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# Rule of Law Journal

## The Reinforcement of Racial Inequalities in the UK Criminal Justice System: A Case Study on the Use of 'Stop and Search' Powers

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### Abstract

The Equality Act 2010 prohibits direct and indirect discrimination based on a set of protected characteristics, including but not limited to disability, sex, race, and religion (s4 Equality Act 2010). Section 1(1) of the act establishes a duty on authorities to “have due regard” to exercising their functions and decisions in a way that is intended to decrease the inequalities of outcome which result from socio-economic disadvantage. The list of relevant authorities overlaps with institutions in the criminal justice system. Therefore, these institutions are not only prohibited from actively discriminating; they also act have a duty to tackle and decrease inequalities. Yet, the extent to which this has been achieved is questionable. Considering the vastness of the system and the breadth of inequalities, this paper will focus on a specific case study that concerns the relationship between racial inequality and policing, specifically the use of stop and search powers. These powers have been used disproportionately against Black and ethnic minorities, which has caused tension and distrust and has led to ethnic inequalities.

### Introduction: The Criminal Justice System

The criminal justice system is an extensive and significant body of institutions that aims to bring justice for all by “convicting and punishing the guilty and helping them to stop offending, while protecting the innocent” (gov.uk, 2017). Its components include police forces, courts, the Ministry of Justice, and the Prison and Probation service (gov.uk, 2017). Its stages can be categorized as entry, prosecution, adjudication, sentencing, corrections, and re-entry (Redonna et al, 2009). The Criminal Justice Act 1991 S95(1)(b) introduced a commitment to publish information with the purposes of facilitating the performances of persons engaged in the administration of criminal

justice and explaining their responsibility of avoiding discriminating against any person on any improper ground (Criminal Justice Act 1991).

The UK Equality Act 2010 prohibits direct and indirect discrimination based on a set of protected characteristics, including but not limited to disability, sex, race, and religion (s4 Equality Act 2010). Section 1(1) of the act establishes a duty on authorities to “have due regard” to exercising their functions and decisions in a way that is intended to decrease the inequalities of outcome which result from socio-economic disadvantage. The list of relevant authorities overlaps with institutions in the criminal justice system. Therefore, these institutions are not only prohibited from actively discriminating; they also act have a duty to tackle and decrease inequalities. Yet, the extent to which this has been achieved is questionable. Issues of inequality are larger than the criminal justice system. These problems are systemic and historic, extending to all parts of society. However, the criminal justice system has a major upfront role in the extents to which it can tackle and confront these issues. Failing to do so can be detrimental on individual, communal, and national levels. There are several examples of inequalities that have been reinforced by the criminal justice system. Considering the vastness of the system and the breadth of inequalities, this paper will focus on a specific case study that concerns the relationship between racial inequality and policing, specifically the use of stop and search powers. These powers have been used disproportionately against Black and ethnic minorities, which has caused tension and distrust and has led to ethnic inequalities.

### **Stop and Search: The Legislation**

Reviews into race inequality in Great Britain have consistently stated that Black and ethnic minorities are subject to a disadvantage in several areas of society (Isaac, 2017), including the criminal justice system (Lammy, 2017). The operations of the criminal justice system are largely influenced by the activities and behaviour of the police, as they are usually the first point of contact into the system for offenders, victims, and other citizens (Kappele, 2012). The mission of policing is set out in the Police Service Statement of Mission and Values as making communities safer by “upholding the law fairly and firmly; preventing crime and antisocial behaviour; keeping the peace; protecting and reassuring communities; investigating crime and bringing offenders to justice” (National Police Chief Council). The police are allocated several instruments to perform these duties, including the powers to stop and search. These powers are grounded in multiple legal authorities (Bowling et al, 2007), including S1 Police and Criminal Evidence Act 1984 and S23 Misuse of Drugs Act 1971, both of which require the presence of an element of reasonable suspicion which cannot be based on personal factors alone. The Police and Criminal Evidence (PACE) states that the purpose of using stop and search powers is to “enable officers to allay or confirm suspicions about individuals without exercising their power of arrest” (Home Office). However, studies, evaluations, and interviews indicate that the application of stop and search does not conform to this intended purpose (Bowling et al, 2007). Instead, its application is unproductively and biasedly disproportionate towards Black and ethnic minorities, specifically

young Black males, which results in communal tension and institutional distrust, and it perpetuates inequality in the criminal justice system.

### **Stop and Search in Action**

According to a study conducted by Bowling et al, people from Black and ethnic minorities have been more likely to be stopped and searched compared to White people throughout the last few decades. The study calculated the number of stop and searches conducted per 1000 head of population within each ethnic group in England and Wales 2005/06: the figures were 90 Black people, 27 for Asian people, 23 for other ethnic origins, and 15 for White people. In 2016/17, 303,288 recorded stops and searches were conducted (down from 1.2 million in 2010/11), but Black people were stopped and searched around nine times more than white people (HM Inspector of Constabulary, 2021). Between April 2019 and March 2020, there were 54 stop and searches for every 1,000 Black people, but only 6 for every 1,000 white people (gov.uk, 2021). The frequency of stop and searches were also disproportionate. In 2000, the British Crime Survey reported that 57% of Black respondents had been stopped more than once, compared to 33% of white respondents (Clancy et al, 2001). One 24-year-old man interviewed in a BBC Newsnight documentary claimed he was stopped and searched over 400 times, attributing his race as the reason behind the police's actions (BBC, 2018). Additionally, police tend to use more force with black and ethnic minorities during stops and searches. The 2019/20 data from HM Inspector of Constabulary's findings reveals that the police conducting stops and searches were 5.7 more likely to use force and nine times as likely to draw Tasers (but not discharge them) on Black people compared to white people (HM Inspector of Constabulary, 2021).

It is important to consider whether the statistics stem from discrimination or whether they are a reflection of an increased involvement in crime and violence within Black and ethnic minorities. According to their data, Waddington et al claimed that it is inconsistent to imply that racial minorities are more likely to act in ways that arouse police suspicion (Waddington et al, 2004). When looking at the use of stop and search powers in affluent areas of London, Shiner et al found that the largest ethnic disparity existed between Black people and other ethnicities (Shiner et al, 2018). For white and Asian British people, the experience of this power was strongly linked with living in deprived areas, yet Black people still witnessed them in the least deprived areas. They were profiled because of their race and not because of other circumstances (Shiner et al, 2018).

### **The Implications of Stop and Search**

Can the existence of stop and search be justified by its productivity? In terms of implications, the harms of the power outweigh any benefits. Most searches result in no further action. An analysis by the office of home affairs select committee found that 21,950 searches were conducted between March and May 2020 in London, but less than 20% actually required further action (Grierson, 2020). Tiratelli et al concluded from an analysis on a decade's worth of police data that

its deterrent effect was “small, at best”, and that there was only a “very weak and inconsistent association” between the power and crime (Tiratelli et al, 2018). Yet, the powers have severe impacts on those stopped and searched, with interviews and surveys highlighting how violating and embarrassing the experience can be (The Guardian, 2020). British Asian and Black youth report feeling targeted, labelled, and disrespected (Parmar, 2011), with many having their first stop and search encounter as early as their preteen years (BBC, 2018). Also, citizens' opinions of the police force have worsened due to the use of these powers, whether they have experienced it first-hand or not (HMIC, 2013). Moreover, the discriminatory use of the power has prompted the emergence of intra-ethnic hostility, with one group of young Sikh males initiating the representation “don't freak, I'm a Sikh” after feeling angry that they were being targeted by the police for “looking like Muslims” (Parmar, 2011). These are just a few examples from widespread findings on how stop and search reinforce discrimination and, therefore, social inequalities.

### **The Police's Understanding of Stop and Search**

Although findings have reiterated the effects of stop and search powers and suggestions on reform have been thoroughly discussed, it is yet to be resolved. One problem in pursuing progress is that there seems to be a misunderstanding within the police force on the reality of using stop and search powers. A study by HM's Inspectorate of Constabulary, in which police surveys were conducted, conveyed that although individual police officers believed that it is important to act fairly, there lacked organisational understandings of how fair decision-making should be performed through the behaviour of officers while using stop and search powers (HMIC, 2013). The officers' tendency to feel that stop and searches were effective and fair was linked to high public satisfaction levels, which were actually the outcome of minimal submission of complaints and an unrepresentative cohort for the survey (of which 1% had actually been stopped and searched) (HMIC, 2013). In reality, the satisfaction levels are on the other end of the spectrum.

### **Potential Solutions**

David Lammy, author of the Lammy Report (an independent review into the treatment of, and outcomes for, BAME individuals in the Criminal Justice System) highlights that the use of stop and search powers “is not only born out of, but also perpetuates a paranoid and generalised suspicion toward an entire community” (Lammy, 2013). In his report, he studies the case of the Northamptonshire Police force, who had been criticised for its use of stop and search powers and subsequently started scrutinising the grounds recorded for every stop and search recorded (Lammy, 2017). Per its new procedures, any search grounds which do not seem 'reasonable' are presented to a Reasonable Groups Panel consisting of 26 members to discuss and evaluate according to the Force's standard. If the Panel agree that the grounds for the stop were not reasonable, several steps of training and guidance are issued to the officer and supervisor, potentially resulting in suspension from conducting the search in the third case. Lammy commends this procedure and encourages other police forces to implement a similar approach

(Lammy, 2017). Expanding such reflection and accountability methods could greatly improve the implementation of stop and search powers and reduce, tackle, and eliminate racial inequality. Another approach, which may seem simplistic but can be effective, is increasing diversity rates within police forces. As of December 2020, less than 8% of police officers in England and Wales were from minority ethnic backgrounds, with 1.2% of police officers identifying as Black (Walcott, 2021). In a study based in the United States, Ba et al argue that diversity in law enforcement can lead to better policing and improved community dynamics (Ba et al, 2021). This change is necessary, and it is likely to also reflect positive and productive outcomes in the United Kingdom.

Finally, there is a key distinction between the criminal justice system carrying out its legal duties and reinforcing inequalities within society. Actions that are grounded in law, whether it be in law enforcement, adjudication, or punishment, are necessary for the preservation of order and safety. However, they must be carried out in a fair procedural manner. Otherwise, illegal yet persistent discriminatory and disproportionate actions can cause severe harm, in this case, producing and reinforcing large scale racial and ethnic inequality in society.

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Sama Zoubi (2022) 'The Reinforcement of Racial Inequalities in the UK Criminal Justice System: A Case Study on the Use of 'Stop and Search' Powers', *Rule of Law Journal*, 3, 33-40

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