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Abstract

Purpose: The aim of the study is to examine the miscarriage of justice in the Legal system

Methodology: This study adopted a desktop methodology. This study used secondary data from which include review of existing literature from already published studies and reports that was easily accessed through online journals and libraries.

Findings: The study reveals that countries have many numerous legal and institutional framework governing justice, nevertheless the law has failed to promote justice due to poor and shallow investigative process, corruption, incompetent forensic science and witness misidentification. The study also shows that there are innocent people who are serving sentences or have been pushed for crime they did not commit and the factually guilty walking free

Unique Contribution to Theory, Practice and Policy: The study was anchored on theory of justice and neo-liberalism theory. The study recommends that there is need to develop a sophisticated and insightful working framework of criminology of wrongful prosecution. The study recommends that researchers should continue to identify the weaknesses in the police investigative and interview process and to propose reform

Keywords: *Miscarriage, Justice, Legal System*

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INTRODUCTION

Any criminal justice system will inevitably make mistakes, the factually guilty will avoid punishment and the innocent will get unfair treatment. Justice errors can have disastrous repercussions for those who were wrongfully convicted, as well as current and future victims of offenders who are not brought to justice (Perera, 2017). They may also have an impact on politicians' beliefs and policies, the attitudes and effectiveness of professionals, and the confidence of the general public in the administration of justice. Even while most people think they could see a miscarriage of justice if they saw one, the phrase doesn't have a universally accepted definition and can have several meanings depending on the situation. It matters from a legal, analytical, public relations, and political standpoint how justice is reduced. It decides which appeals will be successful and estimates of the size of the issue: a definition that is too restrictive will understate the scope of the problem; a definition that is too broad will muddy the meaning of the term and may damage the credibility of system critics. Public opinion of the criminal justice system and any ensuing political improvements are influenced by how the issue is covered in the media (Pickett, 2019).

In order to evaluate erroneous convictions, the due process method is currently under fire from opposite paths. In order to prevent the guilty' convictions from being overturned due to procedural or legal errors, the UK government produced a consultation brief on modifying the appellate test. Others have asked for the creation of an innocence or miscarriage of justice test in an effort to help people whom they claim the Court of Appeal's unduly high standards have rendered incapable of obtaining a legitimate pardon. The newly formed Innocence Network UK (INUK) is supporting the creation of Innocence Projects in UK institutions that are modeled after those in the United States of America in order to find evidence to exonerate the wrongfully convicted (Poyser, 2018).

A wrong conviction is a failure of justice. Unjustly, an innocent person has been imprisoned for a crime that they did not commit (Henry, 2018). This has frequently led to lengthy and challenging periods of incarceration. This is particularly concerning given Canada's strong and comprehensive system of checks and balances in the criminal justice system, which includes the Canadian Charter of Rights and Freedoms, the custom of the Crown serving as an independent quasi-judicial officer and the police force as fair and impartial investigators (Gray, 2017). By showcasing their willingness to take action to stop upcoming injustices, criminal justice system participants can increase public confidence in the administration of justice. Fostering public knowledge of the importance of fair, unbiased, and independent police investigations and Crown prosecutions is also crucial. The systemic reasons for erroneous convictions as well as the specific reasons why particular cases went wrong have been the subject of numerous commissions and studies conducted in Canada and other countries. What is surprising, though, is that some issues, themes, and errors continue to occur regardless of where the injustice occurred. These issues extend beyond courtroom processes and involve the actions of the police, Crowns, defense attorneys, judges, and forensic scientists (Cunliffe, 2021).

The legal, political, and social climates in Canada, the United States, Britain, Australia, and New Zealand are all noticeably different from one another (Iliadis, 2020). Consequently, it is important to proceed with some caution before presuming that Canada may benefit from their findings. For instance, the death sentence and the issue of race are prevalent in the United States

but not in Canada. In order to assure adequate defense for those facing the most serious crimes, many American prosecutors are elected, and the country does not have the same legal assistance system as Canada.

Public defense attorneys frequently have excessive caseloads, and in some jurisdictions, these attorneys are irresponsibly or severely overburdened with multiple lawsuits to be resolved (Gershowitz, 2019). In actuality, these lawyers "just may be sluggish or reluctant to do the job right" in some jurisdictions where there are no clear rules limiting the hiring of private attorneys serving as public defense counsel for the state. According to the argument, there are numerous occasions "where the incapacity of counsel is evident," and in each of these cases, the case has suffered greatly as a result.

Meredith Kercher was brutally murdered and raped in 2007 in the medieval town of Perugia. The incident made headlines around the world and has continued to irritate the internet to this day (Gies, 2017). The attention of the media has nearly always been solely on Amanda Knox. British media gave her the moniker "Foxy Knoxy" and speculated endlessly about her extramarital affairs, leading to a narrative that implied that she was guilty. One of our interviewees described what was written about the case as a "Gothic novel," which fueled a steady stream of media reporting that was also in no small part motivated by an intense interest in Knox's persona. Lack of clarity regarding the circumstances of the victim's murder and the gruesome nature of the crime no doubt added an element of mystery to the case; one of our interviewees described the lack of clarity as adding to the mystery (Gies, 2017).

Social media was essential in mobilizing supporters to fight against the 2009 conviction of American exchange student Amanda Knox and her Italian co-defendant Raffaele Sollecito for the murder of British Erasmus student Meredith Kercher in the Italian town of Perugia. Support for the innocent campaign came from Internet users in a number of countries with a large English-speaking population (Gies, 2017). the recruitment of more supporters who proved to be incredibly committed to the cause and who also brought with them a level of expertise that would have been much more challenging to access otherwise. the founding members of the campaign were able to reach out to others online on a scale that was previously unthinkable.

To make the Western Australian court system more receptive to those with mental impairments, a paradigm shift is needed (Tulich, 2017). Such a change would lessen the possibility of injustices being committed. In order to achieve the desired paradigm shift, possibilities for timely screening and intervention must be maximized together with a diversion towards alternatives, particularly in the newly growing field of oncountry activities. We contend that this can help ensure the Western Australian judicial system does not keep failing, along with the adjustments made by the Western Australian Police in reaction to these cases.

Traditional views have long been represented in constitutional criminal procedure. The 1993 decision in *Herrera v. Collins* by the U.S. Supreme Court provides a perfect illustration of those worries (Garrett, 2017). The court recognized the "disruptive effect" that considering claims of actual innocence would have on the need for finality, as indicated in the statute of limitations that prohibits the late filing of new trial requests in failing to recognize a free standing constitutional claim of actual innocence. Yet, this mindset went beyond instances that dealt specifically with innocence defenses, as other criminal procedure judgements reflected a notion that the precision and dependability of criminal verdicts were not the primary concern.

Brazilian women's personal histories, especially those of the poorer women, are the focus of a feminist study that examines the country. drawing primarily on police reports, legal papers, the words of medical specialists, and other sources created in criminal and civil court proceedings where such women were defendants. Compelling argument for the importance of studying reproductive politics and the police of reproduction control throughout this six-decade period, widely understood to include abortion and infanticide in order to shed light on larger themes in Brazilian history. These include the nation's efforts to link women's citizenship and honor to motherhood, its subsequent advancements in maternal and infant health at the turn of the 20th century, the roles of race and gender in Brazilian medicine and law, and the persistence of inequalities and inequities that have shaped and continue to shape the lives and deaths of many Brazilians. *A Miscarriage of Justice* enriches our historical comprehension of the oppressive laws and excessive medical procedures that Brazilian women must deal with in their experiences of fertility control, pregnancy, childbirth, and parenting. This is perhaps its most significant contribution (Pulley, 2019).

Take the case of false convictions, which, by coming to light as never before, including due to contemporary DNA testing technology, contributed to a broad array of improvements to criminal justice in Uganda, as an example of how an entire criminal justice system can learn from its error (Lubinga, 2019). The emphasis on the innocent has influenced judicial decisions, academic studies, criminal procedure reform laws, revised post-six-conviction criteria, new police procedures that emphasize accuracy, new prosecution procedures, and modifications to legal education.

Understanding the overall fundamental principles of criminal law, such as the definition of a crime, the elements of an offense, or the criminal mind, is a prerequisite for applying criminal proceedings. The criminal justice system in Uganda is by its very nature an accusatory and combative one (Nabasitu, 2018). Criminal procedure must strike a balance between the need for justice, the rights of the accused and the country in a quick and efficient trial. Consequently, the goals of criminal procedure are to preserve the rights of the accused and the suspect. In addition to introducing new laws or changing current ones when necessary, prosecutors are in charge of upholding all existing laws (Hall, 2022). The law has no value if those who break the law are not held accountable for their actions. One of the fundamental human rights guaranteed by our constitution is equality before the law and equal treatment under the law. The prosecutors must see to it that this right is upheld, and everyone who breaks the law—police officers, government employees, or regular citizens—must be held accountable. Likewise, everyone who seeks redress before the law must be treated equally.

Statement of the Problem

It is inescapable that a society will treat individuals who are convicted of crimes harshly and be more eager to prosecute those who it suspects of committing crimes the more threatened it feels by criminal activity (Kovera, 2019). Because violent crime is constantly on the rise, the severity of the punishment meted out to individuals found guilty of such crimes has also increased. However, the essential question that arises is whether the system is accurate and reliable in guaranteeing that the aforementioned punishments are only meted out to the actual criminal and not an innocent person. This necessitates an effective legal justice system. Poyser (2011) and Khan (2022) have a contextual gap because they concentrate on the factors that lead to injustice and erroneous convictions, whereas the current study concentrates on how injustice

occurs in the legal system and the steps that are taken to make the bodies that seek justice strong and effective. So, it was necessary to conduct the investigation.

Theoretical Framework

This study is will be guide by theory of justice which was proposed by John Rawls in 1971 and Neo-liberalism theory that was proposed by Wilsonian in 1992.

Theory of Justice

According to Rawls' theory of justice, the standard of justice should be established by considering the rules that members of a community would agree upon if the veil of ignorance were lifted. The veil of ignorance thus means that people are unaware of their social status in society or their inherent abilities (rawls, 2020). This will stop them from bending the terms of the agreement to their own advantage. Contrary to Kenya's robust affirmative action laws, particularly the gender-based affirmative action that primarily places emphasis on the welfare of women there, the veil of ignorance calls for people to regard the welfare of every member of society as though it were their own. As a result, the ensuing contract symbolizes equality between men and women as ontological ends and as moral beings.

According to Rawls, decisions or the first principle of a vision of justice that people can jointly decide serve as the general starting point for justice as fairness. These decisions or first principles of a theory of justice govern all subsequent institutional criticism and improvement. (Rawls, 2020). According to (Said, 2021), the goal of justice as fairness is to give democratic institutions an acceptable philosophical and moral standard and so to address the issue of how the claims of liberty and equality are perceived. Consequently, it is necessary to pursue the well-known concepts of justice and fairness for Kenya, a country with democratic institutions, to work toward achieving gender equity. These are the core principles of a just society, which primarily view society as an equitable system of social cooperation that develops over time from one generation to the next. In order to establish a political vision of justice for any democratic government, this is a key organizing principle (Lin, 2017). a political system that upholds the notion that all citizens are free and equal and that a well-ordered society is one that is successfully governed by a common understanding of justice. This theory will enable us to recognize the instances where the established legal frameworks and procedures failed to provide fairness and due justice.

Neo-liberalism Theory

Certain circles now assert that the world is in the neoliberal era because of the notion of neoliberalism's increasing influence (Deckard, 2019). Deckard (2019) claims that the neoliberal paradigm is founded on the belief that the application of reason and universal ethics to international relations can result in a more orderly, just, and cooperative world and that international anarchy and war can be policed by institutional reforms that strengthen international organizations and laws. The theory's foundation based on the supposition that, all other things being equal, democratic government, liberal business, international law and organization, collective security, and ethically motivated statecraft can all work together to improve life on Earth. In the 20th century, neoliberalism evolved as an alternative theory to realism and neorealism (Chand, 2022).

Neoliberalism opposes neorealism and supports organizations like the AU and the International Criminal Court. Neo-liberalists vehemently contend that the act of concluding an international

agreement itself alters a nation's self-interest and calculations (Bayeh, 2014). It's also interesting to note that one of the five commitments made by the AU in the Strategy Plan was to guarantee that all African nations ratified the International Criminal Court treaty (African Union). In response, Kenya independently accepted the Rome Statute of the International Criminal Court, perhaps misguided by its own expectations and objectives regarding international criminal law and sovereignty.

According to neo liberals, the globe may transcend the power politics at the core of the neo realist paradigm and engage in meaningful global collaboration. The fundamental tenet of neoliberals is that world peace and international collaboration may result in absolute gains for all. Since international law is regarded as being essential to maintaining world peace, liberal ideals played a significant role in the founding of the International Criminal Court (Peck, 2018). Additionally, the International Criminal Court would advance global security and peace by holding those accountable for atrocity crimes accountable. This theory will aid in our comprehension of the judicial institutions established to uphold the rule of law.

Empirical Review

Khan (2022) conducted research on unfair trials and erroneous convictions. This study employs a qualitative method to examine examples of wrongful conviction in order to emphasize the causes and contributing factors. The case studies of notable cases, journal articles, books, newspaper stories, and reports from human rights groups make up the data used. The report demonstrates how seriously flawed Pakistan's criminal justice system is. Although the Criminal Justice System (CJS) in Pakistan is built on the widely accepted idea that no one is convicted without having been given a fair trial, it has many idiosyncrasies and loopholes that create a vicious cycle, and innocent people suffer as a result.

Rahmawati (2021) conducted a criminological study on Indonesia's judicial system errors. The majority of the instances from the numerous cases acquired target the underprivileged. If this keeps up, there is a chance that the criminal justice system and the government may lose the public's faith and suffer severe repercussions. The approach taken is a qualitative one. Unstructured interviews with practitioners, including representatives from the criminal justice system, governmental and non-governmental groups that assist victims, as well as academics, are used to gather primary data. The gathering of news from online mass media, reports from non-governmental organizations, and reports from the Directory of Decisions of the Supreme Court of the Republic of Indonesia are used to search for secondary data. According to study findings, structural victimization is a phenomenon that arises from societal power structures. Hence, formal social control is required.

Madni (2019) concentrated on Pakistan's propensity for false accusations and imprisonment. In order to effectively address the problem at hand, the research aims to examine the existing legal remedies for unjust prosecution in Pakistan. It also underlines the need for such a framework. According to the report, it is common in our society for people who have spent years in prison and were wrongfully accused to be exonerated by the high court or Supreme Court. After having spent the greatest years of their lives in prison, their only option is to file a lawsuit alleging unjust prosecution, which cannot in any way be justified as a cheap or effective remedy. According to the study's findings, Pakistan's criminal justice system lacks an effective state response to those who have been the victims of false prosecutions that have led to miscarriages of justice, and there is no statutory or legal framework outlining the state's

position on the matter. The study suggests that a comprehensive and perceptive working paradigm for criminology of wrongful prosecution in Pakistan be developed.

Lubinga (2019) analyzed that there must be substantial evidence before a conviction or judgment is rendered. He also examined the causes of incorrect convictions, which are significant in violating the rights of detainees or suspects before conviction. The study's analytical technique was based on the researcher's examination of the body of prior research on the topic. The study found that evaluating the criminal justice system's hierarchy to case adjudication—which may result in false conviction—and highlighting injustices and wrongful conviction scams in criminal processes. The study also demonstrates that wrongful conviction is defined as erroneous procedure, incorrect decision-making, and injustice meted out to the litigant or accused parties.

Kiamba (2018) conducted research on victims' rights and judicial system errors. The study examines the institutional and legal foundation for criminal punishment, sentencing, and special cases of injustice. It questions domestic and international legal frameworks on the rise of injustices and how the victims are impacted. The study shows that despite Kenya's extensive legislative and institutional framework guiding justice, the law has not succeeded in advancing justice because of a lackluster and superficial investigative process, Kenya's growing corruption, incompetent forensic science, and witness misidentification. The study also demonstrates that there are factually guilty persons who are roaming free and innocent people who are serving terms or have been persuaded into committing crimes they did not commit.

Poyser (2011) looked at the police investigation and interviewing procedure as a major contributor to injustices around the world. The findings of psychiatric and psychological research, as well as the ensuing suggestions, are used to analyze this phenomenon. These reforms to UK law, policy, and practice have had a considerable impact as a result. The report demonstrates that, despite significant advancements in this area in the UK, there is still no room for complacency because injustices continue to happen both locally and globally. The study identifies the interviewing of adult victims and witnesses as an area that needs more transparency and investigation as something that has been relatively disregarded in the investigative puzzle. This report urges scholars to keep pointing out the flaws in the police investigation and interview process and to provide reform recommendations based on their empirical research.

METHODOLOGY

This study adopted a desk methodology. A desk study research design is commonly known as secondary data collection. This is basically collecting data from existing resources preferably because of its low cost advantage as compared to a field research. Our current study looked into already published studies and reports as the data was easily accessed through online journals and libraries

RESULTS

The results were analyzed into various research gap categories, that is, contextual and methodological gaps.

Contextual and Methodological Gaps

Kiamba (2018); Madni (2019); Poyser (2011) and Lubinga (2019) posit a conceptual gap as none of these studies addresses on the miscarriage of justice in relation to the legal system.

Rahmawati (2021); Khan (2022) present a methodological gap as these studies used descriptive research design while the current study adopts desktop study research design.

CONCLUSION AND RECOMMENDATIONS

Conclusion

The study comes to the conclusion that a miscarriage of justice may put the government and criminal justice system at risk of losing the public's trust and may have other detrimental effects. The study shows that although many countries have legislative and institutional frameworks guiding justice, these frameworks have not succeeded in advancing justice because of inadequate and superficial investigative processes, corruption, subpar forensic science, and misidentification of witnesses. The study also demonstrates that there are factually guilty persons who are roaming free and innocent people who are serving terms or have been persuaded into committing crimes they did not commit. The study comes to the conclusion that the criminal justice system lacks an effective state reaction to victims of wrongful prosecution that results in miscarriage of justice, and there is no statutory or legal structure articulating the state's response on the matter. The study comes to the further conclusion that the public's perception of the criminal justice system and the subsequent political reforms are influenced by how the media covers the topic.

Recommendations

The study suggests that a comprehensive and perceptive working paradigm for criminology of wrongful prosecution be developed. The study advises that academics keep track of the gaps in police investigation and interview procedures and provide reform recommendations based on their research.

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