

Research on the Application of Equal Rights Law and the Reversal of Burden of Proof in Racial Discrimination

Yuxuan He^{1,*}

¹Law Academy, Henan University of economical and law, Zhengzhou of Henan province, 450000, China

*Corresponding author. Email:heyuxuan981006@163.com

ABSTRACT

Racial discrimination is one of the major issues that jeopardizes international relations and the country's long-term development, and it has long been a source of concern and research among academics. The international community has gradually become more aware of the related crimes caused by racial discrimination. George Floyd, an African American man, died in the United States in 2020 as a result of violent law enforcement by white cops, igniting a global movement known as "Black Lives Matter." This event demonstrates that, while racial discrimination has decreased in recent years, discrimination and inequality still exist in the daily lives of ordinary citizens, posing a significant barrier to the development and improvement of human activities. To address this problem, the law, as a symbol of equality, fairness, and justice, should take responsibility for eradicating inequity. As a result, this thesis will explain and evaluate how to use equal rights legislation and the reversal of the burden of proof, both of which are critical components of the legal system, to address racial disparities. Furthermore, the effectiveness and drawbacks of these two legal methods will be examined.

Keywords: Racial discrimination; Equal rights laws; The reversal of the burden of proof

1. INTRODUCTION

Racial discrimination occurs when certain groups of people have more rights and fewer obligations than other people of the same race in the same human social activities. The cause of this phenomenon is that, throughout human history, some ethnic groups have been relegated to the lower ranks of the social production division for a long time. This disparity in productivity has morphed into racial prejudice over time. As prejudice grows stronger, it has become the privilege of some ethnic groups over others in modern society. However, as human civilization progresses, this concept of privilege becomes incompatible with a society based on the rule of law, which is an important part of civilization because the rule of law is based on the principle that all people have equal rights. Although racial discrimination the law plays a role in maintaining social fairness and safeguarding equal human rights by imposing restrictions and penalties on people's improper behavior, it is still an effective method of ensuring social fairness and safeguarding equal human rights. As Seron pointed out, legal scholars should never lose sight of the law's role in ensuring social

justice and reducing social inequality [1]. As a result, understanding how to use legal measures to address racial discrimination is critical. The impact of equal rights laws on racial discrimination will be discussed in this thesis by using two examples from the United States' educational system. In addition, the principle of reversing the burden of proof will be explored and evaluated in order to address the disadvantages of the victim's self-evidence in order to better reduce racial discrimination.

2. SUBSTANTIVE LAW AND PROCEDURAL LAW IN RACIAL DISCRIMINATION

2.1 The role of equal rights laws in eliminating racial discrimination

The Equal Rights Act does not refer to specific steps of a code, but rather to a series of legal provisions that address inequality and discrimination. Equal rights laws are enacted to eliminate a range of inequalities in society. Therefore, the enactment of equal rights laws is an effective way to eliminate racial discrimination. It is well

known that in some regions or countries, racial discrimination occurs in almost every aspect of life. For example, there was significant racial discrimination in the field of education in the United States. Piff and others say that racial discrimination reached a new peak before and during World War I. At that time, because of this prejudice, even in California, Japanese children were banned from public schools by law, segregating Japanese students from local students[2].

In addition, Wyeth states that in the 1920s, the United States did not give blacks extensive access to public education. Even for decades, laws in southern U.S. states criminalized teaching the black community to learn to read English[3]. This racial and other inequalities in the U.S. education system led to the emergence of affirmative action aimed at pursuing equal rights, which played a key role in addressing racial inequalities in education. According to Varricu, President John F. Kennedy first mentioned "affirmative action" in 1961 under Executive Order 10925. At the time, the order made job applicants equal regardless of race or creed[4].

In addition, the prevalence of affirmative action led to the enactment of the Higher Education Act of 1972. Through Wentworth's research, after the enactment of the Higher Education Act, which embodied the spirit of affirmative action, the government was authorized to provide \$1 billion over two years to desegregate schools[5]. Under the requirements of these laws, educational equality improved in the mid to late 20th century, which meant that racial segregation in American education began to gradually disintegrate, improving an American educational system that had been riddled with racial inequality. It is important to acknowledge that the legislation of the U.S. Equal Rights Act in the 1960s set off a wave of affirmative action movements in many countries and regions of the world, advancing the goal of equal access to rights for different races around the globe. In addition, Tomakovich-Devi and Steinbeck say that the Civil Rights Act of 1964, enacted by the U.S. Congress and signed by then-President Johnson, was not the beginning or end of the struggle for civil rights equality. Its enactment was a critical event. It outlawed racial discrimination in the civic education system.

Through the American experience, the legislation of the Equal Rights Act could effectively require the government to use its resources to limit racial inequality in social life, which would help provide protection from state coercion for those who were discriminated against. group to eliminate it. However, on the other hand, equal rights laws are prone to overkill and lead to absolute equality of human rights and lack of fairness. The over-imposition of absolute racial equality in all areas of life is also unattainable without taking into account the reality. Therefore, in addition to confirming racial equality in daily life from these laws, the way of legal remedies when people suffer from racial discrimination should also

receive attention. At this time, the reversal of the burden of proof is particularly valuable as an important part of litigation law.

2.2 The role of the reversal of the burden of proof in eliminating racial discrimination

In the general rules of evidence, the general principle of "he who claims provides the evidence" is the allocation of the burden of proof, and the reversal of the burden of proof is the exception to this principle. The reversal of the burden of proof originated in Germany in the late 19th and early 20th centuries. It refers to the fact that, according to the law, the party (usually the plaintiff) who files the lawsuit does not bear the burden of proof for some reason, while the other party (usually the defendant) bears the burden of proof. The existence or non-existence of a certain fact. If the party cannot prove it, the plaintiff's factual claim is presumed to be established. It is necessary to ensure that the victim can effectively assert his or her rights through the law. Therefore, in addition to the equal rights law, another important solution is a specific legal procedure, namely the reversal of the burden of proof.

According to Freeman, there are comments about the Anti-Discrimination Act: the Act requires that the individual who is discriminated against must prove that he or she is an individual victim of discrimination and that others deliberately discriminated against him or herself. [6] And the victim must prove how the discrimination caused them harm so that they can obtain compensation or remedies. In Roberts' view, it can be seen that this requirement is indeed in line with the principle that the burden of proof under civil rights law should be on the plaintiff[7]. This means that if the plaintiff does not provide enough evidence to convince the judge, he or she will bear the consequences of losing the case. Roberts states that this principle has been generally applied in international law and has been recognized by the International Court of Justice[8]. However, it would be very detrimental to the victim, the discriminated person, if this principle is still applied in the trial of racial discrimination cases. Since the discriminated person is the victim and the weaker party when the discriminated person files a lawsuit, the ability to prove the case is also relatively weak. It is difficult for the victim to provide concrete evidence to prove that he or she has been discriminated against. Therefore, the principle of reversal of the burden of proof is particularly important at this time and is more conducive to the victim's claim.

In a claim case, it is generally difficult for the claimant to gather evidence that the other party needs compensation, but it is more convenient for the defendant to prove his or her innocence. As Roberts points out, it can be seen that the reversal of the burden of proof provides defendants with a procedural mechanism

through which they can be encouraged to prove their innocence and avoid compensation[9]. Thus, the principle of reversal of the burden of proof is more conducive to the settlement of racial discrimination lawsuit compensation cases than the principle of victim self-explanation in the ADA. This principle shifts the burden of proof to the discriminator, reducing the plaintiff's burden of proof and better protecting the rights of the discriminated. However, it follows that the doctrine is sometimes prone to waste of legal resources due to overuse. In Forejtová's view, it can be known that in the application of the principle of reversal of the burden of proof, the EU follows the principle that the burden of proof will shift only if the discriminated person (the plaintiff) cannot reasonably obtain evidence that he or she has been discriminated against. This means that whenever the plaintiff provides factual evidence that he or she has suffered direct or indirect discrimination, the burden of proof is reversed and the discriminator (defendant) must prove that there was no discrimination against the plaintiff [10]. Therefore, the above assessment shows that although its limitation is that its overuse tends to waste judicial resources, it is still an effective way to solve the problem of racial discrimination in litigation.

3. CONCLUSION

In conclusion, this paper argues that equal rights law legislation and legal procedures that reverse the burden of proof are two effective ways to address the problem of racial discrimination. Equal rights law can require the government to use state power to eliminate racial discrimination and guarantee people to use the law to defend their rights. As for the other approach, the reversal of the burden of proof can guarantee the victim a fair position in the lawsuit, which reflects the practicality of the law more. These two approaches address the issue of racial discrimination from the perspective of legislation and litigation respectively. Through the above analysis, it is clear that the equal rights law plays a crucial role in solving the problem of racial discrimination, but this approach can easily be abused and cause the loss of equality. This is because over-emphasis on absolute justice can lose relative racial equality. Meanwhile, the reversal of the burden of proof method shifts the burden of proof from the plaintiff to the defendant. Although its improper use can cause a waste of legal resources, it can still effectively eliminate racial inequality. The reason is that the principle of reversing the burden of proof may lead to more consumption of legal resources and place more burden on the defendant, but it seems to be even more detrimental to the achievement of racial equality if the disadvantaged discriminated person is allowed to prove himself/herself. Therefore, it is essential to apply the principle of reversal of the burden of proof in cases of claims arising from discrimination. In summary, it is clear that by emphasizing the role of equal rights law and

the reversal of the burden of proof principle in racial discrimination, this negative phenomenon, which has created a huge obstacle to the progress of human civilization, will be greatly improved. It will be improved or even eliminated in the future.

ACKNOWLEDGMENTS

From the initial selection of the topic to the successful completion of the final thesis, everything is inseparable from the international law professor and thesis instructor—Professor Ralph Wilde and other teachers who gave me the enthusiastic help and express me here. Most sincere thanks.

As an undergraduate student who does not have a thorough understanding of professional knowledge, I still had some worries when I initially tried to conduct research on the subject of "racial discrimination". After several deliberations and seeking encouragement and help from professor and teachers as well as classmates, I finally decided against "The Application of Equal Rights Law and the reversal of the Burden of Proof on Racial Discrimination". The tentative analysis and research led to the writing of this paper.

In the end, I am most thankful to my parents. They have given me tremendous support and encouragement in the past few months in order to enable me to complete the paper smoothly. In the future academic career and life journey, I will study and work harder and will not let down their ardent expectations of me. I will definitely work hard to honor and reward them.

REFERENCES

- [1]Forejtová, M. (2013) The Effort to Achieve Equality with the Help of the Reversal of the Burden of Proof In Anti-Discrimination Litigation. *International and comparative law review (Olomouc, Czech Republic)*, 13(1), pp. 137–145. doi: 10.1515/iclr-2016-0064.
- [2]Freeman, A. D., (1978). Legitimizing Racial Discrimination through Anti-Discrimination Law: A Critical Review of Supreme Court Doctrine. *Minnesota law review*. 62(6), 29-45.
- [3]Piff, P. K., Kraus, M. W. and Keltner, D., (2018). *Unpacking the Inequality Paradox: The Psychological Roots of Inequality and Social Class*. Burlington: Academic Press.
- [4]Roberts, C., (2020). Reversing the burden of proof before human rights bodies. *The international journal of human rights*.
- [5]Tomaskovic-Devey, D. and Stainback, K. (2007) *Discrimination and Desegregation: Equal Opportunity Progress in U.S. Private Sector*

Workplaces since the Civil Rights Act. *The Annals of the American Academy of Political and Social Science*, 609(1), pp. 49–84.

[6]Warikoo, N. and Allen, U., (2020). A solution to multiple problems: the origins of affirmative action in higher education around the world. *Studies in higher education (Dorchester-on-Thames)*. 45(12), pp. 2398–2412.

[7]Wentworth, E., (1972). Washington: *The Higher Education Act-and Beyond. Change* (New Rochelle, N.Y.). 4(7), pp. 10–64.

[8]Wise, T. J., (2005). *Affirmative action: racial preference in black and white*. New York: Routledge.