Sexual Harassment, Power and Barriers to Access to Justice: An Intersectional Analysis

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Abstract

In the context of workplace sexual harassment, recognizing and addressing the inequalities that Black women face in seeking access to justice remains a pertinent issue. This article discusses aspects of the author's empirical work on the role of Black women's intersectional identities in influencing their tendency to seek redress for these harms in England and Wales. It draws on intersectionality theory and Rebecca Sandefur's framing of inequalities which shape how individuals engage with legal and legal-like institutions. The article refines Sandefur's understanding of inequalities by demonstrating how different aspects of identity interact with power to influence an individual's decision about pursuing formal avenues of redress. It argues that the participants' decisions on whether to seek legal recourse are shaped by their assumptions about judges and lawyers not recognizing their experiences or giving due credibility to their grievances. The participants' perceptions also influence their willingness to use legal resources to access justice.

Keywords: access to justice; intersectionality; sexual harassment; power.

[A] INTRODUCTION

This article explores the role of identity in shaping the pursuit of access to justice among the Black women who participated in the study. It addresses the question: to what extent do Black women's intersecting identities and power disparities in the workplace influence their decisions to seek redress for sexual harassment? Drawing on the participants' testimonies, this article argues that their decisions to seek redress are shaped by overlapping dimensions of identity, such as race, gender and skin tone, alongside concerns about how experiences of harms may be interpreted in legal settings. The article contributes to the legal discourse on access to justice in England and Wales. Its

originality resides in relying on a "people-centred" approach (Sandefur & Ricca 2024: 59) to understand how inequalities affect an individual's decision to seek legal redress through an intersectional lens. The article also extends the empirical literature in access to justice in three ways. First, it reveals that when intersectional harms remain unrecognized in the anti-discrimination laws in the Equality Act 2010 (EqA), and where individuals anticipate that such harm will not be fully appreciated by legal actors, recognition is a barrier to seeking recourse. Second, it highlights that unequal access to legal knowledge and support services, including organizations such as the Citizens Advice Bureaux (CABx), operates as a barrier to accessing help. Third, the study's findings refine Sandefur's understanding of resources and highlight that, although grievance procedures were available to participants, the interplay between power dynamics and their intersectional identities negatively influenced their decisions for pursuing redress.

This article draws on the author's doctoral project (the study) (Ahamed 2025a). The main research question was concerned with the extent to which intersectional aspects of the Black women participants' identities influenced their understanding of their workplace sexual harassment experiences and decision to seek access to justice in England and Wales. An earlier article (Ahamed 2025b) by the author drawing on the same study (Ahamed 2025a), relied on Felstiner and colleagues' "naming, blaming claiming" framework to examine the degree to which the participants' perceptions of their intersectional identities shaped their ability to recognize their harms (naming), the factors that influenced their attribution of responsibility (blaming) and whether they sought redress (claiming) (Felstiner & Ors 1980-1981). It also considered the participants' perceptions of their employers/managers and how power disparities added to their reluctance to escalate disputes. This article shifts the focus from the participants' decision to seek legal recourse to the constraints they encounter in accessing justice. It examines how the participants' expectations of how their experiences would be recognized within legal processes influenced their decisions to pursue avenues of redress. It draws on intersectionality (Crenshaw 1989; Crenshaw 1991; Cho & Ors 2013) as a theoretical lens to examine the participants' responses as well as Sandefur's understanding of access to justice. While intersectionality theory highlights how factors such as race and gender (Crenshaw 1989) interact to shape experiences of oppression, Sandefur's approach to access to justice illuminates how inequalities affect individuals' ability to pursue formal processes (Sandefur 2008; 2009; 2010; 2019; Sandefur & Burnett 2023). Together, these approaches provide a means to examine

how the participants perceived their harms and how inequalities acted as barriers to seeking recourse.

The structure of the article is as follows: section [B] sets out the methodology used in the study (Ahamed 2025a) and this article. Section [C] provides an overview of Sandefur's notion of access to justice. Section [D] examines the study's findings through Sandefur's understanding of inequalities (Sandefur 2008; 2009; 2010; 2019; Sandefur & Burnett 2023) to demonstrate how forms of disadvantage constrain the participants' ability to seek redress. For the purposes of this article, access to justice is understood as the ability to seek and pursue redress for workplace sexual harassment and the factors that facilitate or impede it.

[B] METHODOLOGY

One of the purposes of the study (Ahamed 2025a) was to examine Black women as individual "subjects" who articulate their own reality and experiences, while recognizing that they belong to a wider social group. This is because, "it is as subject, one comes to voice" (hooks 1989: 42). In centring the participants' voices as individuals, the study was able to capture how they each made sense of their experiences because, as bell hooks observes, it is "as subjects, people have their right to define their own reality, establish their own identities, name their history as objects" (hooks 1989: 42).

The study did not homogenize the experiences of the participants, argue for a monolithic understanding of their identities or essentialize their experiences on the basis that they are connected by a shared racial identity (Lorde 1982: 226). In line with Audre Lorde's notion that Black women "were different" and that their "place was the very house of difference rather than the security of any one particular difference", the study acknowledged "the very house of difference" that Black women occupy, the diverse ways in which they were sexually harassed, and what shaped each woman's decision to seek redress (Lorde 1982: 226).

The study drew on Kelly and colleagues' (1996) view that women's identities are informed by the combined aspects of their experiences along a continuum, rather than being reduced to binary categories, sequential identities, or a linear journey from victimhood to survivorhood. The participants were recognized as having identities beyond their experiences of sexual harm. This included having full embodiment and acknowledgment of their capabilities and of the factors they considered important when deciding on whether to seek recourse. The study adopted

the view that the participants "are all far more than what was done to [them]" (Kelly & Ors 1996: 96).

The study drew on intersectionality to uncover the participants' understandings that may otherwise have remained obscured (Ackerly & True 2020). It adopted Leslie McCall's intra-categorical approach (McCall 2005) to highlight the heterogeneity within the group.[1] This lens revealed the interconnected nature of the participants' intersectional identities and enabled their perceptions of seeking redress to be drawn out. The intra-categorical approach further allowed identity markers like race and gender, as well as aspects such as body shape and skin tone, to be considered. It highlighted how power structures in the workplace resulted in specific dynamics between the participants, and their supervisors, perpetrators, and co-workers which in turn shaped their understandings of their harms and willingness to seek legal remedy. One limitation of the methodological approach was that it did not take into consideration the perspectives of employers, human resource managers, and trade union representatives (Ahamed 2025a).

For the study, data was drawn from semi-structured interviews conducted as relatively informal conversations to foster openness and reflection. The interviews took place during the Covid-19 pandemic between November 2020 and February 2022 and the fieldwork was adapted to accommodate lockdown and mandatory social-distancing measures (Teti & Ors 2020). The pandemic brought renewed attention to the limits and scope of traditional fieldwork approaches (Günel & Ors 2020). To take these into account, Gökçe Günel and colleagues' patchwork ethnography approach, which combines "home" and "field" and reconceptualizes research as a "collaborative" process while recognizing the partial and negotiated nature of knowledge production, was adopted. This allowed for the challenges of the pandemic to be negotiated while preserving the integrity of the research. The approach also conceptualized the use of fragmented data, ensuring that context was preserved in ways comparable to traditional fieldwork methods. At the same time, the effect of the shifting social context of the participants' knowledge production was also explored. Further, the study drew on a broad source of information to capture the dynamic nature of the topic while maintaining the depth and contextual richness associated with traditional fieldwork practices (Günel & Ors 2020).

[1] McCall argues that adopting an intersectional methodological approach enables the ongoing processes through which identity categories are constructed, perpetuated, and challenged within the realm of everyday life to be examined. For further discussion, see McCall (2005).

The interviews were conducted via Microsoft Teams with 15 Black women who had been sexually harassed at work, eight lawyers specializing in anti-discrimination law and three activists working in sexual harassment.[2] This participant pool emerged from individuals who were able to identify and articulate their harm experiences as sexual harassment and the study is therefore shaped by a self-selection bias. The participants are distinguishable from Black women who may have suffered workplace harm, but who found their experiences difficult to articulate, or were unable to recognize their encounter as sexual harassment. The generalizability of the findings, therefore, is limited, as it excludes subtle, cumulative or insidious experiences of harm that are less easily named (Ahamed 2025a). This demonstrates the need for future research to examine the normalization of harm and the ambivalence of women to recognize and name sexual harassment. The limitation of self-selection, however, does not diminish the study's significance in highlighting the reluctance of Black women to seek redress for their harms.

The recruitment process for the interviews posed three main challenges which were dealt with in detail in the study (Ahamed 2025a) and mentioned briefly here. First, the potentially distressing nature of the research topic made recruitment of participants more difficult. To protect participant confidentiality, identifying details in testimonials were anonymized using square brackets. Participants were asked to choose their own pseudonyms, including abbreviations. Second, because many women were working from home during the pandemic, they had to balance their professional lives with domestic responsibilities which put more pressure on their time. This initially limited possible participants, but when Covid-19 measures became more relaxed, engagement improved. Third, as recruitment occurred through social media platforms and direct outreach to law firms and barristers' chambers, there was a fear that potential participants outside these settings could have been excluded. To counteract this, the research aims were publicized through organizations supporting Black women with experiences of sexual abuse which resulted in interest from a further three participants. While these issues informed the recruitment process, they also enabled a more nuanced understanding of the participants' decisions to seek redress for their harms and the barriers they encountered. These are explored in the sections below.

[2] Ethical approval to carry out these interviews and permission were granted by the Social Sciences and Arts C-REC, University of Sussex [ER/NA463/1] [ER/NA463/2] and [ER/NA463/3].

[C] SANDEFUR'S UNDERSTANDING OF ACCESS TO JUSTICE—AN OVERVIEW

In Sandefur's perspective of access to justice, the obstacles that individuals encounter when pursuing legal and law-like institutions are acknowledged (Sandefur 2009; 2019; Sandefur & Burnett 2023). Her approach is consistent with scholarly studies that highlight the need to expand and equalize access to justice (Cornford 2016). She argues that one possible pathway to this is through formal institutions of remedy, such as tribunals and lawyers (Sandefur 2008; Sandefur & Ricca 2024). She suggests, however, that access to justice ought also to include non-legal formal institutions, such as CABx (Sandefur 2008; Sandefur & Denne 2022) and evidenced-based people-centred services (Sandefur & Ricca 2024). Widening access to justice in this way broadens its scope, allows for the inclusion of a wider range of individuals and also consideration of a more diverse scope of issues (Gabbay & Ors 2020).

Sandefur's research draws attention to the effects of cost disparities and resource allocation on individuals and their assessment of their legal needs (Sandefur 2008; Sandefur & Denne 2022; Sandefur & Burnett 2023; Sandefur & Ricca 2024). She examines how identity factors such as race and gender influence the nature and quality of justice afforded. She argues that an individual's understanding of the legal system and their willingness to seek redress are closely tied to their expectations of fair treatment within judicial settings (Sandefur 2008). Her approach also considers whether problems are resolved independently, through support from friends, family or other informal sources of assistance (Sandefur 2019). While Sandefur writes predominantly within the United States context, her perspective is relevant to England and Wales and to the study (Ahamed 2025a) because she takes into account aspects of an individual's identity as an axis of social and economic inequality and considers how these inform a willingness to pursue access to justice (Sandefur 2008; Sandefur 2019; Sandefur & Burnett 2023; Sandefur & Ricca 2024).

However, Sandefur's view (Sandefur 2008; Sandefur 2019) has been critiqued for obscuring challenges that obstruct an individual's engagement with the legal system, including its manipulation by male perpetrators of violence to advance their own power (Magnus & Donohue 2022). Accordingly, there have been suggestions that access to justice should be expanded to accommodate a more multi-layered understanding that prioritizes the safety and challenges of individuals including domestic abuse survivors who face such barriers (Magnus & Donohue 2022). While

acknowledging this critique of Sandefur's approach, the study enabled an intersectional examination of the barriers in accessing justice encountered by the participants in the study to be foregrounded. It also allowed an in-depth consideration of how workplace power disparities influenced participants' decisions to seek access to justice (Ahamed 2025a).

In her analysis of the access to justice literature, Sandefur (2008) categorizes three ways in which inequality may persist. These are helpful in understanding the barriers that participants faced when seeking redress. The inequalities identified informed her subsequent research and evolving understanding of constraints (Sandefur & Denne 2022; Sandefur & Ricca 2024). These insights help illuminate the factors that affected the participants' decisions on whether to seek redress.

Sandefur's first way pertains to how individuals behave when confronted with legal issues. The second classifies an aggrieved individual's understanding about justice, and their views about fair treatment, which in turn influences the pursuit of a particular course of action. The third points to how some problems are recognized by law, others partially and others overlooked entirely (Sandefur 2008). In this context, the study makes two principal contributions to the access to justice empirical literature. First, it refines Sandefur's understanding of resources by identifying internal grievance procedures as organizational resources whose use is shaped by power relations interacting with the participants' intersectional identities; second, it demonstrates how the participants' perceptions constrain their pursuit of formal avenues of redress (Ahamed 2025a).

[D] SANDEFUR: RESOURCES AND COSTS

Sandefur's first classification of inequalities sheds light on how individuals behave when they are constrained by resources and costs (Sandefur 2008). In considering whether to seek legal advice, Sandefur found that costs were not a significant barrier. Rather, individuals did not pursue help because they lacked confidence in a lawyer's ability to resolve their problems (Sandefur 2019). She also found that individuals preferred to cope on their own or with the help of friends and family (Sandefur 2019).[3] In line with Sandefur's research, the findings of the study showed that financial resources played a less prominent role (Ahamed 2025a). Only one participant, Luna, referred to "money" as a constraint when

[3] Research in England and Wales further indicates that the distribution of resources and knowledge, including legal, social, and financial, to which individuals have access also shape these decisions. See also JUSTICE (2019); Busby & McDermont (2020).

contemplating whether to seek legal assistance. Participants GMR and Patti relied on advice from their friends. Participant Anya "told a few friends" and her "partner" about the incident. Similarly, participant Penny explained that, although she shared her sexual harassment experiences with her workmates, she "didn't want to sit through a tribunal and sit with a lawyer and have to rehash everything". The findings revealed that the complexity of the participants' decision on whether to get legal advice was also attributed to how they assumed they would be racialized by lawyers. For instance, participant GMR explained that she felt that because she was Black, "nothing would have been done". She elaborated:

> Black people in society are already looked down on, but for Black women it's even worse … I feel like we're such a vulnerable group, like it's a minority within a minority and there's no point. I think nothing would have been done. When it happened, it's so embedded in my head anyway, that if this happens, you know, brush them off and get on with your day. In my head it was if I brought this up legally or continued it, it would be wasting everybody's time.

Her testimony was echoed by participant barrister Geraldine, who, based on her experience in advising Black women, found that many were reluctant to speak to lawyers because they "were so ready to assume that no one was going to believe them". These findings contribute a more nuanced understanding to Sandefur's view of access to justice by demonstrating the significance of how perceptions of legal response intersect with identity to shape receptiveness to engage with formal and non-formal avenues of support (Ahamed 2025a).

Access to legal resources—the role of CABx in providing information and resources

Within the context of Sandefur's first classification of the ways in which inequalities perpetuate (Sandefur 2008), organizations, such as CABx in England and Wales, are of particular significance. They provide an avenue through which individuals access support outside formal legal institutions (Sandefur & Denne 2022). Funded by the Government in England and Wales, their purpose is to offer general legal advice, assist in the preparation of letters, and refer matters to experts (Abbott 1998; Sandefur 2008; Sandefur & Denne 2022). This positions them as a mechanism for improving access to justice by equipping individuals with appropriate information (McDermont 2013). However, Nicole Busby's research (2016) suggests that CABx have been inadequate in addressing matters beyond case preparation, and individuals have been left on their own to navigate their claims. Further, there is evidence to show that, with

increased pressure on them to assist in areas beyond their expertise, fewer solicitors are willing to provide free advice through CABx (Kirwan 2017). While these studies date back almost ten years, the absence of more recent research highlights a gap in understanding how access to adequate legal resources shapes decisions to seek redress in England and Wales.

Participants were asked about their awareness and use of CABx to understand their level of knowledge regarding accessible resources, ability to ask for formal help, and legal competency. The study's findings reveal that none of the participants approached CABx for assistance or information. While eight participants had never heard of CABx, four who were aware of the organization had not considered approaching it, reflecting a disconnect between service provision and perceived accessibility. For instance, participant Sandra said that she had never "thought about it" and participant Luna noted: "I didn't know that I could speak to Citizens Advice in that way." Participant Nola explained: "At that time, I didn't feel like I could really go that far with it, you know. I guess I wasn't equipped to go far in terms of knowledge maybe, and confidence." These findings suggest that unequal access to information and support operated as barriers, further shaping the extent to which participants responded to seeking legal help through formal avenues (Ahamed 2025a).

Organizational resources

Organizational resources such as grievance procedures, which are a mechanism for redress, also play a role in perpetuating inequalities. Sandefur acknowledges that grievance procedures may "cool out" potential claims before they reach the legal system (Sandefur 2008: 350). She does not, however, address how power disparities affect their use and outcome. The study's findings therefore refine Sandefur's understanding of resources and highlight that, although grievance procedures were available to participants, the interplay between power dynamics and their intersectional identities deterred them from using them. A grievance procedure is the first formal avenue through which an employee can seek recourse. An employee is required to resolve their grievance through this process before escalating it beyond the workplace.

In England and Wales, the body that governs workplace disputes and offers resolution resources is the Advisory Conciliation and Arbitration Service (ACAS).[4] It recommends that a complaint be raised through a grievance procedure to increase the likelihood of resolution. ACAS is able to offer assistance only if a dispute cannot be resolved internally and an

[4] See ACAS.

Employment Tribunal (ET) claim can only be pursued as a final recourse. The study's findings revealed that, although eleven participants raised grievances, none went on to file a complaint with ACAS and pursue an ET claim. These findings should be interpreted in light of the potential for selection bias as Black women whose grievances or claims were addressed in the workplace may have been less likely to volunteer for participation in the study.

The testimonies also show how various forms of power disparities shaped the trajectory of the participants' complaints within the workplace (Ahamed 2025a). Frank Dobbin and Alexandra Kalev (2019) point out how organizational power relations influence grievance procedures in practice. Building on their research, Anna Bull and Erin Shannon's study (2024) in England and Wales notes that women managers may have a beneficial effect on women raising complaints. However, participants' accounts in the study suggest that the presence of women in positions of authority did not invariably result in more supportive responses. This is illustrated by participant Patti's testimony about what occurred when she raised an informal complaint with her female supervisors about being groped by a "letchy" security guard. She recounted:

> They said nobody would believe me. Basically, it was a very male dominated field. So, my immediate supervisors were women, but after that, they were just men. And what they were basically saying was that, that they get it, and it's horrible, but if I were to report it, men wouldn't get it and it would just make things more difficult for me at the [public venue].

Her testimony illustrates how organizational authority was used to discourage her from pursuing her grievance. Patti's female supervisors expressed doubts that the senior male managers would understand her experience. They told her that "men wouldn't get it" and would "make things more difficult". By demonstrating that the interaction of gendered and hierarchical workplace power relations with participants' intersectional identities constrains their ability to use grievance procedures, this finding refines Sandefur's understanding of the significance of resources in perpetuating inequities (Ahamed 2025a).

The findings additionally reveal that power disparities have a significant influence on how grievances are addressed. In particular, the "practical authority" that the employer derives from the employment contract (Collins 2018: 56) enables them to exert influence over their employees. Specifically, the employer's power to direct the employee's work is an expression of the subordinate nature of their relationship (Collins 2018). This creates an imbalance which employers manipulate to influence

the grievance process. Participant Pooja recognized that organizational interests could affect how complaints are handled and resolved. She observed how workplaces "want to be predictable in terms of outcomes". Participant Chris shared an example of this relating to when she raised a formal grievance in the religious organization where she worked and also where the "perpetrator's Godfather" was appointed to carry out the investigation. The church's choice of investigator reveals how it used its practical authority to exploit its "broad" discretionary power (Collins 2018: 56) to influence the outcome of a grievance. When Chris complained about the prejudiced "Godfather['s]" review, the pastor said that she "didn't have a right to determine who was investigating". Chris believed that the institution had "picked a side" and intended to "support a man" instead of her. Her experience echoes Sara Ahmed's notion of collegiality in grievance processes and how it can protect those who are regarded as their own, or "the same kind" (Ahmed 2021: 196). The finding reveals how male solidarity, including through support of women, can undermine and thwart the efficacy of internal complaints mechanisms (Ahamed 2025a).

Participant Chris also noted there was an expectation that Black "women shouldn't be outspoken, women should be quieter". Her testimony provides an insight into her belief of how Black men perceive Black women; that, especially within a church setting, Black women ought to be deferential and accommodating. It further highlights the interplay between racialized and gendered expectations and how power can be exploited to maintain silence.

Together, these testimonies reveal how silence is perpetuated through the interaction between gendered and hierarchical power relations and participants' intersectional identities. The findings also demonstrate that these power relations have the ability to discourage complaints being raised, contribute to their suppression, and shape their outcome. In this respect, the findings of the study (Ahamed 2025a) refine Sandefur's understanding of resources and reveal how the interplay between workplace power and participants' intersectional identities can constrain the effective use of internal grievance mechanisms.

Sandefur: the individual's awareness of their rights

Sandefur's second categorization of inequalities sheds light on the significance of an individual's awareness about their rights (Sandefur 2008). Research suggests decisions about enforcement of rights are determined by factors such as an individual's familiarity with the judicial system, their confidence in navigating it, and their perception

of whether the process will deliver an equitable outcome (Balmer 2013; Equality and Human Rights Commission 2016; Balmer & Ors 2023). The findings in the study, however, diverge from this (Ahamed 2025a). Although 11 participants were broadly aware of their rights, they chose not to seek redress. For example, participant Chris "knew her rights", and participant Elaine remarked that some Black women "are very well aware of their rights but may well take a conscious decision not to enforce or exercise those rights". These findings refine Sandefur's (2008) insights by demonstrating that, where overlapping forms of disadvantage rooted in identity shape decisions to seek justice, an awareness of rights does not necessarily lead to legal action.

Sandefur's framing of inequalities also highlights how decisions to pursue redress are shaped by an individual's perception of fairness and the extent to which legal systems are viewed as capable of responding to their experiences (Sandefur 2019). In England and Wales, ETs are the primary platform to pursue workplace sexual harassment claims. Consequently, participants' perceptions of how they might be received within these legal settings formed an important aspect of the study (Ahamed 2025a). The findings reveal two main reasons why participants chose not to pursue their claims through the ETs. The first concerns their expectations in relation to whether judges would treat their complaints fairly. The second relates to the participants' perceptions of how judges would assess the credibility of their complaints. The following discussion examines these factors in turn.

Fair treatment

Sandefur's work demonstrates how an individual's perception of fairness of legal institutions influences whether they pursue formal avenues of redress (Sandefur 2008). It aligns with Lisa Webley's understanding that judgments are shaped by structural norms and expectations embedded in the legal system (Webley 2017), and sheds light on why participants perceived judicial responses as potentially shaped by racialized and gendered assumptions. Webley (2017) further notes that many cases demonstrate how women are discriminated against by a judicial system historically structured by men to serve male interests. While her argument arises within the realm of family law, it is significant within this context because it demonstrates how judges are socialized within a system that privileges male perspectives and informs how women perceive fairness.

Building on this theme from another perspective, participant Patti believed that, since men "have never really been in a situation where

there is systematic targeting of them", they are unable to create "tools" to "actually deal" with women's harms. Closely connected to the issue of male judges, participant barrister Emily observed that Black women had a particular view of white male judges which they believed placed them at a disadvantage. She explained that Black women were likely to say, "these people don't look or sound like me, they're not going to get me, am I really gonna get justice from these people?" This gives insight into how the question of identity shapes Black women's perceptions of whether white male judges could understand and respond to their harm. These findings build on Sandefur's research by demonstrating how understandings of judicial fairness were shaped through participants' views of their own identity as well as their perception of judges.

Since the completion of the study (Ahamed 2025a), the coming into force of the Worker Protection (Amendment of Equality Act 2010) Act 2023 has inserted section 40A(1) into the EqA, imposing a positive duty on employers to take reasonable steps to prevent workplace sexual harassment.[5] This is enforceable by the Equality and Human Rights Commission. However, judicial scrutiny of the employers' compliance with this provision is not freestanding. The ET's consideration of the preventative duty is contingent upon first finding a breach of section 40.[6] If it finds the employer's duty to take reasonable steps has not been discharged, then the ET may order a maximum uplift of 25% to the compensation awarded in respect of the sexual harassment claim (Worker Protection (Amendment of Equality Act 2010) Act 2023, section 124(4)(b)). The introduction of a preventative duty of care is an important legislative development. Where sexual harassment occurs, however, the practical significance of the provision may be limited if employees remain reluctant to pursue legal redress because they believe judges and lawyers may not recognize or understand their experiences or be influenced by their assumptions.

Perception of bias and access to justice

The *Equal Treatment Bench Book* (Judicial College 2024) recognizes the importance of avoiding assumptions about individuals based on presumed characteristics associated with a particular ethnic minority group. Kimberlé Crenshaw (1992) notes that Black women's accounts of sexual harassment are often met with heightened scepticism and shaped

[5] The *Explanatory Notes* state that what constitutes "reasonable steps" will depend on the circumstances of the employer, including its size and sector. The notes explain that an employer's practices and procedures for preventing and responding to sexual harassment, including grievance and reporting procedures, are likely to be relevant: *Explanatory Notes to the Worker Protection (Amendment of Equality Act 2010) Act 2023* (Commentary on Section 1).

[6] Ibid paragraph 23.

by assumptions regarding credibility. This observation is significant in the context of the study (Ahamed 2025a) because participants anticipated that, because they were Black women, their complaints would be subjected to increased judicial scrutiny which deterred them from pursuing redress through the ET.

Participant Chris illustrated in her testimony how the perception of racial and gendered biases influenced Black women's experiences of engaging with the legal system. She said that, based on the assumption of judges' "predisposed ideas", Black women were often prevented from approaching cases on an "equal footing". She explained how it was usually a case of: "it is because very much her character is put in the way, that you caused this …". According to Chris, Black women believed they could be subjected to greater scrutiny regarding their credibility when pursuing redress and this undermined their confidence in legal processes and influenced their willingness to seek recourse through the ETs.

ETs may also form preconceived judgments about a claimant's character based on how they present themselves in court which may also influence the inferences drawn (*Laing v Bury & Bolton Citizens Advice* 2022). However, participant barrister Sarah observed that diversity on the tribunal benches made them "better equipped" and less likely to rely on racialized and gendered assumptions in their assessments. Similarly, participant solicitor Sally stated that there was "a lot of pressure on judges to refrain from having that preconceived idea of what a typical Black woman is". Participant barrister Emily observed that Black women:

> have a feeling that they're not going to be believed. And that's where I think it's not just necessarily the fact of being a woman. It may be this intersectionality I'm referring to, where it's both a woman and being Black.

In her view, the inclination among Black women to feel that they were not going to be believed stemmed from the assumption it was because that they were "both a woman and Black". Their sense of anticipated disbelief captures how gendered and racialized bias converge to undermine credibility. It also provides a bridge to a broader social narrative about belief and recognition—particularly those captured in activist movements such as #BelieveHer and "Believe Women", which foreground solidarity with women who feel that they have been or will be discredited by the legal system (Srinivasan 2022).

Part of the *Equal Treatment Bench Book*'s purpose is to increase awareness and provide guidance about the varied circumstances of individuals appearing in tribunals. It requires judges to be mindful of the

perspectives of Black individuals and the disadvantages they face (Judicial College 2024). Despite such efforts to increase judges' understanding, the testimonies of participants Chris and Emily suggest that they believed that judges would give less credibility to Black women's allegations, and that their grievances were likely to be discredited based on biases and preconceived views about Black women. This complexity is compounded by additional identity aspects which emerged as negatively shaping the Black women's beliefs about themselves, and how they anticipated they would be viewed by lawyers and judges which in turn affected their understanding of their harms and their decisions about whether to pursue redress.

Skin tone and access to justice

Colourism operates as another barrier to seeking redress. Participants noted the significance of their skin tone as evidence in how differing shades of Blackness shaped their assumptions of how they are likely to be treated by the legal system. Participant Chris pointed out that, "as a dark-skinned woman, I know not to expect justice" and "the darker you are, the less likely you are going to receive justice". Her remarks suggest that colourism shaped how she assumed her complexion would be a consideration factor for judges when awarding her "justice". In contrast, participant Mandy described herself as a "light-skinned Black woman". She believed her lighter skin tone contributed to the Head of Police referring to her as a "little minx". While the participants' reflections on their skin tone are subjective, they offer an insight into the social meanings attributed to colour (Monk 2015) and the possibility of colour-related inequality in the legal system. Chris and Mandy's perceptions, however, may not accurately reflect how they are seen by others. It is possible that their previous experiences of discrimination informed how they understood the significance of their complexion. Taken together, however, these findings reveal that the participants' decisions to seek redress were shaped by understandings of themselves as Black women. This included concerns that racialized and gendered assumptions would influence judicial responses. These beliefs, alongside the anticipated lack of recognition of harm and undermined confidence in the legal system, deterred them from pursuing formal avenues of redress.

Sandefur: the extent to which problems are recognized by the law

Sandefur's third way (2008) of classifying how inequalities perpetuate relates to the extent to which certain kinds of problems are addressed by law, while others remain partially acknowledged or completely unrecognized. Its importance lies in drawing attention to how legal recognition shapes access to justice. Within the context of the study, the overlapping harms rooted in identity aspects that are insufficiently acknowledged by law is particularly relevant given the absence of intersectionality in the anti-discrimination provisions of the EqA, which is the primary legislation governing workplace sexual harassment claims.

The inclusion of section 14, which provides for combined direct discrimination protection based on two protected characteristics, prompted debates and lobbying by women's organizations (Squires 2009). Although enacted, section 14 never came into force on the basis that existing discrimination provisions provided adequate protection (Robinson & Ors 2021). The decision implied there was no evidence to suggest that a legal vacuum existed[7] and that widening the law would be onerous to businesses (Hepple 2016). The non-commencement of section 14 has meant that an express statutory recognition for intersectional discrimination has not been realized.

Participant solicitor Jess referred to this when discussing the definition of sexual harassment and explained that, although the definition in the EqA is "broad" and "captures, in a lot of ways, women's experiences", it is "never understood within an intersectional framework". She elaborated: "It doesn't really acknowledge the fact that sexual harassment intersects with race and that Black and minoritised women experience, you know … racialised sexual harassment. It's just not mirrored in legislation." This limitation has implications for access to justice as it narrows an individual's ability to bring a potentially actionable claim. If section 14 were to come into force, this would be an acknowledgment that identities are complex and multi-faceted, and that certain combinations of characteristics can generate unique experiences of discrimination. Such a balanced, open-textured approach would ensure that, while retaining the EqA's framework analytical potential, it had enough scope to appreciate but not dilute its effectiveness by accommodating the interplay of identity dimensions.

Sandra Fredman notes that "the more a person differs from the norm [single axis discrimination], the more likely she is to experience multiple

[7] See HL Deb 13 January 2010, vol 716, col 547.

discrimination, the less likely she is to gain protection" (Fredman 2005: 14). While she made this observation in 2005, it continues to hold relevance, as the underlying issue of intersectional discrimination remains unresolved. The EqA flattens individuals' identities to a singular dimension such as race or sex and overlooks the ways these aspects shape their particular experiences. The narrowing of identity to single categories in the law blurs the realities of intersectional harm. This was noted by participant activist Veronica who acknowledged that, while it was challenging enough for women to broadly bring claims under the EqA, it was "very difficult for Black women" to seek redress and that: "Black women have a massive struggle." She elaborated: "Because they want you to bring a race case or gender case, well, you know that doesn't work. And you fall out as a woman, and you fall out as Black." Her statement suggests that she perceived Black women as being doubly disadvantaged by the legal system, for their gender and for their race. The absence of any articulation of the connection between intersectional elements exposes a limitation of the EqA's protection against discrimination. This lack of recognition in the law has become a structural barrier to access to justice.

The consequence of the non-commencement of section 14 is that the EqA does not expressly provide for claims based on the intersectional nature of sexual harassment. Section 26 EqA governs workplace sexual harassment and defines conduct by its purpose or effect. It does not specifically address the distinct ways it may be experienced in relation to different identity markers. This legislative gap creates a barrier to recognizing intersectional harm and pursuing redress. The relevance of this gap was reflected in the experiences of participants in the study. The findings revealed that in many instances they perceived that their race, gender, age, as well as their physical characteristics made them susceptible to workplace sexual harms. Solicitor participant Jill clarified that sexual harassment is "never in isolation if it's a Black woman; it's race and sexual harassment combined". Participant Luna, for instance, believed that her "bigger butt" and "kinky" hair led her to being objectified and regarded as "so exotic". She also felt "fetishised … as a younger Black woman" in comparison to her older Black colleagues. Participant Mandy said that as "a light skinned Black woman" she observed that her "skin tone is massively sexualised". Integrating intersectionality into the EqA would narrow the gap and require ETs to consider how different aspects of an individual's identity interact in shaping their experiences of discrimination. This would allow a more nuanced recognition of the resulting harm.

Case law suggests that judges have to varying degrees recognized the intersectional dimensions of discrimination rather than adopting strictly essentialist approaches (see *Bahl v Law Society* 2004; *Miriam O'Reilly v BBC* 2010; *Hewage v Grampian Health Board* 2012). Cases in the lower tribunals have demonstrated an understanding of intersectional discrimination. The decisions in *Bahl* and *Hewage*, however, suggest that the higher courts are hesitant to uphold a claim on the grounds of intersectional discrimination. Although case law may be relied upon to provide guidance on how the law should be interpreted, integrating intersectionality into the anti-discrimination statutory regime of the EqA would require judges to acknowledge its significance when analysing a case. The law can then begin to respond to the distinct challenges of intersectional harms by recognizing how different aspects of an individual's identity contribute to their experience of harassment.

[E] CONCLUSION AND FUTURE RESEARCH

This article examines selected findings from the study through an intersectional analysis of Sandefur's understanding of access to justice, focusing on how inequalities act as barriers to seeking redress. The findings relating to grievance procedures refine Sandefur's first categorization of inequalities in relation to the effective use of resources. The findings further demonstrate that grievance procedures can be understood as resources whose use is shaped by the interaction between power disparities and different aspects of participants' identities. Significantly, this interplay deters participants from raising complaints and suppresses the grievance process and its outcome. The findings also reveal that legal advice and formal avenues of redress need to be understood through the lens of participants' perceptions of how lawyers and judges will recognize and interpret their harms. The participants' self-perceptions, their assumptions about judges regarding their credibility, inadequate recognition of their harms and biases about their race and gender shape their decisions not to pursue redress.

The failure to integrate an intersectional framework into the legislative framework of the EqA raises questions about its ability to recognize and respond to intersectional harms. Over two decades after Bahl (2004) and in the absence of section 14, the courts are tentative in their approach, and it remains uncertain to what extent intersectional analyses will be integrated into judicial decision-making. The effect of this is to constrain individuals from accessing justice from the outset. More broadly, it asserts the necessity of acknowledging recognition as a precondition of access to justice. If intersectional harms remain insufficiently acknowledged by

the EqA, then access to justice will remain a pipe dream. Incorporating intersectionality into the EqA means that judges would be bound to consider it in their decisions. This would lead to a more nuanced appreciation of intersectional harms and ensure judgments are more responsive to the lived realities of individuals.

The findings raise several questions about the relationship between recognition and access to justice that warrant exploration. Participants' decisions to seek redress are shaped by concerns that their experiences of harms, rooted in their identities, will not be adequately recognized or appreciated by lawyers and judges. Future research could examine the extent to which legal recognition influences the likelihood of engagement with ETs and legal actors, and the ways in which lawyers, judges and employers understand intersectional harm within the context of resolving sexual harassment claims in and outside of judicial settings. Comparative research across jurisdictions could also provide insights into whether individuals in jurisdictions that afford greater recognition to intersectional harms experience similar barriers to redress. Further, comparative studies involving Black and white women could provide insight into the extent to which race shapes perceptions of credibility, recognition and access to justice. Research could also be carried out with other groups, including disabled women and trans and non-binary individuals. Such studies would contribute to the developing understanding of the role that recognition plays in seeking redress for intersectional harms.

About the author

Dr Neemah Ahamed *is an academic at Manchester Metropolitan University and a socio-legal researcher whose work explores discrimination law and access to justice through an intersectional feminist lens, with a focus on how identity shapes experiences of harm and responses to it. Her PhD in Law at the University of Sussex examined workplace sexual harassment affecting Black women in England and Wales and the structural and legal barriers they faced when seeking redress.*

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