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More Than “Multiple Jeopardy”: Navigating the Legal System as a British-Muslim-Woman-Litigant-in-Person

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Abstract

Against the backdrop of rising Islamophobia and a deficit in the literature of Muslim experiences of resistance to discrimination through the legal action, in this article, I employ an auto-ethnographic methodological approach to critically reflect on my journey from classroom to courtroom, as a British Muslim woman of colour and litigant-in-person. While threading in excerpts of legal documents from the case, I highlight that: (a) as Muslims we must resist in ways acceptable to gate-keepers of the law, who are largely white and middle-class and unaware of the embodied realities of the inequality that minorities in Britain experience; (b) the law fails to take account of the “context” in which discrimination(s) takes place, as a result of which legal logic(s) and methodologies in cases of religious discrimination are flawed; (c) a religio-social capital operates against Muslims, negating positive social capital(s) such as education, and which, in the social penalties Muslims experience, accumulates greater weight than other intersecting subjectivity markers such as race, class, ethnicity, and gender. I contrast King’s theory of “multiple jeopardy” with my embodied experience of discrimination and inequality, which I demonstrate using the model of the glass Rubik’s cube.

Keywords

Islamophobia – Muslim women – discrimination – employment law – socio-legal issues – social mobility

1 Introduction

A 2017 report by Ipsos Mori found that prejudice against Muslims in the UK is thought to be increasing, especially among Muslim graduates and young Muslims.¹ Survey results demonstrated that 63% of Muslims think there is greater prejudice against Muslims than against any other religious group, and 27% said they had experienced discrimination, rising to 34% for graduates and young Muslims aged between 18 and 24. Furthermore, one in four Muslims (26%) said they worried about being physically attacked due to being Muslim.² A significant aspect of the debate on prejudice and discrimination against Muslims has been the visibility of Muslim women and the subject of the veil, (both the headscarf [hijab] and the full-face veil, also known as niqab). Muslim women are increasingly feared and seen as the “enemy within” because they are viewed as not conforming the Western ideal of womanhood.³ The symbolism of the veil (hijab and/or niqab) is crucial in brokering this view, as it is not only taken as a sign of submissiveness but also as a sign of Islamic aggression,⁴ and thus “covered” women are represented as “agents” of terrorism,⁵ aiding their male counterparts who are ready to wage war on the West.⁶ As a result, the hermeneutics of dress actively contributes to the way in which Muslims are able to perform in and experience public spaces and life in “Western” society, leading academics such as Heidi Mirza⁷ to argue that the headscarf and/or veil, is experienced as a “second skin”. A report titled “The Missing Muslims: Unlocking British Muslim Potential for the Benefit of All” notes that Muslim women who suffer a lack of success based on religion “viewed the prospective discrimination as insurmountable, resulting in them removing their hijab to

1 Ipsos MORI, *A Review of Survey Research on Muslims in Britain*. London: Ipsos MORI, 2017. https://www.ipsos.com/sites/default/files/ct/publication/documents/2018-03/a-review-of-survey-research-on-muslims-in-great-britain-ipsos-mori_o.pdf.

2 Ibid.

3 Barbara Pery, “Gendered Islamophobia: Hate Crime against Muslim Women”, *Social Identities* 20/1 (2014): 74-89.

4 Ibid.

5 Ibid, pg. 83.

6 Ibid. See also Sahar F. Aziz, “From the Oppressed to the Terrorist: Muslim American Women Caught in the Crosshairs of Intersectionality”, *Hastings Race & Poverty Law Journal* 9/1 (2012). Available at: <https://ssrn.com/abstract=1981777>.

7 Mirza, S. H. 2013. ‘A second skin’: Embodied intersectionality, transnationalism and narratives of identity and belonging among Muslim women in Britain. *Women’s Studies International Forum*, 36, pp. 5-15.

find work”.⁸ As a result, the panoptic⁹ nature of the intense media scrutiny of Muslims¹⁰ that feeds into the vicious cycle that is anti-Muslim sentiment and the discrimination that results from it, can lead to the modification of Muslim women’s behaviour to fit the “Western” notion of womanhood. Such social occurrences resonate with Michel Foucault’s work on governmentality,¹¹ discipline and punishment,¹² as the operation of the intense gaze¹³ enables governments to produce a certain type of citizen in accordance with a meta-national narrative.¹⁴

Muslim women’s social experience is further affected by the structural disempowerment they are exposed to as a result of the multiple subjectivities they occupy, such as class, gender, ethnicity, race and religious position, which intersect and further exacerbate the discrimination they face.¹⁵ It is important

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- 8 Citizens Commission on Islam, Participation & Public Life, *The Missing Muslims: Unlocking the British Muslim Potential for the Benefit of All* (London): Citizens UK, 2017), p. 26. https://d3n8a8pr07vhmx.cloudfront.net/newcitizens/pages/1261/attachments/original/1499106471/Missing_Muslims_Report_-_Electronic_copy.pdf?1499106471.
- 9 Suriyah Bi, “Panopticons, Power and Pleasure: Why the Hijab Is Not a Problem”, *Journal of Muslim Minority Affairs* 38/1 (2018): 139-141, pp. 139-141.
- 10 Katy Sian, Ian Law and S. Sayyid, “The Media and Muslims in the UK” (Leeds: Centre for Ethnicity and Racism Studies, University of Leeds). Available at: <http://www.ces.uc.pt/projectos/tolerance/media/Working%20paper%205/The%20Media%20and%20Muslims%20in%20the%20UK.pdf>; Kerry Moore, Paul Mason and Justin Lewis, 2008. “Images of Islam in the UK: The Representation of British Muslims in the National Print News 2000-2008”. Working paper (Cardiff: Cardiff University). Available at: <http://orca.cf.ac.uk/53005/1/08channel4-dispatches.pdf>; Elizabeth Poole and John E. Richardson, *Muslims and the News Media* (London: I.B. Tauris, 2010).
- 11 Michel Foucault, “Governmentality”, trans. Rosi Braidotti and revised by Colin Gordon, in *The Foucault Effect: Studies in Governmentality*, ed. Graham Burchell, Colin Gordon and Peter Miller (Chicago, IL: University of Chicago Press, 1991), pp. 87-104.
- 12 Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Vintage Books, 1995).
- 13 Edward W. Said, *Orientalism* (New York: Pantheon Books, 1979); idem, *Covering Islam: How the Media and the Experts Determine How We See the Rest of the World*. Revised edition. (New York: Vintage, 1997).
- 14 Bi, “Panopticons”.
- 15 Perry, “Gendered Islamophobia”; Aziz, “From the Oppressed to the Terrorist”; Katherine Bullock and Gul Joya Jafri, 2002. “Media (Mis)Representations: Muslim Women in the Canadian Nation”, *Canadian Women’s Studies* 20/2 (2002): 35-40; Jasmin Zine, “Unveiled Sentiments: Gendered Islamophobia and Experiences of Veiling among Muslim Girls in a Canadian Islamic School”, *Equity & Excellence in Education* 39/3 (2006): 239-252; Wahiba M. Abu-Ras and Zulema E. & Suarez, “Muslim Men and Women’s Perception of Discrimination, Hate Crimes, and PTSD Symptoms post 9/11”, *Traumatology* 15/3 (2009): 48-63; Caroline Essers and Yvonne Benschop, 2009. “Muslim Businesswomen Doing Boundary Work: The Negotiation of Islam, Gender and Ethnicity within Entrepreneurial Contexts”, *Human Relations* 62/3 (2009): 403-432.

to note that, historically, this intersection of multiple subjectivity has been attributed to the experience of Black women in the labour market and theories such as King's¹⁶ theory of multiple jeopardy are widely cited. In exploring the experiences of Muslim women, academics have documented Islamophobic incidents perpetrated against Muslims post-9/11, and in doing so have highlighted the gendered nature of such attacks arising from Muslim women's positionality.¹⁷ For instance, Copsey et al.¹⁸ reported that 58% of the 585 Islamophobic incidents reported to Tell MAMA between 1 April 2012 and 30 April 2013 were against women, of which 80% identified as visibly Muslim. Incidents comprised a range of abuse ranging from verbal abuse, spitting, headscarves or face veils torn from women, harassment, aggressive or threatening behaviour, violence and physical harm,¹⁹ which go on to have secondary implications such as anxiety, depression and feelings of isolation.²⁰ Tertiary effects of such abuse for victims can involve questioning one's place in society and whether to alter one's performance of religion and gender in public spaces, which by default fulfils the intention of the perpetrators.²¹

A specific public space in which gendered Islamophobia is known to operate is the workplace. A report by the UK government's Social Mobility Commission²² found that, despite the strong work ethic and high resilience amongst Muslims, which result in outstanding academic results, Muslim men's and women's professional and career development is increasingly punctuated

16 King, "Multiple Jeopardy".

17 See Bourdieu, P. 1977. *Outline of a Theory of Practice*. Cambridge: Cambridge University Press. Bourdieu's notion of "positioned subject" argues that each person is seen as occupying a position in society that affords a particular view of events. Michelle Rosaldo furthers the notion positing that the "positioned subject" is structured by such factors as age, gender, and status, which typically afford the individual a set of life experiences (Michelle Zimbalist Rosaldo, "Toward an Anthropology of Self and Feeling", in *Culture Theory: Essays on Mind, Self, and Emotion*, ed. Richard Shweder and Robert A. Levine [New York: Cambridge University Press: 1984], pp. 137-157).

18 Nigel Copsey, Janet Dack, Mark Littler and Matthew Feldman, "Anti-Muslim Hate Crime and the Far Right". Project report (Teesdie: Teeside University, 2013). Available at: https://www.tees.ac.uk/docs/DocRepo/Research/Copsey_report3.pdf.

19 Chris Allen, "Anti-Social Networking: Findings From a Pilot Study on Opposing Dudley Mosque Using Facebook Groups as Both Site and Method for Research", *Sage Open* 4/1 (2014). doi.org/10.1177/2158244014522074.

20 Imran Awan and Irene Zempi, 2015. *We Fear for Our Lives: Online and Offline Experiences of Anti-Muslim Hostility* (Birmingham and Nottingham: TellMAMA, 2015). Available at: <https://www.tellmamauk.org/wp-content/uploads/resources/We%20Fear%20For%20Our%20Lives.pdf>.

21 Perry, "Gendered Islamophobia".

22 Jacqueline Stevenson, Sean Demack, Bernie Stiell, Muna Abdi, Lisa Clarkson, Farhana Ghaffar and Shaima Hassan, *The Social Mobility Challenges Faced by Young Muslims* (London: Social Mobility Commission, 2017).

by widespread Islamophobia, racism and discrimination. Muslim women in particular are thought to be the least economically active group of women in the UK, with 18% looking after the home and family compared with 6% of the overall female population. The report identifies a number of barriers to success, which include ethnic names that act as a barrier to securing a job interview, Muslim women who wear headscarves being subjected to discrimination in the workplace, teachers expecting less from minority ethnic and/or Muslim students and thus investing less time and fewer resources to benefit their education, and a lack of role models or Muslim staff in schools. As a result, academic researchers have posited that British Muslims face a “Muslim penalty” in the labour market, which disadvantages them negatively as a group above all other groups. This has translated into the unemployment rate amongst Muslims as being twice the national average²³ and British Muslims on average earning £350 less each month compared with members of any other religious group.²⁴ Amongst those who are employed, British Muslims are severely underrepresented in higher occupations with only 6% holding senior positions, which is the lowest figure of all religious groups in the UK.²⁵

A growing body of literature documents civil resistance amongst Muslims including through music,²⁶ poetry,²⁷ blogging²⁸ and essays.²⁹ A current deficit in the academic literature is data on the number of incidents of Islamophobic abuse and discrimination in the workplace that are brought to justice through the UK legal system. In the UK, an employment law claim cannot proceed unless the Advisory Conciliation and Arbitration Service (ACAS), a Crown non-departmental public body of the UK government of the UK, is informed and early arbitration has ended. Each year, ACAS releases statistics on the number

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- 23 Elizabeth Garratt, 2016. “Do British Muslims Face Employment Penalties?” Centre for Social Investigations briefing note 26. Available at: <http://csi.nuff.ox.ac.uk/wp-content/uploads/2016/09/CSI-26-Muslim-employment.pdf>.
- 24 Yaojun Li and Anthony Heath, *Are We Becoming More or Less Ethnically-Divided?* (Oxford: Centre for Social Investigation, University of Oxford, Nuffield College, 2015). Available at: http://csi.nuff.ox.ac.uk/wp-content/uploads/2015/03/CSI_10_Ethnic_Inequalities.pdf.
- 25 Ibid. See also Louis Reynolds and Jonathan Birdwell, *Rising to the Top* (London: Demos, 2015). Available at: <http://www.demos.co.uk/project/rising-to-the-top/>.
- 26 Mona Haydar, Hijabi (Wrap My Hijab). Available at: https://www.youtube.com/watch?v=XOX9O_kVPeo&authuser=1.
- 27 The Last Word Festival 2017—Poetry Slam Final: Suhaiymah Manzoor-Khan: <https://www.youtube.com/watch?v=G9Sz2BQdMF8>.
- 28 Suriyah Bi, 2017. “Holes in My Hijab: Conquering the Subaltern Woman”, *Suriyah Bi*, 24 January 2017. Available at: <https://suriyahbi.wordpress.com/2017/01/24/holes-in-my-hijab-conquering-the-subaltern-woman/>.
- 29 Muna Mire, “Towards a Black Muslim Ontology of Resistance”, *The New Inquiry*, 29 April 2015). Available at: <https://thenewinquiry.com/towards-a-black-muslim-ontology-of-resistance/>.

of cases brought, how many were resolved without proceeding to employment tribunals, and how many proceeded to employment tribunals for resolution.³⁰ However, ACAS does not provide a breakdown of the type of case brought (e.g. gender discrimination) and/or a breakdown of the demographic profiles of the claimants. To my knowledge, no such data exists in the UK from which it can be deduced how many legal cases of discrimination on the grounds of religion are brought to justice in employment tribunals or any other UK court that Muslims have experienced. In recent years, some legal cases involving Muslims taking their experiences of discrimination to court have featured in the news media. However, there is an absence within the literature of the experience of Muslims seeking justice within the legal system and, by extension, an exploration of the intersection of the multiple subjectivity of Muslims in the legal sphere.

In this article, then, I employ an auto-ethnographic methodology to discuss my case of religious discrimination at an employment tribunal as a British Muslim woman of colour, but also as a litigant-in-person who represented herself throughout the case. I aim to contribute to the current gap in the literature on Muslim civil resistance to discriminatory experiences through legal action and in doing so, to provide an ethnographic insight into the ways in which multiple subjectivity operates for Muslims.

2 Background to the Legal Case

Graphic images from 9/11 have long been the cause of controversy. Take, for example, the public backlash that followed the virtual reality app that puts users inside the World Trade Centre.³¹ Amongst other things, exposure to such images can affect the psychological and emotional stability of viewers. For instance, in a landmark paper Phillips put forward the concept of “Werther effect”,³² which argued that the viewing of suicide could trigger copycat suicides. Further, the global consensus is that young people between the ages of 11 and 18 are the group most at risk of committing suicide.³³ After an English teacher at Heartlands Academy in Birmingham, where I worked, showed 18-rated video

30 “Conciliation Update: April 2017-December 2017”. Available at: <http://www.acas.org.uk/index.aspx?articleid=6479>.

31 See “9/11 Virtual Reality Puts User inside World Trade Center and Gets Public Backlash”, *RT Question More*, 31 October 2015. Available at: <https://www.rt.com/usa/320199-september-11-game-virtual-reality/> (accessed 17 February 2018).

32 David P. Phillips, “The Influence of Suggestion of suicide: Substantive and Theoretical Implications of the Werther Effect”, *American Sociological Review* 39/3 (1974): 340-354.

33 Tor Phern-Chern, Beng Yeong Ng and Yong Guan Ang, “The Media and Suicide”, *Annals of the Academy of Medicine, Singapore* 37/9 (2008): 797-799.



FIGURE 1 The caution message with the 18-rated age warning that appeared on screen before the start of the graphic video.

footage containing graphic images of people jumping to their deaths during the 9/11 attacks to a class of 11-year-old students—some of whom had special education needs—I raised a child safeguarding concern.³⁴ At the time, the head of department I had expressed my concerns to reassured me that I had done the right thing, and that a formal investigation would take place into the incident. Forty minutes later however, I was called out from my lesson and told “the school was no longer a place for me to work at, as I was uncomfortable with the curriculum”. I was told that my contract was being terminated, that I needed to collect my belongings, and leave the premises immediately.

I appealed against the decision to dismiss me, but my appeal fell on deaf ears leaving me with limited options. After exhausting internal avenues, I turned to the news media to highlight the injustice that I had been subjected to, after which I filed a case in the UK Employment Tribunals on four grounds: Unfair Dismissal; Whistleblowing under the Protected Interest Disclosure Act (PIDA) 1998; Religious Discrimination; and Victimization. A Subject Access Request (SAR), which allows you access to your data under the Data Protection Act 1998, enabled my claims to be substantiated in the initial court proceedings held to determine whether the case had enough weight for it to be brought to a full tribunal. Despite the defendants’ reluctance to provide these documents,

34 In 2015, I was dismissed from an E-ACT Academy Chain in Birmingham when I raised a safeguarding concern about 11-year-old students being shown an 18-rated, graphic video of people jumping to their deaths during the 9/11 attacks. In 2017, I won a landmark victory on whistleblowing and victimisation claims. “Muslim Teaching Assistant Wins Unfair Dismissal Case over 9/11 Footage”, *The Guardian*, 31 October 2017. Available at: <https://www.theguardian.com/uk-news/2017/oct/31/muslim-teacher-wins-case-after-being-dismissed-over-911-footage> (accessed 17 February 2018).

which was demonstrated by the heavy redactions made, the SAR eventually provided data such as “secret” emails, minutes of meetings, and statements for internal investigation held *after* my dismissal, which demonstrated the true weight of the discrimination to which I was subjected. However, arguing this in court, and having a judge accept it, was a different matter as I shall discuss and demonstrate below.

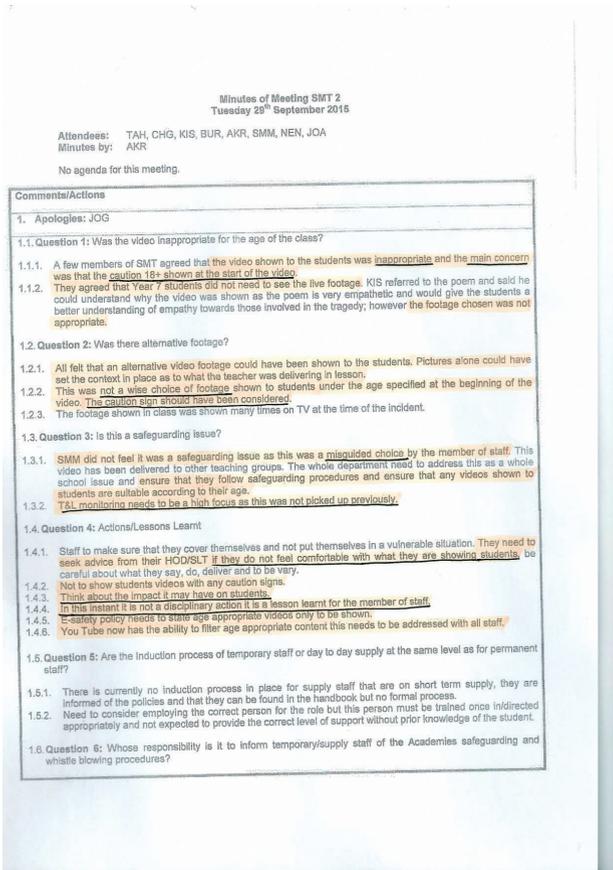


FIGURE 2 Minutes of the meeting held the day after my dismissal by the senior management team at the school. It took a number of complaints to the Information Commissioner's Office over a six-month period for the document to be provided to me in an unredacted form. It demonstrated that senior management at the school also felt it was inappropriate to show the video footage to the children. It is important to note all members of the senior management team present at the meeting were White, Christian.

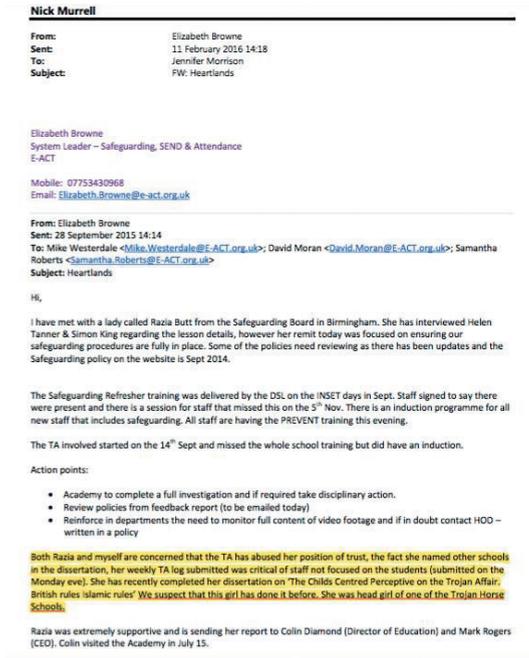


FIGURE 3 One of many “secret” emails sent between staff at the school. This email states “we suspect this girl has done it before. She was head girl at one of the Trojan Horse Schools”, which I argued was evidence that the teachers at the school associated me with the “extremist” nature of those implicated in the so-called Trojan Horse Affair.

Nurun Choudhury- Statement of the events surrounding agency worker Suriyah Bi

On the morning (around 10.30ish) of Wednesday 23rd September 2015 Mrs Jones came to see me in my office. She stated that The TA in SEN Suriyah Bi has stated that Heartlands is anti- muslim and as a result she does not wish Suriyah to be working at the academy, she also asked me to inform the agency. She also stated that in the 12 years she has been at Heartlands, no one had accused Heartlands of being anti-muslim.

Mrs Jones asked me to speak with Nicky Newey-Burridge, and also inform Suriyah that we no longer wish to engage her services.

FIGURE 4 An excerpt from the HR representative's statement for the internal investigation held by the school after the dismissal had been reported in the media. In this statement (which I was provided a copy of six months after my dismissal), it was noted that Mrs Jones (head teacher) decided to dismiss me because she believed I had stated the school was anti-Muslim (I did no such thing). The term “as a result” proved causation, which enabled the victimisation claim in law to succeed.

After a number of preliminary hearings between February 2016 and September 2016, the case was finally heard in December 2016 at a full tribunal hearing that spanned a total of five days. Due to the sheer number of witnesses (the defendant invited ten), the tribunal could not complete its deliberations and reach a decision at the close of the hearing. A decision was provided in March 2017 accepting the claim of unfair dismissal due to whistleblowing, rejecting the claim of discrimination on religious grounds, and setting a hearing for receiving the remainder of the evidence, which would determine the victimisation claim. The victimisation claim was later accepted in October 2017.

3 Resisting the Right Way?

I sat through many court hearings throughout the duration of the court case—which at the time of writing this article is still on-going—and heard the decisions of a number of judges, some of whom were fascinated by the complexity of the case and others who could not wait for the hearing to end so they could have lunch, but all of whom had a distaste for claimants who were vocal, feisty and stubborn. I was always conscious of my tone when addressing Judges and members of the tribunal panel. I noticed judges were more forthcoming and helpful in instances when I did not understand aspects of the law. On one occasion after a telephone hearing, the judge had taken the liberty of also attaching pdf versions of posters and flyers designed to help litigants-in-person. While I was delighted with the outcome of the hearing both in the judgement and the support provided by the judge, I was able to contrast moments during the hearing when I was more argumentative—which were not received well—with moments when I was dependent on the judge to provide clarity and guidance. I also compared the judge's level of support with other judges in hearings in which I was more vocal and passionate—which was often mistaken as being aggressive. As a litigant in person in the absence of the cloak and qualification of law, which can offer a passport to 'perform' as a passionate and argumentative lawyer, litigants in person I find are not afforded the same luxury without being mistaken for being aggressive, resulting in being penalised in often multiple and complex ways.

Throughout the legal case, I also noticed the constant cherry picking of my personhood in different ways by various agents. For instance, while for the school I was a brown head-scarf-wearing Muslim woman who was "objecting" to a video of 9/11 being shown to pupils and had attended a Trojan Horse affair³⁵

35 John Holmwood and Therese O'Toole, *Countering Extremism in British Schools?: The Truth about the Birmingham Trojan Horse Affair* (Bristol: Policy Press, 2018).



Exceptional Criteria

You hold a Masters degree and are currently doing a PhD. You have applied your research skills in this matter and you prepared a document for a public access barrister containing all key information pertaining to this matter. Whilst you state that you are anxious about the case and needs the direct access barrister beside you to give you some hope and strength, you can make written representations to the Employment Tribunal outlining your case. You are thoroughly conversant with the facts of your case. You have also requested information through the subject access request to support your case. All this together demonstrates that you have the confidence and capability to deal with the case yourself and I therefore do not envisage that you will have difficulty in presenting this case yourself. Moreover Legal Help is available to assist you further in preparing and submitting your representations in respect of your claims under the Equality Act 2010 or a previous discrimination enactment. However, this would not cover the provision of advocacy at the Employment Tribunal. This form of service can only be obtained through a legal aid provider. A list of legal aid providers can be found at <http://find-legal-advice.justice.gov.uk>. Please note that this service cannot be provided directly to a public access barrister.

I therefore conclude that you do not meet the criteria for Exceptional Case Funding.

Means

You have been assessed as financially eligible for legal aid without a contribution. However, this does not itself does not entitle you to legal aid given that you have not satisfied the criteria for exceptional funding.

Right of Review

You may apply to the Director within 14 days of receipt of this letter for a review of this decision.* Please use the attached form APP9E.

Yours faithfully,

Malcolm Bryant

FIGURES 5 AND 6 The letter I received from the Legal Aid Agency regarding the outcome of my application for legal aid under the “exceptional circumstances” criteria. In my appeal, I stressed that no matter how educated one was, one could not be expected to *cross-examine* the very people who subjected one to discrimination. My appeal was also rejected.

4 “Second Bite at the Cherry”

In the first verdict provided in March 2017 in which the claim for unfair dismissal due to whistleblowing was successful, the judge rejected the discrimination case on the following grounds:

92. If someone who is a Muslim is treated detrimentally, in part, because of a perception that they are accusing the respondent of being anti-Muslim - can that be direct discrimination because of the protected characteristic of religion?

93. The tribunal concludes not. The detriment was not because the claimant is Muslim but because it was perceived, or assumed from what she had actually said, that she was making an allegation that the school was anti-Muslim. The school has a large number of Muslim students, it is a school which prides itself on being culturally diverse, and Mrs Jones had worked hard and successfully in turning the school into an outstanding one. Any suggestion, or criticism, that the school was anti-Muslim, or indeed against any other religion, would have been anathema to her. The reason why she treated the claimant as she did was, in part, not because of the claimant's religion but because she thought the claimant was accusing the school of being anti-Muslim.

94. We asked ourselves who an appropriate comparator would have been and whether such a comparator would have been treated similarly. A comparator would be a Teaching Assistant who had complained about inappropriate material being shown to children and who had made a link between the showing of the material and religion. But the circumstances of the comparator, to be not dissimilar to those of the claimant, must be that a perception was formed that they were accusing the respondent of being against their religion. There has been no evidence before us that Mrs Jones held this perception, or her belief, only because the claimant is a Muslim. It seems that she had extrapolated from what the claimant had said to Mrs Walters that the claimant was accusing the school of being anti-Muslim. It might have been a mistaken belief on her part, but if the comparator, in similar circumstances to the claimant, was Christian or Jewish and was believed to be accusing the school of being anti-Christian or anti-Jewish, we conclude Mrs Jones would have treated such a comparator in the same way. She would have reacted to any perceived criticism of the cultural inclusiveness and diversity of the school in the same way, irrespective of the religion of the complainant. Therefore, the claimant has not proved facts from which we could conclude that she was treated as she was because of religion and the claim for direct discrimination fails.

FIGURE 7 Excerpt from the verdict in March 2017 in which the tribunal explained why the religious discrimination claim was dismissed.

In the above excerpt, we learn that detrimental treatment based on a perception that one is accusing the school of being anti-Muslim does not equate to discrimination on the grounds of religion. As a stand-alone assumption, this may not equate to discrimination, however, this “assumption” was embedded in a wider context, namely, a collective view amongst the teachers that: (1) my concern was treated as an objection to 9/11 being taught as part of the curriculum, which was supported by (a) ten witnesses being called to testify as to why the poem was on the curriculum and why it was justifiable to teach it to eleven year old pupils, and (b) an attempt on the defendants' part to mislead the tribunal by including in the legal bundle (and referring to it during the hearing) the entire sixteen-page poem “Out of the Blue”, which contained references to 9/11, whereas the original poem that the lesson in which the graphic footage was used was a one-page excerpt from the poem in which there were no direct references to 9/11; (2) and my very raising of a concern was attributed to my being an extremist Muslim tied to the so-called Trojan Horse affair, as demonstrated by the “secret” emails (Figure 3) and the continuous reference of my

being “too critical of staff” and “not fitting in with the school’s ethos”. In putting my case forward, I referred to the Clarke Report,³⁶ which was produced by the former counter-terror lead who conducted an investigation into the events surrounding the scandal. I pointed out that both various findings and the way in which these findings were worded resonated with the way the defendant put forward its case and its witnesses gave evidence. I argued that these statements and their resonance with the Clarke Report were not a coincidence, but rather a code for my being part for the Trojan Horse affair.

In my appeals, I repeatedly pleaded with the judge to reconsider the decision by taking account of on the “context”. This term “context” is one that the legal system does not appear to understand and refuses to understand. Had I not been a Muslim, who wore a headscarf, who attended one of the schools implicated in the Trojan Horse affair, had I not been head girl at that school (which was somehow discovered by the teachers at the academy chain and used to paint me as an extremist Muslim), had I not completed my dissertation on how the Trojan Horse affair impacted pupils who attended the schools (which was taken by the teachers to have been conducted on the Trojan Horse affair), had Islamophobia not been on the rise, had the Trojan Horse affair not happened, the events surrounding my dismissal would have been very different. Further, the “comparator” introduced by the tribunal of a Jew or a Christian having been treated in the same way by the head teacher would not have applied unless an identical Jewish or Christian Trojan Horse plot had unfolded in Birmingham, and anti-Christian or anti-Jewish sentiment and attacks were on the rise. It is for this reason, that the comparator, and by extension the logic exercised by the tribunal, is flawed.

In October 2017, there was a second hearing to determine the victimisation claim and additional detriment caused when the school passed on discriminatory and defamatory information about me to Birmingham City Council. During this hearing, new evidence emerged. The teacher that I had sent my dissertation to in good faith—Adele Johnson—who was the head of safeguarding, admitted during cross examination that the co-head of department had called her after my dismissal and asked her to forward my dissertation to her. Chronologically, this matched the time frame for when I had submitted the email to the human resources representative at the school arguing that my dismissal was an injustice. I argued in my appeal post October 2017 that this indicates that the reason why my Masters dissertation was

36 Peter Clarke, *Report into Allegations Concerning Birmingham Schools Arising from the ‘Trojan Horse’ Letter* (London: DFE, 2014).

asked for at that point in time was because the teachers needed to prove that I was indeed linked to the Trojan Horse affair, which would support the decision to dismiss me. The tribunal made no reference to this argument in the deliberation of its decision. I also wrote to the tribunal asking for reconsideration on the basis that new evidence had emerged however, this was rejected and I was instead, accused by the judge of “wanting a second-bite at the cherry”.

Discrimination is difficult to prove in law, so I have heard. However, what I have experienced is that discrimination is not difficult to prove in law but rather, it is difficult for it to be supported by the law. By this, I mean that, while I proved in law that I had been religiously discriminated against, by highlighting the broader context within which my dismissal took place, the events that took place before and after my dismissal as shown by documents obtained via an SAR, and through evidence acquired through cross-examination, this was not supported by (a) the law and (b) its gatekeepers. The law—Equality Act (2010)—does not allow for the contextual background to be considered. For instance, if from tomorrow onwards, wheelchair users started to be negatively portrayed in the news media on a daily basis, public perception of wheelchair users would become negatively skewed for any number of reasons. And if a scandal involving a small group of wheelchair users had the nation hooked further, and if, amidst all this, a wheelchair user was dismissed from their job because he objected to the showing of an 18-rated video depicting a wheelchair user causing a non-wheelchair user to commit suicide, there would be a rational inclination to view the dismissal of the wheelchair user in the broader context within which wheelchair users had been represented. However, if the dismissed wheel-chair user obtained through an SAR correspondence in which non-wheelchair user staff were alleging that the dismissed wheel-chair user was part of a negative wheelchair user group, along with documents that claimed that non-wheelchair users agreed with the dismissed wheelchair user’s concerns about the video being inappropriate, it is highly likely that we would reach a rational conclusion that discrimination against the wheelchair user on the grounds that he was wheelchair user was involved in the wheelchair user’s dismissal. It would not matter whether there was a perception or an assumption. The law, it seems, evaporates behind the smoke screen of loopholes afforded to it by linguistic technicalities. This shows that much work needs to take place within the legal field to bring it up to date with the “context” of the social landscape relating to cases brought before it.

5 Multiple Jeopardy?

The point around which the various layers of inequality had formed was religion. My being in a school environment as a Muslim teacher and raising a concern about an 18-rated video was taken not as a safeguarding concern as it should have been, but it was taken as a “religious issue”. My educational background as an Oxford graduate, a Masters degree holder, and a PhD candidate was not considered enough for my viewpoint to be considered reasonable and well-informed. My educational trajectory failed to convince the teachers at the school of my ability to reason and to think rationally and independently. The number of times I had worn a degree mortarboard was never going to replace the hijab that I wore on my head, which brings to mind what Malcolm X once said: “What do you call someone with a BA, MSc, PhD? You call him the n word. Basically what the white person calls him.”³⁷ My case demonstrates that decades later, Malcolm’s wisdom endures.

The Trojan Horse scandal³⁸—an alleged plot involving hardline Islamists attempting to take over Birmingham schools—politicised a city and its Muslim residents, and by extension British Muslims. In the minds of the nation, the reach of “Islamic extremism” had infiltrated the schooling system, which caused a shift in the educational landscape, and sanctioned teachers as “officers” policing the thoughts and behaviours of Muslims within the field of education.³⁹ As a result, when I raised the concern about the graphic, 18-rated video on the morning of 23 September 2015 to my line manager and head of department, I was in fact, in that place, at that time, externally experienced by the “native”⁴⁰ as the embodiment of fear, of threat, of radical Islamic extremism.

Sociological theories such as “multiple jeopardy”,⁴¹ while have gone a long way in the understanding of the experience of inequalities at grassroots level, often overlook religion as a marker of inequality, as their focus is skewed towards race, class, ethnicity and gender. Further, it is important to note that these social markers of identity are given equal weighting within theories of multiple jeopardy, which implies that race, class, ethnicity and gender intersect in equal ways to create a multiple jeopardy. However, with the rise of Islamophobia and the repeated portrayal of Muslims as the enemy within,

37 <http://csufacultyvoice.blogspot.com/2013/03/what-do-they-call-black-person-with-ph.html>

38 Tahir Abbas, “The ‘Trojan Horse’ Plot and the Fear of Muslim Power in British State Schools”, *Journal of Muslim Minority Affairs* 37/4 (2017): 1-16.

39 Bi, “Panopticons”.

40 Said, *Orientalism*.

41 King, “Multiple Jeopardy”.

Islam as a religion and its Muslim followers have now acquired a “minority status”, which acts, I argue in the Bourdieuan sense, as a negative religio-social capital, that can negate positive social-cultural capital(s) such as education, as well as tip the scales of interrelating and intersecting social identity markers that create multiple jeopardy to lean towards one marker more than others. In other words, the rise in Islamophobia and anti-Muslim sentiment has created a unique social penalty for Muslims in which religious identity, while it intersects with race, ethnicity, gender and class, at the same time outweighs them in this social equation so that we have a more than simply multiple jeopardy.

My case is testament to this more-than-multiple-jeopardy social predicament. As a British-Muslim-woman-litigant-in-person up against an act of discrimination in the workplace that led to multiple secondary acts of discrimination throughout the court case, legal professionals of whom the majority were white and middle-class and unable to grasp “context”, socio-economic pressures throughout my time as a litigant-in-person but also as a PhD student and part time employee, I best describe my experience as being trapped inside a glass Rubik’s cube, trying to align the squares from the inside all the while different agents are at work, to align the squares from the outside. Perhaps the most effective tool I employed to change this experience was the complexity of my personhood, which had developed as a survival instinct, as a direct result of being dismissed. Overnight, I stepped into an array of roles—detective, investigator, researcher, solicitor, barrister and so on—so that the degree to which I could turn the individual cubes from the inside of the Rubik’s cube relied on my ability to perform in all these roles simultaneously.

The relevance of the glass Rubik’s cube as a metaphor is heightened by the “transparency” with which the experience of inequality occurred while being at the same time deeply remote and isolated from the experiences of many of my peers and work colleagues. For instance, there was transparency in the face-to-face contact with the legal system and the defendant through the constant exchange of case files, hearing bundles, judge’s orders, court attendances, etc. while at the same time the psychological, emotional and physical impact of the case continued to mount. I recall one particular moment that perhaps best illustrates this glass Rubik’s cube model of inequality. On the morning of the first day of the full hearing in December 2016, the judge informed me that the five days might not be enough to hear all the evidence, deliberate and reach a verdict. I felt my heart thump and beat faster, my temperature rise, and a black cloud cover my sight; I felt I was struggling for breath, tears flowed from my eyes. The hearing had not yet begun but I had crumbled at the thought of not getting closure at the end of the week—something with which I had long consoled myself and thus painfully awaited. The judge ruled a short break

would be possible to allow me to collect myself. It was this “transparent” yet “unattainable” glass Rubik’s cube of a social situation that I found myself stuck in—and that I continue to find myself stuck in—that better illustrates, in an embodied way, what modern-day inequality looks and feels like.

6 Conclusion

Employing an auto-ethnographic methodology, I have attempted to provide an insight into the experience of taking on a case at the UK Employment Tribunals as a litigant in person, to seek justice for the discrimination I experienced. While the unfair dismissal whistleblowing and victimisation claims were successful, the direct religious discrimination claim was rejected. I have argued that the logic for this is flawed because the tribunal failed to consider the “context” within which my dismissal took place. In positioning my experience through this article, I have attempted to show that, as Muslims, we are afforded a particular type of resistance and agency, that which is contained within the margins of the frameworks set-out by gatekeepers (law professionals in my case). Further, I have shown that, for Muslims, sociological theories such as multiple jeopardy fail to account for the way in which the matrix that is religio-social capital, operates negatively for Muslims, negating positive social capitals such as education, and therefore carries greater weight in the social penalty that Muslims experience than other intersecting social identity markers such as race, gender, class, ethnicity, age and sexual orientation.