

Forum: Advisory Panel

Issue: Question of discriminatory penal legislation and policies

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Introduction

As technology, international relations, and social structures evolve through the progression of time, there remains a large threat that obstructs the path of international growth and development. This threat manifests itself in the form of discrimination and prejudice - a mindset that has been present since the beginning of human interaction. The practice of discrimination is, in essence, the segregation of a group of people based on factors including gender, sexual orientation, race and more.

Despite the bringing about of social change within recent years, including movements such as #BlackLivesMatter and #MeToo, discrimination is and likely will always be a part of society. This is because of the root cause of discrimination: a lack of willingness to forgive. Through the acts of violence committed within war, previous political movements and personal matters, certain individuals can be led to believe that all members of a specific group share their beliefs, in turn causing the seeds of racism to be sown within these individuals. This ultimately causes discrimination.

Discrimination is very much a social issue; however, due to the widespread presence of discrimination within social groups, bigotry has managed to become a part of certain governments through what is known as discriminatory penal legislation. This term encompasses all laws or policies related to punishment that are considered discriminatory towards any group of people. Such policies are often viewed as unacceptable and are associated with developing nations due to their relation to tradition. However, discriminatory penal legislation exists in nations regardless of their socioeconomic standing. These developed nations, being largely having republican or democratic governments are required to convince a group of people that others of different minorities deserve to be punished in the same fashion, which can prove to be more difficult than it initially appears. Of course, the influence of discrimination within legislation is greater in developing nations, as opposed to developed states.

Regardless of the groups affected or the nation in which these policies are located within, the existence of discriminatory penal legislation is a burden on the domestic growth of the country. Due to this, its contributions to the international community are severely limited, creating a widespread negative impact. The prolonged mistreatment of minorities is also likely to breed resentment for groups in power within nations that are affected by these policies, which, although may not affect the country legislation-

wise, is bound to affect these nations on a social level. It provides the opportunity for violent protest, putting national security at risk, while also worsening relationships between different social groups. A combination of these factors solidifies the issue of revising discriminatory penal legislation as a pressing matter, and one that will continue to worsen if not dealt with.

Definition of Key Terms

Penal Code (or Criminal Code)

In order to fully understand the topic at hand, full comprehension on penal codes is absolutely necessary. A penal code, which is comprised of penal policies or legislation, is a code that encompasses all matters of criminal law within a country. Due to the clear importance of maintaining order and civility within a country, many nations possess a penal code of sorts, even if it isn't widely available for public viewing. Items within a penal code can range from methods of punishment to crimes to groups affected by certain laws. Within this topic, it is important to focus on policies within penal codes that specifically target a group.

Jurisdiction

A measurement of authority that is used to officially grant the power to change or revise legal policies to a body. This term is important to understand, as it greatly aids in identifying whether or not a policy can be revised based on the jurisdiction of the bodies involved. Without official jurisdiction, it is impossible to diplomatically revise a policy under any circumstance.

Ex Post Facto Law

An ex post facto law is anything that revises whether or not an action is considered legal or a law that exacerbates the current punishment for a given offense. Prohibited in certain constitutions, an ex post facto law can completely change how the penal code acts to certain races, seeing as it can change something that was previously legal to something illegal. In addition to this, ex post facto laws are created after an offence (or action) has been committed. An example of this takes place in a nation which has illegalized public displays of affection. After a homosexual couple has broken this law, the creation of a law that penalizes homosexual couples further would be considered an ex post facto law. Due to its ability to create domestic outrage, ex post facto laws are uncommon in developed nations. In developing nations, however, ex post facto laws remain a threat to national security seeing as legislation tends to be weaker in these areas.

Parliamentary Supremacy

Parliamentary sovereignty is a form of government in which the legislative branch, or parliament, holds complete and utter power over all other branches of the government. This means that despite

what judicial bodies (generally courts head by the Supreme Court) or the executive head (depending on the nation, a President or any other head of state) states, the legislative branch holds the most weight and all of the final decision making power. Parliamentary supremacy also decrees that all previous forms of written legislature can be revised by the current legislative branch meaning that in certain circumstances, a constitution can hold no bearing over the parliament. That being said, it is unlikely for parliamentary sovereignty to cause major issues, seeing as democratic policy is to be maintained within the legislative branch.

Presumption of Innocence

The presumption of innocence is the belief that the accused is innocent until proven guilty. Many consider this morally correct, and this policy is thus enforced in the majority of nations with a functioning legal system. That being said, there are nations that do not share this belief, namely the United Kingdom, which commonly applies an inverse policy.

Common Law

A government system in which the major governing body is ruled by the decisions of the judiciary branch. Said to originate from England, Common Law is a widespread system of governing.

Sustainable Development Goals

The Sustainable Development Goals (abbreviated as the SDGs) are a set of goals proposed by the United Nations as a means of eradicating a plethora of global issues by the year 2030. With 193 member states participating in the usage of these goals, the SDG serves as a standardized measurement of success for many countries. Of the 17 goals, 2 of them bear high relevance to the topic at hand: goal 11, to “Make Cities Inclusive, Safe, Resilient and Sustainable” and goal 16, to “Promote Peaceful and Inclusive Societies for Sustainable Development, Provide Access to Justice for All and Build Effective, Accountable and Inclusive Institutions at All Levels.” The SDG are a key factor of how the UNODC aids countries in developing their social structure to revolve around equity amongst all groups.

Background Information

Unlike many other topics, the issue of discriminatory penal policies does not have a primary location of focus; instead it is widespread, thus becoming a very situational matter. Because of this, this section will focus on dissecting the topic at hand into various parts.

Addressing the potential benefits and pitfalls of discriminatory penal policies

At first glance, discriminatory penal legislation would appear to be completely unfair and harmful towards the social balance within any country. While this assumption is true in most cases, certain caveats are present in which case discrimination within a penal code can actually aid in preventing large amounts of confusion. The major exception to the belief that discrimination within legislation is entirely harmful is age discrimination. Obviously, there are policies that are present that involve age discrimination which don't possess a strong link towards the penal code. Such policies include the voting age restriction. However, there are other criminal offences that have been heightened or exist (such as underage drinking or sexual intercourse) because of age discrimination that aid in maintaining balance and ensuring that the lives of adolescents are not potentially damaged in the future.

Crimes that are discriminatory in terms of age have something in common: the crime would have a different punishment (or no punishment at all) if the offender was over 18, which is clear age discrimination. However, this age discrimination is arguably a wise decision. As far as underage sexual intercourse and alcohol consumption is concerned, the penalty levied for these crimes is fair and necessary to prevent uneducated drug abuse or spread of STDs. Likewise, reducing the sentence for traditional crimes is also quite beneficial, considering that the thoughts of many young offenders are malleable and can be remoulded into law-abiding citizens, provided they are given a lesser sentence. Within the United States, for example, punishments for conventional crimes such as theft, assault, or breaking and entering are reduced for minors; another form of age discrimination within the penal code.

That being said, age discrimination within the penal code represents one of the few cases in which discrimination is useful or valid. In many cases, discriminatory policies are detrimental towards the nation in which they are located within, for a variety of reasons, some of which are mentioned below.

Further domestic discontent with ruling government

As discussed previously, discrimination is likely to be present within all social environments in the future, due to the fundamental psychological principle of revenge. The pull of revenge, or rather the lack of willingness to forgive for the atrocities that one has undergone causes discrimination or prejudice directed at a group. When a group is undergoing harsh treatment from a figure of authority, the seeds of discontent are likely to be sown within the minds of the victims. This effect is especially debilitating as it does not help address the social situation of discrimination within the country, and will only worsen as time progresses.

Not only does domestic discontent worsen the social situation within nationals affected, it also puts the nation in political jeopardy. The force of a united group with a singular cause is not to be underestimated, and has been known to cause massive political instability in the past, especially in developing nations. An example of a revolution is the Arab Spring, a series of revolutions across the Middle East that ruptured due to a united desire for a democratic government. In this situation, the United Nations Conference against Corruption greatly aided in quelling the state of hysteria within many Middle Eastern countries, with the assistance of the UNODC. The dislike of

a governmental system can repeat itself, provided that the group being discriminated against is active and has gathered a following that is significant enough. The likelihood of a revolution similar to those that have occurred puts national security in jeopardy.

Decrease in international appeal and approval

In addition to domestic discontent, international appreciation for a country is likely to decrease if discrimination within the penal code is pointed out to the public. This is because of an increasing dislike towards social injustice amongst the international community. While this decrease of approval may initially appear to be a minor issue, it can actually be a long term inconvenience for a nation. A lack of interest within the country, or the fear of entering a country, can take quite a large tax on the tourism industry of a nation. This is especially debilitating in developing nations that are already economically struggling. An example of this could include the DPRK. Although individuals cannot travel there if they wish, in a hypothetical scenario in which they could, they still likely wouldn't. This is because the cruel treatment of the citizens of the DPRK is likely to ward off tourists. A concept like this can be applied to most nations suffering from large social issues. A decrease in international attraction and increase in danger within a nation is also likely to ward off foreign investment, which means that the economy is further harmed, resulting in severe long term consequences.

Flight of human capital and weakened firm efficiency

Not only does discriminatory penal legislation scare away visitors, but it also de-incentivizes minorities from living within the country, even causing some of the members of these minorities to flee the country. This decreases the overall number of resources, in terms of labor and manpower available, that a given firm can possess within the country, which is highly detrimental towards the market for certain products that are labor intensive. An example of this could be within a hand-crafts firm, of which the success is often times decided by the quality of the laborers. If these laborers feel oppressed or leave, then the firm will struggle to keep up with other firms, damaging the market, which could lead to larger impacts on the economy. Not to mention, disagreement about government policies, or racism within the workplace is also likely to decrease the efficiency of a firm.

Various forms of discrimination

The basic definition of discrimination is treating a group of people differently than how the majority of people are treated due to a variety of factors. It is the variety of factors that contribute to discrimination that make it such a diverse topic, seeing as there are many forms of discrimination. The major factors that contribute to discrimination are as follows:

Gender discrimination

As one of the most prominent forms of social discrimination, gender discrimination stems from the root belief that one gender (prominently the male gender) is superior to another. This is an extremely old belief, showing itself to be present within the time of the Greeks where women were believed to be disfigured versions of men. The mistreatment of genders, particularly the female gender, is an issue that all countries face to a certain degree and is known as sexism inside of a social or economic setting. An example of this may include higher pay for a male working the same job compared to his female counterpart.

However, in certain countries, anti-women laws are embedded into their penal codes. China, for example, prohibits women for participating in labor-intensive professions whereas Madagascar has illegalized women working night shifts. These are some of the many examples of anti-women laws within nations- some of which extend to the point where they breach multiple human rights. Gender discrimination within both settings has been the cause for a wide variety of social movements, including non-violent protests and educational movements. It is important to note that these movements are primarily a result of the a heightened expression of feminism, the belief that social equality of the sexes should be achieved. The belief started to pick up in the early 1900s and has since become a belief ingrained in the minds of many young women across the globe.

The UNODC has, in fact, taken measures to combat to combat anti-women discrimination within the penal code, specifically the heightened amount of women imprisoned within Central America. Through the implementation of a set policies designed to improve conditions for women, the Bangkok Rules, in a meeting within Panama City, the UNODC has been able to fight against the sexism scene within Central America. Aside from active initiatives, the UNODC has also participated in initiatives such as the International Gender Champions in order to fight the issue through raising awareness of its potency.

Ethnic or racial discrimination

Racial discrimination is also a long standing social issue within many nations. Often abbreviated as racism, ethnic discrimination is the belief that one race is far superior to all other races or that one race is far inferior to all other races. The most prominent example of racial discrimination lies in the treatment of the African-American population during the slave era. This group of people were enslaved and heavily mistreated because they were believed to be inferior to the inhabitants of the British colonies. The effects of events like this (of which there are many) leave a scar on the timeline of human history. Racism is still observable in many nations on a daily basis leading many minorities to be victims of hate crimes among other offences. Ethnic discrimination also exists within legislation. An example, although non-penal, is the current travel ban within the United States on certain countries within the Middle East. This is discriminating

against a group of people because they are from a certain place, based on an inaccurate stereotype.

In cooperation with the United Nations Office of the High Commissioner of Human Rights (OHCHR), the UNODC has become a part of a United Nations network on Racial Discrimination and the Protection of Minorities. Through this forum, developing countries that suffer from a social imbalance of sorts can voice their opinions, or receive help from developed nations that have been able to rectify their social problems to a more proficient degree.

Religious discrimination

Discrimination based on religious beliefs has also existed for a long period of time. This form of discrimination stems from the belief that one's religion or religious beliefs are correct and another religion's beliefs are incorrect. This sort of discrimination has been the source of conflict for many civil wars in the past. An example of this is the numerous conflicts started by the Sunni-Shi'a divide within primarily Muslim nations. Although not different religions, the separation within these two religions drives certain members of each sect to discriminate against others. Although religious discrimination is a large issue in terms of its social effects, it seems to be underrepresented within legislation. The most relevant example of religious penal discrimination is the enforcement of the Sharia law which can lead to a differentiated treatment of a person based on their religious beliefs.

Discrimination based on sexual orientation

One of the world's largest topics of debate and tension is the rights of the LGBT+ community. Often viewed as unacceptable in the past, the new generation has brought new acceptance and more vocalization about their pro-LGBT beliefs. Although this has been frequently opposed by many, the international community continues to grow more supportive of equality between the different groups of sexual orientation.

That being said, discrimination based on sexual orientation is one of the most common forms of discriminatory penal legislation. This is because many nations have not adapted to the progressive beliefs of other nations, and are struggling to keep up with the beliefs of the newer generation. In many nations, there are laws against homosexuality, particularly same-sex marriage. These policies are considered discriminatory against those who wish to marry others of the same sex.

The UNODC also has involvement in this area, through A pro-LGBTI (lesbian, gay, bisexual, transgender, and intersex) statement that was released by the UNODC along with other UN organizations in order to combat discrimination against adolescents, children, and adults belonging to this particular group.

Age discrimination

As covered previously, age discrimination is the decreasing of sentences, or the prohibition of certain actions under a specific age. This is present in most countries and shouldn't be regarded as something that's detrimental to society. However, this too is a frequent topic of debate, with people arguing that the age voting restriction of certain countries should be lowered.

Instead of advocating for the rights of the younger generation, the Open-Ended Working Group on Ageing aid in protecting the rights of the elderly, with the assistance of the OHCHR.

Major Countries and Organizations Involved

The United States of America

As a developed country, the United States is often viewed as a role model to developing nations for many issues. Although the United States holds its fair share of flaws, it is a perfect example of good legislation and poor execution. Up until the Trump Presidency, the nation has done a great job in making equality present within the penal code. The country has legalized same-sex marriage and has attempted to aid the situation, as far as racial discrimination is concerned. Despite all of these efforts, the social setting in the United States remains questionable as the public is split about the allowance of new cultures and beliefs into the country. The future is unknown for this nation as the Trump Presidency has started to show different beliefs, shown through the travel ban.

Despite the United States' efforts to create a discrimination-free penal code, it has fallen short on several occasions in the past. Though the nation may have shown its recent legislation support of same-sex marriage, it has been shown that there remains a large amount of homophobia within the country, with many of its citizens rallying against gay rights, in addition to the violent events the country has been host to. Aside from the question of sexual orientation, the United States has been the place of origin for many racial stereotypes and prejudices that remain today, particularly against persons of Central / South American, African, or Middle-Eastern origin. There have been violent actions taken against all three of these ethnic groups, ranging from citizen shootings to police brutality. These points all enforce that, while the United States has made amends, the social injustice present within the nation makes it an essential to the issue at hand.

The Arab League

While the Arab League itself has little to do with the topic itself, the countries that are combined to create the Arab League are some of the worst offenders of discrimination with penal codes in the world. Many of these countries have laws that actively work against the freedom of women, in addition to anti-homosexual laws. Certain nations will operate differently (legislation wise) if the offender is non-muslim,

showing clear religious segregation. There are a variety of other laws and policy within countries in the Arab League that exhibit traits of various types of discrimination. Countries within the Arab League that are offenders **include**: Egypt, Iraq, Saudi Arabia, Lebanon, Jordan, Tunisia, Syria, and Yemen.

Lebanon and Malta

In Lebanon, the kidnapping and rape of women is still a crime; however, offenders of this rule may be pardoned, if they marry their victim and stay married for at least 5 years. This means that, even if brought forward to court, a man may walk away freely if he has married the woman that he raped or kidnapped. Such a law is clearly discriminatory against women.

A similar law exists in Malta, while, although not a member of the Arab League, still actively discriminates against women. In Malta, marrying an abductee means that the offender's charges will be wiped. However, even if sentenced to prison, as long as the offender marries their victim anytime after their trial or conviction, their sentence can still be wiped and forgotten about, meaning that men within Malta have a free escape from harassment charges.

Saudi Arabia

Although Saudi Arabia already faces social issues regarding gender equity, it also possesses legislative issues. One of these issues is that women are unable to legally obtain a license plate, and most of the cases, drive. One historian, Saleh al-Sadoon, rationalized this ban after two women were detained and tried, with the logic that the ban was put in place to stop women from being sexually assaulted in the case their car broke down. The enforcing of a stereotype that women cannot handle themselves within the penal code once again shows clear gender discrimination towards females.

Yemen

Within Yemen, an act exists that legally forces women to oblige ever request from their husbands. Because they are forced to obey their husbands in whatever they need, this also opens up legal sexual assault, in which women are forced to participate in intercourse despite their lack of will to do so. This shows discrimination as it legally subjugates women to a weaker social role based on an old cultural norm or stereotype.

Vietnam

In Vietnam, the issue of domestic violence is one that is not directly tied to the penal code or crime; because of this, wives are often subject to abuse by their husbands as there is lax punishment. The UNODC has helped to combat this issue within Vietnam, through raising awareness (partially through the creation of a 10-part documentary detailing the effects of domestic abuse), training law enforcement, and re-evaluating disciplinary policies against offenders of this crime.

Timeline of Events

Date	Description of event
c. 1754 BC	Creation of the Code of Hammurabi
March 4, 1789	United States constitution is put into effect
March 21, 1804	Napoleonic Code begins to be enforced
April 12, 1861 - May 9, 1865	American Civil War
September 11, 2001	Bombings of the Twin Towers
June 26, 2015	Same-sex Marriage Legalized
June 12, 2016	Orlando Shooting
January 27, 2017	President Trump signs first travel ban

Relevant UN Treaties and Events

Seeing as adjusting discriminatory penal legislation is a situational topic, it can be addressed within other topics that target a specific country. Because of this, resolutions or treaties are hard to compile seeing as there can be a large amount of them. That being said, below is an extremely vital resolution.

- United Nations Convention Against Transnational Organized Crime, January 8 2001
(A/RES/55/25)

Previous Attempts to solve the Issue

There has been progress within the field of limiting the amount of discrimination within the penal code for certain nations. A prime example of this is the United States legalizing same-sex marriage in order to address the issue of discrimination due to sexual orientation within the penal code. Other nations have also made progress on this, with developed nations such as Canada also showing support for same-sex marriage and granting protection to couples within this category.

Solutions like these are technically sufficient in order to achieve the desired output-- a lack of discrimination within the penal code. However, discrimination remains within a social setting due to a lack of change within the population along with legislature. This can be shown, once again, within the United States, in which a gay nightclub was shot by a security guard on the 12th of June of 2016.

There remains little truly helpful specific information on the previous attempts that have been made to solve the issue at hand; hashtags and social media movements have aided in reconstructing equity for all regardless of minority, but they have mostly failed to create an impact within legislation. In general, certain discriminatory policies have been amended, mostly in the cases of developed nations, and the situation of racism continues to worsen in all nations socially.

Aside from government solutions, the UNODC has played an integral part in aiding to resolve instances of discriminatory penal legislation throughout the world. Firstly, its social movements, through supporting students in Honduras in order to provide them with proper international-minded education, or raising awareness of racial discrimination through integrating itself with existing organizations, provide nations with a unitary body to follow. They are extremely beneficial and effective in spreading awareness and educating the local populous about large issues present within the country, in order to create change.

The UNODC, however, also takes initiatives that demonstrate their power and influence as a body. The organization's participating in conferences like The UN Network on Racial Discrimination and Protection of Minorities allow countries to be supported by the UN further, developing them to stand against discrimination. Other statements such as the support of the LGBTI community inspire change and tackle legislation simultaneously. Overall, the UNODC is able to address the social aspect and the legislation aspect of the issue, allowing it to solve problems more efficiently than the nations themselves.

Possible Solutions

Seeing as the topic of discriminatory penal legislation is extremely case-by-case, there really are no solutions that would aid in fixing the legislation in any country. However, there are solutions that can be drafted based on the type of discrimination within the penal code.

As far as gender, racial, religious, or sexuality discrimination, an incredibly important step is to create proper education and awareness in order to address the possible social repercussions that may be created through an alteration in legislation. Allowing the populous of a country with discriminatory legislation to experience international culture will allow for the creation of open-mindedness. Once this is done, visits from representatives of different countries or general education about different cultures and beliefs will greatly aid in creating a smooth transition from discriminatory policies to non-discriminatory policies. As far as the actual revision of these policies is concerned, international mindedness is key in allowing these newer policies to be passed.

An important solution to consider is revising the ability to create ex post facto laws, seeing as they can be highly detrimental to a group and allow for discrimination to permanently affect the law. Reducing the scenarios in which the creation of an ex post facto law is considered acceptable within will

be helpful in adding structure to less developed nations. Spreading the presumption of innocence is also another policy that can be spread across in order to reduce the likelihood that the fate of the defendant is decided before they have their case argued because of the group they are from.

When revising age discriminatory policies, it is important to take into account the goal of reducing or increasing the penalties for certain ages. Using existing policies in countries such as the United Kingdom may serve as a guideline for adjusting age discriminating policies.

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