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# **RACIAL PROFILING IN LAW ENFORCEMENT**

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## **ABSTRACT**

Racial profiling in law enforcement remains a pervasive and systemic issue that fundamentally violates principles of equality, justice, and the rule of law. This article undertakes a critical examination of racial profiling through international and comparative legal lenses, exploring its evolution and entrenchment across jurisdictions. Drawing upon constitutional jurisprudence, international human rights instruments, and empirical studies, the analysis exposes the socio-legal harms and discriminatory impact of racial profiling, particularly on marginalized communities. The article further evaluates the responses of various legal systems, highlighting both the failures and successes of regulatory and judicial interventions. In concluding, it proposes targeted legal and policy reforms to dismantle racial profiling practices, advocating for stronger accountability mechanisms, data transparency, and adherence to anti-discrimination norms embedded in international law. By integrating comparative perspectives and grounding the discussion in both theory and practice, this article contributes to the growing body of scholarship aimed at promoting equitable law enforcement and safeguarding human dignity.

## **I. CONCEPTUAL FRAMEWORK: UNDERSTANDING RACIAL PROFILING**

Racial profiling refers to the discriminatory practice by law enforcement authorities of subjecting individuals to heightened scrutiny, surveillance, or intervention based primarily on their perceived race, ethnicity, religion, or national origin, rather than on any individualized suspicion or objective evidence of wrongdoing. Often justified under the guise of crime prevention or national security, racial profiling operates on stereotypes and group-based assumptions, thereby infringing on the principle of equal protection under the law.

Human rights institutions, civil liberties organizations, and numerous national and international courts have denounced racial profiling as a form of institutionalized racism<sup>1</sup> that perpetuates

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<sup>1</sup> See U.N. Comm. on the Elimination of Racial Discrimination, *General Recommendation No. 31 on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System*, ¶ 5(a), U.N. Doc. CERD/C/64/Misc.11/rev.3 (2005).

systemic discrimination and reinforces social hierarchies. It undermines the legitimacy of criminal justice systems by eroding public trust, especially among historically marginalized communities, and it contravenes core tenets of democratic governance, such as accountability, transparency, and procedural fairness.

In jurisdictions governed by constitutional rule and adherence to the rule of law<sup>2</sup>, the discriminatory targeting of individuals on racial or ethnic grounds constitutes a violation of fundamental rights, including the right to equality, non-discrimination, and due process. Despite its widely acknowledged illegality and demonstrable ineffectiveness in enhancing public safety, racial profiling remains an entrenched practice in both developed and developing legal systems.

This section lays the theoretical foundation for analysing racial profiling from a socio-legal perspective. By examining its legal, political, and sociological dimensions, it sets the stage for a more nuanced exploration of its historical development, judicial treatment, and comparative manifestations in the sections that follow.

## **II. HISTORICAL AND COMPARATIVE EVOLUTION OF RACIAL PROFILING**

Racial profiling, as a systemic tool of law enforcement, has deep historical roots in both colonial and post-colonial societies. It is inextricably linked to the legacies of slavery, segregation, and racial subjugation, where legal institutions often served as instruments of control over racially marginalized populations. The modern manifestation of racial profiling reflects this lineage, reinforced through immigration regimes, counterterrorism efforts, and crime prevention strategies that disproportionately target racial and ethnic minorities.

### **A. United States: From Slavery to Stop-and-Frisk**

In the United States, racial profiling can be traced to slave patrols in the antebellum South, which laid the foundation for racially targeted policing. During the Jim Crow era, policing practices were explicitly designed to control Black mobility and suppress dissent. In the late 20th century, policies such as “stop-and-frisk” and the “war on drugs” disproportionately

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<sup>2</sup> See A.V. Dicey, *Introduction to the Study of the Law of the Constitution* 183–205 (8th ed. 1915); see also Lon L. Fuller, *The Morality of Law* 39–45 (1964) (emphasizing the rule of law as a foundational principle of constitutional government requiring equal application of legal norms).

affected African American and Latino communities. Empirical studies demonstrate that minority individuals were far more likely to be stopped, searched, or arrested despite lower rates of contraband discovery compared to white individuals<sup>3</sup>.

U.S. constitutional jurisprudence, notably under the Fourth and Fourteenth Amendments, has grappled with racial profiling in cases such as *Terry v. Ohio*<sup>4</sup> and *Whren v. United States*<sup>5</sup>. However, courts have often refrained from directly addressing racial bias, instead focusing on the formal legality of stops and searches. This reluctance has been critiqued for enabling de facto discrimination under a veneer of procedural neutrality.

### **B. United Kingdom: Policing and the "Sus" Laws**

In the United Kingdom, racial profiling gained prominence during the 1970s and 1980s with the enforcement of the “sus” laws under the Vagrancy Act 1824. These provisions allowed police to stop and search individuals merely on suspicion of intent to commit a crime. Black Britons, particularly Caribbean youth, were disproportionately targeted, culminating in widespread unrest such as the 1981 Brixton riots. The repeal of the “sus” laws was a pivotal moment in British policing, yet racial disparities have persisted under subsequent legislation, including the Police and Criminal Evidence Act 1984 (PACE) and the Terrorism Act 2000<sup>6</sup>.

Despite policy efforts to introduce stop-and-search safeguards, reports from Her Majesty’s Inspectorate of Constabulary and the Equality and Human Rights Commission continue to reveal significant racial disparities. Black people remain several times more likely to be stopped than their white counterparts, raising concerns about compliance with the Equality Act 2010 and the European Convention on Human Rights (ECHR).

### **C. India: Caste, Communalism, and Discriminatory Policing**

In India, while the discourse on racial profiling is less developed, analogous practices exist in the form of communal profiling<sup>7</sup>, wherein religious minorities—particularly Muslims and

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<sup>3</sup> See **Jeffrey Fagan**, *Second Generation Racial Profiling and the Future of Policing*, 6 U. Chi. Legal F. 123, 130–33 (2010); **Andrew Gelman et al.**, *An Analysis of the NYPD’s Stop-and-Frisk Policy in the Context of Claims of Racial Bias*, 102 J. Am. Stat. Ass’n 813 (2007); **Civil Rights Div., U.S. Dep’t of Just.**, *Investigation of the Newark Police Department* 17–20. [https://www.justice.gov/sites/default/files/crt/legacy/2014/07/22/newark\\_findings\\_7-22-14.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2014/07/22/newark_findings_7-22-14.pdf).

<sup>4</sup> *Terry v. Ohio*, 392 U.S. 1 (1968).

<sup>5</sup> *Whren v. United States*, 517 U.S. 806 (1996).

<sup>6</sup> See: Police and Criminal Evidence Act 1984, c. 60 (UK); Terrorism Act 2000, c. 11 (UK).

<sup>7</sup> See Amnesty Int’l, *Losing the Margins: The Urgent Need to Reform the Unlawful Activities (Prevention) Act* (2021),

Dalits—are subjected to heightened surveillance and suspicion. Instances of custodial violence, disproportionate arrest rates, and selective application of anti-terror laws such as the Unlawful Activities (Prevention) Act (UAPA) suggest structural bias within the criminal justice system<sup>8</sup>. Despite constitutional protections under Articles 14, 15, and 21, law enforcement agencies have faced criticism for communal bias, especially in the aftermath of incidents like the 2002 Gujarat riots or the 2020 Delhi riots. Civil society organizations and commissions such as the Sachar Committee have highlighted the institutional neglect and discrimination faced by Muslim communities in particular<sup>9</sup>. However, judicial oversight and systemic reform mechanisms remain weak, with limited prosecutorial accountability for discriminatory policing.

#### **D. European Union and International Norms**

Across the European Union, racial profiling often manifests in immigration and border control practices, disproportionately affecting Roma, African, and Middle Eastern populations. The European Court of Human Rights (ECtHR) has recognized the discriminatory nature of such practices under Article 14 (non-discrimination) in conjunction with Article 8 (privacy) of the ECHR, notably in cases such as *Timishev v. Russia*<sup>10</sup>.

Moreover, the European Commission against Racism and Intolerance (ECRI)<sup>11</sup> and the United Nations Human Rights Committee have repeatedly called for the prohibition of ethnic profiling, urging member states to collect disaggregated data, improve accountability, and adopt clear anti-profiling legislation.

### **III. EMPIRICAL DIMENSIONS AND REAL WORLD CONSEQUENCES**

While theoretical discourse on racial profiling often focuses on its legal and moral implications, empirical research offers critical insights into its prevalence, effectiveness, and societal impact. Studies across multiple jurisdictions consistently reveal that racial profiling is both ineffective

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<sup>8</sup> Unlawful Activities (Prevention) Act, No. 37 of 1967, INDIA CODE (1967).

<sup>9</sup> Prime Minister's High-Level Comm. on the Socio-Economic and Educational Status of the Muslim Community of India, *Social, Economic and Educational Status of the Muslim Community of India: A Report* (2006) (commonly known as the Sachar Committee Report).

<sup>10</sup> *Timishev v. Russia*, App. Nos. 55762/00 & 55974/00, 2005-XII Eur. Ct. H.R. 1.

<sup>11</sup> Eur. Comm'n Against Racism & Intolerance (ECRI), *General Policy Recommendation No. 11 on Combating Racism and Racial Discrimination in Policing* (2007).

as a law enforcement strategy and deeply harmful to the communities it targets<sup>12</sup>.

### A. Statistical Evidence of Disparate Policing

Data from the United States provides some of the most robust empirical documentation of racial profiling. According to a 2020 report by the Bureau of Justice Statistics, Black Americans are over 2.5 times more likely than white Americans to be stopped by police, and nearly twice<sup>13</sup> as likely to experience the threat or use of force during such encounters. Latino and Native American populations also report significantly higher rates of stops, searches, and arrests relative to their population proportions.

Similar trends have been observed in the United Kingdom. Stop-and-search data from the UK Home Office in 2023 showed that Black individuals were over seven times more likely to be stopped and searched than white individuals. Importantly, the “hit rate”<sup>14</sup> (i.e., the rate at which contraband is found) does not justify this disproportionality, indicating that racialized stops are not based on reliable indicators of criminality.

In France, studies by Human Rights Watch and the Open Society Foundations show that police frequently engage in “facial checks” of young Black and Arab men in urban areas without objective suspicion—prompting national debates about the legality of such practices under the French Constitution and European human rights law.

### B. Consequences for Targeted Communities

Beyond raw statistics, the psychological and social consequences of racial profiling are profound. Targeted individuals frequently report feelings of fear, humiliation, distrust, and alienation<sup>15</sup>. These effects are not limited to direct encounters with law enforcement but extend to families and communities, fostering a generalized mistrust of the state<sup>16</sup> and its institutions.

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<sup>12</sup> See David A. Harris, *Profiles in Injustice: Why Racial Profiling Cannot Work* 76–90 (2002); U.S. Dep’t of Just., Civil Rights Div., *Investigation of the Ferguson Police Department* 62–74 (Mar. 4, 2015).

<sup>13</sup> U.S. Dep’t of Just., Bureau of Just. Stat., *Contacts Between Police and the Public, 2020 – Statistical Tables* 3–6 (2022), <https://bjs.ojp.gov/library/publications/contacts-between-police-and-public-2020-statistical-tables>.

<sup>14</sup> U.K. Home Office, *Police Powers and Procedures: Stop and Search and Arrests, England and Wales Year Ending March 2023*, at 5–8 (Oct. 2023), <https://www.gov.uk/government/statistics/police-powers-and-procedures-stop-and-search-and-arrests-england-and-wales-year-ending-31-march-2023>.

<sup>15</sup> See David A. Harris, *Racial Profiling: Past, Present, and Future?*, 30 *Crim. Just.* 28, 32–34 (2015); Amnesty Int’l, *Stop and Search is Discriminatory and Damaging—New Research Reveals Impact on Young People* (Oct. 27, 2021),

<sup>16</sup> See Tom R. Tyler, *Why People Obey the Law* 161–65 (2006) (arguing that perceptions of procedural justice influence public trust in legal institutions); Tracey L. Meares, *The Law and Social Science of Stop and Frisk*, 10

Studies conducted in the United States and Canada have found that racial profiling significantly reduces public cooperation with law enforcement<sup>17</sup>, including reluctance to report crimes, serve as witnesses, or participate in community policing programs. The breakdown in trust compromises public safety and weakens the overall effectiveness of criminal justice systems. Children and youth from profiled communities are particularly vulnerable. Repeated exposure to racially biased policing leads to trauma, educational disruption, and social stigmatization<sup>18</sup>, reinforcing cycles of marginalization and contributing to the school-to-prison pipeline.

### C. Economic and Structural Costs

Racial profiling also imposes substantial economic costs on the state. Civil lawsuits and class actions related to unlawful stops, arrests, or detentions have resulted in millions of dollars in settlements<sup>19</sup>. In New York City, the landmark *Floyd v. City of New York*<sup>20</sup> case on stop-and-frisk practices led to a federal ruling that the city had violated the constitutional rights of its Black and Latino residents, requiring systemic reforms and independent oversight—at significant public expense.

Furthermore, racial profiling diverts law enforcement resources away from evidence-based crime prevention. When officers are encouraged or permitted to act on implicit or explicit racial bias rather than objective criteria, policing becomes not only unjust but inefficient<sup>21</sup>.

### D. Profiling in the Context of Counterterrorism and Immigration

Post-9/11 counterterrorism measures have accelerated the normalization of racial and religious profiling, particularly targeting Muslims and individuals of Middle Eastern or South Asian descent. Airports, immigration checkpoints, and surveillance programs disproportionately

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Ann. Rev. L. & Soc. Sci. 335, 341–44 (2014) (discussing how profiling practices reduce legitimacy of law enforcement in minority communities).

<sup>17</sup> See Tracey L. Meares & Tom R. Tyler, *Justice Sotomayor and the Jurisprudence of Procedural Justice*, 123 Yale L.J.F. 525, 530–33 (2014); Tom R. Tyler, *Trust and Law-Abidingness: A Proactive Model of Social Regulation*, 81 B.U. L. Rev. 361, 365–70 (2001).

<sup>18</sup> See Kristin Henning, *The Age of Innocence: How America Criminalizes Black Youth* 89–112 (2021); Devon W. Carbado, *From Stopping Black People to Killing Black People: The Fourth Amendment Pathways to Police Violence*, 105 Calif. L. Rev. 125, 139–45 (2017).

<sup>19</sup> See U.S. Dep't of Just., Civ. Rts. Div., *Investigation of the Ferguson Police Department* 93–95 (Mar. 4, 2015), [https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf); ACLU, *The Cost of Police Misconduct Settlements* (2020).

<sup>20</sup> *Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013).

<sup>21</sup> See David A. Harris, *Profiles in Injustice: Why Racial Profiling Cannot Work* 74–78 (2002); L. Song Richardson, *Police Efficiency and the Fourth Amendment*, 87 Ind. L.J. 1143, 1165–71 (2012).

scrutinize these groups under expansive national security mandates.

In many Western countries, Muslim men report being routinely flagged for additional screening, surveillance, or denial of entry based solely on their names, religious practices, or appearance. While states justify such profiling on grounds of preventive security, there is little evidence that these measures have led to meaningful reductions in terrorist activity. On the contrary, such policies have exacerbated Islamophobia<sup>22</sup> and increased the risk of radicalization by alienating law-abiding citizens.

#### **IV. LEGAL AND JURISPRUDENTIAL ANALYSIS**

Legal systems across the world have addressed the issue of racial profiling with varying degrees of commitment and success. While many states have constitutional and statutory prohibitions against discrimination, the enforcement of these guarantees through judicial mechanisms has often been uneven. This section evaluates the jurisprudential landscape on racial profiling through the lenses of constitutional law, international human rights law, and comparative judicial responses.

##### **A. Constitutional Guarantees and Doctrinal Challenges**

Most democratic constitutions enshrine the principles of equality before the law and non-discrimination<sup>23</sup>. In India, for instance, Articles 14, 15, and 21 of the Constitution provide strong textual guarantees against arbitrary state action and discrimination. Similarly, the U.S. Constitution's Equal Protection Clause<sup>24</sup> under the Fourteenth Amendment and protections against unreasonable searches and seizures under the Fourth Amendment provide a dual framework to challenge racial profiling<sup>25</sup>.

Yet, judicial interpretation has often weakened the force of these protections. In *Whren v. United States*, the U.S. Supreme Court upheld the constitutionality of pretextual traffic stops, stating that as long as there is probable cause for any offense, the officer's subjective motivation

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<sup>22</sup> See Human Rights Watch, *With Liberty to Monitor All: How Large-Scale U.S. Surveillance is Harming Journalism, Law, and American Democracy* 35–40 (2014), <https://www.hrw.org/report/2014/07/28/liberty-monitor-all/how-large-scale-us-surveillance-harming-journalism-law-and>; Arun Kundnani, *The Muslims Are Coming! Islamophobia, Extremism, and the Domestic War on Terror* 117–130 (2014).

<sup>23</sup> See International Covenant on Civil and Political Rights art. 26, Dec. 16, 1966, 999 U.N.T.S. 171; INDIA CONST. arts. 14–15; U.S. CONST. amend. XIV, § 1.

<sup>24</sup> U.S. CONST. amend. XIV, § 1.

<sup>25</sup> U.S. CONST. amend. IV.

is irrelevant<sup>26</sup>. This ruling effectively allows racially motivated stops to escape constitutional scrutiny, so long as there is some legal justification.

In India, courts have shown reluctance to engage directly with the question of communal profiling. Despite growing evidence of bias in the enforcement of counterterrorism laws such as the UAPA<sup>27</sup>, the judiciary has generally deferred to the executive, invoking national security to justify extensive preventive detention and surveillance powers<sup>28</sup>.

## B. International Human Rights Instruments

International human rights law unequivocally prohibits discrimination and arbitrary interference by state actors. Article 26 of the **International Covenant on Civil and Political Rights (ICCPR)**<sup>29</sup> guarantees equality before the law and protection against discrimination. Article 9 protects individuals from arbitrary arrest and detention, while Article 17 safeguards against unlawful interference with privacy.

The Human Rights Committee, in its General Comment No. 18, has emphasized that differential treatment based solely on race, religion, or national origin is inherently discriminatory unless objectively justified and necessary for a legitimate purpose. The Committee has criticized states where racial profiling is practiced systematically and has called for remedies that include data collection, accountability mechanisms, and training of law enforcement personnel<sup>30</sup>.

At the regional level, the European Court of Human Rights (ECtHR) has addressed racial profiling under Article 14 (non-discrimination) in conjunction with other substantive rights. In *Timishev v. Russia*, the Court held that denying entry to a Chechen applicant on ethnic grounds violated the Convention, establishing that ethnic discrimination need not be proven through intent, but may be inferred from context and impact<sup>31</sup>.

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<sup>26</sup> *Whren v. United States*, 517 U.S. 806, 813 (1996) (“Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.”).

<sup>27</sup> See: <https://www.mha.gov.in/sites/default/files/A1967-37.pdf>

<sup>28</sup> See *People’s Union for Civil Liberties v. Union of India*, (2004) 9 SCC 580 (India); see also Gautam Bhatia, *The Transformative Constitution: A Radical Biography in Nine Acts* 237–42 (2019).

<sup>29</sup> International Covenant on Civil and Political Rights art. 26, Dec. 16, 1966, 999 U.N.T.S. 171.

<sup>30</sup> U.N. Human Rights Comm., General Comment No. 18, Non-Discrimination, ¶¶ 6–10, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (Nov. 10, 1989).

<sup>31</sup> *Timishev v. Russia*, App. Nos. 55762/00 & 55974/00, 2005-XII Eur. Ct. H.R. 1, ¶ 58 (holding that a difference in treatment based on race or ethnicity may constitute discrimination even absent intent).

### C. Comparative Judicial Responses

Judicial responses to racial profiling vary significantly. In Canada, the Supreme Court has taken a more progressive approach. In *R. v. Le*, the Court recognized that racialized individuals experience heightened police scrutiny and ruled that such social context must inform the assessment of whether a police encounter was voluntary or coercive<sup>32</sup>.

The South African Constitutional Court, in cases such as *Minister of Safety and Security v. Van Duivenboden*<sup>33</sup>, has stressed the importance of state accountability in preventing systemic human rights abuses by law enforcement. Although racial profiling has not been squarely addressed in South Africa's courts, the constitutional framework—especially Section 9 on equality—offers a robust foundation for potential litigation.

In contrast, France's Conseil d'État has been more cautious. While acknowledging racial disparities in policing, it has hesitated to attribute them to discriminatory intent without definitive evidence, reflecting a legal culture that formally emphasizes republican universalism over identity-based claims<sup>34</sup>.

### D. Weaknesses in Enforcement and Accountability

Even where anti-profiling laws exist, enforcement remains weak due to structural and procedural hurdles. Victims of racial profiling often face difficulties in accessing remedies, especially in jurisdictions where civil suits against law enforcement are procedurally complex or prohibitively expensive.

Additionally, qualified immunity doctrines, prosecutorial discretion, and lack of independent oversight bodies enable impunity for discriminatory practices. Few jurisdictions mandate the collection of disaggregated data<sup>35</sup> on police stops, making it difficult to prove systemic discrimination or track patterns over time.

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<sup>32</sup> *R. v. Le*, [2019] 2 S.C.R. 692, ¶¶ 3–5, 90 (Can.).

<sup>33</sup> *Minister of Safety and Security v. Van Duivenboden* 2002 (6) SA 431 (SCA) (S. Afr.).

<sup>34</sup> See Julie Ringelheim, *Racial Profiling: A French Perspective*, 5 *Open J. Soc. Sci.* 171, 174–78 (2017); see also Human Rights Watch, *The Root of Humiliation: Abusive Identity Checks in France* (2020).

<sup>35</sup> See Joanna C. Schwartz, *How Qualified Immunity Fails*, 127 *Yale L.J.* 2, 9–15 (2017); United Nations Human Rights Council, *Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance on Racial and Ethnic Profiling*, U.N. Doc. A/HRC/38/52, ¶¶ 56–60 (May 25, 2018).

## **V. SOCIO-LEGAL CRITIQUE AND THEORETICAL PERSPECTIVES**

Racial profiling cannot be understood solely through the lens of legal doctrine or statutory prohibitions. Its persistence—despite constitutional safeguards and international condemnation—reveals its deeper entrenchment within societal power structures and ideologies. This section engages with theoretical perspectives from critical race theory, sociology of law, and political theory to uncover the underlying logics that sustain racial profiling as a practice and institution.

### **A. Critical Race Theory and the Structural Nature of Profiling**

Critical Race Theory (CRT)<sup>36</sup> argues that racism is not merely a collection of individual biases but is embedded in legal institutions, practices, and norms. Legal scholars such as Derrick Bell and Kimberlé Crenshaw have emphasized that the law often functions to preserve the interests of dominant racial groups under the guise of neutrality. Racial profiling, from a CRT perspective, reflects the law's complicity in maintaining racial hierarchies.

Judicial doctrines that disregard the subjective motives of law enforcement (e.g., *Whren v. United States*) effectively render racialized experiences invisible, privileging formal legality over substantive justice. Such frameworks ignore how “colorblind” policies can reproduce systemic discrimination when applied in unequal social contexts<sup>37</sup>.

CRT also critiques the selective legitimacy<sup>38</sup> granted to certain fears. While minority populations are routinely cast as threats to public order, the systemic violence they endure—from over-policing to economic marginalization—is treated as unremarkable. Thus, the state's construction of “risk” is itself racialized.

### **B. Sociology of Law and the Logic of Surveillance**

Sociological perspectives emphasize that policing is not simply a reactive function but a

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<sup>36</sup> See Kimberlé Crenshaw et al., eds., *Critical Race Theory: The Key Writings That Formed the Movement* (1995); Derrick Bell, *Faces at the Bottom of the Well: The Permanence of Racism* (1992).

<sup>37</sup> See Devon W. Carbado, *Race, Pedagogy, and Legal Education: A New Course in Law School Diversity*, 21 Nat'l Black L.J. 38, 41–45 (2009); see also Ian Haney López, “A Nation of Minorities”: *Race, Ethnicity, and Reactionary Colorblindness*, 59 Stan. L. Rev. 985, 1002–07 (2007).

<sup>38</sup> See Kimberlé Williams Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 Stan. L. Rev. 1241, 1281–85 (1991); Patricia J. Williams, *The Alchemy of Race and Rights* 43–48 (1991).

constitutive element of social order<sup>39</sup>. The practice of racial profiling must be situated within broader structures of surveillance, classification, and control. Sociologists such as Loïc Wacquant have argued that modern policing in marginalized communities often mirrors punitive logics found in colonial governance and carceral regimes.

In this light, racial profiling operates less as a tool of crime prevention and more as a mechanism for disciplining surplus populations—those who are economically and politically marginalized. The hypervisibility of racialized individuals in public and urban spaces is not accidental but reflects a social demand for order based on exclusion and hierarchy<sup>40</sup>.

Moreover, the routinization of surveillance through technologies—such as predictive policing algorithms and facial recognition—risks entrenching racial profiling in more covert and automated forms<sup>41</sup>. Without careful oversight, such tools replicate historical patterns of discrimination under a veneer of objectivity and innovation.

### **C. Political Theory and the Crisis of Democratic Legitimacy**

From a political theory standpoint, racial profiling poses a crisis for democratic legitimacy<sup>42</sup>. In societies that claim to be governed by the rule of law and principles of equality, the targeted exclusion of certain racial or ethnic groups undermines the very foundations of citizenship. As scholars like Charles Mills and Iris Marion Young have argued, the liberal state often excludes through inclusion<sup>43</sup>, by granting formal rights while simultaneously subverting their realization through discriminatory practices.

Racial profiling delegitimizes the moral authority of the state by revealing its selective application of justice. When law enforcement becomes a site of fear rather than protection for

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<sup>39</sup> See Loïc Wacquant, *Punishing the Poor: The Neoliberal Government of Social Insecurity* 41–56 (2009); David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* 104–110 (2001).

<sup>40</sup> See Loïc Wacquant, *Urban Marginality in the Coming Millennium*, 36 *Int'l J. Urb. & Reg'l Res.* 1, 6–9 (2012); Didier Fassin, *Enforcing Order: An Ethnography of Urban Policing* 152–159 (2013).

<sup>41</sup> See Andrew Guthrie Ferguson, *The Rise of Big Data Policing: Surveillance, Race, and the Future of Law Enforcement* 95–110 (2017); Rashida Richardson, Jason M. Schultz & Kate Crawford, *Dirty Data, Bad Predictions: How Civil Rights Violations Impact Police Data, Predictive Policing Systems, and Justice*, 94 *N.Y.U. L. Rev. Online* 15, 19–24 (2019).

<sup>42</sup> See Charles W. Mills, *The Racial Contract* 52–60 (1997); Iris Marion Young, *Inclusion and Democracy* 85–92 (2000).

<sup>43</sup> See Charles W. Mills, *The Racial Contract* 53–56 (1997); Iris Marion Young, *Inclusion and Democracy* 90–94 (2000).

entire communities, the social contract becomes fractured<sup>44</sup>. This erosion of trust weakens civic engagement, fosters alienation, and diminishes the state's capacity to govern effectively and ethically.

#### **D. Intersectionality and the Multiplicity of Disadvantage**

An intersectional analysis reveals how racial profiling does not operate in isolation but intersects with other axes of identity, including gender, class, caste, religion, and immigration status<sup>45</sup>. For instance, Black and Muslim women may face profiling not only as racialized subjects but also through gendered forms of suspicion, such as assumptions about veiling or “improper” behaviour.

In India, Dalit Muslims and Adivasis experience compounded profiling due to their caste and tribal status, often being criminalized as “habitual offenders” under colonial-era laws such as the Criminal Tribes Act, which, although repealed, has left enduring institutional legacies. These intersections complicate legal redress, as the harms are distributed and reinforced across multiple domains—legal, social, and economic.

## **VI. LEGAL AND POLICY RECOMMENDATIONS**

Effectively addressing racial profiling requires a multi-pronged<sup>46</sup> strategy involving legal reform, institutional accountability, and cultural transformation within law enforcement. This section outlines key recommendations, drawing upon constitutional jurisprudence, international human rights obligations, and comparative institutional models.

### **A. Constitutional and Legislative Reforms**

#### **1. Explicit Prohibition of Racial Profiling in Law<sup>47</sup>**

Legislatures must enact statutes that explicitly define and prohibit racial profiling, rather than relying solely on general anti-discrimination provisions. These laws should

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<sup>44</sup> See Tom R. Tyler, *Legitimacy and Criminal Justice: The Benefits of Self-Regulation*, 7 Ohio St. J. Crim. L. 307, 313–18 (2009); Bernard E. Harcourt, *Illusion of Order: The False Promise of Broken Windows Policing* 183–188 (2001).

<sup>45</sup> See Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex*, 1989 U. Chi. Legal F. 139, 149–57 (1989); Sumi Cho, Kimberlé Crenshaw & Leslie McCall, *Toward a Field of Intersectionality Studies: Theory, Applications, and Praxis*, 38 Signs 785, 788–93 (2013).

<sup>46</sup> See Open Soc’y Just. Initiative, *Reducing Ethnic Profiling in Europe: A Handbook of Good Practices* 11–17 (2012).

<sup>47</sup> See Am. Civ. Liberties Union (ACLU), *Reforming Racial Profiling Laws: Why Explicit Bans Are Essential* (2015),

incorporate clear definitions, outline reporting duties, and provide remedies for affected individuals<sup>48</sup>.

For example, Canada's Ontario Human Rights Code prohibits systemic discrimination by public institutions, and the state of California in the U.S. has enacted the Racial and Identity Profiling Act (RIPA)<sup>49</sup>, mandating data collection on police stops and public reporting.

## 2. Reform of Search and Seizure Doctrines<sup>50</sup>

Courts should revisit jurisprudence that allows pretextual stops or permits subjective police discretion without adequate safeguards. Doctrines like *Whren v. United States* must be reassessed through the lens of substantive equality, allowing courts to consider discriminatory intent or impact in determining the legality of a stop.

## 3. Strengthening Fundamental Rights Guarantees<sup>51</sup>

In jurisdictions like India, courts must interpret Articles 14, 15, and 21 more robustly to recognize and prohibit racial, religious, and communal profiling, especially under special laws such as UAPA or NSA. This calls for judicial courage in holding executive actors accountable even in the context of national security or counterterrorism.

## B. Institutional and Administrative Reforms

### 1. Independent Oversight and Civilian Complaint Mechanisms<sup>52</sup>

Establishing independent police complaint authorities at national, state, and local levels is essential. These bodies must have investigative powers, access to data, and the ability to recommend disciplinary or prosecutorial action.

The United Kingdom's Independent Office for Police Conduct (IOPC)<sup>53</sup> and New York City's Civilian Complaint Review Board (CCRB)<sup>54</sup> provide models for institutional independence and transparency.

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<sup>48</sup> See U.N. Off. of the High Comm'r for Hum. Rts., *Guidelines for the Prevention of Discrimination in Policing*, U.N. Doc. HR/PUB/21/2, at 12–16 (2021),

<sup>49</sup> Racial and Identity Profiling Act of 2015, Cal. Gov't Code §§ 12525.5, 13519.4 (West 2023).

<sup>50</sup> See Devon W. Carbado, *From Stopping Black People to Killing Black People: The Fourth Amendment Pathways to Police Violence*, 105 Calif. L. Rev. 125, 140–47 (2017); David A. Harris, *Racial Profiling Revisited: "Just Common Sense" in the Fight Against Terror?*, 17 Crim. Just. 36, 38–42 (2002).

<sup>51</sup> See Gautam Bhatia, *The Transformative Constitution: A Radical Biography in Nine Acts* 201–12 (2019); Anuj Bhunia, *Courting the People: Public Interest Litigation in Post-Emergency India* 137–42 (2017).

<sup>52</sup> See U.N. Off. of the High Comm'r for Hum. Rts., *Guidelines for the Prevention of Discrimination in Policing*, U.N. Doc. HR/PUB/21/2, at 24–26 (2021).

<sup>53</sup> Independent Office for Police Conduct, *Our Work*.

<sup>54</sup> N.Y.C. Civ. Complaint Rev. Bd., *About the CCRB*,

## 2. **Mandatory Data Collection and Publication**<sup>55</sup>

Police departments must collect and publicly disclose disaggregated data on stops, searches, arrests, and use of force, categorized by race, religion, and ethnicity. Data transparency allows researchers, civil society, and oversight agencies to identify patterns and hold institutions accountable.

## 3. **Bias Training and Cultural Competency Education**<sup>56</sup>

Mandatory training on implicit bias, cultural awareness, and constitutional rights must be instituted for all law enforcement personnel. However, training alone is insufficient—reform must also include supervisory accountability and performance evaluation based on rights-compliance metrics, not just arrest statistics.

### **C. Judicial and Procedural Safeguards**

#### 1. **Shift Burden of Proof in Profiling Claims**<sup>57</sup>

Courts should adopt presumptive models of discrimination where data shows disproportionate impact. This approach, recognized in international human rights law, shifts the burden to the state to justify its conduct once a prima facie case of discrimination is made.

#### 2. **Admissibility Exclusions for Unlawful Profiling**<sup>58</sup>

Evidence obtained through racial profiling must be excluded from judicial proceedings, consistent with the doctrine of the “fruit of the poisonous tree.” This would deter unlawful police conduct by linking constitutional violations to tangible trial consequences.

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<sup>55</sup> See U.N. Hum. Rts. Council, *Racial and Ethnic Profiling: Report of the Special Rapporteur on Contemporary Forms of Racism*, U.N. Doc. A/HRC/38/52, ¶¶ 55–60 (May 25, 2018); Eur. Comm’n Against Racism & Intolerance, *General Policy Recommendation No. 11 on Combating Racism and Racial Discrimination in Policing* §§ I–II (2007).

<sup>56</sup> See U.S. Dep’t of Just., Civil Rights Div., *Advancing Diversity in Law Enforcement* 23–26 (2016).

<sup>57</sup> See U.N. Hum. Rts. Comm., *General Comment No. 18: Non-Discrimination*, ¶ 13, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (Nov. 10, 1989); Eur. Comm’n Against Racism & Intolerance, *General Policy Recommendation No. 11 on Combating Racism and Racial Discrimination in Policing* § II(1) (2007).

<sup>58</sup> See *Mapp v. Ohio*, 367 U.S. 643, 659 (1961) (establishing the exclusionary rule under the U.S. Constitution); David A. Harris, *Racial Profiling and the Constitution: Ignoring the Lessons of the Past*, 3 Rutgers Race & L. Rev. 1, 18–22 (2001).

### 3. Access to Legal Aid and Class Remedies<sup>59</sup>

Victims of profiling must be provided with legal aid, especially in cases involving public law or human rights violations. Class action mechanisms and public interest litigation can be used to challenge systemic practices and seek structural remedies.

## D. International and Cross-Border Cooperation

### 1. Adoption of International Guidelines<sup>60</sup>

States should adopt and implement standards such as the UN OHCHR Guidelines for the Prevention of Discrimination in Policing and the ECRI General Policy Recommendation No. 11 of the Council of Europe, which provide detailed blueprints for anti-profiling policies.

### 2. Cross-Jurisdictional Learning and Harmonization<sup>61</sup>

Legal systems should learn from best practices across jurisdictions. For example, Germany's Federal Anti-Discrimination Agency, South Africa's Equality Courts, and Canada's race-based data mandates offer valuable institutional models adaptable to local contexts.

## VII. CONCLUSION

Racial profiling in law enforcement is not merely a deviation from constitutional norms—it is a systemic pathology that corrodes the moral and legal foundations of democratic governance. Despite universal commitments to equality, non-discrimination, and the rule of law, racial profiling persists across jurisdictions in both overt and insidious forms. It undermines individual dignity, weakens public trust, and entrenches societal divisions, particularly against historically marginalized communities.

This article has examined racial profiling from a multi-dimensional lens: defining its contours, tracing its evolution, evaluating its legal treatment across comparative jurisdictions, and engaging with its deeper socio-political implications. Through critical race theory, sociological

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<sup>59</sup> See U.N. Hum. Rts. Council, *Access to Justice: Report of the United Nations High Commissioner for Human Rights*, ¶¶ 34–37, U.N. Doc. A/HRC/30/20 (June 26, 2015); S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* 112–119 (2002).

<sup>60</sup> See U.N. Off. of the High Comm'r for Hum. Rts., *Guidelines for the Prevention of Discrimination in Policing*, U.N. Doc. HR/PUB/21/2 (2021); Eur. Comm'n Against Racism & Intolerance, *General Policy Recommendation No. 11 on Combating Racism and Racial Discrimination in Policing* (2007).

<sup>61</sup> See Fed. Anti-Discrimination Agency (Germany), About Us; Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (S. Afr.); Gov't of Can., Building Trust and Confidence: Data Collection on Indigenous and Racialized Communities.

insight, and constitutional jurisprudence, it has demonstrated that racial profiling is not an incidental flaw, but a structurally embedded practice that thrives on institutional inertia and selective accountability.

The solutions, though complex, are not unattainable. Legislative clarity, judicial vigilance, institutional independence, and international human rights compliance must converge to outlaw and prevent racial profiling in all its forms. It is imperative for states to not only adopt robust legal frameworks but also reimagine the very philosophy of policing—from a model of coercion to one of community protection and rights-based service.

Ultimately, the abolition of racial profiling is not only a legal necessity but a moral imperative. Democratic societies must choose between preserving systemic bias or advancing toward an equitable and humane legal order. The path forward lies in confronting hard truths, enacting principled reforms, and reaffirming the fundamental promise of justice for all.

