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experience prosecuting a wide range of matters Saffie holds a Law degree from UCL and a Masters in African Studies from SOAS. In her Masters, she majored in 'Government and Politics in Africa' and her dissertation focused on the political participation of women in The Gambia. She was awarded a major scholarship by Middle Temple Inn to study the Bar Professional Training Course. She won a Criminal Bar Association Bursary and sits on the CBA's social mobility committee. She has undertaken voluntary work with the Personal Support Unit assisting litigants in person through the court process. She has also volunteered on the SPITE for schools project. Saffie currently sits as co-chair on the Black Women in Law's mentoring committee and mentors a number of young Black women pursuing a career at the Bar.

FROM CHARGE TO CONVICTION - THE BLACK MUSLIM'S EXPERIENCE OF THE BRITISH JUDICIAL SYSTEM

BY FATIMA MUHAMMED

In the era of colorblindness, it is no longer socially permissible to use race, explicitly, as a justification for discrimination, exclusion, and social contempt. So we don't. Rather than rely on race, we use our criminal justice system to label people of color "criminals" and then engage in all the practices we supposedly left behind.

Michelle Alexander, The New Jim Crow

Statistics regarding charge, trial, and conviction show that Black people are over-represented in the British Criminal Justice System (CJS) (Watts et al, 2020). We also know that Muslims are increasingly being racialised as a community (Selod and Garner 2015), and are subjects of disproportionate surveillance and increasing criminalisation (Tufail and Poynting 2013, Choudhury and Fenwick 2011). What is less well documented however, is what the landscape looks like when we examine the Black and Muslim intersection, and when we look at this experience from a variety of angles, rather than simply the one dimensional 'defendant' angle.

CHARGE

Little work has been carried out on looking at and properly analysing charging decisions made by the Crown Prosecution Service (CPS) and how this impacts upon minority communities. What we do know is that both Black people and Muslims are the subject of disproportionate attention from law enforcement, who feed cases to the CPS for charges to be considered. Unlike in the US, the CPS are independent of the Police but of course work collaboratively with them in dealing with any case. If it has been established that more Black and Muslim individuals are being stopped, searched, arrested and investigated by the police, it stands that the CPS will receive more referrals of cases for charge, involving suspects or defendants from these same backgrounds.

As a Black Muslim, whether a victim, professional, defendant, judge or any other party involved in proceedings, you are very unlikely to see yourself represented. There certainly are Black lawyers, Black judges / Magistrates and Black court staff, but they are significantly underrepresented, leaving the general court house landscape as largely 'pale, male and stale' as it has been for so many years. It is undeniable that over the years things have changed for the better, but it is arguable whether they have changed enough and whether they are changing quickly enough for the Black Muslim community.

At the charge stage, prosecutors do not necessarily see the defendants that are subject to their charging decisions, so it can be argued that the scope for racial and religious bias is somewhat

reduced. However, a number of cases will involve both photographic and audio visual evidence that may make a defendant's race and or religion apparent. There is also the written evidence such as witness statements or interview transcripts which may contain detailed descriptions. And finally, the obvious detail that many minorities will be familiar with; the name of a defendant which can often indicate race, religion, nationality and heritage in many instances.

After the brutal murder of Stephen Lawrence in 1993, the Macpherson report (1999) deemed the Metropolitan Police to be institutionally racist, and similarly, the Sylvia Denman report (2001) found issues within the CPS and deemed it also to be institutionally racist. The result being a number of recommendations made to address this. Since then, there has not been another independent report looking at this issue. In 2017 MP David Lammy conducted a comprehensive review into the experiences of people of Black, Asian and Minority Ethnic backgrounds in the CJS. Lammy (2017) has since called for an in-depth review of CPS charging decisions, something that the CPS recognises could be beneficial in addressing inequalities in the CJS and any role it plays in that.

In the absence of any such report, what we do know when looking at the demographics of those referred to the CPS and those charged, who then end up facing court proceedings is the following. Black defendants can be said to face more serious charges including for knife offences, so-called gang related offences, drug offences and violent assault offences (see Shiner et al 2020). In line also with the negative stereotypes of Muslims we do see Muslims disproportionately impacted by counter-terrorism law and policies (Choudhury and Fenwick, 2011). Black Muslims face a double danger of disproportionate discrimination.

COURT PROCEEDINGS

When it comes to court proceedings, the court does, in many instances, present a hostile and non-representative environment for Black Muslims. Not only for those having their cases heard as defendants but also for those appearing as victims and witnesses, and to an extent, those attending court as professionals. Over the years we have heard personal anecdotes from Black people, minorities and Muslims, who have felt they were more harshly subjected to searches upon entry to court. Just recently, stories have appeared in the mainstream media once again, of lawyers of colour being mistaken by court staff as defendants and not lawyers, simply due to their skin colour (Blackall, 2020). For many of us who are Black and working in the CJS, we have similar stories - of being mistaken for defendants, family of defendants, interpreters, list callers and essentially anything other than what we are- i.e. lawyers or even judges and magistrates.

As a Black Muslim, whether a victim, professional, defendant, judge or any other party involved in proceedings, you are very unlikely to see yourself represented. There certainly are Black lawyers, Black judges / Magistrates and Black court staff, but they are significantly underrepresented, leaving the general court house landscape as largely 'pale, male and stale' as it has been for so many years. It is undeniable that over the years things have changed for the better, but it is arguable whether they have changed enough and whether they are changing quickly enough for the Black Muslim community.

Court houses, unlike other public institutions, do not typically have adequate prayer facilities for Muslims. Consequently, unoccupied conference rooms are makeshift prayer rooms while ablutions are carried out in facilities that are not quite appropriate.

Most court professionals lack sufficient faith awareness to know and understand etiquettes of interacting with Muslims i.e. shaking hands with the opposite sex, the requirement to have a space to pray 5 times a day, the impact of fasting during Ramadan and having to attend court. This is exacerbated for Black Muslims by the longstanding misconception that Black people either can't be Muslims, or aren't 'proper Muslims' anyhow.

These issues go as far as the jury in Crown Court trials; a jury is supposed to guarantee you judgment by your 'peers' but as a Black Muslim, your chances of seeing a Black Muslim juror, particularly in certain parts of the UK, are slim to none. This understandably impacts the perception of fairness and challenges the old adage of it being "as important for justice to be seen to be done."

Add to this all the microaggressions of having your name mispronounced, the data that shows Black people are less likely to be considered victims but rather aggressors, and the stereotypical criminalisation of Black and Muslim culture; there are then questions as to how likely it is for Black defendants to receive a fair trial, free from bias. And how likely it is for Black Muslim court users to have a positive experience of the court system to enable them to fully and effectively participate in the justice process.

CONVICTION AND SENTENCING

The lack of diversity of both the judiciary and jurors has been highlighted previously, but now we need to look at the impact of this. The British Judiciary is notoriously under-representative of British society. It doesn't reflect the communities it impacts and we see that minorities, particularly Muslims and Black people receive disproportionately harsher sentences, leading to their over representation in prisons.

The judicial diversity statistics (2019a) show that:

- Black, Asian and Minority Ethnic representation among judges in the court was generally lower than the general population
- 12% of magistrates declared themselves as BAME
- There were very few magistrates aged under 40 (5%) compared with 52% of magistrates who were aged 60 or over.

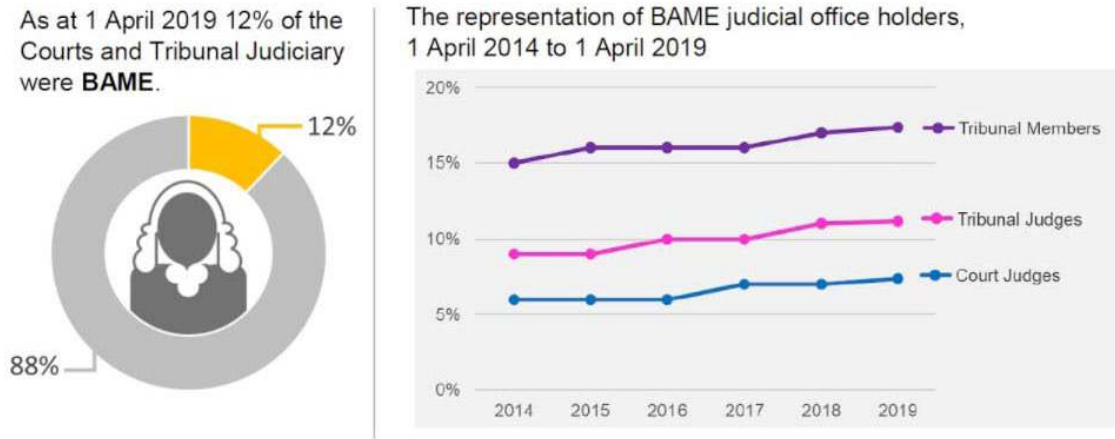
Looking at youth justice, we see that BAME people account for 50 per cent of young offenders in prison (Aidara 2020)—this exponential rise taking place at a time when youth imprisonment in general has fallen by a third. In the year ending March 2019, 27.8% of people in youth custody were Black – more than double the percentage in the year ending March 2006 (12.5%) (Ministry of Justice 2020).

BAME Judicial Office Holders

The representation of BAME office holders in the courts, tribunals and magistracy as at 1 April 2019.



Figure 2a: BAME Judicial Office Holders ¹⁴



Legal Professions of the Judiciary

Court and Tribunal Judges must have a professional legal background, the majority are solicitors or barristers, but may come from backgrounds such as legal executives or academics.

Figure 2b: Representation of BAME judicial office holders ¹⁵

We often see the use of what are called 'deterrent' sentences, deployed as a means to deter criminals who commit a certain type of crime so that they desist from committing said crime, out of fear of the consequences, which are usually immediate custody or otherwise sentences that are more 'harsh' than usual. Often such sentences end up being used to address crimes that predominantly affect or involve Black communities which of course impacts the Black Muslim community. In the UK we have seen this with the 2011 London riots, the Notting Hill Carnival, knife crime offences, so-called gang offences (particularly those involving music artists such as 'Drill artists') and joint enterprise laws.

^{14,15} See Courts and Tribunals Judiciary 2019b

This targeted use of deterrent sentences has resulted in Black defendants who would arguably, otherwise not have received custodial sentences, being put behind bars and suffering deprivation of liberty, for what would be considered in many instances, low level offending (Prison Reform Trust, 2017; Gormley et al, 2020). Or for first time offences which would in different circumstances, never have reached the custody threshold (Ministry of Justice 2017). So for example, during the 2011 London riots, young Black youths arrested for low value shoplifting offences (e.g. for stealing an inexpensive pair of trainers), who would usually have faced a fine, found themselves incarcerated, as an example to be made of.

KNIFE CRIME - TWO STRIKES AND YOU'RE OUT!

A good case study to look at is that of knife crime. In 2015 the UK government introduced a 'two-strikes' deterrent sentence for knife offences (including for the lowest category of the offence - simple possession i.e. being found with a knife on your person but no evidence of it having been violently used against somebody or brandished in public). Under this new sentencing power, judicial discretion was mostly taken away (not that it was known for being exercised favorably against Black defendants in any event) and judges had to ensure that defendants convicted more than once of being in possession of a knife or blade, would be sentenced to a minimum 6 month prison sentence (and a maximum of 4 years). If that defendant is a juvenile aged between 16 and 17, he would be sentenced to at least 4 months custody in a youth detention and training center. In the year preceding the imposition of this sentencing power, 1,300 people received non-custodial sentences or cautions for such offences. The intention with the new sentencing power was that they would all have faced a prison sentence instead (MOJ 2015). At the time the law was passed, the government claimed that knife offences had fallen by approx 40% between 2009 - 2014. At the same time the proportion of knife offenders going to prison had increased from 22% to 29%, while average sentences for knife offences had increased from 166 days to 227 days (Ministry of Justice 2015).

To then fully paint the picture of the inequality before the law, we can look at one particular case which caused outrage amongst the Black community and many criminal justice reform activists. That is the controversial case of Oxford medical student Lavinia Woodward (Yorke 2017). In 2018, knife crime offending was a hot topic, generating provocative headlines and media imagery. It is against this backdrop that Lavinia's case took place. In 2017, Woodward pleaded guilty to unlawful wounding, after she punched and stabbed the victim, Cambridge student Thomas Fairclough. Briefly the facts of her case were that she had met Fairclough through the online dating app, Tinder and entered a relationship with him. After discovering that he had contacted her mother regarding her drinking, she attacked him. She was said to have thrown a laptop at him before stabbing him in the leg with a bread knife, also injuring two of his fingers. All of this was said to have taken place whilst she was under the influence of alcohol and drugs - aggravating features of the offence under the sentencing guidelines.

Woodward, being a white Oxford medical student with aspirations of becoming a medical surgeon, exceptionally received a deferred sentence (the judge specifies a period of time in which your behaviour and conduct will be assessed with a view to rewarding good conduct with

a lesser sentence, if any at all). When Judge Ian Pringle QC finally sentenced Woodward, he gave her a suspended sentence. In the course of the case, the judge had described Woodward, as an "extraordinarily able young lady", whose talents meant that a prison sentence would be "too severe". The judge praised her for her remorse and made remarks to the effect that it was important not to hinder her future of becoming a surgeon by marring her criminal record. The media reported Woodward being seen mouthing the words "thank you" to the judge as she left the courtroom (Yorke, 2017).

When holding up this case as an example, those in defence of the judge's actions often make the following points; that there were many mitigating factors in her case and that the judge exercised his discretion within the sentencing guidelines. True though that is, there were also many aggravating features, including the fact that the offence took place in a domestic violence context, it was a sustained attack and Woodward was under the influence of drink and drugs. She was also said to have breached her bail conditions by contacting the victim. 24 year old Woodward received a suspended sentence where many of her Black counterparts would have been subjected to immediate custody. As a young white female, studying at one of the UK's most elite institutions, the judge wasn't able to see her as the 'other' in the same way that Black defendants often are.

CONCLUSION

Black Muslims ultimately suffer from discrimination on both a racial and religious level in the criminal justice system Firstly, for being Black, as that is often the most obvious visible minority identifier, but also for being Muslims, a community also viewed with suspicion, racialised and negatively stereotyped. As Black people we do not see ourselves adequately represented on the professional side but we are disproportionately represented on the criminalisation side. As Muslims, we find ourselves equally, inadequately represented, but also inadequately catered for.

The CJS thus becomes an inaccessible and hostile institution for many in the Black community, resulting in Black Muslims having low confidence levels in the system whether seeking to engage with it as victims, witnesses, defendants or professionals. The following recommendations are made as a way forward to address some of these issues:

- Initiatives to support the recruitment of greater diversity in the CJS from court staff to Barristers, Solicitors, QCs, Judges and Magistrates
- Adequate and practical equality and diversity training (including faith awareness) for court staff and the judiciary
- Improved prayer and ablution facilities at court
- In-depth and independent review of charging decisions
- Data looking specifically at the intersection of race and religion for Black Muslims to better understand the 'double damage' suffered by Black Muslims across all access points of the CJS

¹⁶ Although it did still exist in the legislation, allowing judges not to impose the minimum mandatory sentence if they felt that it would be 'unjust' to do so. But the intention and guidance was that such discretion would be exercised only in the rarest of cases

This final recommendation is not just desirable but in fact essential. Without knowing the full extent of the issues, we will always be at a disadvantage in trying to seek solutions to address them. The recommendations are not exhaustive or intended to be ‘final’ solutions – simply a starting point.

The Black Lives Matter movement was borne out of the inequalities suffered by Black people at the hands of the CJS and yet many Muslims think it isn’t a Muslim issue. This is in spite of the number of Black Muslims in the community (see Ali 2015). Justice must be accessible to all for it to truly be Justice. The Muslim community needs to be concerned about issues affecting all for it to be united and true to its teachings.



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Fatima Muhammed qualified as a Barrister and has worked in the Criminal Justice Sector for many years. She has worked on cases and legal issues across multiple jurisdictions and has studied Race and Law and the impact of Western legal systems on minority groups

Please note that this has been written in a personal capacity and views expressed are not necessarily representative of any organisation

BLACK MUSLIMS IN UK PRISONS

BY ABU HAJIRAH
