

REFORMING JUSTICE: UNVEILING PROSECUTORIAL DISCRETION THROUGH THE DOCUMENTARY SERIES “PHILLY DA”

Kashish Agarwala *

ABSTRACT

In light of the documentary series "Philly DA," this article examines the idea of prosecutorial discretion. It focuses on Larry Krasner's efforts to overhaul the criminal justice system as the district attorney of Philadelphia. The ability to determine how a case will be resolved is known as prosecutorial discretion. Prosecutors have this power, and because they have complete control, it can occasionally result in arbitrary punishments. In addition, the article discusses the difficulties and problems surrounding prosecutorial discretion as well as the prosecutors' responsibility to uphold the rule of law. Last but not least, the article examines how restorative justice might foster community healing and serve as a transformative alternative to imprisonment.

UNDERSTANDING PROSECUTORIAL DISCRETION

In the context of the documentary series Philly Da, the use of prosecutorial discretion has been the subject of intense debate and controversy. Due to the policies and procedures of the recently elected district attorney, Larry Krasner, the district attorney's office in Philadelphia has received considerable attention in recent months.

Krasner explores a variety of topics, but prosecutorial discretion is one of the most important ones he encounters. His own use of prosecutorial discretion in a more fair and progressive way has not, however, been without controversy. Many people support him for taking courageous action to address systemic inequities in the criminal justice system, despite claims from critics that he is too mild on crime and he would soon create a situation of anarchy.

Now, let us define what Prosecutorial Discretion actually means. Prosecutors are thought to have the ultimate authority to choose what is right and wrong in a criminal justice system, regardless of what one may think about them. Your local district attorney, more than any other position or person in America, has a greater influence on the criminal justice system, including police brutality and the overall phenomenon of widespread incarceration.

*BA LLB, FIRST YEAR, NATIONAL LAW UNIVERSITY, DELHI.

Of course, it is impossible to ignore President Obama's advice to those who are unsatisfied with their local district attorney.

“If you are really concerned about how the criminal justice system treats African-Americans, the best way to protest is to vote . . . Do what they just did in Philadelphia and Boston, and elect state’s attorneys and district attorneys who are looking at issues in a new light.”¹

I think the message President Obama was trying to get through was pretty clear: if you want to fix the issues with our criminal justice system—like racial unfairness and mass incarceration—get prosecutors on your side.

After hearing this kind of message, we frequently have a tendency to lose faith in the criminal justice system. If appointing prosecutors who seemed ideal in the first place really helped, we wouldn't even be discussing the problem of prosecutorial discretion.

In fact, the criminal justice system will change thanks to the prosecutors who are courageous enough to right their wrongs. Or, to use Professor Angela J. Davis's phrase:

“Just as the power and discretion of prosecutors have contributed to mass incarceration and racial disparities in the criminal justice system, that same power and discretion may be used to institute reforms to correct these injustices.”²

UNVEILING THE CHALLENGES AND CRITICISMS OF PROSECUTORIAL DISCRETION

The main critique of prosecutorial discretion, in my opinion, is that prosecutors focus more on identifying the criminal than the offence itself. They might just charge you for a crime that would merely go unpunished if you were not wearing a particular piece of clothing they dislike or if the hue of your skin does not match their ideal skin tone.

According to empirical studies, prosecutors are driven to bring more cases since they have a greater range of professional options to consider. It has long been believed that career concerns drive prosecutors to act more harshly. Boylan (2005) discovered, for instance, that

¹ Daniel Fryer, *Race, Reform, & Progressive Prosecution* [2020] 10 J. Crim. L. & Criminology 769

² *ibid*

receiving longer sentences aids US Attorneys in securing other esteemed positions once their term is out.³

Additionally, there is a strong consensus that prosecutors in the United States have excessive power and that this power should be limited. Prosecutors have frequently been referred to as the most powerful individuals in the criminal justice system since the middle of the 20th century. The prosecutor has the power to issue arrest warrants, present cases to the grand jury in secret, and, based on his biased presentation of the evidence, can result in the citizen being charged and detained pending trial.

He has the choice to dismiss the matter before trial, in which case the defence would not have the opportunity to be heard. He could also have a public trial instead. Even In the event that the accused is found not guilty, the prosecutor may still suggest a punishment, as well as determine whether the prisoner should be given probation or a suspended sentence and whether he will be eligible for parole once he has served his sentence⁴.

Some academics believe that the politics of crime—rather than plea bargaining—are the reason why modern prosecutors are so powerful. Prosecutors merely want to appear "tough on crime" in order to satisfy public expectations.

According to what I understand and what I've studied in class, prosecutors want to demonstrate that they are acting and are not just sitting around by being "tough on crime" by using a punitive rather than a rehabilitative approach to crime. They are fixed at the moment the crime has been committed and fail to see the circumstances that lead to the crime from before it was committed. I want to make the case, using ideas from the Haney article, that they have a very individualistic perspective on crime and fail to recognise how society as a whole equally contributes to a given crime.

PROSECUTORIAL ACCOUNTABILITY

“While a prosecutor may strike hard blows, he is not at liberty to strike foul ones it is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one”⁵

³ George P. Fletcher „Some Unwise Reflections about Discretion [1984] 47[4] Gautam D.N 269–86

⁴ *Ibid*

⁵ *State v. Reilly*, 446 A.2d 1125 (Me. 1982)

Particularly in cities like "Philadelphia," public prosecutors have a big impact on people's life because they are the ultimate authority and determine whether to charge the offender or not.

They have complete discretion and power, which could result in prosecutorial misconduct. The evidence in a case can also be tainted by misconduct, particularly when witnesses are pressured or coerced into testifying or when prosecutors purposefully present the jury with misleading testimony from witnesses or false or provocative arguments.

It is crucial that prosecutors are appropriately regulated and held accountable for misconduct given their immense power. Although prosecutors believe they are adequate, if not excessively, controlled, in the information age, public concerns about prosecutorial wrongdoing and calls for reform of the regulation of prosecutors have grown louder and spread further.⁶

With the growing concerns of Prosecutorial Discretion, I believe that by holding prosecutors accountable for their actions we can safeguard people's individual rights and prevent miscarriages of justice and therefore it will lead to maximisation of happiness. This understanding of prosecutorial accountability is made possible with the aid of John Stuart Mill's utilitarian theory, which emphasises the maximisation of happiness and minimization of harm. The Rawlsian school of thought can also be used to support the claim that prosecutors have an obligation to ensure that everyone is treated fairly and is given a fair trial in their capacity as agents of justice. It becomes vital to hold prosecutors accountable in order to address any inequities or biases in the system that can compromise this notion of justice as fairness.

PROSECUTORIAL DISCRETION AND RACE-RELATED DISPARITIES

The subject of prosecutorial discretion has long been debated, especially when it comes to how it affects racial inequities. Although prosecutors are obliged to handle cases fairly, personal prejudices can occasionally affect their judgement.

According to a study by the New York County District Attorney's office, black defendants were more likely to receive plea deals with longer prison terms than similarly situated white defendants, and prosecutors were more likely to recommend that bail be denied for them than for similarly situated white defendants. Additionally, the study discovered that prosecutorial

⁶ Bruce Green and Ellen Yaroshefsky, *Prosecutorial Accountability 2.0*[2017] 92 [1] Notre dame law review

discretion "found more severe outcomes for minority defendants compared to similarly situated white defendants at every step of the criminal procedure."⁷

When we talk about the series "Philly Da," we can also notice how disparities between races are present. The problems caused by the racial disparities in the criminal justice system are being faced by Philadelphia, along with many other American cities. These differences are visible in a number of criminal justice system components, including the selection of charges, the process for requesting bail, the frequency of arrests, and plea bargaining.

I contend that this discretion, which is virtually exclusively used in secret, gives prosecutors more authority than any other criminal justice official, with essentially no matching accountability to the public they serve. Therefore, I contend that prosecutors have a duty to exercise their discretion to end the unfair treatment of African Americans in the criminal justice system as part of their general obligation to seek justice.

To encourage the appropriate, non-discriminatory use of prosecutorial discretion, I suggest that racial impact studies be used in prosecution offices. The essential component of racial impact studies is the collecting and public release of information on the race of the accused and the victim in each case for each type of offence, as well as the actions that were taken at each stage of the criminal procedure.⁸ Racial impact studies may point to unjustified unequal treatment based on unconscious racism or class bias, as well as truly different outcomes based on disproportionate offending and uninterested or reluctant victims.

Journal of Legal Research and Juridical Sciences

EXPLORING RESTORATIVE JUSTICE AS A TRANSFORMATIVE ALTERNATIVE TO INCARCERATION

"Philadelphia claims to be a city of freedom yet they have the highest prison population than any other city"

Philadelphia is the most imprisoned city in America, Larry Krasner throughout the series tries to remind us. His argument is that we should invest the same funds we spend on prisons in other sectors of growth, such as healthcare, education, and tourism. More than one-third of prisoners are serving time for marijuana possession, being detained following a prostitution

⁷ Davis, Angela J., "Prosecution and Race: The Power and Privilege of Discretion" [1998] 67 [1] Fordham Law Review

⁸ *Ibid*

arrest, and disobeying traffic signals. Few of those prisoners are likely to pose a threat to the public's safety.

With the assistance of restorative justice, these crimes can be easily resolved. Famously, restorative justice has a history that spans both eras. It outlines the earliest method of resolving disputes without resorting to violence as well as the most modern framework for addressing long-recognized flaws in our criminal justice system⁹. Its traditional justice remedies, which included offenders making apologies to their victims primarily through restitution in order to restore order and peace following a disagreement and prevent the effects of feud and vengeance, are referred to as its old form.

Once misconduct has been acknowledged, the conference between the two communities of care is led by the facilitator. Prior to moving on, there is a discussion of what was done and how it affected everyone in the room (the victim's suffering and the offender's family's stress).¹⁰ Then, an explanation of what must be done to undo those various forms of damage that follow.

I believe that by integrating the victim, the offender, and the community in the process, restorative justice attempts to foster understanding, empathy, and personal responsibility.¹¹ It can give the accused a chance to take responsibility for their crimes, atone, and reintegrate into society while simultaneously attending to the needs and worries of the victim. Restorative justice is a philosophical approach that emphasises reparation for victims' harm rather than merely punishing offenders. It aims to mend the damaged bonds, encourage recovery, and stop further offences. The goal of this strategy is to treat the root causes of criminal conduct and reintegrate people into society as law-abiding citizens. It is consistent with the ideals of rehabilitation and reintegration.

CONCLUSION

Prosecutorial discretion is an essential component of the criminal justice system. It plays a crucial part in directing a person's behavior. It is a type of discretion that provides prosecutors tremendous power and may occasionally trample on people's rights. The powerful

⁹ Heather strang ,*Experiments in restorative justice* (pp. 483–498). ANU Press.

¹⁰ *Ibid*

¹¹ Rajeshwari, B ,*Feminist Perspectives on Post-riot Judicial Inquiry Commissions in India. Journal of Asian Security and International Affairs*(2017)4(2), 196–218.

prosecutors should exercise that power with caution. They must use their influence in an ethical and moral manner.

One of the primary ideas I've taken away from my research on prosecutorial discretion is that biases account forms a sizeable portion of prosecutorial discretion. Biases based on various factors, such as ethnicity, socioeconomic class, or gender, are unethical and harm public confidence in the criminal justice system. People from marginalised groups are typically the ones who suffer the most from such biases, which may treat people unfairly. In comparison to those from privileged backgrounds, they may face harsher charges, longer prison terms, and restricted parole or probation.

I'm convinced that there needs to be a diversified strategy used to address these biases. First and foremost, the prosecutors must not just downplay biases but rather recognise their existence. They won't be able to influence other people's viewpoints or transform society by treating everyone equally until they are willing to own recognize their own biases.

Secondly, It is important to reinforce the prosecutors' responsibility and accountability. In order to prevent arbitrary sentencing, I firmly believe that prosecutors should be held responsible for their acts. This may include tools that allow prosecutors to review their choices and make any necessary corrections.

I would also like to suggest that restorative justice be taken into account as an alternative to incarceration for less offensive crimes, which will lessen the possibility of prosecutorial discretion being abused and also help with recovery. Additionally, as the prison population is frighteningly rising, it will decrease.

To sum up, I firmly believe that prosecutorial discretion is a crucial component of the criminal justice system, but it also needs to be applied equitably. In order to advance justice and equality, it is crucial to encourage accountability and involve diverse stakeholders in the process by reviewing the decisions.