuals were not taken advantage of in the performance of their contracted duties. As was demonstrated in the case of *Quinnen v Hovells*,[439] a self-employed person fulfils the requirement needed to be protected if he or she performs any work under a contract. Although the case of *Quinnen*[440] was decided under the repealed Equal Pay Act, the decision remains relevant. This is because the 2010 Act

---

[436] Equality Act 2010, s 83(2)(a)
[437] Equal Pay Act 1970 s 1(6)
[438] Sex Discrimination Act 1975 s 82(1)
[439] *Quinnen v Hovells* [1984] ICR 525
[440] *Quinnen v Hovells* [1984] ICR 525

absorbs this principle and would operate similarly to the repealed Act in terms of the protection offered to self-employed workers.

Also, it should be noted that all phases of employment, from the hiring stage to dismissal, are covered by the Act.[441] Hence, policies, including dress codes, used as a determining factor in the hiring, promoting, or dismissing of an employee can be brought under the ambit of the Act. Like the RRA 1976, under the 2010 Act, the protected characteristic 'race' also includes nationality, ethnicity and colour.[442] Furthermore, biracial individuals and those who identify with two or more distinct racial groups are also covered by the Act.[443] Although the Act does not include caste in the definition of race, the case of *Chandhok v Tirkey*[444] infers that there can be a successful claim against caste discrimination if it is adequately linked to ethnicity. In *Chandhok*,[445] the Employment Appeal Tribunal conceded that the concept of a caste system could be included under the umbrella of ethnicity and ethnic origins.

Direct discrimination under the 2010 Act occurs when an employer treats a worker with a protected characteristic less favourably than another worker without the relevant characteristic.[446] Direct discrimination is prohibited under section 13 of the Act, and an employer is unable to justify the discriminatory action with reference to his intentions or motives.[447] This was seen in the well-known case of *James v Eastleigh Borough Council*[448] where it was held that in determining a claim of direct discrimination, an objective approach must be utilised to make a decision. In *James*, the claimant, a 61-year-old man, claimed that he had been subject to direct discrimination based on his sex as he was required to pay a small fee to use a council swimming pool while his wife of the same age was not.[449] The council claimed that the discrimination occurred as the fee waiver was only eligible for pensioners; as the claimant was under the

---

[441] Ian Smith, Aaron Baker and Owen Warnock, *Smith & Wood's Employment Law* (Oxford University Press, 2019), pp. 244 - 351

[442] Equality Act 2010, s 9(1)

[443] Equality Act 2010, s 9(4)

[444] *Chandhok v Tirkey* [2015] ICR 527

[445] *Chandhok v Tirkey* [2015] ICR 527

[446] Equality Act 2010, s 13

[447] Ian Smith, Aaron Baker and Owen Warnock, *Smith & Wood's Employment Law* (Oxford University Press, 2019), pp. 244 - 351

[448] *James v Eastleigh Borough Council* [1990] ICR 554

[449] *James v Eastleigh Borough Council* [1990] ICR 554

pensionable age for men, the pensionable age being different for men and women, he was required to pay the fee. Initially, the Court of Appeal had dismissed the claim by assessing the motives of the council. However, the House of Lords overturned this decision and emphasized that a court is not to subjectively take into account the reasons for the discrimination but should instead assess if the claimant would have been treated differently but for the protected characteristic. This case demonstrates that incidents of direct discrimination cannot be justified even when the discriminator has a seemingly legitimate reason for perpetuating the discrimination.

Likewise, there is no justification for direct discrimination even when the employer claims that the discriminatory act was for the benefit of the aggrieved employee. In *Moyhing v Barts & London NHS Trust*,[450] a male nurse's claim alleging direct discrimination was upheld by the courts despite the seemingly beneficial outcomes of the discriminatory act. In *Moyhing*,[451] the defendant hospital instituted a policy whereby male nurses were to be supervised when performing sensitive and intimate procedures on female patients. This policy was determined to be discriminatory as female nurses were not required to have a chaperone when undertaking intimate procedures on patients of any sex. The hospital claimed that the policy was to protect the male nurses, but the court held that such differential treatment of male and female nurses based on stereotypical beliefs of either sex could not be justified.

It should be noted that evidence of differential treatment is not synonymous with a claim of indirect discrimination. Direct discrimination differs from indirect discrimination as there is no justification for unequal treatment. A prerequisite in establishing indirect discrimination is that there must be evidence that a generally applied policy or procedure has led to less favourable outcomes for individuals possessing protected characteristics,[452] as was exemplified in the case of *Ministry of Defence v Jeremiah*.[453] In *Jeremiah*[454], men employed in the factory were compelled

---

[450] *Moyhing v Barts & London NHS Trust* [2006] IRLR 860
[451] *Moyhing v Barts & London NHS Trust* [2006] IRLR 860
[452] Equality Act 2010 s 13(1); Ian Smith, Aaron Baker and Owen Warnock, *Smith & Wood's Employment Law* (Oxford University Press, 2019), pp. 244 - 351
[453] *Ministry of Defence v Jeremiah* [1979] 3 WLR 857
[454] *Ministry of Defence v Jeremiah* [1979] 3 WLR 857

to perform onerous and filthy tasks, while women also employed in the factory were exempted from the unpleasant jobs. It was held that this difference in the allocation of tasks was discriminatory irrespective of the fact that the men were often paid a slightly higher wage than the women. The case of *Jeremiah*[455] is relevant as it demonstrates the fact that an employer is unable to purchase the power to discriminate by offering the disadvantaged employees more money. The case showed the robustness of the courts in ensuring that incidents of direct discrimination are not watered down by the presence of other factors, such as, in this case, extra financial remuneration.

---

[455] *Ministry of Defence v Jeremiah* [1979] 3 WLR 857

4.4 INDIRECT DISCRIMINATION

The consequences of discrimination, whether direct or indirect, are far-reaching. It remains possible for discriminatory policies, even those which are subtle, to effectively restrict a group of people from employment or curtail their career progression.[456] Ethnic minorities, by virtue of their identity, are vulnerable to negative conditions in the workplace. Research demonstrates that ethnic minority workers suffer disadvantageous working conditions, and this may correlate with the fact that children from minority households have a greater risk of living in poverty.[457] The importance of such discovery is the potential of generational disadvantage with minority workers stuck in a cycle of poor working conditions. Substantive equality cannot be achieved if the current gap in employment opportunities is maintained.

The key difference between direct and indirect discrimination under the 2010 Act is the fact that whilst there is no justification for direct discrimination, indirect discrimination can be justified by an employer if the discriminatory policy, criterion or principle (PCP) is considered to be a necessary and proportionate means of achieving the company's legitimate objectives.[458] In the issue of dress codes, it is important to establish whether unstated but established dress standards and informal appearance expectations can amount to a PCP for an indirect discrimination claim. The law does not give a detailed explanation as to what should be considered as an acceptable PCP; instead, it is concisely stated that it must be a requirement or condition of the employer. Consequently, the Act's wording can be broadly interpreted to allow for a range of employer decisions to be scrutinized and subjected to judicial assessment. In effect, most employment policies are frequently considered as a PCP regardless of the formality of its application. This means that informal arrangements and established workplace norms, such as dress codes and official appearance standards, would fall under the ambit of a PCP and could

---

[456] Abida Malik, Hafsah Qureshi, Humayra Abdul-Razakq, Zahra Yaqoob, Fatima Zahra Javaid, Faatima Esmail, Emma Wiley, Asam Latif, ''I decided not to go into surgery due to dress code': a cross-sectional study within the UK investigating experiences of female Muslim medical health professionals on bare below the elbows (BBE) policy and wearing headscarves (hijabs) in theatre' [2019] 9(3) BMJ Open
[457] Equality and Human Rights Commission, Is Britain Fairer? The State of Equality and Human Rights 2015 [2015],
[458] Equality Act 2010, Section 19(2)(d)

potentially be disputed against in a claim under s.19 of the 2010 Act, which allows for judicial action in the event of discriminatory practices.

Indirect discrimination often leads to the normalization of discriminatory behaviour and an acceptance of the contentious PCP as the standard. As argued by Smith et al., "...neutral actions that are experienced as discriminatory happens every day and more often than not because of attitudes and policies that strike those who hold or adopt them as 'common sense'.[459] Hence, victims may be slow in realizing their disadvantageous position and the biased nature of the PCP. The subtlety of indirect discrimination also usually disguises the exact grounds for the unfair treatment, leaving affected employees unable to accurately pinpoint which of their protected characteristics places them at a detriment. The combination of these factors can be problematic considering the initial time limit for making complaints to the employment tribunal. An employee can bring a claim within three months of the complained treatment; this is unlikely to be a problem in situations where the discrimination is of a continuous nature.[460] However, one-off incidents involving a discriminatory PCP may go undetected and avoid judicial scrutiny.

Indirect discrimination is solely concerned with manifestations and expressions of protected characteristics and seeks to regulate seemingly neutral company rules which are capable of impeding the rights of the employees possessing, or associated with, protected traits.[461] The law relating to indirect discrimination can be said to be targeted at the achievement of substantive equality by governing the adoption of policies, rules and procedures that in operation places a specific group with a certain protected characteristic at a disadvantage.[462] Van Laer and Janssens describe indirect discrimination as inconspicuous and highlight the fact that it is difficult to prove as it often disguises itself as part of normal daily occurrences.[463] They go

---

[459] Ian Smith, Aaron Baker and Owen Warnock, *Smith & Wood's Employment Law* (Oxford University Press, 2019), at page 254

[460] Ian Smith, Aaron Baker and Owen Warnock, *Smith & Wood's Employment Law* (Oxford University Press, 2019), pp. 244 - 351

[461] Mark Freedland and Lucy Vickers, 'Religious Expression in the Workplace in the United Kingdom' [2009] 30(3) Comparative Labour Law and Policy Journal 597

[462] Ian Smith, Aaron Baker and Owen Warnock, *Smith & Wood's Employment Law* (Oxford University Press, 2019), pp. 244 - 351

[463] Koen Van Laer and Maddy Janssens, 'Ethnic Minority Professionals' Experiences with Subtle Discrimination in the Workplace' [2011] 64(9) Human Relations, pp. 1203-1227

further to argue that subtle discrimination weakens its victims, who are usually the minority members in a territory while appearing to be beneficial and designed to apply to everyone.

Each indirect discrimination case is supposed to be decided on its own merits and with regard to the specific circumstances of each case. This accounts for the often-varying court conclusions in cases that may appear similar. For example, both the cases of *Malik v British Home Stores*[464] and *Kingston and Richmond AHA v Kaur*[465] involved female claimants who, due to religious and cultural reasons, were unable to concede to their respective employers' dress codes which required the wearing of a uniform that displayed the legs. While the claim of the employee in *Malik*[466] was upheld because the employer could not demonstrate the business necessity for the wearing of a skirt, the claim in *Kaur* was dismissed. The employer's uniform in *Kaur*[467] was justified because of its industry, healthcare, and the unique health and safety requirements all staff were required to follow. In *Malik*, the courts were particularly persuaded by the fact that the relevant uniform was easily modifiable with little financial or commercial costs to the BHS. However, in *Kaur*, the courts appeared to highly esteem the opinion of the Health Authority in its overall assessment of the health and safety concerns related to a change in uniform. It was held that the employers were justifiable in their assessment of what is suitable for the nursing profession. Consequently, the courts have demonstrated a variation in their deference to different industries (the retail and health industries in these cases, respectively).

---

[464] [1980] 2 WLUK 78
[465] {1981} IRLR 337
[466] [1980] 2 WLUK 78
[467] {1981} IRLR 337

4.5 INDIRECT DISCRIMINATION AND LEGITIMATE AIM

There could be lawful and reasonable motives underpinning certain indirect discriminatory policies. Under the 2010 Act, allowance is made for genuine occupational requirements which may necessitate discriminatory treatment of a certain group. Such occupational requirements must be crucial and fundamental for the successful performance of the relevant job role.[468] Apart from the proving of a genuine occupational requirement, an employer can lawfully justify a provision that operates in an indirectly discriminatory fashion by satisfying two main conditions. Firstly, the employer must demonstrate that the contested criterion applied to all members of staff, including those who do not share the claimant's protected characteristic. If an employment policy is found to be imposed selectively, for example, only to members of a claimant's group, that would be found to be an incident of direct discrimination for which there is no justification. After satisfying the requirement that the policy is indiscriminately applied, the employer must prove that it is a proportionate means of achieving a legitimate aim.

Before assessing the proportionality of an action, it must first be established that the employer had a legitimate aim to fulfil. A truly legitimate aim should be necessary for the success of the business or organization. This argument was put forward in *Steel v Union of Post Office Workers,*[469] where it was held that a requirement, or aim, must be necessary, and the employer must be placed under a heavy burden of proof to prove this. Unfortunately, in *Ojutiku v Manpower Services Commission,*[470] the rigidity of how a commercial aim is to be deemed as legitimate was weakened. In Everleigh LJ's judgement, he replaced Phillips J's requirement in *Steel*[471] for the aim to be necessary with a test that merely sought to prove that the aim was 'acceptable to right-thinking people'[472]. He claimed that it was not the intention of the legislators to make employers demonstrate that their employment requirements were essential.

---

[468] Equality Act 2010, Schedule 9
[469] *Steel v Union of Post Office Workers* [1978] ICR 181
[470] *Ojutiku v Manpower Services Commission* [1982] IRLR 418
[471] *Steel v Union of Post Office Workers* [1978] ICR 181
[472] [1982] IRLR 418, at page 421

The test for proving the legitimacy of an aim was changed further in *Hampson v Department of Education and Science*[473] and approved in *Webb v EMO Air Cargo (UK) Ltd*[474]. In *Hampson*, it was held that the proper test was the balancing of the discriminatory effect and the alleged benefit of the aim. In *Webb*,[475] the House of Lords upheld the test requiring a balancing exercise and stated that an aim could only be justifiable if the advantages it produces outweighs the negative impact of its discriminatory effect. From an analysis of these cases, it can be inferred that the determination of the legitimacy of an aim is based on a form of proportionality exercise. Hence, the concept of proportionality and legitimacy have now become intricately linked, whereby it will be difficult to prove one without the presence of the other.

As previously noted, not all incidents of indirect discrimination which occur are rooted in malicious motives and agendas, particularly when considering race-based discrimination and the legitimacy of company aims. As the majority of individuals in the UK are White, rules and policies would have over time evolved in favour of the majoritarian group. Those policies, through repeated use, will likely become norms and socially acceptable patterns of behaviour. As stated by Smith et al., 'arrangements that suit, and always have suited, a majority group might unnecessarily but very seriously disadvantage minority or less empowered groups without anyone meaning them to do so'.[476] Hence, those normalized patterns of behaviour which may accommodate the needs of the majority may also simultaneously restrain the rights of minority groups.

An example of such a normalized pattern of behaviour is the insistence of a secular appearance in the workplace. Consequently, it is common for employers to argue that there is a business and commercial interest in the censoring of racial, religious, cultural, political, and sexual manifestations of employees.[477] Such a generally applicable rule demanding corporate neutrality affects certain marginalised employees negatively and disproportionately. An example

---

[473] *Hampson v Department of Education and Science* [1991] 1 AC 171
[474] *Webb v EMO Air Cargo (UK) Ltd* [1993] 1 WLR 49
[475] *Webb v EMO Air Cargo (UK) Ltd* [1993] 1 WLR 49
[476] Ian Smith, Aaron Baker and Owen Warnock, *Smith & Wood's Employment Law* (Oxford University Press, 2019), at page 254
[477] Mark Freedland and Lucy Vickers, 'Religious expression in the workplace in the United Kingdom' [2008] 30 Comparative Labour Law and Policy Journal, 597

is seen in the case of *Singh v Greater Manchester Police* wherein a Sikh policeman contested that he was discriminated against by the general rule, which prohibited him from wearing a turban during riot training.[478] The proceedings in *Singh* were eventually dismissed due to the claimant's discontinuation of the case.[479] However, it was reported that the claimant received substantial damages for loss of earnings and emotional distress suffered during the legal proceedings.[480] Cases such as *Singh* bring a realistic dimension to the associative problems of workplace rules which enforce secularity. Furthermore, such dress codes arguably purport that society, in general, views secularity and neutrality as virtues worthy of pursuit.[481] As highlighted by Sandra Fredman, such subtle discrimination can manifest as a 'pressure to assimilate to the dominate culture'[482] and this illegitimate coercion to involuntarily adopt the appearance of the majoritarian group is arguably an unfair infringement of the employee's human rights under Article 8 of the ECHR.

It is an important point to note that the use of majoritarian dress codes, whilst seemingly legitimate and indiscriminate, may act as a tool to preserve the power of the reigning ethnic group. Dress codes control appearance, which in turn has been shown to affect behaviour, thereby recreating the dominant social ideologies in the workplace. This was demonstrated by the research of Crane, who highlighted the impact of dress on an individual's overall deportment and bearing.[483] Hence, whilst individuals from varying ethnic groups are being employed, their ethnic identity is denied expression, and thus muted, is eclipsed by the visage of White heritage. In such a situation where dress codes extinguish minority identity through an insistence of secularity or neutrality, a diverse workforce will artificially and unnaturally display similarity with the majoritarian group, whilst incidents of deviation will be considered inappropriate and unprofessional.

---

[478] Press Association, 'Sikh Policeman Wins £10,000 Award After Turban Row' (*The Guardian*, Friday 2nd October, 2009*)*

[479] *Mr G Singh v The Chief Constable of Greater Manchester Police* Employment Tribunals (Case No: 2404021/2018)

[480] Manchester Evening News, 'Sikh Cop Wins £10,000 Over Turban Row', (*Manchester Evening News*, 2 October 2009)

[481] Iain Mclean and Scot M. Peterson, 'Secularity and Secularism in the United Kingdom: On the Way to the First Amendment' [2011] 3(4) BYU Law Review, 637

[482] Sandra Fredman, 'Equality: A New Generation?' [2001] 30(2) Industrial Law Journal 145, 147

[483] Diana Crane, *Fashion and its Social Agendas* (The University of Chicago Press, 2000)

4.6 PROPORTIONALITY AND THE RIGHTS OF EMPLOYERS

"Employers have a right to set up an environment in their workplace that is the best for their customers and best for their business. At the same time, how an employee looks or chooses to appear can be essential to their identity as an individual, and that needs to be respected."[484] Visone's appraisal takes into account both the rights and desires of the employers and employees. The court takes a similar approach in cases regarding an infringement of an employee's right through indirect discrimination. In the UK, courts are required to evaluate the interests of opposing parties through a proportionality balancing test.[485] Proportionality is used as an assessing instrument in indirect discrimination cases because employers are able to justify their discriminatory policy, provided that such policy or rule was established for the fulfilment of a legitimate aim.

Baker explains that the concept of proportionality, in determining the value to be placed on the rights of an employee, can be assessed in a *stricto sensu* manner.[486] This implies that the court would be required to consider whether an employer's consideration of an employee's dressing is fundamentally and strictly necessary for the achievement of a legitimate aim. However, it has not been made conclusively clear as to what criteria influences a decision that a discriminatory policy is proportionate. Historically, ambiguous words such as 'appropriate' have been used to describe the standard employers needed to meet to demonstrate that their policy was proportionate. This concession that an appropriate discriminatory workplace rule may be deemed as proportionate can be said to be a diluted version of the original requirement that the rule is the least restrictive option available to the employer.[487]

Baker argues that the current approach of the UK courts is inordinately and excessively favourable to employers.[488] His academic commentary on the nature of proportionality heavily

---

[484] Bill Visone, 'Cramping your style: Personal Appearance in the Workplace' [2016] 30(2) Georgetown Immigration Law Journal, at page 378.
[485] Bill Visone, 'Cramping your style: Personal Appearance in the Workplace' [2016] 30(2) Georgetown Immigration Law Journal, 359
[486] Aaron Baker, 'Proportionality and Employment Discrimination in the UK' {2008} 37(4) Industrial Law Journal 305
[487] Aaron Baker, 'Proportionality and Employment Discrimination in the UK' {2008} 37(4) Industrial Law Journal 305
[488] Aaron Baker, 'Proportionality and Employment Discrimination in the UK' {2008} 37(4) Industrial Law Journal 305

suggests that the courts have made the standard of proof required to justify indirect discrimination advantageously low for employers. He asserts that an employer is not really required to prove that the relevant rule was genuinely necessary for a cogent legitimate aim. Instead, despite potential great discomfort and unfairness an employee might suffer from an indirectly discriminatory policy, the employer can justify their actions if they can merely demonstrate commercial reasons for their decision.[489] Despite his criticisms of the application of the proportionality doctrine, Baker admits that an employer is most likely to be in the best position to determine what is commercially best for their business or organization.[490] This assertion is questionable and arguably places commercial interests in a more favourable light than an employee's needs.

Employers solely focused on business goals may tilt towards practices that inhibit the personal expression of staff in order to please the majority of their respective client target group. In the employment scene, it is important to have an unbiased party judicially intervene and overlook the activities of corporations to ensure substantive equality practices. Likewise, Deitch *et al.* raise an important point regarding the assessment of the value to be given to an employee's negative treatment based on an indirectly discriminatory company policy.[491] They assert that a seemingly insignificant incident that disadvantages a group with a protected characteristic might not necessarily have an insignificant effect on the disadvantaged group.[492] In other words, the mere fact that the contentious workplace rule is slight does not mean that it is incapable of having a severely adverse impact on relevant employees.

In the case of *Wong v Igen Ltd (formerly Leeds Careers Guidance)*[493], the CA issued extensive guidance on how the burden of proof should be placed on employers in cases alleging discriminatory treatment. It was held that the claim of the complainant would be subject to the

---

[489] Aaron Baker, 'Proportionality and Employment Discrimination in the UK' {2008} 37(4) Industrial Law Journal 305
[490] Aaron Baker, 'Proportionality and Employment Discrimination in the UK' {2008} 37(4) Industrial Law Journal 305
[491] Elizabeth A. Deitch, Adam Barsky, Rebecca M. Butz, Suzanne Chan, Arthur P. Brief and Jill C. Bradley, 'Subtle Yet Significant: The Existence and Impact of Everyday Racial Discrimination in the Workplace' [2003] 56(11) Human Relations, pp. 1299-1324
[492] Elizabeth A. Deitch, Adam Barsky, Rebecca M. Butz, Suzanne Chan, Arthur P. Brief and Jill C. Bradley, 'Subtle Yet Significant: The Existence and Impact of Everyday Racial Discrimination in the Workplace' [2003] 56(11) Human Relations, pp. 1299-1324
[493] {2005} ICR 931

inferences of the tribunal so as to determine what deductions can be attained from the facts of the case. If a potential incident of discrimination is inferred, then the employer is obligated to prove on the balance of probabilities that the treatment was not based on unlawful grounds. The tribunal is then to assess whether the evidence of the defendant adequately demonstrates that the complained treatment is not reflective of the presence of discrimination.

The concept of proportionality arguably highlights the subtle hierarchy of competing rights and characteristics. The aims of the employer are measured against the affected rights of the employee to determine which should prevail. In cases relating to dress codes, the courts have to decide whether there is a right to dress following the ideals of a protected characteristic, and if so, whether that right should be accorded greater weight than the commercial interests of the employer. It is questionable whether the courts, made up of judges, each with his/her own personal bias, should be in the position to ascribe worth and value on personal characteristics and business aims that are unconnected to them.

Ideally, an employer should fail the proportionality test if the discriminatory policy does not add essential value to the business and if there is a means of achieving the same results but with a reduced negative impact on the affected employees. In assessing proportionality, there has been inconsistency in determining how rigidly the statute is to be interpreted. In the case of *Bilka-Kaufhaus GmbH v Weber von Hartz (170/84)*[494], the CJEU, ruling based on Article 157 EC, held in effect that a proportionality test would justify a discriminatory PCP if it were shown that there were no alternative less discriminatory means of achieving the employer's legitimate aim. In *Bilka*,[495] it was also emphasized that justification for indirect discrimination could only be achieved if the relevant aim constituted a genuine need of the business. The case of *Bilka*[496] is important as the 2010 Act must be interpreted per the objectives of the EU Directive, which it implements.

---

[494] [1986] 5 WLUK 96
[495] [1986] 5 WLUK 96
[496] [1986] 5 WLUK 96

It has been suggested, however, that the UK courts interpret the statutory wording on the justification of indirect discrimination with regard to the outcomes desired.[497] As was demonstrated in the case of *Ojutiku v Manpower Services Commission*[498], the courts take a more lenient approach and only place a relatively low burden of proof on employers. The case of *Homer v Chief Constable of West Yorkshire*[499] is important in the discourse of proportionality. In *Homer*, the decision of the CJEU in *Bilka*[500] was analysed to determine the appropriate burden to be placed on employers. The court determined that the aim of the discriminatory policy must be legal and permissible for the employer to do as well as presenting a need for the specific business. Owing to *Bilka*[501] and *Homer*[502], it can be said that the doctrine of proportionality is to be utilised in the narrow sense (*stricto sensu*).

Proportionality has been criticized as an unfixed and unstable principle. Each case is to be determined on its merits; hence, there are usually no concrete and predictable means of foreseeing whether a unique business aim would be considered legitimate and a justifiable reason for indirect discrimination. Specifically, the doctrine of proportionality does not give explicit guidance on the precise measurement of how meticulously the means need to fit the ends.[503] The elasticity of proportionality also adds to the aura that there exists a hierarchy of rights as there can be different outcomes in a case based on the protected characteristic involved. This was seen in the ECHR case of *Abdulaziz and others v United Kingdom*[504] in which a law was deemed discriminatory on the grounds of sex but was not justifiable on the grounds of race. Hence it can be said that the courts make biased judgements on each case as to which group should qualify for preferential treatment and have their rights upheld.

---

[497] Ian Smith, Aaron Baker and Owen Warnock, *Smith & Wood's Employment Law* (Oxford University Press, 2019), pp. 244 - 351
[498] [1982] 5 WLUK 212
[499] [2012] UKSC 15
[500] [1986] 5 WLUK 96
[501] [1986] 5 WLUK 96
[502] [2012] UKSC 15
[503] Sandra Fredman, *Discrimination Law* (Oxford University Press, 2011), 116
[504] (1985) 7 EHRR 471

Proportionality exercises often involve a subtle weighing of rights to determine which should be prioritized. An example of this was seen in the case of *Ladele v Islington LBC*[505] where a Christian registrar who sought to be exempted from performing civil partnership ceremonies failed in her claim. The claimant insisted that the policy requiring all registrars to perform the ceremonies was disadvantageous to people of her faith. The court considered the principles of equality which prospects to accommodate different groups of protected characteristics. In this case, it was religious rights and the right to not be discriminated against based on a sexual orientation which was balanced. The claim failed, and the intention to protect gay couples from differential treatment was given greater accord than religious beliefs.[506]

---

[505] [2009] EWCA Civ 1357
[506] [2009] EWCA Civ 1357

4.7 THE NEED FOR A COMPARATOR

Whilst claimants of indirect discrimination have certain conditions to fulfil, the burden placed on them is a lot less than that placed on employers. To prove indirect discrimination, the claimant must establish a suitable comparator group to prove the presence of a disadvantage. However, it should be noted that the courts are not obliged to only accept concrete statistical evidence in the presentation of disadvantage with reference to a comparator group. In *Games v University of Kent*,[507] the claimant was successful in proving a disadvantage by demonstrating that people his age were less likely to have obtained a PhD than those who were younger. Although the claimant did not point to a specific comparator age group, he produced information that suggested that the need to have a PhD had only recently become a requirement whilst it was previously regarded as unnecessary. Hence, applicants his age suffered a particular disadvantage if they desired to pursue a career in academic teaching.

The need for a comparator can be a major drawback of the equality laws. The insistence of a suitable comparator infers that equality is achieved when there is uniformity of treatment and/or effect. Since indirect discrimination has unwittingly become synonymous with conformity, an individual claim of discriminatory treatment must be hinged on suitable evidence that demonstrates a disadvantage in comparison to others. The disadvantage of the requirement for comparison is that it neglects the fact that individuals have an unpredictable mix of characteristics. A person may suffer a particular disadvantage in relation to the unique combination of her features and characteristics, which may be difficult to evidence against an accepted comparator.[508]

Concerning race and ethnicity, a person may adopt practices and norms of an ethnic group which places her at a disadvantage but would not be easily proven when compared to another without the adopted ethnic characteristics. For example, a South African person of White descent who identifies as an African may choose to manifest that identity outwardly, for example,

---

[507] *Games v University of Kent* [2015] IRLR 202

[508] Sarah Hannett, 'Equality at the Intersections: The Legislative and Judicial Failure to Tackle Multiple Discrimination' [2003] 23(1) Oxford Journal of Legal Studies, pp.65-86

through hairstyles. A company dress policy that disproves such hair arrangement may be difficult to dispute against via a claim of indirect discrimination as the claimant neither has a suitable comparator group nor membership in the group with the protected characteristic. Other White women will not be negatively affected by the rule, and African women, with the characteristic kinky hair texture, may present the hairstyle differently. The claimant will not be able to use other White women without an African identity as comparators because an inward allegiance to a group and separation from another is not accounted for in the 2010 Act. Another tenuous result of the need to find a comparator is the possibility that it may frustrate and limit legitimate claims. A comparator for an indirect discrimination claim must be employed under commensurate terms and conditions as the claimant.[509] This requirement may prove difficult due to both the general secrecy of personal employment contracts and the fact that certain groups are segregated in the workplace due to socioeconomic factors and unconscious bias.[510]

'The choice of a comparator itself requires a complex value judgment as to which of the myriad differences between any two individuals are relevant and which are irrelevant. The choice of relevant characteristics is often itself determinative of the outcome … equally problematic, the comparator can be constructed in different ways, leading to entirely different outcomes.'[511] In the ECJ case of *Defrenne v Sabena*[512], it was rigidly endorsed that comparison should not take place between workers from different industries. The UK case of *Scullard v Knowles*[513], however, extends the position in *Defrenne*[514] by allowing comparison between workers not employed by the same employer but doing similar work.

The role of a comparator in an indirect discrimination claim is not just to prove group disadvantage. Importantly, it is also to show that the relevant rule leads to the effect that fewer

---

[509] Sophia Reibetanz Moreau, 'Equality rights and the relevance of comparator groups' [2006] 5 JL & Equal, 81
[510] Ken Clark and Stephen Drinkwater, 'Segregation Preferences and Labour Market Outcomes' [2007] 94(2) Economic Letters, pp. 278 - 283
[511] Sandra Fredman, *Discrimination Law* (Oxford University Press, 2011) at pages 98-99
[512] [1976] ICR 547
[513] [1996] ICR 399
[514] [1976] ICR 547

individuals of the group with the protected characteristic can comply.[515] For example, a rule to work Fridays will not be indirectly discriminatory if it merely inconveniences the social plans of a certain group; it must be shown that because the rule affects the ability of a group to engage in religious observations, they are consequently less able to comply with it. It should be noted that the current legislation allows for the comparator to be a hypothetical person who does not share the claimant's protected characteristic but who nevertheless has comparable circumstances to that of the claimant.[516]

Apart from demonstrating a comparator group, a claimant must prove that he or she has individually been subject to a disadvantage. As long as the claimant can establish personal disadvantage, it is not necessary to prove the reason why the possession of the protected characteristic made the relevant employment provision disadvantageous. This was established in *Essop v Home Office (UK Border Agency),*[517] where the Supreme Court held that workers of ethnic minority descent did not need to indicate exactly how their racial and ethnic identity made them more likely to fail a Skills Assessment.

---

[515] Merel Jonker, 'Comparators in multiple discrimination cases: a real problem or just a theory?' in Marjolein van den Brink, Susanne Burri and Jenny Goldschmidt (eds) *Equality and human rights: nothing but trouble?* (Netherlands Institute of Human Rights (SIM) Utrecht University, 2015), pp. 211-221
[516] Equality Act 2010, s 23
[517] *Essop v Home Office (UK Border Agency)* [2017] 1 WLR 1343

4.8 GROUP DISADVANTAGE

An individual is able to suffer a severe disadvantage due to possessing a combination of protected characteristics;[518] for example, a homosexual woman from an ethnic minority group might consider herself disadvantaged by a company dress policy. She may want to dress following the appearance standard for men of her ethnic group. In such a situation, the woman's position is brought about by the combination of three factors: her gender, her sexuality, and her race. However, proving group disadvantage would be tenuous or practically impossible.

A further problem of the requirement to show group disadvantage is that it does not take into account the possibility of unique manifestations of group identities. An example was seen in the case of *Eweida v British Airways Plc*[519] where the UK courts rejected a claim of indirect discrimination based on religion as it was held that the religious group to which the claimant belonged would not have been disadvantaged by the employer's dress policy. The claimant, a Christian, alleged that the prohibition on wearing religious symbolisms amounted to indirect discrimination. Her claim was refuted as the courts reasoned that Christians are not bound by specific dress requirements; hence, no group disadvantage could be shown. Instead, it was held that her decision to wear a cross was a personal fashion statement rather than a manifestation of religious obligations. Such reasoning is foundationally flawed as it assumes that all members of a social group or with the same protected characteristics act the same way. Particularly when dress and physical appearance are involved, individuals creatively display their personalities whilst simultaneously indicating membership to a group.[520] Consequently, while members of a group may present themselves with aspects of similarity, it must be recognized that there might be features of personal convictions demonstrated in each person's appearance. Hence, a person sharing a protected characteristic with a group may suffer from negative differential treatment

---

[518] Ben Smith, 'Intersectional Discrimination and Substantive Equality: A Comparative and Theoretical Perspective' [2016] 16 The Equal Rights Review, 74
[519] [2010] EWCA Civ 80
[520] Claire Dwyer, 'Negotiating Diasporic Identities: Young British South Asian Muslim Women' [2000] 23(4) Women's Studies International Forum, pp. 475-486

even though the majority of the group is unaffected. In this area, the law fails to achieve true substantive equality as it only upholds the mainstream and well-known needs of groups.

The argument of the CA in *Eweida*[521] evidences how the particular needs of individuals possessing a protected characteristic are overlooked in favour of the experiences of the group. In this way, equality law only responds to the majoritarian views of the protected groups whilst overlooking the rights of the group members in the minority who exhibit variance in group behaviour. The claimant's strong belief that the wearing of a cross was vital for the expression of her Christian faith was undermined. Her personal convictions were accorded no value and were only protectable to the extent that they conformed with the Court's opinion of Christian behaviour. The fact that no other employee of the Christian faith had complained against the defendant's dress regulations were considered as proof that the policy was not indirectly discriminatory. The lack of majoritarian assent of Christians with regards to the wearing of crosses was given an arguably exaggerated place of importance. The CA seemed satisfied with the evidence denoting no group disadvantage that they failed to properly weigh the case using a proportionality *strictu sensu* test as evidenced in Homer. A strict proportionality test would have analysed the legitimacy of British Airways' secular dress policy, with particular consideration of the fact that it made allowance for the demonstration of the requirements of other religions. Most importantly, a proper proportionality assessment would have examined if and to what extent the prohibition of religious symbols benefitted the company. That benefit, once evidenced, should then have been weighed against the loss of the claimant's right to religious observance in line with her understanding of it.

The decision of the British courts in *Eweida* shows a few fallacies in the requirement of group disadvantage.[522] Firstly, it does not account for the presence of sub-groups and the fact that members of a group interpret group values differently. This was demonstrated in the CA's failure to account for the fact that there are different types of Christians and that within each sect and denomination, there are different views on how the practice of Christianity should be manifested. If only majoritarian group norms are protected, individuals sharing protected

---

[521] [2010] EWCA Civ 80
[522] [2010] EWCA Civ 80

characteristics with the group would, in essence, become outsiders, and the notion that their beliefs and manifestations are unimportant will be given credence to by the law's disregard of it.

In effect, characteristics that are considered willingly adopted are not given as much attention as those which are considered to be legally or biologically assigned. It can be argued that due to the possibility of proselytization, evangelism and change of beliefs, religion is, to an extent, an unfixed and voluntary acquired characteristic. The error in such reasoning is that the fact that a feature might be chosen does not take away from its inherent value and ability to influence its acquirer. Furthermore, with the growing understanding of the fluidity of gender and interracial relations, characteristics that were once deemed as natural and permanent have been shown to be flexible and evolving.[523]

The importance of considering how the courts measure voluntarily chosen characteristics are due to the partly self-elective aspect of ethnicity. Anderson refers to this as the ideology that ethnic identity is circumstantial and is subject to reinterpretation, with individuals strategically choosing what sets of cultural norms to adhere to and identify with.[524] A practical example of this was seen in the recent Black Lives Matter (BLM) protests evolved from the racially influenced incidents of police brutality in America. In the British protests, individuals who may have previously identified with English culture chose to adopt a 'Black' status with physical manifestations designed to show roots in an Afro-Caribbean heritage.[525] Such physical manifestations were prominently displayed on social media, with individuals dressing in accordance with varying facets of African customs, from the exhibition of traditional hairstyles to the wearing of African textiles.

The BLM movement demonstrated the level of control and awareness that individuals have over their identity. Irrespective of nationality, the presence of European ancestry or full

---

[523] Kate Malleson, 'Equality Law and the Protected Characteristics' [2018] 81(4) The Modern Law Review, pp.598-615

[524] Alan B Anderson, 'The Complexity of Ethnic Identities: A Postmodern Re-evaluation' [2001] 1(3) Identity: An International Journal of Theory and Research, pp 209 - 223

[525] Jillian Fish, Rafael Aguilera, Ighedosa E. Ogbeide, Darien J. Ruzzicone, and Moin Syed. "When the personal is political: Ethnic identity, ally identity, and political engagement among Indigenous people and people of colour." [2021] 27(1) Cultural Diversity and Ethnic Minority Psychology, pp. 18-36

previous involvement in British society, individuals deliberately chose to reframe their identity to show a connection to and an allegiance with an African ethnic identity.[526] The fact that ethnic identity can be strategically chosen or reframed is not a limitation but a demonstration of the vital role of individuality and personal perception in identity politics. If the law is to appropriately govern a society that is subject to the variations of identity formation, it has to be both flexible and focused on a person-centred approach that respects the uniqueness of individual choice.

A contrast to *Eweida v BA*[527] is seen in the case of *Noah v Desrosiers*[528]*,* where it was ruled that the criterion for hairdressers to have their hair uncovered was discriminatory because it discouraged and disadvantaged Muslim women. Whilst this ruling is arguably correct, the same conclusion would have been reached if the tribunal considered the claimant's claim of indirect discrimination based on her personal religious beliefs rather than on group disadvantage. Many women of the Muslim faith either do not wear a head covering or would have no moral and religious concerns about removing a head covering for the sake of an employment.[529] The tribunal's decision in *Noah* propagates popular belief about Muslim women and again overlooks the reality of variance amongst members of a social group.[530]

Apart from showing group disadvantage, the claimant also has to demonstrate that she was personally affected by the disadvantage. As seen in the case of *Noah*, the claimant succeeded because she desired to wear her headscarf. Even though the rule was found to be disadvantageous against Muslim women, a Muslim woman who does not wear a headscarf would not have been able to prove indirect discrimination. In *Starmer v British Airways plc,*[531] we see another coinciding of group and personal disadvantage with the result of a finding of unjustified indirect discrimination. In *Starmer,*[532] a female pilot was not allowed to apply for part-time hours

---

[526] Lanier Frush Holt and Matthew D. Sweitzer. "More than a black and white issue: ethnic identity, social dominance orientation, and support for the Black Lives Matter movement." [2020] 19(1) Self and Identity, pp.16-31

[527] [2010] EWCA Civ 80

[528] ET/2201867/07

[529] Anna-Mari Almila, 'Fashion, Anti-Fashion, Non-Fashion and Symbolic Capital: The Uses of Dress among Muslim Minorities in Finland' [2016] 20(1) Fashion Theory, pp. 1 - 27

[530] ET/2201867/07

[531] [2005] All ER (D) 323

[532] [2005] All ER (D) 323

due to a rule which refused pilots who had not flown for at least 2,000 hours to work less than 75 per cent of full time. The claimant was able to prove group disadvantage by exhibiting that women were most likely affected as they had more career breaks due to caring responsibilities and would consequently find it difficult to acquire the required 2,000 hours of flight time. She also proved a personal disadvantage as she did not meet the requirement and could not apply for the part-time hours needed to enable her to undertake childcare duties.

The Equality Act 2010's decision to base protection against indirect discrimination solely on group membership demonstrates either a lack of understanding or a disregard of the fact that fixed categories deny individual authenticity. When an individual loses the ability to solely define himself, he is forced to ascribe to himself a socially influenced identity that may not truly accommodate his needs.

4.9 INTERSECTIONALITY AND GROUP DISADVANTAGE

As discussed in Chapter Two, ethnicity is a wide and complex subject; consequently, identities attached to it are multilayered and unique to each individual. Anderson's research on ethnic identity supports the stated thesis that ethnicity is not one-dimensional but is both influenced and constructed by varying social processes.[533] Such processes include globalization, diverse media platforms and intermarriage. Important to the discussion of intersectionality and ethnicity is the reality that certain ethnic minority individuals will suffer a unique type of disadvantage as a result of the combination of their ethnicity with other protected characteristics, particularly gender, religion, and sexual orientation. The physical manifestation of ethnic identity will vary depending on several other factors unique to the relevant individual. Therefore, a law based on a single-axis model of identity, such as the Equality Act 2010, will be unable to adequately safeguard the interests of ethnic minority employees whose sense of ethnic dress conflicts with the established workplace dress code.

The concept of intersectionality explains how an individual could be affected by the disadvantages associated with multiple groups as well as disadvantages caused by the possession of a combination of protected characteristics. As claimed by Smith, "Gender reaches into disability; disability wraps around class; class strains against abuse; abuse snarls into sexual orientation; sexual orientation folds on top of race (…) everything finally piling into a single human body".[534] The term 'intersectionality' was originally coined by Crenshaw, who explained that black women suffered from specific detriments derived from the consolidation of their gender and racial origin. Crenshaw highlighted that the current laws at the time were ineffective as they only offered relief for victims discriminated against based on sex or race but not for a combination of both.[535]

---

[533] Alan B Anderson, 'The Complexity of Ethnic Identities: A Postmodern Re-evaluation' [2001] 1(3) Identity: An International Journal of Theory and Research, pp. 209 - 223
[534] Ben Smith, 'Intersectional Discrimination and Substantive Equality: A Comparative and Theoretical Perspective' [2016] 16 The Equal Rights Review, 74
[535] Kimberle Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics' [1989] 140(1) University of Chicago Legal Forum, 139

Intersectionality can prove to be an aspect of the weakness of the 2010 Act as claimants are normatively expected to prove disadvantage based on the experience of groups with the singular protected characteristics. Atrey describes this dilemma by referencing the problematic situation of individuals sharing 'sameness' whilst exhibiting differences from the group.[536] A black woman could share race with other black individuals but differ in experience with black men; however, her experience as a woman of African descent could distinguish her positionally from women of other races. Whilst she shares race and gender with protected groups, her simultaneous membership of both differentiates her from each group.

The use of a single axis legal model not only generalizes the reality of personal characteristics but also reinforces stereotypes of people with similar features.[537] This is seen in the legal requirement for disadvantage to be based on its impact on a group with a protected characteristic. The insistence of granting remedies on group disadvantage erroneously overlooks the fact that a substantial number of individuals in the group would suffer aspects of the group disadvantage but would also experience personal detriment unrelatable by other members of the group. The fact that members of a group share a feature does not mean that they would all suffer the same disadvantage or to the same degree. Interestingly, Bhavani *et al.* demonstrate that amongst each group, there is a pervading false sense of homogeneity.[538] Although individuals are constantly faced with the simultaneous similarities and differences between themselves and members of their group, when encountering outsiders, they uniquely act as though they are one. This false unconscious belief in the oneness of traits in a member group creates feelings of solidarity and strengthens resistance against others.

Unfortunately, such group solidarity has been used as a model for group protection. The requirement of group disadvantage infers that the negative differential treatment or outcome be systematic or standardized. Hence, stereotypes pertaining to the needs, experiences and natures of groups with protected characteristics are encouraged. When only stereotypical

---

[536] Shreya Atrey, *Intersectional Discrimination* (Oxford University Press, 2019), pp. 1 - 7
[537] Ben Smith, 'Intersectional Discrimination and Substantive Equality: A Comparative and Theoretical Perspective' [2016] 16 The Equal Rights Review, 74
[538] Reena Bhavnani, Heidi Safia Mirza, Veena Meetoo, *Tackling the Roots of Racism: Lessons for Success*. (Policy Press, 2005), pp. 1 - 55

disadvantages are accounted for in legal protection, the law becomes mainly relevant in incidents imitating historical prejudice whilst ignoring the fact that discrimination is an evolving dynamic with ever-changing manifestations. Group disadvantage forces non-conforming individuals to integrate into group culture in order to have a form of equality. That in itself is disadvantageous treatment and defeats the aims of equality. As Fredman states, '[discrimination] should not exact uniformity as a price of equality. Instead, it should accommodate difference and aim to achieve structural change'.[539] Legal relief for indirect discrimination based on the concept of individuality and intersectionality provides inclusivity and caters for changing needs and modifications in the perception of personal rights. These limits of the law have led to expressed doubts as to its ability and suitability to affect the level of protection needed to ensure fairness in the employment sector. Take the case of Muslim women and their desire to wear the headscarf: a PCP that operates to prevent such an outward demonstration of religion has been deemed to be indirectly discriminatory, as seen in the case of *Azmi*.[540] However, the decision, in that case, was based on religion and not on the coincidence of religion and gender. If a situation arose where a Muslim man, who chooses to physically express himself as a female, sought to wear a headscarf, it is likely he would not find relief under the current law.

Pilkington discusses the issue of multiple identities, which corresponds to Atrey's discussion on intersectionality.[541] Apart from ethnic origin, individuals also take into account their gender, religion, sexuality and physical ability in the subconscious constitution of identity. However, ethnic identity is unique in that it tends to be shaped by a consideration of other personal factors. Ethnic groups tend to have pervading beliefs concerning gender roles, religious convictions, sexual orientation and disability status. Hence, discrimination against an individual based on his ethnicity can invariably amount to discrimination on other grounds. Due to each person's capacity to have multiple identities and the fact that these identities become interlinked, there is a need for a review of legislation that purports to protect individual and singular exhaustively listed characteristics.

---

[539] Shreya Atrey, *Intersectional Discrimination* (Oxford University Press, 2019), at page 25
[540] *Azmi v Kirklees MBC* [2007] ICR 1154
[541] Andrew Pilkington, *Racial Disadvantage and Ethnic Diversity in Britain* (Palgrave Macmillan, 2003)

Intersectionality, to an extent, fragments the presence of legally recognized protected characteristics.[542] Treating individuals on the basis of a single identity defines them according to the perception of the dominant group and 'artificially heightens differences and suppresses similarities between members and non-members of different groups".[543] The alternative to the current law is to replace the recognized characteristics with 'multiple inequality variegations'.[544] As society becomes more diverse with groups growing in connection and collaboration, a legal system that identifies discrimination as separate incidents relating to specific groups is archaic and insufficient for the present needs of society. When discrimination is limited to group disadvantage, it disregards the multi-conscious identities of individuals and can operate by coercing such individuals into choosing a convenient aspect of their identity to base their claims of discrimination on.

Group disadvantage thus elevates the protected characteristics rather than developing the ideology that it is the individual who is important. Awareness revolves around each listed characteristic, omitting the fact that new categories are being identified, leaving individuals who do not fit convincingly into any of the characteristics on the exhaustive list vulnerable to unjustified discriminatory attacks. The current policy on proving indirect discrimination is not able to deal with situations that manifest 'multiple layers of oppression'.[545]

Consequently, group disadvantage fails to account for the fact that membership of a group is not synonymous with uniformity of expression.[546] A member of a group should be free to perform her group identity in ways that differ from that of the majority. For example, whilst most members of an ethnic group, such as Afro-Caribbeans, may choose to wear mainstream clothing, some may insist on demonstrating that group identity with ethnic apparel. It should also be noted that such ethnic apparel might not be that which is considered usual or even easily identifiable with the group but demonstrates a suitable link with the ethnicity sought to be

---

[542] Gerard Quinn, 'Reflections on the Value of Intersectionality to the Development of Non-Discrimination Law' [2016] 16 The Equal Rights Review, pp.63-72
[543] Shreya Atrey, *Intersectional Discrimination* (Oxford University Press, 2019), at page 5
[544] Shreya Atrey, *Intersectional Discrimination* (Oxford University Press, 2019), at page 6
[545] Shreya Atrey, *Intersectional Discrimination* (Oxford University Press, 2019), pp. 1- 7
[546] Sarah Hannett, 'Equality at the Intersections: The Legislative and Judicial Failure to Tackle Multiple Discrimination' [2003] 23(1) Oxford Journal of Legal Studies, pp.65-86

demonstrated: 'in this way, grounds of discrimination law ... signify patterns of group disadvantage which are historical, substantial, pervasive and abiding'.[547]

Adding complexity to the dynamic of intersectional discrimination is the potential of the proportionality test to reinforce the notion of a hierarchy of rights. Repeated demonstration of such a hierarchy will enforce the dual belief that characteristics are not inextricably linked and that each singular feature has a fixed value or degree of importance. Some patterns of disadvantage are reinforced by the coinciding of two or more characteristics; hence, purporting to separate them or evaluate them individually is a false form of justice. Individuals would only be given protection based on another's idea of his identity and needs rather than on a true reflection of his individuality. Atrey claims that when the doctrine of intersectionality is considered, there is no room for a hierarchy of rights as it 'resists a race to the bottom kind of disadvantage contest'.[548]

Furthermore, whilst it is possible for a PCP to be discriminatory based on one ground (a specific protected characteristic), its effect may be felt negatively because of the possession of other characteristics, even those unconnected to the original basis for the discrimination. According to Willey, this reality of compound discrimination, or intersectionality, discourages potential claimants from bringing proceedings due to a lack of evidence that one particular characteristic founded the discriminatory treatment.[549] Willey uses the example of Canada, which has a similarly diverse population, to calculate a possible percentage of individuals not succeeding in claims because of the presence of complex intersectionality. He claims that a corresponding pattern of injustice could be found in Britain as in Canada, where approximately 48 per cent of all indirect discrimination cases involved multiple discrimination.[550]

The importance of legislating for the effects of combined discrimination has been considered, but implementation has been delayed due to consideration of the economic budget.

---

[547] Shreya Atrey, *Intersectional Discrimination* (Oxford University Press, 2019), at page 60
[548] Shreya Atrey, *Intersectional Discrimination* (Oxford University Press, 2019), at page 44
[549] Brian Willey, *Employment law in context: an introduction for HR professionals* (4th Edition. Harlow: Pearson, 2012)
[550] Brian Willey, *Employment law in context: an introduction for HR professionals* (4th Edition. Harlow: Pearson, 2012)

The costs involved in admitting cases based on multiple discrimination and intersectionality was viewed as being too high; consequently, it can be inferred that financial stability and economic factors are given a greater degree of importance than the protection of vulnerable individuals with multiple identities.[551] Furthermore, the government resisted combined discrimination, as they are more inclined to favour employers and are hesitant for the law to place an onerous burden on them. The decision to refuse relief for intersectionality prioritizes the rights of employers and infers that business needs preside over the rights of employees. Also, it has been reasoned that the ignoring of intersectionality allows for concentration on incidents of discrimination that are deemed as more serious, suggesting that negative differential treatment arising from combined traits are of a lesser degree of importance.[552]

The consequence of a legal system that both fails to acknowledge intersectionality and uphold the dignity of each person's individuality is that individuals may personally consider themselves unjustifiably disfavoured due to a feature they possess that is not included in the 2010 Act. For example, psychological identity is not included as a protected characteristic; however, physical manifestations and responses are often triggered by the way a person mentally defines themselves irrespective of what social group they belong to.

As stated by Hannett, discrimination law, particularly as demonstrated in the 2010 Act, is reliant on explicit and recognizable identities.[553] Hence, a claim of the possession of a protected characteristic that is not supported by evidence will fail. In this way, the law does not account for individualistic perceptions of features but only protects those which are identifiable and which fit in with common expectations and patterns. An exhaustive list is incapable of creating fairness in employment as there would always be individuals who are left exposed by the gaps in the

---

[551] Shreya Atrey, *Intersectional Discrimination* (Oxford University Press, 2019), pp. 109 - 138
[552] Brian Willey, *Employment law in context: an introduction for HR professionals* (4th Edition. Harlow: Pearson, 2012)
[553] Sarah Hannett, 'Equality at the Intersections: The Legislative and Judicial Failure to Tackle Multiple Discrimination' [2003] 23(1) Oxford Journal of Legal Studies, pp.65-86

law.[554] There would also be gaps and cracks in the law when an approach that purports to tally features deemed worthy of protection is undertaken.

It is posited that discrimination law should not solely focus on disadvantages based on social standing but should anticipate and protect against disadvantages caused by personal orientation. Protecting the individual rather than the group takes off the pressure of adding new categories (and likewise, removing categories that are no longer thought necessary for protection). Individual protection is important, as those exhibiting unique traits tend to be in the minority and are most vulnerable for protection. An example is a transgender man who chose to retain his ability to carry a child not being protected against discrimination on the grounds of pregnancy due to no longer being legally classified as a woman.

In its current state, it can be said that discrimination law acts as a form of social, moral police that asserts the rights of individuals possessing protected characteristics whilst subtly denouncing the importance of other personal attributes. In this way, the law serves as a source for debate of the values and normative status of the current society. It also demonstrates the effects of historical events which highlighted certain groups and successfully legitimised their social position. Consequently, it is argued that the law and the society are inseparably linked, and both serve to reinforce and modify the other. Societal values and sentiment regarding social groups influence the legal protection offered, whilst disregard for non-mainstream ideals is reflected in the lack of corresponding laws and regulations.[555]

---

[554] Paola Uccellari, "Multiple discrimination: How law can reflect reality' [2008] Volume 1, The Equal Rights Review, pp. 24-49
[555] Tim Reeskens and Matthew Wright, 'Nationalism and the Cohesive Society: A Multilevel Analysis of the Interplay Among Diversity, National Identity and Social Capital Across 27 European Societies' [2013] 46(2) Comparative Political Studies, pp.153-181

4.10 THE MULTIPLICITY OF GENDER, RELIGION AND ETHNICITY

Double discrimination, as explained by Shoben,[556] differs from the traditional understanding of intersectional discrimination coined by Crenshaw.[557] Whilst intersectional or compound discrimination is rooted in the disadvantage caused by a mixture of personal features, double discrimination is demonstrated when an individual suffers multiple but distinct detriments as a result of membership in two or more groups. The key difference is the distinction of prejudice and the opportunity for a claimant to receive remedial action appropriate to each specific right infringed upon.

Shoben adds to the discourse of the complexity that arises from a multi-layered identity in her work on compound discrimination.[558] She emphasizes that there is a link between gender and race; hence, an inference can be drawn from her findings that the experience of disadvantage endured by minorities can be exacerbated by their biological and assumed gender identity. The relevance of intersectionality and compounded discrimination to ethnic dress lies in the simple but often overlooked fact that dress is frequently designed to be gender-specific. Consequently, the appearance standards established for women via cultural cues frequently differ from those established for men. An example of this is seen in the wearing of 'wrappers' (long lace skirts designed to be tied at the waist) by Yoruba women, whilst the men are expected to wear loose-fitting trousers and traditionally designed tunic-style shirts. The example of the Yoruba approach to ethnic dress demonstrates the variance in appearance standards set for the different genders. Therefore, a corporate dress code could be disadvantageous to an individual due to the combination of both his or her gender and ethnic status. A dress code forbidding loose-fitting styles may not be disadvantageous to the Yoruba people as a whole (or to the Afro-Caribbean race to which they are socially ascribed) or to men in general, but it will affect the unique group

---

[556] Elaine W. Shoben, 'Compound Discrimination: The Interaction of Race and Sex in Employment Discrimination' [1981] Scholarly Works, Paper 582

[557] Kimberle Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics' [1989] 140(1) University of Chicago Legal Forum, 139

[558] Elaine W. Shoben, 'Compound Discrimination: The Interaction of Race and Sex in Employment Discrimination' [1981] Scholarly Works, Paper 582

of Yoruba men. Compound discrimination involving both gender and race can also be seen when corporate dress codes interact with the different colour and fabric requirements prescribed by ethnic values for both genders. Corporate dress codes that call for muted or subtle colours could create a disadvantageous situation for individuals whose gender and ethnic identity create a conflict.

Bradley et al. discuss the impact of workplace cultures on ethnic minority women. The workplace, in its varying forms, represents a part of society and is a community in itself.[559] In each workplace, members or employees build a narrative of their role, value and abilities. Therefore, the workplace impacts upon a person's identity construction and is capable of categorizing people into groups based solely on their functions in the workplace. Workplace culture refers to the underlying perspectives that shape corporate policies and establish or normalize certain patterns of behaviour. It can be argued that because most leadership and influential roles within corporations are occupied by members of the majoritarian social group, the relevant workplace cultures rooted in majoritarian norms is that they could foster established PCPs that conflict with the identity constructs of minority groups.

Using ethnic minority women as a focus group, Bradley *et al.* explain that workplace culture can have serious detrimental effects on an individual's career attainment.[560] Interestingly, they note that workplace culture can transcend beyond, and run contrary to, established policies. They use the example of an equality policy commonly found in most corporations and highlight how the behaviour of the company as a group can act contrarily to the expectations of the policy. It can be inferred that if a company has been established on majoritarian norms and is led by individuals belonging to the dominant group, it becomes harder for substantive equality to be achieved as the unconscious culture of the company may be rooted in bias. Supporting this

---

[559] Harriet Bradley, Geraldine Healy, Cynthia Forson and Priyasha Kaul, 'Workplace cultures: what does and does not work' [2007] Equal Opportunities Commission, pp. 9 - 15

[560] Harriet Bradley, Geraldine Healy, Cynthia Forson and Priyasha Kaul, 'Workplace cultures: what does and does not work' [2007] Equal Opportunities Commission, pp. 9 - 15

argument are the findings of Bradley *et al.,* which demonstrate a substantial implementation gap between official company policies and the actual practices observed.[561]

With regards to dress codes and ethnic status, a policy that promises equality but gives no allowance for the expression of minority identity status may demonstrate an unwelcoming workplace culture. Workplace cultures are important in the study of equality laws as they highlight the reality of societal influence on practices within the employment field.[562] Whilst the law may dictate what policies should be pursued or refrained from, it is the behaviour and normalized bias of individuals that determines practice.

Beyond gender, ethnic manifestation is also affected by religion, with convictions and personal beliefs influencing the external manifestation of overall identity. Race, culture and ancestral roots have been shown to interfere with the way an individual interprets or reacts to religious beliefs.[563] Using Christianity as a continued example, this influence of race and a history of slavery and abuse can be said to be a major reason why some people of colour choose to interpret Jesus as being Black.[564] However, media productions designed majorly by White individuals tend to depict Jesus as White and with a Euro-centric set of appearance and behavioural attributes.[565] This example of the conflicting interpretations of the leading figure in Christianity demonstrates how faith and ethnicity interplay. Consequently, an individual choosing to dress in accordance with beliefs rooted in Christianity will be further influenced by his ethnic identity and the racial interpretation of the leading figures of his chosen faith.

The combination of certain beliefs and an ethnic status can affect the way an individual dresses; consequently, a corporate dress code may lead to a form of compound discrimination in which the individual is affected due to the interaction of both the characteristics of race and religion. Graham and Haidt argue that the concept of religion is misunderstood if viewed as a

---

[561] Harriet Bradley, Geraldine Healy, Cynthia Forson and Priyasha Kaul, 'Workplace cultures: what does and does not work' [2007] Equal Opportunities Commission, pp. 9 - 15

[562] John Wrench and Tariq Modood, 'The Effectiveness of Employment Equality Policies in Relation to Immigrants and Ethnic Minorities in the UK' [2001] International Migration Papers 38,

[563] Rebecca Y Kim, 'Religion and ethnicity: Theoretical connections' [2011] 2(30 Religions, pp.312-329

[564] Wongi Park, 'The Black Jesus, the Mestizo Jesus, and the Historical Jesus' [2017] 25(2) Biblical Interpretation, pp.190-205

[565] George Yancy, *Christology and whiteness: what would Jesus do?* (Routledge, 2012), pp. 19 - 36

single-dimensionally individual trait.[566] Instead, religion is best understood as a trait or a solidified set of beliefs founded and established through the activities of a social group.[567] This conceptualization of religion emphasizes its connection to communities and entrenched factions who have grown to share similar perceptions and have accordingly modified aspects of their identity to demonstrate allegiance and a sense of belonging.

Religion can be described as both the outcome of social cohesion and an instrument that acts as a social adhesive capable of connecting individuals who may otherwise have nothing in common.[568] As the by-product of social groups, religion or ingrained beliefs are fashioned by what can be called the 'aristocracy' of a certain community. These aristocrats are similar to social elites who, through their influence and social power, determine the behaviour of others. Individuals tend to adhere to the perceptions of these community aristocrats because they have created a subconscious connection between the aristocrat's social power and a higher state of being.[569] Unlike social elites who emerge from the most politically, financially and socially affluent, community aristocrats evolve from a supposed perception of moral superiority. This theory can explain why religions derived from the same source can be radically different. The term 'community' in this context does not refer to a physical location but one built on shared ideas and psychological similarities. Christianity, for example, could be said to belong to the wider community of Judean beliefs.

The communal aspect of religion, its role in the strengthening of social ties and its ability to transform a group of varying individuals into a unit with a passionately shared fundamental identity cannot be overstated.[570] Hence, its inclusion in the Equality Act 2010 is a positive step in the journey towards substantive equality. However, the limits of the law are seen in its narrow

---

[566] Jesse Graham and Jonathan Haidt, 'Beyond Beliefs: Religions Bind Individuals into Moral Communities' [2010] 14(1) Personality and Social Psychology Review, pp.140-150

[567] Jesse Graham and Jonathan Haidt, 'Beyond Beliefs: Religions Bind Individuals into Moral Communities' [2010] 14(1) Personality and Social Psychology Review, pp.140-150

[568] Yinger J. Milton, *Religion, society and the individual; an introduction to the sociology of religion*. (Macmillan, 1957).

[569] Christian D von Dehsen and Scott L. Harris, eds. *Philosophers and religious leaders*. (Vol. 2. Greenwood Publishing Group, 1999)

[570] Jesse Graham and Jonathan Haidt, 'Beyond Beliefs: Religions Bind Individuals into Moral Communities' [2010] 14(1) Personality and Social Psychology Review, pp.140-150

interpretation of what amounts to religious beliefs and its hesitancy to fully protect religious manifestations. The discussion of religion in this manner is relevant to the topic of ethnic dress as the line between cultural or racially motivated expression and religiously inspired action is often very thin.[571] Certain religious beliefs are founded or substantially manipulated by cultural attitudes, environmental cues, and family values. In such cases, the same faith can be practised differently by groups of people who differ in ethnic identity, and in many cases of outward difference, clothing is used as the signifier of variance.[572]

Christianity, for example, can be practised differently by individuals belonging to factions developed and maintained by community aristocrats as seen in Catholicism, maintained by the Pope, and Eastern Orthodoxy, headed by the Patriarch of Constantinople.[573] When social behaviour is used to analyse religion, it becomes clear that it is multilayered and cannot be utterly understood as a purely individual or personal belief. In this regard, the 2010 Act can be commended for its categorization of religion as a group characteristic.[574] Unfortunately, its error lies in the restriction of claims to those in which group disadvantage can be shown. Whilst religion is shaped by society; its internal adoption will be affected by other traits of the individual, with ethnicity being particularly relevant in this regard.

The ONS report on ethnicity, published in 2014, demonstrates that there is a strong correlation between ethnicity and religion.[575] In essence, the report showed that individual ethnic groups tend to have a dominant religion which could suggest that group values and cultural norms influence (and are in turn influenced by) the chosen religion. The current dominant religion in the UK is Christianity, with over 93 per cent of adherents having a White ethnic identity. It is therefore suggested that the overall appearance norms in the UK have been partially influenced by the dominant social group's values, which are rooted majorly in

---

[571] Claire Mitchell, "The religious content of ethnic identities' [2006] 40(6) Sociology, pp. 1135-1152

[572] Joanne B. Eicher and Tonye V. Erekosima, 'Why Do They Call it Kalabari? Cultural Authentication and the Demarcation of Ethnic Identity' in Joanne B. Eicher (ed), *Dress and Ethnicity* (Berg Publishers, 1995), pp. 139-164

[573] Robert Lee Wolff, 'Politics in the Latin Patriarchate of Constantinople, 1204-1261' [1954] 8 Dumbarton Oaks Papers, pp. 225 - 303

[574] Equality Act 2010, s10

[575] Office of National Statistics, '2011 Census analysis: Ethnicity and the Labour Market, England and Wales' [2014] <https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/ethnicity/articles/ethnicityandthelabourmarket2011censusenglandandwales/2014-11-13> accessed 11 November 2020.

Christianity (albeit in a more minimal form). If we adopt the theory that suggests that religion and ethnicity intermingle to form identity manifestations, it can then be inferred that the current appearance standards have evolved loosely from both Christian and Eurocentric values.

In the UK, Christianity is largely practised narrowly, with many believers not subjected to an all-encompassing set of physical dress rules. Consequently, many Christians in this society are noted to dress in a neutral and secular manner.[576] As seen in the case of *Eweida*,[577] it is largely believed that there is not an enforced dress code for Christian adherents. This point is important as it demonstrates how ethnic values affect the interpretations of religious dogma. As previously discussed, Christians with a Nigerian (or African) ethnic identity will differ from their White counterparts and may deem the wearing of headscarves to be an essential item for the correct fulfilment of religious duties performed by women.[578] In such an instance, religious beliefs are altered or modified along with ethnic cues and identity. Similarly to the population of Christians, the report found that approximately 93 per cent of people who claim to have no religious faith are White. This fact is important because corporate dress codes that insist on secular wear or ban religious symbolism could indirectly and simultaneously impact ethnic and religious minorities negatively. To draw a further correlation between ethnicity and religion, the ONS report reveals that ethnic minorities are also likely to be religious minorities as the dominant faith (and atheism) are substantially made up of White individuals.[579]

Using headscarves as an example, it has been noted that African women have utilized the item of clothing as a key element in their traditional attire.[580] The varying styles of head tying, fabric and colours are chosen often to signal the women's particular ethnic heritage and ancestral ties. However, headscarves are also a key religious symbol for these women and are used as both an expression of faith and an act of submission to its laws. Pereira and Ibrahim use Nigerian

---

[576] Steve Kettell, 'On the public discourse of religion: An analysis of Christianity in the United Kingdom' [2009] 2(3) Politics and Religion, pp.420-443
[577] *Eweida v British Airways plc* [2010] EWCA Civ 80
[578] Charmaine Pereira and Jibrin Ibrahim, 'On the Bodies of Women: The Common Ground Between Islam and Christianity in Nigeria' [2010] 31(6) Third World Quarterly, pp.921-937
[579] Office of National Statistics, '2011 Census analysis: Ethnicity and the Labour Market, England and Wales' [2014]
[580] Charmaine Pereira and Jibrin Ibrahim, 'On the Bodies of Women: The Common Ground Between Islam and Christianity in Nigeria' [2010] 31(6) Third World Quarterly, pp.921-937

women as a case study and argue that the wearing of headscarves has become an interlinked symbol of both religion and ethnicity.[581] They assert that "women's bodies constitute significant zones for the inscription of social norms, practices and values" and argue that over time, religious activity has merged with ethnic status and eventually has manifested through the clothing choices of women in these regions.[582] In Nigeria, both Muslim and Christian (the two main faiths practised in the country) women wear headscarves in the performance of religious duties; however, the manner in which these women wear them differs. Interestingly, there are further differences in the styling of the headscarf across the varying tribes of Nigeria, and this tends to correlate with the dominant religion practised in these parts. Tribes that are dominantly adherents of the Christian faith, like the Igbos and the Yoruba, known for being socially vibrant, wear headscarves that demonstrate flamboyance and flair. In contrast, the Northern tribes, which are predominantly Muslim, known for their diligence to labour as seen in their dominance of agriculture, tend to wear plain coloured scarves or hijabs. Consequently, the headscarves of the women of the varying regions demonstrate both their faith and their cultural values and behavioural patterns.

Applying this understanding that appearance can be dictated simultaneously by religion and ethnic roots, in British society, it becomes apparent that the legal rules in place may not be adequate. Minority ethnic groups who are also religious may feel compelled to dress in ways that are both consistent with their cultural roots and to their religious beliefs. However, the requirement of demonstrating group disadvantage does not currently favour incidents evolving from an intersection of personal characteristics. A Nigerian woman of the Christian faith employed in the UK may feel compelled to wear a headscarf, demonstrating both her faith and ethnic roots. However, as demonstrated in the case of *Eweida*,[583] the courts will analyze the disadvantage with regard to the 'average Christian woman' who may not share the ethnic roots

[581] Charmaine Pereira and Jibrin Ibrahim, 'On the Bodies of Women: The Common Ground Between Islam and Christianity in Nigeria' [2010] 31(6) Third World Quarterly, pp.921-937

[582] Charmaine Pereira and Jibrin Ibrahim, 'On the Bodies of Women: The Common Ground Between Islam and Christianity in Nigeria' [2010] 31(6) Third World Quarterly, at page 921

[583] *Eweida v British Airways plc* [2010] EWCA Civ 80

of the claimant. Consequently, such a claimant desiring to wear a headscarf may not find relief by clinging to religion as the chosen protected characteristic.

Although the British courts decided essentially that the interests of British Airways outweighed that of Ms Eweida, the ECHR gave a judgment in favour of the claimant.[584] As previously discussed, both the CA and the SC were swayed both by what they considered to be a lack of cogent or substantial group disadvantage and by the perceived ambiguity surrounding the importance of symbolic jewellery to the Christian faith. It can be said that the approach of the British courts, inferred from the case of *Eweida v BA*, demonstrates ignorance of both the reality of individuality in the expression of a protected characteristic and the importance of such independent manifestations to the development of personal identity.[585]

The ECHR approached the case of *Eweida* from a different angle by investigating the actual benefits conferred to a business by its refusal to permit non-normative dress.[586] This mode of balancing conflicting interests is not merely interested in the seemingly legitimate aim of an employer but goes deeper by measuring the genuine quantifiable commercial advantages gained from the application of a contentious PCP. Consequently, employers are held to a higher standard by the added responsibility of showing that the relevant PCP is effective in bringing about the aims for which it was established. When the PCP being contended with involves dress codes, it is not enough for an employer to claim that the pursuance of neutrality is legitimate; they must go further to ensure that the neutral dress code positively impacts the business.

---

[584] *Eweida v United Kingdom* [2013] ECHR 37
[585] [2010] EWCA Civ 80
[586] [2013] ECHR 37

4.11 THE EQUALITY ACT AND THE INTERCONNECTION OF RACE, RELIGION AND ETHNICITY

The 2010 Act takes a wide approach to the definition of race, including colour, nationality, and ethnic origin in its description. In the interpretation of the Act, the courts have decided which social groups can be said to fall under the scope of race to prove discrimination. In *Mandla*[587], it was explained that for a group to be considered an ethnic group, they must both subjectively regard themselves as a group and be objectively identified by outsiders as such. Furthermore, it was held that the group must demonstrate the presence of long-standing cultural norms and a reasonably enduring sense of tradition. From the case of *Mandla*, it can be inferred that the courts seek longevity, shared values and recognizable group traits before recognizing a group as an ethnic one.[588] These requirements proved detrimental to the Rastafarian group as they were not considered to be an ethnic group because they have only been recognized for about 60 years. It is thus questionable whether the criteria set for the demonstration of ethnic group identity is fair and appropriate.[589]

In *Mandla*, the courts demonstrated that although race and ethnicity are connected, the concept of ethnicity is broader than that of race and is more concerned with social behaviour and patterns.[590] Interestingly, it was also held that apart from a general sense of affliction, a group can be considered to be an ethnic one if it represented a collective minority being suppressed within a larger dominant group. There is also an individualistic element to ethnicity as self-designation is considered, as long as the individual regards herself as a member of the group and is in terms accepted by other group members and is for all practical purposes treated as an insider of the group. In addition, the courts decided that a claimant is not bound to prove that his membership of a racial group was the sole cause of the disadvantageous treatment to prove the presence of indirect discrimination.

---

[587] *Mandla v Dowell-Lee* [1982] UKHL 7
[588] E Ellis Cashmore, 'The Dawkins Case: Official ethnic status for rastas' [1989] 16(1) Journal of Ethnic and Migration Studies, pp. 158 - 160
[589] Michael Banton, 'Are Rastafarians an ethnic group?' [1989] 16(1) New Community, pp. 153 - 157
[590] *Mandla v Dowell-Lee* [1982] UKHL 7

Likewise, in *Nagarajan v Agnew and others*[591], it was held that as long as it can be satisfied that a claimant's racial group was a key factor in the unlawful discrimination, the case can be treated as based on racial grounds even though there are other factors present. Under the repealed RRA 1976, the only decisions of employers which could be challenged were employment requirements or conditions. In *Perera v (1) The Civil Service Commission (2) The Department of Customs and Excise*[592], it was explained that a requirement or condition should be an obligation or 'must' imposed by the employer. In the 2010 Act, the wording of a PCP is a lot wider and allows a range of employer decisions to be scrutinised and subject to judicial assessment. In the issue of dress codes, it is important to establish whether unstated dress standards and informal, albeit established, appearance expectations can amount to a PCP for an indirect discrimination claim.

Before the 2010 Act, some incidents of religious discrimination were decided on racial grounds, as seen in *Mandla v Dowell-Lee*[593]; however, not all religions were capable of coming under the scope of racial group protection. Hence, Muslims and Rastafarians cannot seek protection under the laws relating to ethnic groups, as seen in the case of *Dawkins v Department of the Environment* [594]. Some commentators such as Willey argue that religion or belief relates not only to the decision to be a member of a religious group but also to the interpretation of the requirements of the faith and the decision to follow the rules, if any, of the relevant holy book.[595] It has also been noted that the variations amongst religions often lead to conflicting situations whereby it has to be determined whose rights should be protected. The inference of such arguments is that there is virtually no middle ground to be found in situations arising from a conflict of religious beliefs, hence to curtail discrimination, one party's rights must be restricted.

This perception of religion and belief as chosen traits gives insufficient regard to the strong link between race, ethnic descent and religion. From the perspectives of many religious

---

[591] [1994] IRLR 61
[592] [1983] IRLR 166 CA
[593] [1982] UKHL 7
[594] [1993] IRLR 284
[595] Brian Willey, *Employment law in context: an introduction for HR professionals* (4th Edition. Harlow: Pearson, 2012)

individuals, their faith was not chosen but inherited.[596] Neither do some consider their interpretation of religious duties as an independent decision but have had their convictions and mindsets passed onto them by family and environmental influences. In some ethnic groups, the common or popular religion is considered a group trait rather than a personal acquirement that can be deviated from. Consequently, some groups reject individuals who do not practice the common religion. The importance of religion and ethnic group membership can be seen in some social requirements for marriage contracts to be engaged with only according to the tenets of the chosen religion.[597] Also, the children born to these ethnic groups are automatically and repeatedly indoctrinated into the religion, examples of which include the naming of children after religious icons or obligating children to participate in religious dedications and sacrifices.[598]

If ethnic discrimination is disguised or closely resembles religious bias, an employer can be under a less stringent burden of proof to provide justification. The disadvantageous effect of the PCP may be considered to be merely a consequence of the individual's own choices rather than indirect discrimination based on a protected characteristic. In this way, the law demonstrates a gap in the protection offered for members of ethnic groups. For example, if the claimant in *Ladele v London Borough of Islington* was influenced by a religion tied with her ethnic identity, the requirement to perform civil partnerships will not only amount to a disregard for religious beliefs but would have also compromised ethnic group membership and identity.[599] If the courts examine similar facts as in the *Ladele* case but based on claims of indirect racial discrimination, it is arguable that the proportionality test would have weighed more in the claimant's favour.[600] The fact that the Council employers were able to get other registrars to perform civil partnerships without difficulty might have influenced the courts that the employer's policy was not the least restrictive option to ensuring fair treatment for homosexual couples.

---

[596] Slavica Jakelić. *Collectivistic religions: Religion, choice, and identity in late modernity*. (Routledge, 2016)
[597] Amy Adamczyk and Brittany E Hayes, 'Religion and sexual behaviours: Understanding the influence of Islamic cultures and religious affiliation for explaining sex outside of marriage' [2012] 77(5) American Sociological Review 723 - 746
[598] Michael Hand, 'Religious upbringing reconsidered." [2002] 36(4) Journal of Philosophy of Education, pp.545-557
[599] *Ladele v London Borough of Islington* [2009] EWCA Civ 1357
[600] *Ladele v London Borough of Islington* [2009] EWCA Civ 1357

Indeed, the employment tribunal took this line of reasoning and held that her innate beliefs were disregarded.

It is suggested that the consequent rejection of the tribunal's decision by the CA due to the notion of voluntary characteristics, such as religion, which endorsed discriminatory or differential treatment, are not to weigh too heavily in a proportionality balancing exercise. The lack of significance attached to such religious beliefs is demonstrated by the CA's refusal for the claimant to appeal to the Supreme Court as the underlying issues of the case were deemed to not be of 'general public importance'.[601]

Often the difficulty with describing certain religions as an element of racial groups is the fact that society plays a role in the determination of what mindsets and behavioural patterns constitute a religion. This is seen in the ECHR case of *Campbell and Cosans v The United Kingdom,* where it was decided that for a precept to be considered under the ambit of religion and belief, 'it must be worthy of respect in a democratic society'.[602] This suggests that religion and belief are subject to an objective test based on the opinions of the majority of society. Religion or belief which is not considered respectable will not be protected, nor would it be able to trump the protected rights of others, as seen in the case of *McClintock*.[603] The problem with this assessment of religion based on the current societal perceptions of worthy ideals is that it fails to mitigate the fact that society as a whole is influenced by majoritarian norms and philosophies. Hence, the guidance in *Campbell* allows minority religions to be disregarded and unprotected if their inherent values are inconsistent with the bias of a 'democratic society'. Consequently, in *Grainger plc v Nicholson*, [604] beliefs about environment conservation and climate change were deemed respectable, whilst the belief against couples of the same sex adopting a child was not.

Ethnic and racial groups emanating from non-British societies may be particularly affected by such guidance as the concept of 'respectable' differs widely amongst different groups. In some countries, such as those in Africa or some parts of Asia, issues considered respectable might be

---

[601] *Ladele v London Borough of Islington* [2009] EWCA Civ 1357, 239
[602] [1982] 4 EHRR 293
[603] [2007] IRLR 29
[604] [2010] IRLR 4 EAT

both illegal and commonly held to be morally reprehensible, examples of which include child marriage and polygamy.[605] Migrants from such countries who represent minority ethnic groups in the UK would have such beliefs quashed and would not be able to successfully bring proceedings against PCPs, which bar them from visually manifesting such beliefs. It is appreciated that equality laws have a duty to protect all people, particularly those deemed vulnerable; however, it should not be taken for granted that the majoritarian ideals in the UK, created mainly by Europeans who traditionally observe Christian or secular views, have become the benchmarks for measuring worth.[606] Therefore, ethnic minorities who coincidentally also observe minority religions are at a disadvantage when they choose to express both aspects of their identity through dress.

The behaviour of the majority of a group is taken into account when an individual claims indirect discrimination. This was seen in the case of *Azmi,* where it was considered, although not the determining factor, that other female Muslim teachers were satisfied to wear the headscarf only and not the full Niqab as desired by the claimant. Malleson also highlights that the protected characteristics must "have some definitional and categorical stability, must broadly reflect people's understanding of social reality and lived experience and must align with the most significant areas of discrimination in society".[607] These highlighted conditions of a protected characteristic can frustrate equality as it fails to account for the constant changes in the classification of identity. The flexible nature of identity makes it increasingly difficult to prove the presence of a legally protected characteristic. The current law demonstrates a lack of understanding of the realities of group membership and the disadvantage generated by group identity. Hence, the law fails to transform societal inequality due to its inability to accommodate individual disadvantage linked to group membership and identity. For cases involving conflicts

---

[605] Alissa Koski, Shelley Clark and Arijit Nandi, Has Child Marriage Declined in sub-Saharan Africa? An Analysis of Trends in 31 Countries [2017] 43(1) Population and Development Review pp.7-29; Julie Hunt and Nalini Kasynathan, Pathways to Empowerment? Reflections on Microfinance and Transformation in Gender Relations in South Asia [2001] 9(1) Gender and Development, pp.42-52

[606] Office of National Statistics, '2011 Census analysis: Ethnicity and the Labour Market, England and Wales' [2014] <https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/ethnicity/articles/ethnicityandthelabourmarket2011censusenglandandwales/2014-11-13 > accessed 11 November 2020.

[607] Kate Malleson, 'Equality Law and the Protected Characteristics' [2018] 81(4) The Modern Law Review at page 598

around ethnic dress and ethnic identity, the law needs to be able to respond to incidents of disadvantage without being rooted in a recognizable and historical social ground of discrimination.

The current list of characteristics consists of three types of identities: (a) legally ascribed identities, such as gender and age; (b) socially assigned identities, such as race, and (c) identities involving a mixture of perceived personal assent and external perception such as religion and sexual orientation. These listed characteristics appear fixed and would only be expanded if a group with a distinct feature can leverage social interest in the legitimization and recognition of their claims. As illustrated by Malleson, the currently protected traits are the product of significant lobbying and political agitation of disadvantaged groups.[608] She also argues that certain characteristics seen as trivial and flippant can have a serious impact on people and cause negative differential treatment, and she uses the example of the stereotype and bias surrounding overweight individuals to buttress this argument.

Whilst the Equality Act 2010 does not indicate a hierarchy in the protected character, decided cases often demonstrate bias and differentiation in the accorded values of the individual characteristics. In *Sethi v Elements*[609], an agency's dress policy forbidding facial hair was held to be indirectly discriminatory and unfairly disadvantageous to Sikhs, like the claimant. It was particularly noted in *Sethi*[610] that the finding of disadvantage to the claimant was influenced by the prominent understanding of facial hair being an essential element for a practising male. This is important as it demonstrates that the courts favour characteristics that are considered fundamental to a majority of the affected group. This was also demonstrated in the case of *Eweida v BA,* where it was held that there was no indirect discrimination against the Christian claimant due to a lack of consensus regarding whether the wearing of a cross was fundamental in the Christian faith.[611] As in *Sethi*,[612] the court in *Eweida* demonstrated little regard for

---

[608] Kate Malleson, 'Equality Law and the Protected Characteristics' [2018] 81(4) The Modern Law Review, pp.598-615

[609] *Mr R Sethi v Elements Personnel Services Ltd* EAT 2300234/2018

[610] EAT 2300234/2018

[611] *Eweida v British Airways plc* [2010] EWCA Civ 80

[612] EAT 2300234/2018

individual expression and suggested that protection is only given in instances where a popular or majoritarian disadvantage has occurred.

In *Harris v NKL*,[613] a case slightly similar in fact to *Sethi*,[614] the courts did not find in favour of the claimant, a Rastafarian, who claimed that his employees' rules regarding hair were indirectly discriminatory. The employer terminated the claimant's employment due to what they perceived as untidy hair. The claimant argued that his hair was matted, which was a necessary requirement for dreadlocks. Unlike in *Sethi*,[615] where facial hair was deemed an important part of the Sikh faith, dreadlocks were not considered a fundamental feature. The court justified their decision by basing the outcome on the tidiness of the hair rather than the presence of dreadlocks.

---

[613] *Harris v NKL Automotive Ltd and Matrix Consultancy UK Ltd* EAT 0134/07
[614] EAT 2300234/2018
[615] EAT 2300234/2018

4.12 CONCLUSION

Smith discusses the problematic nature of having equality laws founded on the single-axis model of identity.[616] Such laws overlook the multiplicity of individuality and also fail to take into account the influence of choice and interconnectedness on each person's identity.[617] For true equality to occur, the law must make allowance for the treatment of claimants as individuals. The reality of the uniqueness of each human being needs to be expressed in anti-discrimination law so that victims of indirect discrimination can find relief from situations where their concurrent similarities and variance from groups affects them negatively. The use of exhaustive listed protected characteristics is arguably an attempt to generalize the lived experience of individuals while upholding old-fashioned and traditional perceptions of human characterization.[618]

Consequently, the chief problem of the law is that it fails to account for the diverse identity formations encapsulated by ethnic dress. The 2010 Act acknowledges the reality of discrimination based on multiple grounds; unfortunately, it limits this to incidents of direct discrimination.[619] Anti-discrimination law, aimed at curbing indirect discrimination, defines identity along fixed lines and merely elaborates the homogenous and singular complaints of visible minorities.[620] Unfortunately, this focus on fixed characteristics also tends to highlight only the problems of groups, or group members, who have managed to spearhead societal narratives whilst also wielding considerable political power. Intersectionality is important in any discourse surrounding ethnicity because ethnic identity cannot be reduced to exclusive and definite groups. Ethnic identities, and the ethnic dress that manifest them, are dynamic, unfixed, and multifarious. The manifestation of ethnic identity is invariably linked to the individual's gender, family and relationship status, social class, and, in many instances, religion. A law that purports

---

[616] Ben Smith, 'Intersectional Discrimination and Substantive Equality: A Comparative and Theoretical Perspective' [2016] 16 The Equal Rights Review, 74

[617] Sarah Hannett, 'Equality at the Intersections: The Legislative and Judicial Failure to Tackle Multiple Discrimination' [2003] 23(1) Oxford Journal of Legal Studies, pp.65-86

[618] Gerard Quinn, 'Reflections on the Value of Intersectionality to the Development of Non-Discrimination Law' [2016] 16 The Equal Rights Review, pp.63-72

[619] Schedule 14

[620] Ben Smith, Intersectional Discrimination and Substantive Equality: A Comparative and Theoretical Perspective, *[2016] 16* The Equal Rights Review

to keep all these aspects separate fails to offer substantive equality and might create situations in which invisible minorities are marginalised or forced to align with a more dominant subgroup to receive a measure of relief.

A key element that adds to the complexity of ethnicity is its attachment to primordialism. This refers to the notion that aspects of ethnicity are determined or heavily influenced by certain fixed social categories. These include ancestry, common point of origin, language and physical or biological similarities. The concept of primordialism in relation to ethnicity demonstrates the close connection between sociology and biology. Ethnicity is both defined by biological traits and from the interpretations given to them by society. Ethnic identity is therefore not only determined by the relevant individual but is also asserted by a societal preoccupation with assumed inferences drawn from established norms. For example, a Black person's identity, subject to primordialism, will be linked to an African heritage and may include stereotypical notions of what being 'African' means. For ethnic identity to be truly protected by the law, the influence of primordialism should be considered. Concerning the workplace, this will translate as allowing individual employees to take full control of their identity to define and manifest it independently. Consequently, dress codes may need to steer away from rigidity and group classifications and become more person-centred and with a focus on preserving individuality.

Apart from the risk of marginalization, those with complex identities are indirectly portrayed to be problematic and wilfully different. Intersectional discrimination can be difficult to accommodate under the law as it usually demonstrates the collision of complicated social frameworks. However, if the law treats individuals as though they can be compartmentalised into groups, people who do not fit into any of the defined groups are subconsciously conjectured as atypical. If a person's lived experience is unique and different from the group that is most connected with his or her identity, the law provides no means of relief in the event of felt discrimination.

5. THE REALITY OF CORPORATE DRESS CODES AND ETHNIC DRESS

5.1 INTRODUCTION

This chapter follows on from Chapter Four's discussion of the legal policies designed to curtail unjustifiable incidents of indirect discrimination based on an individual's race and ethnic group membership. The focus is on the reality of diversity politics within the corporate scene. The main purpose of this chapter, following the doctrinal analysis of the current legal provisions in the preceding chapter, is to present both a realistic and up-to-date report of discriminatory actions and current social deportment.

Chapter 4 focused on both anti-discrimination legislation and case law to set forth judicial interpretations and legal elucidation of the integral components of ethnic identity. Under the statute, protection of ethnic identity is placed under the umbrella of race; however, although the law primarily makes it illegal to discriminate on racial grounds, it does not explicitly promote positive action from employers.[621] The law seeks to accommodate the diverse members of the community by absolutely barring direct discrimination and requiring an acceptable justification for indirect discrimination. However, the law fails to acknowledge the contribution of ethnic dress in the subjective component of race and does not make room for its flexibility and the fact that it varies according to individual and according to his or her current status. It is proposed that contemporary visual appearances of staff are somewhat representative of enforced dress codes. Having a true depiction of official dress codes is important because it shows how employers interpret and incorporate legislation. Also, present dress codes demonstrate the value that corporations place on visible differences and ethnic minority identification.

---

[621] Equality Act 2010, Section 9

Whilst there has been an increase in diversity in labour market participation, there remains significant segregation of racial and ethnic groups in particular industries. For instance, research shows that ethnic minorities suffer a 10 per cent employment gap and are less likely to be in paid employment compared to their White counterparts.[622] The Office for National Statistics' most recent data showing the current labour market status outlines the distribution of ethnic groups in varying sectors.[623] The data drawn from the Labour Force Survey shows that ethnic minorities are overly represented in sectors that require fewer qualifications and earn lower wages. For example, the combined Pakistani and Bangladeshi ethnic groups had the highest percentage of workers in the hospitality industry, with approximately 30.7 per cent of members employed in the industry.[624] The hospitality sector includes mainly the distribution, hotel, and restaurant industry, which to an extent have dress codes, most commonly in the form of uniforms. Furthermore, in the transport industry, it was found that Southern Asian men were the group most likely to be found in employment, particularly as taxi drivers.[625] Lastly, it was found that over 50per cent of African and Caribbean women were employed in the public and social health sector; this group also has dress codes in the form of uniforms. Such research demonstrates that while the law has established principles against race-based discrimination, there remains an implementation gap. In reality, the effects of anti-discrimination policies are not cogent as manifestations of race are somewhat censored by the substantial presence of ethnic minorities in jobs that endorse neutrality and employee uniformity. The major problem with such uniforms is that they are hard to customize, as seen in *Kingston and Richmond AHA v Kaur*, and staff are usually barred from making significant alterations to demonstrate personal identity and group membership.[626]

---

[622] GOV.UK 'Employment' (29 January 2021) < https://www.ethnicity-facts-figures.service.gov.uk/work-pay-and-benefits/employment/employment/latest#:~:text=76per cent25per cent20ofper cent20peopleper cent20agedper cent2016,outper cent20ofper cent20allper cent20ethnicper cent20groups> accessed 27 May 2021.

[623] Office for National Statistics, 'A09: Labour Market Status by Ethnic Group' (*ONS*, 18 May 2021) <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/labourmarketstatusbyethnicgroupa09> accessed 27 May 2021.

[624] GOV.UK 'Employment by Sector' (9 November 2020) <https://www.ethnicity-facts-figures.service.gov.uk/work-pay-and-benefits/employment/employment-by-sector/latest> accessed 27 May 2021.

[625] GOV.UK 'Employment by Sector' (9 November 2020) <https://www.ethnicity-facts-figures.service.gov.uk/work-pay-and-benefits/employment/employment-by-sector/latest> accessed 27 May 2021.

[626] *Kingston and Richmond AHA v Kaur*

A discussion on the implementation gap also brings a realistic dimension to an analysis of indirect discrimination. Although many forward-looking companies may choose to add policies on equality and tolerance to their portfolios, the question remains whether these policies are appropriately implemented. Since equality is not an issue that should be dealt with superficially, it is imperative that these policies do not merely present the image of tolerance but should go further to encourage and support the manifestation of minority identities. As part of the data collection strategies undertaken in the cause of this research, the dress policies of British based organizations have been collated and examined. The overwhelming consensus favours diversity and inclusion, with most organizations publicly displaying a commitment to aid in the closing of employment gaps based on ethnicity, gender, religion and social class. However, despite positive attempts to foster a diverse workforce, it can be argued that employers may simply be attracting more minority workers but may fail to ensure that their workplace culture is accepting of the varying manifestations of ethnic identity. Substantive equality cannot be said to exist simply because of the presence of minority workers. The fact that those workers are expected to operate within a workforce that encourages the employment of members of minority groups, but unconsciously establishes rules that coerce those workers to embrace European appearance norms, should be subjected to judicial review. The question, therefore, is whether the application of the current laws, demonstrated by case law, allows for findings of indirect discrimination in such scenarios.

Corporate bodies often justify their use of strict dress codes by claiming it is designed to encourage and foster professionalism.[627] This chapter questions the interpretation of the concept of professionalism and argues whether a flexible approach would be detrimental to the commercial aims of a business. It is argued that a key fallacy in the discussion of corporate dress codes is the notion of a standardized and uniform approach to professional appearance. In a Huffington Post targeted at job seekers and workers in the early stages of their career, it is noted that a large proportion of companies use generic vocabulary such as 'business casual' or 'business

---

[627] Bill Visone, 'Cramping your style: Personal Appearance in the Workplace' [2016] 30(2) Georgetown Immigration Law Journal, 359

professional' to vocalise appearance expectations.[628] There is an innate assumption that professionalism has an ideal that should be projected by all employees irrespective of ethnic backgrounds.[629] This subtle misconception and insistence on visual uniformity can also be seen in a recent online guide developed by Indeed on workplace appearances.[630] Whilst there is discussion around gender-neutral dress and the varying appearance expectations of different sectors, there is no discussion on ethnic wear.

To showcase the reality of working conditions in the UK, this chapter utilizes the social media accounts of UK based companies, the websites and online presence of the same companies, media portrayals and advertisements, as well as the information given on websites hosted by job recruitment agencies. In particular, due to their large database of job advertisements and career advice, this chapter draws extensively on data derived from both Indeed and LinkedIn. The media industry as a whole is analyzed due to the important role it has on societal idealization and its ability to set trends by making previously ignored items become fetishized and increasingly desirable. In this regard, the media industry is described as a societal elite and a key part of societal construction.

---

[628] Victoria McLean, 'Heels or Not, What You Wear Matters at Work and at Job Interviews' (*Huffington Post*, 27/04/2017) <https://www.huffingtonpost.co.uk/victoria-mclean/heels-or-not-what-you-wea_b_16261380.html> accessed 27 May 2021.

[629] Victoria McLean, 'Heels or Not, What You Wear Matters at Work and at Job Interviews' (*Huffington Post*, 27/04/2017) <https://www.huffingtonpost.co.uk/victoria-mclean/heels-or-not-what-you-wea_b_16261380.html> accessed 27 May 2021.

[630] Indeed Editorial Team, 'What To Wear To Work' (*Indeed Career Guide*, February 24, 2021) < https://www.indeed.com/career-advice/starting-new-job/what-to-wear-at-work> accessed 27 May 2021.

5.2 THE CONFLICT BETWEEN BUSINESS AIMS AND MINORITY EXPRESSION

It is necessary to explore the business case for generic and neutral corporate dress codes to rigorously evaluate the appropriate value given to business interests in proportionality assessments. The business ideals and the concerns regarding branding and customer acceptance should be measured and contrasted against the possible benefits of having a workforce with demonstrable visible differences. It is argued that a key proponent in discrimination is poor inter-group relations and an innate fear of the other. The media, positively and authentically, presenting minority identities can eradicate ignorance about minorities and normalize the presence of ethnic dress in day-to-day interactions.

Research suggests that an overwhelming proportion of the agenda to encourage diversity within the workplace focuses on increasing the number of individuals from varying grounds.[631] Unfortunately, these efforts are not complemented by the creation of flexible policies which support non-normative and minority manifestations. The possibility of discrimination is still very much a reality when the minority staff being hired are subjected to majoritarian norms. In-depth research into corporate advertising revealed that members of minority groups with protected characteristics are still underrepresented in marketing images across British newspapers.[632] Furthermore, it was reported that the overwhelming majority of advertisements broadcasted for the British audience feature people belonging to the White race and who adhere to majoritarian and popular norms.[633] The reality of advertisement in the UK expressly demonstrates that the reality of diversity within society is not acknowledged and properly represented visually. Also, the insufficient images of minority status may hint at an underlying notion that minority symbolisms conflict with the expectations of professionalism. As previously discussed, the media, as an entity, operates in the capacity of a societal elite and is

---

[631] Harold Andrew Patrick and Vincent Raj Kumar, 'Managing Workplace Diversity: Issues and Challenges' [2012] 2(2) Sage Open <https://journals.sagepub.com/doi/10.1177/2158244012444615> accessed 1 June 2021.

[632] Emmanuel Mogaji, 'Reflecting a Diversified Country: A Content Analysis of Newspaper Advertisements in Great Britain' [2015] 33(6) Marketing Intelligence and Planning

[633] Emmanuel Mogaji, 'Reflecting a Diversified Country: A Content Analysis of Newspaper Advertisements in Great Britain' [2015] 33(6) Marketing Intelligence and Planning

capable of simultaneously reflecting popular culture whilst also influencing it. Consequently, the media's portrayal of the kind of individuals and the types of appearance considered to be suitable for corporate jobs consolidate and entrench subconscious discriminatory beliefs about ethnic minorities and minority physical expressions.

Investigating adverts and examining media portrayals of professional individuals is important in the research on indirect discrimination as it demonstrates current societal attitudes on race within employment. The utility and efficacy of the law are revealed in the actual practices, policies and procedures of British companies. Hence, if corporate dress codes majorly restrict the wearing of minority symbolisms, it is arguable whether the protected characteristic of race is duly covered by the Equality Act 2010. In the absence of an official dress code and appearance policies, an inquiry of official media portrayals can also reveal the attitude of the relevant employers and whether or not they have created a work culture that accepts diversity and makes allowances for the display of minority identities. Advertisements and portrayals of working individuals within the UK fail to acknowledge the lived experiences of minority groups. A survey by Lloyds Banking Group reveals that approximately 53 per cent of respondents feel that the media excludes or incorrectly represents them.[634] It can therefore be inferred that there is a disparity between majoritarian established norms and the actual reality of the ever-changing society. Although Britain is continually evolving with a greater degree of racial and cultural diversity, this fact is not reflected within public images depicting professional staff. The disparity between the appearance of the actual population and the appearance of professional staff creates the impression that only a certain style of dress is suited for the employment scene. Therefore, minority individuals may find themselves in situations where they have to operate under varying identities. Whilst at work, minority employees are barred from wearing ethnic dress and are in effect coerced to conform to the established majoritarian standards.

---

[634] Lloyds Banking Group, 'Ethnicity in Advertising: Reflecting Modern Britain in 2018' <https://www.lloydsbankinggroup.com/who-we-are/responsible-business/inclusion-and-diversity/ethnicity-in-advertising.html> accessed 1 June 2021.

Research demonstrates that it is important for people to have visual role models in positions of power in the corporate world to stimulate their own self-efficacy beliefs.[635] It can be argued that when minorities fail to see people of racial or ethnic variance depicted in the corporate scene, a feeling of inadequacy is subconsciously adopted. As concisely stated by Michelle Obama, the concept of failure begins in the inner subconscious realm before it manifests into reality.[636] Hence, when ethnic minorities are made to feel that their kind is not suitable for certain professions, there will be a corresponding decline in career aspirations and efforts. Even in situations where diversity is encouraged in a workplace and represented in the relevant adverts, separating ethnic minority workers from ethnic markers and symbolisms still creates a scenario where minorities feel unwelcome. In advertisements that depict workers of colour in majoritarian dress and without significant ethnic markers and symbolisms like natural hairstyles or traditional jewellery, the subtle message being communicated is that minorities are only welcome as long as their differences are hidden. This censorship of minority manifestations could discourage certain groups from seeking employment in many professions, as demonstrated in the research of Malik *et al.,* which revealed that a significant proportion of Asian Muslims in the UK is hesitant to take jobs in hospitals surgeries with ambiguous laws regarding the wearing of a hijab.[637]

This discouragement of minorities could explain the disproportionate number of ethnic minorities who are self-employed in comparison to their White counterparts. To achieve an employment scene where there is genuine diversity and substantive equality, special attention should be given to dress requirements to ensure that alternative wear following minority identity is not depicted as unprofessional and unsuitable.[638] Beyond official dress policies, employers

---

[635] Thekla Morgenroth, Michelle K Ryan and Kim Peters, 'The Motivational Theory of Role Modeling: How Role Models Influence Role Aspirants' Goals' [2015] 19(4) Review of General Psychology, pp.465-483

[636] Michelle Obama, *Becoming* (Random House Inc, 2018)

[637] Abida Malik, Hafsah Qureshi, Humayra Abdul-Razakq, Zahra Yaqoob, Fatima Zahra Javaid, Faatima Esmail, Emma Wiley and Asam Latif, 'I Decided Not to Go into Surgery Due to Dress Code': A Cross-Sectional Study Within the UK Investigating Experiences of Female Muslim Medical Health Professionals On Bare Below The Elbows (BBE) Policy And Wearing Headscarves (Hijabs) In Theatre' [2019] BMJ Open <http://bmjopen.bmj.com> accessed 2 June 2021.

[638] Memoona Tariq and Jawad Syed, 'Intersectionality at Work: South Asian Muslim Women's Experiences of Employment and Leadership in the United Kingdom' [2017] 77, Sex Roles 510-522

should be conscious and deliberate regarding the choices they make of visual images used to represent their corporations and workforce via social media and televised adverts.

Furthermore, an awareness of societal appearance norms is informative because it may demonstrate the presence of a causative link between social trends and employment practices. The evaluation of societal appearance norms goes beyond an acknowledgement of fashion trends, which are developed by popular culture, but refers to a standardized way of life built on a history of stereotypes and prejudice.[639] In both designer couture and high street clothing brands, outfits designated as professional or workwear are routinely avoidant of ethnic minority culture.[640] It may be argued that clothing lines deliberately choose to avoid symbolisms related to minority groups to curtail the possibility of being misunderstood or labelled as cultural appropriators.[641] However, the fact that the overwhelming majority of clothing is designed with fabric, in colours and with reference to styles that are best suited to majoritarian preferences calls to question whether society has effectively endorsed visible diversity.[642] Using the example of fabrics, there was a dearth of outfits created using materials closely related to minority groups in the visual images gleaned from the case study subjects. Fabrics significantly associated with minority groups such as the Aso Oke worn by the Yoruba,[643] the woven clothing of the Katang[644] and the Sarees traditionally worn by South-Asians[645] were completely missing on the appearance of staff members photographed and displayed on the case studies' social media profiles.

---

[639] Sue Omar, 'Is Fashion Finally Addressing its Diversity Problem' (*Raconteur*, 15 October 2020) <https://www.raconteur.net/hr/diversity-inclusion/diversity-fashion/> accessed 2 June 2021.
[640] Marc Bain, 'Fashion's Big Diversity Problem Goes Way Beyond the Models' (*Quartz at Work*, 8 January 2019) <https://qz.com/work/1516836/fashions-lack-of-diversity-goes-beyond-the-models-to-the-boardroom/> accessed 2 June 2021.
[641] Anisha Khopkar, 'We Need to Talk About Cultural Appropriation in Fashion' (*ABC Everyday*) <https://www.abc.net.au/everyday/cultural-appropriation-and-fashion/10501010> accessed 2 June 2021; Daniel Khalili-Tari, 'There are More Models of Colour, but is Fashion Really Diverse' (*Aljazeera*, 12 February 2021)
[642] Kristin Aune, Reina Lewis and Lina Molokotos-Liederman, 'Modest Fashion in UK Women's Working Life: A Report for Employers, HR Professionals, Religious Organisations and Policymakers. Project Report' [2021] University of the Art London, pp. 14 - 23
[643] Areolae Odunaya Orimolade, 'Aso Ebi: Impact of the Social Uniform in Nigerian Caucuses, Yoruba Culture and Contemporary Trends' [2014] University of South Africa
[644] Linda McIntosh, 'Developing Distinctive Dress: Textiles and Clothing of the Katang and Mankhong Ethnic Group of Southern Laos' [2013] 47(1) Costume, pp.79-100
[645] Ashley Hull, 'A Reflection on Cross-Cultural Competencies' [2018] 51(3) Special Issue. The Journal of Educational Thought, pp.281-296

Furthermore, it can be said that businesses and corporations wield a significant amount of power in society. Since businesses and corporations provide jobs, financial security, and a sense of worth and purpose to individuals, they can, in effect, substantially influence societal attitudes.[646] If certain dress styles and physical manifestations are deemed unacceptable by these entities, the message being declared to society is that those dress styles are inferior and unsuitable for the prestige that comes with operating in the realms of a respectable profession. In the same vein, rendering an appearance style related to minority culture as negative infers that the relevant ethnic group is itself unsuitable. Consequently, corporate dress codes and advertisements must depict the wearing of ethnic dress in a professional setting. Doing so demonstrates the acceptance of the minority groups and helps to dissolve the notion that minorities are unsuitable for high-flying professional careers.

From the business perspective, research suggests that brands may gain an advantage by investing in diversification strategies and featuring a wide variety of social minorities in official campaigns.[647] Accurate and authentic portrayals of minority groups have been shown to increase consumer interest in the relevant brand by up to 65 per cent.[648] This statistic demonstrates the growing flexibility of society and how people's conceptualization of identity has evolved. Whilst corporate fashion has been slow to change, the secular world consisting of variegations of minorities have emerged with new ideals and expectations. Although the majority group in the UK is still the most likely to find secure well-paying jobs, minority groups are growing in societal power. Consequently, corporate policies that consciously or unconsciously seek to maintain the status quo of White domination in the workplace could dissuade consumers with a liberal mindset from engaging with the relevant corporation.

In a further argument for the stance that ethnic manifestation ought to be fully protected as an element of race is the data which suggests that incidents of race-based discrimination,

---

[646] Janine R Wedel, 'From Power Elites to Influence Elites: Resetting Elite Studies for the 21st Century' [2017] 34(5-6) Theory Culture and Society, pp. 153 - 178
[647] Kareem D Sadiq, 'Race, Ethnicity and Immigration in the Workplace' (2005) pp. 61-66 Canadian Issues
[648] Lloyds Banking Group, 'Ethnicity in Advertising: Reflecting Modern Britain in 2018' <https://www.lloydsbankinggroup.com/who-we-are/responsible-business/inclusion-and-diversity/ethnicity-in-advertising.html> accessed 1 June 2021.

which includes the restriction of ethnic dress, directly causes inequalities to health. Whilst it may seem like the conflict between ethnic dress and corporate apparel standards are distinct from healthcare concerns, the evidence linking mental illness to discrimination shows otherwise. Data specific to the UK indicate an annual expenditure of over 6 billion pounds in treating mental illness; when Bhui *et al.'s* findings are considered, racial tension is likely part of the overall experience of mental health difficulties.[649] Irrespective of to what extent racial bias affects annual expenses, if the financial capital of increasing ethnic protection is exceeded by the cost of dealing with its aftermath, then the reasonable response will be to defer to the former. In connection to the issue of mental health is a business benefit that is often overlooked in the proportionality exercise between employee and employer interests.

Whilst seemingly simple, authentic presentation of the self leads to a general increase in self-confidence and perceptions of self-efficacy. These are in the interests of employers as staff with higher perceptions of self-efficacy are more likely to fulfil job specifications confidently and with greater skill.[650] Likewise, it has been shown that there is a connection between confidence in one's ability to perform well in his or her job role and an overall sense of job satisfaction. Employers who obtain the services of workers that are satisfied in their job roles enjoy stability and a consistent workforce.[651] As further research suggests, an absence of emotional and mental constraints at work allows for interpersonal growth in employees that directly improve work performance, heighten occupational functioning whilst simultaneously reducing the total time taken off work due to ill health.[652]

A limitation of the research of Bhui *et al.* is the fact that some of the conclusions reached are based on information from the United States. Although British society differs from that of the

---

[649] Kamaldeep Bhui, Stephen Stansfield, Kwame McKenzie, Saffron Karlsen, James Nazroo and Scott Weich, 'Racial/Ethnic Discrimination and Common Mental Disorders Among Workers: Findings from the Empiric Study of Ethnic Minority Groups in the United Kingdom' [2005] 95(3) AM J Public Health, pp. 496 - 501

[650] Todd J Maurer, 'Career-relevant Learning and Development, Worker Age, and Beliefs about Self-efficacy for Development' [2001] 27(2) Journal of Management, pp.123-140

[651] Heather K Spence Laschinger, Joan E Finegan, Judith Shamian and Piotr Wilk, 'A Longitudinal Analysis of the Impact of Workplace Empowerment on Work Satisfaction' [2004] 25(4) Journal of Organizational Behaviour, pp.527-545

[652] Martin Powell, Jeremy Dawson, Anna Topakas, Joan Durose and Chris Fewtrell, 'Staff Satisfaction and Organisational Performance: Evidence from a Longitudinal Secondary Analysis of the NHS Staff Survey and Outcome Data' [2014] NIHR Journals Library

US, the core message of their research is transferable.[653] The connotation between discriminatory behaviour and resulting mental distress serves as a sober reminder of the importance of ethnic identification to minority individuals. The reality of discrimination means that individuals are to be more than encouraged to display ethnic flair but should also be protected when they choose to do so.

The role of ethnic identification to the overall wellbeing of an individual was further tested using a representative example of the working minority population in the UK. These results were presented in the Ethnic Minority Psychiatric Illness Rates In The Community (EMPIRIC) study and showed that as many as 68 per cent of the minority population demonstrated symptoms of mental illness.[654] The EMPIRIC study used information from the 1998 and 1999 Health Survey for England and classified ethnic groups according to the official categories used in the 1999 Census. A more recent study carried out in 2005 followed up on the data presented in the EMPIRIC study but went further to streamline respondents to 2054 individuals in paid employment at the time of the study.[655] Both the EMPIRIC study and the 2005 follow up were undertaken before the enactment of the 2010 Act; however, they remain relevant in their acknowledgement of the mental health impact of discriminatory behaviour. Furthermore, it will be interesting to note if there has been a reduction in the number of reported mental strains in working minority individuals after the 2010 Act came into force.

Concerning racial discrimination being a public health issue, the correlation between disadvantageous treatment and a corresponding mental health decline results in a financial penalty on society.[656] Whilst mental health problems aggravated by racial tension costs the state

---

[653] Kamaldeep Bhui, Stephen Stansfield, Kwame McKenzie, Saffron Karlsen, James Nazroo and Scott Weich, 'Racial/Ethnic Discrimination and Common Mental Disorders Among Workers: Findings from the Empiric Study of Ethnic Minority Groups in the United Kingdom' [2005] 95(3) AM J Public Health, pp. 496 - 501

[654] Martin Blanchard, Mike Crawford, Steve Fenton, Elizabeth Fuller, Saffron Karlsen, Michael King, Keith Lloyd, Sally McManus, James Nazroo, William O'Connor, Kerry Sproston, Stephen Stansfeld, Peter Tyrer and Scott Weich, 'Ethnic Minority Psychiatric Illness Rates in the Community (EMPIRIC) – Quantitative Report' (Edited by Kerry Sproston and James Nazroo, 2002) National Centre for Social Research.

[655] Kamaldeep Bhui, Stephen Stansfield, Kwame McKenzie, Saffron Karlsen, James Nazroo and Scott Weich, 'Racial/Ethnic Discrimination and Common Mental Disorders Among Workers: Findings from the Empiric Study of Ethnic Minority Groups in the United Kingdom' [2005] 95(3) AM J Public Health, pp. 496 - 501

[656] Kwame McKenzie and Kamaldeep Bhui, 'Institutional Racism in Mental Health Care' [2007] BMJ < https://doi.org/10.1136/bmj.39163.395972.80> accessed 3 June 2021.

both money and the resources of health services, it also affects employers as individuals with significant mental health illnesses have been shown to perform less than expected in the fulfilment of their job roles.[657] When racial and ethnic discrimination is viewed from a wider perspective than that of the law, it becomes apparent that legal instruments are not sufficient to bridge the gap of inequality.

---

[657] Anne Honey, 'The Impact of Mental Illness on Employment: Consumers' Perspectives' [2003] 20(3) Work, pp.267-276

5.3 THE MEDIA AND REPRESENTATION OF ETHNIC DRESS IN EMPLOYMENT

The strength of ethnic ties and identities change over time and varies across the globe;[658] this suggests that racial/ethnic divisions can only be understood when located in their social and historical context. The outcome of a racial or ethnic study will vary based on the social and territorial context in which the research is carried out. Hence, it can be suggested that the attitudes pervading Britain concerning ethnic minorities will invariably differ from that of a non-western country. For example, in each territory, the population of minority groups are different, and attitudes towards diversity vary due to factors such as immigration laws and historical relationships with other groups. In addition to the fact that racial studies differ amongst countries, there is evidence that suggests that the difference in the social elites also influences interactions amongst groups.[659]

Social elites and celebrities may be in the form of individuals, organizations or even circumstances.[660] A notable circumstance that heralded a considerable change in the social organization of Britain was the second world war. As a result of the war, Britons temporarily stopped categorizing one another according to ethnic or racial ties; rather, people were seen in terms of friend or foe.[661] People of colour, mixed heritage and immigrants were largely considered part of Britain, particularly when they joined British armed forces or supported its military objectives. Conversely, other European nationals involved with the opposing forces were viewed with greater hostility and treated as aliens irrespective of similarities in physical features and shared Westernized cultures.

To a surprising degree, sports has been noted to constitute a social elite through its ability to combine individuals from varying backgrounds into a single team and for a unified goal.

---

[658] David O Sears, Mingying Fu, P J Henry and Kerra Bui, 'The Origins and Persistence of Ethnic Identity among the New Immigrant Groups' [2003] 66(4) Race, Racism and Discrimination, pp. 419-437
[659] Anubhav A Mishra and Abhinav Mishra, 'National vs. Local Celebrity Endorsement and Politics' [2014] 27(4) International Journal of Politics, Culture and Society, pp. 409-425
[660] Olivier Driessens, 'Theorizing Celebrity Cultures: Thickenings of Media Cultures and the Role of Cultural (Working) Memory [2014] 39(2) Communications, pp. 109 - 127
[661] Sonya O Rose, 'Race, Empire and British Wartime National Identity, 1939-45' [2001] 74(184) Institute of Historical Research, pp.220-237

Furthermore, people of colour, particularly those of Afro-Caribbean descent, have used sports as a means of self-advancement.[662] The prowess of ethnic minority athletes has both given the relevant communities social respect and an opportunity to have an audience transcending all backgrounds. Similar to the period after World War Two, wherein people from varying backgrounds joined forces for the benefit of Britain, sports also has the potential to break down barriers and create mixed groups where the focus is on a unified goal and collective skills rather than on individual ancestral descent.[663]

It has been suggested that majoritarian groups need minorities to preserve balance in society and legitimize their dominance. This need was explained by Kushner in regard to how the racist needs a person of colour to project his values and beliefs of morality.[664] Hence, without a victim, the oppressor loses all power and sense of meaning in discriminatory practices. Linking this theory to the discourse of discrimination of ethnic minorities, it can be argued that, whether through deliberate intent or via unconscious processes, societal elites preserve and normalize discriminatory behaviour in order to maintain the hierarchy of groups in society.

One key sector in the UK that simultaneously draws attention to issues surrounding dress whilst also managing to remain overlooked in studies dedicated to ethnic dress in professional settings is the media and television industry. Research demonstrates that as of 2017, the British entertainment and media sectors is worth approximately £68 billion whilst employing a significant number of employees from varying backgrounds.[665] Although research has been targeted on the media's portrayal of ethnic minorities, there is a gap in the literature on specific inquiries into whether there is an actionable conflict between dress codes within the media industry and the desire to wear ethnic dress. In this regard, the umbrella term, the media sector,

---

[662] Lodis Rhodes and Johnny S Butler, 'Sport and Racism: A Contribution to Theory Building in Race Relations?' [1975] 55(4) Social Science Quarterly, pp.919-925; Manuel R Zenquis, Munene F Mwaniki, 'The Intersection of Race, Gender and Nationality in Sport: Media Representation of the Ogwumike Sisters' [2019] 43(1) Journal of Sport and Social Issues, pp. 23 -43

[663] Kevin Dixon, Jacqueline Lowes and Tom Gibbons, 'Show Racism The Red Card: Potential Barriers to the Effective Implementation of the Anti-Racist Message' [2014] 17(1) Soccer and Society, pp. 140 - 154

[664] Tony Kushner, *We Europeans? Mass Observation, 'Race' and British Identity in the Twentieth Century* (Ashgate, 2004)

[665] Rosemary Gallagher, 'UK Entertainment and Media Industry Worth £76bn by 2021' (*Insider*, 6 June 2018) < https://www.insider.co.uk/news/uk-entertainment-media-pwc-europe-12650656> accessed 6 June 2021.

refs to job roles that include acting, hosting shows, serving as a visible anchor, and working in any capacity where there is interaction with an audience. Job roles within the media industry that operate behind the scenes are used in this analysis as a control group to help determine whether dress codes within the industry are manipulated to suit the majority of viewers.

The media has been listed as a key factor in the creation and representation of stereotypes.[666] These stereotypes, which reduce ethnic minority groups to nothing more than generalized characteristics, influence how social institutions interact with the relevant groups. When stereotypes become prevalent, the perceived characteristics become seemingly fixed as others define the identities of the affected group in line with stereotypical beliefs.[667] Efforts made by such catalogued groups to portray their true selves are often ignored, undermined, or viewed with suspicion.

John Styles reflects on the history of dress and the formation of its increased value to society. [668] Notably, he demonstrates how dress has historically been used as a social indicator and a means of differentiation. For example, items of clothing that were mass-produced or cheap to acquire indicated the relatively low status of the wearer and cued observers that they were of little significance. According to Styles, the realization that there was such a progressive correlation between appearance, power and autonomy has led to the increased interest of researchers in the study of dress.[669] As research on dress has developed, the impact of the media in the creation and sustenance of dress norms has been extensively explored.

The media is capable of making an issue appear dominant and important by emphasizing it repeatedly while ignoring other topics.[670] Consequently, the attention of receivers is focused on the subjects reoccurring in the media whilst they grow to disregard or consider as non-urgent the matters not highlighted. Van Leuven and Slater add to the commentary of the influence of

---

[666] Dana Mastro, 'Why the Media's Role in Issues of Race and Ethnicity Should be in the Spotlight' [2015] 71(1) Journal of Social Issues, pp.1-16

[667] Travis L Dixon, Kristopher R Weeks and Marisa A Smith, 'Media Constructions of Culture, Race and Ethnicity' [2019] 23 Oxford Research Encyclopedia of Communication

[668] John Styles, 'Dress in History: Reflections on a Contested Terrain' [1998] 2(4) Fashion Theory, pp. 383-392

[669] John Styles, 'Dress in History: Reflections on a Contested Terrain' [1998] 2(4) Fashion Theory, pp. 383-392

[670] David Weaver, Media Agenda-Setting and Public Opinion: Is There a Link? [1984] 8(1) Annals of the International Communication Association, pp. 680 - 691

the media as their work demonstrated that the media often creates a systematic transformation and an evolution of public thought processes and opinion.[671] In addition, Bruggemann and Engesser, although focused on the research of climate change, touch upon the interpretive nature of the media and how an issue can be displayed in varying lights to achieve a pre-determined objective.[672]

Regarding dress and appearance standards, research demonstrates that people are indirectly influenced on how to present themselves via the intimations perceived and gleaned from varying media outlets.[673] Importantly, Harlow notes that clothing is a substantial means of demonstrating personal characteristics, including race, and that such demonstrations may be controlled by the cues sent by media platforms. Furthermore, through an exploration of the historical use of clothing, it can be seen that certain fashions and styles superimposed the traits of virtue or vice on an individual.[674] This exposits the reality that there is a link between appearance choices and perceived behavioural characteristics.

Rozini Sini reported the case of an African woman domiciled and employed within the UK, Leila (not her real name), who was repeatedly told by her employer that her natural afro hair was inappropriate and unprofessional.[675] Sini reports that the employee eventually caved to the pressure and had a weave installed, which resembled the appearance and texture of White hair, to fit in with the image deemed professional at work. Wilson's notion of dress as performance is demonstrated in the reported incident.[676] Whilst the African employee wore her natural hair, she was perceived as not representing the professional image that she was required to perform. However, even though her efficacy was not reported to have improved after the change of

---

[671] James K Leuven and Michael D Slater, How Publics, Public Relations, and the Media Shape the Public Opinion Process, [1991] 3(1-4) Public Relations Research Annual, pp.165-178

[672] Michael Bruggemann and Sven Engesser, 'Beyond False Balance: How Interpretive Journalism Shapes Media Coverage of Climate Change' [2017] 42 Global Environmental Change, pp. 58 - 67

[673] Mary Harlow, 'Female dress, third-sixth century: The messages in the Media' [2004] 12 International Journal of History and Archaeology, pp. 203-215

[674] Mary Harlow, 'Female dress, third-sixth century: The messages in the Media' [2004] 12 International Journal of History and Archaeology, pp. 203-215

[675] Rozini Sini, 'Wear a Weave at Work – Your Afro Hair is Unprofessional' (*BBC UK*, 15 May 2016) < https://www.bbc.co.uk/news/uk-36279845> accessed 28 May 2021

[676] Elizabeth Wilson, 'Deviant Dress' [1990] 35 Feminist Review, pp. 67 - 74

hairstyle, Leila was accepted and instinctively considered more capable of performing the role of a professional with a Eurocentric hairpiece.

Just as repeated images conveyed by the media grow to be regarded as the norm, the repeated wearing of a type of dress by a certain race, a specific gender or for a specific occasion often leads to the creation of stereotypes. Wilson notes that stereotypes are often particularly created through clothing choice, thereby leading to difficulties for those who choose to appear differently.[677] Unfortunately, stereotypes become integrated into social consciousness and become normalized so that non-conformists are regarded as deviant. Referring back to the reported case of Leila, it can be said that because straight, silky hair has been normalized as the ideal for working-class women, her afro, coarse hair was regarded as an unacceptable deviation.

Rosalind Gill adds to the discourse on how people are swayed into a mindset, including that of appearance, through manipulated or misinformed media representation.[678] Gill notes that certain ideologies concerning identity can both be crystallized or transformed by the creation of a media culture. She uses the idea of femininity to exemplify the pervasive influence of the media. She exemplifies this by explaining how the media has increasingly shifted away from presenting the attributes of motherhood and caregiver as synonymous with the female gender. Instead, the sexualization of the body and the provocative nature of modern fashion has been established as the current symbolisms for femininity.

Elizabeth Wilson, who writes from a feminist point of view, argues that the media is partly responsible for an unjustifiable restraint placed on a woman's freedom to express a non-stereotypical image via dress.[679] Wilson encourages both flexibility and independence for genuine self-representation, and she notes that clothing plays a vital role. Wilson identifies the communicative properties of clothing and how it causes wearers to assume a role. She claims that "the word appearance...actually acknowledges the performance element of dress." In our hairstyles, our choice of clothes and our use (or not) of cosmetics, we create an 'appearance' for

---

[677] Elizabeth Wilson, 'Deviant Dress' [1990] 35 Feminist Review, pp. 67 - 74
[678] Rosalind Gill, 'Postfeminist Media Culture. Elements of a Sensibility' [2007] 10(2) European Journal of Cultural Studies, pp.147-166
[679] Elizabeth Wilson, 'Deviant Dress' [1990] 35 Feminist Review, pp. 67 - 74

public and private consumption".[680] Such a theory is important in understanding the relationship between ethnic minorities workers and company dress policies. If minority workers are obligated to dress or present themselves in ways that suppress their cultural and racial identity, the result might be that such workers instinctively perform the false role suggestive of their appearance.

---

[680] Elizabeth Wilson, 'Deviant Dress' [1990] 35 Feminist Review, pp. 67 - 74

5.4 ETHNIC MINORITY STAFF AND CORPORATE DRESS STANDARDS

"Including others, instead of assimilating or marginalizing them, requires reflection upon the self and what is taken for granted from that position. Taking this as a starting point means we need to engage in an ongoing balancing act with both the same and the other in a manner in which the dynamic (dialectic) connection between the two does not a priori depart from a hierarchical relationship."[681]

The difficulty in creating an effective and accepting workspace with two or more distinct cultural identities is highlighted by Ghorashi and Sabelis.[682] They discuss how the quest to overcome this difficulty by creating policies designed to eliminate dissimilarities is potentially problematic and unconsciously discriminatory. Ghorashi and Sabelis argue that because many industries are dominated by White male workers, females and members of ethnic minorities are often depicted as alien outsiders. Gullestad also observes the working conditions of ethnic minority and immigrant workers and notes that the process of integration into mainstream cultural practices is often difficult.[683] She indicates that the quest for equality may be compromised by the demand for assimilation as immigrants are stripped of their ethnic identity and affixed to the dominant collective identity. Assimilation and integration may be positive in some instances; for example, an immigrant's adoption of the dominant language may reduce communication barriers and aid in the fostering of relationships. However, the insistence of identicalness as a condition for equal treatment and opportunity penalizes those who decline or are unable to yield to the majoritarian ideals and patterns. As Gullestad demonstrates, ethnic minority workers who refuse to disguise their cultural characteristics are invariably considered to be rebellious and hostile.[684]

---

[681] Halleh Ghorashi and Ida Sabelis, 'Juggling Difference and Sameness: Rethinking Strategies for Diversity in Organizations' [2013] 29 Scandinavian Journal of Management, pp.78-86

[682] Halleh Ghorashi and Ida Sabelis, 'Juggling Difference and Sameness: Rethinking Strategies for Diversity in Organizations' [2013] 29 Scandinavian Journal of Management, pp.78-86

[683] Marianne Gullestad, 'Invisible Fences: Egalitarianism, Nationalism and Racism', [2002] 8(1) The Journal of the Royal Anthropological Institute

[684] Marianne Gullestad, 'Invisible Fences: Egalitarianism, Nationalism and Racism', [2002] 8(1) The Journal of the Royal Anthropological Institute

The focus on ethnic group membership and physical appearance creates a gap between those who consider themselves to be 'insiders' and those who, by implication, are regarded as 'outsiders'. An insider-outsider mentality may make it more difficult for a person of colour to have a fair chance in the employment field as their race creates a barrier and divides them from employers of the majority race. If ethnic minorities are instinctively considered to be different, there is a higher possibility that they would be treated with suspicion and judged based on stereotypical perceptions rather than on their ability to suitably perform the job role.

Clarke indicates that a large proportion of desirable companies to work for in the UK employ formal dress codes to govern employee appearance.[685] Furthermore, research suggests that only approximately 27 per cent of the *Sunday Times Best 100 Companies to Work For* have flexible dress requirements.[686] Consequently, it can be inferred from these data that corporate dress codes are far from being a historical issue but remain a prevalent subject in employment. Also, research demonstrates that the companies which incorporate formal dress codes to employment structure favour business dress. Interestingly, staff who are employed in organizations requiring formal clothing appear to find satisfaction in the overall employment structure of their respective companies. Clarke argues that this feeling of job satisfaction can be partly attributed to how individuals feel when wearing socially construed professional wear.[687] As previously indicated, the wearing of a suit induces feelings of power and competence, which may then positively influence the wearer's overall sense of professional wellbeing.[688] Furthermore, as was discussed by Karl, Hall and Peluchette, individuals feel differently about themselves based on how they are dressed.[689] It was found that a person's clothing choice could either positively or negatively affect

---

[685] Rebecca Clarke, 'Formal Dress Codes Can Lead to Happier Employees, Research Shows' (*HR Review*, 23 August 2018) < https://www.hrreview.co.uk/hr-news/formal-dress-codes-can-lead-to-happier-employees-research-shows/112004> accessed 07 June 2021.

[686] Vincenzo Ferrara, 'Formal Dress Codes Can Lead to Happier Employees' (*PA Life*, 29 August 2018) < https://palife.co.uk/news/formal-dress-codes-can-lead-to-happier-employees/> accessed 07 June 2021.

[687] Rebecca Clarke, 'Formal Dress Codes Can Lead to Happier Employees, Research Shows' (*HR Review*, 23 August 2018) < https://www.hrreview.co.uk/hr-news/formal-dress-codes-can-lead-to-happier-employees-research-shows/112004> accessed 07 June 2021.

[688] Shahidha Bari, 'What to Wear at Work: The New Rules' (*Financial Times*, 27 June 2019) <https://www.ft.com/content/3a3f2178-980a-11e9-9573-ee5cbb98ed36> accessed 6 June 2021.

[689] Katherine A. Karl, Leda McIntyre Hall and Joy V. Peluchette, 'City Employee Perceptions of the Impact of Dress and Appearance: You are What You Wear' [2013] 42(3) Public Personnel Management, pp.452-470

their emotional health, psychological well-being and proper perception of themselves.[690] Consequently, dress codes that prohibit authentic identity expression may inhibit a worker's ability to be efficient and/or enjoy the benefits of job satisfaction.

Whilst the reality of diversity in the workplace has been highly encouraged and advertised by varying companies, there remains an unconscious bias in the hiring process that disadvantages ethnic minorities and those considered to be different. Daniele Fiandaca discusses how employers may intuitively and unknowingly favour job applicants who share similar characteristics with them.[691] An obvious characteristic of all applicants in physical interviews is race, therefore, it can arguably be said that colour is a key factor in subconscious bias by employers in the hiring stage. Due to the fact that humans tend to feel comfortable around the familiar, it is not difficult to conceptualize why an employer might unconsciously favour a job applicant of the same race to the extent of placing ethnic minorities at a disadvantage.

As race is largely a static characteristic that is almost impossible to alter unless there is a change to how racial difference is demonstrated, the unconscious bias will remain. However, because there is increasing social pressure on companies to hire people from varying backgrounds, employers may then choose to hire ethnic minorities but create dress codes that force everyone to conform their appearance to the White image. As Ghorashi and Sabelis note, such devices are often quite difficult to identify or label as discriminatory due to their subtlety and the fact that the dress codes apply to everyone.[692] Once members of ethnic minority groups are labelled and treated with a negative bias, ethnic grouping within the workplace may occur. Ethnic grouping can be said to occur when members of varying ethnic groups interact mainly with individuals who share their ethnicities and cultural beliefs. The negative consequence of ethnic

---

[690] Katherine A. Karl, Leda McIntyre Hall and Joy V. Peluchette, 'City Employee Perceptions of the Impact of Dress and Appearance: You are What You Wear' [2013] 42(3) Public Personnel Management, pp.452-470

[691] Daniele Fiandaca, 'Diversity at work: hiring the best person for the job isn't enough' (*The Guardian*, 5 January 2016)

[692] Halleh Ghorashi and Ida Sabelis, 'Juggling Difference and Sameness: Rethinking Strategies for Diversity in Organizations' [2013] 29 Scandinavian Journal of Management, pp.78-86

grouping is the creation of a gulf between workers from varying backgrounds as differences between ethnicities are heightened, thereby increasing the risk of intolerance and conflict.[693]

Another point to note in a discussion surrounding the depiction of ethnic dress in corporate advertisement is the communicative abilities of dress to potential clients. For businesses seeking to send a message of inclusivity to the society in order to attract the custom of diverse groups, the presence of minority dress and traditions displayed positively in official marketing campaigns will draw in members of minority groups and can help to establish the business as an ally of historically oppressed minorities. In this regard, ethnic dress could boost the image of a business and, by so doing, aid in the fulfilment of its economic aims. However, that argument can be countered as ethnic dress can be interpreted in accordance with the viewer's own possibly biased convictions. For example, company dress policy permitting women of south Asian descent to wear a full burka could affect the sales and customer relations of a company. This is also due to the communicative nature of dress, which can simultaneously bring about positive and negative reactions. The wearing of a full facial covering for cultural and religious reasons (both of which are characteristics intertwined with ethnicity) can be used by the wearer to communicate convictions, heritage, and status. On the other hand, viewers can interpret the attire as a denunciation of feminism or a signifier of extremist views. Unfortunately, it is difficult for an employer to establish the narrative by which employee traditional dresses are interpreted. Consequently, a company might be shunned by potential customers who perceive employee ethnic dress negatively and who also merge their contrary interpretations of ethnic dress with perceived company policy. In such cases, the public might view the company's permission of the wearing of ethnic dressed as a representation of the firm's views.

In employment, dress and appearance are important as employees represent the company's brands; hence, a negative reception of an employee could directly create a negative response for the relevant company.[694] From this analysis of ethnic dress and its potential positive

---

[693] Martin Klinthall and Susanne Urban, 'The Strength of Ethnic Ties: Routes Into the Labour Market In Spaces of Segregation' [2016] 53(1) Urban Studies, pp.3-16

[694] Harriet Bradley, Geraldine Healy, Cynthia Forson and Priyasha Kaul, 'Workplace cultures: what does and does not work' [2007] Equal Opportunities Commission, pp. 9 - 15

and negative impact, it can be said that the decision to permit ethnic dress is both important to employees and employers. In such a scenario where legitimate interests compete for validation, the exercise of a proportionality test is imperative. As discussed in the previous chapter, the test of proportionality is a legal instrument that can operate ambiguously and can be influenced by the recognition of a hierarchy of rights. Since a proportionality test involves the weighing up of competing rights, the outcome of each case is dependent on the values that the court places on the business interest to maintain a positive public image against that of the employee's desire to express ethnic identity and authenticity. As previously mentioned, the case of *Eweida v BA* demonstrates that the Court resolves the conflict of rights based on group disadvantage and whether or not a sufficiently large percentage of the affected group is negatively impacted by the relevant PCP.[695] This approach is in direct contrast with the approach of the ECtHR, which placed more emphasis on whether the company will suffer demonstrable harm by allowing the expression of minority identity in the workplace.[696]

---

[695] *Eweida v British Airways plc* [2010] EWCA Civ 80
[696] *Eweida v United Kingdom* [2013] ECHR 37

5.5 THE RELEVANCE OF ONLINE EMPLOYMENT TOOLS ON ETHNIC DRESS

The use of dress codes to measure the attitude and inherent beliefs of the UK society regarding ethnic dress is arguably effective as it captures the current state of professionalism. Apart from the use of official social media account photographs, the vast online resources aimed at job seekers and early-stage career professionals demonstrate pervading societal views on appropriate dress. The 21st century heralded a surge in the application of virtual and online means of job seeking. Platforms such as LinkedIn took advantage of the increasing reliance on software and technology in recruitment and employment opportunities. Consequently, more traditional forms of jobseekers are gradually being replaced by virtual connections and online personas of both employers and potential employees. This change is significant, particularly following the Covid-19 crisis where job structures changed and concentrated on virtual interactions. Therefore, data and information from platforms dedicated to employability should not be discounted and are utilized in this research to demonstrate how the concepts of professionalism and dress are understood.

The Financial Times online magazine has dedicated articles on workplace culture and the use of clothing as a tool for corporate branding. Bari argues that office cultures in several industries have changed with the influx of a new generation of workers and with modern thoughts overtaking rooted and outdated perspectives.[697] Vital in Bari's discourse is the notion that employees are becoming increasingly frustrated with the rigidity of established dress codes. With growing awareness of self and the increased discussion around the connection of bodily integrity, mental health and professional effectiveness, individuals are becoming more averse to rules and expectations around core personal issues, such as dress styles. However, her article demonstrates the anxiety surrounding clothing in a professional setting, with employees unsure of how to demonstrate both their individuality and professionalism at the same time. As succinctly stated, "dress is one of the ways in which some of our most serious concerns about

---

[697] Shahidha Bari, 'What to Wear at Work: The New Rules' (*Financial Times*, 27 June 2019) <https://www.ft.com/content/3a3f2178-980a-11e9-9573-ee5cbb98ed36> accessed 6 June 2021.

power, authority and freedom are expressed".[698] This statement supports one of the arguments highlighted in this thesis, that dress is communicative and is used to send non-verbal messages to viewers.

Similarly, in a post written by the Indeed Editorial Team, the conversation around professional wear focused on mute colours, minimal jewellery, subtle designs, and structured fittings.[699] The complete omission of ethnic dress or racially inspired physical symbolisms from an evaluation of corporate dress can infer that there is a widely adopted belief that either ethnic dress is unimportant or is inappropriate in the professional environment. Applying such professional appearance standards on a minority ethnic group like the Herero community, for example, reveals how constraining it may be. As previously reported, the Herero tribe demonstrate their individuality, particularly through the attire of their female members.[700] Females are to wear long, elaborate dresses and head ties in the representation of their ethnic identity.[701] The guidance developed by Indeed for professional business dress makes no allowance for the type of ethnic costume worn by the Herero women. The lack of ethnic concession could imply that minorities are expected to sacrifice the manifestation of ethnic roots for acceptance in professional industries.

In addition, the phrase 'dress the way you want to be addressed' is commonly used to encourage people to ensure their physical appearance matches their positional ambitions. Career websites advise job seekers to dress like current employees of their preferred firms; likewise, individuals who desire a promotion are advised to tailor their dress sense to match that of their superiors.[702] The problem with this advice lies in the fact that White males are the group with the overall highest rate of employment and also tend to occupy a substantial percentage of senior

---

[698] Shahidha Bari, 'What to Wear at Work: The New Rules' (*Financial Times*, 27 June 2019) <https://www.ft.com/content/3a3f2178-980a-11e9-9573-ee5cbb98ed36> accessed 6 June 2021.

[699] Indeed Editorial Team, 'Guide to Business Attire (With Examples)' (*Indeed*, 9 February 2021) <https://www.indeed.com/career-advice/starting-new-job/guide-to-business-attire> accessed 06 June 2021.

[700] Deborah Durham, 'The Predicament of Dress: Polyvalency and the Ironies of Cultural Identity' 26(2) [1999] American Ethnologist at page 392

[701] Hildi Hendrickson, 'The Long Dress and the Construction of Herero Identities in Southern Africa' [1994] 53(2) African Studies, pp.25-54

[702] Zabrina Janda, 'How Dressing Like A Boss Landed Me A Promotion in 6 Months' (*HuffPost*, 28 September 2016) <https://www.huffpost.com/entry/how-dressing-like-a-boss-landed-me-a-promotion-in-6_b_57eab9abe4b095bd896a004d> accessed 06 June 2021.

positions.[703] Therefore, when individuals are asked to package themselves in similarity to the employed and highly positioned, they are indirectly asked to conform to the image of White masculinity.[704] This argument could explain why dress items such as colourful and flouncy skirts are considered unprofessional and male dress tunics are discouraged.[705] To reduce the gap between minorities and the majoritarian White group, employers and the media need to demonstrate a realistic depiction of inclusivity.

The concern about the communicative elements of dress is the fact that it is interpreted through social beliefs about symbolism and images. Social elites throughout history have established the meanings of varying forms of expression. For example, as suggested by Bari, the traditional suit, as well as colours thought to be professional (dark and neutral tones), have been elucidated as influential, powerful, and confident.[706] Hence, when members of society view an employee wearing a well-fitted suit in subtle colours, they instinctively receive the message that the wearer is in a position of authority and is effective in their respective job position. Unfortunately, the fact that social elites determine the interpretations of dress leads to misunderstanding. In the UK, it is very uncommon for an ethnic minority to be vastly influential; hence interpretations of ethnic manifestations are most likely influenced by the White elites. Consequently, ethnic minorities have not been allowed to determine the message gleaned from their ethnic dress.

On LinkedIn learning, a video titled 'Does Dress Matter' led by a professional global strategist, Roberta Matuson, highlights the importance of an employee's appearance profile

---

[703] GOV.UK, 'Ethnicity Facts and Figure' (*GOV.UK*, 29 January 2021) <https://www.ethnicity-facts-figures.service.gov.uk/work-pay-and-benefits/employment/employment/latest#:~:text=76%25%20of%20people%20aged%2016,out%20of%20all%20ethnic%20groups> accessed 06 June 2021.

[704] Roberta Matuson, 'Managing Up, Down and Across the Organization: Does Dress Matter' (*LinkedIn Learning*, 07 March 2017) <https://www.linkedin.com/learning/managing-up-down-and-across-the-organization/does-dress-matter?u=42583876> accessed 06 June 2021.

[705] Indeed Editorial Team, 'Guide to Business Attire (With Examples)' (*Indeed*, 9 February 2021) <https://www.indeed.com/career-advice/starting-new-job/guide-to-business-attire> accessed 06 June 2021.

[706] Shahidha Bari, 'What to Wear at Work: The New Rules' (*Financial Times*, 27 June 2019) <https://www.ft.com/content/3a3f2178-980a-11e9-9573-ee5cbb98ed36> accessed 6 June 2021.

whilst at work.[707] Matuson argues that formal dress adds value to the individual employee and hinges this argument on the correlation between greater work efficiency recorded amongst subjects wearing a formal dress as against those wearing a casual dress in a workplace simulation. Her assertions portray that the wearing of professional clothing, ideally considered to be suited to the job context, increased levels of confidence and was correlated to better abstract thinking and problem-solving.[708]

Dressing for success can be linked to social class dynamics; it is hinted by Matuson that clothing purchased from low-end retailers are inappropriate for an individual seeking to climb up the corporate ladder.[709] Consequently, it can be inferred from that argument that more expensive clothes, and those purchased from established luxury brands, are considered ideal for key positions within an organization. This thought broadens the argument of what is considered professional and can be linked to subtle racial inequality and societal injustice. Research demonstrates that, in the UK, ethnic minorities generally occupy lower social positions and earn less compared to their White counterparts.[710] Therefore, the average ethnic minority employee will be less able to afford expensive brands and clothing; this will consequently lead to a greater inability to dress for higher positions in their respective organizations.

In addition, Amis *et al*. raise an important point in dress dynamics that supports the same-as-me ideology. Their research notes that superior staff members respond more positively to job seekers and inferiors whose dress style mimics theirs.[711] Furthermore, apart from attending job interviews, individuals seeking career opportunities are also advised to wear a business dress to

---

[707] Roberta Matuson, 'Managing Up, Down and Across the Organization: Does Dress Matter' (*LinkedIn Learning*, 07 March 2017) <https://www.linkedin.com/learning/managing-up-down-and-across-the-organization/does-dress-matter?u=42583876> accessed 06 June 2021.

[708] Roberta Matuson, 'Managing Up, Down and Across the Organization: Does Dress Matter' (*LinkedIn Learning*, 07 March 2017) <https://www.linkedin.com/learning/managing-up-down-and-across-the-organization/does-dress-matter?u=42583876> accessed 06 June 2021.

[709] Roberta Matuson, 'Managing Up, Down and Across the Organization: Does Dress Matter' (*LinkedIn Learning*, 07 March 2017) <https://www.linkedin.com/learning/managing-up-down-and-across-the-organization/does-dress-matter?u=42583876> accessed 06 June 2021.

[710] Office for National Statistics, 'Ethnicity Pay Gaps: 2019' (*ONS*, 12 October 2020) < https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/ethnicitypaygapsingreatbritain/2019> accessed 06 June 2021.

[711] John M Amis, Johanna Mair and Kamal A Munir, 'The Organizational Reproduction of Inequality' [2020] 14(1) Academy of Management Annals, pp 195 - 230

semi-formal events such as career fairs for the sole purpose of giving employers the opportunity of viewing the individual in a professional light.[712] The guidance of dress for job seekers conveys the message that appearance is seen as a foreshadow of job performance in the employment sector. This supports the previously stated premise that dress is communicative and expresses details about the wearer to the viewer. In the employment sector, clothing accepted as professional communicates an understanding of job politics and displays the wearer in either a positive or negative light depending on whether their choice of clothing correlates with the expectations of the relevant employer.

Depiction of ethnic minorities in authentic ethnic dress helps to create the narrative that minority cultures, traditions and symbolisms are not only welcome but also instrumental to successfully creating a diverse professional setting. It can be argued then that an increase in the demonstration of minority appearance standards will lead to a rich array of individuals pursuing professional careers due to renewed belief that members of their respective groups are capable of being both authentic and professional. If the British corporate environment were to be conceptualized as a story, then ethnic minorities as protagonists should be allowed to play their roles following their identities and without the influence of a majoritarian script.

---

[712] Rachel Swain, '5 Ways to Make the Most of Career Fairs' (*Prospects*, April 2021) <https://www.prospects.ac.uk/careers-advice/getting-a-job/5-ways-to-make-the-most-of-careers-fairs> accessed 06 June 2021.

5.6 CASE STUDY ANALYSIS - EVIDENCE OF ETHNIC DRESS IN UK LAW FIRMS

To bring a realistic scope of the issue of corporate dress codes restricting ethnic dress, the social media platform *Facebook* was used to collate official pictures from three pre-determined companies functioning in the UK and according to British trade laws. To be exact, the companies chosen for this analysis are from the legal sector, with each having a staff team of over 10,000 employees within the UK. Importantly, the official social media accounts for these companies claim to support diversity and insist on operating from an accepting and tolerating viewpoint.

To protect the privacy of the companies chosen, data relevant to any will be presented under a pseudonym. The images garnered for this analysis were made publicly available and were retrieved from the official Facebook accounts. For ease and a better presentation of the results, the analysis will be divided into three segments reflecting each of the chosen sectors. The results of this analysis, whilst not applicable to all sectors in the UK, is relevant and vital to the research on the acceptance and legal endorsement of ethnic dress within the workplace. The pictures gleaned demonstrate how the employees dress in the performance of the job roles. Importantly, the posting of these pictures for public consumption can be taken to infer the acceptance of the appearance of the staff members pictured.

Another point to note is that some of the official accounts are targeted at graduates; hence the content is aimed at encouraging recruits. The pictures chosen to be displayed on these pages can therefore be inferred to be non-verbal cues as to the relevant workplace culture and the established appearance policies. It also conveys to potential employees what is expected from them to become a functioning part of the team. Pictures are visual cues to the public, conveying the company's efforts, projects and what they stand for. Hence, with a vast staff team and a collection of official images, it is expected that there would be pictures demonstrating the visible ethnic difference.

Observations of ethnic minority individuals are limited to visible minorities and people of colour. Unfortunately, the nature of image observation does not allow for the identification of European minorities or individuals from distinct ethnic groups who possess White features, such

as Irish Travelers. It is impossible to discern non-visible distinct cultural traits and ethnic inclinations from curated photos; hence, this observation will not be able to capture the full picture of ethnic identity manifestation in the workplace. To produce more accurate results, only pictures featuring clearly aligned individuals will be considered for analysis. Photographs of brand pictures, office layout and event design are omitted. Also, pictures, where the physical features and images of individuals are blurred or indiscernible, are omitted from the analysis.

The images collated from the chosen Facebook pages of companies gives credence to the argument that formal business dress is preferred in traditional roles, whilst a more business casual appearance standard is considered suitable for non-professional events or in roles of greater creativity or with little access to customers and business partners. Through the exploration of Facebook, some firms succeeded in showing a sense of inclusivity by featuring several people of colour in their gallery of corporate images. Unfortunately, an overwhelming proportion of minorities showcased were without any physical ethnic markers or symbolisms.

Company A is one of the larger law firms with branches in several cities in the UK. With a British staff team exceeding 2,000 individuals and an explicitly stated dedication to be inclusive, it is to be expected that there would be a visible presence of ethnic minority employees working with the firm. The chosen Facebook page for this company is an official page targeted at graduates and aims to fulfil the firm's recruitment needs. With over 6,000 followers, it can be said that Company A is relatively popular and demonstrates a strong connection with the public. Consequently, posts made by its page are influential, and because they are targeted at potential employees, they are capable of enticing individuals with a visual display of work culture. Company A's graduate Facebook page has 153 pictures[713] but with only one picture, which appears to show a form of appearance differentiation from the majoritarian dress norms. In the picture, a middle-aged woman is photographed wearing a hijab. Whilst religion and ethnicity are arguably related, for the purpose of collating visual documentation of ethnic dress, representations of religion shall not be included as evidence of ethnic dress. This is largely due to the fact that individuals of varying ethnic backgrounds can be of the same faith and share

---

[713] The stated figure was correct as of June 17 2020

religious symbols. Hence, a display of religious allegiance is not necessarily a manifestation of ethnic identity. There were no other photographs portraying variance, neither was there any indication of differing ethnic and cultural identities.

Company B is also a prestigious legal firm and has included a section on their official website on their extensive commitment to diversity and inclusion. To demonstrate the authenticity of their claim of building a diversified workspace, Company B has a dedicated committee comprising of senior staff members responsible for training and providing resources for the development of diversity and inclusion within all branches. Like Company A, the official Facebook page used is targeted at graduates and aimed at recruitment. True to its claim of diversity, Company B's Facebook page immediately showcases people of colour and a varied mix of ethnicities in its timeline video. Whilst there is no image of ethnic clothing in the video, there are glimpses of Afro-Caribbean women with ethnic hairstyles such as braids and cornrows. On Company A's Facebook page, there are approximately 900 Timeline photos, and there is a varied mix of different visible ethnic minority individuals represented. In some of the pictures of young Black women, they are seen with Eurocentric-style hair. The hairstyles appear to be wigs or weaves made of either synthetic or human hair fibres and are representative of Western appearance norms whilst being vastly different to the natural hair textures of Black women. However, these pictures do not indicate whether the hairstyles were chosen solely based on the preference of the individuals or whether there had been subconscious pressure to fit in with majoritarian norms. The latter appears to be unlikely as there are pictures posted of other Black women in traditional styles and with their natural hair textures. The mix of timeline pictures truly demonstrates the work on inclusion and diversity propagated by the firm.

Company C's UK graduates page is followed by over twelve thousand people and has 682 timeline photos at the time of research. Company C had a total of 682 timeline photographs, with 183 of them featuring a discernible BAME individual. However, only 27 of these images showed minority individuals in traditional ethnic wear or with an appearance that signals membership to a minority group. A large proportion of women of Afro-Caribbean descent were photographed wearing what appeared to be weaves and abstaining from presenting the natural hair textures, which are known to be majorly coarse and kinky. The women wore weaves designed to give the

appearance of long, sleek, and straight hair similar to that of European and East Asian women. It has been noted that minority women view straight and sleek hair as professional and consider their natural hair textures and ethnic hairstyles as inappropriate for the workplace.[714]

In Company D's Facebook page, the brand portrays allegiance to a sense of inclusion with its cover picture displaying individuals of different age groups and with varying physical abilities; however, there is little evidence of racial or ethnic dress. The overall number of timeline pictures publicly available on Company D's Facebook page is 1,449, demonstrating regular usage of the social media platform and a desire to visually communicate with potential employees and clients.

Company	Total Number of Timeline Pictures	Total Number of Pictures with a BAME Individual	Total Number of Pictures Depicting Ethnic Dress
Company A	153	17	0
Company B	900	75	16
Company C	682	133	27
Company D	1,449	92	18

The use of case studies illustrates the main point raised in the preceding chapter that visible diversity is not prevalent in the UK employment scene. This is relevant to the analysis of the legal instruments as it demonstrates that the law's protection of minorities is arguably shallow and without proper regard for the manifestation of ethnic identity. Whilst the law protects against race-based discrimination and with-it ethnic identification; it does not create a positive duty for employers to support the fluidity of ethnic expression.[715] Instead, the law endorses employer discretion and provides an opportunity for indirect discrimination to be

---

[714] Ra'Mon Jones, 'What the Hair: Employment Discrimination Against Black People Based on Hairstyles' [2020] 36(27) Harv. B.L. Law J, 27
[715] Equality Act 2010, Sections 9, 13 and 19

justified through the presentation of legitimate aims.[716] As seen in the decided cases involving dress and indirect discrimination, it appears that the understanding of what amounts to a legitimate aim is broad and can be said to tilt in favour of employers.[717] As was highlighted from the decision in *Harris v NKL* where the termination of an employee's employment contract was justified based on the argument that the claimant's dreadlocks were untidy.[718] Key in that decision is how the courts seem to uphold as legitimate the employer's requirement for positive aesthetics without an in-depth evaluation on whether the perception of dreadlocks as untidy was rooted in majoritarian preferences. The courts also failed to enquire whether the claimant's physical presence reduced his ability to perform his job role properly and whether the presence of dreadlocks affected the tangible commercial goals of the company.

The perception of dreadlocks as untidy appears to indicate the presence of stereotypes concerning cultural norms and a general hesitancy of businesses to associate with visible minority status.[719] Interestingly, all three legal companies used as case studies did not have images of staff and corporate partners with dreadlocks. While it may be farfetched to draw a conclusion from the absence of dreadlocked hairstyles, the coincidence may demonstrate a normalized perception that certain ethnic minority manifestations are unprofessional.[720] This is also another advantage of utilizing the legal sector for analysis; the expectations of professionalism within the industry are beneficial for this research as it is focused on understanding the acceptability of minority symbolisms in professional and corporate fields.

Furthermore, ethnic minority hairstyles such as Bantu knots, Fulani braids and African head wraps were absent in the images of photographed Black women on the social media pages of the chosen law firms. Although this may be solely caused by the independent choice of the women, it remains possible that the companies either deliberately omitted to place the images

---

[716] Equality Act 2010, Section 19(2)(d)

[717] *Steel v Union of Post Office Workers* [1978] ICR 181; *Ojutiku v Manpower Services Commission* [1982] IRLR 418

[718] *Harris v NKL Automotive Ltd and Matrix Consultancy UK Ltd* EAT 0134/07

[719] Kyle Ring, 'Twisted Locks of Hair: The Complicated History of Dreadlocks' (*Esquire*, 26/10/2020) < https://www.esquire.com/uk/style/grooming/a34465402/history-of-dreadlocks/> accessed 28 May 2021.

[720] Robert Booth and Sally Weale, 'Unilever Pledges to Protect Staff with Afros and Dreadlocks' (*The Guardian*, 9 December 2020) < https://www.theguardian.com/world/2020/dec/09/unilever-pledges-to-protect-staff-with-afros-and-dreadlocks> accessed 28 May 2021.

of minorities in traditional symbolisms on their official pages, or they have established a workplace culture wherein minority expression is discouraged. Biologically, Afro-Caribbean women tend to have hair that is naturally kinky, coarse or tightly coiled; consequently, the abundance of images of Black women with silky straight hair raises the question of whether there is an implicit expectation for minority women to aesthetically present themselves in the fashion of the majoritarian group.[721] This anomaly coincides with reports that Black women, in particular, are consistently discouraged from presenting their natural hair with comments and advice from senior colleagues, alluding that their natural hair is untidy and deviant from corporate expectations.[722]

Another point that was illustrated through the perusal of the chosen companies' social media presence is the notion, demonstrated in *Eweida v BA*,[723] that only a disadvantage that affects a sizable number of relevant group members is supported by the law.[724] To reiterate, the UK courts claimed that physical manifestations of identity such as the wearing of a head covering by Muslim women should be accommodated by corporate dress policy because it is commonly accepted in the Muslim community that the covering of female hair is a demonstration of modesty. The courts further claimed that the choice to manifest personal identity via a means not observed by the majority of a group might amount to nothing more than an individualistic preference and not a group disadvantage. In the images of the companies, a few women were seen with Hijabs, but there were no displays of ethnic headgears by the women photographed. Furthermore, a few men were pictured wearing turbans demonstrative of the Sikh culture, yet

---

[721] Sweta Rajan-Rankin, 'Material Intimacies and Black Hair Practice: Touch, Texture, Resistance' [2020] Nordic Journal of Feminist and Gender Research < https://www.tandfonline.com/doi/full/10.1080/08038740.2021.1912172?scroll=top&needAccess=true> accessed 28 May 2021.

[722] Remi Joseph-Salisbury and Laura Connelly, 'If Your Hair Is Relaxed, White People Are Relaxed. If Your Hair Is Nappy, They're Not Happy': Black Hair as a Site of 'Post-Racial' Social Control in English Schools' [2018] 7(11) Race/Ethnicity, Crime and Social Control, 219; Rozini Sini, 'Wear a Weave at Work – Your Afro Hair is Unprofessional' (*BBC UK*, 15 May 2016) < https://www.bbc.co.uk/news/uk-36279845> accessed 28 May 2021; Christine Emeleone, 'I was Sent Home From Work Because of My Afro. The UK is Definitely Still Racist' (*The Tab*, 2020) <https://thetab.com/uk/2020/06/08/i-was-sent-home-from-work-because-of-my-afro-the-uk-is-definitely-still-racist-160427> accessed 28 May 2021.

[723] *Eweida v British Airways plc* [2010] EWCA Civ 80

[724] Kate Malleson, 'Equality Law and the Protected Characteristics' [2018] 81(4) The Modern Law Review, pp.598-615

there were no images of men with minority ethnic headgear such as do-rags, dashiki hats or fez caps.[725] This suggests that while allowances are made for popular minority appearance standards, lesser-known ethnic symbols or those worn by the minority of an ethnic group is not accounted for. In addition, the connection between religion and ethnicity is further demonstrated as many of the religious dresses worn, such as the hijab and the Sikh turban, can also be used as an ethnic marker. This supports the argument raised in the preceding chapter that there is a form of a hierarchy of rights in the employment sector, with religion seemingly being considered a more cogent characteristic for protection than race and ethnicity.[726]

---

[725] Alex Bresler, 'II Traditional Hats from Around the World and Their Stories' (*Matador Network*, June 8, 2018) <https://matadornetwork.com/read/11-traditional-hats-around-world-stories/> accessed 28 May 2021.
[726] Kate Malleson, 'Equality Law and the Protected Characteristics' [2018] 81(4) The Modern Law Review, pp.598-615

5.7 CHALLENGING BUSINESS JUSTIFICATIONS FOR INDIRECT DISCRIMINATION

Lloyd's Banking Group published a report that explores the use of minority individuals in corporate marketing and advertisement.[727] Whilst commendable in its advocation for diversity in corporate advertising, the issue of ethnic identity and its connection to dress is ignored. Consequently, it can be inferred that ethnic visibility in the workplace has been wrongly restricted to the appearance of varying skin tones or physical features. This could also demonstrate the erroneous interpretation of ethnicity as the direct equivalent or manifestation of race. This understanding of ethnicity omits the social, communal, and individualistic dimensions of ethnicity.

Ethnic dress is a vivid expression of the dynamics of ethnic identity as it communicates the beliefs, values, gender identity and historical dialogue of an ethnic group. An ethnic minority employee stripped of his ability to manifest his individualistic ethnic identity via dress is arguably still being denied full acceptance in the British corporate scene. In the picture demonstrating an ethnic minority in the corporate advert, the model, though seemingly from an Asian background, is fully clothed in accordance with the societal standards of professionalism in the UK. An exploration of East Asian male ethnic dress reveals of striking disparity between the Lloyd's banking group model and how traditional East Asian men dress.[728] The argument that a specific pattern of dress evolved from White social preference should be the standard of corporate professional wear indirectly alludes to the underlying and subconscious notion that ethnic minorities do not have a secure and equal position within the employment sector. The research undergone by Lloyd's banking group offers insight into how corporations understand ethnicity and their roles in the establishment of substantive equality.[729]

---

[727] Lloyds Banking Group, 'Ethnicity in Advertising: Reflecting Modern Britain in 2018' <https://www.lloydsbankinggroup.com/who-we-are/responsible-business/inclusion-and-diversity/ethnicity-in-advertising.html> accessed 1 June 2021.
[728] Victoria and Albert Museum, 'Traditional Dress from East Asia' < http://www.vam.ac.uk/content/articles/t/traditional-dress-from-east-asia/> accessed 4 June 2021.
[729] Lloyds Banking Group, 'Ethnicity in Advertising: Reflecting Modern Britain in 2018' <https://www.lloydsbankinggroup.com/who-we-are/responsible-business/inclusion-and-diversity/ethnicity-in-advertising.html> accessed 1 June 2021.

In addition, a commonly used justification in favour of the employer's right to control employee image is the consideration of commercial success and its connection to a corporation's overall brand image.[730] Research has demonstrated that prospective clients and shareholders adjust the reception of a business's goods or services based on their overall assessment of the employees purporting to represent the relevant brand.[731] This is particularly true in industries considered to be professional, as studies show that outsiders find employees dressed following traditional professional attire to be more trustworthy and capable.[732] Consequently, there is usually a minimum standard of dress expected from employees who operate on behalf of a corporation both in internal affairs and in outside or external interactions with others. It is arguable that in official policies, there is an expectation on employees to tailor their appearances to suit public business standards in order to ensure that the firm gains the confidence of third parties. It can be inferred from this that firms place a great value on how external parties view their employees. Furthermore, research suggests that firms subtly place the responsibility to dress in accordance with public standards on the employees and are often ambiguous as to what amounts to dress capable of disrupting consumer confidence.[733]

Using the dress policy given by a legal firm operating in the UK for the purpose of this research as an example, although an inexhaustive list of potentially inappropriate wear is listed, the company places the onus of good judgement on the individual employee whilst stating that the relevant line managers can be called upon to give guidance. The provision of guidance by the line managers has the potential to either produce positive or negative results for the agenda of substantive equality and visible diversity. Recent statistics demonstrate that in the UK, BAME members of staff are disproportionately assigned to job positions lacking authority and

---

[730] Chris Y. Shao, Julie A. Baker and Judy Wagner, 'The Effects of Appropriateness of Service Contact Personnel Dress on Customer Expectations of Service Quality and Purchase Intention: The Moderating Influences of Involvement and Gender' [2004] 57(10) Journal of Business Research, pp. 1164-1176

[731] Bill Visone, 'Cramping your style: Personal Appearance in the Workplace' [2016] 30(2) Georgetown Immigration Law Journal, 359

[732] Adrian Furnham, Pui Shuen Chan and Emma Wilson, 'What to wear? The influence of attire on the perceived professionalism of dentists and lawyers' [2014] 43 Journal of Applied Social Psychology, pp.1838-1850

[733] Susan M Heathfield, 'What Employees Should Wear to Work' (The Balance Careers, 21 December 2020) < https://www.thebalancecareers.com/what-should-employees-wear-to-work-1917929 > accessed 06 June 2021.

determinative power.[734] Consequently, it can be inferred that the relevant managers would most likely be members of the majoritarian group and who, without special training on the needs of minority groups, may be unable to discern ethnic dress needs. Furthermore, if the line managers give guidance based on their subjective understanding of professional wear, implicit bias can influence decision making and the disregard or improper attention given to legitimate ethnic manifestations.

The novel, albeit tragic, outbreak of the Covid-19 virus could present a unique insight into the acceptability of wearing minority ethnic dress in the fulfilment of professional duties. During the recent lockdown enforced by the government, the notion of 'work' has arguably been redefined.[735] As employees have been directed to work from home in many professional industries, the relevance of dress and appearance has substantially reduced. The fact that workers can perform some of their functions from home and, with the advantage of little to no contact with clients, in dress that is considered comfortable raises the question of whether the previous strict approach to non-normative dress is justifiable. During a pandemic, the attention on the relevant employee shifts from whether or not he's manifesting a minority identity to whether his appearance shows due respect to the safety and well-being of clients. This argument can be evaluated in the light of the *Azmi* case, which, although decided solely on religious grounds, can be used to understand the complexities of ethnic dress.[736]

The rules on social distancing and working from home might have impacted established workplace cultures. Working from home, to an extent, reduces the level of pressure on employees to present a certain image. The lack of constant scrutiny and interaction with members of the public reduces the expectation of professional appearance. Hence, it can be said that professionals who work from home are able to be their most authentic selves with regard to their choice of dress. Furthermore, the relaxation of dress code policies and employees' proper

---

[734] Office of National Statistics, '2011 Census analysis: Ethnicity and the Labour Market, England and Wales' [2014] <https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/ethnicity/articles/ethnicityandthelabourmarket2011censusenglandandwales/2014-11-13> accessed 11 November 2020.
[735] Sebastian Doerr and Leonardo Gambacorta. Covid-19 and regional employment in Europe. No. 16. Bank for International Settlements, 2020.
[736] *Azmi v Kirklees MBC* [2007] ICR 1154

fulfilment of job specifications irrespective of what they wear could infer that dress and image politics in the workplace has been an unnecessarily important focus. During the period of the lockdown, customers and clients were relatively uninterested in the dress style of the employees whose services were needed; rather, the focus was placed on the individual's professionalism. Professionalism in this season also took a different meaning; as it now included how the relevant staff member composed himself and the value he places on health and safety in the performance of his duties. For example, the observing of social distance rules, perceived cleanliness, and the wearing of protective clothing. Whether employees took government orders seriously and demonstrated this in a change of appearance was considered more important than whether they wore a traditional professional dress or not.[737]

In *Azmi*, it was ultimately decided that the teacher's wearing of a face veil, for religious reasons, was rightly barred by the defendant school because the lack of visible facial expressions was deemed to be detrimental to the learning of the children.[738] Whilst the decision in *Azmi* is in some respects positive as an in-depth inquiry was held to properly allocate value on the respective parties' rights in the proportionality test, its overall decision can be viewed differently in light of covid-19. Rules concerning working amid a pandemic have meant the wearing of face masks except for extenuating circumstances. Consequently, children being taught in a physical classroom are more likely to have their abilities to discern information via facial cues disrupted. However, the fact that children have still been taught under the potential conditions of wearing a facial covering could demonstrate that the disruption of a lack of facial cues on learning is not sufficient to prohibit ethnic or religious manifestation. Therefore, the case of *Azmi* can be re-examined and may lead to an inference that the value placed on individual rights to authentic self-representation is unjustly low. In a time where customers and clients are mainly only able to get professional assistance via non-visual means, i.e., through phone conversations, emails and online chats, it is arguable that consumers are ultimately much more concerned about the value

---

[737] Manuela Angelucci, Marco Angrisani, Daniel M. Bennett, Arie Kapteyn, and Simone G. Schaner, 'Remote work and the heterogeneous impact of covid-19 on employment and health' [2020] Working Paper 27749, National Bureau of Economic Research.
[738] *Azmi v Kirklees Metropolitan Borough Council* [2007] IRLR 434 (EAT)

of the service they receive than they are about the ethnic status and appearance choices of the staff from whom they receive the service.

5.8 CONCLUSION

It can be argued that the ability of employers and corporations to control, to a substantial extent, the fiscal strength of individual employees places them at a distinctly advantageous position in society. Through an examination of data, it is inferred that employers, as a group, are members of the societal elite responsible for shaping and manipulating social norms and preferences. From a legal perspective, this consideration should be included in any proportionality exercise concerning PCPs. Company policies both reflect the expectations of the majoritarian group whilst also confirming and cementing the associated bias and prejudice. The notion of the business operating in the position of a societal elite with the power to influence preferences and what is considered acceptable demonstrates an often-overlooked dimension of the corporate scene. Businesses and corporations are usually perceived as agents with purely economic concerns and ambitions. It is argued that businesses are, in reality, hybrid personalities within society capable of establishing patterns of moral based actions. Through established corporate policies and the publicly visualized values and ethics of an organization, a business could set the pace for society's acceptance of marginalized groups.

To insist that the priorities of businesses should be centred around commercial goals is to be ignorant of the huge role they play in society. In the forms of employees, clients, customers or participants, various groups of society engage in regular and continuous engagement with the staff of a business. This close connection to people means that corporate decisions will invariably affect a proportionate amount of society.[739] For example, a client who may have no personal relationship with a member of a minority group could be placed in a position whereby he is being served by a minority employee in the pursuance of business. Such a client has been given the opportunity to potentially interact with an unfamiliar group and to draw inferences about the entire group from his interaction with a minority employee. Hence, a company policy that regulates the minority manifestations of employees is also unconsciously affecting the public's perception of minorities. In addition, a company policy that indirectly brands an item of ethnic

---

[739] David Sciulli, *Corporate power in civil society: An application of societal constitutionalism*. (NYU Press, 2001), pp. 1 - 7

dress and minority physical manifestations as unacceptable potentially feeds the widespread belief that ethnic minorities are not suitable for professional jobs.

Furthermore, a lack of visible cultural identity in the workplace could send the unsavoury message that visible differences are to be hidden and overshadowed by majoritarian norms. This ideology reinforces the notion that minorities are merely tolerated but not accepted as they are only given space in the workplace as long as they leave their minority identities in their respective private spheres. In addition, through the use of advertising and marketing, a company can visually connect to a large audience and can then positively or negatively set the script for the operation of working-class minorities in a professional setting.

Whilst it may seem that a business is more likely to attain its economic and commercial aspirations if its staff are dressed according to the expectations and socially accepted norms of the territory that it operates in. However, it is arguably inherently unfair for minority employees to be subconsciously or indirectly coerced into choosing between job security and an authentic manifestation of ethnic identity. As has been discussed extensively on the disadvantage of group protection, the balancing of the conflicting interests tends to place the minority and the unique members of a group at a severe disadvantage.[740] Although the views of clientele are considered valid, it is proposed that employees should not be given guidance based on the preferences of the majority. Social injustice will, arguably, continue to thrive in an environment where it is considered acceptable for working individuals to be judged on their professional capacity and work efficiency based on the personal characteristics displayed in their appearance. If the law makes it unjust for individuals to be unfairly treated based on protected characteristics, which include race, then employers should not be allowed to justify dress policies that operate to erase those characteristics. Furthermore, it should not be a defence if an employee's minority appearance affects the commercial goals of a business. To raise such a defence is to, in effect, continue discrimination and encourage bias. In cooperation with societal elites such as the media, businesses and corporations should be encouraged to use their economic power to disintegrate negative stereotypes and encourage visible diversity. Although it may seem counterintuitive for

---

[740] Sarah Hannett, 'Equality at the Intersections: The Legislative and Judicial Failure to Tackle Multiple Discrimination' [2003] 23(1) Oxford Journal of Legal Studies, pp.65-86

businesses to take an active approach in the dissolution of ethnic-based indirect discrimination, scholars have suggested that it is, in fact, beneficial for businesses and the economy as a whole. Greater diversity and policies that foster inclusion come with an increase in business creativity due to the presence of individuals from varied backgrounds.[741]

---

[741] Jalal Armache, 'Diversity in the workplace: Benefits and challenges' [2012] 1 Journal of International Diversity, 59- 74; Kelli A Green, Mayra López, Allen Wysocki, and Karl Kepner, 'Diversity in the workplace: Benefits, challenges, and the required managerial tools' [2002] 2 EDIS.

6. Conclusion

6.1 INTRODUCTION

This thesis is an academic response to the gap in legal studies pertaining to racial discrimination. It is asserted that the traditional legal understanding of race fails to appreciate the vitality of ethnic dress to racial identity. Without proper regard given to the integral role that ethnicity and its manifestation, ethnic dress, plays in identity formation, the law is arguably handicapped to ensure protection against discrimination. The often-overlooked subject of ethnic dress is deliberately placed at the focal point of this thesis as it is an expressive example of the physicality of ethnic identity.[742] Through clothing, body modifications and specific symbolisms, ethnic dress communicates an important aspect of communal affiliations and shared convictions.[743] Hence, it is suggested that the law reflect the importance of ethnic dress and explicitly include it under the ambit of its protection.

It has been emphasized that discrimination, in all its variants, is as much a sociological issue as it is a legal one.[744] It is proposed that the legislative bodies involve sociological appraisals in future reforms of anti-discrimination statutes. Apart from an ethical stance against discrimination, disadvantageous treatment because of racial roots and ethnic connection has a tangible detrimental effect on society.[745] In terms of contribution to the broad field of discrimination, this thesis sought to demonstrate that substantive equality is a function of not only the law but of society.[746] It is argued that the requirement for the law to be predictable

---

[742] Joanne B. Eicher, 'Introduction: Dress as Expression of Ethnic Identity' in Joanne B. Eicher (ed), *Dress and Ethnicity* (Berg Publishers, 1995), pp. 1 - 11

[743] Kim Johnson, Sharron J Lennon and Nancy Rudd, 'Dress, Body and Self: Research in the Social Psychology of Dress' [2014] 1(20) Fashion and Textiles, pp.1-24

[744] Matthew Clair and Jeffrey S Denis, 'Sociology of Racism' [2015] 19 International Encyclopedia of the Social & Behavioral Sciences

[745] Tim Strangleman and Tracey Warren, *Work and Society: Sociological Approaches, Themes and Methods* (Routledge, 2008), pp. 8 - 28

[746] Devah Pager and Hana Shepherd, The Sociology of Discrimination: Racial Discrimination in Employment, Housing, Credit, and Consumer Markets' [2008] 34 Annual Review of Sociology

according to the rule of law also inhibits its efficiency in incidents of ethnic-based indirect discrimination. The arguably insufficiency of the law in this regard is evidence of the disconnect between the legal system and the reality of lived experiences. Research suggests that people are less likely to identify under a single-axis model of classification.[747] With a growing sense of interconnectedness and the effects of both multiculturalism and globalization, what it means to be British is increasingly personalized and diverse.[748] Over the years, the notion that each ethnic group is distinct; and separate does not hold to be true, yet there remains ethnic pride and a desire to be identified with one's roots.[749]

The relevance of an in-depth analysis on intersectionality and the Equality Act 2010 is rooted in the question of *whether the British courts' interpretation of ethnic manifestation in indirect discrimination cases appropriately reflects the relevant individual's chosen identity?* The discussion around ethnic dress and the limitations of corporate dress policies is particularly relevant to intersectional discrimination due to the hybrid nature of ethnicity. As explained in Chapter Two, ethnicity can be defined as a social construct that can manifest in varying ways depending on the presence of other personal characteristics.[750] More importantly, ethnic dress, which can be utilised as a tool for ethnic identity expression, is influenced by the wearer's relationship with their gender, religion, sexual orientation, and even marital status.[751] This thesis has sought to address a gap in the academic literature on discrimination as there are few theoretical analysis targeted on the inadequacy of a legal system unaccustomed to providing relief for individuals, minorities within minority groups, and those whose identity expression is unique and solely founded on an individualistic understanding of the self.[752]

---

[747] Sarah Hannett, 'Equality at the Intersections: The Legislative and Judicial Failure to Tackle Multiple Discrimination' [2003] 23(1) Oxford Journal of Legal Studies, pp.65-86

[748] Davina Cooper, Dominic Cooper, and Cooper Davina. *Challenging diversity: Rethinking equality and the value of difference.* (Cambridge University Press, 2004), pp. 3 - 14

[749] Veena Chattaraman and Sharon J. Lennon, 'Ethnic identity, consumption of cultural apparel, and self-perceptions of ethnic consumers' [2008] 12(4) Journal of Fashion Marketing and Management, pp. 518 - 529

[750] Thomas Hylland Eriksen, 'Ethnicity' In G Ritzer (ed). *The Wiley-Blackwell Encyclopaedia of Globalization* [2012] < https://doi.org/10.1002/9780470670590.wbeog179> accessed 23 June 2021.

[751] Deborah Durham, 'The Predicament of Dress: Polyvalency and the Ironies of Cultural Identity' 26(2) [1999] American Ethnologist, pp. 389 - 411

[752] Sarah Hannett, 'Equality at the Intersections: The Legislative and Judicial Failure to Tackle Multiple Discrimination' [2003] 23(1) Oxford Journal of Legal Studies, pp.65-86

The complexity of ethnic identification reflects the richness of ethnicity and race and proves that it has grown far beyond a biological and geographical concept and has become a sociological phenomenon.[753] As previously stated, sociology is heavily involved in human behaviour, and, according to academic commentators, human behaviour is not easily predicted.[754] For ethnic minorities to be fully empowered to authentically display their ethnic roots in accordance with their individualised interpretations and personal experiences, the law needs to be buttressed by a mechanism suited to human experiences.[755] The notion of social elites, identified in this thesis as a specific socially elevated group capable of great influence, is presented for further study into the possibility of its development to deter indirect discrimination. Whilst the law may be unable to legislate for each unique manifestation, social elites, particularly media figures and corporate marketing/advertising bodies, can be used to break down the barriers preventing substantive equality.

It may be argued that a legal thesis should not contain such in-depth analysis and persistent evaluation of sociological frameworks. Whilst the fields of both sociology and law are often linked, it is suggested that legal studies do not adequately account for the sociological underpinnings that have a valuable impact on the operation of the law. In quite simple terms, sociology can be described as a methodological assessment of human behaviour within communities and groups.[756] Discrimination cannot be examined in isolation by using only legal doctrines; rather, its very nature demands an observation of behavioural patterns and the evolution of social preferences. In support of this argument, research by Bhui *et al.* explicitly states that racial studies should be examined primarily as a sociological issue.[757] They assert that race is a social construct with subtleties and complications best understood under the lenses of sociology. As previously mentioned, racial and ethnic-based discrimination is as much of a

---

[753] Scott Plous, *Understanding Prejudice and Discrimination* (ed. S. Plous). (New York: McGraw-Hill, 2003)

[754] Matthew Clair and Jeffrey S Denis, 'Sociology of Racism' [2015] 19 International Encyclopedia of the Social & Behavioural Sciences, pp. 857 - 863

[755] Andrew Pilkington, *Racial Disadvantage and Ethnic Diversity in Britain* (Palgrave Macmillan, 2003)

[756] Tim Strangleman and Tracey Warren, *Work and Society: Sociological Approaches, Themes and Methods* (Routledge, 2008), pp. 8 - 28

[757] Kamaldeep Bhui, Stephen Stansfield, Kwame McKenzie, Saffron Karlsen, James Nazroo and Scott Weich, 'Racial/Ethnic Discrimination and Common Mental Disorders Among Workers: Findings from the Empiric Study of Ethnic Minority Groups in the United Kingdom' [2005] 95(3) AM J Public Health, pp. 496 - 501

sociological risk factor as it is a legal violation.[758] As a sociological risk factor, racial discrimination expands the negative notion that individuals exist in a hierarchical place predetermined by biology.[759] This mentality leads to distrust among groups and a reluctance to accept tangible differences in culture. A key disadvantage borne out of this racial tension is the promotion of stereotypical beliefs and an increase in methods of group domination.[760] Moreover, social elements such as majoritarian practices, group formation and group relations are founding themes of discrimination.[761] Consequently, the law is handicapped when it tries to solve a social problem like indirect discrimination with rules that are not reflective of social practices.

Therefore, an advantage of examining the law through the lens of sociology is that often ignored sociological ideas are correctly identified as both an influence on the law and a predictor of the law. The British society, whilst diverse, is still somewhat divorced from the reality of its minority communities.[762] Corporate dress codes are rooted in the archaic understanding of professionalism, and it fails to properly incorporate the flexibility and open-mindedness needed to increase the presence of visible diversity.[763]

A sociological examination of the UK as a collective society unveils the presence of both diverse communities and an established majoritarian culture.[764] Sociology helps us understand the underlying influences of group domination practices that lead to minority marginalization. In addition, whilst legal instruments offer punitive penalties for perceived breaches of anti-discrimination law, it is offered that sociological tools can go further by triggering a change in group conceptualization and perceptions of acceptable social conduct. With regard to dress,

---

[758] Matthew Clair and Jeffrey S Denis, 'Sociology of Racism' [2015] 19 International Encyclopedia of the Social & Behavioural Sciences, pp. 857 - 863

[759] Reena Bhavnani, Heidi Safia Mirza, Veena Meetoo, *Tackling the Roots of Racism: Lessons for Success*. (Policy Press, 2005), pp. 1 - 55

[760] Tony Kushner, *We Europeans? Mass Observation, 'Race' and British Identity in the Twentieth Century* (Ashgate, 2004)

[761] Devah Pager and Hana Shepherd, The Sociology of Discrimination: Racial Discrimination in Employment, Housing, Credit, and Consumer Markets' [2008] 34 Annual Review of Sociology

[762] Tony Kushner, *We Europeans? Mass Observation, 'Race' and British Identity in the Twentieth Century* (Ashgate, 2004)

[763] Bill Visone, 'Cramping your style: Personal Appearance in the Workplace' [2016] 30(2) Georgetown Immigration Law Journal, 359

[764] Andrew Pilkington, *Racial Disadvantage and Ethnic Diversity in Britain* (Palgrave Macmillan, 2003)

groups create traditions and use clothing as a visible means of communication.[765] Consequently, the dress norms and common style trends adhered to within any society is a deliberate function of group choice and emerge from the dominant beliefs of the majoritarian group over time. This discourse on the creative process of dress norms is important in the employment field as employers consciously consider the preferences of society when establishing their respective dress codes.[766]

Issues surrounding discrimination involve complex processes that may be considered to be above the ambit of the law. Sociological theories are not just tools to aid understanding but have the potential to create positive change and increase visible diversity within the British employment scene. When ethnic groups are reconceptualized as social mechanisms, the integral role of dress to foster feelings of belonging and signal identity status is more prominent. This is a valuable point as the legislating bodies of the UK may not take a personal feature seriously unless it is demonstrated to be of significant importance. Apart from legislation, personal characteristics considered to be unimportant are weighed lightly by the British courts in proportionality assessments, as evidenced in the decision of *Eweida v British Airways*.[767]

Both Chapters Two and Three set out to state the vitality of ethnicity to race and the importance of ethnic dress to ethnicity, respectively. Until ethnic dress is rightly recognised as a means of racial manifestation, corporate dress codes which insist on secularity may be unfairly deemed justifiable. In addition, because dress has been said to be communicative, ethnic dress can be understood as minority voices enunciating group values and cultural identity.[768] Consequently, this thesis endorses full legal protection for ethnic manifestation through dress and a re-evaluation of what is considered professional wear. It is suggested that both formally and informally established corporate dress codes should be flexible enough to accommodate

---

[765] Joanne B. Eicher, 'Introduction: Dress as Expression of Ethnic Identity' in Joanne B. Eicher (ed), *Dress and Ethnicity* (Berg Publishers, 1995), page 1

[766] Frank J. Cavico, Stephen C. Muffler and Bahaudin G. Mujtaba, 'Appearance Discrimination in Employment: Legal and Ethical Implications of "Lookism" and "Lookphobia"' [2012] 32(1) Equality, Diversity and Inclusion: An International Journal, pp. 83 - 119

[767] *Eweida v British Airways Plc* [2010] EWCA Civ 80

[768] Joanne B. Eicher, 'Introduction: Dress as Expression of Ethnic Identity' in Joanne B. Eicher (ed), *Dress and Ethnicity* (Berg Publishers, 1995), pp. 1 - 11

individualistic manifestations of ethnicity and unique interpretations of cultural values.[769] Considering that a substantial number of workers spend a large part of their adult life at work, it becomes all the more important to ensure that they can present their authentic selves without fear of a negative backlash. Apart from the length of time individuals spend at work, another factor that should be accounted for is the fact that people adapt and manipulate their identities per their job roles.[770] Individual identities can either be bolstered or negatively affected by the work roles and expectations. Consequently, a biased corporate dress code can cause real, albeit often overlooked, harm to minority individuals.

---

[769] Kim Johnson, Sharron J Lennon and Nancy Rudd, 'Dress, Body and Self: Research in the Social Psychology of Dress' [2014] 1(20) Fashion and Textiles, pp.1-24

[770] Bill Visone, 'Cramping your style: Personal Appearance in the Workplace' [2016] 30(2) Georgetown Immigration Law Journal, 359

6.2 ETHNIC DRESS IN THE WORKPLACE

The word 'dress' can be conveyed as both a noun and a verb; as a noun, it refers to the articles of clothing and external adornments used in the presentation of self.[771] On the other hand, as a verb, dress intimates the process by which an individual uses his external presence to convey aspects of his identity. Such a broad view on the notion of dress was taken by Eicher and Evenson, who link the practice of getting dressed to an individual's awareness of his social position and his understanding of the world around him.[772] Importantly, it was also noted how dress could be used specifically as both a product and a means of expanding the commonly perceived limitations of the body.[773] This can refer to the communicative nature of dress which, without the use of language or sound, can transmit intimate information of the wearer to viewers. Messages about a person's possible financial capacity, relationship status, occupation, religion, sexual orientation and gender can be conveyed to onlookers through an examination of a person's dress.

Concerning ethnicity, the intended message for communication varies in accordance with the relevant cultural context.[774] The pervading societal norms affect the interpretation of an individual's dress. Consequently, the same article of clothing can evoke different feelings in people based on the perceived culture of the wearer and the dominant culture of the society. For example, a headscarf worn by a South Asian woman may be interpreted as a symbol of religious devotion; the same scarf worn by a White woman may be more readily seen as a fashion statement or a means to disguise the hair than as a religious manifestation. A Black woman also wearing a headscarf, but one made of African textiles or with culturally symbolic prints will be assumed to be demonstrating allegiance to her ethnic roots.

---

[771] Kim Johnson, Sharron J Lennon and Nancy Rudd, 'Dress, Body and Self: Research in the Social Psychology of Dress' [2014] 1(20) Fashion and Textiles, pp.1-24

[772] Joanne Bubolz Eicher and Sandra Lee Evenson, *The Visible Self: Global Perspectives on Dress, Culture and Society*. (Fairchild Books, 2015)

[773] Joanne Bubolz Eicher and Sandra Lee Evenson, *The Visible Self: Global Perspectives on Dress, Culture and Society*. (Fairchild Books, 2015)

[774] Deborah Durham, 'The Predicament of Dress: Polyvalency and the Ironies of Cultural Identity' 26(2) [1999] American Ethnologist, pp. 389 - 411

It is asserted that the concept of professional wear be strictly regarded as clothing that allows for the effective performance of job requirements. Professionalism should not involve the idealization of a particular manner of dress but should be reflective of the British society and accept the uniqueness of ethnic identity. Whilst it has previously been argued that dress codes benefit employers' interests by making staff appear aesthetically pleasing to the majoritarian group,[775] it is posited that this is fundamentally wrong as it endorses the notion that minority staff members are little more than corporate tools. Although employees are often deemed as brand representatives, it should be remembered that they are individuals who deserve the freedom to present the most authentic versions of themselves. Furthermore, subconsciously muting minority identity under the defence of commercial attractiveness infers that there is something intrinsically negative about minority identity. It should not be the norm that corporations consciously and deliberately distance their brand from minority values.

The workplace represents a conglomeration of a diverse group of people, including those with varying physical abilities, ethnicities, gender expressions, beliefs, and ages. Consequently, it can arguably be said that a company dress code enforced to create physical uniformity whilst at work will invariably inhibit the free expressions of certain individuals. The main focus of this research has been to analyse to what degree ethnic manifestations are protected in the workplace. Emphasis has been laid on minority ethnic identities, the concept of individuality concerning protected characteristics and the legal reaction to identities whose manifestations are not firmly established or widely known within the British society. From this analysis, it is posited that the Equality Act 2010 is an inadequate piece of legislation in ensuring that minorities, vulnerable individuals and persons with unique interpretations of ethnic identity are protected against the risk of indirect discrimination within the workplace.

Moreover, the in-depth studies on ethnic-based indirect discrimination have provided essential information on both the barriers to employment and restrictions within employment.[776] There is therefore a gap in the available literature on the ability of the law to ensure proper ethnic

---

[775] Adrian Furnham, Pui Shuen Chan and Emma Wilson, 'What to wear? The influence of attire on the perceived professionalism of dentists and lawyers' [2014] 43 Journal of Applied Social Psychology, pp.1838-1850
[776] Lena Nekby and Magnus Rodin, 'Acculturation Identity and Labor Market Outcomes' [2007] IZA Discussion Papers, No. 2826, Institute for the Study of Labor

expression and visible diversification in the workplace. Key to this thesis is the underlying thought that there is currently an extinguishment of minority culture in the workplace. It can be said that ethnic minorities are tolerated but not truly accepted. Tolerance relates to the denunciation of openly discriminatory attitudes and a pursuit of giving all qualifying candidates, irrespective of their backgrounds, access to employment opportunities. The lack of true acceptance is displayed in the indirect but effective censure on the manifestation of ethnic identity.[777] Hence, while there is a sense of diversity in the workplace, there exists a culture of fashioning staff after the same ideological appearance standard.[778]

This research has also explored the intricacies surrounding self-discovery, the adoption of community beliefs and identity manifestation. It demonstrates that dress is a topic worthy of examination as individuals showcase key aspects of their persona, perspectives and viewpoint through the subtle ways in which they present themselves.[779] Key to this discussion is the realization that people do not lose their distinctiveness and unique identities by merely being a member of a corporate workforce. Hence, strict dress codes that give no room for the expression of non-normative ethnic identities either exclude affected persons from employment or extinguish the physical manifestation of such identities. It can be said that such dress codes portray the notion that minorities are only fit for employment if they subscribe to the dominant culture and appear as Eurocentric as possible.[780] Whiteness is then, arguably, set as an appearance goal and a subtle requirement to be considered worthy of portraying a professional image.

---

[777] Koen Van Laer and Maddy Janssens, 'Between the devil and the deep blue sea: Exploring the hybrid identity narratives of ethnic minority professionals' [2014] 30(2) Scandinavian Journal of Management, pp. 186-196

[778] David L Collinson, 'Identities and Insecurities: Selves at Work' [2003] 10(3) Organization, pp. 527 - 547

[779] Joanne B. Eicher and Tonye V. Erekosima, 'Why Do They Call it Kalabari? Cultural Authentication and the Demarcation of Ethnic Identity' in Joanne B. Eicher (ed), *Dress and Ethnicity* (Berg Publishers, 1995), pp. 139-164

[780] Lena Nekby and Magnus Rodin, 'Acculturation Identity and Labour Market Outcomes' [2007] IZA Discussion Papers, No. 2826, Institute for the Study of Labour

6.3 THE IMPORTANCE OF INTERSECTIONALITY IN THE DISCOURSE SURROUNDING DRESS

The beauty of ethnicity lies in its complexity, and it operates simultaneously as a group trait and an individualistic expression of identity.[781] Whilst ethnicity revolves around group membership; it is also subject to manipulation as its expression through clothing can be customized by anyone who subjectively chooses to be classified as a group member.[782] The ability of ethnicity to be expressed in varying ways through ethnic dress is further highlighted when other personal characteristics, such as relationship status, gender classification and religious beliefs, are taken into account. It may seem that a mention of features such as religion and relationship status are abstract and unconnected to the subject of indirect discrimination perpetrated through corporate dress codes. However, it is earnestly argued that the opposite is the case and that the manifestation of ethnic dress intersects with most personal traits and changes in line with the experiences of the relevant person.

This thesis has sought to demonstrate that ethnic identity, and its expression through dress deserves further attention and should be explicitly considered in discussions concerning discrimination and intersectionality. This is because ethnicity in itself can be likened to a social group forged by an intersection of other characteristics. To use the Yoruba tribe to exemplify the individualistic alterations on ethnic dress, it is common for members of the tribe to dress in unique styles, such as the Iro, Buba, Ipele and Gele for women whilst men dress in Agbada, Sokoto and a Dansiki. These styles are worn together as an outfit and can be suited for both informal and formal functions.[783] The individualisation of the Yoruba attire is shown in the choice of colour, types of fabric and even the presence of jewellery when worn by each individual. Depending on preferences and social class status, women can either tie their Gele in flamboyant

---

[781] Sandra Fredman, *Discrimination Law* (Oxford University Press, 2002), 50

[782] Sertanya Reddy, 'Styling the Self: Fashion as an Expression of Cultural Identity in a Global World' [2018] Diakses Pada.

[783] Adeola Oladele Ogunsanya, Changing Patterns in Feeding, Dressing and Naming Among Yoruba of South-Western Nigeria Since 1960, Volume XVII (2) Nigerian Journal of Social Studies

styles or use it simply as a head covering. Marital status can also be determined through Yoruba ethnic dress, as it is common for couples to dress in matching fabrics.[784]

Ethnic dress, similarly, to ethnic identity, is complex and includes physical attributes and body parts, such as facial hair and body modifications.[785] An example of this is the styling of hair into dreadlocks, not as a fashion statement but as a means of demonstrating Rastafarian beliefs and/or a connection to Afro-Caribbean roots.[786] Such subtle features are important as they can have an overall impact on a person's ability to present himself. Continuing with the example of dreadlocks, as a person's hair grows, his needs will change as well as his overall appearance. This ever-changing nature of ethnic dress and the influence of other characteristics on its manifestation makes it challenging to protect. The difficulties that the law has been faced regarding intersectional and compound discrimination also poses a challenge to substantive equality and real change in the visible diversity of the workplace.[787] Protection against unlawful indirect discrimination should be responsive to its varying manifestations and effects rather than being rigid and one-dimensional. Fredman proposes that the pursuit of substantive equality should be approached from multiple dimensions. She claims that such a multi-faceted technique allows for due attention to be laid on the complexities involved with establishing equality instead of focusing on an artificial fixed area of priority.[788]

Clothing and physical appearances are instruments used to both communicate values and set the standard by which a person wishes to be treated. Therefore, a person's dress will change based on their current status and their frame of mind, a common example being the wearing of a wedding ring to indicate a committed relationship or a general unavailability to romantic advances. Furthermore, minority ethnic groups may have a specific way of presenting marital status, such as through the wearing of a face veil. Such seemingly subtle personal characteristics

---

[784] Adeola Oladele Ogunsanya, Changing Patterns in Feeding, Dressing and Naming Among Yoruba of South-Western Nigeria Since 1960, Volume XVII (2) Nigerian Journal of Social Studies

[785] Janet Andrewes, *Bodywork - Dress as Cultural Tool Dress and Demeanour in the South of Senegal* [BRILL, 2004], 260

[786] Ra'Mon Jones, 'What the Hair: Employment Discrimination Against Black People Based on Hairstyles' [2020] 36(27) Harv. B.L. Law J, 27

[787] Elaine W. Shoben, 'Compound Discrimination: The Interaction of Race and Sex in Employment Discrimination' [1981] Scholarly Works

[788] Sandra Fredman, 'Equality: A New Generation?' [2001] 30(2) Industrial Law Journal 145

can have drastic effects on an individual's chosen dress style. Similar to intersectional discrimination, whereby the simultaneous presence of personal characteristics creates a unique type of disadvantage, ethnic dress can change significantly over a person's lifetime simply due to the acquisition of new characteristics or new development in personal status.

The Equality Act 2010 demonstrates an understanding of the complexity of human life by including key personal characteristics under its ambit of protection. However, it is argued that the inclusion of an exhaustive list of factors displays a dissociation from real life. In reality, personal features are not neatly distinct and easily identifiable.[789] Furthermore, because of the capacity of humans to grow, personal characteristics take on a fluid nature as individuals navigate through life. Religious beliefs can be changed due to proselytization, modified to suit individual convictions or abandoned altogether.[790] Likewise, relationship status changes over time and is constantly being redefined, an example of which is the growing interest in polyamorous relationships.[791] This discourse on the changing nature of personal traits is to show that the law has not kept up with social changes.

Before the Equality Act 2010, some incidents of religious discrimination were decided on racial grounds, as seen in *Mandla v Dowell-Lee*[792]; however, not all religions were capable of coming under the scope of racial group protection.[793] Hence, groups such as Rastafarians could not seek protection under the laws relating to ethnic groups, as further demonstrated in the case of *Dawkins*[794]. Some commentators, such as Willey, argue that religion and belief are unique characteristics as they are not innate to a person's nature but are arguably acquired voluntarily.[795] The acquisition of a religious belief relates not only to the decision to be a member

---

[789] Shreya Atrey, *Intersectional Discrimination* (Oxford University Press, 2019), pp. 109 - 138
[790] Tad Stahnke, 'Proselytism and the Freedom to Change Religion in International Human Rights Law' [1999] BYU L. Rev, 251
[791] Lars Backstrom and Jon Kleinberg, 'Romantic Partnerships and the Dispersion of Social Ties: A Network Analysis of Relationship Status on Facebook' In *Proceedings of the 17th ACM Conference on Computer Supported Cooperative Work and Social Computing* (Association for Computing Machinery, 2014)
[792] *Mandla v Dowell-Lee* [1982] UKHL 7
[793] E Ellis Cashmore, 'The Dawkins Case: Official ethnic status for rastas' [1989] 16(1) Journal of Ethnic and Migration Studies, pp. 158 - 160
[794] *Dawkins v Dept of the Environment sub nom Crown Suppliers PSA* [1993] IRLR 284
[795] Brian Willey, *Employment law in context: an introduction for HR professionals* (4th Edition. Harlow: Pearson, 2012)

of a religious group but also to an acceptance of the interpretation of the requirements of the faith and the decision to follow the rules, if any, proclaimed by the relevant holy book. This perception of religion and belief as a chosen trait gives insufficient regard to the strong link between race, ethnicity and religion. From the perspectives of many religious individuals, their faith was not chosen but inherited. Neither do many consider their interpretation of religious duties as an independent decision but have had their convictions and mindsets passed on to them by family and environmental influences.[796] In some ethnic groups, the common or popular religion is considered a group rather than a personal acquirement that can be deviated from.[797]

In addition, common religious beliefs of an ethnic group will manifest in cultural demonstrations and dress. Vickers noted that many company dress policies prohibiting religious expressions operate unfairly and are inherently biased against members of religions that have explicit rules on physical appearance.[798] In the United Kingdom, the primary religion is Christianity, which has been classified as an orthodoxical religion.[799] Religions based on orthodoxy are primarily concerned with the believer's faith and allegiance to the doctrines of the religion. It is important to note that the overwhelming majority of those who self-identify as Christians in the UK are White. Furthermore, according to the Office of National Statistics, 93per cent of Christians in England and Wales are White.[800] The other category of religions involves those whose theology is hinged on orthopraxy. Contrary to orthodoxical religions, the concept of orthopraxy entails that the believer adheres to the established rules and regulations vital for the correct observance of the faith.

Therefore, beyond having the potential to negatively affect a religious employee's work experience and opportunities, dress codes that are based on a rigid concept of neutrality may indirectly force members of ethnic minorities to imitate the appearance of members of the

---

[796] Slavica Jakelić. *Collectivistic religions: Religion, choice, and identity in late modernity*. (Routledge, 2016)

[797] Michael Hand, 'Religious upbringing reconsidered." [2002] 36(4) Journal of Philosophy of Education, pp.545-557

[798] Lucy Vickers, 'Religious Freedom: Expressing Religion, Attire and Public Spaces' (2014) 22 *Journal of Law and Policy* 591

[799] Mark Freedland and Lucy Vickers, 'Religious Expression in the Workplace in the United Kingdom' [2009] 30(3) Comparative Labour Law and Policy Journal 597

[800] Office for National Statistics, 'Full story: What does the Census tell us about religion in 2011?' [2013]

majority ethnic group whose main religion, Christianity, has no explicit rules on religious dress.[801] The importance of religion to certain ethnic groups can be undermined if a conflicting company policy is merely considered a consequence of an individual's own choices rather than an incident of unlawful indirect discrimination. In this way, the law demonstrates a gap in the protection offered to members of religious, ethnic groups.

Furthermore, as noted by Taylor *et al.*[802], each individual is free to determine his or her own gender identity. Hence, it can be asserted that dress codes which insist on each staff member wearing clothes stereotypically aligned to their biological sex can be inherently and unjustifiably discriminatory. Todd Brower also notes that the issue of corporate dress codes within the workplace can crystallize and affirm stereotypes about an appropriate image, particularly those concerning the distinction between male and female appearance.[803] Likewise, Deborah Zalesne[804] and Jennifer Levi[805] both remark that official dress codes generally reinforce the ideology and customs of the majority in society regarding the acceptable way that men and women are to present themselves. He also argues that workplace dress codes often act as a tool that further marginalises the minority and unduly exposes them to criticism and negative assumptions.

Members of ethnic minority groups in whose culture gender is physically demonstrated in non-conventional ways or who do not adhere to stereotypical expressions of gender demarcation may be forced to disregard their traditional form of dress whilst at work. For example, a dress code that demands that men keep their hair cut short would effectively prevent the men from cultures that promote long hair in males from presenting themselves with the characteristics representative of their culture and ethnicity. Furthermore, indirect exclusion can be seen in dress codes that require secularity, muted colours and a restriction of jewellery or a deviation from the

---

[801] Office for National Statistics, 'Full story: What does the Census tell us about religion in 2011?' [2013]

[802] Susannah Taylor, Lisa A Burke, Kathleen Wheatley and Joanie Sompayrac, 'Effectively Facilitating Gender Transition in the Workplace' [2011] 23(2) Employee Responsibilities and Rights Journal 101

[803] Todd Brower, 'What's in the Closet: Dress and Appearance Codes and Lessons from Sexual Orientation' [2013] 32(5) Equality, Diversity and Inclusion: An International Journal, pp. 419 - 502

[804] Deborah Zalesne, 'Lessons from Equal Opportunity Harasser Doctrine: Challenging Sex-Specific Appearance and Dress Code' (2007) 14 Duke Journal of Gender Law and Policy 535

[805] Jennifer L Levi, 'Some Modest Proposals for Challenging Established Dress Code Jurisprudence' [2007] 14 Duke Journal of Gender Law and Policy 256

rigid demarcation of gender. In several minority cultures, males wear garments that can be likened to dresses whilst females are encouraged to wear flamboyant jewellery or flouncy skirt wraps, an example of which is the Herero community.[806] In communities like these, the general guidance of professional wear will operate by coercing members of the relevant ethnic group to both mute their ethnic identities and assimilate into the dominant culture.

Durham's work investigating the importance of the Herero dress also demonstrates the link between culture and gender.[807] The Herero dress is worn solely by women, yet it is the generally accepted symbol of the Herero community. Durham reports that an image of a woman wearing the dress is repeatedly used in logos for associations of the Herero community.[808] Although the community values both male and female members equally, the feminine attire is considered a representation of their culture and the main item of differentiation from other ethnicities and cultures in Botswana. This is an important observation as it demonstrates that the bodily presentation of one gender can, in effect, either affirm or negate an icon of cultural identification.

---

[806] Deborah Durham, 'The Predicament of Dress: Polyvalency and the Ironies of Cultural Identity' 26(2) [1999] American Ethnologist, pp. 389 - 411
[807] Deborah Durham, 'The Predicament of Dress: Polyvalency and the Ironies of Cultural Identity' 26(2) [1999] American Ethnologist at page 393
[808] Deborah Durham, 'The Predicament of Dress: Polyvalency and the Ironies of Cultural Identity' 26(2) [1999] American Ethnologist at page 393

6.4 THE EFFICACY OF THE LAW IN RACE-BASED INDIRECT DISCRIMINATION

Unlike incidents of alleged direct race-based discrimination, the subtle reality of ethnicity makes targeted discrimination harder to spot and made subject to a legal decision.[809] The use of the word subtle in recent reference to ethnicity alludes to the fact that identity is not always obvious through biological factors such as skin colour. Distinct ethnic groups with key differences in culture and values may share biological markers but differ in their interpretation of such markers. Consequently, when the law heavily focuses on what is considered established features, like skin colour, to adjudicate in discriminatory cases, it fails to recognise the fact that a racial group is not necessarily equivalent to an ethnic group.

Following on with examples of skin colour, the African continent boasts a majority population of dark-skinned individuals; however, the similarities, in many cases, end with skin tone. Within each geographical territory, there is a colourful variety of dress styles, cultural beliefs, established religion and value systems.[810] A law that accounts for race as a function of skin colour is wholly inadequate and wrongly assumes that groups experience the same realities due to the similarities of their skin. This same concern can be seen in south Asian communities whereby members share physical and biological traits and originate from neighbouring territories but are markedly different in terms of culture, religion and value systems. In accounting for ethnicity, racial considerations must be included. However, there is a risk of inefficiency if the law purports to group individuals by virtue of biological traits.

Taylor-Gooby and Waite also argue that while British laws have not fully adopted the reality of multiculturalism in the processing of policies, it has, nevertheless, developed with a focus on mutual societal accommodation rather than through fixed legal interventions.[811] Importantly in their discourse of multiculturalism is the implication that tolerance of difference should be the

---

[809] Koen Van Laer and Maddy Janssens, 'Ethnic minority professionals' experiences with subtle discrimination in the workplace' [2011] 64(9) Human Relations, pp. 1203-1227

[810] Jean Marie Allman, (ed) *Fashioning Africa: power and the politics of dress*. (Indiana University Press, 2004), pp. 31 - 50

[811] Peter Taylor-Gooby and Edmund Waite, 'Toward a More Pragmatic Multiculturalism? How the U.K. Policy Community Sees the Future of Ethnic Diversity Policies' [2014] 27(2) Governance: An International Journal of Policy, Administration, and Institutions, pp. 267-289

minimum aspiration of policymakers and legal instruments. Variegations of identity demand more than mere tolerance and are entitled to both acceptance and the opportunities to manifest such difference without suffering negative social recompense.

A further flaw of the 2010 Act seldom spoken about is the fact that there are no allowances for perceived discrimination and perceived disadvantage. This is a by-product of the statute's preoccupation with group experiences and is also a reflection of the arguably limited scope of legislation that adjudicates only over what can be classified as tangible discrimination. From a sociological standpoint, the presence and understanding of discrimination are not constrained to the availability of concrete actions. Sociology, in its estimation of discrimination, treats human behaviour as actions within themselves and considers the invisible aftermath of biased treatment as cogent.[812] In day-to-day instances of discrimination, a person's experience will be unique and not necessarily extendable to his or her ethnic group.[813] Perception is needed in discrimination studies as it may help track normalised behaviour and gives proper regard to the impressions of minorities, and respects the experiences and somewhat undocumented instances of biased behaviour. Hence, an individual's perception of disadvantageous treatment should not be treated as mere sensitivity but should be used as a tool to possibly locate the presence of indirect discrimination.

Analysis of perceived discrimination is important as it may indicate the presence of invisible bias. Statistically, for example, members of the Black or Afro-Caribbean groups are more likely to be unemployed and denied positive job opportunities.[814] However, current legal provisions explicitly bar employers from withholding jobs from qualified individuals due to a bias around race. The disparity between the dogma of the law and the reality of employment prejudice indicates both the enduring presence of racial distinction and the inability of the law to effectively control sociologically borne problems. If a minority employee is under the persistent

---

[812] Devah Pager and Hana Shepherd, 'The Sociology of Discrimination: Racial Discrimination in Employment, Housing Credit and Consumer Markets' [2008] 34 The Annual Review of Sociology, pp.181-209
[813] Koen Van Laer and Maddy Janssens, 'Ethnic minority professionals' experiences with subtle discrimination in the workplace' [2011] 64(9) Human Relations, pp. 1203-1227
[814] Office of National Statistics, '2011 Census analysis: Ethnicity and the Labour Market, England and Wales' [2014] <https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/ethnicity/articles/ethnicityandthelabourmarket2011censusenglandandwales/2014-11-13> accessed 11 November 2020.

perception that he is being viewed in a negative light due to his choice to externally manifest a minority ethnic identity, he may suffer from mental strain, as indicated in the research of Bhui *et al.*.[815] The negative impact of discrimination is not isolated to incidents of tangible actions but can also be felt when the relevant employee perceives its presence. Internal tension and mental strain have been shown to affect a worker's overall performance, which in turn increases the likelihood of employment penalties and job instability.[816] Consequently, a complete absence of legislation encouraging judicial action on a claimant's perception of discrimination may be unjustly placing minorities in a further vulnerable state. In addition, it is asserted that indirect discrimination cases should not be limited to actions that result in palpable consequences for a claimant but should also acknowledge the reality of the psychological impact of discrimination and its unseen manifestations.

Individuals who have repeatedly endured discriminatory behaviour and who have chosen to assimilate into the majoritarian culture to avoid further backlash may not have any current proof of discrimination.[817] However, the very fact that amongst an ethnic group, there has been an assumption that authentic ethnic identification is frowned upon, and there is a general leaning towards the adoption of majoritarian values for employment success should be enough to attract the attention of the judiciary. An example of this is seen in the growing trend of African women wearing wigs to work and presuming that their natural hair is deemed inappropriate in professional settings.[818] Even though there might be no evidence of the latter in the form of

---

[815] Kamaldeep Bhui, Stephen Stansfield, Kwame McKenzie, Saffron Karlsen, James Nazroo and Scott Weich, 'Racial/Ethnic Discrimination and Common Mental Disorders Among Workers: Findings from the Empiric Study of Ethnic Minority Groups in the United Kingdom' [2005] 95(3) AM J Public Health, pp. 496 - 501

[816] Peter A Heslin, Myrtle P Bell and Pinar O Fletcher, 'The Devil Without and Within: A Conceptual Model of Social Cognitive Processes Whereby Discrimination Leads Stigmatized Minorities to become Discouraged Workers' [2012] 33(6) Journal of Organizational Behaviour, pp.840-862

[817] Yvette M J van Osch and Seger M Breugelmans, 'Perceived Intergroup Difference as an Organizing Principle of Intercultural Attitudes and Acculturation Attitudes' [2011] 43(5) Journal of Cross-Cultural Psychology, pp. 801-821

[818] Sweta Rajan-Rankin, 'Material Intimacies and Black Hair Practice: Touch, Texture, Resistance' [2020] Nordic Journal of Feminist and Gender Research < https://www.tandfonline.com/doi/full/10.1080/08038740.2021.1912172?scroll=top&needAccess=true> accessed 28 May 2021.

explicit dress codes stating the unsuitability of ethnic hairstyles, the pervading stereotype that depicts kinky hair as unprofessional should not be ignored.[819]

A noted problem in the inclusion of perception in discrimination studies is the reality that it is not always reflective of current practices and could potentially be the creation of imagination. Taking this flaw into account, it is emphasized that the perception of minorities is not proposed as a basis of a legal claim but can be utilised as a powerful tool in shaping the discourse around discrimination and identifying the otherwise unnoticed needs of the minority community. The future of substantive equality and the dissolution of ethnic disparities in working conditions depends on positive action by the State and then the employers. Positive action goes beyond the creation of laws that prohibit discriminatory activities but involves the integration of proactive action fuelled by the actual needs of minorities derived from their stated perceptions.

Another strong argument against a proposition of legally accounting for individual perception is the broad scope for human error. Research has suggested that people interpret the world around them, including the actions of others, through the lens of their own reality.[820] This factor is apt because it is highly likely that a person may wrongly perceive discrimination due to his own distorted beliefs about other groups or as a defence mechanism from previous experiences of discrimination.[821] However, the loopholes in individual perception of discrimination do not negate the validity for the call of greater legal attention in this regard. Years of both direct and indirect discrimination may have created a generation of sensitive individuals with an overly heightened response to behaviour from members of other groups. However, the only way to desensitize people and create a society devoid of the lack of trust and racial scepticism that currently exists is for the law to decisively improve and extend the protection offered to minorities.

---

[819] Christine Emeleone, 'I was Sent Home from Work Because of My Afro. The UK is Definitely Still Racist' (*The Tab*, 2020) <https://thetab.com/uk/2020/06/08/i-was-sent-home-from-work-because-of-my-afro-the-uk-is-definitely-still-racist-160427> accessed 28 May 2021.

[820] Mark Toogood, 'Modern Observations: New Ornithology and The Science of Ourselves, 1920-1940' [2011] 37(3), pp. 348-357

[821] Tony Kushner, *We Europeans? Mass Observation, 'Race' and British Identity in the Twentieth Century* (Ashgate, 2004)

Whilst it may be arduous and overburdening for the judiciary to preside over every individual claim of perceived discrimination, a system should be created that gives a voice to the minorities and creates a space for the communication of concerns that cannot be proved through tangible evidence. The current legal provisions, which focus on tangible manifestations of discrimination through the requirement of group disadvantage, fails to recognise the often highly subtle nature of discrimination.[822] Also, although personal perception may be hard to demonstrate, one way of testing its presence is through the use of empirical research and an evaluation of corporate culture within each sector. The state should be more invested in the pursuit of substantive equality and should go beyond conducting research on factors such as the rate of unemployment but should rather commit to finding out whether minorities feel pressured to alter their physical identity whilst at work. Such an in-depth analysis into the individual perception of ethnic minority staff goes beyond the resources of a doctoral research and is better suited for governmental review. For example, rather than just asking people about the details of their employment in future Census endeavours, questions relating to dress codes, workplace culture and the availability of flexible policies allowing minority expression should be included.

The argument for the inclusion of discrimination perception is supported by Bhui *et al.,* who include questions designed to capture the perceptions and experiences of minority workers in their research.[823] To create a balanced observation of workplace practices, their research involves asking interviewees to answer questions pertaining to a self-ascribed quantification of perceived discrimination both within the workplace and outside of the employment sphere. The analysis of both ambits of discrimination may help in discerning whether the policies enforced by employers are representative of the community. If incidents of perceived discrimination are disproportionately greater in the workplace than in the wider community, then the efficacy of the Equality Act 2010 may be called into question. Furthermore, a greater incidence of racial bias in employment may be demonstrative of the notion that equality laws are deliberately more relaxed with regards to employers than to the average members of society. Combined with the

---

[822] Shreya Atrey, *Intersectional Discrimination* (Oxford University Press, 2019), pp. 109 - 138
[823] Kamaldeep Bhui, Stephen Stansfield, Kwame McKenzie, Saffron Karlsen, James Nazroo and Scott Weich, 'Racial/Ethnic Discrimination and Common Mental Disorders Among Workers: Findings from the Empiric Study of Ethnic Minority Groups in the United Kingdom' [2005] 95(3) AM J Public Health, pp. 496 - 501

fiscal power and influence on staff that most employers have, it becomes apparent that employers wield a lot of force and that this should be taken into account in proportionality tests.

6.5 THE CASE FOR AN INDIVIDUALISTIC ELEMENT IN ANTI-DISCRIMINATION LAW

The governance of incidents of indirect discrimination should recognize the intricate and wide-ranging differences of economically active individuals in society. Equal treatment of varying staff members may result in unexpected consequences as certain groups may be substantially disadvantaged. It may be said that the use of group membership as a prerequisite for bringing a claim under indirect discrimination balances out the strength of a corporation. The purported weight of disadvantage affecting a sizable group can be thought to match the conflicting interests of an employer. However, this is not the case; as argued in the discussion of group membership, individuals within each ethnic group have additional needs, which creates a unique and personalized form of identity manifestation. Consequently, disadvantages occurring through indirect discrimination can be incredibly unique in practice, with evidence of group disadvantage not always available. In situations whereby an individual attempts to bring a claim under the scope of indirect discrimination without the persuasive support of actual group disadvantage, the employer will be unfairly favoured with an almost insurmountable leverage against the claimant.

Bhui *et al.'s* research subtly highlights the negativity of perceiving individuals under the single-axis model of the law.[824] Although their focus is on mental health and not on intersectionality, their findings suggest that an individual's experience of life is always a by-product of the integration of multiple protected characteristics. Therefore, it is suggested that the law is lagging alarmingly behind the evolution of society as a result of its failure to account for the inevitable amalgamation of features. Furthermore, beyond the presence of an intersectional model of law, there should be an allowance for individualistic needs and experiences. Unlike Crenshaw's[825] apt recognition of the existence of new vulnerable groups forged through the merging of characteristics outside of the control of the individual members,

---

[824] Kamaldeep Bhui, Stephen Stansfield, Kwame McKenzie, Saffron Karlsen, James Nazroo and Scott Weich, 'Racial/Ethnic Discrimination and Common Mental Disorders Among Workers: Findings from the Empiric Study of Ethnic Minority Groups in the United Kingdom' [2005] 95(3) AM J Public Health, pp. 496 - 501

[825] Kimberle Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics' [1989] 140(1) University of Chicago Legal Forum, 139

such as race and gender, it is posited that ethnic identity, whilst having an element of group similarities, is complex due to its subjectivity. Whilst the community of Black women may have a somewhat unified response against discrimination, the personal nature of dress, even within the confines of ethnic identity, create situations whereby the victims of discrimination may struggle to find those with similar experiences. To exemplify this point, the wearing of silk wrappers (Sari), cropped blouses and silk scarves of vibrant colours can be considered as a manifestation of ethnic identity amongst Indian women. The stated dress items in themselves conflict with the generally prescribed professional attire requiring muted colours and tailored or fitted styles.[826]

The conflicts between an Indian woman's attire and corporate dress code barring its presence in the workplace will most likely receive judicial attention in the form of a proportionality test to discern whether or not an unjustifiable incident of indirect discrimination has occurred.[827] The case becomes different if a man belonging to the same group but identifying with a feminine gender chooses to dress following both aspects of his identity. This will entail the wearing of ethnic dress commonly designated for women of that community. The hypothetical man's legal claim is a lot more complex than that of a woman in his ethnic group as any disadvantage that he suffers will not be the common experience of the majority of men in his ethnic group who choose to dress according to the styles designed for men. Furthermore, if he is not undergoing a gender transition or does not identify as anything other than heterosexual, he has no recourse under the other protected characteristics.

The law can show greater regard to individualism and personal perception whilst also maintaining an acknowledgement of the importance of commercial values. This can be done by eradicating the need for group disadvantage, thereby encouraging unique claims and recognising the broad spectrum of ethnic manifestations. Within corporate firms, particularly the three legal companies used as case studies, there has been a surge in the desire to be seen as advocates for diversity. In the quest to promote diversity, companies have set up independent boards and committees with the primary aim of locating areas of potential bias in company policies and actively listening to minority workers to glean further insights into minority needs. It is proposed

---

[826] Shahidha Bari, 'What to Wear at Work: The New Rules' (*Financial Times*, 27 June 2019) <https://www.ft.com/content/3a3f2178-980a-11e9-9573-ee5cbb98ed36> accessed 6 June 2021.
[827] Aaron Baker, 'Proportionality and Employment Discrimination in the UK' {2008] 37(4) Industrial Law Journal 305

that the state utilise this method of independent bodies used as an objective bridge between the most vulnerable ethnic minority members and the government's interest in business growth.

The purpose of an independent governmental body designed to garner the experiences of the minorities within minority groups is important in this regard. If the proposed body, unlike those endorsed by businesses, are given legal power to represent clients, it is argued that the potential for ignoring unique experiences will be greatly reduced. Rather than burden the judicial system with a constant stream of claimants with solitary experiences of discrimination, this state-sanctioned body can present the cases en masse before the courts, thus creating a new group of minorities within minorities. Furthermore, the presence of such a body, akin to that of trade unions but with the clear and singular function of establishing substantive equality for the vulnerable, will influence businesses to modify policies that hinder the flexibility of self-presentation.

The most vulnerable members of an ethnic group are likely to be the ones whose expression of group identity is uncustomary and unsupported by the majority of the group. To ignore the potential of disadvantageous treatment suffered by these individuals is to penalize them for the idiosyncrasies and their interpretation of group values in accordance with personal convictions and circumstances. Restating the example used earlier, a heterosexual man who has no desire to transition but who nevertheless has a stereotypic feminine psychological identity will fall in the legal gaps of the current 2010 Act. As stated earlier, if the hypothetical man is of Indian descent and chooses to manifest ethnic identity through clothing that also reflects his interpretation of gender, a conflicting workplace dress policy could potentially go unchallenged. This is because the conjectural claimant has no definite group to be classified under when seeking recourse. Furthermore, his circumstances might differ significantly from that of the members of his ethnic group who largely wear the ethnic dress that coincide with their biological or transitioned gender. Whilst certain workplace dress policies may not come under the understanding of indirect discrimination as sanctioned in the 2010 Act due to a lack of group disadvantage; they may still breed unfair experiences for those who differ markedly from the group. Consequently, the focus should not be an eradication of the potential to cause group harm

but the creation of policies within employment that accommodate the fluid and isolated reality of some members of minority groups.

6.6 CONCLUSION

A key emphasis of this thesis is the proposition for ethnicity to be viewed as a multifaceted entity that intersects with other personal characteristics. Unique to ethnicity is the fact that its manifestation through ethnic dress invariably changes in response to social status, mindset and lived experiences of the individual. Such a comprehension of ethnicity advocates for a system that is both concrete in terms of being dependable and pliable enough to accommodate individual idiosyncrasies.

As discussed, ethnicity is a unique characteristic as it is both communal and individualistic; however, an in-depth examination of the interpretation of anti-discrimination provisions demonstrate that the law operates in a single-sided manner with vague and insufficient protection offered to individualistic manifestations.[828] Although research has revealed that manifestations of ethnicity can vary widely even amongst members of the same group, it is posited that currently, little regard is given to unique or minority expressions of group-specific traits. Considering that the vast majority of humanity are capable of making unique decisions while experiencing life in ways that differ from their peers, it is questionable as to why the law does not reflect the idiosyncrasies of human life and the reality that group members do not operate identically.[829]

From the research of Bhui *et al.*, it can be argued that racial discrimination is a prominent social problem; their report shows findings of increased incidence of mental stress and an overall heightened experience of mental illness amongst members of minority racial groups who have suffered biased treatment primarily because of their race. Such findings on racial discrimination are relevant in discussions of ethnic disadvantage due to the integral role of ethnicity in race. Consequently, such research can be extended to the realm of the workplace and can be cited as further incentive to protect ethnic identity and its visual manifestations. Apart from the possibility of reducing mental health crises amongst the minority community, better protection

---

[828] Ben Smith, 'Intersectional Discrimination and Substantive Equality: A Comparative and Theoretical Perspective', [2016] 16 The Equal Rights Review, 74

[829] Halleh Ghorashi and Ida Sabelis, 'Juggling Difference and Sameness: Rethinking Strategies for Diversity in Organizations' [2013] 29 Scandinavian Journal of Management, pp.78-86

from minorities alleviates the pressure on health services and can possibly reduce overall expenditure on employees. This inference is drawn from data indicating how much financial burdens corporations carry when employees suffer from poor mental health and job satisfaction.[830] Broadly speaking, an increase in efforts promoting equality offers benefits for both society and employers.

The rights of corporations in determining brand image are not to be disregarded. Rather, it is posited that they should weigh much less in proportionality assessments and that the threshold of what constitutes a legitimate aim be considerably elevated. The current provisions in the Equality Act 2010, as well as the British courts' interpretation of its provisions, is arguably disproportionately lenient on employers.[831] Taking the fiscal powers of employers into account and the relative vulnerabilities of employees, particularly those of minority descent, it appears unjust that greater discretion is given to company policies over the alleged infringement of workers' rights to physically manifest ethnic identity.[832] This fact is exacerbated by the law's requirements of group disadvantage and its disregard of unique and individual disadvantage. The insistence of group disadvantage and relevant comparators demonstrates a disconnect of the law from the lived experiences of individuals.[833] This also makes it difficult for claimants to successfully initiate proceedings against perceived indirect discrimination.

It is accepted that it would be impossibly arduous and unsuitable for the current procedures of the British Court to judge the merits of each case of alleged discrimination according to the specific uniqueness of the relevant parties. Indeed, the constant fluidity and growth of the human experience may frustrate the legal system and create ambiguities surrounding precedence and case law. Taking the case of *Eweida v British Airways*[834] as a consistent example, the claimant's strong conviction surrounding the wearing of a cross necklace was noted to be a practice that the majority of Christians do not feel compelled to follow. By

---

[830] Peter A Heslin, Myrtle P Bell and Pinar O Fletcher, 'The Devil Without and Within: A Conceptual Model of Social Cognitive Processes Whereby Discrimination Leads Stigmatized Minorities to become Discouraged Workers' [2012] 33(6) Journal of Organizational Behaviour, pp.840-862

[831] Sandra Fredman, *Discrimination Law* (Oxford University Press 2002)

[832] Linda Dickens, 'The Road is Long: Thirty Years of Equality Legislation in Britain' [2007] 45(3) British Journal of Industrial Relations, pp. 463-494

[833] Shreya Atrey, *Intersectional Discrimination* (Oxford University Press, 2019), pp. 140 - 168

[834] *Eweida v British Airways Plc* [2010] EWCA Civ 80

basing the merits of Ms Eweida's claim on the majority practice of her chosen group members, the British courts prioritized the ability of the judicial system to operate efficiently whilst also revealing that the minorities and the unique within protected groups are unfairly left vulnerable.

Although the ECtHR found in favour of the claimant, the subjects of individuality and unique manifestations of group characteristics were left without clear and concrete guidance.[835] This is particularly important in discussions surrounding dress due to the level of personification that each person demonstrates with their clothing items. This is even more apparent with ethnic dress as its wearer's style will invariably be infused with their concept of identity which includes considerations such as gender, religion, social class, marital status, and orientation.[836] Even though a claimant can submit simultaneous but separate claims alleging indirect discrimination based on differential grounds, the law has failed to demonstrate a concrete procedure for dealing with cases hinged on intersectionality.[837]

The fallacy in the current legal system is in its treatment of groups as consolidated and united entities. This conceptualization of ethnic groups omits the increased amalgamation and intermingling of groups. Groups are no longer individually separate but have become merged into a wider society rooted in diversity and cultural variance. The need for stability and concrete direction conflicts with the flexibility and unpredictability that considerations of individualism, without a reference to a fixed group, demand. Concerning indirect discrimination, the lack of individualism and the focus on group disadvantage leaves a gap in the protection of minorities. However, the law needs to be predictable to have a deterrent effect on rule-breakers and to allow businesses and corporations to run with confidence and efficiency. Consequently, it is arguable that the current legal provisions are not able to adjudicate fairly on behalf of minority employees whose interpretation of ethnic wear differ from the majority opinion of their respective ethnic groups. In this regard, the law can be aided by non-legal measures which may offer a greater incentive to employers for the establishment of flexible dressing policies in the workplace.

---

[835] *Eweida v United Kingdom* [2013] ECHR 37
[836] Deborah Durham, 'The Predicament of Dress: Polyvalency and the Ironies of Cultural Identity' 26(2) [1999] American Ethnologist, pp. 389 - 411
[837] Shreya Atrey, *Intersectional Discrimination* (Oxford University Press, 2019), pp. 140 - 168

In the UK, and particularly within the employment sector, positive change in the treatment of minorities only occurs through societal pressure.[838] Consequently, only the minority groups with loud social voices and a substantial number of majoritarian supporters or the support of societal elites benefit the most. Regarding dress codes within businesses and corporations, the need for diversity and flexibility for ethnic minorities has risen in the ranks of importance following the relatively recent social inequality protests and diversity campaigns.[839] Whilst ethnic dress protection has not been a prominent societal objective, recent events demonstrate the process by which actionable change is processed within the UK. Groups that are considered intrinsically valuable and socially acceptable tend to garner public sympathy.[840] However, the most vulnerable minority groups who are either negligible in size or markedly different from societal constructs are usually left without proper acknowledgement of their restricted rights. The same can also be said for lesser-known or less practised norms within a minority group.

Substantive equality and visible diversity in employment are vital in ensuring that minorities are not marginalized and stuck in a cycle of negative employment outcomes. Further research is proposed to analytically study how to incorporate sociological methods into legal action. Discrimination, particularly the subtle and indirect variety, results from normalised prejudice and an erroneous acceptance of invalid stereotypes. A sociological intervention within the legal system can encourage the treatment of minorities as unique individuals whose ethnic identity is in constant interplay with personal idiosyncrasies and distinctive convictions. Such an approach could include a re-evaluation of professional wear and corporate dress codes to challenge the cogency of rigid dress rules. A sociological awareness of the intimate importance of dress can aid the legal system in acknowledging that the desires of corporations to establish a neutral public image should not be prioritized over the rights of minorities to manifest their ethnic identity through ethnic dress.

---

[838] Andrew Pilkington, *Racial Disadvantage and Ethnic Diversity in Britain* (Palgrave Macmillan, 2003)

[839] Jillian Fish, Rafael Aguilera, Ighedosa E. Ogbeide, Darien J. Ruzzicone, and Moin Syed. "When the personal is political: Ethnic identity, ally identity, and political engagement among Indigenous people and people of colour." [2021] 27(1) Cultural Diversity and Ethnic Minority Psychology, pp. 18-36

[840] Kate Malleson, 'Equality Law and the Protected Characteristics' [2018] 81(4) The Modern Law Review, pp.598-615s

7. BIBLIOGRAPHY

CASES

- Abdulaziz and others v United Kingdom (1985) 7 EHRR 471

- Allen v Flood [1898] AC 1

- Azmi v Kirklees Metropolitan Borough Council [2007] IRLR 434 (EAT)

- Bilka-Kaufhaus GmbH v Weber von Hartz (170/84) [1986] 5 WLUK 96

- Campbell and Cosans v The United Kingdom [1982] 4 EHRR 293

- Chandhok v Tirkey [2015] ICR 527

- Dawkins v Department of the Environment [1993] IRLR 284

- Defrenne v Sabena [1976] ICR 547

- Essop v Home Office (UK Border Agency) [2017] 1 WLR 1343

- Eweida v British Airways Plc [2010] EWCA Civ 80

- Eweida v United Kingdom [2013] ECHR 37

- Games v University of Kent [2015] IRLR 202

- Grainger plc v Nicholson [2010] IRLR 4 (EAT)

- Hampson v Department of Education and Science [1991] 1 AC 171

- Harris v NKL Automotive Ltd and Matrix Consultancy UK Ltd EAT 0134/07

- Homer v Chief Constable of West Yorkshire [2012] UKSC 15

- James v Eastleigh Borough Council [1990] ICR 554

- Kingston and Richmond AHA v Kaur {1981} IRLR 337

- Ladele v Islington LBC [2009] EWCA Civ 1357

- Malik v British Home Stores [1980] 2 WLUK 78

- Mandla v Dowell-Lee [1982] UKHL 7

- McClintock v Department of Constitutional Affairs [2007] IRLR 29 Mandla v Dowell-Lee [1982] UKHL 7

- Ministry of Defence v Jeremiah [1979] 3 WLR 857

- Moyhing v Barts & London NHS Trust [2006] IRLR 860

- Mr G Singh v The Chief Constable of Greater Manchester Police Employment Tribunals (Case No: 2404021/2018)

- Mr R Sethi v Elements Personnel Services Ltd EAT 2300234/2018

- Nagarajan v Agnew and others [1994] IRLR 61 EAT

- Noah v Desrosiers ET/2201867/07

- Ojutiku v Manpower Services Commission [1982] IRLR 418

- Perera v (1) The Civil Service Commission (2) The Department of Customs and Excise [1983] IRLR 166 CA

- Perera v Civil Service Commission (No.2) {1983} IRLR 166

- Quinnen v Hovells [1984] ICR 525

- R v Secretary of State for Employment, ex p Seymour Smith [2000] 1 All ER 857

- Scullard v Knowles [1996] ICR 399

- Starmer v British Airways plc [2005] All ER (D) 323

- Steel v Union of Post Office Workers [1978] ICR 181

- Webb v EMO Air Cargo (UK) Ltd [1993] 1 WLR 49

- Weinberger v Inglis (No 2) [1919] AC 606

- Wong v Igen Ltd (formerly Leeds Careers Guidance) {2005} ICR 931

LEGISLATION

- Council Directive 2000/43/EC of 29 June 2000 Implementing the Principle of Equal Treatment Between Persons Irrespective of Racial or Ethnic Origin

- Council Directive 2000/78/EC of 27 November 2000 Establishing a General Framework for Equal Treatment in Employment and Occupation [2000] OJ L303/16

- Equal Pay Act 1970

- Equality Act 2010

- Race Relations Act 1965

- Race Relations Act 1976

- Sex Discrimination Act 1975

BIBLIOGRAPHY

- ACA, 'Race discrimination: key points for the workplace', August 2018 < https://archive.acas.org.uk/media/4413/Race-discrimination-key-points-for-the-workplace/pdf/Race-discrim-keypoints-workplace.pdf >

- Adamczyk A and Hayes B E, 'Religion and sexual behaviours: Understanding the influence of Islamic cultures and religious affiliation for explaining sex outside of marriage' [2012] 77(5) American Sociological Review 723 – 746

- Adeojo M O, 'Weaving Through the Tresses: A Review of Emma Dabiri's *Don't Touch My Hair'* [2021] 33 (1) Journal of African Cultural Studies, pp. 115-117

- Ahdar R and Leigh I, *Religious Freedom in the Liberal State* (Oxford University Press, 2005)

- Al Ramiah A, Hewstone M, Dovidio J F and Penner L A, 'The Social Psychology of Discrimination: Theory, Measurements and Consequences' in *Making Equality Count: Irish and International Research Measuring Equality and Discrimination.* (The Equality Authority, 2010)

- Alexander R D, 'The Evolution of Social Behaviour' [1974] 5 Annual Review of Ecology and Systematics

- Allman J M, (ed) *Fashioning Africa: power and the politics of dress*. (Indiana University Press, 2004).

- Almila A, 'Fashion, Anti-Fashion, Non-Fashion and Symbolic Capital: The Uses of Dress among Muslim Minorities in Finland' [2016] 20(1) Fashion Theory

- Altorjai S, 'Over-qualification of Immigrants in the UK' [2013[No.2013-11 ISER Working Paper Series

- Amis J M, Mair J and Munir K A, 'The Organizational Reproduction of Inequality' [2020] 14(1) Academy of Management Annals

- Anderson A B, 'The Complexity of Ethnic Identities: A Postmodern Re-evaluation' [2001] 1(3) Identity: An International Journal of Theory and Research

- Andrewes J, *Bodywork - Dress as Cultural Tool Dress and Demeanour in the South of Senegal* [BRILL, 2004]

- Angelucci M, Angrisani M, Bennett D M, Kapteyn A, and Simone G. Schaner S G, 'Remote work and the heterogeneous impact of covid-19 on employment and health' [2020] Working Paper 27749, National Bureau of Economic Research.

- Armache J, 'Diversity in the workplace: Benefits and challenges' [2012] 1 Journal of International Diversity

- Aspinall P J, 'The Future of Ethnicity Classifications' [2009] 35(9) Journal of Ethnic and Migration Studies

- Atrey S, *Intersectional Discrimination* (Oxford University Press, 2019)

- Aune K, Lewis R and Molokotos-Liederman L, 'Modest Fashion in UK Women's Working Life: A Report for Employers, HR Professionals, Religious Organisations and Policymakers. Project Report' [2021] University of the Art London.

- Backstrom L and Kleinberg J, 'Romantic Partnerships and the Dispersion of Social Ties: A Network Analysis of Relationship Status on Facebook' In Proceedings of the 17th ACM Conference on Computer Supported Cooperative Work and Social Computing (Association for Computing Machinery, 2014)

- Bain M, 'Fashion's Big Diversity Problem Goes Way Beyond the Models' (*Quartz at Work*, 8 January 2019) <https://qz.com/work/1516836/fashions-lack-of-diversity-goes-beyond-the-models-to-the-boardroom/> accessed 2 June 2021.

- Baker A, 'Proportionality and Employment Discrimination in the UK' {2008] 37(4) Industrial Law Journal

- Bakirathi M, 'Undressing the diaspora' in Puwar N and Raghuram P (eds) *South Asian Women in the Diaspora*. (Routledge, 2020.)

- Banton M, 'Are Rastafarians an ethnic group?' [1989] 16(1) New Community.

- Bari S, 'What to Wear at Work: The New Rules' (*Financial Times*, 27 June 2019) <https://www.ft.com/content/3a3f2178-980a-11e9-9573-ee5cbb98ed36> accessed 6 June 2021.

- Baron D P, Harjoto M A and Jo H, 'The Economics and Politics of Corporate Social Performance' [2017] 13(2) Business and Politics

- Barot R and Bird J, 'Racialization: The Genealogy and Critique of a Concept' [2010] 24(4) Ethnic and Racial Studies

- Barth F, 'Introduction to Ethnic Groups and Boundaries: The Social Organization of Cultural Difference' in Marco Martiniello and Jan Rath (eds) *Selected Studies in International Migration and Immigrant Incorporation* (Amsterdam University Press, 2010)

- Bartlett K T, 'Only Girls Wear Barrettes: Dress and Appearance Standards, Community Norms, and Workplace Equality' [1994] 92(8) Michigan Law Review

- Basas C G, 'Henna Tattooing: Cultural Tradition Meets Regulation' [2007] 62 Food and Drug Law Journal

- Battu H and Zenou Y, 'Oppositional Identities and Employment for Ethnic Minorities: Evidence from England' [2009], Institute for the Study of Labour (IZA), IZA Discussion Papers, No.4517

- Battu H, Mwale M and Zenou Y, 'Oppositional Identities and the Labour Market' [2005] IZA Discussion Paper No. 1852

- BBC, 'Halo Code: What is it and How does It Protect Afro Hair?' (10 December 2020) BBC <https://www.bbc.co.uk/newsround/55249674#:~:text=The%20Halo%20Code%20is%20a,they%20choose%20to%20in%20school.> accessed 23 February 2022

- BBC News, 'Are Beards Obligatory for Devout Muslim Men?' (BBC, 27 June 2010)

- BBC News, 'Fulham Schoolboy Dreadlock Ban Overturned' (12 September 2018) BBC News <https://www.bbc.co.uk/news/uk-england-london-45499584> accessed 22 February 2022

- BBC News, 'Racial discrimination at work: 'Our abilities weren't valued'', (BBC News, 10 November 2019) <https://www.bbc.co.uk/news/av/uk-34769385> accessed 27 November 2019

- Beane D, Ponnapalli A and Viswesvaran C, 'Workplace Religious Displays and Perceptions of Organization Attractiveness' [2016] 29(2) Employee Responsibilities and Rights Journal

- Bell E L, 'The Bicultural Life Experience of Career-Oriented Black Women' [1990] 11(6) Journal of Organizational Behaviour

- Bengoechea M, 'Media Interpretation of a Leading Woman Politician's Performances and Dress Code Challenges' [2001] 5(1) Journal of Interdisciplinary Feminist Thought

- Benson I T, 'Two Errors in Relation to Respecting Religious Rights: Driving A Wedge Between Religion and Ethics/Morals and Treating All Kinds of Religious Employers the Same' [2012] 9(3) Canadian Diversity.

- Bhavnani R, Mirza H S, Meetoo V, *Tackling the Roots of Racism: Lessons for Success.* (Policy Press, 2005)

- Bhopal R, 'Glossary of Terms Relating to Ethnicity and Race: For Reflection and Debate' [2004] 58(6) Journal of Epidemiology and Community Health

- Bhui K, Stansfield S, McKenzie K, Karlsen S, Nazroo J and Weich S, 'Racial/Ethnic Discrimination and Common Mental Disorders Among Workers: Findings from the Empiric Study of Ethnic Minority Groups in the United Kingdom' [2005] 95(3) AM J Public Health.

- Bisin A, Patacchini E, Verdier T, and Zenou Y, 'Ethnic Identity, Residential Segregation, and Labour-Market Outcomes of Immigrants in Europe' [2009] IZA Discussion Paper No. 4517

- Blanchard M, Crawford M, Fenton S, Fuller E, Karlsen S, King M, Lloyd K, McManus S, Nazroo J, O'Connor W, Sproston K, Stansfeld S, Tyrer P and Weich S, 'Ethnic Minority Psychiatric Illness Rates in the Community (EMPIRIC) – Quantitative Report' (Edited by Kerry Sproston and James Nazroo, 2002) National Centre for Social Research.

- Bleich E, 'Institutional continuity and change: norms, lesson-drawing, and the introduction of race-conscious measures in the 1976 British Race Relations Act' [2006] 27(3) Policy Studies

- Blumer H, 'Race Prejudice as a Sense of Group Position' [1958] 1(1) The Pacific Sociological Review

- Bock G, 'Racism and Sexism in Nazi Germany: Motherhood, Compulsory Sterilization and the State' in K G Saur (ed) *The Final Solution* (Volume 2, 1989)

- Booth R and Weale S, 'Unilever Pledges to Protect Staff with Afros and Dreadlocks' (*The Guardian*, 9 December 2020) <https://www.theguardian.com/world/2020/dec/09/unilever-pledges-to-protect-staff-with-afros-and-dreadlocks> accessed 28 May 2021.

- Bradley H, Healy G, Forson C and Kaul P, 'Workplace cultures: what does and does not work' [2007] Equal Opportunities Commission

- Bresler A, 'II Traditional Hats from Around the World and Their Stories' (Matador Network, June 8, 2018) <https://matadornetwork.com/read/11-traditional-hats-around-world-stories/> accessed 28 May 2021.

- Brower T, 'What's in the Closet: Dress and Appearance Codes and Lessons from Sexual Orientation' [2013] 32(5) Equality, Diversity and Inclusion: An International Journal

- Bruggemann M and Engesser S, 'Beyond False Balance: How Interpretive Journalism Shapes Media Coverage of Climate Change' [2017] 42 Global Environmental Change

- Brynin M and Guveli A, 'Understanding the Ethnic Pay Gap in Britain' [2012] 26(4) Work, Employment and Society.

- Brynin M, 'Overqualification in Employment' [2002] 16(4) Work, Employment and Society

- Bussey K, 'Gender Identity Development' in Schwartz S J, Luyckx K and Vignoles V L (eds) *Handbook of Identity Theory and Research* (Springer, New York, 2011)

- Campiolo M R F, 'Professional Image and Client Perception' [2016] Medical Office Management

- Carrim N M H, 'Minority Employees' Ethnic Identity in the Workplace' [2019] Oxford Research Encyclopedia of Business and Management

- Cashmore E E, 'The Dawkins Case: Official ethnic status for rastas' [1989] 16(1) Journal of Ethnic and Migration Studies

- Cavico F J, Muffler S C and Mujtaba B G, 'Appearance Discrimination in Employment: Legal and Ethical Implications of "Lookism" and "Lookphobia"' [2012] 32(1) Equality, Diversity and Inclusion: An International Journal

- Chan A H, 'Fashioning change: Nationalism, colonialism, and modernity in Hong Kong' [2000] 3(3) Postcolonial Studies: Culture, Politics, Economy

- Chao M M, Hong Y-y and Chiu C-v, 'Essentializing Race: Its Implications on Racial Categorization [2013] 104(4) Journal of Personality and Social Psychology

- Chapman M, 'Freezing the Frame: Dress and Ethnicity in Brittany and Gaelic Scotland' in Joanne B. Eicher (ed), *Dress and Ethnicity* (Berg Publishers, 1995)

- Chattaraman V and Lennon S J, 'Ethnic identity, consumption of cultural apparel, and self-perceptions of ethnic consumers' [2008] 12(4) Journal of Fashion Marketing and Management

- Clair M and Denis J S, 'Sociology of Racism' [2015] 19 International Encyclopedia of the Social & Behavioural Sciences

- Clark K and Drinkwater S, 'Pushed Out or Pulled In? Self-employment Among Ethnic Minorities in England and Wales', [2000] 7(5) Labour Economic

- Clark K and Drinkwater S, 'Segregation Preferences and Labour Market Outcomes' [2007] 94(2) Economic Letters

- Clarke R, 'Formal Dress Codes Can Lead to Happier Employees, Research Shows' (*HR Review*, 23 August 2018) < https://www.hrreview.co.uk/hr-news/formal-dress-codes-can-lead-to-happier-employees-research-shows/112004> accessed 07 June 2021.

- Cohen S, 'The Truth within Our Roots: Exploring Hair Discrimination and Professional Grooming Policies in the Context of Equality Law' [2021] 2 York Law Review pp. 108-122

- Cole M, 'A Plethora of 'Suitable Enemies': British Racism at the Dawn of the Twenty-First Century' [2009] 32(9) Ethnic and Racial Studies

- Colgan F and McKearney A, 'Visibility and Voice in Organizations: Lesbian, Gay, Bisexual and Transgendered Employee Networks' [2012] 31(4) Equality, Diversity and Inclusion

- Collinson D L, 'Identities and Insecurities: Selves at Work' [2003] 10(3) Organization

- Combs G M and Milosevic I, 'Workplace Discrimination and the Wellbeing of Minority Women: Overview, Prospects and Implications' [2016] Handbook on Well-Being of Working Women

- Cooper D, *Challenging Diversity* (Cambridge University Press, 2009)

- Corcoran M and Duncan G J, 'Work History, Labour Force Attachment, and Earnings Differences between the Races and Sexes' [1979] 14(1) Journal of Human Resources

- Craik J, *The Face of Fashion: Cultural Studies in Fashion* (Routledge, 1994)

- Crane D, Fashion and its Social Agenda: Class, Gender, and Identity in Clothing. (University of Chicago Press, 2000)

- Crenshaw K, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics' [1989] 140(1) University of Chicago Legal Forum

- de Beco G, 'Protecting the Invisible: An Intersectional Approach to International Human Rights Law' [2017] 17(4) Human Rights Law Review

- Deitch E A, Barsky A, Butz R M, Chan S, Brief A P and Bradley J C, 'Subtle Yet Significant: The Existence and Impact of Everyday Racial Discrimination in the Workplace' [2003] 56(11) Human Relations

- Dellinger K and Williams C L, Makeup at Work: Negotiating Appearance Rules in the Workplace [1997] 11(2) Gender and Society

- Department of Education, 'Promoting Fundamental British Values as Part of SMSC in Schools. Departmental Advice for Maintained Schools' [2014] DFE-00679-2014

- Dickens L, 'The Road is Long: Thirty Years of Equality Legislation in Britain' [2007] 45(3) British Journal of Industrial Relations

- Disele P L P, Tyler D J, Power E J, 'Conserving and Sustaining Culture through Traditional Dress' [2011] 23 Dept of Family and Consumer Sciences, formerly Home Economics Education

- Dixon K, Lowes J and Gibbons T, 'Show Racism the Red Card: Potential Barriers to the Effective Implementation of the Anti-Racist Message' [2014] 17(1) Soccer and Society

- Dixon T L, Weeks K R and Smith M A, 'Media Constructions of Culture, Race and Ethnicity' [2019] 23 Oxford Research Encyclopedia of Communication

- Doerr S and Gambacorta L, 'Covid-19 and regional employment in Europe' [2020] 16 Bank for International Settlements

- Driessens O, 'Theorizing Celebrity Cultures: Thickenings of Media Cultures and the Role of Cultural (Working) Memory [2014] 39(2) Communications

- du Toit J L, 'White 'Women In 'Black' Clothing: Overtures Towards Africanness in Dress In A South African Context' in Moletsane R, Mitchell C and Smith A (eds) *Was It Something I Wore?* (HSRC Press, 2012)

- Durham D, 'The predicament of dress: polyvalency and the ironies of cultural identity' [2008] 26(2) American Ethnologist

- Dwyer C, 'Negotiating Diasporic Identities: Young British South Asian Muslim Women' [2000] 23(4) Women's Studies International Forum

- Eicher J and Barbara Sumberg, 'World Fashion, Ethnic, And National Dress' in Eicher J B (ed.), *Dress and ethnicity*. (Berg Publishing, 1995).

- Eicher J B and Erekosima T V, 'Why Do They Call it Kalabari? Cultural Authentication and the Demarcation of Ethnic Identity' in Joanne B. Eicher (ed), *Dress and Ethnicity* (Berg Publishers, 1995)

- Eicher J B and Evenson S L, *The Visible Self: Global Perspectives on Dress, Culture and Society*. (Fairchild Books, 2015)

- Eicher J B, 'Introduction: Dress as Expression of Ethnic Identity' in Eicher J B (ed), *Dress and Ethnicity* (Berg Publishers, 1995)

- Eicher J B, *Dress and Ethnicity: Change Across Space and Time*. (Oxford, 1995)

- Emeleone C, 'I was Sent Home from Work Because of My Afro. The UK is Definitely Still Racist' (*The Tab*, 2020) <https://thetab.com/uk/2020/06/08/i-was-sent-home-from-work-because-of-my-afro-the-uk-is-definitely-still-racist-160427> accessed 28 May 2021.

- Entwistle J. *The fashioned body: Fashion, dress and social theory* (John Wiley & Sons, 2015).

- Equality and Human Rights Commission, 'Is Britain Fairer? The State of Equality and Human Rights' [2015] <https://www.equalityhumanrights.com/en/publication-download/britain-fairer-2015> accessed 28 June 2021.

- Eriksen T H, 'Ethnicity' In Ritzer G (ed). *The Wiley-Blackwell Encyclopaedia of Globalization* [2012] < https://doi.org/10.1002/9780470670590.wbeog179> accessed 23 June 2021.

- Esau A, 'Islands of Exclusivity: Religious Organization and Employment Discrimination' [2000] 33(3) The University of British Columbia Law Review

- Fardouly J, Pinkus R T, Vartanian L R, 'The Impact of Appearance Comparisons Made Through Social Media, Traditional Media, And in Person in Women's Everyday Lives' [2017] 20 Body Image.

- Ferrara V, 'Formal Dress Codes Can Lead to Happier Employees' (*PA Life*, 29 August 2018) < https://palife.co.uk/news/formal-dress-codes-can-lead-to-happier-employees/> accessed 07 June 2021.

- Fiandaca D, 'Diversity at work: hiring the best person for the job isn't enough' (*The Guardian*, 5 January 2016)

- Fish J, Aguilera R, Ogbeide I E, Ruzzicone D J, and Syed M. "When the personal is political: Ethnic identity, ally identity, and political engagement among Indigenous people and people of colour." [2021] 27(1) Cultural Diversity and Ethnic Minority Psychology.

- Ford R, 'Acceptable and Unacceptable Immigrants: How Opposition to Immigration in Britain is Affected by Migrants' Region of Origin' [2011] 37(7) Journal of Ethnic and Migration Studies

- Fredman S, 'Equality: A New Generation?' [2001] 30(2) Industrial Law Journal

- Fredman S, *Discrimination Law* (Oxford University Press, 2002)

- Freedland M and Vickers L, 'Religious Expression in the Workplace in the United Kingdom' [2009] 30(3) Comparative Labour Law and Policy Journal 597

- Furnham A and Wilson E, 'Gender Differences in Estimated Salaries: A UK Study' [2011] 40(5) The Journal of Socio-Economics

- Furnham A, Chan P S and Wilson E, 'What to wear? The influence of attire on the perceived professionalism of dentists and lawyers' [2013] 43(9) Journal of Applied Social Psychology

- Gallagher R, 'UK Entertainment and Media Industry Worth £76bn by 2021' (*Insider*, 6 June 2018) <https://www.insider.co.uk/news/uk-entertainment-media-pwc-europe-12650656> accessed 6 June 2021.

- Garner S, *Racisms: An Introduction* (SAGE, 2017)

- Ghorashi H and Sabelis I, 'Juggling Difference and Sameness: Rethinking Strategies for Diversity in Organizations' [2013] 29 Scandinavian Journal of Management

- Gill R, 'Postfeminist Media Culture. Elements of a Sensibility' [2007] 10(2) European Journal of Cultural Studies

- Gill T, 'Application of EU Directives 2000/78 and 2000/43 in the Member States and Consequences in case of Non-Implementation or Incorrect Implementation' [2006] < http://www.era-comm.eu/oldoku/Adiskri/01_Overview/2006_Gill_EN.pdf >, 1(2)

- GOV.UK 'Employment by Sector' (9 November 2020) <https://www.ethnicity-facts-figures.service.gov.uk/work-pay-and-benefits/employment/employment-by-sector/latest> accessed 27 May 2021.

- GOV.UK 'Employment' (29 January 2021) <https://www.ethnicity-facts-figures.service.gov.uk/work-pay-and-benefits/employment/employment/latest#:~:text=76%25%20of%20peoplepercent20agedpercent2016,out%20ofpercent20all%20ethnic%20groups> accessed 27 May 2021.

- GOV.UK, 'Ethnicity Facts and Figure' (GOV.UK, 29 January 2021) <https://www.ethnicity-facts-figures.service.gov.uk/work-pay-and-benefits/employment/employment/latest#:~:text=76%25%20of%20people%20aged%2016,out%20of%20all%20ethnic%20groups> accessed 06 June 2021.

- Graham J and Haidt J, 'Beyond Beliefs: Religions Bind Individuals into Moral Communities' [2010] 14(1) Personality and Social Psychology Review

- Green K A, López M, Wysocki A, and Kepner K, 'Diversity in the workplace: Benefits, challenges, and the required managerial tools' [2002] 2 EDIS.

- Gullestad M, 'Invisible Fences: Egalitarianism, Nationalism and Racism' [2002] 8(1) The Journal of the Royal Anthropological Institute

- Gurven M, 'Human Survival and Life History in Evolutionary Perspective' in Mitani J C, Call J, Kappeler P M, Palombit R A and Silk J B (eds) *The Evolution of Primate Societies* (University of Chicago Press, 2012)

- Hambler A, 'Neutrality and Workplace Restrictions on Headscarves and Religious Dress: Lessons from Achbita and Bougnaoui' [2018] 47(1) Industrial Law Journal

- Hand M, 'Religious upbringing reconsidered." [2002] 36(4) Journal of Philosophy of Education

- Hannett S, 'Equality at the Intersections: The Legislative and Judicial Failure to Tackle Multiple Discrimination' [2003] 23(1) Oxford Journal of Legal Studies

- Hansen K T, 'The world in dress: Anthropological perspectives on clothing, fashion, and culture' [2004] 33 Annual Review of Anthropology

- Harlow M, 'Female dress, third-sixth century: The messages in the Media' [2004] 12 International Journal of History and Archaeology

- Haslam N and Whelan J, 'Human Natures: Psychological Essentialism in Thinking about Differences between People' [2008] 2(3) Social and Personality Psychology Compass

- Heathfield S M, 'What Employees Should Wear to Work' (*The Balance Careers*, 21 December 2020) < https://www.thebalancecareers.com/what-should-employees-wear-to-work-1917929 > accessed 06 June 2021.

- Hecht M L, Collier M J and Ribeau S A, *African American Communication: Ethnic Identity and Cultural Interpretation* (Sage Publications, 1993)

- Helleiner J, 'Gypsies, Celts and Tinkers: Colonial Antecedents of Anti-Traveller Racism in Ireland' [2010] 18(3) Ethnic and Racial Studies

- Hendrickson H, 'The Long Dress and the Construction of Herero Identities in Southern Africa' [1994] 53(2) African Studies

- Hepple B A and Szyszczak E, *Discrimination: The Limits of Law* (Mansell, 1934)

- Hepple B, 'The New Single Equality Act in Britain' [2010] 5 The Equal Rights Review

- Heslin P A, Bell M P and Fletcher P O, 'The Devil Without and Within: A Conceptual Model of Social Cognitive Processes Whereby Discrimination Leads Stigmatized Minorities to become Discouraged Workers' [2012] 33(6) Journal of Organizational Behaviour

- Hilton J L and von Hippel W, 'Stereotype' [1996] 47 Annual Review of Psychology

- Holt L F and Sweitzer M D. "More than a black and white issue: ethnic identity, social dominance orientation, and support for the Black Lives Matter movement." [2020] 19(1) Self and Identity.

- Honey A, 'The Impact of Mental Illness on Employment: Consumers' Perspectives' [2003] 20(3) Work

- Howard E, 'The EU Race Directive: Time for Change?' [2007] 8 International Journal of Discrimination and the Law

- Howe J, 'A Legally Constructed Underclass of Workers? The Deportability and Limited Work Rights of International Students in Australia and the United Kingdom' [2009] 48(3) Industrial Law Journal

- Hull A, 'A Reflection on Cross-Cultural Competencies' [2018] 51(3) Special Issue. The Journal of Educational Thought.

- Hunt J and Kasynathan N, Pathways to Empowerment? Reflections on Microfinance and Transformation in Gender Relations in South Asia [2001] 9(1) Gender and Development

- Indeed Editorial Team, 'Guide to Business Attire (With Examples)' (Indeed, 9 February 2021) <https://www.indeed.com/career-advice/starting-new-job/guide-to-business-attire> accessed 06 June 2021.

- Indeed Editorial Team, 'What To Wear To Work' (Indeed Career Guide, February 24, 2021) < https://www.indeed.com/career-advice/starting-new-job/what-to-wear-at-work> accessed 27 May 2021.

- Jakelić S. *Collectivistic religions: Religion, choice, and identity in late modernity*. (Routledge, 2016)

- Janda Z, 'How Dressing Like A Boss Landed Me A Promotion in 6 Months' (*HuffPost*, 28 September 2016) <https://www.huffpost.com/entry/how-dressing-like-a-boss-landed-me-a-promotion-in-6_b_57eab9abe4b095bd896a004d> accessed 06 June 2021.

- Jennifer L. Bedford and C. Shanthi Johnson, 'Societal Influences on Body Image Dissatisfaction in Younger and Older Women', [2006] 18(1) Journal of Women and Aging

- Jivraj S and Simpson L (eds) *Ethnic Identity and Inequalities in Britain: The Dynamics of Diversity* (Policy Press, 2015)

- Johnson K, Lennon S J and Rudd N, 'Dress, Body and Self: Research in the Social Psychology of Dress' [2014] 1(20) Fashion and Textiles

- Johnson L, 'Interpreting Historical Responses to Racism by UK Black and South Asian Headteachers Through the Lens of Generational Consciousness' in *Educational Leadership* (Routledge, 2017).

- Johnston R, Poulsen M and Forrest J, 'Ethnic and Racial Segregation in U.S. Metropolitan Areas, 1980-2000: The Dimensions of Segregation Revisited' [2007] 42(4) Urban Affairs Review

- Johnston R, Sirkeci I, Khattab N and Modood T, 'Ethno-religious Categories and Measuring Occupational Attainment in Relation to Education in England and Wales: A Multilevel Analysis' [2010] 42(3) Environment and Planning.

- Jones J, 'Trans dressing in the workplace' [2013] 32(5) Equality, Diversity and Inclusion: An International Journal

- Jones K P, Arena D F, Nittrouer C L, Alonso N M and Lindsey A P, 'Subtle Discrimination in the Workplace: A Vicious Cycle' [2017] 10(1) Industrial and Organizational Psychology

- Jones R, 'What the Hair: Employment Discrimination Against Black People Based on Hairstyles' [2020] 36(27) Harv. B.L. Law J.

- Jonker M, 'Comparators in multiple discrimination cases: a real problem or just a theory?' in van den Brink M, Burri S and Goldschmidt J (eds) *Equality and human rights: nothing but trouble?* (Netherlands Institute of Human Rights (SIM) Utrecht University, 2015)

- Joseph-Salisbury R, 'Afro Hair: How Pupils are Tackling Discriminatory Uniform Policies' (April 20, 2021) The Conversation < https://theconversation.com/afro-hair-how-pupils-are-tackling-discriminatory-uniform-policies-159290> accessed 23 February 2022

- Joseph-Salisbury R and Connelly L, 'If Your Hair Is Relaxed, White People Are Relaxed. If Your Hair Is Nappy, They're Not Happy': Black Hair as a Site of 'Post-Racial' Social Control in English Schools' [2018] 7(11) Race/Ethnicity, Crime and Social Control

- Kamenou N and Fearfull A, 'Ethnic minority women: A lost voice in HRM' [2006] 16(2) Human Resource Management Journal.

- Kapur P, 'Sharing Identity Through Dress: The Case of Sikh Women' [2010] 55(2) Psychological Studies

- Karl K A, Hall L M, Peluchette J V, 'City Employee Perceptions of the Impact of Dress and Appearance: You Are What You Wear' [2013] 42(3) Public Personnel Management

- Kettell S, 'On the public discourse of religion: An analysis of Christianity in the United Kingdom' [2009] 2(3) Politics and Religion.

- Khalili-Tari D, 'There are More Models of Colour, but is Fashion Really Diverse' (Aljazeera, 12 February 2021)

- Khopkar A, 'We Need to Talk About Cultural Appropriation in Fashion' (*ABC Everyday*) <https://www.abc.net.au/everyday/cultural-appropriation-and-fashion/10501010> accessed 2 June 2021

- Kim R Y, 'Religion and ethnicity: Theoretical connections' [2011] 2(30) Religions

- Kinket B and Verkuyten M, 'Ethnic Self-Identification and Social Context' [1997] 60(4) Social Psychology Quarterly

- Klinthall M and Urban S, 'The Strength of Ethnic Ties: Routes into the Labour Market In Spaces of Segregation' [2016] 53(1) Urban Studies

- Knoebel A, 'Ben & Jerry's and the Business of Brands Getting Political' (November 5, 2018) Forbes

- Kohler-Hausmann I, 'Discrimination' [2014] Oxford Bibliographies. DOI: 10.1093/obo/9780199756384-0013

- Koski A, Clark S and Nandi A, 'Has Child Marriage Declined in sub-Saharan Africa? An Analysis of Trends in 31 Countries' [2017] 43(1) Population and Development Review

- Krieger N, 'Refiguring "Race": Epidemiology, Racialized Biology and Biological Expressions of Race Relations' [2000] 30(1) International Journal of Health Services

- Kushner T, *We Europeans? Mass Observation, 'Race' and British Identity in the Twentieth Century* (Ashgate, 2004)

- Kymlicka W, 'Immigration, Citizenship, Multiculturalism: Exploring the Links' [2003] 74 The Political Quarterly

- Laschinger H K S, Finegan J E, Shamian J and Wilk P, 'A Longitudinal Analysis of the Impact of Workplace Empowerment on Work Satisfaction' [2004] 25(4) Journal of Organizational Behaviour

- Laurin K and Plaks J E, 'Religion and Punishment: Opposing Influences of Orthopraxy and Orthodoxy on Reactions to Unintentional Acts' [2014] Social Psychological and Personality Science

- Leuven J K and Slater M D, How Publics, Public Relations, and the Media Shape the Public Opinion Process, [1991] 3(1-4) Public Relations Research Annual

- Levi J L, 'Some Modest Proposals for Challenging Established Dress Code Jurisprudence' [2007] 14 Duke Journal of Gender Law and Policy 256

- Levi J, 'Misapplying Equality Theories: Dress Codes at Work' [2016] Yale Law School Legal Scholarship Repository

- Lloyds Banking Group, 'Ethnicity in Advertising: Reflecting Modern Britain in 2018' <https://www.lloydsbankinggroup.com/who-we-are/responsible-business/inclusion-and-diversity/ethnicity-in-advertising.html> accessed 1 June 2021.

- Luna Z, '" Truly a Women of Colour Organization": Negotiating Sameness and Difference in Pursuit of Intersectionality' [2016] 30(5) Gender and Society.

- Madge C and Harrison T, 'Mass Observation: First Year's Work.' [1938] London: Frederick Muller Ltd.

- Maira S, 'Henna and Hip Hop: The Politics of Cultural Production and the Work of Cultural Studies' 3(3) [2009] Journal of Asian American Studies

- Malik A, Qureshi H, Abdul-Razakq H, Yaqoob Z, Javaid F Z, Esmail F, Wiley E, Latif A, ''I decided not to go into surgery due to dress code': a cross-sectional study within the UK investigating experiences of female Muslim medical health professionals on bare below the elbows (BBE) policy and wearing headscarves (hijabs) in theatre' [2019] 9(3) BMJ Open

- Malleson K, 'Equality Law and the Protected Characteristics' [2018] 81(4) The Modern Law Review

- Manchester Evening News, 'Sikh Cop Wins £10,000 Over Turban Row', (Manchester Evening News, 2 October 2009)

- Mastro D, 'Why the Media's Role in Issues of Race and Ethnicity Should be in the Spotlight' [2015] 71(1) Journal of Social Issues

- Matuson R, 'Managing Up, Down and Across the Organization: Does Dress Matter' (LinkedIn Learning, 07 March 2017) <https://www.linkedin.com/learning/managing-up-

down-and-across-the-organization/does-dress-matter?u=42583876> accessed 06 June 2021.

- Maurer T J, 'Career-relevant Learning and Development, Worker Age, and Beliefs about Self-efficacy for Development' [2001] 27(2) Journal of Management.

- Mayblin L, 'Asylum, Welfare and Work: Reflections on Research in Asylum and Refugee Studies' [2014] 34(5/6) International Journal of Sociology and Social Policy

- McIntosh L, 'Developing Distinctive Dress: Textiles and Clothing of the Katang and Mankhong Ethnic Group of Southern Laos' [2013] 47(1) Costume.

- McKenzie K and Bhui K, 'Institutional Racism in Mental Health Care' [2007] BMJ < https://doi.org/10.1136/bmj.39163.395972.80> accessed 3 June 2021.

- McLaughlin E and Murji K, 'After the Stephen Lawrence Report' [1999] 19(3) Critical Social Policy

- Mclean I and Peterson S M, 'Secularity and Secularism in the United Kingdom: On the Way to the First Amendment' [2011] 3(4) BYU Law Review

- McLean V, 'Heels or Not, What You Wear Matters at Work and at Job Interviews' (*Huffington Post*, 27/04/2017) <https://www.huffingtonpost.co.uk/victoria-mclean/heels-or-not-what-you-wea_b_16261380.html> accessed 27 May 2021.

- Mead P C, and Pedersen E L, 'West African Apparel Textiles Depicted in Selected Magazines from 1960 To 1979: Application of Cultural Authentication' [1995] 23(4) Family and Consumer Sciences Research Journal

- Milton Y J, *Religion, society and the individual; an introduction to the sociology of religion*. (Macmillan, 1957).

- Mishra A A and Mishra A, 'National vs. Local Celebrity Endorsement and Politics' [2014] 27(4) International Journal of Politics, Culture and Society.

- Mitchell C, "The religious content of ethnic identities' [2006] 40(6) Sociology

- Modood T and Ahmad F, 'British Muslim Perspectives on Multiculturalism' [2007] 24(2) Theory, Culture & Society

- Modood T, Berthoud R, Lakey J, Nazroo J, Smith P, Virdee S and Beishon S. *Ethnic Minorities in Britain: Diversity and Disadvantage* (No. 843, Policy Studies Institute, 1997)

- Mogaji E, 'Reflecting a Diversified Country: A Content Analysis of Newspaper Advertisements in Great Britain' [2015] 33(6) Marketing Intelligence and Planning

- Moodley K and Adam H, 'Race and Nation in Post-Apartheid South Africa' [2000] 48(3) Current Sociology

- Moreau S R, 'Equality rights and the relevance of comparator groups' [2006] 5 JL & Equal

- Moreau S, 'What Is Discrimination?' [2010] 38(2) Philosophy and Public Affairs

- Morgenroth T, Ryan M K and Peters K, 'The Motivational Theory of Role Modeling: How Role Models Influence Role Aspirants' Goals' [2015] 19(4) Review of General Psychology

- Murji K, 'Sociological Engagements: Institutional Racism and Beyond' [2007] 41(5) Sociology

- Ndakalako-Bannikov M, 'Changing Dresses: Owambo Traditional Dress and Discourses on Tradition, Ethnicity, and National Identity in Namibia' [2020] 57(1) Journal of Folklore Research

- Nekby L and Rodin M, 'Acculturation Identity and Labour Market Outcomes' [2007] IZA Discussion Papers, No. 2826, Institute for the Study of Labour

- Obama M, *Becoming* (Random House Inc, 2018)

- Office for National Statistics, 'A09: Labour Market Status by Ethnic Group' (ONS, 18 May 2021) <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/labourmarketstatusbyethnicgroupa09> accessed 27 May 2021.

- Office for National Statistics, 'Census 2001 Questionnaires. Sample Copies of the Questionnaires used in the 2001 Census' (ONS) <https://www.ons.gov.uk/census/2001censusandearlier/aboutcensus2001/census2001forms> accessed 23 June 2021.

- Office for National Statistics, 'Ethnicity Pay Gaps: 2019' (ONS, 12 October 2020) < https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/ethnicitypaygapsingreatbritain/2019> accessed 06 June 2021.

- Office for National Statistics, 'Full story: What does the Census tell us about religion in 2011?' [2013]

- Office of National Statistics, '2011 Census analysis: Ethnicity and the Labour Market, England and Wales' [2014] <https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/ethnicity/articles/ethnicityandthelabourmarket2011censusenglandandwales/2014-11-13> accessed 11 November 2020.

- Office of National Statistics, '2011 Census analysis: Ethnicity and the Labour Market, England and Wales' [2014] <https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/ethnicity/articles/ethnicityandthelabourmarket2011censusenglandandwales/2014-11-13> accessed 11 November 2020.

- Office of National Statistics, 'A Quick Guide to 1991 and Earlier Censuses' (ONS) <https://www.ons.gov.uk/census/2001censusandearlier/aquickguideto1991andearliercensuses> accessed 23 June 2021.

- Ogbonna E and Harris L C, 'Managing organisational culture: insights from the hospitality industry' [2006] 12(1) Human Resource Management Journal

- Ogunsanya A O, 'Changing Patterns in Feeding, Dressing and Naming Among Yoruba of South-Western Nigeria Since 1960', Volume XVII (2) Nigerian Journal of Social Studies

- Omar S, 'Is Fashion Finally Addressing its Diversity Problem' (*Raconteur*, 15 October 2020) <https://www.raconteur.net/hr/diversity-inclusion/diversity-fashion/> accessed 2 June 2021.

- Orimolade A O, 'Aso Ebi: Impact of the Social Uniform in Nigerian Caucuses, Yoruba Culture and Contemporary Trends' [2014] University of South Africa

- Pager D and Shepherd H, 'The Sociology of Discrimination: Racial Discrimination in Employment, Housing Credit and Consumer Markets' [2008] 34 The Annual Review of Sociology

- Park W, 'The Black Jesus, the Mestizo Jesus, and the Historical Jesus' [2017] 25(2) Biblical Interpretation.

- Parutis V, '" Economic Migrants" or "Middling Transnationals"? East European Migrants' Experiences of Work in the UK' [2014] 52(10) International Migration

- Patel T G, 'Race/Ethnicity, Crime and Social Control: An Introduction' [2018] 7(12) Social Sciences 271

- Patrick H A and Kumar V R, 'Managing Workplace Diversity: Issues and Challenges' [2012] 2(2) Sage Open <https://journals.sagepub.com/doi/10.1177/2158244012444615> accessed 1 June 2021

- Peplow S, 'The 'Linchpin for success'? The problematic establishment of the 1965 race relations act and its conciliation board' [2017] 31(3) Contemporary British History

- Peragine V, Palmisano F and Brunori P, 'Economic Growth and Equality of Opportunity' [2013] Policy Research Working Paper 6599, The World Bank Development Economic Vice Presidency Partnerships, Capacity Building Unit

- Pereira C and Ibrahim J, 'On the Bodies of Women: The Common Ground Between Islam and Christianity in Nigeria' [2010] 31(6) Third World Quarterly

- Phinney J S and Rotheram M J, *Children's Ethnic Socialization: Pluralism and Development* (SAGE Publications, 1986)

- Pilkington A, 'Racism in Schools and Ethnic Differentials in Educational Achievement: A Brief Comment on a Recent Debate' [1999] 20(3) British Journal of Sociology of Education

- Pilkington A, *Racial Disadvantage and Ethnic Diversity in Britain* (Palgrave Macmillan, 2003)

- Plous S, *Understanding Prejudice and Discrimination* (ed. S. Plous). (New York: McGraw-Hill, 2003)

- Powell M, Dawson J, Topakas A, Durose J and Fewtrell C, 'Staff Satisfaction and Organisational Performance: Evidence from a Longitudinal Secondary Analysis of the NHS Staff Survey and Outcome Data' [2014] NIHR Journals Library

- Press Association, 'Sikh Policeman Wins £10,000 Award After Turban Row' (The Guardian, Friday 2nd October, 2009)

- Pyke K D, 'What is Internalized Racial Oppression and Why Don't We Study It?' [2010] 53(4) Sociological Perspectives

- Quinn G, 'Reflections on the Value of Intersectionality to the Development of Non-Discrimination Law' [2016] 16 The Equal Rights Review

- Rafaeli A, Dutton J, Harquail C V and Mackie-Lewis S, 'Navigating by Attire: The Use of Dress by Female Administrative Employees', [1997] 40(1) The Academy of Management Journal

- Rajan-Rankin S, 'Material Intimacies and Black Hair Practice: Touch, Texture, Resistance' [2020] Nordic Journal of Feminist and Gender Research < https://www.tandfonline.com/doi/full/10.1080/08038740.2021.1912172?scroll=top&needAccess=true> accessed 28 May 2021.

- Ratcliffe R, 'Friends' pictures on social media have biggest impact on body image' (*The Guardian*, Sunday 5 March 2017)

- Reddy S, 'Styling the Self: Fashion as an Expression of Cultural Identity in a Global World' [2018] Diakses Pada.

- Reeskens T and Wright M, 'Nationalism and the Cohesive Society: A Multilevel Analysis of the Interplay Among Diversity, National Identity and Social Capital Across 27 European Societies' [2013] 46(2) Comparative Political Studies

- Rhodes L and Butler J S, 'Sport and Racism: A Contribution to Theory Building in Race Relations?' [1975] 55(4) Social Science Quarterly

- Ring K, 'Twisted Locks of Hair: The Complicated History of Dreadlocks' (*Esquire*, 26/10/2020) <https://www.esquire.com/uk/style/grooming/a34465402/history-of-dreadlocks/> accessed 28 May 2021.

- Roach-Higgins E and Ellen J B M, 'Dress and Identity' [1992] 10(4) Clothing and Textiles Research Journal

- Rose S O, 'Race, Empire and British Wartime National Identity, 1939-45' [2001] 74(184) Institute of Historical Research

- Sadiq K D, 'Race, Ethnicity and Immigration in the Workplace' (2005) Canadian Issues

- Saha A, 'Beards, Scarves, Halal Meat, Terrorists, Forced Marriage: Television Industries and the Production of Race' [2012] 34(4) Media, Culture and Society

- Sales R, 'The Deserving and the Undeserving? Refugees, Asylum Seekers and Welfare in Britain' [2002] 22(3) Critical Social Policy

- Savage M, Wright D and Gayo-Cal M, 'Cosmopolitan Nationalism and the Cultural Reach of the White British' [2010] 16(4) Nations and Nationalism

- Schaffer G, 'Scientific Racism Again? Reginald Gates, the Mankind Quarterly and the Question of Race in Science after the Second World War' [2007] 41(2) Journal of American Studies

- Schaub J-F, *Race is about Politics: Lessons from History* (Princeton University Press, 2019)

- Scholar H, 'Dressing the Part? The Significance of Dress in Social Work' [2013] 32(3) Social Work Education

- Sciulli D, *Corporate power in civil society: An application of societal constitutionalism*. (NYU Press, 2001)

- Sears D O, Fu M, Henry P J and Bui K, 'The Origins and Persistence of Ethnic Identity among the New Immigrant Groups' [2003] 66(4) Race, Racism and Discrimination.

- Shao C Y, Baker J A and Wagner J, 'The Effects of Appropriateness of Service Contact Personnel Dress on Customer Expectations of Service Quality and Purchase Intention: The Moderating Influences of Involvement and Gender' [2004] 57(10) Journal of Business Research

- Sharaby R, 'The Bride's Henna Ritual: Symbols, Meanings and Changes' [2006] 11 Nashim: A Journal of Jewish Women's Studies and Gender Issues

- Shariatmadari D, 'What are British Values? You asked Google – here's the answer' (*The Guardian*, Wednesday 3 February 2016)

- Shoben E W, 'Compound Discrimination: The Interaction of Race and Sex in Employment Discrimination' [1981] Scholarly Works, Paper 582

- Simpson L, Jivraj S and Warren J, 'The Stability of Ethnic Identity in England and Wales 2001-2011' [2016] 179(4) Journal of the Royal Statistical Society. Series A (Statistics in Society)

- Sini R, 'Wear a Weave at Work – Your Afro Hair is Unprofessional' (*BBC UK*, 15 May 2016) < https://www.bbc.co.uk/news/uk-36279845> accessed 28 May 2021

- Slepian M L, Ferber S N, Gold J M and Rutchick A M, 'The Cognitive Consequences of Formal Clothing' [2015] 6(6) Social Psychological and Personality Science

- Smith B, 'Intersectional Discrimination and Substantive Equality: A Comparative and Theoretical Perspective' [2016] 16 The Equal Rights Review.

- Smith I, Baker A and Warnock O, *Smith & Wood's Employment Law* (Oxford University Press, 2019)

- Smith M M, *How Race is Made: Slavery, Segregation and the Senses* (University of North Carolina Press, 2006)

- *Sorry To Bother You*, Boots Riley, Mirror Releasing, [2018]

- Special Eurobarometer 393, Discrimination in the EU in 2012 Report, [November 2012]

- Stahnke T, 'Proselytism and the Freedom to Change Religion in International Human Rights Law' [1999] BYU L. Rev

- Strangleman T and Warren T, *Work and Society: Sociological Approaches, Themes and Methods* (Routledge, 2008)

- Stuurman S, 'Francois Bernier and the Invention of Racial Classification' [2000] 50(1) History Workshop Journal

- Styles J, 'Dress in History: Reflections on a Contested Terrain' [1998] 2(4) Fashion Theory

- Swain R, '5 Ways to Make the Most of Career Fairs' (*Prospects*, April 2021) <https://www.prospects.ac.uk/careers-advice/getting-a-job/5-ways-to-make-the-most-of-careers-fairs> accessed 06 June 2021.

- Tabili L, 'The Construction of Racial Difference in Twentieth-Century Britain: The Special Restriction (Coloured Alien Seamen) Order, 1925' [1989] 32(2) The Historical Journal

- Taramundi D M, 'Between Islamophobia and Post-Feminist Agency: Intersectional Trouble in the European Face-Veil Bans' [2015] Feminist Review

- Tariq M and Syed J, 'Intersectionality at Work: South Asian Muslim Women's Experiences of Employment and Leadership in the United Kingdom' [2017] 77 Sex Roles

- Taylor-Gooby P and Waite E, 'Toward a More Pragmatic Multiculturalism? How the U.K. Policy Community Sees the Future of Ethnic Diversity Policies' [2014] 27(2) Governance: An International Journal of Policy, Administration, and Institutions

- Thompson C J and Haytko D L, 'Speaking of Fashion: Consumers' Uses of Fashion Discourses and the Appropriation of Countervailing Cultural Meanings' [1997] 24(1) Journal of Consumer Research.

- Thompson C, 'Black Women, Beauty and Hair as a Matter of Being' [2009] 38(8) Women's Studies

- Timming A R, Baumann C and Gollan P, 'Employee Voice and Perceived Attractiveness: Are Less Attractive Employees Ignored in the Workplace' [2021] 4(1) Journal of Participation and Employee Ownership

- Tobler C, *Indirect Discrimination: A Case Study into the Development of the Legal Concept of Indirect Discrimination under EC Law*. (Volume 10, Intersentia NV 2005)

- Tomasello M, *A Natural History of Human Thinking* (Harvard University Press, 2014)

- Toogood M, 'Modern Observations: New Ornithology and The Science of Ourselves, 1920-1940' [2011] 37(3) Journal of Historical Geography

- Torntore S J, 'Fashion, Tradition, and Cultural Authentication: Change in Hmong American Ethnic Textiles and Aesthetics at Hmong New Year' [2004} Textile Society of America 9th Biennial Symposium

- Uccellari P, 'Multiple discrimination: How law can reflect reality' [2008] Volume 1, The Equal Rights Review

- Valk A and Karu K, 'Ethnic Attitudes in Relation to Ethnic Pride and Ethnic Differentiation' [2001] 141(5) The Journal of Social Psychology

- Van Hoecke M, 'Legal Doctrine: Which Method(s) for What Kind of Discipline?' in Van Hoecke M (ed) *Methodologies of Legal Research* (Hart Publishing, 2011)

- Van Laer K and Janssens M, 'Between the Devil and The Deep Blue Sea: Exploring the Hybrid Identity Narratives Of Ethnic Minority Professionals' [2014] 30(2) Scandinavian Journal of Management

- Van Laer K and Janssens M, 'Ethnic minority professionals' experiences with subtle discrimination in the workplace' [2011] 64(9) Human Relations

- van Osch Y M J and Breugelmans S M, 'Perceived Intergroup Difference as an Organizing Principle of Intercultural Attitudes and Acculturation Attitudes' [2011] 43(5) Journal of Cross-Cultural Psychology

- Vickers L, 'Religious Discrimination in the Workplace: An Emerging Hierarchy?' [2010] 12(3) Ecclesiastical Law Journal

- Vickers L, 'Religious Freedom: Expressing Religion, Attire, and Public Spaces' [2014] 22(2) Journal of Law and Policy 591

- Victoria and Albert Museum, 'Traditional Dress from East Asia' < http://www.vam.ac.uk/content/articles/t/traditional-dress-from-east-asia/> accessed 4 June 2021.

- Vince M, 'Neutrality, Muslimness and the Whiteness of RE Professionalism' [2000] 68(3) Journal of Religious Education

- Virk K, 'Ruby Williams: No Child with Afro Hair Should Suffer Like Me' (10 February 2020) BBC News <https://www.bbc.co.uk/news/newsbeat-45521094> accessed 23 February 2022

- Visone B, 'Cramping Your Style: Personal Appearance in the Workplace' [2015] Georgetown University Law Centre

- von Dehsen C D and Harris S L, eds. *Philosophers and religious leaders*. (Vol. 2. Greenwood Publishing Group, 1999)

- Wallace D and Joseph-Salisbury R, 'How, still, is the Black Caribbean child made educationally subnormal in English school system?' [2021] Ethnic and Racial Studies, pp. 1-27

- Weaver D, 'Media Agenda-Setting and Public Opinion: Is There a Link?' [1984] 8(1) Annals of the International Communication Association

- Wedel J R, 'From Power Elites to Influence Elites: Resetting Elite Studies for the 21st Century' [2017] 34(5-6) Theory Culture and Society

- Werbner P, 'Theorising Complex Diasporas: Purity and Hybridity in the South Asian Public Sphere in Britain' [2004] 30(5) Journal of Ethnic and Migration Studies

- Werner C, 'To What Extent Should the Law Do More to Address Gendered Discrimination in Workplace Dress Codes?' [2017] 44 Exeter L Rev

- Wheeler R, *The Complexion of Race: Categories of Difference in Eighteenth-Century British Culture* (University of Pennsylvania Press, 2010)

- Willey B, *Employment Law in Context: An Introduction for HR Professionals* (2nd Edition, Pearson Education,2003)

- Wilson E, 'Deviant Dress' [1990] 35 Feminist Review

- Wolff R L, 'Politics in the Latin Patriarchate of Constantinople, 1204-1261' [1954] 8 Dumbarton Oaks Papers.

- Wray H, 'The Aliens Act 1905 and the Immigration Dilemma' [2006] 33(2) Journal of Law and Society

- Wrench J and Modood T, 'The Effectiveness of Employment Equality Policies in Relation to Immigrants and Ethnic Minorities in the UK' [2001] International Migration Papers 38, International Labour Office Geneva, International Migration Branch

- Yancy G, *Christology and whiteness: what would Jesus do?* (Routledge, 2012)

- Yip T, 'Ethnic Identity in Everyday Life: The Influence of Identity Development Status' [2013] 85(1) Child Development

- Zalesne D, 'Lessons from Equal Opportunity Harasser Doctrine: Challenging Sex-Specific Appearance and Dress Code' (2007) 14 Duke Journal of Gender Law and Policy 535

- Zenquis M R and Mwaniki M F, 'The Intersection of Race, Gender and Nationality in Sport: Media Representation of the Ogwumike Sisters' [2019] 43(1) Journal of Sport and Social Issues

- Zschirnt E and Ruedin D, 'Ethnic Discrimination in Hiring Decisions: A Meta-Analysis of Correspondence Tests 1990-2015' [2016] 42(7) Journal of Ethnic and Migration Studies