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DECOLONIZING LEGAL SYSTEMS: A GLOBAL IMPERATIVE FOR JUSTICE AND EQUALITY

The Overlooked Necessity

Throughout history, colonial superpowers imposed their legal authority on their so-called ‘subjects,’ one of them being the Indian sub-continent. This resulted in permanently altering legal systems throughout the world. Nevertheless, the demand for removing colonial heritage and its implications from judicial systems is steadily growing. Colonial laws were disconnected from the masses and promoted inequality. They denied fundamental human rights to several indigenous communities, including rights ranging from land to culture. In extreme cases, this undermined these communities' autonomy and dignity. The British legal system imposed on India a Eurocentric worldview, which only helped them strain any remaining power from the people of India and force discriminatory practices and ideologies. Thus, decolonizing these laws and the legal systems requires revamping the prevalent discrimination and restructuring the system to remove all biases and ensure that it upholds virtues like equality and justice.

Unearthing the Imperialist Self-Interest

The Indian jurisprudence is deeply rooted in the ancient Hindu and Islamic laws throughout the Indian legal history. It is modeled on meaningful deliberations and collaborations within its culture, environment, and historical experiences. However, the complete overhaul of India's ancient criminal justice system with the introduction of European colonial laws reflected the neglect of our outstanding knowledge possessed by legal giants like Manu, Yajnavalkya, Kautilya, Brihaspati, and so on. The British colonial mindset stressed the surrender of rights to the sovereign superior to seek justice as a matter of grace. This stands in

complete contrast to the values embedded in the ancient Indian legal system based on justice and equality for all. The decreased accessibility of the courts coupled with how the expenses are borne for litigation today reflects this change in approach. The colossal pendency and mounting backlog of cases also sheds light upon the colonial mindset of disregarding trivial cases. In all cases, the ordinary person faces the brunt of an alien legal system in his day-to-day life.

Adherence to an alien legal system embedded in the colonial psyche reflects a need for more knowledge about our rich cultural past. Such mental slavery is evident from the colonial way of addressing the judges as Lords, the outdated tradition of wearing gowns for lawyers, the use of the English language for pleading, and so on. There lies an urgent need to revamp the law degree syllabus in India to include the history of Indian law and undo the complete neglect of Indian jurisprudence and political philosophy. This would significantly impact the goals of our Constitution and further the national interests in the spirits of young individuals.

Addressing the false narrative

India's current realities based on such colonial hindsight lack the amalgamation of a rich and diverse cultural heritage and the dreams and aspirations of several Indians. However, the three new criminal acts¹ are an affirmative step towards rethinking and reformulation of the oldest judicial system in the world, i.e., India. Breaking away from the false narrative of the ancient legal system lacking the rule of law, Indian jurists, scholars, and academicians are slowly unveiling and dismantling such ignorance, imperialist self-interest, and contempt for Indian civilization. Similarly, the recently proposed Model Prisons Bill, 2023² presents a golden opportunity to truly transform our criminal justice system by ending the broad, arbitrary powers wielded by the state. It shall bring in the era where the subjects could demand justice from the king at the cost of even him bending before the rule of law. It is hoped that the Indian tradition of judicial independence, sovereignty, and integrity would be reignited with the Indianisation of colonial laws.

¹ Bharatiya Nyaya (Second) Sanhita, 2023 ("BNS"); Bharatiya Sakshya (Second) Bill, 2023 ("BSB"); Bharatiya Nagarik Suraksha (Second) Sanhita, 2023 ("BNSS").

² Khadija Khan, "What is the Model Prisons Act announced by the MHA?" Indian Express (May 26, 2023), available at <https://indianexpress.com/article/explained/explained-law/model-prisons-act-mha-8630225/>.

The imperative of reintegration of indigenous local systems

Many laws in India continue to disproportionately impact specific groups, such as ethnic minorities, women, and LGBTQIA+ individuals. The road to transforming these laws is a complex one, but surely not impossible. It would require acknowledging these existing discriminatory laws and established practices while critically analyzing and removing them through a comprehensive discussion. It is very significant to keep in mind the end goal, that is, the inclusion of the subalterns who have faced discrimination and making their voices reach all the limbs of the largest democracy in the world.³ They should be made felt like an equal citizen, unlike in the colonial era. Including these communities and societies in the legal system would drive us towards togetherness and justice. This would help them gain recognition and long-lost respect by upholding autonomy and self-determination. This mammoth task necessitates experts to reinvent and brush up their practices, but in the longer run, it would make it a healthier environment for practitioners and petitioners.

Decolonizing the global legal systems, including India's, is not merely an aspirational goal; it is a necessary undertaking to pursue justice and equality worldwide. In a world of constant flux, embracing decolonization recognizes our shared humanity and compels us to rectify past wrongs collectively. The imperative to decolonize legal systems is a global responsibility, which can only be possible through international collaboration in sharing best practices, fostering a dialogue that transcends borders, and developing a collective commitment to psychological decolonization.

³ Rishika Sahgal, "*Decolonizing criminal law in India*," (2023), 10.4324/9781003176619-40.