

minorities

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Lack of Access to Justice for Minorities as Offenders, Victims, and Witnesses

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Lack of Access to Justice for Minorities as Offenders, Victims, and Witnesses

Introduction

For the longest time, minority groups² in the United States and across the world have been discriminated and sidelined² by the prevailing criminal justice system. The minorities which mainly includes the African Americans, Hispanics, children, and women have been denied access to justice through racial and class discrimination. The other category of minorities are immigrants, same-sex couples, and people living with disabilities. The discrimination is manifested when such categories or people are offenders or victims which inflates the number of such people in prisons and correctional facilities. African Americans are⁵ more likely to be arrested, convicted, and prosecuted for lengthy prison sentences than whites. The incarceration rate of blacks is 5.9 times higher than that of whites. There is evidence of direct racial discrimination for black Americans and Latinos in sentencing outcomes.

According to race-based theory, there is a rise of predictions that significantly established discrimination against certain minority groups within criminal justice systems (Garland, Spalek, & Chakraborti, 2006). The discrimination is based on race by the police, courts, and other agencies in the United States. It is the right of every citizen, despite their race or ethnicity, to be treated fairly and in a humane manner. Criminal justice systems should develop ways to offer legal aid, including legal advice, assistance, legal education, and make it possible for offenders, victims, and witnesses to access legal information at no cost. This is when they cannot access such information or lack sufficient means. This is important, particularly in the early stages of any criminal justice process, for the individuals who have been detained for certain criminal offenses, but it is not always the case (McClain, 2018). This paper will focus on discrimination of minorities as

offenders, victims, and witnesses in the criminal justice systems, its impacts on minorities accessing justice, and probable strategies to manage the discrimination.

14th Amendment and Equal protection

The 14th Amendment guarantees equal protection for all US citizens. It is also called the equal protection clause and aims at creating equality and fairness among all United States citizens irrespective of their race, class, religion, or gender. Equal protection is the idea that a governing body must treat all persons equally. However, this clause has been used discriminatorily by officials and entities that are entitled to enforce it. The clause has been used to the advantage of some groups of people while disadvantaging others. Specifically, the law has been used to undermine the rights of African Americans and other marginalized groups. ¹⁵ In the criminal justice system, “the due process” law has been used to discriminate against them.

Criminal justice system

Decisions and actions taken by a criminal justice system are required to allow minorities to defend themselves when they are either detained before trial or when they are undergoing prosecution. Legal aid is necessary for any victim and witness in a criminal justice process to guarantee them their protection as it is their right (Garland, Spalek, & Chakraborti, 2006). Over the years, members of minority groups have been overrepresented in alleged offenders and victims. Therefore, it is fundamental to make sure the minorities' rights to fair trials and equality before the law are upheld as this group is subject to discriminatory treatment from pernicious stereotypes and biased criminal justice officials (Barak, Leighton, & Flavin, 2010). Such occurrences lead to

injustices because their statements are considered less credible than members in a dominant community.

Discussing minority groups, it is important to note that people in these groups have continuously faced discrimination in the criminal justice systems based on their ethnicity, language, and religion. Others face additional ⁴ forms of discrimination based on their disabilities, gender, sexual orientation, and age (McClain, 2018). There are groups of individuals vulnerable to these types of discrimination, including minority children, minority women, and minority persons living with HIV/AIDS and disabilities (Schetzer, Buanamano, & Mullins, 2002).

¹³ **Overrepresentation of minority groups in criminal justice system**

Discriminatory criminal policies have been used to target black people in the history of America. Since the Reconstruction era, laws and policies have been enacted to target African Americans. Consequently, black people have been perceived to be more offenders compared to whites. Black people have higher chances of being stopped, searched, arrested, and sentenced more harshly than white people. Racial discrimination manifests itself ¹² in the criminal justice system, with African Americans being overrepresented in correctional facilities. Although the constitution guarantees certain human rights such as justice and fair trials, the U.S. criminal justice system violates these constitutional rights, especially to the poor, minorities, and the marginalized. Racial discrimination is evident in all the criminal justice system stages, starting with the police during arrests and judges during trials and sentencings (Spohn, 2017).

In policing, black Americans made more than a quarter (27%) of all arrests made in 2016. This is double their share of the total population. Children made about 35% of the total juvenile arrests that year. In short, blacks led to crime rates in all age groups. More searches and arrests are likely to fall on blacks than whites.

African Americans also lead when it comes to sentencing. However, the blacks and Latinos comprise 29% of the U.S. population, 57% of the country's prison population. Similarly, blacks and Hispanics' imprisonment rates are far higher (5.9 and 3.1 times, respectively) than whites (Rehavi & Starr, 2014). The disparities exist in both serious and less serious crimes. In the U.S., African Americans form nearly half (48%) of the 206 000 life sentence convicts. The same case applies to other offenses such as drug offenses. This can be explained by the fact that prosecutors are more likely to convict black people with harsh sentences for similar crimes than whites.

African Americans and capital punishment

Capital punishment is one of the areas where discrimination manifests itself disproportionately affecting the blacks. The blacks have always been targeted by capital punishment rules. Waller (2011) states that the death penalty is used unjustly and that it is discriminatory. He argues that the weight of the death penalty is disproportionately carried by the less privileged in the society. Racial, ethnic, religion, class contribute to bias in judgements and trials. Such people have limited access to legal representation and end up being wrongfully convicted. Waller contends that the judicial system is fallible and convictions can be made wrongly. He says that there have been many exonerations of people who have spent many years in jail for crimes they did not commit. Prosecutors do not make the necessary effort to warrant an execution. Additionally, the victims of capital punishment are not adequately represented in the law because they lack resources and competent lawyers for fair trial. He brings the idea of racism

and justice where he contends that the issue of racism plays a big role in convictions. With majority of the juries in USA being whites, the African Americans are disadvantaged. Even with the smallest population in the country (12%), African Americans have been convicted with most murders in the USA.

Minority children

Children form another category of minority groups that is disproportionately ¹ by the criminal justice system. Detention of children within the juvenile justice system is one of the most important factors that affect children. It is a form of violence and violates human rights of children. Statistics show that at least 1 million children are deprived their liberty globally majority of whom are first time offenders, waiting trials, and are detained for minor offenses (Norman, 2009). Such children experience violence while in custody of police officers and correctional officers. Violence is also evidenced during pre-trials and post sentence detention and is perpetrated by staff and adult detainees (Muižnieks & Kempf, 2010).

Furthermore, children from ethnic, religious, and racially minority groups are overrepresented ¹¹ in the criminal justice system. A case study conducted by the UN shows that violence among the children, responses to such violence ¹⁴ with the juvenile justice system, and imprisonment of children has been a form of human rights violations (Bishop, 2005). Many children are arrested in incidents of violence; some are in police custody and other security forces. In this case, there are children in pre-trial while others are experiencing post-sentence detention. However, in the General Assembly held in 2014, members adopted the ³ UN Model with strategies and practical measures focusing on eradicating violence against children, basing their arguments ³ on crime prevention and criminal justice (Omi & Winant, 2014). The member States looked into

ways to remove any discrimination children encounter when accessing justice and assure them an effective criminal ruling best of their interests (Barak, Leighton, & Flavin, 2010).

Women

Women in the minority group face violence due to discriminatory provisions and actions present in the criminal justice systems. There are instances when a system allows a perpetrator to avoid prosecution when either marry the victim or attaches weightless evidence to a victim's testimonies (López, 2006). Many of the women subjected to violence, accused, and convicted of crimes are members of the ethnic minority groups suffering from the socio-economic margin (Erez & Hartly, 2002). They are also seen to be overrepresented in many criminal justice systems. This discrimination results in many of such women lacking access to proper services before, during, and after the trial (Schetzer et al., 2002). They face imprisonment, which denies them access to legal aids, social welfare, and other essential amenities. Additionally, according to the WHO, 10% of the world's population is comprised of people living with disabilities (Peffley, & Hurwitz, 2010). They have been another vulnerable group that has experienced discrimination, which poses a challenge to acquiring the intended justice.

Minorities' rights are never enjoyed among the minority groups. This is evident since laws enacted mostly favor dominant communities (Banks, Eberhardt, & Ross, 2006). Some of the rights include the right to equality when they are ¹⁰ before the courts and the right to fair trials. For parties with no sufficient understanding of the language used in the courts, it is a requirement that assistance from an interpreter, which must be free of charge, is provided to translate crucial procedural decisions. According to ⁹ International Covenant on Civil and Political Rights, a person accused of committing an offense must be guaranteed the right to acquire an interpreter's assistance when he or she has no understanding of the language used in court (López, 2006). However, States

rarely allocate enough budget to have competent interpreters with the expected complex legal concepts. This makes the minority groups more susceptible to arbitrary and unnecessary pre-trial detentions. They are unaware of and incapable of exercising their rights against self-incrimination or unjust sentencing (Walker, Spohn, & DeLone, 2012).

Witnesses

Basing on the United Nations Declaration that focused on basic principles of victims' justice and abuse of power, some guidelines provide justice matters that include victims and witnesses of crime (Banks et al., 2006). These principles are meant to assure victims and witnesses of their protection by the ¹criminal justice system. Unexpectedly, this is not the case as most legal systems do not adhere to it. The victims' role during a court proceeding is minimal and sometimes taken to be secondary (Wade, 2010). Victims are treated simply as witnesses, which discourages them from taking part in arguments or place charges for any damage in a criminal proceeding. It becomes difficult for a victim of a crime wishing to file a complaint or take a step to obtain protection, especially when they are from a minority group (Hurwitz, & Peffley, 2005). This forces victims and witnesses in such minority groups to lack trust in the justice systems' abilities to protect their rights; they develop a fear of retaliation and establish legal strategies to protect themselves.

The way forward: strategies and policies

Certain policies can be implemented to fill the gap that exists within the criminal justice system that denies minority groups' access to justice. Measures, policies, and strategies ought to be put across to protect minorities' rights, especially the victims, witnesses, and offenders ¹in the criminal justice system. One of the measures is developing a national policy for legal aid (Rose, 2020). This policy is the responsibility of the State to address the needs of expected beneficiaries

of legal aid. The process can be made possible through engaging and consulting key stakeholders like bar associations, the judiciary, Non-Governmental Organizations, law enforcement authorities, and civil society organizations (Omi, & Winant, 2014). Among the national strategies to be put in place include; identifying the needs and probable demands of legal aid based on vulnerable minority groups as well as identifying and implementing essential ways of delivery considering the increase of minorities' rights protection.

According to complaints of legal aid providers violating the rights of minorities' rights, developing and promulgating a professional code of conduct is another key factor in consideration (López, 2006). Bar associations develop the codes of conduct following the law. The practice should enhance assistance and provide protection to minority victims and witnesses from specialized and qualified criminal justice officers, including the police, judges, and prosecutors. The specialists should be provided with specialized training on how to execute their roles responsibly without violating the rights of the minorities (Doerner & Demuth, 2010). The training programs should cover certain needs and conditions of individuals of racial minorities, like impacts of varying crimes on minority victims and offenders. This can improve the criminal justice system's abilities to protect and provide expected assistance to minorities.

Increase diversity among the professionals in criminal justice systems can help reflect on ethnic, racial, and religious diversity. It is a requirement that judges and prosecutors should acquire training on different forms of religion, race, and cultural diversity. The knowledge is meant to improve their understanding of the specific needs of such minority groups before addressing their cases (Hurwitz & Peffley, 2005). Therefore, it might reduce the chances of discriminating against them and also help in mitigating the risks of trespassing through their fundamental rights like rights to fair trials and rights to equality.

Another important policy is to make changes ⁶ in the criminal justice system. The criminal ² justice system should be reformed such that it does not disproportionately affect black people. It is important to note that the overrepresentation of African Americans in crime statistics is not justified per se. Most of the arrests and convictions are out of bias and are influenced by racial discrimination directed towards African Americans. According to Waller (2011), black people are more likely to be sentenced because they lack proper representation during the hearing. Black victims of capital punishment, for example, are not adequately represented in the law because they lack resources and competent lawyers for a fair trial. The court system should ensure such people get proper representation during the trial through state attorneys where such people cannot afford competent lawyers. With the majority of the juries in the USA being whites, African Americans are disadvantaged. Even with the smallest population in the country (12%), African Americans have been convicted with most murders in the USA (Waller, 2011). The U.S. criminal justice system should be reformed, starting from police officers to prosecutors and judges.

There should be measures to ensure judicial proceedings for the minority groups. Many people are wrongly convicted due to a lack of adequate advice from attorneys (Skrentny, 2009). In such cases, one might need to appeal, which is never the case for the minorities as they lack access to legal aid. There are high chances of imprisonment as they might face direct or indirect discrimination (Doerner, & Demuth, 2010). As a result, the establishment of practices that enhances the protection of minorities through raising awareness on their rights when accused is essential, especially in the marginalized communities and the socially disadvantaged areas where most of these minority groups live.

Conclusion

For years, minorities have continuously faced challenges to access justice due to unfavorable criminal justice systems. They have experienced problems from lack of access to legal aid, which is meant to help to provide assistance during legal proceedings to avoid wrong prosecution and imprisonment. Challenges minorities face to access justice and probable measures to be taken to protect their rights have been discussed in this paper. This paper has identified gaps and challenges⁸ when it comes to minority protection in the criminal justice context.

The fact that many African Americans and other minority groups are convicted and jailed does not mean they are more offenders than whites. Rather, it means that justice is not served equally. It means¹ that the criminal justice system favors the whites and is biased towards the blacks. This is caused by racial discrimination, which still a big problem in the United States. Policies also need to be changed so that they do not disproportionately impact blacks. The U.S. violates⁴ the International Covenant on Civil and Political Rights by creating an environment that promotes racial discrimination. The government should be in the forefront in curbing racial discrimination that trickles down⁷ to the criminal justice system (Francioni, 2007).

The United States should take necessary steps to ensure that African Americans are accorded fairness in the judicial system like the whites. This will remove the notion that blacks are more offenders and lawbreakers than whites. This will also ensure that the percentage of black people represented in crime statistics is genuine and real. Practical measures and good practices have been suggested that can help fill gaps that exist in the criminal justice system. Such polies when implemented will help protect human rights of people belonging to minority groups.

References

- Banks, R. R., Eberhardt, J. L., & Ross, L. (2006). Discrimination and implicit bias in a racially unequal society. *California Law Review*, 94(4), 1169-1190.
- Barak, G., Leighton, P., & Flavin, J. (2010). *Class, race, gender, and crime: The social realities of justice in America*. Rowman & Littlefield Publishers.
- Beqiraj, J., & McNamara, L. (2016). Children and access to justice in the agenda for sustainable development. Briefing Paper by the Bingham Centre for the Rule of Law, International Bar Association.
- Bishop, D. M. (2005). The role of race and ethnicity in juvenile justice processing. Our children, their children: Confronting racial and ethnic differences in American juvenile justice, 23-82.
- Doerner, J. K., & Demuth, S. (2010). The independent and joint effects of race/ethnicity, gender, and age on sentencing outcomes in US federal courts. *Justice Quarterly*, 27(1), 1-27.
- Erez, E., & Hartly, C. C. (2002). Battered immigrant women and the legal system: A therapeutic jurisprudence perspective. *W. Criminology Rev.*, 4, 155.
- Flynn, E. (2015). *Disabled Justice?: Access to Justice and the UN Convention on the Rights of Persons with Disabilities*. Ashgate Publishing, Ltd..
- Francioni, F. (Ed.). (2007). *Access to justice as a human right*. OUP Oxford.
- Garland, J., Spalek, B., & Chakraborti, N. (2006). Hearing lost voices: Issues in researching 'hidden minority ethnic communities. *British journal of criminology*, 46(3), 423-437.
- Golash-Boza, T. (2016). A critical and comprehensive sociological theory of race and racism. *Sociology of Race and Ethnicity*, 2(2), 129-141.

- Hurwitz, J., & Peffley, M. (2005). Explaining the great racial divide: Perceptions of fairness in the US criminal justice system. *The Journal of Politics*, 67(3), 762-783.
- Kohler-Hausmann, J. (2019). *Getting tough: Welfare and Imprisonment in 1970s America*. Princeton University Press.
- López, I. F. H. (2006). A nation of minorities: Race, ethnicity, and reactionary colorblindness. *Stan. L. Rev.*, 59, 985.
- McCaffree, K. (2020). Towards an integrative sociological theory of empathy. *European Journal of Social Theory*, 23(4), 550-570.
- McClain, P. (2018). *Can we all get along?: Racial and ethnic minorities in American politics*. Routledge.
- Muižnieks, N., & Kempf, F. (2010). Children and Justice. In *Child-friendly Justice* (pp. 289-307). Brill Nijhoff.
- Norman, A. (2009). *Access to Justice: a review of existing evidence of the experiences of minority groups based on ethnicity, identity and sexuality*.
- Omi, M., & Winant, H. (2014). *Racial Formation in the United States*. Routledge.
- Peffley, M., & Hurwitz, J. (2010). *Justice in America: The separate realities of Blacks and Whites*. Cambridge University Press.
- Rehavi, M. M., & Starr, S. B. (2012). Racial disparity in federal criminal charging and its sentencing consequences. *U of Michigan Law & Econ, Empirical Legal Studies Center Paper*, (12-002).
- Rehavi, M. M., & Starr, S. B. (2014). Racial disparity in federal criminal sentences. *Journal of Political Economy*, 122(6), 1320-1354.

- Rex, J. (2018). The concept of race in sociological theory. In *Race and Racism* (pp. 35-56). Routledge.
- Rose, P. I. (2020). *They and we: Racial and ethnic relations in the United States*. Routledge.
- Schetzer, L., Buanamano, R., & Mullins, J. (2002). *Access to justice and legal needs*. New South Wales: Law and Justice Foundation.
- Skrentny, J. D. (2009). *The minority rights revolution*. Harvard University Press.
- Spohn, C. (2017). Race and sentencing disparity. *Reforming criminal justice: A report of the Academy for Justice on bridging the gap between scholarship and reform*, 4, 169-186.
- Tibbetts, S. G. (2018). *Criminological theory: The essentials*. Sage Publications.
- Van Dijk, J. (2019). Galona's review of victim labelling theory: A rejoinder. *International review of victimology*, 25(1), 125-13
- Wade, P. (2010). *Race and ethnicity in Latin America*. Pluto Press.
- Walker, S., Spohn, C., & DeLone, M. (2012). *The color of justice: Race, ethnicity, and crime in America*. Cengage Learning.
- Wallace, W. L. (Ed.). (2017). *Sociological theory: An introduction*. AldineTransaction.
- Waller, B. N. (2011). *Consider ethics: Theory*.

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