

Defacing the Dignity of Minorities through the Prism of the Covid-19 Pandemic: The Plight of BAME Groups in Britain

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Abstract

This article examines the dignity of minority groups through the prism of the Covid-19 pandemic in Britain. It argues that, despite the significant achievements by successive governments in promoting equality in Britain; the emergence of the Covid-19 pandemic has shown that the BAME groups still face undignified treatments which affirm the status-quo. In respect of the UN Charter and international law, this article contends that the 'right to equality' is a recognised and established human right principle, seeking to protect the worth of all human beings without distinction. Procedurally, the government and public institutions owe it as a public sector equality duty (PSED), to implement creative and substantive policies/programmes to foster equal opportunities for all individuals to thrive. Similarly, the article argues that though the Equality Act of 2010 has established legal remedies to stem discriminatory practices in places of work; however, the Pandemic demonstrates that BAME groups' remain marginalised including the LGBT community. Furthermore, this article draws on researches conducted by the Institute for Fiscal Studies, Oxford Independent Research Centre, National Health Service and UK's Parliament's records, to contend that BAME groups were disproportionately suppressed by the Covid-19 due to unfavourable governmental and institutional policies. Lastly, this article concludes that the unfavourable treatments suffered by the BAME groups at the hands of government agencies during the pandemic compromises the people's human dignity.

Keywords: BAME Groups, Covid-19, Dignity, Discriminatory policies, Human Rights and LGBT

DOI: 10.7176/JLPG/135-01

Publication date: August 31st 2023

1. Introduction

Despite significant achievements realised at the international and national levels to ensure that persons of ethnic backgrounds are treated equally; so as, to gain substantive opportunities to promote their social, economic, political and cultural wellbeing, the emergence of the Covid-19 pandemic (Covid-19) has shown that vestiges of discriminatory procedures still pervade facets of the British society which need redress. At the international level, the 'right to equality' (RTE) is enshrined in a myriad of international conventions which is translated into substantive laws in some countries to protect individuals. In the British society, for example, the Equality Act (2010) (the Act)¹ represents a genuine effort to promote the welfare of all citizens without distinctions. However, the implosion of the Covid-19 pandemic offered an opportunity for certain public agencies to undermine the vision and objective of the Equality Act by demonstrating the unequal and marginalised status of the BAME groups in the British society. Against that background, this article examines the challenges confronting ethnic minorities, especially during the pandemic, by organising the discussion as follows: brief antecedents of equality in international legal history, selected international law provisions protecting RTE, procedural equality, substantive equality, Equality Act (2010), discrimination against LGBT, sources of inequality in the British society as affecting the BAME groups, factors responsible for poor treatment of BAME groups and a conclusion.

2. The Genesis of the Principle of Equality in International legal history

The right to equality (RTE)/ non-discrimination was a thorny issue and source of contention at the international community plane. At the 1919 Paris Conference which was held after the First World War, Japan worked assiduously to have the principle of racial equality inserted into the Covenant of the League of Nations.² Consequently, a majority of eleven out of seventeen members of the Conference Commission voted in favour of the Japanese proposal; yet, President Wilson of the United States "suddenly declared from the chair that the amendment had failed."³ Despite fierce protests by several delegates against the rejection of the amendment, President Wilson insisted to the utter disappointment of the Japanese delegation that the amendment had not been adopted.⁴ Thus from the outset, the League of Covenant did not even entail any explicit reference to the

¹ The Equality Act (2010),

² Mbaye, K. 'Article 2, Paragraph 1, La Charte des Nations Unies –Commentaire article', (1991) 2nd edn, Jean-Pierre Cot and Alain Pellet, (eds) (Paris, Economica) 83.

³ Mbaye, K, 'Article 2' *ibid*

⁴ Paul Gordon Lauren, 'Power and Prejudice: The Politics and Diplomacy of Racial Discrimination, Second Edition, (Oxford: Oxford University Press, 1995).

principle of equality between States.¹ Perhaps the political disdain exhibited by President Wilson to reject the Japanese delegation's "right to equality" provision might have laid the formidable precedent for the secondary treatment meted out to minority communities in most western countries, including Britain.

However, after the global war and its attendant destructions, some changes were made to the Charter of the United Nations, with a view to correcting the deliberate and carefully orchestrated discriminatory practices of the western powers against developing states.² Thus, the world could not stand idle to the visceral practices and the threat to peace that they represented was instructive. In the preambular paragraph to the Charter of the United Nations (the Charter), the peoples of the Organisation proclaimed their determination: "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small."³ Accordingly, Article 1(2) of the Charter outlines the purposes of the United Nations, inter alia, to "develop friendly relations among nations based on respect for the principle of equal rights and self-determination of all peoples" and to "achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and the fundamental freedoms for all without distinction as to race, sex and language."⁴ Similarly, Article 2 (1) of the Charter emphatically proclaimed that the "organization is based on the principle of sovereign equality of all its members", and the "principle of non-discrimination in the observance of human rights is reaffirmed in Articles 13(1) (b), 55 (c) and 76 (c) respectively."⁵ The Charter recognises that international peace and security depend to a large extent on "universal respect for, and observance of, human rights and fundamental freedoms for all without distinctions as to race, sex, language, or religion."⁶ Significantly, those Charter provisions as alluded to in the above, sought to place equal right of individuals and States on a justifiable pedigree within what is now recognised as the international constitution.⁷ This historical antecedents cast the international character of the RTE of which some provisions are discussed in their respective international conventions to demonstrate states', (Britain included) obligation to protect their citizen against any shape or manner of discrimination.

2.1 Selected Provisions of International Conventions protecting Equality of Rights

A copious body of conventions, regulations and resolutions exist to promote and protect the right to equality within the international community with the following as examples. First, the Universal Declaration of Human Rights (UDHR) (1948),⁸ is an enduring International Convention that is believed to have achieved customary law status,⁹ advocating that human beings must be treated equally in all matters without distinction. Article 1 of UDHR states that: "All human beings are born free and equal in dignity and rights"¹⁰; whilst Article 2 of the UDHR proclaims that: "Everyone is entitled to all the rights and freedoms set forth in this Declaration without discrimination such as race, colour, sex, language, religion, political, opinion, national or social origin, property, birth or other status."¹¹ Drawing inspiration from the Charter, the UDHR appears to have affirmed the view that equality of the human person is paramount in advancing peace and security in the democratic governance of societies. Specifically, Article 7 of UDHR states, that: "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of the Declaration and against any incitement to discrimination."¹² The close relationship between equality and discrimination is very instructive because practically there is a difference between substantive and nominal equality which is not the focus of this article.

Second is the International Covenant on Civil and Political Rights (ICCPR).¹³ Article 2 of the ICCPR is probably one of the bedrock conventions which promotes gender equality and ensures that men and women are accorded equal civil and political rights in civilised communities around the world.¹⁴ The issue of gender equality transcends the civil –political spectrum and extends to the economic arena too. As contended later in

¹ Mbaye, K. 'Article 2' *ibid* (n2).

² Mbaye, K. 'Article 2', *ibid*.

³ The Preamble: The Charter of the United Nations and Statute of the International Court of Justice, (New York: United Nations, 1973).

⁴ UN Charter, Articles 1(2) *ibid*.

⁵ UN Charter, Articles 13 (1) (b), 55 (c) and 76 (c), *ibid*.

⁶ UN Charter, Article 55 (C) *ibid*.

⁷ Ronald St. J. Macdonald, The Charter of the United Nations as World Constitution, *International Law Studies*, Volume 75

⁸ UN Universal Declaration of Human Rights (UDHR) (1948), available at < <https://www.un.org/en/about-us/universal-declaration-of-human-rights> > accessed October 20, 2022.

⁹ Hannum, H. 'The Status of the Universal Declaration of the Human Rights in National and International Law', *Georgina Journal of International and Comparative Law*, (1995) 25: Issues 1 & 2287-398.

¹⁰ UN Universal Declaration, Article 1, *ibid*. (n12)

¹¹ UN Universal Declaration, Article 2, *ibid*. (n12)

¹² UN Universal Declaration, Article 7, *ibid*. (n12)

¹³ UN International Covenant on Civil and Political Rights (ICCPR) (1966), available at < <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> > accessed October 20, 2022.

¹⁴ Mark Goodale, *Reinventing Human Rights*, (California: Stanford University Press, March, 22, 2022).

this article, women and children were the hardest hit during the recent Covid-19 pandemic in Britain; eliciting the question whether the principle of equality is still relevant. Similarly, Article 27 of the ICCPR clearly proclaims, that: “ethnic, religious and linguistic minorities be treated equally in respect of their dignity as human beings; and it further states that “persons belonging to such minorities shall not be denied the right, in community, with other members of their groups, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”¹ The principle of equality is relevant in light of the principle of non-discrimination because in most cases; failure to treat another person equally may result in discriminatory outcomes, as explored regarding the BAME and LGBT groups in later parts of this article.

Third, the International Covenant on Economic, Social and Cultural Rights (ICESCR),² recognises the need to accord all manner of people equal treatment with respect to sharing and enjoying state, communal or ethnic resources and protection during normal and crisis times without distinction. By virtue of Article 3 of the ICESCR, states are required “to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights as set forth in the present covenant.”³ The issue of equal right and access to enjoying state benefits and resources has been a thorny challenge for successive governments in the British society; however, the Covid-19 crisis has renewed the debate on the subject, revealing substantial examples of unequal treatment suffered by the minority groups of which the BAME are severely affected.

Fourth, the Convention on the UN Rights of the Child (UNCRC),⁴ is one prominent international treaty signed by the international Community, including the UK, to protect and guard the wellbeing of all children within their jurisdictions. Equally, Article 2(1) of the CRC provides that: “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or opinion, national, ethnic or social origin, property, disability, birth or other status.”⁵ As a protector of all children, Article 2(1) of the CRC uniquely aims to accord children in the United Kingdom every support they need to grow so as to fulfil their physical, emotional and psychological development, for a better future without discrimination on ethnic status. Conversely, pre-Covid-19 government policy such as restricting social benefits to two children coupled with stiffer lock-down measures contributed to unveiling the unequal status and its attendant hardship faced by the BAME community throughout the country.

The Framework Convention for the protection of National Minorities (FCfPNM)⁶, is a unique international regime because it is “the first ever legally binding multilateral instrument dedicated to the protection of national minorities in general.”⁷ Article 27 of this Convention states that “protection of national minorities and of the rights and freedoms of persons belonging to those minorities’ forms an integral part of the international protection of human rights, and as such falls within the purview of international co-operation.”⁸ On this issue, it is argued that “...members of national minorities possess equality rights and freedom of association, expression, thought conscience, and religion.”⁹ Treating people of minority backgrounds on equal basis represents not only respect for human dignity, but also a deference towards good governance, as required in civilised communities. The above international provisions had contributed and still play a key role in advancing equal treatment of all persons in the international community. However, minority groups were subject to systemic and secondary treatment during the pandemic as they were restricted from accessing government support schemes, due to their immigration and ethnic status.¹⁰ This phenomenon raises the issue of procedural and substantive opportunity, which constitute aspects of discriminating against minority groups in the UK.

3. Procedural Equality of Opportunity

Equality of opportunity is a common theme pursued by several campaigners to promote equal treatment and equality of outcome, and is given statutory backing in many states, including Britain in the UK.¹¹ Proponents of this principle recognise that equal treatment against a background of past and structural discrimination can perpetuate disadvantages.¹² Drawing on the analogy of competitors in a race, Freedman argues that “true equality

¹ UN ICCPR (1966), Article 27, *ibid.* (n17).

² UN International on Economic, Social and Cultural Rights (ICESCR) (1966), available at < <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> > accessed October 20, 2022.

³ UN IESCR (1966) Article 3, *ibid.* (n19)

⁴ UN Convention on the Rights of the Child (CRC) (1989)

⁵ UN CRC, Article 2 (1), *ibid.* (n21).

⁶ The Framework Convention for the Protection of National Minorities (FCfPNM) (1994), available at < <https://digitallibrary.un.org/record/520831?ln=en> > accessed October 20, 2022.

⁷ FCfPNM (1994), *ibid.*

⁸ International Covenant on Civil and Political Rights, article 27; UNGA Res 220A (XXI)

⁹ Macklem, P. ‘Minority Rights in International law’ (2008), *International Journal of Constitutional Law*, Vol. 6, Issue 3-4, 531- 552.

¹⁰ Silvia Angeletti, *Religious Minorities’ Rights in International Law: Acknowledging Intersectionality, Enhancing Synergy*, (2021), *Religions*, 12:691, available at:< <https://doi.org/103390/re11209691> > accessed October 12, 2022.

¹¹ Equality Act, (2010)

¹² Freedman, S. ‘Substantive Equality Revisited’ (2016) *International Journal of Constitutional Law*, Vol. 14, Issue 3, 712-738.

is hardly achieved if individuals begin the race from different starting points”¹; and also opines that “focusing solely on equality of results is to subordinate the right of individual treatment to a utilitarian emphasis on outcomes.”² Where individuals enjoy equality of opportunity, the problem of institutional discrimination may be overcome; thereby creating favourable conditions for individuals to be treated on the basis of their individual qualities/merits without regard to race or sex.³ Freedman’s analogy suggests that governments, including the British government, have an obligation to implement laws and policies that create opportunities, which are fairer and open to all persons in their jurisdictions, to participate in the socio-economic activities of the country.⁴ Thus, to achieve equality of right especially among the minority groups, requires that procedural and substantive equality are implemented substantively to advance the dignity of all persons without discrimination.

Another view is that equality of opportunity entails the removal of impediments to the advancement/achievement of women or minority groups, but elimination of such impediments in themselves hardly guarantees substantive fairness or an outcome.⁵ For instance, the abolition of word -of-mouth recruitment or non-job related selection criteria hardly removes procedural obstacles to create substantive opportunities for minority groups. Thus, those who lack the requisite qualifications as a result of past discrimination will be unable to meet job-related criteria; where women with childcare responsibilities will still struggle to take on paid work. Former US President, Lyndon Johnson, once remarked, that it is “not enough to open the gates of opportunity. All our citizens must have the ability to walk through those gates.”⁶ Notwithstanding efforts by the British government to create equal opportunities for all persons, including minority groups, the fact still remains that procedural equalities alone cannot stem the discrimination suffered by the BAME minority groups as manifested during the pandemic.

3.1 Substantive Equality

In contrast to the above, a substantive equality of opportunity requires that strategies be adopted to ensure that persons from all sections of the British society have a genuinely equal chance of meeting the established criteria for access to a particular social good.⁷ This requires that concrete policies and programmes- such as education, training and family –friendly measures- are implemented at the local community, regional and national level, to enable all citizens especially the minority groups, realise their substantive rights as dignified human beings. This also raises the issues of access, since prevailing criteria of merit may themselves reflect and reinforce existing patterns of disadvantaging minority groups. For example, a criteria such as continuous work history would reflect a view that experience out of the paid labour force is of value to a future job. Consequently, minority groups who had left the paid workforce or possess little educational qualifications would be subject to discrimination /detriment.⁸ Hepple argues that, “one is not providing genuine equality of opportunity if one applies an unchallenged criterion of merit to people who have been deprived of the opportunity to acquire “merit.”⁹ Practically, equality of opportunity is hardly deployed in its substantive sense when drafting equality laws. Hence, equality of opportunity, like equality of results, remains at most a partial basis for grounding the right to equality.¹⁰ Moreover, Fredman also contends that substantive equality extends beyond the confines of a single measure in addressing the disadvantage, stigma, stereotyping, prejudice, violence, enhanced voice and participation being advocated by government/public institutions.¹¹ This is because substantive equality should be responsive to addressing the needs of all persons in society, especially the minority groups; and, this can be achieved by translating laws and policies into practical actions; so that, individuals could access public resources without restrictions as to ethnicity or status. Under the Equality Act (2010), the government broadened the scope of protection to ensure that minority groups, including the LGBT; take advantage of the opportunities in the socio-economic milieu of society to secure their welfare without discrimination on the basis of race or gender.

4. The Equality Act (2010) and Minority Groups

With the enactment of the Equality Act (2010), a profound political statement was made by British government to promote and protect the human rights of all employees in the workplace by stemming overt and covert forms of discrimination. Besides positive measures being implemented by successive governments and agencies to

¹ Freman, S. ‘Substantive Equality Revisited’ (2016), *ibid*.

² Fredman, S. ‘Substantive Equality Revisited’ (2016), *ibid*.

³ Fredman, S. ‘Substantive Equality Revisited’ (2016), *ibid*.

⁴ Fredman, S. ‘Substantive Equality Revisited’ (2016), *ibid*.

⁵ William, S. *Introducing Employment Relations: A Critical Approach*, 4th edn, (Oxford: Oxford University Press, 2020).

⁶ Lyndon B.J. ‘*Voting Rights, Another Affirmative Action Mess*’ Address at Howard University, (4th June 1965), in Abigail Thernstrom, (eds) (1996), No. 42, 43U.CL. A. L. REV. 2031-2037.

⁷ William, S. *Introducing Employment Relations: A Critical Approach*, 4th edn. (Oxford: Oxford University Press, 2020).

⁸ Hepple, B. ‘Discrimination and Equality of Opportunity- Northern Irish Lessons’ (1990) 10 Oxford J. Legal Stud.408, 411.

⁹ Hepple, B. ‘Discrimination and Equality of Opportunity-Northern Irish Lessons’ (1990), *ibid*.

¹⁰ Hepple, B. ‘Discrimination and Equality of Opportunity-Northern Irish Lessons’ (1990), *ibid*.

¹¹ Fredman, S. ‘Substantive Equality Revisited’ (2013), *International Journal of Constitutional Law*, Vol. 4, Issue 2, 712-738.

promote a fairer society free from discrimination, steep forms of discrimination persist across the British society, and largely experienced among minority groups as examined subsequently.

5. Discrimination against LGBT Community during Covid-19 pandemic

The Lesbian, Gay, Bisexual and Transgender (LGBT) community in Britain constitute an integral part of the British society, with substantive and creative contributions towards the social, economic and political prosperity of the state. For example, some researchers are of the view that: “The patterns for lesbian women—with women in same-sex partnerships having higher levels of education, higher wages, and greater labor force attachment than women in heterosexual partnerships—are consistent with the theory of human capital accumulation and specialization within the household. Lesbian women who realize early in life that they will not marry into a traditional household will generally invest more heavily in market-oriented human capital...”¹ This statement underscores the point that the LGBT community contributes to the British economy by investing its financial resources and diverse creative forces to grow and expand the fortunes of the state. Yet, besides its active participation in the British society, the LGBT community suffers discriminatory treatments for choosing a life perceived to be contrary to the norm. In this regard, some commentators have suggested that: “Significant proportion of young homeless people may be lesbian, gay or bisexual. In their study of homeless LGB youth, they found that this group of young people were particularly vulnerable and conclude that choosing a lifestyle ‘against the norm’ may have material implications.”²

Although these unfavourable and discriminatory practices against the LGBT community had been latently in existence for years, the emergence of the pandemic has highlighted their misery by demonstrating how discrete health and emergency policies were deployed to suppress the dignity and wellbeing of such community, particularly during the pandemic. Similarly, this feat suffered by the LGBTQ resembles what the BAME community also experiences daily and severely during the pandemic, with majority of them denied access to socio-economic support on the grounds of illegal immigration status and related bureaucratic policies.³ Furthermore, it is contended that despite advancement in socio-economic resources coupled legislative reforms to protect the welfare of the LGBT community in Britain, discriminatory and bureaucratic policies still pervade the corridors of public institutions, to undermine the established rights and entitlements due them. As evidenced during the pandemic, the LGBT community’s access to health care and social amenities were stifled.⁴ Moreover, a commentator argues that diversity in human population creates novel and entrepreneurial opportunities that advance societal progress; thus, the LGBT community as one such creative group should be protected in order that they would contribute creative and innovative ideas to shape the competitive edge of Britain as an economic force at the domestic and international business arenas of the 21st century.⁵

However, a survey conducted by Greasley (1999) states that LGBT issues are not given prominent attention in Trade Union or Employment policies. Greasley opines thus: “This could be interpreted as a weak commitment to lesbian and gay equality issues. He further points out that even when a union has a formal policy commitment to equality, this may not be followed through with the production or dissemination of relevant literature or the introduction of awareness training. Strikingly, less than half of the unions responding to Greasley’s (1997) survey indicated that discrimination against lesbian and gay employees would be considered a disciplinary offence.”⁶ The Lukewarm attitude by successive British Governments and allied public agencies, to properly address the plight of the LGBT community, with specific respect to health and social security are highlighted by the pandemic. Equally, the LGBT Foundation contends that: “Factors related to Covid-19 such as having to stay inside, having normal routines disrupted, being unable to see loved ones, and anxiety around health are having detrimental effect on the mental health of many of the LGBT people.”⁷ Unlike the larger British society, the LGBT community is a marginalized group with difficult in accessing normal or scheduled health treatment which eventually undercut their social welfare. Moreover, the British Broadcasting Corporation (BBC), also reported on the predicament of the LGBT community, stating that: “One possible reason for this is how support systems for the LGBTQ+ community often differ from those for cis-gender and cis-heterosexual people. The term “chosen family” is used to describe the communities that LGBTQ+ people to forge, and

¹ Black, D.A., Sanders, S.G. and Taylor, L.J., 2007. The economics of lesbian and gay families. *Journal of economic perspectives*, 21(2), pp.53-70.

² Dunne, G., Prendergast, S. & Telford, D. (2002) ‘Young, Gay, Homeless and Invisible: a growing population?’ *Culture, Health and Sexuality*, 4(1): 103-115.

³ Ryan-Flood, R., (2004). Beyond recognition and redistribution: A case study of lesbian and gay workers in a local labour market in Britain. *Gender Institute: London School of Economics*.

⁴ Siegel, S.N., (2019). *The Political Economy of LGBT Rights*. In *Oxford Research Encyclopedia of Politics*.

⁵ Qian, H. (2013). Diversity versus tolerance: the social drivers of innovation and entrepreneurship in US cities. *Urban Studies*, 50(13), pp.2718-2735.

⁶ Greasley, P. (1999) ‘British Trade Unions and Sexual Diversity: Survey Evidence since the 1980s’. In Hunt, G. (ed) *Laboring for Rights: unions and sexual diversity across nations*. Philadelphia: Temple University Press

⁷ BBC News (2020)

evidence has shown the strengths of these groups. They operate as safeguards against depression and suicidality caused by stigma and discrimination, and particularly among young LGBTQ+ people- these connections may be more effective at reducing poor mental health than even individualised approaches such as cognitive behavioural therapy.¹

Notwithstanding the global effects of the pandemic on society, some key public institutions including the NHS were profoundly overwhelmed by workload, forcing it to rationalise services which discriminated against the LGBT community; and restricted the LGBT community's access to medical attention for a period of more than 34 months. This has compounded the psychological welfare of the LGBTQ community as well as practices and policies which were implemented by public agencies during the pandemic reinforce the vestiges of inequality pervading the frontiers of the British society. The discriminatory measures suffered by the BAME groups during the pandemic have traces in legal jurisprudence. For example, in *Regina v Immigration Officer at Prague Airport* (2004), the Lord Justices reasoned that “[B]ecause people rarely advertise their prejudices and may not even be aware of them, discrimination has normally to be proved by inference rather than direct evidence. Once treatment less favourable than that of a comparable person [...] is shown, the court will look to the alleged discriminator for an explanation. The explanation must [...] be unrelated to the race or sex [...]. If there is no, or no satisfactory explanation, it is legitimate to infer that the less favourable treatment was on racial grounds.” The implication of this judgment is often the standard practice in employment law, which adopts the use of inferences as affirmative proof rather than expect direct evidence. The relevance of this judgment is that most of the disadvantages suffered by the BAME community and by extension the LGBTQ group could have been challenged successfully at the court of law; since, the evidence will be examined on the basis of inference rather than by experts to make a determination.

In another case (*Swiggs and Others v Nagarajan*, 1999), the Lord Justices also explained that “Direct evidence of a decision to discriminate on racial grounds will seldom be forthcoming. Usually the grounds of the decision will have to be deduced, or inferred, from the surrounding circumstances. [...] Members of racial groups need protection from conduct driven by unrecognised prejudice as much as from conscious and deliberate discrimination.” More importantly, the obligation to protect the marginalised especially the BAME groups, with proactive measures to ensure their wellbeing is strongly emphasised in the above judicial wisdom. Similarly, Lord Justice May, argues that it is an established jurisprudence for decades that different treatment (including compared to how another would be treated) and racial difference indicate possible racial discrimination. In such circumstances, adjudicators expect the respondent to convincingly explain. Unless they do, discrimination is legitimately inferred, as a matter of “almost common sense.” Furthermore, the responsibility to protect minority groups against discriminatory tendencies by the judiciary is firmly upheld in those preceding judgments and the one below. Moreover, as established in the above, the burden of proof is “on the balance of probabilities, bearing in mind the difficulties which face a person who complains of unlawful discrimination.” (Neill L.J. in *King v. Great Britain-China Centre [1991] I.R.L.R. 518, as cited by House of Lords – Strathclyde Regional Council v. Zafar, 1997*). Although the above judgments pertain to employment-related cases, the principles are equally relevant and valid for service provision and many other areas of discriminatory matters. Thus, there is no reason not to apply them to all cases relating to discrimination as pertained to situations affecting the BAME and LGBTQ groups.

6. Sources of Inequalities in the British society as affecting the BAME Groups

The COVID-19 pandemic is known to have disproportionately afflicted ethnic minorities in a number of countries as well as in Britain, where the Black, Asian and minority ethnic (BAME) groups have suffered adverse health and socio-economic detriments in respect of the mortality rates compared to the white local population.² Several arguments and studies have been undertaken in an attempt to explain the susceptibility of the BAME groups to the Pandemic. Antonio Gutierrez, the United Nations Secretary-General, has said this on the effects of the pandemic on humanity, thus: “We have seen how the virus does not discriminate, but its impacts do- exposing deep weaknesses in the delivery of public services and structural inequalities that impede access to them. We must make sure they are properly addressed in the response.”³ The UN General-Secretary's statement above, is instructive in two respects. First, it points out the threatening impact of the pandemic on the international community; and second, it reveals the inequalities and socio-economic chasm that has existed among minority groups for ages, but has been exacerbated by the pandemic across all states, especially in Britain. At the national level, every strata of the British society has been affected socially or economically due to the pandemic. However, among the BAME groups, the effects of the pandemic are steeped and entrenched because

¹ The Trevor Project Implications and Poverty in the UK: A Review and top-line Findings from the UK Household Longitudinal Study./Res Gend Stud 20155.23.-72. < <https://core.ac.uk/download/pdf/74372485.pdf>. > accessed October 12, 2022.

² Bhatia, M., (2020). COVID-19 and BAME Group in the United Kingdom. The International Journal of Community and Social Development, 2(2), pp.269-272.

³ Antonio Gutierrez

of the severest hardships experienced by them, with examples enunciated in the paragraphs following.

First, the Institute for Fiscal Studies (IFS) (2020), discussed the predicament of the BAME group in light of the pandemic, stating in a recent survey that: “Bame communities are the harder hit than any other groups in two ways. (a) Being that males are more likely to be the sole providers in a family unit dependents, and second that most of these communities work in shut-down sectors or are unemployed. Combined together, men working in the lowest skilled occupations had the highest rate of death involving Covid-19, with 21.4% deaths per 100,000 males (225 deaths); men from Bangladeshi and Pakistani groups for example are four times as likely to work in shut-down sectors as white men.”¹ Like the financial crisis of 2007-8, minority groups who occupy the lowest ebb of society, especially the BAME groups, tend to be the most socio-economically afflicted. Also, the deprived status of the BAME groups in respect of the pandemic cannot only be attributed to the pandemic solely, but also the failing policies of successive British governments to proactively address societal inequalities with creative and pragmatic policies. The privatisation of certain government enterprises together with the implosion of private corporations without effective state monitoring and regulation mean that people of minority backgrounds are pre-disposed to unfavourable employment conditions which perpetuate their marginalisation particularly during crisis.²

(b) Linked with the deprived working conditions is the challenge of financial insecurity among the BAME groups. The Oxford Centre for Evidence Based Medicine (2020), has stated that the BAME groups are most likely to be financially constrained, explaining that: “*Loss of income has affected many households during the pandemic lockdown. This is especially true for BAME groups who are more likely to have low income, be in zero contract and non-salaried jobs than white ethnic groups. Ethnic inequities have been increasing in employment and housing nationwide since the start of 2000s.*”³ Not only are the BAME groups confronted with endemic financial challenges occasioned by poor remunerations and low-paid jobs at their respective employment sectors, but also lack of strong leadership within political and business circles to champion their welfare and interests.⁴ Further to ethnic inequities, redundancy and furloughed policies that largely marginalised the minority groups is the challenge of deepened insecurity. Simply put, human security is the “belief that human beings should be able to lead lives of creativity, without having their survival threatened or their dignity impaired.”⁵ Yet, the prevalence of threats to life coupled with inadequate provisions to support the existence of decent family life may be considered insecurity.⁶ Those insecurities brazenly undermined the sustenance and livelihood of the BAME groups profoundly during the pandemic. The Runnymede Trust – an advocacy group for ethnic minorities in the UK- has equally suggested in an impact assessment study of minority communities, contending that: “The devastating impact of Covid-19 on Black, and Minority Ethnic communities in Britain is enormous. BME people are more likely than white people to have had to start using their savings for day- to-day spending (14% BME vs 8% white groups); to find it harder thousand times to pay bills or rent (15% BME vs 3% white); and to have had to start skipping meals, or doing so more often than usual, due to financial difficulties (7% BME groups vs 2% white British group).⁷ This is an affirmation of the true status and dire situation in which the community is engrossed.

Second, the discriminatory policies operative in many organisations coupled with financial losses suffered by the BAME groups, have been exacerbated by the pandemic; however, these challenges had been simmering under different governmental and institutional policies over the years. Again, within the NHS unequal treatment towards the BAME groups is pervasive. For example, “inequalities in wages and career development in the NHS, combined with discrimination at work and in society, restrict BAME workers to certain roles, potentially undermining their specialities and services critical for combating Covid-19 and other pandemics.”⁸ Over 10 years of the implementation of the Equality Act, BAME groups working within the NHS and other public agencies continue to face systemic discriminations; impeding them from rising to managerial and executive roles so as to earn substantive financial and professional positions to improve their socio-economic wellbeing. The consequence of such inequality is the disproportionate rates of impoverishment recorded among the BAME

¹ Institute of Fiscal Studies (May 1, 2020). Are some ethnic groups more vulnerable to COVID-19 than others? available at < <https://ifs.org.uk/inequality/chapter/are-some-ethnic-groups-more-vulnerable-to-covid-19-than-others/> > accessed December 2022.

² Williams (2020)

³ Oxford Centre for Evidence-Based Medicine (May 5, 2020), BAME Covid-19 Deaths- What Do You Know? Rapid Data and Evidence Review, available at: <https://www.cebm.net/covid-19/bame-covid-19-deaths-what-do-we-know-rapid-data-evidence-review>, accessed September 20, 2022.

⁴ Joseph, J.P., Joseph, A.O., Jayanthi, N.V.G., Pereira, B. and Gahir, J., (2020). BAME underrepresentation in surgery leadership in the UK and Ireland in 2020: an uncomfortable truth. *The Bulletin of the Royal College of Surgeons of England*, 102(6), pp.232-233.

⁵ Sen, A., Why human security. In international symposium on human security, Tokyo (Vol. 28) (July, 2000).

⁶ J. Ann Ticker, (1992) *Gender in International Relations: Feminism Perspectives on Achieving Global Security* (New York: Columbia University Press), pp. 1-25

⁷ Zubaida Haque, Laia Becares and Nick Treloar, ‘Over Exposed and Under-Protected: The Devastating Impact of Covid-29 on Black and Minority Ethnic Communities in Great Britain, Runnymede- A Runnymede Trust and ICM Survey, (August, 2020).

⁸ Kapilashrami and Bhui (2020)

groups, across the NHS and other professions in Britain.¹

Third, structural and social inequalities impacted individuals in the vulnerabilities of Covid-19 as well as exposed them as food deserts with limited access to healthy foods, lack of green spaces for exercise and fresh air. Ethnic minorities frequently live in areas or regions that are polluted than others, situations which can be exacerbated by lack of service provision, including garbage collection.² These kinds of “structural inequity” are pervasive in ethnic minorities across Britain, and mostly explained the inter-group susceptibility to Covid-19. Closely linked to poor nutrition is the problem of overcrowding which prevails in BAME communities. According to some commentators, the culture of multi-generational living within some Black, Asian and minority ethnic (BAME) communities’ results in overcrowding, thereby placing the elderly and those with comorbidities at risk.³ These disadvantages collectively make it more challenging for Covid-19 social distancing measures to work. Furthermore, Africans are at a higher risk of receiving later and more indigent healthcare compared to other ethnic groups. A pandemic at the Magnitude of Covid-19, with severe economic crises, can only further hamper the delivery and availability of healthcare particularly among BAME groups.⁴

7. Factors which promoted poor treatment of BAME Groups during Covid-19

There are multiplicity of factors that accounted for the unequal treatments suffered by the minority groups in Britain, particularly during the pandemic. This is intricately meshed with laws, regulations and institutional policies to create barriers for the realisation of their human rights and dignity during the lockdown as the following attest.

First, the Institute for Public Policy Research (IPPR) indicated that in 2018, half of all care workers were paid below the real living wage.⁵ According to the IPPR, there are approximately 900, 000 workers whose main job is in frontline care work, with at least 100,000 more doing this work as their second job. And as many as 83% of frontline care workers being women, with disproportionate representation of Black and ethnic minority workers (BAME). The fact that these women and minority groups are paid low wages in a such demanding job coupled with its attendant appalling treatment and working conditions not only support the premise of unequal treatment but also defeats the British government’s policy-mantra of making work attractive to all citizens.

Second, the enactment of the Legal Aid, Sentencing and Punishment of Offenders Act (LAPSO) (2013), introduced cost-saving measures that also removed legal aid from housing problems, family law issues, immigration litigations, employment disputes, including welfare benefits payments.⁶ Although the government has an obligation to streamline state funds so as to promote sanity in the economy, however, with the implementation of the LAPSO, minority groups lost the opportunity of accessing state funding to engage the service of lawyers; in order, to challenge claims of housing, welfare benefits and immigration applications. The inability to pursue the above-listed socio-economic claims, due to limited legal aid and arbitrary laws, discriminate against BAME groups.⁷ Similarly, it is argued that the coalition government (Conservative and Liberal Democrats)’s policy of reforming Britain’s financial structure, including benefit schemes, narrowed opportunities thereby widening the poverty gap among the BAME groups. This is because the removal of legal-aid denies majority of the BAME groups an opportunity to secure the service of professional lawyers, to challenge government agencies on issues relating to discriminatory and arbitrary policies that undermine their livelihoods and dignity.⁸ Similarly, Playton and Obrecht (2017) argued that expensive legal charges and lack of legal aid constitute a barrier to equality. It is undeniable that majority of the BAME groups are financially constrained due to poorly paid jobs; and thus, are unable to engage the services of seasoned and competent legal professionals to fight social benefits claims that protect and uphold their human dignity.

Third, migrant and non-migrant women, in particular, face severe financial difficulties due to their inability to work as well as access healthcare delivery because of bureaucratic immigration policies which exclude and limit them adversely.⁹ The policy of having to pay for medical treatment by non-immigrant women, majority of whom belong to the BAME groups, creates an incentive for public health officials to deny them medical treatment. This is exacerbated by low and insufficient wages in the case of those who work illegally, and thus

¹ Clare Wenham, Julian Smith and Rosemary Morgan, The Gendered Impacts of the Outbreak, (2020), *The Lancet*, 305, 10227, p. 846.

² Bentley (2020).

³ Abuelgasim, E. Saw LJ, Shirke M, Zeniah M, Harky A. Covid-19: Unique Public Health Issues facing Black, Asian and Minority Ethnic Communities: Current Problems in Cardiology- (Aug. 2020) 1:45(8): 100621

⁴ Camille R.Quinn, Shavonda Johnson, Kristian Jones, Ravi Parekh, Additti Munshi and Donte T. Boyd, Social Work and the Next Frontier of Racial Justice: Using COVID-19 as a vehicle for Healing, (June, 2022), *Social Work in Public Health*, available at: <<https://doi.org/10.1080/19371918.2022.2084197>>.

⁵ Dromey and Hochlaf (2018)

⁶ Dona Playton and Stacey L. Obrecht, LAPSO Removed Legal Aids for Private Family Law and Contract or Divorce, but Renames for Risk of Domestic Abuse or Child Abuse, (April 2013), *Wyoming Law Review*, 7 (2), 296-320.

⁷ Owen Bowcott, Legal Aid: How has it changed it 70 Years? *The Guardian*, Wednesday, 26 December 2018.

⁸ Dona Playton and Stacey L. Obrecht, *ibid*, see note 63.

⁹ The Guardian: Opinion- ‘Coronavirus Exposes How Riddle Britain is Racial Inequality’, available at: <https://www.theguardian.com/commentisfree/20/coronavirus-racial-inequality-uk-housing-employment-bame> > accessed October 12, 2022.

restrict the women's capacity to support themselves and their children, especially in matters relating to healthcare and wellbeing.¹ Furthermore, the challenges of paying for medical services, inability to access public social benefits coupled with illegal immigrant status – all contribute to undermine their human dignity and further expose them severely to the threats of the pandemic and consequently increasing the public health risk of the British society.² Moreover, 'there is a proposition that the nature of medical training given to the healthcare professionals in certain parts of the country perpetuates unconscious biases against marginalised groups, thereby prejudicing their future diagnoses of illnesses as well as course of treatment'.³ Although Britain operates a National Health Service (NHS) which delivers free healthcare at most hospitals and health centres throughout the country; yet, the introduction of fee paying for non-immigrants constitutes discrimination towards foreign women, majority of whom belong to the BAME groups. Besides the severity of fee-paying, majority of those women are asylum seekers, refugees, who are processing their documentation, or are spouses/dependents of permanent immigrants, foreign workers and students, who pay regular taxes to the government. Therefore, denying them access to medical treatment on the basis of their immigration status violates the tenets of international humanitarian law which recognises the rights of asylum-seekers and related people to good health care among other socio-economic protections.⁴

Fourth, the government's policy of using the NHS to enforce deportation strategies pose health dangers among vulnerable minority groups and by extension the British public. Some commentators suggest that a government policy which frightens the vulnerable people in society to abstain from healthcare, in normal and pandemic times, is dangerous to public and human society generally.⁵ Aldridge argues that: "*In these circumstances, the balances are clear and there can be no justification for delays endangering the health of vulnerable individuals and public health more broadly. These ideologically driven policies must be suspended with immediate effect pending thorough and independent review.*"⁶ As health ethics require, denying access to healthcare, especially among minority women is not only discriminatory but also perpetuates systemic procedures that undergird inequality. Blundel et al. argue, that: "The specific nature of the economic shock associated with COVID-19 has interacted with many old and deep inequalities. Excluding key workers, most people in the bottom tenth of the earnings distribution are in sectors that have been forced to shut down, and 80% are either in a shut-down sector or are unlikely to be able to do their job from home – compared with only a quarter of the highest-earning tenth. Young people and those of Pakistani, Bangladeshi or black ethnicity are also more affected than others in these respects. Londoners are the most likely people in the country to be able to do their jobs from home.⁷ As a signatory country to the international humanitarian convention, it is appalling to observe that the pandemic was weaponised to either deport or deny the vulnerable access to healthcare/treatment. Despite the government's good-will to protect the poorer families against the menacing threats of the pandemic, some commentators are of the firm opinion that immigrants from- Bangladesh, Africa and other ethnic minority groups- not only suffered financially but also struggled to foot essential bills due to poor remunerations characterised by limited opportunity to secure economically rewarding jobs. These commentators further opined, thus: The crisis has so far impacted the earnings of the poorest households the most. Households in the poorest fifth – as measured by their pre-crisis income – have been hit hardest in terms of earnings, with a fall in their median household earnings of around 15% (or around £160 per month).⁸ Undoubtedly, the perennial impoverished status of the BAME groups in Britain, which had been at the fore-front of successive British governments' policy initiatives did little to improve their worth because the pandemic provided an opportunity for a raft of unfavourable measures to be implemented to the groups' detriment. Marmot engages the debate by stating that: In support of my contention that the real causes of the failure of health to improve are social, are the growing inequalities in health according to deprivation and region. The relation between deprivation and health is graded. Classifying areas of the country by the index of multiple deprivation reveals a strong and consistent gradient: the more deprived the area, the lower the life expectancy, and healthy life expectancy.⁹ The systemic

¹ Sabrina Germain and Adrienne Young, COVID-19 Highlighting Inequalities in Access to Healthcare in England: A Case Study of Ethnic Minority and Migrant Women, (2022) *Feminist Legal Studies*, 28, 301-310.

² Public Health England, 'Beyond the Data: Understanding the Impact of COVID-19 on BAME groups', (London, PHE Publics, 2020).

³ Roberts Dorothy, Is Race-based Medicine good for US: African American Approaches to Race, Biomedicine, and Equality, (2008), *Journal of Law, medicine and Ethics*, 36:537-545.

⁴ David J. Hunter, Covid-19 and the Stiffer Upper Lip- The Pandemic Response in the United Kingdom, Perspective, (2020). *The New England Journal of Medicine*, 382.

⁵ Zoe Gardner, Migrants Deterred from Healthcare during the Covid-19 Pandemic, available at: < <http://www.jcwi.org.uk> > accessed October 12, 2022.

⁶ Robert W. Aldridge, 'Black, Asian and Minority Ethnic groups in England are at Risk of Death from COVID-19: Indirect Standardisation of NHS Mortality Data (2020) *Wellcome Open Res.* 5 (88), doi:10.12688/wellcomeopeners.15922.2

⁷ Blundel R, Joyce, R, Costa -Dias M and XU X, 'Covid-19: The Impacts of the Pandemic on Inequality' (2020), Institute for Fiscal Studies.

⁸ Bourquin P, Delestre I, Joyce, R, Rasul I and Waters T, 'The Effects of Coronavirus on Household Finances and Financial Distress', (2020), Institute for Fiscal Studies.

⁹ Michael Marmot, 'Coronavirus: Why Minority Ethnic Groups suffer More' (June 2020), Science-Museum, available at: <https://www.sciencemuseumgroup.uk.blog> > accessed October 12, 2022.

deprivation of the BAME groups coupled with feeble state policies to stem and promote the dignity endowed them, has largely eroded their dignity which continue to plummet during and post-Covid-19. In spite of the substantial contributions made by the BAME groups toward the socio-economic and political wellbeing of the British society, there is still a need for legislative instruments to be promulgated with judicial remedies adopted to implement substantive policies to ensure that the BAME groups' human rights and dignity are protected and respected irrespective of the contingencies and future occurrences of global crisis.

Conclusion

Pandemics have been experienced unequally with higher rates of infection and mortality among disadvantaged communities, particularly in more socio-economically deprived communities such as the BAME groups. Emerging evidence of human miseries, destructions of socio-economic structures as well as the marginalisation witnessed during and post pandemic reinforce the premise that serious, proactive and novel solutions are required urgently to protect and safeguard the dignity of the British people, of whom the BAME groups constitute a part. As a protagonist of global politics and signatory to several international humanitarian and human conventions, it is imperative that the British government respects its international obligations by implementing genuine and minority-sensitive policies to ensure that all citizens, especially the BAME Groups' wellbeing are respected always, especially in times of crisis like the Covid-19 pandemic. Although the government's policy of absorbing employees' salary during the crisis provided solace to sections of the population, yet it could have done more strategically to address the peculiar welfare of the LGBTQ and BAME communities with a view to preparing them to contribute actively towards enhancing themselves and the country at large.

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