On the Nature of Indirect Discrimination: Systems, Culture, and Moral Absence

by Timandeep Singh Gill

Foreword

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The content of this paper is based on my real-world experience of engaging with a well-known organisation in litigation proceedings regarding certain discriminatory practices in both its employee conduct and internal systems

Introduction

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The distinction between "direct" and "indirect" discrimination in legislation is widely accepted but fundamentally misleading

It suggests a hierarchy of seriousness and intent that does not hold up under scrutiny

The term "direct" implies something intentional, harmful, and blameworthy. "Indirect," by contrast, suggests a side-effect, an accident, a technical breach. This framing distorts both the real lived experience of discrimination and the nature of the systems that reproduce it. In reality, what the law calls "indirect discrimination" is often the most dangerous form of all

False Neutrality

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How Systems Become Agents of Harm : The legal imagination (in my current experience, up to but not including the level of the

Administrative Court) tends to treat systems as neutral until proven otherwise. This is a fallacy. A system is nothing more than a set of decisions encoded by someone into something that may be repeated continually at the press of a button. It cannot question itself. It cannot discern morally : even if it could (eg. AI), it is disabled or very limited. If a discriminatory culture builds the system, the system will have prejudice and discriminatory conduct embedded into its core coding. And once embedded, that bias is laundered through the logic (or more accurately, presumption) of neutrality. The organisation will say: "This is just how the process works. It applies to everyone equally."

But equal application of a discriminatory mechanism is not fairness. It is scale. And the harm becomes more widespread, more durable, and more concealed precisely because it is made to feel procedural. No one takes responsibility, and no one is forced to morally reckon with the outcome. This is why indirect discrimination, though commonly perceived as legally secondary to 'direct' discrimination, is structurally more dangerous. Once the system's infrastructure has been set into motion, and eventually no accountability remains in the organisation for its prejudicial DNA (ie. coding), that is where the problem takes root and sets deep into the infrastructure of the organisation. In part, this is a description of my work : this is what I sense, define, attach internal responsibility to, litigate and finally seek to reform

<u>The Actor Problem : Person vs. Process</u> : In cases of direct discrimination, the actor is usually human. There is a person whose judgment or conduct reflects prejudice. In indirect discrimination, the actor is a process or platform-based system—a recruitment test, a software filter, a policy algorithm. But processes do not emerge spontaneously. They are designed. Someone built them. Someone selected the variables. Someone chose what counts as a "good answer"

So when a system consistently disadvantages disabled people, or older candidates, or ethnic minorities, the proper question is not whether the system "intended" to discriminate. It is: who built the system, and what assumptions did they embed into it? Indirect discrimination is not the absence of intention; it is the presence of unexamined assumptions made durable by repetition. It is a far more purposefully manifested intent

<u>*Normalisation and Danger*</u> *: The final danger of indirect discrimination is in its normalisation. Because it is made to be administrative, it feels like administration and process (normality) and it is not felt as harm. It scales impersonally, more people are able to engage with the system due to its scalability and thus many more people are affected. When a discriminatory culture embeds itself in the very rules of access to something - whether that is support, care or work, that harm is harder to detect, harder to question, and harder to resist. This is not lesser harm. It is systemic harm. And it is morally no different from its "direct" counterpart—in fact, it may be worse*

Conclusion
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The distinction between 'direct' and 'indirect' discrimination might be useful for legal labelling purposes, but it is misleading when used as a moral compass or indicator of seriousness or level of intent. It obscures the most important truth: no act of discrimination exists in isolation. Every act is part of a system—whether that system is a person and their team or an institution (the culture) or a coded platform-based system (internal system)

Direct discrimination is prejudice expressed by a person

Indirect discrimination is prejudice embedded by a culture in a system with no moral bearing of its own to mete out prejudicial responses perpetually

Neither is acceptable. Neither is less harmful. And no system is beyond questioning

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