



RACE AND EQUALITY

Black people and the criminal justice system

Considerable progress has been made in terms of policy development on race and criminal justice over the past ten years.

The main government departments concerned, the relevant agencies, organisations and professional groups have all formulated equal opportunities policies, have given attention to the recruitment of black people to their staff, to training on race issues and to improving the quality of service they offer to black people. This is not to say that there is not a lot still to be done to ensure that policies are implemented and that working practices change at every level, so that the effects are felt on a day-to-day basis in every court, every prison, every probation office and so on. Translating policy into concrete action has proved a very difficult process and there is a long way to go before provision of equal opportunities is embedded in the structures of the criminal justice process.

Black prisoners

Crucially, these many welcome changes have had little impact on one of the most startling and worrying features of racial difference in criminal justice, namely the marked disproportion of black people in prison relative to their presence in the population at large. Black people currently constitute about 5 per cent of the population of Great Britain, but make up 18 per cent of the prison population. The disproportion is particularly marked for Afro-Caribbean people who constitute about 1 per cent of the general population but just over 11 per cent of the prison population. Black people are more over-represented in the remand than the sentenced groups in the prison population (19 per cent of adult males on remand as against 16 per cent of adult males under sentence in 1990). The over-representation is remarkably high for women of Afro-Caribbean origin who in 1990 made up virtually one-quarter of the female prison population, although part of the high proportion of black women in prison is accounted for by the presence of foreign nationals convicted of drugs trafficking offences. This disproportionate number of black, particularly Afro-Caribbean, people must be a matter of great concern for those involved with race issues and criminal justice policy and practice.

Discrimination and the law

The aim of a non-discriminatory policy is

to ensure that no one receives less favourable treatment on the grounds of race, colour, nationality or ethnic origins, or is discriminated against by conditions or requirements applied to all which cannot be shown to be justifiable, irrespective of race.

This definition is enshrined in the Race Relations Act. Unfortunately the House of Lords has judged that the expression 'provision of goods and facilities and service' in the anti-discrimination statutes applied only to activities or matters analogous to those provided by private undertakings. The result is to raise the question of how far areas of government or government-related activity are outside the enforcement provisions of the Act entirely.

Certainly in relation to much of the criminal justice system, including police activity, there is apparently a wide freedom to discriminate so far as the remedies under the 1976 Race Relations Act are concerned. This lack of remedy occurs precisely where the individual is most vulnerable. In the private sector, if there is discrimination at one source, the individual generally has both the opportunity of going elsewhere to another provider of services and also has his remedy under the Race Relations Act. He or she appears to have neither, when facing a prison officer, a police officer or a magistrate prepared to discriminate improperly in exercising control functions.

Cautioning & police discretion

When someone enters the criminal justice system by coming to the attention of the police, a sequence of decisions are made by a succession of different agencies - the police, the Crown Prosecution Service, social workers or probation officers, the courts and then finally the prisons.

At various stages in the criminal justice process there is scope for discretion in making decisions. If discrimination - whether intended or not - occurs at any of these stages it will have a cumulative effect showing clearly in the large black prison population.

The cautioning of offenders is an interesting example. At the Conservative Party Conference in 1992, the then Home Secretary acknowledged in his speech that the level of juvenile crime had fallen significantly. Despite that, it has now been necessary for the Home Office to make amendments to the national standards for cautioning established by Home Office Circular 59/1990. The general principles underlying those standards are unchanged: properly used,

cautioning continues to be regarded as an effective form of disposal, and one which may in appropriate circumstances be used for offenders of any age.

Circular 59/1990 left cautioning decisions to the discretion of the police. The decision to caution is in all cases one for the police, although it is open to them to seek the advice of multi-agency panels.

How is this discretion used?

CRE Survey on juveniles

Three years ago, the Commission for Racial Equality undertook a survey of seven police forces which began keeping ethnic records of pre-court decisions on juveniles. For each ethnic group, the number of young people referred for prosecution was compared with the number diverted from court through cautions or 'no further action'. Details of the charge and the number of past offences were also recorded so that the seriousness of the offence and the offender's previous record could, to some extent be taken into account.

We found that there were significant common patterns in the data collected by each.

- In the majority of forces, proportionately more ethnic minority young people - and particularly Afro-Caribbean - were referred for prosecution than white young people. In inner city areas the difference was very substantial indeed.
- The wide-spread police view that such a difference would indicate that, on average, ethnic minority young people were committing more serious offences was not borne out. Statistical control for offence type suggested that this factor played a very small part in explaining the differences in prosecution rates.
- Controls for the 'number of past offences' also suggested that this was not the main explanation
- There was one possible non-racial explanation for the generally higher prosecution rate for ethnic minority young offenders. Only half as many young Afro-Caribbeans admitted the offence as did young white. If this is a pattern then we need to know the reason.

But the general conclusion still backed up other researches that young black people are less likely to be cautioned and more likely to be prosecuted.

Navnit Dholakia is Principal Officer at the Commission for Racial Equality.