

## Discrimination as a Global Paradigm: United Kingdom and United States of America in Focus

Ousu Mendy

Universitas Atma Jaya Yogyakarta, Indonesia

Email: 225214866@students.ussjy.ac.id

Submitted: May 25, 2023; Reviewed: Sept 18, 2023; Accepted: Sept 21, 2023

Article Info	Abstract
<p><b>Keywords:</b>  <i>Discrimination, Equality before the Law, Gender Inequality, Racial Discrimination</i></p> <p><b>DOI:</b>  <i>10.25041/lajil.v5i2.3030</i></p>	<p><i>Despite the international community's commitment to protecting human rights, Equality before the law remains a global problem. This research offers a global perspective on the current threat of discrimination emerging from the paradigm shift from Equality before the law as a universal principle declared in the Universal Declaration of Human Rights. This normative research explored extensive theoretical approaches based on secondary data, including journal articles, books, and international conventions. The results of this research showed that the current democratic system is experiencing a setback due to different factors that include autocracy and unconstitutional change of governments through coup d' état. The impact of discrimination on inequality is destructive. Women have also made significant progress in many areas over time in places where discrimination is low, enabling them to close the gender gaps.</i></p>

### A. Introduction

Equality before the law is a fundamental idea in creating laws and pursuing justice in society. Focusing on prospective thinking while disregarding ideal norm thinking, which emphasizes justice and the paramount importance of fairness universally, results in injustice, whether in formulation, treatment, or imbalance. Equality before the law is the condition of being aligned with the justice system. In this definition, justice is the standard that must be upheld in creating and implementing the law without being prejudicial to certain people. Discrimination in such a context is considered a violation of Equality before the law. Justice resulting from legal Equality is not constitutional; <sup>1</sup> The principle of the legal state and the rule of law, which emerged from the Anglo-Saxon legal system, emphasizes three benchmarks: Supremacy of the law, Equality before the law, and the Constitution premised upon individuals'

<sup>1</sup> Bambang Joyo Supeno, "Principle of Equality Before the Law and Diversion on Criminal Justice System for Children in Indonesia," *UNTAG Law Review (ULREV)* 4 No. 1 (2020): 72.

rights. To achieve a safe, orderly, prosperous, and just democratic national system, the law should control and resolve problems that affect the nation and society.<sup>2</sup>

The equality category encompasses social freedom, along with all citizens' equal rights and obligations. Legal Equality also encompasses an equivalent standard of legal accountability regarding socioeconomic levels. Furthermore, abuses of gender equality can significantly affect other facets of human rights.

Gender equality should be seen as a part of human rights that upholds justice and Equality. Human rights apply to both genders. The Equality of political, civil, social, economic, and cultural rights and freedoms for every person is incorporated in international and constitutional legal principles.<sup>3</sup> Despite ongoing political and legal focus on disadvantage, inequalities and unequal distribution of power and resources still exist in the modern era. Quality and nondiscrimination are based on the fundamental understanding that every person has equal rights and liberties, considered essential tenets of the international human rights system.<sup>4</sup> Therefore, these values are universally recognized human rights pillars and the key to a progressive society based on the rule of law.

In 2020, America experienced racial inequality through the “*Black Lives Matter*” movement. Racial Equality was established through The Voting Rights Act of 1965, which implemented the expansion of voting rights.<sup>5</sup> Unfortunately, global citizens still experience inequality and discrimination. The causes and effects of growing income and wealth disparities have been widely studied. Knowledge of the joint distributions of income and wealth, which evolved, is still limited despite the significant progress made by previous research.<sup>6</sup> The USA was established upon legalized Discrimination in the form of slavery, which persists as structural racism until today. Since liberation, racism has been used to enforce a clear and tacit order that prioritizes white human life above black and brown human life.<sup>7</sup>

In the past few years in the United Kingdom, the major political parties in the United Kingdom have paid significantly more attention to anti-Semitism and Islamophobia. In 2018, there was a call for investigations into Islamophobia in the Conservative Party from the Muslim Council of Britain and Conservative Baroness Sayeeda Warsi. According to the 2017 British Social Attitudes Survey, 33 percent of Conservative party supporters would characterize themselves as at least moderately racist, compared to 18 percent of Labor party supporters.<sup>8</sup> According to a survey, most black people in the United Kingdom have encountered bias from medical professionals due to their race, with younger people reporting this prejudice more frequently. A poll revealed that 65% of black respondents had encountered discrimination from medical professionals, including doctors and other staff members, which percentage is higher among black people aged 18 to 34 with 75%. The Black Equity Organization, a national civil rights organization founded in 2020 to address systemic racism in the UK, filed the report. Black or mixed-ethnicity respondents provided 2051 replies to the poll, including 1014

<sup>2</sup> Wira Purwadi, Mohamad Ali Akbar Djafar, Gilang Fatirah Densi, Anika Zaitun Tumiwa, and Arum Salsabila Yieputri Langkamane, “Application of the Principle of Equality Before the Law to Law Enforcement for The Realization of Justice In Society,” *JURNAL LEGALITAS* 15 No. 1 (2022): 59.

<sup>3</sup> Oleg M. Yaroshenko, Kostiantyn Yu. Melnyk, Dmytro I. Sirokhac, Olena S. Arsentievad, and Irina I. Teslikovae, “Gender Inequality in Social Security on the Basis of the ECtHR Case-Law,” *Sriwijaya Law Review* 6 No. 2 (2022): 225

<sup>4</sup> Blaker Strand, Vibeke, and Ingunn Ik Dahl, “Responding to Disadvantage and Inequality through Law,” *Oslo Law Review* 4 No. 3 (2017): 124.

<sup>5</sup> Frank W. Munger and Carroll Seron, “Law and the Persistence of Racial Inequality in America,” *New York Law School Law Review* 66 No.2 (2020): 178.

<sup>6</sup> Moritz Kuhn, Moritz Schularick and Ulrike I. Steins, “Income and Wealth Inequality in America, 1949-2016,” *Journal of Political Economy* 128 No.9 (2018): 3469.

<sup>7</sup> S. E. LaFave, K. Bandeen-Roche, G. Gee, R. J. Thorpe, Q. Li, D. Crews, L. Samuel, A. Cooke, M. Hladek, and Sarah L. Szanton, “Quantifying Older Black Americans’ Exposure to Structural Racial Discrimination: How Can We Measure the Water In Which We Swim?” *Journal of Urban Health* 99 No.5 (2022): 795.

<sup>8</sup> Lee Crawford and Ukasha Ramli, “Discrimination by Politicians against Religious Minorities: Experimental Evidence from the UK,” *Party Politics* 28 No.5 (2022): 826.

respondents between 18 and 34. Vivian Hunt, the organization's chair of trustees, said, "The key to change is identifying and recognizing the reality of black communities across the country."<sup>9</sup>

This research focuses on explaining discrimination as a global issue, including racial and gender discrimination in the United Kingdom and the United States of America. The UK and USA were selected as these countries are more advanced in political and legal developments.

## B. Discussion

### 1. The Status quo odiscrimination as a threat to Equality Before the Law

Over the years, democracy has encountered significant setbacks due to various factors, including autocracy and unconstitutional changes in government, such as coups d'état. However, the impact of discrimination on ensuring equality before the law, a cornerstone of modern governance and the rule of law, remains pertinent and destructive. The Organization for Economic Co-operation and Development (OECD) (2015) reported that the unemployment rates for native-born children of immigrants (aged 15 to 34) in Belgium, France, Germany, the Netherlands, Norway, Sweden, and the United Kingdom were roughly twice higher than the white majority group. Similar patterns were also identified in the unemployment rates between African Americans and whites in the United States.<sup>10</sup> Article 7 of the Universal Declaration of Human Rights presupposes Equality before the law: "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against discrimination in violation of this Declaration and against incitement to such discrimination".

Article 26 of the International Covenant on Civil and Political Rights states, "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit discrimination and guarantee equal and effective protection against discrimination on any grounds such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". The legal foundation for these two provisions of international legal instruments lies in the principle that there should be no discrimination of any kind, regardless of what may be stipulated in a law. Hence, equality "before the law" is used instead of "before man's opinion or moral view."

#### a. Racial Discrimination

International Convention on the Elimination of All Forms of Racial Discrimination provides that "racial discrimination shall mean any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."<sup>11</sup> Discrimination against Blacks and other minorities in the United States and abroad has been reignited by the *Black Lives Matter* movement in 2020. Discussions about the prejudice and how the black people are affected are common in Western Europe. European research focusing on immigrants as racial and ethnic minorities keeps rising.<sup>12</sup> Similarly, in Germany, significant growth in extreme right-wing and nationalist sentiments and a general

<sup>9</sup> Gareth Iacobucci, "Most Black People in UK Face Discrimination from Healthcare Staff, Survey Finds," *BMJ*, (2022) 2337

<sup>10</sup> Quillian, et al., "Do Some Countries Discriminate More than Others? Evidence from 97 Field Experiments of Racial Discrimination in Hiring." *Sociological Science* Vol. 6: (2019): 467.

<sup>11</sup> Article 1 of International Convention on the Elimination of All Forms of Racial Discrimination (1965).

<sup>12</sup> Rosita Fibbi Didier Ruedin, Robin Stünzi, and Eva Zschirnt, "Hiring Discrimination on the Basis of Skin Colour? A Correspondence Test in Switzerland." *Journal of Ethnic and Migration Studies* 48 No.7 (2022): 1515-16.

polarization of society have been documented by representative longitudinal population studies.<sup>13</sup>

One essential normative objective of contemporary governance is equal law enforcement for all citizens. Achieving this objective proves challenging, as demonstrated by the increasing number of experimental studies highlighting public servants' prejudice against people of color across the Western world.<sup>14</sup> Organizational performance has recently received attention as a potential organizational element that may be linked to discriminatory behavior. A recent experimental investigation shows that ethnic employment discrimination is less common in Danish schools with higher academic achievements. Managers at unsuccessful firms claimed to be less receptive to applicants from underrepresented groups and more susceptible to feeling stressed, which caused their unconscious bias. Research in public administration on how effective an organization has underlined the significance of using prior performance as a factor in decision-making.<sup>15</sup>

Researchers have attempted to calculate the causal impact of race or gender on outcomes in Discrimination studies. In the context of criminal justice, one would inquire whether persons detained would have faced charges or been found guilty if they had been of a different race. Counterfactual concerns have long been acknowledged, particularly those involving the measurement of causal estimation for largely immutable characteristics. An additional challenge that has garnered attention in recent discussions is post-treatment bias. Numerous discrimination studies rely on assumptions regarding events considered intermediate, such as incarceration, which may be outcomes of<sup>16</sup>

Previous studies have shown that racism and discrimination are factors that affect health, and they negatively affect the marginalized communities' physical and mental health. Institutional or systemic discrimination, including residential segregation, perpetuates detrimental health effects through unequal access to essential services and resources, such as employment, housing, and education, and exposure to environmental hazards. These effects manifest through biological mechanisms, such as epigenetic changes and psychological stressors. Furthermore, racism on an interpersonal level can manifest in both subtle ways, like microaggressions, and more overt forms, such as discriminatory hiring practices. All these forms of discrimination are harmful to an individual's health, especially for those from marginalized communities. It is crucial first to document the experiences of racial discrimination among underrepresented people to gain a strong comprehension of this issue.<sup>17</sup> The term "socially assigned race" refers to how others perceive a person's race, which can take many forms, including physical attributes, social and institutional interactions, preconceptions, and social conventions.<sup>18</sup>

The values of Equality and non-discrimination may offer practical instruments for eradicating the discriminatory practices performed by States towards non-citizens. Domestic and international anti-discrimination laws have historically incorporated exclusions concerning

<sup>13</sup> Arda Yolci, Liane Schenk, Pia-Theresa Sonntag, Lisa Peppler, Meryam Schouler-Ocak, and Anna Schneider, "Observed and Personally Experienced Discrimination: Findings of a Cross-Sectional Survey of Physicians and Nursing Staff," *Human Resources for Health* 20 No. 1 (2022): 83.

<sup>14</sup> Anthony H. Richmond, *Colour prejudice in Britain: A case study of West Indian Workers in Liverpool, 1941 – 1951* (Taylor & Francis, 2023), p. 3.

<sup>15</sup> Jonas Larsson Taghizadeh, "Organizational Performance and Discrimination: Are High-Performing Schools Less Likely to Discriminate against Potential Clients?" *Public Performance & Management Review* 46 No.2 (2023): 369.

<sup>16</sup> Gaebler, Johann, William Cai, Guillaume Basse, Ravi Shroff, Sharad Goel, and Jennifer Hill, "A Causal Framework for Observational Studies of Discrimination" *Statistics and Public Policy* 9 No.1 (2022): 26.

<sup>17</sup> Jennifer A. Andersen, Don E. Willis, Joseph Keawe'aimoku Kaholokula, Brett Rowland, Sarah Council, Sheldon Riklon, and Pearl A. McElfish, "Experiences of Discrimination Among Native Hawaiians and Pacific Islanders Living in the USA," *Journal of Racial and Ethnic Health Disparities* 10 (2023): 1.

<sup>18</sup> Kellee White, Jourdyn A. Lawrence, Nedelina Tchangalova, Shuo J. Huang, and Jason L. Cummings, "Socially-Assigned Race and Health: A Scoping Review with Global Implications for Population Health Equity" *International Journal for Equity in Health* 19 No.1 (2020.): 26.

immigration and nationality. Such exceptions raise important concerns about the extent of the protection provided by anti-discrimination legislation, which rather strengthens racial discrimination instead of eradicating it. The issues arising from these exclusions are fundamentally contentious and problematic. The broad application of these rules can significantly influence the extent to which non-citizens can rely on the protections offered by anti-discrimination legislation.<sup>19</sup> Citizenship is closely related to the “boundaries of belonging” instead of merely a legal position. Citizenship defines who “we” are, who belongs to “us,” and who does not. Being a citizen of a country does not imply that one “belongs” to that country. Individuals and groups perceived as “others” — belonging to different ethnic, national, or racial groups — are often not regarded as part of the community in their host country.

An analysis of the involuntary loss of citizenship due to privatization shows that, even though legal standards prohibiting statelessness have limited a state's capacity to discriminate, this has not eliminated discrimination.<sup>20</sup> Nationality has been regarded a dubious basis for Discrimination following the European Court of Human Rights (ECtHR), the Committee for the Elimination of Racial Discrimination (CERD Committee), and the Human Rights Committee. Many restrictions still apply, especially regarding the deportation and admission of immigrants. Rather than focusing on matters related to immigration control or deportation scenarios, the principle of equal treatment in the European Court of Human Rights (ECtHR) jurisprudence has mainly been applied to cases concerning the equal treatment of migrants legally residing within the State and their access to social benefits. ECtHR also specifically distinguishes the immigration status ground from the nationality ground. Therefore, its stringent stance against discrimination based on nationality does not apply to discriminatory treatment based on that ground. These restrictions are the challenge that international and regional organizations should address to uphold the principles of non-discrimination and State sovereignty.

The perception that all forms of inequality stem from discrimination and constitute a social issue necessitating intervention is a viewpoint many embrace within the political sphere. However, others consider it overly broad. Political conservatives tend to advocate for a narrower definition, limiting the concept's scope to actions explicitly designed to reduce a group's opportunities. Social science experts widely contest this restrictive interpretation for several reasons. Firstly, introducing an intentionality criterion shifts the focus to psychology, away from the broader social structures that constrain individuals and groups. Additionally, discrimination becomes challenging since intentions are inherently invisible. Regardless of whether institutional structures intentionally produce inequalities<sup>21</sup>

Contrary to what some may believe, racial discrimination extends beyond individual acts of unfairness perpetrated by members of different groups. It encompasses a sophisticated network of organizational arrangements that perpetuate disparities between groups, which evolves into racial discrimination when these groups are perceived as belonging to different races. These disparities manifest in political influence, economic wealth, and access to cultural resources.

International human rights laws, with their legally binding statutes and transformative norms, aim to eradicate racial discrimination. Yet, the efficacy of legal frameworks in eliminating racism has not met expectations. Racism, in its various forms, continues to significantly contribute to the inequality and indignity experienced by many individuals.<sup>22</sup>

<sup>19</sup> David Fennelly and Clíodhna Murphy, “Racial Discrimination and Nationality and Migration Exceptions: Reconciling CERD and the Race Equality Directive,” *Netherlands Quarterly of Human Rights* 39 No.4 (2021): 309

<sup>20</sup> Antje Ellermann, “Discrimination in Migration and Citizenship,” *Journal of Ethnic and Migration Studies* 46 No.12 (2020): 2469.

<sup>21</sup> Thomas Fraser Pettigrew, “Racial Discrimination,” In *International Encyclopedia for the Social and Behavioral Sciences*, (edited by N. J. Smelser and P. B. Baltes, 2nd ed. Pergamon), 2015: 2.

<sup>22</sup> Anna Spain Bradley, “Human Rights Racism,” *Harvard Human Rights Journal* 32 (2019): 1-2.

In South Africa, apartheid eradication took decades to succeed. Even today, racism and racial discrimination still occur in other forms around the world. The cornerstone of racism in South Africa was its institutionalization and legalization. This means that discrimination and prejudice against Black people were not merely the outcomes of official government policy but were deeply embedded and evident in the nation's statutes, court procedures, and judicial system.<sup>23</sup> Appropriation of land by the white population at the detriment of the black South Africans was legalized in the law.<sup>24</sup> The central position of racism and the idea of white supremacy refers to a system rather than right-wing extreme racist hate organizations that actively promote white control.<sup>25</sup>

Since 1994 (after the end of the apartheid), whites and blacks now have equal formal legal rights (the law no longer marginalizes and excludes blacks). Black people in this context are referred to as a "previously disadvantaged group."<sup>26</sup> In South Africa, racist and patriarchal colonialism and apartheid laws, policies, and practices led to the establishment of separate societies for blacks, whites, Indians, and people of color. This includes different education, health, and public amenities systems; segregated land ownership; segregated, zoned living areas for the black urban population; later, self-governing territories and homelands for the black rural population; passing laws for blacks; racial classification; the prohibition of marriage between whites and people of other races; and separate labor systems with job reservations for whites and wage differences between white and black.

The post-1994 government has enacted rules to redress economic and social disparities, including racial classifications. However, discrimination did not fade away completely.<sup>27</sup> Institutional racism in South Africa also manifests itself in different forms. One of the main issues with the disparity that exists between blacks and whites is institutional racism. Institutional racism can be traced back through economic and political structures and refers to any rule or practice that systematically disadvantages minority groups in comparison to the majority. Institutional racism and social scientists now emphasize public school funding and teacher quality issues. Racism is intimately tied to the organized exchange of prejudice and stereotypes, which involves more than a personal bias: racism, social, and cultural factors.<sup>28</sup>

The criteria effectively limited the number of "black" applicants by favoring black parents from middle-class families who could afford the tuition. Additionally, residential segregation in "group areas" rendered it highly unlikely for there to be many "black" applicants.<sup>29</sup> This practical issue of racial discrimination in South Africa, in contradiction to the Constitution, serves as both a demonstration and reaffirmation of the ongoing state of discrimination as an act against the principle of Equality before the law.

## **b. Gender Inequality**

The gender inequality in this research also relates to global discrimination against women. What is required to eliminate discrimination against women: Equality or equity? According to the United Nations Convention on Elimination of Discrimination Against Women (CEDAW),

<sup>23</sup> Thulani Nkosi and Neo Mahlako. "Are Courts Going out of Their Way to Accommodate RACISTS? A Critique of South African Revenue Service v Commission for Conciliation, Mediation and Arbitration and Others," *Law, Democracy and Development* 24 (2020): 339-40.

<sup>24</sup> *The Natives Land Act, 1913* (subsequently renamed Bantu Land Act, 1913 and Black Land Act, 1913; Act No. 27 of 1913) was an Act of the Parliament of South Africa that was aimed at regulating the acquisition of land.

<sup>25</sup> David Gillborn, "Rethinking White Supremacy," *Ethnicities* 6 No.3 (2006): 320.

<sup>26</sup> Joel M Modiri, "The Colour of Law, Power and Knowledge: Introducing Critical Race Theory in (Post-) Apartheid South Africa," *South African Journal of Human Rights* 28 (2012): 406.

<sup>27</sup> Lee Stone and Yvonne Erasmus, "Race Thinking and the Law in Post-1994 South Africa," *TRANSFORMATION* 79 (2012): 121.

<sup>28</sup> Onke Aphelele Qwabe, "Institutional Racism and Its Effects on Higher Education: A Case Study of UKZN Howard College," *University of KwaZulu-Natal* (2020): 8.

<sup>29</sup> Khaya Gqibitole, "Black Youths' Challenges in the 'New' South Africa: Education, Language and Identity in Kopano Matlwa's Coconut (2007)," *Open Journal of Social Sciences* 07 No.12 (2019): 240.

Equality is associated with the effort against discrimination against women.<sup>30</sup> CEDAW's concept of Equality consists of three principles: the principle of non-discrimination, the principle of state obligation, and the principle of substantive Equality –Equality of outcome. Additionally, Article 15 of CEDAW mandates state parties to ensure women's Equality before the law in civil matters, including legal capacity and the ability to enter into contracts, embodying this principle. Every party needs to ensure that women have an equal standing in the justice system. Women and girls are often limited to exploring their potential and prevented from fully participating in social, political, and economic sectors.

The term "gender inequality" refers to the perceived or actual unequal treatment of people based on their gender. Its roots are in cultural differences in gender roles, which are socially constructed systems. Even though differences between men and women are inherent due to their biological sex, gender disparity constitutes a kind of social discrimination. Over time, women have significantly improved in many areas, even exceeding the gender barriers.

The hardships and roles of men and women are unequal. Access to opportunities in the political, economic, and social spheres, as well as to education, healthcare, and physical and financial resources, is still biased to a certain gender. Two facets of political gender inequality are the underrepresentation of women in political leadership roles and business and political appointments. There are many aspects of social gender inequality, some of which are worse for men than for women. For example, men are more likely to experience violence, incarceration, and disability, while women are more likely to experience domestic abuse and sexual assault.<sup>31</sup>

### 1) CEDAW'S Principle of Equality

The goal of the Conventions is to abolish all sex-based discrimination against women in all forms. It ensures that women, irrespective of their marital status and on equal terms with men, are acknowledged and able to exercise all human rights and fundamental freedoms in political, economic, social, cultural, civic, domestic, and any other spheres. Although the Convention only mentions sex-based discrimination, article 1, in conjunction with paragraphs 2 (f) and 5 (a), shows that the Convention also addresses gender-based discrimination against women.

The biological distinctions between men and women are referred to as sex. In contrast, "gender" encompasses socially established identities, characteristics, and responsibilities for men and women and society's cultural and social interpretations of these biological distinctions. Such distinction forms hierarchical ties between men and women, while the sharing of power and rights often disadvantages women due to values from the culture, society, and community. Article 1 clearly defines the Convention as also applying to gender-based discrimination.

According to this definition, discrimination refers to any differentiation, exclusion, or restriction that prevents women from exercising their human rights and freedoms, even when discrimination was not intended. In this definition, treating women and men equally or neutrally could constitute discrimination against women if equal treatment prevents women from exercising a right due to a lack of recognition of the inherent disadvantage and inequality that women experience. The Committee's opinions on this topic are reflected in its reports, recommendations, conclusions, proposals, and statements and in the way it conducts inquiries under the Optional Protocol.

As stated in Article 2, state parties are urged to denounce discrimination against women in "all forms." In contrast, Article 3 urges state parties to adopt suitable measures in "all fields" to promote the complete empowerment of women. The Convention foresees the emergence of new types of discrimination that were not known when it was written by including these

<sup>30</sup> Article 1 of Convention on the Elimination of All Forms of Discrimination against Women.

<sup>31</sup> Joyce P. Jacobsen, "Gender Inequality: A Key Global Challenge – Reducing Losses Due to Gender Inequality," In *How Much Have Global Problems Cost the World?*. (Cambridge University Press), 2013: 192.

provisions. According to Article 2, state parties must address every facet of their legal responsibilities under the Convention to respect, safeguard, and uphold women's rights to Equality and freedom. By refraining from passing laws and policies that prevent women from equally enjoying their rights, state parties must uphold their commitment to ensure respect. States parties must take steps to end stereotyped roles for men and women as well as customs that discriminate against women and perpetuate the idea that one sex is inferior to the other and that men and women should play different roles. Therefore, various measures need to be taken, including adopting temporary special measures per General Recommendation No. 25 and Article 4 (1) of the Convention to ensure that women and men have equal rights both *de jure* and *de facto*. States parties should design public policies, programs, and institutional frameworks that meet the unique needs of women to fully realize their potential on an equal basis with men.

### 1. The Futuristic Approach to the Realization of Non-discrimination

After outlining the current state of discrimination as a challenge to the principle of Equality before the law (*das sein*), this final section shifts focus to the ideal scenario (*das sollen*), emphasizing the principle of non-discrimination following the rule of equality before the law. The battle against all forms of discrimination should start at the national level, as the struggle for or against the rule of law is ultimately determined there. Consequently, there must be national action plans dedicated to combat discrimination.

A National Action Plan against Racial Discrimination that consists of a thorough set of initiatives designed to gradually strengthen the promotion of racial equality is required. In the domains of public administration as well as the private sector, where racial prejudice also exists, a National Action Plan Against Racial Discrimination can be translated into real action. Each plan will establish clear objectives, targets, and activities, as well as the accountable state agencies, deadlines, and performance measures for each one. These national action plans should be implemented and binding in national legislation.<sup>32</sup> Legal protections against discrimination serves as a crucial foundation to end discrimination. These measures allow every party to take preventive action against discrimination using certain regulations and mechanisms to lower the rates of discrimination. Laws also help create these standards.<sup>33</sup>

From a legal perspective, the idea of equality in rights, entitlement, and the enjoyment of rights are all based on the concept of integration.<sup>34</sup> Aligning with the provisions of the Universal Declaration of Human Rights, states should begin to compel their people towards the realization of Article 7 of this Declaration, which provides that "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against incitement to such discrimination". The right to equality and nondiscrimination encompasses not only the obligation to avoid discrimination and the erosion of quality but also the duty to support and enhance the realization and enjoyment of the rights to equality and non-discrimination for everyone.

The community will be treated unfairly due to the law enforcement process if the quality before the law principle is not used as the point of reference. Although this idea is widely accepted in society, not everyone is equal in the eyes of the law. The law often appears weakened when faced with politics, authorities, the wealthy, or the elite. It shows a stark

<sup>32</sup> Zhanna Khamzina, Yermek Buribayev, Binur Taitorina, Ainur Yessengazieva, and Anarkhan Kuttygalieva, "Towards Nondiscrimination and Gender Equality: The Role of International Labor Standards," *Sustainability* 14 No.9 (2022): 5353

<sup>33</sup> Jody Heymann, Bijetri Bose, Willetta Waisath, Amy Raub, and Michael McCormack, "Legislative Approaches to Nondiscrimination at Work: A Comparative Analysis across 13 Groups in 193 Countries," *Equality, Diversity and Inclusion: An International Journal* 40 No.3 (2020): 236.

<sup>34</sup> María José Añón, "The Fight Against Discrimination and Access to Justice. A Path to Integration," *Migraciones Internacionales* 8 No.3 (2016): 222.



contrast in its power and severity when compared to its treatment of common people and those labeled as destitute.<sup>35</sup> The application of equality before the law concerning racial and gender discrimination is quite challenging. Thereby, a paradigm shift against social cohesion and integration should be encouraged.

### C. Conclusion

In conclusion, it is important to point out that the issue of equality before the law and the bait of discrimination is a classic issue. Since this problem is a legal issue, a legal mechanism must address it. Practices of cultural racism or ethnocentrism are still common, where some people believe that certain cultures are better than others. Some people still believe in a superior race with an inherent right to rule over those they deem inferior. Any form of racism is a result of power disparity. Racial discrimination on a global scale is alarming, necessitating states and their institutions to consider its effects on social cohesion and integration among individuals, regardless of their backgrounds.

Gender discrimination persists in the present day, often manifesting in covert and largely undetectable forms across various regions of the world. Stereotypes about men and women are perpetuated and spread through several social institutions, including the media, families, daycare centers, and schools. Traditional gender qualities in Western countries frequently connect to power. The primary traits of women – dependence, maternal instincts, passivity, and familial commitment – reflect their lack of power. Women frequently hold lower-level roles, and their work is often underappreciated and underpaid. Boys or girls who do not fit the stereotyped expectations may face criticism, exclusion, or even violence. These issues can complicate a child's development of gender identity, thereby exposing them to a world filled with segregation and Discrimination.

### D. Suggestion

To live in a society that embraces Equality before the law and ends racial and gender discrimination, suggestions were proposed. At an individual level, people who report institutional and personal racism should be listened to, validated, and supported. Many persons of color claim that white people do not take accusations of racism seriously. Since antiracism starts with a fundamental respect for all people, it is important to take racism-related reports seriously. Everyone needs to be mindful of diversity and its effects, especially regarding privilege and power. Everyone needs to stop any form of injustice to thrive in society.

At the community level, when racism is observed, it is imperative to intervene and disrupt it safely. Encountering racism, whether overt or covert, calls for engaging in persuasive dialogues. Requesting relevant facts and accompanying data can assist in refuting racist assumptions. It is also beneficial to discuss the circumstances that have led individuals to harbor racist attitudes. Participation in and support of anti-racist community activities, marches, rallies, and educational programs are crucial. These efforts enhance understanding of the racism present in the locality and mobilize actions against it.

At the national level, political avenues should be utilized to combat discrimination. Demanding an end to discriminatory behavior in the legal system, the judicial system, the educational system, and the media involve writing to senators and members of Congress (depending on the country). It is imperative to advocate for the enactment of federal legislation that would outlaw racist behavior and establish mechanisms for monitoring police activity. Additionally, advocating for effective measures to combat prejudice in employment and education is crucial. Numerous studies have demonstrated that, when all other factors are consistent, individuals of color are significantly more likely than white individuals to be

---

<sup>35</sup> Supra note, no.32: 65.

rejected for employment and admission to educational institutions. Affirmative action initiatives play a vital role in addressing the issue of racist exclusion.

## REFERENCES

- Andersen, Jennifer A., Don E. Willis, Joseph Keawe‘aimoku Kaholokula, Brett Rowland, Sarah Council, Sheldon Riklon, and Pearl A. McElfish. 2023. “Experiences of Discrimination Among Native Hawaiians and Pacific Islanders Living in the USA.” *Journal of Racial and Ethnic Health Disparities* 10 (January): 1–28. <https://doi.org/10.1007/s40615-022-01509-x>.
- Añón, María José. 2016. “The Fight Against Discrimination and Access to Justice. A Path to Integration.” *Migraciones Internacionales* 8 (3): 221–54.
- Blaker Strand, Vibeke, and Ingunn Ikdahl. 2017. “Responding to Disadvantage and Inequality through Law.” *Oslo Law Review* 4 (3): 124–32. <https://doi.org/10.18261/issn.2387-3299-2017-03-01>.
- Bradley, Anna Spain. 2019. “Human Rights Racism.” *Harvard Human Rights Journal* 32: 1–58.
- Browne, Colette V., Jeanette C. Takamura, and Jin Young Seo. 2022. “Global Gender Inequality, Older Women, and the Call for Change in the United States.” *Journal of Cross-Cultural Gerontology* 37 (3): 339–53. <https://doi.org/10.1007/s10823-022-09462-2>.
- Crawfurd, Lee, and Ukasha Ramli. 2022. “Discrimination by Politicians against Religious Minorities: Experimental Evidence from the UK.” *Party Politics* 28 (5): 826–33. <https://doi.org/10.1177/13540688211021053>.
- Ellermann, Antje. 2020. “Discrimination in Migration and Citizenship.” *Journal of Ethnic and Migration Studies* 46 (12): 2463–79. <https://doi.org/10.1080/1369183X.2018.1561053>.
- Fennelly, David, and Clíodhna Murphy. 2021. “Racial Discrimination and Nationality and Migration Exceptions: Reconciling CERD and the Race Equality Directive.” *Netherlands Quarterly of Human Rights* 39 (4): 308–28. <https://doi.org/10.1177/09240519211055648>.
- Fibbi, Rosita, Didier Ruedin, Robin Stünzi, and Eva Zschirnt. 2022. “Hiring Discrimination on the Basis of Skin Colour? A Correspondence Test in Switzerland.” *Journal of Ethnic and Migration Studies* 48 (7): 1515–35. <https://doi.org/10.1080/1369183X.2021.1999795>.
- Gaebler, Johann, William Cai, Guillaume Basse, Ravi Shroff, Sharad Goel, and Jennifer Hill. 2022. “A Causal Framework for Observational Studies of Discrimination.” *Statistics and Public Policy* 9 (1): 26–48. <https://doi.org/10.1080/2330443X.2021.2024778>.
- Gillborn, David. 2006. “Rethinking White Supremacy.” *Ethnicities* 6 (3): 318–40. <https://doi.org/10.1177/1468796806068323>.
- Gqibitole, Khaya. 2019. “Black Youths’ Challenges in the ‘New’ South Africa: Education, Language and Identity in Kopano Matlwa’s Coconut (2007).” *Open Journal of Social Sciences* 07 (12): 238–55. <https://doi.org/10.4236/jss.2019.712018>.
- Heymann, Jody, Bijetri Bose, Willetta Waisath, Amy Raub, and Michael McCormack. 2020. “Legislative Approaches to Nondiscrimination at Work: A Comparative Analysis across 13 Groups in 193 Countries.” *Equality, Diversity and Inclusion: An International Journal* 40 (3): 225–41. <https://doi.org/10.1108/EDI-10-2019-0259>.
- Iacobucci, Gareth. 2022. “Most Black People in UK Face Discrimination from Healthcare Staff, Survey Finds.” *BMJ*, September, 2337. <https://doi.org/10.1136/bmj.o2337>.

International Convention on the Elimination of All Forms of Racial Discrimination (1965).

Jacobsen, Joyce P. 2013. "Gender Inequality: A Key Global Challenge – Reducing Losses Due to Gender Inequality." In *How Much Have Global Problems Cost the World?*, 192–206. Cambridge University Press. <https://doi.org/10.1017/CBO9781139225793.008>.

Khamzina, Zhanna, Yermek Buribayev, Binur Taitorina, Ainur Yessengazieva, and Anarkhan Kuttygalieva. 2022. "Towards Nondiscrimination and Gender Equality: The Role of International Labor Standards." *Sustainability* 14 (9): 5349–62. <https://doi.org/10.3390/su14095349>.

Kuhn, Moritz, Moritz Schularick, and Ulrike I. Steins. 2018. "Income and Wealth Inequality in America, 1949–2016." *Journal of Political Economy* 128(9): 3469–3519. <https://doi.org/10.1086/708815>

LaFave, S. E., K. Bandeen-Roche, G. Gee, R. J. Thorpe, Q. Li, D. Crews, L. Samuel, A. Cooke, M. Hladek, and Sarah L. Szanton. 2022. "Quantifying Older Black Americans' Exposure to Structural Racial Discrimination: How Can We Measure the Water In Which We Swim?" *Journal of Urban Health* 99 (5): 794–802. <https://doi.org/10.1007/s11524-022-00626-6>.

Larsson Taghizadeh, Jonas. 2023. "Organizational Performance and Discrimination: Are High-Performing Schools Less Likely to Discriminate against Potential Clients?" *Public Performance & Management Review* 46 (2): 368–90. <https://doi.org/10.1080/15309576.2022.2163408>.

Modiri, Joel M. 2012. "The Colour of Law, Power and Knowledge: Introducing Critical Race Theory in (Post-) Apartheid South Africa." *South African Journal of Human Rights* 28: 405–36.

Munger, Frank W., and Carroll Seron. 2020. "Law and the Persistence of Racial Inequality in America." *New York Law School Law Review* 66 (2): 175–205.

Nkosi, Thulani, and Neo Mahlako. 2020. "Are Courts Going out of Their Way to Accommodate RACISTS? A Critique of South African Revenue Service v Commission for Conciliation, Mediation and Arbitration and Others." *Law, Democracy and Development* 24: 338–63. <https://doi.org/10.17159/2077-4907/2020/ldd.v24.14>.

Pettigrew, Thomas Fraser. 2015. "Racial Discrimination." In *International Encyclopedia for the Social and Behavioral Sciences*, edited by N. J. Smelser and P. B. Baltes, 2nd ed. Pergamon.

Purwadi, Wira, Mohamad Ali Akbar Djafar, Gilang Fatirah Densi, Anika Zaitun Tumiwa, and Arum Salsabila Yieputri Langkamane. 2022a. "Application Of The Principle Of Equality Before The Law To Law Enforcement For The Realization Of Justice In Society." *JURNAL LEGALITAS* 15 (1): 59–75. <https://doi.org/10.33756/jelta.v15i1.14772>.

Quillian et al., "Do Some Countries Discriminate More than Others? Evidence from 97 Field Experiments of Racial Discrimination in Hiring." *Sociological Science* Vol. 6 (2019): 467–496.

Qwabe, Onke Aphelele. 2020. "Institutional Racism and Its Effects on Higher Education: A Case Study of UKZN Howard College." University of KwaZulu-Natal.

Richmond, Anthony H., "Colour prejudice in Britain: A case study of West Indian Workers in Liverpool, 1941 – 1951" (Taylor & Francis, 2023), p. 3.

Stone, Lee, and Yvonne Erasmus. 2012. "Race Thinking and the Law in Post-1994 South Africa." *TRANSFORMATION* 79: 119–43.

Supeno, Bambang Joyo. 2020. "Principle of Equality Before the Law and Diversion on Criminal Justice System for Children in Indonesia." *UNTAG Law Review (ULREV)* 4 (1): 71–80.

- 
- wani, Zulfqar Ashraf. 2018. "Gender Inequality – A Global Issue." *International Journal of Research* 5 (19): 383–95.
- White, Kellee, Jourdyn A. Lawrence, Nedelina Tchangalova, Shuo J. Huang, and Jason L. Cummings. 2020. "Socially-Assigned Race and Health: A Scoping Review with Global Implications for Population Health Equity." *International Journal for Equity in Health* 19 (1): 25–38. <https://doi.org/10.1186/s12939-020-1137-5>.
- Yaroshenko, Oleg M., Kostiantyn Yu. Melnyk, Dmytro I. Sirokhac, Olena S. Arsentievad, and Irina I. Teslikovae. 2022. "Gender Inequality in Social Security on the Basis of the ECtHR Case-Law." *Sriwijaya Law Review* 6 (2): 224–38.
- Yolci, Arda, Liane Schenk, Pia-Theresa Sonntag, Lisa Peppler, Meryam Schouler-Ocak, and Anna Schneider. 2022. "Observed and Personally Experienced Discrimination: Findings of a Cross-Sectional Survey of Physicians and Nursing Staff." *Human Resources for Health* 20 (1): 83–92. <https://doi.org/10.1186/s12960-022-00779-0>.