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Justice System: A Comparative Study
between India and the U.S.

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Abstract

Strengthening the rule of law and increasing institutional accountability is the key to reduce conflicts and injustice. In an attempt to promote world peace and conflict-free institutions, the United Nations set up a few goals, to be achieved by 2030, which aim to reduce corruption and bribery, eradicate violence against children, decrease abuse and exploitation, enforce non-discriminatory laws and policies and develop transparent institutions, just to name a few. The paper aims to specifically study how the justice systems in the two countries, India and America have affected the peace in those regions. Also, to see whether India, the world's largest democracy and America, one of the world's oldest democracies, have certain flaws and biases in their justice systems that originate from historical oppression of caste and race respectively. It also asks, given the fact that justice is an important component of all democratic republics, does the presence of a biased justice system prove to be a major threat to democracy and development.

Keywords: *Sustainable development goals, strengthening democratic institutions, inefficient judiciary, police brutality, mass incarceration, biased criminal justice system, education for justice*

1.0 Introduction

The biases in justice systems lead to injustice in society and therefore an unpeaceful environment which can be detrimental to sustainable development because peace is a key component of sustainable development and a healthy business environment is important for development, but in some communities, business operations are disrupted due to the unreliable social services and the prevalence of social problems such as poverty, hunger and inequality. (McLaughlin, 2017)

These problems have been created due to excessive policing and insufficient investment in housing and education in these communities like the slum areas in India like Mumbai (42%), Andhra Pradesh (35.7%), Chhattisgarh (31.9%), etc. (KAY JOHNSON, Associated Press, 2016) or predominantly black neighbourhoods in America like Atlanta (54.0%), Augusta (54.7%), Baltimore (64.3%), etc. (Wikipedia contributors, 2020c) and these problems, in turn, create a hostile environment to set up businesses thus causing further economic loss to the already economically backward area. This further adds to the social, economic and political isolation of those areas. Thus the 16th sustainable development goal given by the United Nations, which they

aim to attain by 2030, of the goal of ‘Peace, Justice, and Strong institutions’ plays a very important role now more than ever given the increasing threats of systematic violence and unfair power dynamics all around the world.

2.0 Policing

One way for us to quantify the flaws or biases in the justice systems of a country is by focusing on their criminal justice systems and incarceration rates over the years, which gives us a clear indication of the socio-political and historical reasons that, to this day, affect policing and justice in those countries.

3.0 Flaws/Biases Of Policing In U.S.

While talking about the criminal justice system in America it is hard to ignore that America has one of the highest incarceration rates in the world, that is, while the United States has only 5 per cent of the world's population, it has nearly 25 per cent of its prisoners — about 2.2 million people. (Incarceration Nation, 2014)

The reason for this high rate of incarceration can be because of the widespread availability of inexpensive, high-quality firearms to almost anyone irrespective of having long criminal records or histories of severe mental illnesses. Another reason for this high incarceration rate can be the training given to the police in America. A report by the Police Forum in 2015 stated that “That is the training currently provided to new recruits and experienced officers in most departments is inadequate. A survey of police agencies that we conducted for this project revealed that we give officers many hours of training in how to shoot a gun. But we spend much less time discussing the importance of de-escalation tactics and Crisis Intervention strategies for dealing with mentally ill persons, homeless persons, and other challenging situations.” (Police executive research forum, 2015) With such high incarceration rates there has been a lot of expenditure on developing bigger prisons, this money otherwise, could have been used to develop better education, housing, or even healthcare systems. By greater investments in these areas, it might even bring down the rates of crimes in many communities because “the vast majority of criminal offenders who enter the justice system are disordered. About 60% have at least one mental health problem. Eighty per cent have a substance use disorder. Neurodevelopmental and neurocognitive impairments are common.” And

it is largely due to failure of access to adequate public health that has resulted in these high rates of incarceration. (Kelly, 2018)

According to the U.S. Bureau of Justice Statistics (BJS) in 2018 the imprisonment rate for Black females (88 per 100,000 Black female residents) was 1.8 times as high as for white females (49 per 100,000 white female residents), while the imprisonment rate for Black males (2,272 per 100,000 Black male residents) was 5.8 times as high as for white males (392 per 100,000 white male residents). Out of all ethnic groups, African Americans, Puerto Rican Americans, and Native Americans have some of the highest rates of incarceration. (Wikipedia contributors, 2020a)

This shows that there is a bias in the system and the reasons for this wide gap can be traced back to the abolition of slavery in America, in 1865, through the 13th amendment in the US constitution which stated that, “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.” (History.com Editors, 2020)

If we look at it carefully, the constitution, permits an enhanced version of slavery through the prison systems of the country. Following the end of the Civil War, the question became on how to replace the millions of slaves who were crucial to the economic system of the south and the answer came in the form of mass arrests for minor crimes like loitering and vagrancy and the creation of a system of convict leasing that allowed prisoners to work for private parties and thus continuing exploitation of black people by simply dressing it up in another form. (Turan, 2016a)

Another reason for bias in the policing system was because of the actions of Nixon in the 1970s, after becoming the president, when he raged a so-called ‘war on crime’ through which he indirectly attacked the black political movements, anti-war protest, women’s rights movements and movements for gay liberation going on in the country as a threat to the law and order. Following which he led a ‘war on drugs’ which resulted in the problem of drug addiction being viewed as a criminal issue rather than a health issue. (Netflix, 2020a)

Richard Nixon allegedly began his 'war on drugs' to criminalize black people and 'hippies'. This was confirmed by Nixon's domestic policy adviser John Ehrlichman. In an interview with Dan Baum in 1994, he said: "The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the anti-war left and black people. Do you understand what I'm saying? We knew we couldn't make it illegal to be either against the war or blacks, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities." (Lopez, 2016)

This war on drugs was further promulgated by Ronald Reagan by unfairly criminalizing crack/cocaine, prevalent in black neighbourhoods, over the powder variety prevalent in the suburban white neighbourhoods. (Turan, 2016b)

Many presidents following him irrespective of their political parties, also introduced a set of 'reforms' in policing which had a disproportionate effect on black people and white people since black communities had higher policing rates like- the three-strikes policy according to which once a person has been arrested three times, on their 4th arrested they will face life imprisonment, irrespective of the type of crime they have committed (Netflix, 2020b) or Mandatory Minimums sentences, which could be unfair as it did not take into account mitigating factors, like unintentional or first arrests.

This systematic and institutionalized racism in the American policing system has manifested itself in the form of police brutality, prevalent even today. Today, a reaction to more than 200 years of discrimination can be seen in the form of Black Lives Matter protests going on in America, but to think that the movement for justice for black people started with George Floyd would be wrong, because the black lives matter movement was still rallying in Ferguson in 2015, following the murder of Michael Brown Jr. or after the murder of Tamir Rice, by two police officers in 2014. The Black Lives Matter movement answers the main questions raised in this paper, that when a community that has historically been discriminated against unjustly, by the police or by the judiciary, it negatively hampers the economic and social development of those communities. Thus, having a negative impact on the proportionate, equitable, and optimum development of the entire country.

3.2 Comparison Of Policing Between U.S. And India

In the U.S., the White community distances themselves from the Black community and thinks very poorly about them. They regard Black people as a lazy community, don't want to do any hard work; as a community into robbery, stealing, and drugs; as a community that lives filthily and looks even more filthy. In India, the Hindus distance themselves from the Muslims and dub their neighbourhoods as 'Little Pakistans'. They believe that Muslims live in unsanitary conditions and slaughter animals in their courtyard. These deeply entrenched prejudices against the two communities play an important role in police brutality against them.

In order to make an effective comparison we need to look at the statistics regarding police killings—and instances of police brutality in general—in both these countries. In the United States, the state and local law enforcement agencies are not obliged to report instances of police killings to the FBI or any other federal authority. This means that official statistics simply consist of voluntary reports sent to the federal government by certain agencies. Similarly, in India, there are numerous gaps and inconsistencies in the data collected by the National Crime Records Bureau (NCRB). (Mohanty, 2017)

There are a lot of similarities between the two countries when it comes to police brutality. Recently, there were two cases of police brutality in Minneapolis, the U.S. and New Delhi, India. In the U.S., George Floyd was killed while he was getting arrested. In New Delhi, Faizan was assaulted and beaten up to death in lock-up. The difference between the two is that the police cop caught choking George Floyd has been charged with murder in the third degree, whereas in the case of Faizan, the cops were charged with nothing. (Khanna, 2020)

4.0 Judiciary

The goal of achieving sustainable development stands on a big pillar, the judiciary. It aims to protect the rights and personal liberty of individuals and the society against its invasion by others. It is imperative to make the justice system effective and constructive as it is an integral part of a democratic setup.

4.1 Flaws/Biases Of Indian Judiciary

India attained independence from the British Raj in 1947 and became a sovereign democratic republic in 1950, but the criminal justice system established by them has still not undergone any substantial changes. The biggest example could be the Indian Penal Code (IPC) which was established in 1860, which defines sedition and provides for its punishment. The main issue with the Criminal Justice System in India is that it has become very ineffective.

In total, courts in India (district, High Court and Supreme Court) have a cumulative backlog of over 3.5 crore cases. More than 85% of these cases are at the district and subordinate courts. (Shrivastava, 2020). On average, a district judge has about 50-60 cases listed before him each day. It is impossible to meaningfully hear such a high number of matters, and therefore at least 40 of these cases will be adjourned by the judge. This happens every day in each court across the country throughout the year. It is these daily problems that magnify over time and transform into structural problems crippling the functioning of the institution. (Narasappa, 2019)

Justice delayed is justice denied and thus impossible delays in the judicial process resulting in the continued detention of accused persons, pending trial. This is problematic because the extended incarceration of a person accused of an offence impedes the effective assistance from their counsel, and can affect the defence put on at trial. The pendency of a criminal case directly affects their liberty, free movement, and interaction in society, even if the accused is not in prison. (*Indias Criminal Justice System: An Example of Justice Delayed, Justice Denied*, 2015) It is for all these reasons that a speedy trial is required in most of the cases as according to per NCRB data, 67.2% of our total prison population comprises of under-trials prisoners, i.e., those who haven't been convicted yet. (Clear IAS TEAM, 2018)

The Criminal Justice System of India is biased against the poor. Be it the police, agents, advocates, media, even the legal — the frail and weak discover the framework stacked against them. Even documenting an FIR is a battle. Charge sheets are never documented inside the stipulated 60-day time frame. The proof is frequently altered, either intentionally or through insensitivity. (*Criminal Justice System In India Biased Against The Poor*, 2018)

To understand this more profoundly, these two cases can help understand the bias against the poor. The first case is of Salman Khan, an Indian film actor and producer, whose car crashed into the pavements at Bandra, killing one person and injuring four others in 2002. His bodyguard filed an FIR at the Bandra Police Station. Salman Khan was arrested by the Bandra police and booked under provisions of Indian Penal Code (IPC), which would attract a punishment of 10 years of imprisonment, if convicted. Over the next 13 years, the court went back and forth on this as he kept challenging the applications in the Mumbai court. In 2015, he was acquitted of all charges in the case and the amounts paid by him were refunded. (S, 2016) His reputation barely suffered but instead, he probably got more fame. He won the case and was benefited by it, and the one who lost the case was our criminal justice system.

The second case is of the Ryan International School murder case of 2017. In the middle of media accusations and the people needing someone to blame, the Haryana Police arrested and got a “confession” from the school bus conductor, Ashok Kumar. The Gurgaon District and Sohna Bar Associations passed resolutions refusing to defend him. Ashok Kumar was demonised as a barbaric murderer, a paedophile. It needed the CBI to dig out the truth and arrest a Class XI student of the same school. Kumar was released, but his reputation was murdered. (Shivaram, 2018) All of the accusations against him must have caused a lot of mental trauma and socio-economic issues for him and his whole family. This case also shows just how much the media influences the whole process of an accused getting prosecuted. The government seems to be working just to look good in the media, and hence indirectly in front of the common public.

In India, women are not given much importance when it comes to them being victimized. There are many cases in which the majority are imprisoned for petty, non-violent offences, and frequently as a result, directly or indirectly, of discrimination and deprivation, often experienced at the hands of their husbands or partners, their family and the community. (*Access to Justice: Discrimination against Women in Criminal Justice Systems*, 2013) There are also several cases which do not even come in the police’s notice. More than 98% of sexual violence cases go unreported. Most of them are of the Dalit community because women are vulnerable there. They hesitate to report rape cases because no one in the police station bothers to listen to them, mostly because they belong to the lower cast.

The Dalits and Adivasis make up a disproportionately higher section of the prison population in India. According to the NCRB report of Prison Statistics of India 2015, more than 55% of the under-trial prisoners consist of the same. (Datta, 2019) There are allegations that police officers often pick them up and jail them on concocted charges. They are also kept under illegal detention and are subjected to brutal forms of torture to extract “false confessional statements” regarding crimes which they had not committed. Most of them are too poor and illiterate to understand what’s happening with them and arrange for their bail. For these reasons, the entire community lives in fear of detention and arrest. Hence, it is crucial to remove caste bias from the Criminal Justice System of India.

4.2 Comparison Between Indian And American Judiciary

In both America and India, the members of marginalized communities have had very little representation at the highest level of the judicial system, which is the Supreme court. In India after Justice K.G. Balakrishnan’s retirement in May 2010, no Dalit judge has been elevated to the apex court. (Dhingra, 2018) Similarly in America, since the Supreme Court first convened in 1790, 113 justices have served on the bench. Out of those, 107 have been white men. In the 228-year history of the Supreme Court, only 5.3% of justices have been women or minorities. (Griggs, 2018) This lack of representation results in feelings of increasing isolation and discontentment amongst the marginalized communities.

Conscious and unconscious caste biases are still very much prevalent in the Indian judicial system. The trial court judgment acquitting the accused in the infamous Bhanwari Devi gangrape case in Rajasthan is a rare instance of caste prejudice overtly manifested and articulated by a judge. On September 22, 1992, she was gang-raped by five men, including a Gujar. The Jaipur district and sessions judge delivered the judgment and stated, the accused were middle-aged and therefore respectable citizens, while teenagers were the ones who usually committed rapes. The judgment went on to declare, “Since the accused are upper-caste men, the rape could not have taken place because Bhanwari was from a lower caste”. (Shukla, 2017)

America still has a jury system, which can further have a negative impact on the decisions made, as research has shown that the race, perceived attractiveness, affability, and nervous behaviour of a defendant can all influence rates of conviction and lengths of sentencing. And, jurists' own backgrounds will cause them to weigh evidence through a lens of bias, no matter how many times a judge instructs them to act impartially. (Suttie, 2015)

Thus it is fair to say that the justice system of both India and America are flawed and have systematic biases and prejudices that they need to work out in order to bring about justice for marginalized people, because in the words of Martin Luther King Junior "*Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.*" (King, 1994, pp. 1–3)

5.0 Factors That Can Reduce Injustice

The idea of justice extends beyond policing and incarceration. It also includes factors that improve the quality of life of people and allow optimum utilization of the resources provided to them. Some factors that can help people to meet their true potential are as follows:

1. Grassroots Level Efforts: Traditional power dynamics in a society can also have a negative impact on the justice systems. In most countries rich, privileged, upper caste, upper class, cisgender men get to be in places of decision making and have the power to make laws and judgments on the lives of a much more diverse population. These rulings can at times feel inconsiderate and tone-deaf. Also, those in positions of power seek to maintain that power and have no incentive to change. This cycle can be very harmful and unjust to people who barely see themselves represented in positions of power. One way to deal with this injustice is to make efforts at the grass-root levels in rarely recognized communities in areas of education, housing, healthcare, and other basic amenities.
2. Promotion Of Education: Through 'education for justice', which is the process of promoting a culture_of lawfulness through educational activities at all levels, one can promote peace in communities._(Wikipedia contributors, 2020b) Education can also help in bringing about social justice. As prominent social justice education theorist, Lee Ann Bell (1997) puts it:

“... social justice education is both a process and a goal. The goal of social justice education is full and equal participation of all groups in society that is mutually shaped to

meet their needs. Social justice includes a vision of society in which the distribution of resources is equitable and all members are physically and psychologically safe and secure. We envision a society in which individuals are both self-determining (able to develop their full capacities), and interdependent (capable of interacting democratically with others).”(Adams et al., 1997, pp. 1–3)

3. Transparency In Decision-making Bodies: A way to ensure that people can enjoy timely justice is through improving transparency in judicial bodies. Such transparency minimizes the possibility of bribery and also increases the accountability levels of esteemed bodies like the judiciary or the police, which if left unchecked can turn corrupt and autocratic.
4. Universal Access To Healthcare: Many offenders of the criminal justice system have complex multiple needs and marginalized backgrounds due to which they are denied proper access to healthcare and social care services. (The NHS Confederation, 2008) Lack of access to healthcare further adds to the already vulnerable conditions of such communities thus having a detrimental impact on their development and their ability to attain optimum levels of development. Also, provisions to provide healthcare services for all, with special emphasis on marginalized communities can improve their standard of living and also lead to the development of human resources capital, which in turn would help in maximizing the country’s development.
5. Investment In Vulnerable Communities: Development of infrastructure and increased spending on housing in areas inhabited by marginalized communities is beneficial not only because it improves the standard of life, but also creates job opportunities in the communities, therefore also having a positive impact on the GDP. The most important factor is the increased accountability of justice bodies, as it prevents them from making any excesses that stem from historic and systematic biases.

6.0 Conclusion

The promotion of peaceful and inclusive societies, providing access to justice for all is crucial at this point because crimes against humanity are not reducing. The comparison between the world’s largest democracy, India, and the world’s oldest democracy, the U.S. showed that both countries have a long way to go. The bias in the justice system and police brutality against Black people and Muslims in the U.S. and India respectively denies people their right to a sustainable

future and violates their human rights in major ways. The damage and suffering caused because of these issues tend to break the society and have a negative impact on everyone. It also tampers with the confidence of the public in police and judiciary. It also tampers with the confidence of the public in police and judiciary. If the people do not have confidence in the pillars of a democratic government, the Sustainable Development Goals set by the United Nations will be unfeasible.

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