

PUNITIVE TURN OF THE STATE UNDER NEOLIBERALISM: A POLITICAL ECONOMIC PERSPECTIVE ON CRIMINALITY AND INCARCERATION AND ITS IMPLICATION ON INDIA

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Abstract

Under Neoliberalism, the state retrenches from the realm of welfare and promotes the idea of laissez faire, but in modern times, the state has simultaneously rearmed itself in the punitive realm to curb social insecurity and urban marginality which is resultant of such economic deregulation. Wacquant and others argue that under the Neoliberal regime, the incarcerations do not merely reflect the rising crime rates but also mirror state inactions in the realm of welfare and proactiveness in the punitive realm. This paper advocates the use of political-economic analysis for understanding the socio-economic dynamics of marginality and incarceration in India.

The works of Loïc Wacquant form the bedrock of my analysis. Wacquant in his methodological approach debunks the opposition between the materialist approaches of Marx and Engels and the symbolic approach of Emile Durkheim and combines them using the notion of bureaucratic field developed by Pierre Bourdieu to establish a vital understanding of the relationship between political economy, state, and penal apparatus. After analyzing people management techniques of Workfare and Prisonfare, this paper will highlight how the State under Neoliberalism got restructured as a Leviathan through astute use of these techniques and the rhetoric of security. After highlighting the contributions of Young, Hallsworth, and Lea, and LeBaron, and Roberts, this paper concludes by stating how the Indian state is undergoing a similar transformation under Neoliberalism.

Keywords: Prisonfare, Workfare, Neoliberalism, Leviathan, Incarceration

Introduction

In the report published by Dr. Ashley Nellis (2016) on the sentencing project, the key findings illustrated that in the State Prisons, African Americans' incarceration was more than 5.1% times that of the Whites. Furthermore, the disparity widened in the states of Iowa, New Jersey, Wisconsin, Minnesota, and Vermont where the ratio of incarceration of African Americans to Whites became 10 to 1. This disparity does not merely pertain to African Americans as the Latino incarceration rate is 1.4 times that of Whites. The Indian reality is also grim as according to Prison Statistics of India 2019, Schedule Caste (SC) comprised 21.74% of the convicts, Schedule Tribes (ST) comprised 13.6%, and Other Backward Classes (OBC) comprised 34.96% convicts in India. If we look into the numbers of undertrials, Schedule Caste (SC) comprised 20.96% of the undertrials, Schedule Tribes (ST) comprised 10.51%, and Other Backward Classes (OBC) comprised 34.21% of undertrials. The prison representation of these vulnerable communities far exceeds their share in the population.

What do these statistics tell us? These Statistics may point at the increasing crime rate in the USA, with African Americans being the largest chunk among the criminals. The Indian case might reveal to us the structural issues of law implementation and adjudication and societal limitations of Indian democracy. Through the analysis of various writings of Loïc Wacquant and other scholars, this paper would advocate the case of adopting a political-economic explanation for explaining and understanding the dynamics of criminality in India. The political-economic analysis allows us to interpret these statistics more critically. Wacquant and others argue that under the regime of Neoliberalism which is categorized by economic deregulation and retrenchment of the state from the realm of welfare, the incarcerations didn't merely reflect the rising crime rates but also mirror state inactions in the realm of welfare and proactiveness in the punitive realm. Under Neoliberalism, the state retrenches from the realm of Welfare but simultaneously rearms itself in the punitive realm to curb social insecurity and urban marginality which is resultant of economic deregulation.

The works of Loïc Wacquant form the bedrock of my analysis. Wacquant in his methodological approach debunks the opposition between the materialist approaches of Marx and Engels and the symbolic approach of Emile Durkheim and combines them using the notion of bureaucratic field developed by Pierre Bourdieu to establish a vital understanding of the relationship between political economy, state, and penal apparatus. After analyzing people management techniques of Workfare and Prisonfare, this paper will move on to highlight how the State under Neoliberalism got restructured to its core

with its innovative use of Workfare and Prisonfare technologies. After invoking the contributions of Young, Hallsworth, and Lea, and LeBaron, and Roberts, I will conclude by stating how the perspective political economy can help us in understanding State and Ethno-racial and gendered dimensions of punishment and its implication on democracy in India.

Criminality and the discourses on the State

There are two dominant perspectives on viewing the relationship between the state and the penal apparatus. The first is the materialist school which deploys Marxist analysis in establishing the relationship between social forces and punishment while the second school represented by the works of Durkheim incorporates the symbolic analysis.

Dario Mellosi (1976) in his article 'The Penal question in Capital' tries to develop a Marxist understanding of crime and punishment. By analyzing the magnum opus of Marx, 'the Capital', Mellosi argues that Marx dealt with the issues of crime and punishment by situating this issue under the analytical purview of the study of man's social condition under capitalism. To validate this claim, Mellosi invokes the Marxian axiom that the history of institutions and ideas has no life; it doesn't exist. It is through an understanding of material conditions and social processes that produced it; we shall be able to grasp the essence of an institution (p.31). This can act as an opening point towards a Marxist analysis of the institution of prison and penalization.

Borrowing the scientific methodology of capital into his investigation of penal questions in Marx, Mellosi brings into light how Marx's investigation of the penal question was primarily a historical enquiry tracing the origin of capitalist society. In that enquiry, Marx locates the central role of materialism that influenced the bourgeois criminal policy. Marx notes that in the dawn of the 15th century, through the massive appropriation of land, farmers were displaced from their means of subsistence and got converted into a wage labourer. This process was termed primitive accumulation because it divorced the producer from his means of subsistence and it preceded the capital formation (p.26). After the process gets completed, these erstwhile farmers become 'free' from their land, free in the sense to sell their labor-power in the labour market. Since this free proletariat cannot get easily absorbed into the newly developed manufacturing units, they were turned into vagabonds, beggars, and robbers (ibid.).

What is interesting for our analysis is the role of the state. The state acts as the classical political committee to manage the common affair of the whole of the bourgeoisie. The executives of the state were the primary usurpers of

the land and passed laws like Old Poor law to facilitate the appropriation of the 'commons'. The role of the state was to create conditions conducive to the formation of capital through legal or violent ways. In *Capital*, Mellosi notes that Marx highlights his concern towards state use of violence and penal apparatus to gain control over the labor-power and ensure the guarantee of surplus appropriation and exploitation (p.27).

However, there is a distinction when it comes to the role of prison. Since the executives passed various laws criminalizing pauperism, Prison became the site where the population expelled from the lands could be placed and disciplined as wage laborers with labor-power, which was necessary to sustain the wage labour system. Thus, Mellosi argues that Marx sees prison as an apparatus that seeks to discipline vagrants as to their new conditions (p.28). The prisons were fashioned into workhouses where inmates were made to work for long hours (sometimes even 12-14) to fashion them into workers from whom surplus can be extracted. The legal ideology was rooted in production hence the task of prison was to teach the proletariat the discipline of the factories (p.29). In the neoliberal political economy, the prison acts as a shed where people are managed while their subjectivity remains unchanged. Although the distinct role of prison here seems apparent, the logic that rules both epochs is the same. In the 15th century, the prison became the site of placing poor who couldn't find work similarly, in the late 20th century, it became the site of placing the poor rendered 'useless' in the interconnected globalized world. In both cases, the nature of prison is dependent upon the prevalent material conditions of the times. 'Criminals' that occupied the prisons in both epochs were the ones who could not find work and did not fit into the logic of capitalism. It was the state who adjudicated the task of labeling the criminal.

Rusche and Kirchheimer's analysis reflects a similar concern. In their book *Punishment and Social Structure*, Rusche and Kirchheimer (2003) analyzed the link between crime and the social environment. Through linking these two aspects, Rusche and Kirchheimer investigated how a certain mode of punishment became prominent or obsolete in the particular social situation and What were the causes of choices and rejection of certain methods of punishments in specific historical periods. In their study, they deployed a historical approach to argue that "every system of production tends to discover punishments which correspond to its productive relationships" (Mellosi, 2003, pp. 1-7). Their central thesis was that the specific development of productive forces permits the application and rejection of certain penal methods. Working through this premise we can see an inherent connection with the Marxist understanding of punishment. As argued that Prisons under the capitalist

economy served as a site to refashion dispossessed farmers into wage laborers, it tallies with the study of Rousche and Kirchheimer when they locate the link between economy and penalization (mercantilist economy led to the rise to House of correction). Rousche and Kirchheimer question the bond between Crime and Punishment and reification of punishment as the causality of crime. They argue that punishment should be analyzed as a social phenomenon having wider associations with economy and culture.

Moving on to a different perspective, we encounter Durkheim's theory of the state that Loyal (2016) argues was situated on the understanding of the state as the 'representation of the social collectivity' or 'organ of social thought'. The state was assigned the task to 'work out representations that hold good for the collectivity'. Prima facie it appears Durkheim's analysis focuses on a sociological understanding of the state. Working on this idea, Steven Spitzer (1975) in his analysis of Durkheim, argued that Durkheim considered crime and punishment as essential 'social facts' that revealed the inner workings of society and mechanism through which societies change (p.613). For Durkheim, the element of the law was an important vantage point to understand the principal form of social solidarity and the type of morality prevalent in the society. These aspects aided Durkheim to understand the nature of crime and the aspect of punishment. In his work "Two laws of Penal evolution", he set out to give two important prepositions. Firstly, he argued that the greater the stratification of the society, the more lenient the punishment. Durkheim asserted that as a society moves from less developed to more developed, the intensity of punishment declines. Secondly, he argued that punitive intensity is high where there is a form of political absolutism (p.614). There seems to be a direct link between social development and punitive intensity in his works.

Wacquant interacts with a materialist understanding of punishment and the role of state however he moves beyond them to incorporate Bourdieu's notion of the bureaucratic field which brings material as well as symbolic aspects of state and its apparatus together. Bourdieu argues that "state is the culmination of a process of concentration of different species of capital" namely physical, economic, informational, and finally symbolic capital. The state then gets constituted into 'meta-capital', granting power over other species of capital and their holders. All these species of capital along with their corresponding field get together to give rise to 'statist capital' which enables the state to exercise the power of all species of capital and adjudicate upon their deployment and transformation into one another. The construction of state follows the construction of the field of power in which different species of capital and their holders struggle to get power over the state i.e., access to statist capital (Bourdieu, Wacquant and Farage, 1994, pp. 5-6).

Bourdieu's theory of state brings together the classical theories of Marx, Weber, and Durkheim and seeks to build upon them. The state as a bureaucratic field is defined by the possession of a monopoly of legitimate physical and symbolic power over territory and the population residing within it. We can see how Bourdieu brings in Weber's conceptualization. Bourdieu builds upon the definition of Weber and other 'physicalist' approaches like that of Marxism and Tilly by asserting that the power by itself has no purpose i.e., no power cannot be expressed as naked power. The physical violence exercised by the state has a symbolic dimension in a way that the brute force exercised by the state also contains a form of seduction and persuasion that obtains a certain kind of recognition from the social community. Bourdieu asserts that a state resting on brute force can easily be overthrown; hence it is the symbolic capital (symbolic power) of the state that influences the physical power. These symbolic components like legitimation and consent assist in the maintenance of state order. By placing much greater emphasis on the symbolic dimension, Bourdieu doesn't slip into idealism rather goes on to provide what Loyal (2016) calls 'materialist theory of symbolic' where material and symbolic domination co-exist. Bourdieu through this theory transcends Weberian analysis by stating that its monopoly of symbolic power that influences physical violence and also Marxian theories by situating symbolic over the material. When Wacquant professes his subscription to Bourdieu, he aspires to move beyond the Marxist understanding by assimilating it with a sociological one. Wacquant bases his argument on the premise that Neoliberalism enforces the transformation of the state but also keeps into account the sociological angle that Marxists ignore that can help us understand many of the practical policies of the state.

Neoliberalism and the Return of the Prison

Wacquant (2010) paints Neoliberalism as a transnational political project that aims to remake the nexus of the market, state, and citizenship from above. Wacquant brings the class analysis to point towards the prevalence of the global ruling class consisting of executives from IMF, World Bank, and other multinational organizations along with economists, scientists, lawyers, and experts that are employed by them. Wacquant argues that this global ruling class facilitates the political project of Neoliberalism. Wacquant argues that the political project of Neoliberalism rests on four institutional logics. Firstly, economic deregulation aims at the facilitation of capital across territories along with privatization of public services. Secondly, retrenchment of the welfare state and shifting focus on workfare dissocializes wage labour via varieties of 'workfare' measures like contractualization of labour, dilution of labour laws, etc. Third, rolling out of the proactive penal apparatus that manages the population rendered useless under the neoliberal economy and final-

ly, the cultural trope of individual responsibility that promotes entrepreneur spirit but leaves behind any appeal of corporate liability (p.213).

Proponents of liberalism associate ‘freedom’ with the ideas of liberalism. Neoliberalism too in its economic dimension used the rhetoric of freedom. Under Neoliberalism, Michel Foucault predicted the retreat of state and diffusion of its functions in his famous theses on governmentality. Wacquant in this regard registers a few of his disagreements in his engagement with Michele Foucault. While he agrees with Foucault’s formulation that power is not merely repressive but also productive, he argues that Foucault erred in concluding the retreat of prisons as in the neoliberal settings as prisons have made a heroic comeback. Secondly, instead of disciplining inmates into docile and productive bodies, the contemporary prison, mired by resource crunch and demographic impracticability, promotes brute neutralization and acts as a site of housing bodies not transforming their subjectivities. Thirdly, Contra Foucault’s prediction, carceral institutions haven’t spread like capillaries inside the organic body of state rather under Neoliberalism, people from certain localities, races, and classes are hoarded inside the prisons. The demographic profile of inmates within American prisons reflects ethno-racial selectivity. Finally, the ‘death of scaffold’ that is the demise of celebrations of rituals of public execution have not taken place instead, there is what Wacquant terms as ‘crystallization of law and order pornography’ which means the representation of offenders and prisoners have shifted from the state spectacle to the commercial media in the form of courtroom dramas, crime thriller serials, and news reporting. The actors embodying ideals of justice to their brim, perform the task of catching a criminal thereby perpetuating the paranoia of social insecurity and reestablishing the relevance of state (pp. 204-206).

The notion of power as production is integral to Wacquant’s study of state. The penal state does not merely suppress but also produces images of criminals (most often that’s a racist or communalist image), new bodies of knowledge in the sphere of criminology, and finally, the idea of security and insecurity. The power of Leviathan is not merely situated in its penal front in the era of Neoliberalism, but the state operates simultaneously in economic, cultural, and penal levels (Wacquant, Volker and Karen, 2011, p.213).

Workfare and Prisonfare as People management techniques

With the heroic comeback of the Prison within Neoliberalism, we can identify innovative technologies of utilizing prison to reproduce and sustain social relations of Neoliberalism. These two techniques are Workfare and Prisonfare. Workfare and Prisonfare are a direct result of the criminalization of poverty and the management of marginality. Workfare is the consequence

of the retrenchment of the state from the realm of welfare. As the obligation of workfare replaces the right to welfare, people are forced to work in sub-par conditions with a minimum of wages to get public support (p.207). Wacquant lists Prisonfare as one among three-techniques to remedy the undesirable behaviour of the population. The other two are socialization that seeks to find the social root of their issues, second is medicative that seeks to treat miscreants as cases of individual pathologies. By Prisonfare, Wacquant implies a “policy stream encompassing categories, programs, and discourses that confront urban ills by rolling out of police, courts, and prisons. This includes criminal databases, schemes of profiling like background checks and surveillance” (p.209). Prison fare also accompanies the system of its justification manifested in the cultural industry of media that propagates a culture of fear. Wacquant argues that penalization is not limited to mere incarceration but also all those apparatuses of states (like public places and school) that deploys the technologies of panopticism and surveillance. Wacquant (2010) argues that workfare and Prisonfare can be termed as people processing institutions (p.202). Under Neoliberalism, Prisons are getting fundamentally transformed from being houses of correction imbued with the philosophy of reformation and rehabilitation to mere warehouses, housing the surplus population rendered useless by globalization. Workfare and Prisonfare complement each other as the Workfarization entails reducing recipients from state support while Prisonfare entails facilitation of marginalized into the prisons, ensuring longer jail terms leading to a ballooning of population within the prisons. Punitive containment as a technique tends to club poor as criminals and perpetuates the paranoia of social insecurity among the citizens. Using this rhetoric, a carceral regime is established that offers “relief not to the poor but relief from the poor” (p.204).

Emergence of Leviathan

Wacquant argues that Neoliberalism has brought unique structural innovation in the realm of state crafting as with the monopoly on legitimate violence, the Leviathan also procures a monopoly over symbolic definitions of criminality and morality. Neoliberal Leviathan thereby gets involved in the construction of bureaucracy for policing, judging, and punishing the socially marginalized. This remaking of the state is carried out for global capital and management of the poor.

Wacquant asserts that this enlargement of the penal sector is the response to social insecurity created by the retrenchment of the state from its welfare function. This retrenchment leaves certain sections of the society economically vulnerable who are then sequestered into the penal warehouses. This new Leviathan reinforces class, racial and ethnic segregation. During the 1960s

race riots in America, police, courts, and prisons were deployed to contain advanced marginalization that was the result of economic deregulation. This economic deregulation creates class polarization and reinforces ethno-racial hierarchy (Wacquant, Volker, and Karen, 2011, p.205). Wacquant argues that it's not the policies of the neoliberal state that is illiberal rather it is its architecture. Wacquant gives the name centaur state to this design of the state that is liberal at the top and paternalistic at the bottom. This state displays its kind face towards upper and middle classes whereas displays a rough tyrannical face towards the lower classes (ibid). The central ideological tenet of Neoliberalism is of small government and laissez-faire but it only embraces it from the above. Neoliberalism is a revolution from above that reemphasizes control in every area of social life with an exception of the economy.

What is the implication of this engagement? Through this engagement, Wacquant debunks the myth of the prison industrial complex modeled on the industrial-military concept of 1960. Wacquant argues that the surge in the number of prisons or prison boom is not a result of privatization's drive for profit rather is a political project of state crafting (Wacquant, Volker and Karen, 2011, p.211). The privatization of prison would not go much far as Wacquant argues that private prisons operate with medium to low-level security hence, they would not want to house felons with long sentences. Furthermore, they also seek to avoid old prisoners and women due to medical costs and reproductive health care costs attached to them. Secondly, without the subsidies borne by the state, the maintenance of prisons can become a hugely expensive affair. Prison fare cannot be commodified because prison is a political institution not an economic one and remains one of the more central organs of state even during the time of Neoliberalism (pp. 213-215).

The Rhetoric of Security

Hallsworth and Lea (2011) in their essay account for the emergence of the security state as the successor of the liberal welfare state. Although the Neoliberal state has retrenched from the welfare domain, there are three areas in which the security state is emerging namely transition from welfare to workfare, risk management manifested in measures to control crime, and finally, blurring of warfare and crime control (p.141). What's noteworthy in their argument is there is not merely rolling out of state in its punitive dimension but also how under Neoliberalism, there has been the rise of non-state actors and organizations in the sphere of crime control who have not challenged the state rather got into the partnership with the state to the extent of expanding its power (p.142).

Hallsworth and Lea do not ignore the presence of the economic system of

Neoliberalism which is the major force leading to such restructuring of the state. Hallsworth and Lea argue that the security state or Leviathan engages in the task of managing social fragmentation and advanced marginality rendered structurally irrelevant to capital accumulation. The collective status of such a useless population justifies their banishment. The security state deploys new technologies of power for risk management that involves surveillance and punitive containment. Hallsworth and Lea concur with Wacquant when they point towards a move of the state from welfare to Prisonfare marked by arming up of penal apparatus. Unlike the welfare state, which identified poverty as a social problem to be remedied by welfare measures, the Security state sees poverty as a security issue that is to be remedied by coercive management of the population (p.144). This coercive management of the population is similar to that of punitive containment propounded by Wacquant with the addition of astute use of crime rate statistics to deploy paranoia of increasing crime rate by political leaders not only to sustain social relations but also keep their legitimacy intact. As Wacquant noted the transformation in the architecture of the state, Hallsworth and Lea add on to his formulation by inserting Crime control as the dominant paradigm of social control; criminalization of social policy, and functions of states being distributed through an assemblage of state and private non-state actors as arms of Neoliberal Leviathan.

Hallsworth and Lea also register their agreement with Wacquant by asserting that instead of the general welfare, crime control becomes an essential part of statecraft. Instead of providing full employment to the population and investing in social security, the state minimizes the population dependent upon state benefits. The priority of the state is to attract footloose capital by providing a cheap labour force and conditions conducive for capital investment. Under this scenario, social security from its welfarist dimension turns into a coercive form of workfare as entitlement to benefits becomes linked to job seeking that forces the poor to work for whatever wages the global capitalist class dictates. Furthermore, the sections of people who are not able to secure jobs which are usually belonging to a certain ethnic minority are sequestered in prison, leading to Prisonfare (pp. 145-146). Hallsworth and Lea complement Wacquant's formulations by illustrating that the punitive turn of the statecraft takes place in twin directions of pre-crime and post punishment. The security state has expanded the range and use of custodial sentences to create new categories of criminals. The security state through pre-emptive criminalization of a particular portion of the population manages the risk in the society. In the post punishment domain, the Leviathan gets tooled up with laws that ensure prolonged incapacitation of the 'useless' population. This Leviathan arms itself up with laws that impose similar sentences onto street criminals that were originally formulated to punish rapists and pedophiles. Indeterminate sen-

tences for Public Protection (IPP) a law that was crafted to punish rapists and pedophiles is now being used to punish ordinary criminals (p.147).

In India, extraordinary laws were drafted to address extraordinary situations of compromised national security with regard to terrorism and separatism in the country. However, some of the controversial provisions from now lapsed Prevention of Terrorism Act (POTA 2002-2004) and Terrorist and Disruptive Prevention Act (TADA 1985-1995) were siphoned off to the permanent Unlawful Activities (Prevention) Act (UAPA 2013) which gives a semblance of permanence of the extraordinary. The requirement of global capital has been translated into threats to internal national security, which warrants application of such laws on the 'internal enemies of India' (Roy & Singh, 2015, pp. 309-310). While the POTA and TADA dealt with terrorism, UAPA has ingrained itself into a normal legal regime in India and is being used to target not merely terrorist suspects but also alleged Maoist sympathizers, civil and human rights activists, journalists, academicians and lawyers. Any obstruction in the flow of global capital hence becomes a threat to national security.

Wacquant would note the neoliberal capitalist logic to it, whereas Hallsworth and Lea would complement it by adding the logic of 'securitization'. Neoliberal capital logic and risk management logic work in tandem to shape the contours of the state. Iris Marion Young (2003) has argued that a security state deploys patriarchal logic (of subduing and disciplining women at home) into the domain of statecraft under the rhetoric of security to reduce citizens to the status of an obedient subject. Hallsworth and Lea (2011) concur with Young to assert that such arming up of Leviathan signals changing worldview of executives regarding humans. The security state no longer sees delinquents as composite beings embedded in exploitative social relations rather as anti-social risks to the society which are to be contained. The state labels the 'useless' sections of the population as 'deviant' one to gather legitimacy that it lost by retrenchment from the domain of welfare. The security state not merely dilutes rights and democratic citizenship, as Wacquant and Young would argue but also becomes authoritarian. Hallsworth and Lea would term such transformation as the move towards soft fascism (p.153). Wacquant (2010) also argues that the rise of the penal wing into ascension within this bureaucratic field is injurious to the democratic ideals. Due to the advent of Neoliberalism and the retrenchment of the state from welfare, certain sections of society have been pushed back into poverty under which they are not able to enjoy their basic citizenship rights and are reduced to mere subjects of the state (p.218).

Workfare and social mobility

Reproduction and extension of capitalism involve relations of coercion, discipline, and restraint. The relevance of Wacquant assertion can be listed down by taking into account the thesis by Genevieve LeBaron and Adrienne Roberts (2010) that describes contemporary carcerality in capitalism as an interplay of states, markets, and households to reinforce a set of social relations that integrate large numbers of people in Workfare while marginalizing others and pushing them into the realm of Prisonfare (p.21). The important contribution of the article by Roberts and LeBaron is that it highlights the carceral relations prevalent in our day-to-day existence and demonstrates how the workfare is not merely an oppressive outcome of economic deregulation as Wacquant would suggest but also demonstrates Workfare as a form of carceral relation. LeBaron and Roberts bring into play the example of debt structure as a carceral relation that integrates people into unequal relations with the market. Due to the retrenchment of the state, people have to take debt to fulfill their necessities like health and education. LeBaron and Roberts argue that this debt structure affects the social mobility of people. To repay the debt, people get forced into workfare (p.33). Providing a gendered perspective on the reproduction of social relations and the plight of domestic workers, LeBaron and Roberts argue that lower-class migrant women and black women are denied any rights by their domestic employers and the state doesn't come to their rescue either. Women domestic servants enter into unfair capitalist relations to avoid deportation. The state under Neoliberalism appropriates the labour power of the women immigrants for the social reproduction of capitalist relations while simultaneously seeking to curtail the biological reproduction aspect of women immigrants so that it doesn't have to provide healthcare to them (p.37).

Wacquant in his formulation of Prisonfare, talks only about 'warehousing of population' but doesn't elaborate upon the productive aspect of penal incarceration in the form of prison Labour. LeBaron and Roberts argue Neoliberalism transforms even the market into a carceral space. Due to the privatization of prisons, there has been a rise in 'corporate use of prisoner's labour power' integrating them in 'unfree capitalist relations of production (p.29). Due to this cheap (or rather free) prison labour, the conditions of workers outside prison also deteriorate as their wages drop when their jobs go behind bars leading to enhanced workfarization of the population. Under Neoliberalism, Prisons themselves become a capitalist enterprise(ibid.).

Neoliberalism and workfarization in India

Even after the adoption of economic reforms, the political leadership across the ideological spectrum has promoted the idea of inclusive growth with

special legal provisions for the vulnerable sections of society. This aspect challenges the application of the concept of workfare in the Indian context, especially after when OBC were provided with 27% reservation in the public sector. Jayal (2015) highlights that the quota for other backward classes came at the same time India liberalized the economy which comes across as an anomaly and does not fit the idea of ‘workfare’; however, she argues that there are three explanations for this anomaly. Firstly, as the privileged found new opportunities in industries and business, the expansion of quota became a politically expedient formula for political elites to demonstrate their pro-poor stance as they get away with providing recognition rather than distribution. The second explanation refers to the pace of reforms which has been slow and gradual as compared to other countries, which has allowed political rhetoric of inclusive growth to work alongside privatization, creating what Atul Kohli calls ‘illusions of inclusion’. Finally, since in India, no political party can ignore the voice of the poor in which SC, ST and OBCs form the major chunk, the parties provide social benefits as compensation for being left by the business and industries which caters to upper caste and class notion of merit. Here the social and economic rights (judgments on right to education, right to work etc.) forms part of what T.H Marshall calls class abatement and quotas form the part of caste abatement. These social rights abate the ‘nuisance of poverty’ through public spending enabled by economic growth, which does not address the widening disparity between rich and poor. The quotas are provided in the area (government jobs) where there is rising disinterest from the elites hence performing the function of caste abatement. The class and caste abatement argument provide the explanation for the anomaly between economic reforms and rhetoric of inclusive growth (pp. 123-124). However, under the pressure of global capital, the state has started rolling back, which is evident from decreasing vacancies, the problem of paper leaking, delay in results and judicial stays on the appointment. This backlog of vacancies is an example of an illusion of inclusion which is evident through this table.

Table 1 : Data on the backlog of reserved vacancies as on 31.12.2019

S. No	Ministry/ Department	SC			ST			OBC		
		Vacancies	Filled up	unfilled	Vacancies	Filled up	unfilled	Vacancies	Filled up	unfilled
1	Posts	1379	393	986	845	158	687	1090	426	664
2	Railways	9767	4208	5559	7713	2250	5463	12061	5314	6747
3	Housing & Urban Affairs	259	141	118	272	124	148	720	431	289
4	Defence Production	8604	6818	1786	7352	5647	1705	4692	4156	536
5	Defence	1649	236	1413	1068	117	951	2732	529	2203
6	Atomic Energy	189	52	137	189	40	149	679.	108	571
7	Financial Services	1527	648	879	1363	421	942	2252	1018	1234
8	Revenue	4971	1483	3488	3214	647	2567	4336	1492	2844
	Total I	28345	13979	14366	22016	9404	12612	28562	13474	15088

This table is taken from the answer provided in the Lok Sabha for unstarred question no.4511 on 24.3.2021 regarding ‘vacant posts of reserved categories’ raised by Ms. Raksha Nikhil Khadse, Mr Kapil Patil and Mr. Manoj Kotak. The table reveals that more vacancies remain unfulfilled than filled. The vacancies for the All India Civil Services have been declining as well.

Table 2 : Vacancies advertised by Department of Personnel and Training

Year	Vacancies
2014	1364
2015	1164
2016	1209
2017	1058
2018	812
2019	927
2020	796
2021	712

The data shows that SC, ST and OBC are pushed into workfare in the informal sector of the economy, where they face a competitive disadvantage from the elites and are forced to take up menial jobs.

Security state and Prisonfare in India

According to the census of India 2011, SC formed 16.63% ST formed 8.63% of Indian population from 1998 to 2014, their average representation into prisons was 22.21% and 13.5% respectively. Hindu formed 80% of the population, while their representation was a mere 70%. Muslims comprised 14% of the population while they averaged 21% occupancy in the Indian prisons from 1998 to 2014 (Ahmed and Siddiqui, 2017, p.100). These figures may tempt us to use socio-religious factors to explain the representation in prison; however, Ahmed and Siddiqui (2017) add nuance to this study by highlighting that Hindus get over-represented in prison in the states where they are in the minority. For example, in the states of Meghalaya, Manipur, and Jammu and Kashmir, Hindus are in minority while they are in the majority within prisons (ibid.). Now, these numbers might just reveal the aspect of criminality; however, looking at the number of undertrials, we witness the same pattern of over-representation of minorities. Socio-religious and backwardness explanations fail as they would not explain why Hindus get overrepresented

in the prisons in the states where they are a minority (p.102). Vijay Raghawan (2016) highlights the problem of undertrials in India as firstly, they suffer from a lack of quality representation from the lawyers provided by the state. Secondly, the undertrials from the vulnerable sections of society are not able to furnish the bail amount. Finally, a very poor judge to population ratio has increased the pendency of cases in the Indian courtrooms (pp. 17-18). The report by Sayan Ghoshal (2020) affirms this point by revealing that there are 448 vacancies in the High courts, 5000 in subordinate courts. The report also quotes former Chief Justice of India, T S Thakur's plea to increase the sanctioned strength of subordinate judges from 21,542 to 40,000 so that pendency of cases can be fixed and undertrials also get a speedier hearing. This demand is not new but is implausible to fulfill as the state continues to roll back in the era of Neoliberalism. The rising population of undertrials in the Indian prison is evidence of people management techniques rendered useless by global capitalism in India. The study by Irfan Ahmad and Zakaria Siddiqui (2017) analyses the impact of over-representation of minorities and its implication for the democracy of India. They contend that the disproportionate presence of minorities in the jail represents democracy in the jail (p.99). Given the activists and tribals under extraordinary laws for showing dissent against neoliberal policies of the state, the quality of democracy has suffered immensely in neoliberal India.

Padhi and Adve (2006) argue that post liberalization of the economy, the state governments have been vying for private capital, and the architecture adopted by the state is that of a security state which expresses sovereignty in repression (p.186). Under the neoliberal condition, criminality is manifested in the protests against large dams and industries in tribal areas and the punishment is exercised through incarceration under extraordinary laws. In India, under the paradigm of development, various neoliberal projects have rendered vulnerable sections displaced and dispossessed. The examples are the Kalinga Nagar violence in Odisha in 2006, where the Police killed 14 tribal protesters during their protest against boundary construction at Tata Plant. In 2000, three people were killed at Maikunch in Raygada in Odisha. On May 1, 2005, the police indiscriminately arrested 42 people, including 9 women in Lower Sukhtel of Bolengir district for protesting against the proposed dam (p.187).

Conclusion: Neoliberalism and penal democracy

Through the synthesis of materialist and symbolic understanding of the state, we may be better equipped to understand its transformation in the era of Neoliberalism. The political-economic explanation becomes a better explanation that ties the experiences of over representation of incarcerated minorities in the US with that of India. Neoliberalism inserts punity into the capitalist

democracy so that those sections of people who cannot be integrated into the global capitalist logic shall be warehoused into prisons through the exercise of extraordinary laws.

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References

- Mellosi, D. (2003). Introduction. In G. Rusche, & O. Kirchheimer, *Punishment and Social Structure*. Columbia University Press. 1-7.
- Mellosi, D. (1976). The Penal Question in Capital. *Crime and Social Justice*, 26-33.
- Wacquant, L. (2010). Crafting the Neoliberal State: Workfare, Prisonfare, and Social Insecurity. *Sociological Forum*, 197-220.
- Hallsworth, S., & Lea, J. (2011). Reconstructing Leviathan: Emerging Contours of the Security State. *Theoretical Criminology*, 141-157.
- Spitzer, S. (1975). Punishment and social organization: The study of Durkheim theory of penal evolution. *Law and Society review*, 613-638.
- Siddiqui, M. Z., & Ahmad, I. (2017). Democracy in Jail Over-representation of Minorities in Indian Prisons. *Economic and Political Weekly*, 98-106.
- Bourdieu, P., Wacquant, L., & Farage, S. (1994). Rethinking the State: Genesis and Structure of Bureaucratic field. *Sociological theory*, 1-18.
- LeBaron, G., & Roberts, A. (2010). Towards Feminist Political Economy of Capitalism and Carcerality. *Journal of Women in Culture and Society*, 19-44.
- Wacquant, L., Eick, V., & Winkler, K. J. (2011). The Wedding of Workfare and Prisonfare revisited. *Social Justice*, 203-222.
- Loyal, S. (2016, July). *Bourdieu on the State: An Elisian Critique*. Retrieved March 20, 2017, from Human Figurations. <http://quod.lib.umich.edu/h/humfig/11217607.0005.207/--bourdieu-on-the-state-an-eliasian-critique?rgn=main;view=fulltext>
- Padhi, R., & Adve, N. (2006). Endemic to Development: Police Killings in Kalinga Nagar. *Economic and Political Weekly*, 186-187.

Jayal, N. G. (2015). Affirmative action in India: Before and after the neo-liberal turn. *Cultural Dynamics*, 117-133.

Raghawan, V. (2016). Undertrial Prisoners in India. *Economic and Political Weekly*, 17-19.

Roy, A., & Singh, U. K. (2015). The Masculinist Security State and Anti-terror Law Regimes in India. *Asian Studies Review*, 305-323.

Ghosal, S. (2020, January 8). *Why India's courts are struggling to find judges*. Retrieved from Business Standard:
https://www.business-standard.com/article/specials/why-india-s-courts-are-struggling-to-find-judges-116061600898_1.html

Nellis, A. (2016). *The Color of Justice: Racial and Ethnic Disparity in State Prisons*. The Sentencing Project.

National Crimes Record Bureau (2020). *Prison Statistics India 2019*. Retrieved from ncrb.gov.in:
<https://ncrb.gov.in/sites/default/files/PSI-2019-27-08-2020.pdf>

Young, I. M. (2003). The Logic of Masculinist Protection: Reflection on the Current Security State. *The University of Chicago Press*, 1-25.