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THE DESIRE FOR WHITENESS: CAN LAW AND ECONOMICS EXPLAIN IT?

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This paper provides a new theoretical perspective on colorism by considering it from an economic point of view. It relies on three theories of law and economics that explain racism. While critiquing these theories, it also extends them to evaluate colorism. Because these theories correlate race with skin color, in order to apply these theories to colorism, it distinguishes colorism from racism using the “desire for whiteness” (DFW) as a tool for analysis. Further, this paper provides a comparative perspective of colorism in the traditional American labor market (ALM) and the Indian arranged marriage ‘market’ (Iamm). It finds that: (a) these theories are able to provide some insights into why decisions in these markets are colorist, (b) the insights are incomplete and do not fully explain the complexities of colorist interactions though they do explain some of its history, (c) applying these theories to the IAMM strengthens these theories – the statistical theory for instance, is better able to explain discrimination in Iamm than in ALM, (d) only McAdams’ status production theory is able to deliver an account of DFW. It concludes that a legal framework relating to colorism should aim to eliminate DFW from society.

Introduction

“She’s more like a gypsy nor ever, “said aunt Pullet, in a pitying tone; “It’s very bad luck, sister, as the gell should be so brown; the boy’s fair enough. I doubt it’ll stand in her way i’ life to be so brown.”

Aunt Pullet’s concern for the future of Maggie Sullivan, the so-called “brown-skinned” heroine of George Eliot’s classic novel, The Mill on the Floss was not unfounded. Studies have shown that colorism, by which I mean the differential treatment of individuals in economic and social transactions, based solely on differences in skin color, is pervasive in modern societies. Expressed positively, colorism is a preference for persons of lighter skin, or expressed negatively, it is the exclusion, denial or penalizing of persons of darker skin.

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1 GEORGE ELIOT, THE MILL ON THE FLOSS (1860)

2 Brown-skinned people, i.e. those who are neither black nor white, fall in the medium of the skin color dynamic and are therefore, easiest to identify as the targets of colorism.

3 George Eliot portrayed Maggie Sullivan, the dark-skinned protagonist of The Mill on the Floss, as a tragic and non-conformist heroin. Her dark color and her indifference to her family’s lamentations and chidings about her skin color was an integral part of the tragic atmosphere of strife, struggle and confrontation that Eliot built around Maggie’s character. It was considered unusual for the heroines of romantic novels at that time to be portrayed as dark skinned.
This paper introduces colorism to the law and economics discussion of racism and considers whether the existing theories of discrimination in law and economics provide an explanation for colorism. Colorism is intuitively linked to racism because skin color has dominated our understanding of racial classifications. In societies that are racially heterogeneous such as the United States, skin color preferences are usually associated with racism whereas, similar preferences may be classifiable as colorism in societies that are racially uniform. Can the same behavior constitute racism in one society and colorism in another? A comparative study in racially homogenous and heterogeneous societies such as India and the United States, respectively can provide a more comprehensive understanding of the source and existence of colorism and its distinction with racism. This paper undertakes such a comparative study by examining the prevalence of colorism in two situations in particular - the United States employment market and the Indian ‘arranged marriage market’. This comparative context helps to develop a clearer distinction of colorism with racism.

This paper considers the premium attached to whiteness to be the most prominent characteristic of colorism and uses it to embark on this study of colorism. Why do people of nearly all races have a desire for whiteness? The answer to this question will enable a better understanding of how law can be employed to address colorism.

Three theories of racism are discussed in this paper. Gary Becker introduced the first economic theory based on taste for discrimination. The second account is the theory of statistical discrimination. Statistical discrimination occurs due to the use of generally held beliefs about average group characteristics to make assumptions about the behavior of the members of the group as a whole. The third and most recent account of racial discrimination is Richard McAdams’ status production theory. Race discrimination by this account is “a means by which people who share roughly similar but observable traits that come to be known as ‘race’ produce social status for themselves.” The commonality of these theories is that they all rely on the visibility of skin color and the ease with which skin color allows us to make racial classifications.

This paper is divided into six parts. Part I argues that the existence of colorism is established through the prevalence and pervasiveness of whiteness as a privilege in society. Part II examines whether it is possible to distinguish between colorism and racism. Part III studies some aspects of the history of colorism in America and India. Part IV examines the economic theories of racism and attempts to relate them to colorism. Part V discusses the law on racism and colorism in India. Part VI puts forward a conclusion.

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5 Edmund Phelps and Kenneth Arrow have been credited with introducing this theory. Later economists who worked on it include Dennis Aigner, Glen Cain, Shelly Lundberg and Richard Startz. This paper limits itself to the initial theorization of statistical discrimination by Phelps and Arrow.
8 Id. at 1045.
I. Whiteness as a Commodity

Cheryl Harris describes whiteness as a kind of property evidenced for instance by the attempts at passing off as white by blacks with light skin color. As she explains it, blacks attempted to pass-off as white because possessing whiteness meant enjoying various privileges that were exclusively associated with being white. Colonization and slave trade led to the legal construction of blacks as chattel. The exploitation of blacks and their exclusive use in slavery contributed to the construction of whiteness as property because at that time, whiteness represented mastership. Therefore, being white was valued in a manner similar to the value associated with the possession of property. The law in America played a significant role in creating and sustaining the idea of whiteness as property by recognizing the differential rights and privileges of whites. Similarly, whiteness was valued in colonial India because whites had privileges that native Indians did not. In short, whiteness had a value, it was exclusively possessed and therefore, it was desired.

However, in what way do we value whiteness and how do we measure its value to us? Is the value given by individuals to whiteness a factor of the racial identity of that individual? Studies have shown that skin tone has a substantial impact on the way a person is treated in society and affects chances for successful employment and marriage. In many societies skin color is directly associated with social status and those who are dark skinned are economically and socially disadvantaged. In America, lighter skinned blacks are reported to face much lower discrimination than darker blacks, not only from whites but also from other blacks. The literature shows evidence social and economic preference for light skinned persons).

Research conducted before and during the civil rights movement suggested a continuing relationship between the variations in skin tone and the life chances of black Americans. The study finds strong support for continuing social stratification of blacks on the basis of skin tone. See Verna M. Keith & Cedric Herring, Skin Tone and Stratification in the Black Community 97(3) AM. J. SOC. 760, 760-61 (1991). Darkness of hue is found to lead to greater criminal activity suggesting that darker hued blacks face greater disadvantages in legitimate opportunities which drives them to criminal activities. See Kwabena Gyima-Brimpong & Gregory N. Price, Crime and Punishment: and Skin Hue Too? 96(2) AM. ECON. REV. 246 (2006). See also Leonard M. Baynes, If It's Not Just Black and White Anymore, Why Does Darkness Cast a Longer Discriminatory Shadow than Lightness? An Investigation and Analysis of the Color Hierarchy, 75 DENV. U. L. REV. 171 (1997) (discussing various studies which establish that darker skinned persons face greater discrimination than lighter skinned persons).

Blacks with lighter skin tone report dramatically better treatment from whites and partially better treatment from blacks than those with darker skin tone. See Joni Hersch, Skin Tone Effects Among African Americans: Perceptions and Reality 96(2) AM. ECON. REV. 251 (2006).

Alice Walker defined the “prejudicial or preferential treatment of same race people based solely on their skin color...” as ‘colorism’. See ALICE WALKER, If the Present Looks Like the Past, What does the Future Look Like, in IN SEARCH OF OUR MOTHERS GARDENS 290, 290-91 (1983).
similar effects for darker skinned persons of other racial categories as well, such as Asians and Latinos. In China, there is a common saying that white skin can cover any physical unattractiveness.

In India, there is a deep rooted preference in society for white skin. Lighter skin is considered a sign of beauty and men specifically seek light skin color as a requirement in a prospective mate. Fairness cream advertisements connect fairness to greater employability and beauty. While initially these products catered specifically to women, recently a large number of fairness creams are being marketed more particularly for men. Some fairness creams come along with ‘shade meters’ that measure skin tone before and after using the product. This is a clear instance of the social legitimization of the desire for whiteness and its commodification by the encouragement of whiteness as an ideal that can be attained by gradually moving from a darker to a lighter shade.

The desirability of whiteness is also reflected in mainstream cinema. Black women rarely play romantic leads in Hollywood films and those that do are usually lighter complexioned. Similarly, almost all Indian women who play romantic roles in Bollywood films are also light skinned.

Both western and eastern societies thus, attach a similar value to whiteness. Just as Trina Jones recounts experiences of warnings given to black women against staying out for long periods in the sun for fear of becoming too dark, Indian girls are also brought up with similar warnings and associated negative conceptions surrounding dark skin color.


17 See Kajalie Shehreen Islam, Hana Shans Ahmed et. al., Fair Factor: The Whiter the Better, 94(5) STAR – WEEKEND MAGAZINE, http://www.thedailystar.net/magazine/index.htm (May 12, 2006), for a description of preferences for lighter skinned women amongst Bangladeshi men and the lengths to which Bangladeshi women go to lighten the color of their skin by a few shades in a society where everyone is a shade of brown. Discrimination based on darkness of skin is not limited to African Americans. See Baynes supra note 14, at 171. The wages of Latino men reduce with the darkness of their skin. See Christina Gomez, The Continual Significance of Skin Color: An Exploratory Study of Latinos in the Northeast, 22 HISPANIC J. BEHAV. SCt. 94, 94 (2000).

18 See Debarshi Dasgupta, Our True Colours, 16 OUTLOOK (July 29, 2009) (describing Indians’ obsession with skin color including in the fewer takers for darker babies in adoption agencies, an incident where a woman committed suicide after her husband constantly harassed her for being dark).

19 See William Darity Jr., Caste or Race: Parallels or Disjunctures in Balmurli Natrajan & Paul Greenough (ed.), Against Stigma: Studies in Caste, Race and Justice Since Durban (2009) (discussing a national survey taken in 2000 by the Family Planning Commission of India of 3,800 young people, 67% said they would look for a ‘fair complexion’ in a prospective mate) citing Malvika Kaul, Arranged Marriages Bounce Back: What’s Love Got To Do With It, THE SUNDAY TIMES OF INDIA REVIEW (Sept. 3, 2000). However, Darity points out that, “the real test for the presence of a racial system in India would be that color is associated strongly with social status and economic privilege.”

20 For instance, the commercial advertisement of one fairness cream on Television depicts a man gaining success in his job search after becoming a few shades lighter from the use of a fairness cream.

21 Prior to the advent of fairness creams, traditional remedies were used for skin lightening.


23 Id. at 1520 n.145.
Whiteness is thus, an asset, a property, which has crossed cultural differences to come to be universally valued and commodified. Those who possess it are privileged and those who don’t, constantly seek to acquire it in the hope of overcoming their disadvantage.

Whites have used ‘whiteness’ as a means of domination. The black resistance of whites did not sufficiently question the value of whiteness. Both blacks and brown-skinned people in India have accepted rather than questioned white standards of beauty and value as true and it is because of this that a desire for whiteness has developed among them and they are also prejudiced along similar lines.

The preceding discussion suggests that colorism is expressed as a preference for whiteness. However, is the desire for whiteness merely a form of racism or is it its own independent phenomena? The following section examines the distinction between racism and colorism.

II. Aligning Colorism with Racism

Existing scholarship on colorism has distinguished colorism from racism in order to establish the presence of colorism as a distinct phenomenon. For instance, Jones believes that while colorism is an important element of racism, it is also its own distinct phenomenon. Title VII of the Civil Rights Act of 1964 distinguishes color from race as grounds for a claim of discrimination.

The obvious ground for distinction between colorism and racism is that colorism is not confined to the technicalities of racial boundaries i.e. it can be both inter-racial and intra-racial. For instance, Aunt Pullet’s concern in The Mill on the Floss was that the protagonist Maggie Sullivan’s brown skin would not be considered favorably by prospective white suitors even though she was racially white. This represents intra-racial colorism.

Particularly in the context of racially homogeneous societies it is worth questioning whether the distinction between colorism and racism is a genuine one to make? Scholars have argued that there is a more fundamental basis for this distinction which derives from a critical conception of race and the construction of racial boundaries. According to Jones, skin color is the device used to assign racial categories to people and race is the social treatment that is given as a result of that categorization. Consequently, differences in treatment based on skin color do not result from racial

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25 See id. at 20. The black is beautiful campaign briefly resisted white conceptions of beauty but failed to gain momentum.
26 Id. at 1520; see also Cynthia E. Nance, Colorable Claims: The Continuing Significance of Color under Title VII Forty Years After Its Passage, 26 BERKELEY J. EMP. & LAB. L. 435, 441 (2005).
27 See Jones, supra note 22, at 1493-98.
28 See id. at 1493-99.
29 Under Title VII, courts in the United States can recognize colorism as a distinct harm. However, there have been few discrimination claims based solely on color and many of the cases alleging color discrimination also allege race discrimination. See Nance, supra note 24, at 436.
30 See Jones, supra note 22, at 1493-98.
categorization *per se* but from difference in skin color alone.\textsuperscript{31} As a corollary, the value associated with being lighter or darker skinned is related to the proximity of skin tone to the racial ideal i.e., white.\textsuperscript{32} Colorism, it is possible to argue, is an antithesis of racism because it questions the clarity with which people are grouped into racial categories through skin color and therefore, questions the basis on which individuals are assigned racial categories.

There is strong support among scholars for considering colorism as a complex aspect of race discrimination.\textsuperscript{33} Scholars holding this view consider colorism to be an evolutionary product of racism that will come to replace what we know to be racism in the future rather than be a parallel and distinct phenomenon that coexists with racism. Colorism is viewed as a consequence of the increasing inter-mixing of races, resulting in the blurring of clearly defined racial categories as black and white and the consequent replacement of racism with colorism as the basis for subordination and discrimination of colored people.\textsuperscript{34}

In order to determine how different colorism and racism really are, one must examine how each has historically manifested itself in society. The following discussion considers the historical development of colorism.

**III. The History of Colorism**

The historical evolution of the desire for whiteness can be traced to the European colonization of the ‘colored’ world.\textsuperscript{35} Colonization played a vital role in evolving and propagating ideas of racism and colorism.\textsuperscript{36} With the colonizers’ conquest came power and the desire to maintain power. They used skin color as a marker of status and as a tool of divisiveness.\textsuperscript{37} In sixteenth century Europe, the color black was associated with evil and dirt and the color white was associated with innocence and purity.\textsuperscript{38} Therefore, people who were black represented all that was evil and filthy and were consequently, not to be associated with.\textsuperscript{39} Thus, the colonizers distinguished themselves from the indigenous population based on their whiteness, which they correlated with higher status.\textsuperscript{40}

In America, colorism is said to be the result of slavery, the exploitation of plantation workers and the segregationist period of the ‘Jim Crow South’. The history of
colorism in America is popularly presented as a narrative of the treatment given to mixed breed persons, also called Mulattos. According to the early recordings of history in the American south, whites distinguished Mulattos from blacks because of their lighter skin color and accorded superior social treatment to them on that basis.\(^{41}\) They were more likely to be trained in skilled household jobs than darker-skinned blacks.\(^{42}\) However, subsequently, they were grouped together with blacks and suppressed.\(^{43}\) Nevertheless, mulattos attempted to distinguish themselves from other blacks based on their lighter skin color and created exclusive educational institutions and societies whose membership was based along strict and autocratic definitions of skin color.\(^{44}\)

Thus, skin color was an important medium of social repression in the American south. Whether based on race or skin color, the history of colonization is one of the creation of distinctions in order to claim superiority and greater social status. However, no concrete conclusions have been reached as to how colorism has historically been distinguished from racism and why it persists in its present form even today.\(^{45}\)

**The history of colorism in India**

There are some peripheral indications of colorism in Vedic India. For instance, the division of texts in the *Yajurveda* into the *Taittiriya-samhita*, also called the *Krishna* or black *Yajurveda* and the *Vajasaneyi-samhita*, also called *Shukla* or white *Yajurveda* because the former is said to be ‘rather confused’ and the latter only contains mantras, is considered to be an indication of colorism in ancient India.\(^{46}\) In fact some scholars such as Macdonell\(^{47}\) have ascribed the division of the Indian caste system to be based on race rather than occupational distinctions, though this interpretation of the history of the caste system is controversial and has been discredited in some scholarship.\(^{48}\) Macdonell argued that the word used in the later Vedas to describe the division of Indian society into different castes is *varna* which some scholars have contended means ‘color’.\(^{49}\) According to Macdonell, the three upper castes in India i.e., the priests, the military and the peasantry were also collectively designated the ‘Arya Varna’ or ‘Aryan color’ and the lower castes were designated the ‘Dasa Varna’ or ‘slave color’.\(^{50}\) Macdonell was of the view that the word *varna* or color was used to emphasize racial distinctions in these classifications.\(^{51}\) This is also expressed in the Rig-Veda by the description “black skin”.\(^{52}\) Macdonell has argued that later Indian texts also describe the importance of color distinctions in the conception of the caste system.\(^{53}\) In certain Pali texts *Brahmins* (members of the highest caste) have been

\(^{41}\) See id. at 1509.
\(^{42}\) Aaron Gullickson, *The Significance of Color Declines: A Re-analysis of Skin Tone Differentials in Post Civil Rights America*, 84(1) SOCIAL FORCES 157, 158 (2005); See also Jones, *supra* note 22, at 1513.
\(^{43}\) See id. at 1510-16.
\(^{44}\) See id. at 1509.
\(^{45}\) Banks, *supra* note 34, at 1705.
\(^{46}\) See Rajbali Pandey trans., *YAJURVEDA* 5 (Diamond Books, 2010).
\(^{49}\) See Macdonell, *supra* note 47, at 237.
\(^{50}\) Id. at 241.
\(^{51}\) Id. at 241.
\(^{52}\) See Macdonell, *supra* note 47, at 241.
\(^{53}\) Id. at 243 n.9.
expressed as considering themselves of the white *varna* and the other castes as of the black *varna*. However, others argue that caste or *varna* based classification was one of occupation and not color and the color based division of the caste system is not based in history.

The view presented above of the possibly racist division of Indian society in ancient times by the then invading Aryans is similar to the later history of America and of European colonization. History shows us that whites have used their skin color to further their ambition by instilling a sense of inferiority in indigenous populations who have darker skin color. This repeated use of whiteness in the historical dynamics of power and exploitation has resulted in a separate value being associated with it. This value disregards racial boundaries. Thus, colorism can no longer be confined to a subset of racism but is the result of a more complex history that has created a value in whiteness.

**IV. Fitting Colorism in a Theoretical Framework**

The discussion so far has established that colorism exists and is relevant to our present society, though it is as yet unclear whether it exists separately from racism and if so, what separates it from racism. Finding a theoretical explanation for colorism can help clarify these ambiguities and the logical place to begin this explanation is within the existing sphere of theories.

One may think of the theories of racism discussed below as attempting to provide an answer to the question – what does the discriminator gain and correspondingly, what does the discriminated-against lose in rationally explainable terms by engaging in racially discriminatory conduct? Depending on the theory, the discriminator engages in discrimination to satisfy the discriminator’s peculiar tastes, statistically determined beliefs or competing social ambitions. Each theory provides a powerful explanation of motives that is useful in understanding such behavior, though each theory also has its own drawbacks. These drawbacks may be a result of the limitations of the tools of economics employed or they may simply be a result of the theories not taking into account important aspects of discrimination. This paper asks the further question of each theory – do the same explanations of motivations for engaging in racially discriminatory behavior also explain the premium attached to whiteness – which in turn forms the basis for colorism?

In fitting colorism into an existing theoretical framework, this paper tests whether law and economics theories can explain the following phenomenon that are relevant to colorism: (a) the existence of colorism in employment markets in the United States, (b) the existence of colorism in the ‘arranged marriage market’ in India and (c) explain the near universal desire for whiteness amongst different racial groups. This section is divided into three parts. Part A makes a case for Gary Becker’s theory of discrimination, referred to as the theory of associational animus, part B discusses statistical discrimination and Part C evaluates the status production theory.

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54 Id. at 243 n.9.
A. Associational Animus

Gary Becker’s theory postulates that discrimination is caused due to individuals’ peculiar ‘tastes for discrimination’ - because discriminators do not have a taste for associating with certain persons, they wish to avoid contact with them. A taste for discrimination is a ‘non-pecuniary, psychic cost’ that an individual incurs in associating with persons who are the subject of discrimination. In other words, individuals discriminate when they are willing to pay an amount or forego certain income because of their preference for not associating with certain persons. For instance, when an employer discriminates against an employee, the employer in effect incurs a non-pecuniary cost in employing the employee. Becker suggests that this can be measured by using a ‘discrimination coefficient’ which represents the difference between the money and the true or net wage paid to the employee. The discrimination coefficient measures the intensity of the employer’s taste for discrimination. According to Gary Becker, in a competitive market, the effect of discrimination is to reduce the demand for those employees who are the subject of discrimination. However, other scholars argue that employers can have differing tastes for discrimination so that discrimination is more costly for some than others and employers who do not discriminate and have lower costs of discrimination will then absorb the employees who have been discriminated against. These scholars argue that in a competitive market, market forces will work to absorb the work force that is discriminated against.

Gary Becker suggests that direct contact between blacks and whites is necessary to develop a desire to discriminate. Tastes for discrimination can cause either market discrimination, or market segregation, or both. Becker states that the distinction between market discrimination and market segregation ‘is essential for a clear understanding of the observable consequences of tastes for discrimination’. Segregation occurs because individuals exercise the choice to not associate with members of other groups. It may be a result of the taste for discrimination, for instance, if inter-group discrimination is greater than intra-group discrimination, individuals may prefer to associate with members of their own group. Discrimination occurs when individuals are willing to incur additional costs or forfeit income in order to satisfy their taste for avoiding associations with certain people. Becker states that the taste for discrimination is the most important cause of discrimination but he does not claim that it is the only cause of discrimination.

56 See BECKER, supra note 4, at 153.
57 See id.; See generally GARY S. BECKER, THE ECONOMIC APPROACH TO HUMAN BEHAVIOR 7 (1978).
58 See BECKER, supra note 4, at 14.
59 See id. at 153.
60 See id. at 39.
61 See id. at 42.
62 See id. at 154.
63 Id. at 157.
64 Id. at 157.
65 See id. at 14, 157.
66 See id. at 159-60.
67 See id. at 14, 157. One of the criticisms of Becker’s theory by McAdams is that it does not explain racial segregation in the Jim Crow era. Becker’s failure to do so may be precisely because of this distinction made by him between market segregation and discrimination.
68 Id. at 153.
McAdams has criticized Becker’s theory for being both over and under inclusive because it does not explain why whites shunned more public associations with blacks such as sitting next to them in buses while engaging in much more intimate associations with blacks such as employing them in household work as well as making black women their mistresses.\(^69\) McAdams argues that if discrimination was based on tastes for non-association, whites should have more strongly opposed associations with blacks in more private and intimate settings such as that of the home or in sex. However, in making this argument McAdams may have missed Becker’s argument that the taste for discrimination may cause market discrimination or market segregation and that taste is not the only variable in determining actual discrimination.\(^70\) Becker would thus, classify the variations in contact between blacks and whites in public buses or within the home as segregation caused due to discrimination rather than discrimination per se.

Becker also argues that the nature and type of contact plays an important role in determining discrimination. Therefore, more public associations can produce a greater amount of discrimination. One can argue that in such settings it was more difficult to choose the blacks with whom whites wanted to associate and even where possible such choices would be costly to make. Whereas in private settings whites could easily choose to associate only with the blacks towards whom they did not have a taste for discrimination, such as lighter complexioned blacks. Therefore, the obvious disassociation with blacks in public settings may be the most efficient means of reducing contact where it was not otherwise possible to selectively associate.

Does Becker’s theory explain colorism?

Becker intended his theory to apply to all forms of discrimination in the market place including discrimination based on color.\(^71\) However, in order to be able to explain colorism one must attempt to find a logical explanation for a stronger taste for not associating with darker blacks.\(^72\) In other words, are individuals’ preferences for not associating with others affected by the lightness or darkness of their skin color? There is some evidence to support such a taste in the data on skin color based wage differentials.\(^73\) Becker would claim that this wage differential represents the non-pecuniary cost incurred by the employer in employing a darker skinned employee.

Historically, lighter toned slaves were more often hired to work in situations of closer proximity to whites and within the sphere of their home whereas darker slaves were generally made to work in the fields and do hard manual labor.\(^74\) The fact that house

\(^{69}\) See McAdams supra note 7, at 1037.

\(^{70}\) See Becker, supra note 4, at 157.

\(^{71}\) Id. at 153.

\(^{72}\) One of the grounds of criticism of the theory is that in stating that persons do not desire association with members of a particular race, the theory does not explain the construction of race and how persons are categorized as a race. See McAdams supra note 7, at 1041-42.

\(^{73}\) For a study on labor market outcomes of persons with difference skin tones see Arthur H. Goldsmith, Darrick Hamilton & William Darity Jr., Shades of Discrimination: Skin Tone and Wages 96(2) AM. ECON. REV. 242 (2006) (finding that skin shade among African Americans has an important effect on wages).

\(^{74}\) See Keith & Herring, supra note 14, at 762. This may serve to explain away some part of the criticism of over-inclusiveness of the theory that if whites did not have a taste for association with
servants and servants hired to undertake prestigious skilled labor were disproportionately found to be lighter skinned Mulattos lends greater credence to the associational animus theory.  

Another possible reason for why people may have a taste for associating with persons of lighter skin is that darker skin colors more emphatically invoke a certain negative image associated with blackness and thus increase the costs of association. This is also supported by studies conducted by Myrdal who contended that lighter skinned blacks were preferred as slaves by whites because they were more aesthetically appealing to whites and were thought to be of higher intellect because of their white ancestry.

In the Indian ‘arranged marriage market’, lighter skinned brides are prioritized and command a premium. Families of dark-skinned prospective brides have been found to pay large amounts of money in dowry to secure a husband. Conversely, dark men have been found to marry into poor families so that they can have a fair bride. This dowry or price differential that arises from skin color differences represents Becker’s discrimination coefficient or a non-pecuniary psychic cost that individuals are willing to pay to avoid associating with darker-skinned women.

To extend Becker’s theory, assuming that under perfectly competitive conditions there is perfect substitutability between fair brides and darker brides, some profit-maximizing grooms who do not have such a strong taste for discrimination or place a lower value on fair brides should change their preferences and seek darker brides who may in turn command less accomplished grooms due to their lower value in the marriage market. Similarly, other grooms will also seek out darker brides until equilibrium is reached. Amali Philips finds that arranged marriages are considered to be the means for dark women to find marriage partners for themselves, which otherwise may not have been possible. This is consistent with Becker’s idea of a competitive equilibrium.

However, Becker’s theory is simplistic and leaves many questions unanswered. The primary one being where does the desire for ‘whiteness’ come from? It does not explain why lighter skin color is desired.

B. Statistical Discrimination

blacks they would not have hired them to work in their homes where association with them at a comparatively intimate level would be unavoidable. See McAdams supra note 7, at 1037.  

75 Literature supports the theory that “when forced to deal with blacks, whites preferred blacks with lighter skin tones”. In fact whites still seem to “prefer and find less threatening persons who look more like themselves.” See Jones, supra note 22, at 1513-14.

76 Thereby depicting the internalization of the norms of the colonizers.

77 See Keith & Herring, supra note 14, at 762.


79 Dasgupta, supra note 18, at 22.

80 See Philips, supra note 78, at 269.

81 Another question left unanswered by the theory is why blacks with lighter skin tone would discriminate against blacks of darker skin tone.
Statistical discrimination provides an account of racism that is based on rationality and shows that it is not necessary that such behavior be grounded in animus or prejudicial intent. This is different for instance from the status production theory where animus is an important aspect of the theory.

In his paper introducing the statistical theory of discrimination, Edmund Phelps takes the example of a traveler in a strange town faced with making a choice between eating dinner at his hotel or at another restaurant in town. Assuming that the costs of acquiring information about restaurants are high and the restaurant at the hotel is believed to be inferior at least half of the time, Phelps argues that it would be rational for the traveler to make a rule that he will eat outside the hotel on every occasion without any prior investigation of restaurant quality, even if such a rule can be called discriminatory (against the hotel) and though in some cases the hotel food may be better than the food at other restaurants. Similarly in the context of racial discrimination, a profit maximizing employer may discriminate against blacks if information costs are high and the employer believes blacks to be less qualified, reliable etc. This explains how it is profitable to make discriminatory decisions in certain situations. However, it does not explain why, for instance, in this situation all travelers may choose to eat at the restaurant in town instead of at the hotel. There should logically be an equal proportion of travelers choosing to eat at either the restaurant or at the hotel. In other words, it does not explain how blacks are uniformly disfavored in discriminatory decisions. Moreover, with the passage of time and increased contact, discriminatory decisions may change in that the traveler in Phelps’ example may realize that eating outside the hotel is not the better option and may with time start eating at the hotel instead. However, in the context of statistical discrimination scholars have demonstrated how discrimination can be self-perpetuating once discriminatory conduct is established over a period of time. This will be discussed in further detail below.

Individuals can be easily categorized based on race due to the association between race and skin color and the observability of skin color. If, on an average, people of different races differ in productivity due to unobservable causes such as quality of education or cultural differences, the statistical theory of discrimination postulates that employers can profitably use race as a proxy for these unobservable characteristics that come to be associated with race.

Phelps’ assumption of high information costs is noteworthy. High information costs may appear to be a restrictive assumption for justifying discriminatory behavior in the present world given that information costs have reduced with improvements in technology. Kenneth Arrow explains that these information costs do not refer to the easily verifiable or observable qualifications and characteristics of an individual. Rather, these information costs refer to traits relevant to an individual’s employability that are not easily observable such as investments that workers make in themselves in

83 Id. at 659.
84 Id. at 659.
the form of habits of action and thought, steadiness, punctuality, responsiveness and initiative, among others, which all contribute to the qualifications of a worker.  

However, these characteristics can be acquired with experience, training and motivation and therefore, should not in themselves justify hiring decisions.

Strahilevitz however, shows that an important cause of statistical discrimination is the lack of verifiable information about the subject of discrimination. One cause for high information costs may be privacy laws that prevent the disclosure of information (for instance criminal history records) and thus, encourage discriminatory decisions that would not be made if employers had more information. Stravilevitz also shows that government disclosure of previously private information can reduce discrimination if statistical discriminators form a majority of discriminators in the market and the government disclosed information is relatively accurate. Thus, information costs are central to statistical discrimination.

In his paper discussing racial discrimination in labor markets, Kenneth Arrow argues that statistical discrimination will occur only when employers incur ‘personnel investments’. Personnel investments are costs incurred by employers every time a worker is hired and includes costs of training. According to Kenneth Arrow, if there were no personnel investments, an employer would hire everyone who applied and simply fire those unqualified after evaluating their performance. However, personnel investments make changing the labor force from black to white or vice versa a costly proposition. Given the costs associated with personnel investments, employers should be wary of making any mistakes in their hiring decisions. Kenneth Arrow thus explains that statistical discrimination occurs in order to reduce the possibility of costly mistakes arising as a result of an employer’s inability to completely evaluate the qualifications of prospective employees. In a costless world of course, an employer would have all the information required to arrive at a correct hiring decision and then would hire an employee who would be least likely to sink the personnel investments made in her.

However, this explanation presumes that either it is impossible to obtain accurate information about certain personal attributes or characteristics of people or that information costs are higher than the costs associated with mistaken decisions i.e., the cost of hiring an unsuitable person who may need to be dismissed from service after personnel investments have been incurred. Otherwise, employers would invest in acquiring the correct information about prospective employees (given that mistakes can be costly in the form of sunken personnel investment costs) rather than use proxies to predict the potential characteristics of potential employees. This assumption of high information costs, while central to the statistical theory of discrimination, limits the scope and applicability of this theory.

87 See KENNETH ARROW, SOME MODELS OF RACIAL DISCRIMINATION IN THE LABOR MARKET 21 (1971).
89 See id. at 363-64.
90 See id. at 373.
91 See Arrow, supra note 87, at 21.
92 See id. at 21.
93 See id. at 21.
94 See id. at 19-20.
Discriminatory conduct arising as a result of statistical discrimination can be perpetuated over a period of time. One of the reasons for this may be a rational workers unwillingness to invest in human capital in light of discrimination. When prospective employers make judgments based on race rather than the ability and qualifications of individual blacks, then blacks are not rewarded for any investments they make in acquiring these qualifications which will in-turn reduce their motivation to invest in acquiring these qualifications, leading to a cycle of self perpetuating statistical discrimination.

Roithmayr uses antitrust principles to argue that market discrimination is ‘locked-in’ because of historical monopolistic conduct by whites which created barriers to entry for blacks so that standards of competition that favored whites were locked-in by the market over a period of time. Due to market mechanisms an initial advantage can feed back on itself to create an even larger advantage until that advantage becomes so large that it is locked-in the market. Thus, racism persists because blacks do not enjoy the same opportunities to compete. The culturally specific standards of competition that have been institutionally locked-in by white monopolistic conduct favor whites and create barriers to entry for blacks in a self-perpetuating cycle of discrimination. Statistical discrimination can thus explain the persistence and prevalence of racism in present society.

*Can statistical discrimination explain colorism?*

Does this theory give us some clues about why we value whiteness? The foundation for statistical discrimination lies in the ability and ease with which it is possible to characterize people into different groups and then make generalized assumptions about their characteristics based on their membership in a group. Does the presence of a variety of shades of skin color make this characterization more costly? Can skin color (unconnected with race) be used profitably as a proxy for making employment decisions?

For statistical discrimination to be profitable the following conditions should be met: (a) high information costs, (b) the ability to clearly classify people into groups and (c) the ability to make correlations between the group’s attributes and its productivity. The assumption of high information costs in (a) above and the restrictiveness of that assumption is the same for colorism and racism.

It is possible to make correlations between skin color and productivity as suggested in (c) above. Not only have such correlations been made but they even have a basis in history. For instance, in America, people with lighter skin tone, who were also Mulattos, were generally found to have been better educated and wealthier as they had the opportunity to capitalize on their white ancestry. Thus, American history indicates

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96 See Arrow, *supra* note 87, at 96-97.

97 See id. at 731-732.

98 See id. at 732.

99 See id. at 734-5.
that people associated lighter skin color with white heritage and consequently, with better education and more opportunities. Empirical evidence suggests that employment decisions in the present day are also affected by skin color. In fact a variety of studies conducted recently in the American labor market have found a gradient of higher success and better opportunities for persons with lighter skin color. Therefore, a positive correlation can be drawn between skin color and the presence of unobservable attributes. However, such correlations are racist rather than colorist because they are related to the employer’s belief in the historical link between the color and race of a prospective employee. In other words, these distinctions are not made purely based on skin color but because people of lighter skin color are assumed to be of white ancestry and consequently, have the benefits that are associated with being white. This reasoning does not satisfactorily explain how employers and other decision-makers draw fine distinctions between people of different skin color and needs more in-depth study that is beyond the scope of this paper.

Finally, with respect to (b) above, given the different shades of skin color, (as compared to the specificity of racial groupings) colorism belies the ease of classification into groups that racism promotes. It doesn’t seem efficient to identify different skin hues and categorize individuals into a multiplicity of hues just to avoid high information costs. Moreover, groups based on color will not be well defined and therefore, there are likely to be ambiguities about the classification of individuals into such groups. If it is difficult to classify individuals into groups based on skin color then it will be correspondingly difficult to make assumptions about group attributes. There is a greater chance of decisions being made wrongly because of ambiguities in color based classifications. Thus, while classifications based on race are clear and therefore, easy to make, classifications based on skin color have an element of ambiguity which makes them complex. Therefore, it will be less profitable for employers to make such decisions. It is doubtful that statistical discrimination will be efficient in the absence of clearly defined groups.

In the Indian ‘arranged marriage market’ prospective brides and grooms seek mates with certain characteristics. Some of these characteristics are easily observable while others are not. Examples of observable characteristics are beauty, family background, education etc. Examples of unobservable characteristics are health, cultural and social values, behavioral qualities etc. of the prospective partner. These are characteristics that can only be known with time and familiarity. Given that marriages are typically fixed within a short period from the time that the alliance is brought to the families and that interaction between the prospective partners is strongly discouraged, unobservable characteristics are difficult to determine. Skin color serves as an identifiable proxy for some of these traits as lighter skin color is associated with better breeding and higher social status. However, it is still not clear as to how skin color

101 For a study on labor market outcomes of persons with different skin tones see Arthur H. Goldsmith, Darrick Hamilton & William Darity Jr., Shades of Discrimination: Skin Tone and Wages 96(2) AM. ECON. REV. 242 (2006) (finding that skin shade among African Americans has an important effect on wages).
102 See Philips, supra note 78, at 253 (discussing the conceptions of skin color in Kerala, a state of India and the social judgements that color brings with it as well as describing existing literature in social science about the importance of skin color in South Asian arranged marriages).
has come to serve as a proxy for unobservable characteristics in both the employment and marriage market. From the discussion above it is clear that information costs are high in the Indian arranged marriage market. It is also clear that Indian arranged marriage market participants attribute positive traits to prospective partners of lighter skin color. Thus, in making a choice between darker complexioned girl A and lighter complexioned girl B, boy C will choose girl B if he knows equally little about both girls and her observable characteristics are equivalent to girl A.

As decisions have been made on this basis for a long period of time, it is possible to argue that light skin has now become a mandatory requirement for a prospective bride and not merely a proxy for limited information. In that, even if there is more information about girl A than girl B, the complexion of girl B is likely to make her a more successful candidate for marriage. In fact because fair complexion has come to be associated with beauty in general, even individuals choosing mates outside the arranged marriage market, where information costs are relatively low, prefer partners of a lighter skin color. In short, statistical discrimination can explain why decisions about prospective marriage partners are made based on skin color.

Moreover, the fact that discriminatory beliefs are held uniformly across racial and national divides fits well within the theory of statistical discrimination. In other words, the existence of statistically based beliefs can explain how all individuals have the same preference for fair skinned persons.

However, statistical discrimination cannot explain the complexities and intricacies of interactions in society that are affected by skin tone. It does not explain how skin color rather than some other equally visible attribute such as hair color is used as a proxy for making statistically based decisions. The associations between the race of a person and certain characteristic attributes which prima facie have no actual relation with race are created by society. Statistical discrimination cannot explain the existence of deep rooted beliefs regarding the positive attributes of being white especially amongst darker skinned blacks. It cannot explain the desire for whiteness.

C. Status Production

The status production theory postulates that racial discrimination arises from a desire for status. The theory finds support in the well-established fact that the effect of racially discriminatory behavior has historically been the appropriation of status by whites. The theory is based on the desire to be socially esteemed and in particular, to seek status in small, close-knit communities that McAdams calls ‘socially connected groups’. McAdams argues that the desire for status is so great amongst

103 Particularly in the labor market, there are a number of other characteristics that employers can use as a proxy for these unobservable traits e.g. a person’s accent.

104 McAdams supra note 7, at 1044 citing DAVID R. ROEDIGER, THE WAGES OF WHITENESS 13 (1991) and Derrick Bell, White Superiority in America: Its Legacy, Its Economic Costs, 33 VILL. L. REV. 767, 77 (1998) among others. See also Harris, supra note 9, at 1745-46 (describing how the acceptance of white privilege in law in the period after the abolition of slavery contributed to the creation of whiteness as status); Dasgupta, supra note 18, at 23 (presenting a view based on Indian colonial history that fair skin represents social superiority in India).

105 McAdams supra note 7, at 1023-24.
members of socially connected groups that it motivates individuals to make material sacrifices for the sake of gaining status within a group.\textsuperscript{106} McAdams then extrapolates this argument to society at large. Members of a socially connected group contribute materially to improving their inter-group status because creating status for their group vis-à-vis other groups means that members of society will grant them esteem because of their membership in that particular group.\textsuperscript{107}

According to McAdams, status is not only a means of bringing about but also an end of intra-group cooperation.\textsuperscript{108} Intra-group cooperation however, brings about inter-group conflict in the form of competition for inter-group status.\textsuperscript{109} Since social status is relative in that it is acquired in relation to others, investing in increasing the status of one’s group means subordinating the status of other groups.\textsuperscript{110} According to McAdams, the desire for status increases cooperation among members of a group.\textsuperscript{111} Racism is a product of this desire for status.

\textit{How does status production explain free riding?}

Any theory of group behavior is faced with the challenge of being able to rationally explain how the tendency of members to free ride is overcome.\textsuperscript{112} McAdams’ status production theory argues that racial status production will occur even in the absence of any external coercion\textsuperscript{113} as long as socially connected groups overlap substantially with intra-racial or shared trait groups.\textsuperscript{114} Socially connected and shared trait groups naturally overlap according to McAdams, because the very visibility of skin color as a shared trait makes it advantageous for whites to come together as socially connected groups to create status.\textsuperscript{115} The status production theory thus presumes that individuals have a tendency to group together based on race and will overcome the urge to free ride because (a) they strongly desire to be esteemed by others, and (b) skin color is the ideal criterion for social grouping for the purpose of status creation.\textsuperscript{116}

\begin{itemize}
  \item \textsuperscript{106} See id. at 1031.
  \item \textsuperscript{107} See id. at 1045.
  \item \textsuperscript{108} See id. at 1029.
  \item \textsuperscript{109} See id. at 1029.
  \item \textsuperscript{110} Id. at 1031.
  \item \textsuperscript{111} Id. at 1031.
  \item \textsuperscript{112} The tendency to free ride arises when a good is non-excludable and an actor internalizes all of the immediate costs of contributing to it but only receives a part of the diffuse future benefits from the provisioning of the good. As a result, either a suboptimal amount of the good, or no amount of the good is produced. Studies have shown that factors such as group size and the noticeability and perceptibility of the contribution as well as an individual’s share in the benefits can affect the motivation to free ride. See Lee A. Fennel, \textit{Common Interest Tragedies}, 98 Nw. U.L. Rev. 907 at 919 (2004); Robert Albanese & David D. Van Fleet, \textit{Rational Behavior in Groups: The Free Riding Tendency}, 10(2) Acad. Mgmt. Rev. 244, 244 (1985).
  \item \textsuperscript{113} In his book on the theory of collective action, Mancur Olson showed that large groups will not be able to produce public goods in the absence of external coercion. See MANCUR OLSON, \textit{THE LOGIC OF COLLECTIVE ACTION} (1971). Elinor Ostrom has argued that collective action will be possible even without coercion where groups develop social norms. See ELINOR OSTROM, \textit{GOVERNING THE COMMONS: THE EVOLUTION OF INSTITUTIONS FOR COLLECTIVE ACTION} (1990).
  \item \textsuperscript{114} See McAdams supra note 7, at 1047.
  \item \textsuperscript{115} See McAdams supra note 7, at 1047-48. This argument is cyclical in itself.
  \item \textsuperscript{116} The more observable the trait the more status members have to gain by joining the group. Id. at 1045.
\end{itemize}
Considering presumption (a) above first, McAdams’ devotion to the concept of esteem and the willingness of individuals to cooperate for the sake of esteem may be restrictive. When individuals’ desire for status is so strong, McAdams does not explain how individuals overcome the desire to create esteem for themselves by subordinating, rather than cooperating with others. In other words, what is the currency of the esteem payments that group members make and why would individuals invest in creating status that is shared rather than invest in purely personal status creation? McAdams does not answer this satisfactorily. Individuals will value esteem differently and all members of a socially connected, shared trait group may not be willing to incur the same costs to generate esteem, which are also necessary to be borne for status creation.

Now considering presumption (b), can the mere visibility of skin color be responsible for overcoming free riding? The visibility of skin color is an important aspect of McAdams’ theory because it makes it easy to monitor defections or free riding by group members.\textsuperscript{117}

According to Epstein, the argument against free riding does not take into account the ease of mobility - the new entry of firms or defection by firms. McAdams acknowledges that each socially connected sub-group will have a tendency to free ride when many socially connected groups comprise one shared trait group.\textsuperscript{118} In other words, given that all whites are not socially connected, some socially connected white sub-groups will likely free ride of the investments of other whites. McAdams argues that status production will still occur because socially connected white subgroups with lower status and few other options for status production will benefit enough from racial subordination to be willing to produce status even if other subgroups free ride.\textsuperscript{119} This is in line with Olson’s’ idea of voluntary collective action in small group sizes.\textsuperscript{120} However, it is difficult to see how status can be produced if free riding is extensive. If some whites do not indulge in discrimination and do not distinguish blacks in any way from themselves, then the effect of the investments of other white subgroups will be diluted and may even be nullified. Particularly, when white subgroups who are not indulging in discrimination are likely to be the ones with higher social status. A majority of white sub-groups must at least be ready to make esteem payments to other whites who are creating status in order for the status production theory to work. But McAdams does not explain why elite white sub-groups will make esteem payments to whites with lower social status.

Another argument that McAdams puts forth is that free riding will be overcome by the presence of discriminatory social norms that transcend individual subgroups.\textsuperscript{121} Epstein argues that the theory is wrong in concluding that status production (or only social and cultural norms) are powerful enough to motivate group solidarity in the

\textsuperscript{117} According to McAdams, the use of observable traits as proxies for granting esteem gives people a reason to care about the esteem generating behavior of others with whom they share the observable trait. Esteem makes cooperation rational. See id. at 1022.

\textsuperscript{118} See id. at 1046.

\textsuperscript{119} See id. at 104-47.


\textsuperscript{121} Id. at 1047.
absence of force or coercion. He also argues that the techniques of status production are not exclusively available to whites – blacks can also create status for themselves and the theory does not sufficiently take this into account. A possible explanation for why blacks may not attempt to create status for themselves is provided in the following discussion.

Applying the theory of status production

The status production theory is able to explain the desire for whiteness. As with statistical discrimination, the status production theory is also premised upon the visibility of skin color, which makes race an easily identifiable marker for defining and creating shared-trait groups. The visibility of skin color is the sole reason advanced for the importance given to it in status creation. McAdams argues that whiteness is a visible trait that is associated with higher status because of the investments that whites have made in status production. These investments then explain the desire for whiteness – which is the desire for the privileges and status that are associated with possessing white skin color. Skin color has served as more than an indicator of class, it was the determinant of status regardless of a person’s actual socio-economic class. This is because whites have used skin color to create status for themselves. The status production theory can explain the desire for whiteness by relying on the association between color and status. This association explains the value society places on whiteness.

The status production theory can also partially explain why blacks and other colored people value whiteness even though it is a characteristic which they do not themselves possess. For instance, members of a dark skinned Indian family will nevertheless reject a prospective bride who is dark in favor of a light skinned bride even though they may share the same skin shade as the dark skinned bride. This is because the characteristic of whiteness is associated with a group that has created status for itself. By investing heavily in “status accorded to whiteness,” whites have been able to ensure that their beliefs associated with whiteness acquired the form of a social norm that was internalized by all of society. Through their discriminatory interactions with whites, blacks are reminded of the benefits of being white and their own inferiority by virtue of being black. Thus, the desire for whiteness is a desire to seek membership of the group which is believed to have a higher status.

Further, while people care about what others think, it is possible to use the status production theory to make a claim that people care more for obtaining the esteem of persons who are highly placed in society than the esteem of group members who are

123 Id. at 1106.
124 See McAdams supra note 7, at 1045.
125 See id. at 1045.
126 See Jones, supra note 22, at 1528.
127 See id. at 1528.
128 The status production theory can only partially explain this because its explanation for why groups create status for themselves is based on the assumption that people tend to esteem characteristics in others which they also possess themselves, an assumption that is proved untrue in this case.
129 McAdams, supra note 7, at 1046.
130 Social norms can arise amongst a collection of socially connected groups. See id. at 1047.
no better off than themselves.\textsuperscript{131} This is not to say that esteem of other blacks does not matter to blacks. However, the desire for membership of the group with superior status may be stronger than the need for esteem from the fellow members of a socially subordinated group. According to the status production theory, members allocate esteem to others within a group because those esteem payments encourage the creation of group status. In a situation where members of a group concede their inferior position\textsuperscript{132} the group may invest in acquiring visible traits that others consider valuable rather than trying to generate esteem for their own shared trait group.\textsuperscript{133} Thus, internalizing the views of the more powerful and dominating members of society i.e. whites, is one possible reason for intra-racial colorism.\textsuperscript{134} In this situation, there is no motivation to invest in creating status for one’s own group as no pay offs are being achieved from group membership. Members may no longer feel it profitable for them to remain in that group but may strive to attain membership of another group.\textsuperscript{135} As acquiring the traits of other groups does not require co-operation of group members, it may result in a loss of value in membership of the subjugated group. This may explain the feeling of low self esteem among darker skinned people as well as the desire for whiteness.\textsuperscript{136}

The behavior of blacks and even of Mulattos during the Jim Crow south suggests that it was too costly to invest in subordination of whites and instead it was more profitable to accept white superiority and align ones’ self with whites.\textsuperscript{137} For instance, Mulattos believed that their white blood made them superior to other black slaves.\textsuperscript{138} Mulattos were thus, using the value ridden property of ‘whiteness’ to create status for themselves.\textsuperscript{139} Rather than group together to subordinate whites, mulattos and blacks competed to subordinate each other and accepted white superiority. Further, studies have shown that lighter skinned blacks or Mulattos took pains to maintain their

\textsuperscript{131} We tend to value most the opinion of those we esteem highly. See id. at 1024. This could (in a situation where internalization of norms has resulted in greater esteem for persons who are believed to represent an ideal which a person is striving to reach) be a person of another group. Thus, all persons of a group may esteem an ideal which they do not possess.

\textsuperscript{132} Frequent exposure to negative evaluations can undermine the sense of self worth. Self evaluations have an effect on a person’s moral worth as well as competency or efficacy. Interestingly, the effect of colorism is different for women and men. Skin tone has a significant effect on self efficacy of black men and on self esteem of black women though the findings in the study are moderated for socio-economic status in the case of women. See Maxine S. Thompson & Verna M. Keith, \textit{The Blacker the Berry: Gender, Skin Tone, Self Esteem and Self Efficacy}, 15(3) \textsc{Gender} & \textsc{Soc’y} 336, 339 (2001).

\textsuperscript{133} McAdams, \textit{supra} note 7, at 1045.

\textsuperscript{134} See Nance, \textit{supra} note 24, at 443.

\textsuperscript{135} This explains the attempts at passing off by blacks with lighter skin tones.

\textsuperscript{136} See McAdams, \textit{supra} note 7, at 1049.

\textsuperscript{137} An important part of the game of status production is to gain the approval of third party observers. A strategy would be to eliminate the existence of the third party group by including them in either one’s own group or the disparaged group and since it is better to be a part of the majority, all else equal, this strategy would involve defining one’s self as a part of the majority. See Thompson & Keith, \textit{supra} note 131, at 337.

\textsuperscript{138} Skin tone was an important criterion for attaining prestige in the community. See Keith & Herring, \textit{supra} note 14, at 762.

\textsuperscript{139} It is no surprise that Mulattos patterned their behavior on whites. See Keith & Herring, \textit{supra} note 14, at 763.
distinctive status by engaging in conscious acts with the objective of furthering group interests, an example is their insistence on endogamy.\textsuperscript{140}

Can the status production theory also explain colorism?

At first glance, some of the history of American colorism is explained by the theory of status production. An example of the efforts of Mulattos towards status production is the systematic exclusion and disparagement of blacks by the formation of societies such as the brown paper bag\textsuperscript{141} and blue-vein\textsuperscript{142} societies. These societies present a micro-picture of how skin color was used to create social hierarchies.

Firstly, these societies attempted to create and define an identifiable group on the basis of skin color where the inherent foundation for a group i.e. an unambiguous boundary did not exist naturally.\textsuperscript{143} The very essence of the distinction on the basis of which whites built their status, skin color, is eroded when the distinction between black and white is blurred by the creation of an intermediate category of people with skin color that falls within a diverse range between black and white.\textsuperscript{144} As the range of skin tones is diverse, the process of creating groups based on skin color rather than race is a complex one. However, these societies used innovative methods of achieving group exclusivity by objectively determining the precise skin tone required for membership of the group. Group members could then make investments in status production with less fear of free riding. Secondly, these societies show that skin color could be used as a means for status creation.

The controversial theory of the origins of the Indian caste system based on a color hierarchy created by the Aryans also points towards a link between skin color and status that supports the status production theory. If the theory is correct then it is possible to say that the behavior of the Aryans in creating social (or occupational) hierarchies based on skin color or varna was their attempt at creating a system of clearly defined groups that preserved their status by making the group to which they belonged the socially superior one. This fits neatly into the explanation provided by the status production theory.

The status production theory can also be used to explain colorism in present society. Societies make strong correlations between light skin color and higher social status.

\textsuperscript{140} The disproportionate intermarriage amongst Mulattos is contended to be the effect of a strong social norm enforced by the Mulatto elite in order to preserve distributional rents associated with being a Mulatto. See Howard Bodenhorn, \textit{Colorism, Complexion Homogamy and Household Wealth: Some Historical Evidence}, 96(2) AM. ECON. REV. 256, 259-60 (2006). See also Keith & Herring, supra note 14, at 760-61.

\textsuperscript{141} The brown paper bag societies excluded membership of those blacks whose skin was darker than the color of a brown paper bag. See \textit{Brown Paper Bag Syndrome: Darker Skinned Blacks are Subject to Greater Discrimination} 37 J. BLACKS HIGHER EDUC. 46 (2002).

\textsuperscript{142} The blue-vein societies’ membership was restricted to those persons whose skin color was light enough for their veins to be visible. See Baynes, supra note 14, at 133-34.

\textsuperscript{143} In some of these societies people were admitted solely on the basis of their skin color regardless of their socio-economic status. This was probably an extreme attempt at drawing a group boundary.

\textsuperscript{144} McAdams acknowledges that as cross-membership between groups increases people will invest less in subordinating other groups to which they may also belong. McAdams, supra note 7, at 1080. Yet this category of mixed race people are not a product of the new age. They always existed. Their existence has however, not undermined the ability of whites to create status for themselves. Examining the reasons for this is beyond the scope of this study.
American employers may want to hire people with lighter skin color and Indian men may seek brides with light skin color because they feel that such people come from a higher stratum of society and are better situated to be employees or marriage partners and that associating with such people will increase their own status. If one considers marriage to be a strategic decision of improving or establishing ones social status, then the premium associated with a fair bride (in the form of demand for more dowry for darker brides) is perfectly explained.

However, setting aside historical and present day examples, can the theoretical precincts of status production be used to explain colorism? The interconnectedness of socially connected and shared trait groups is an important part of McAdams’ theory as it explains why individual members of a group will make intra-group contributions in the form of esteem payments. However, it is difficult to extrapolate the connection between shared trait and socially connected groups in case of colorism because people who share the same skin tone may not always be a part of the same socially connected groups and vice versa. Given the diversity of skin colors, sometimes even among members of the same family, natural social connections are drawn between people of different skin color. Consequently, the advantages that overlapping socially connected and shared trait groups provide to status creation in the case of racism is difficult to replicate with colorism. Colorism blurs the color line in that it shifts the paradigm of discussion from a simple black and white one to a more ambiguous one of whiteness and darkness.

Taking this argument one step further - introducing colorism into the status production theory means acknowledging that there are a variety of skin colors within a race and that shared trait groups and intra-racial groups are not superimposable. Members of the same race do not necessarily share the same skin color and therefore cannot form a part of a shared trait group. The basis of McAdams’ argument that the trait common to members of a race is skin color and therefore, shared trait groups are actually intra-racial groups cannot stand unless members of a race can be said to group together based on their specific skin tone. Since we do not generally observe such groupings in society, McAdams’ argument of intra-group cooperation by reason of esteem payments as well as his arguments for why free riding will not occur cannot explain colorism.

It is possible to take a different view of this by considering how whites have responded to groups who have tried to free ride off whites’ investments in status production. History shows that on the one hand their response was to preserve the distinctiveness of group boundaries by resorting to mechanisms such as the “one drop rule” which emerged at the height of the period of segregation in the south. This is consistent with the status production theory because preserving group boundaries is

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145 Indian and European history is replete with examples of rulers and kings marrying strategically to further their interest or status. When families look for prospective spouses for their children in an arranged marriage, the primary concern of the parents is that the child should marry into a family with status.

146 For example, the protagonist in Eliot’s Mill on the Floss, Maggie Sullivan was dark complexioned whereas her brother was fair complexioned. See supra note 1.

147 Any person with even a drop of black blood was treated as a member of the African American race. See Jones, supra note 22, at 1505.

148 The status production theory explains why rigorously enforcing boundaries between races pays off. McAdams, supra note 7, at 1049 n.182.
necessary to avoid free riding of whites’ investments in status production. On the
other hand, whites created a divide based on skin color by actively favoring lighter
skinned blacks over darker skinned blacks. One way to explain why whites created
a distinction between lighter skinned and darker skinned blacks is that by
distinguishing persons on the basis of skin tone, whites re-emphasized their own
superiority in the so-called racial hierarchy. Giving preference to people who were
more akin to whites in terms of their most visible characteristic i.e. skin color, and the
benefits attendant to such preference like higher status, was a way to strongly
reinforce the benefits associated with ‘whiteness’ and thereby to create a social
hierarchy or normative structure in which the characteristic of whiteness was an ideal
desired by all non-whites. This explanation is also consistent with the general idea of
status production.

To conclude the above discussion, the idea that colorism can be a result of the desire
to create status is compelling and both historical and present day examples exist to
support such a thesis. However, the theory of how status is created does not fit with
our understanding of colorism and therefore, the theory of status production cannot as
such explain colorism.

The discussion that follows attempts to apply the understanding of colorism derived
from the above to developing a legal framework for colorism in India.

V. COLORISM AND THE LAW IN INDIA

The discussion on racial discrimination and the law in India is superimposed with the
dialogue on caste-based discrimination. While the media and academics discuss
racism and colorism in India, there is little by way of law to support this discussion.
Human rights and other legal activists have also not considered racism as a prominent
form of discrimination in India. The only legal provision that could be used to redress
racism in India is Article 15 of the Constitution of India, which prohibits all forms of
discrimination, including discrimination based on race. In addition, Section 153
clauses (a) and (b), and Section 505 of the Indian Penal Code prohibit actions that
promote disharmony, hatred, feelings of enmity and ill-will on grounds of race. These

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149 Blacks with lighter skin tone report dramatically better treatment from whites and partially better
treatment from blacks than those with darker skin tone. See Hersch, supra note 16, at 251. In the
majority of the cases Mulattos with their lighter skin tones were admired by blacks. See Jones, supra
note 22, at 1517. Whites and lighter skinned blacks have been found to have deep seated beliefs that
dark skinned blacks are more prone to violence, criminal activity, drug use and laziness. See Brown
Paper Bag Syndrome: Darker Skinned Blacks are Subject to Greater Discrimination, supra note 140,
at 46.

According to McAdams under the status production theory people of a particular racial group invest in
group boundaries to maintain their position in high status groups. McAdams, supra note 7, at 1045.
However, since the goal of status production is to subordinate by gaining the approval of third party
observers McAdams suggests that an obvious strategy would be to eliminate third party observers by
including them in one’s own group thereby defining ones group as the majority. Therefore, status
production can explain the need to define one’s self as belonging to the majority group. See McAdams,
supra note 7, at 1049.

150 See Dasgupta, supra note 18, at 16.

151 See e.g., Mara Adelman & Sonora Jha, Looking for Love in All the White Places: A Study of Skin
Color Preferences on Indian Matrimonial and Mate Seeking Websites, 1(1) STUD. S. ASIAN FILM &
MEDIA 65 (2009).
also distinguish between race and caste. However, no case primarily alleging racism has been brought before Indian courts.\textsuperscript{152} This has lead the UN Committee on Elimination of Racial Discrimination (CERD) to question whether individuals are sufficiently informed about their rights against discrimination. The CERD has also expressed concern that there is no “specific statute providing for the right of individuals to seek from the courts just and adequate reparation or satisfaction for any damage suffered as a result of acts of racial discrimination”.\textsuperscript{153}

Further, while the law addressing racism in India is limited and may not be adequate, there is absolutely no law that addresses colorism in India. Article 15 of the Constitution of India is titled “Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth”. Thus, discrimination based on color is not recognized as a ground of discrimination in the Indian constitution. Therefore, people facing discrimination based on color in India will have to bring claims under racism under the present legal framework in India.

In short, discrimination based on color is not legally recognized in India. However, racism is prohibited under the Constitution of India. This paper shows that even though colorism may have historically originated from racism, in its present form it is distinct from and unrelated to racism. This difference does not take away from the importance of colorism.\textsuperscript{154}

The legal framework in India should be sensitive to this difference and ‘color’ should feature as a separate ground of discrimination. A question for future research is whether, even if color is included as a ground of discrimination, it will be able to address the occurrence of colorism in institutions, particularly in social institutions such as in the Indian arranged marriage market. The challenge will be for prospective aggrieved parties to prove such a claim in a court of law given the inherent subjectivity of skin color. It is necessary for the law to address the inherent reason behind the existence of colorism i.e., the desire for whiteness, rather than to simply include color as a ground of discrimination.

In framing a law on colorism, India should look to the American experience under Title VII of the Civil Rights Act of 1964\textsuperscript{155} for guidance. For instance, US courts have ruled that people bringing color based claims must also share American racial history.\textsuperscript{156} Accordingly, a person of Pakistani origin was not allowed to bring such a claim.\textsuperscript{157} It is interesting to note that in the US a majority of the colorism claims have


\textsuperscript{153}Id. at ¶ 339-373.

\textsuperscript{154}See contra Hersch, supra note 16, at 251 (showing that the perceptions of the impact of colorism in society may be greater than the actual differential treatment given to people of different skin shades).

\textsuperscript{155}“Title VII's protections against color discrimination prohibit an employer from making detrimental employment decisions based on the immutable characteristics of color.” Nance, supra note 24, at 460.


\textsuperscript{157}“The court recognized that 'the literal language of the statute which prohibits discrimination on the basis of 'color' would seem to apply to Ali's claim,' but stated that 'the testimony regarding skin color variations among the peoples of Pakistan does not suffice to merit the division of Pakistanis into distinct 'protected classes' according to color.' Nance, supra note 24, at 459.
been brought by South Asians.\textsuperscript{158} Does this mean that there is more colorist prejudice against South Asians or is it that South Asians are more conscious of colorism?\textsuperscript{159} The reason for this may be that colorism is still to establish itself as a legitimate and sufficient ground of discrimination.

Another interesting point to note from the American experience is that contrary to expectations, all plaintiffs bringing claims are not dark skinned. Some claims have even been brought by light skinned plaintiffs alleging discrimination towards them by dark skinned people.\textsuperscript{160} The reasons for this kind of retaliatory action can be an interesting point for future research. Further, it will be interesting to see if such cases already exist in India and if so, whether a law on colorism will bring them to light. However, Indian legislators should keep in mind that Title VII solely addresses employment discrimination claims, whereas a similarly confined law in India will cover only a small proportion of existing instances of colorism.

\section*{VI. Conclusion}

This paper finds that the existing theories of racism are unable to explain the deep rootedness or persistence of colorism. The only theory that is able to explain the desire for whiteness is the theory of status production. However, the constraints in the construction of this theory restrain its ability to satisfactorily explain colorism. While status creation may be an objective of colorism, the theory does not satisfactorily explain how status production, in the manner described by McAdams, may be the means to that end. The idea of status as an end result of racism and colorism is compelling and resonates globally. Thus, it is worth exploring whether other means of status production would achieve the same result. Perhaps this theory should draw upon the more universal history of colonial domination outlined in this paper rather than that of the Jim Crow South for its explanation of racism. Nevertheless, the theory of status production may be most useful to us in understanding colorism as a by-product of racism. Particularly, it makes a strong argument for considering colorism as a by-product of racism.

The primary distinction between colorism and racism is that unlike colorism; skin color is not the sole basis for discriminatory classifications in racism. This distinction is the chief reason for the inability of the theories of racism to explain colorism. Interestingly however, the theory of statistical discrimination provides a neat explanation of colorism in the Indian ‘arranged marriage market’. This is probably because distinctions are made in India based solely on minute differences in skin tone. Consequently, discrimination occurs according to a gradient that follows complexion differences. Membership of a group may not be significant for discrimination to be statistically induced in such a situation.

\textsuperscript{158} See Nance, supra note 24, at 474.
\textsuperscript{159} See id. at 471.
\textsuperscript{160} See id. at 465.
By comparing colorism in the United States and India, this paper produces a more universal account of colorism. One that establishes the domination of skin color in discriminatory decision-making; whether defined as colorism or racism. Regardless of the form in which colorism exists today, the role of racism in constituting colorism cannot be over looked. In comparison to the United States where color is often not the sole basis for discrimination, can colorism be more widespread in India? What explains the persistence of colorism in India’s racially homogenous society? These questions may be the subject of future study.