



DECOLONIZATION OF LAW IN INDIA: EXPLORING AN ALTERNATIVE PARADIGM

The initiative to bring new criminal codes may be an important step to decolonize the law, but it must be comparatively analyzed with respect to existing criminal codes to understand the continuity and disjunction from the existing colonial nature of law. Decolonization of law would be a symbolic gesture if criminal codes in India do not find their historical roots and restore the compassionate ethics emerged and progressed from the spiritual traditions

By Dr Mritunjay Kumar

"THE life of law has not been logic: it has been experience," remarked eminent jurist Justice Oliver Wendell Holmes. His statement reflected a hope to perceive law in fact than merely a pretension exemplified by logic of legislation. The legislative measures of Parliament over the years have remained truthful to the "truth of reason" over "truth of fact", to use the metaphors of Gottfried Leibniz. The proposed criminal law codes, while repealing the existing ones, brought by the Union minister of home affairs, to overhaul the colonial nature of our criminal laws and to bring transformative legislative reforms to fulfill the necessity of just and humane governance, have brought a euphoric sense of excitement among the intelligentsia; many of them are posturing in their favour and some are expressing the doubt about them. It is, however, necessary that the Indian jurisprudence expounded by

Parliament must perceive the truth of fact as well as reason, so that a profound vision, if it exists, should not appear to be utopian or unrealistic.

With the adoption of the Constitution, India aspired to flourish as a democratic and republican society. The Directive Principles of State Policy, prescribed by the Constitution, express the socialistic goals to achieve for India without compromising the individual's freedoms, autonomy, and dignity. However, such goals have remained dependent on the laws introduced by the British Raj in India. After Independence, most of the colonial criminal laws were retained, and some of the draconian legal provisions, such as the offence of sedition, have been abused by many successive governments. The purpose of introducing those laws by the British colonial regime was to suppress the dissenting voices of Indians to maintain the political order of the colonial rule in India. Surprisingly, the post-colonial India chose to retain the colonial legal apparatuses even ▶



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though the language of the Constitution signified the high hope of republican dreams.

Post-colonial India paid less attention than required to deliberate over the colonial nature of Indian laws and legal language. Pre-colonial India had different sources of laws. However, customs had the predominant place in the lives of all Indian creeds, sects, and tribes. Therefore, the life of law was less dependent on the sophisticated languages and their interpretation. It was colonial governmentality, inspired by Jeremy Bentham and John Austin, that modernized the Indian laws to meet with the requirement of British Industrial Revolution and Market Society. Therefore, the codification and legislative practices adopted by colonial regime culminated into the comprehensive codes in civil and criminal laws, and English was adopted as the legal and official language contrary to the *lingua franca* of contemporary Indians.

Language is the fundamental building block on which the edifice of culture flourishes and sustains. Every language contains and sustains a peculiar life-world whose dis-

appearance signifies the death of that particular culture. The plurality of languages is the hallmark of Indian societies. Along with the diversity of languages, India also has been an ensemble of normative as well as legal pluralism. Indian constitution is the *grund norm*, which validates the linguistic, cultural, and legal pluralism. For instances, the VIII Schedule of the Constitution recognizes 22 Indian languages. The V and VI Schedules of the Constitution prescribe for the special provisions for the administration of Scheduled Areas and Scheduled Tribes. Article 371 of the Constitution provides for the special provisions for many states to protect from the effects of parliamentary legislations, the plurality of social or religious practices, customary laws and procedures, and administration of civil and criminal justice as per the customary laws, etc. Article 343 of the Constitution declares Hindi in Devanagari script as the official language of Union, but English was accepted as a language of use for official purposes for 15 years from the commencement of the Constitution. Article 345 mandates the state to adopt any of the languages in use in that state or Hindi as official language or languages.

One of the key features of Indian Federalism is its linguistic federalism. Many Indian states have been organized on the basis of a shared language of the community. Not surprisingly, a common language, shared by a community has a cultural ease in governance and communicative action. Irrespective of the fact that India has diversity of languages, many of its languages and local dialects are dying due to indifference of the state machineries. As per GN Devy, 280 languages have died in India in the last four decades. It is due to faulty policy of the state, i.e., only that language is officially recognized which is used by 10,000 or more people that the living languages of India are dying rapidly in an era of linguistic globalization.

The recent initiative of the Union government may be an important step towards the decolonizing mission. To repeal the offence of sedition would be a vital step for a substantive democracy. Such an initiative would allow Indian citizens to express freely their



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opinions on economic, social and political issues with a sense of responsibility. To what extent, these bills would be able to eliminate the colonial values persisting in the criminal laws of the country may be answered by future historians.

The second question is related to the decolonization of legal language. Article 348 of the Constitution mandates to use English as a medium for the laws legislated by Parliament. The recent nomenclatures used in the titles of three bills in Hindi introduced by the Union minister of home affairs in Parliament have not amused many people, including the chief minister of Tamil Nadu, who designated this action as “linguistic imperialism”. The interesting part of this discourse is that all these bills have been drafted in English.

In this context, it may be concluded that the legislative language of Parliament is and should be undertaken as per the mandate of the Constitution. While taking cultural plurality and federal spirit into consideration, the Parliament, taking inspiration from the Supreme Court, which has translated 9,423 judgments in 14 regional languages, may take an initiative to translate these laws into many regional languages, including Hindi. So that, the problem of accessing

the normativity of law may be solved and dissolved.

The initiative to bring new criminal codes may be an important step to decolonize the law, but it must be comparatively analyzed with respect to existing criminal codes to understand the continuity and disjunction from the existing colonial nature of law. Decolonization of law would be a symbolic gesture if Indian criminal codes do not find their historical roots and restore the compassionate ethics emerged and progressed from the folk and spiritual traditions.

The art of legislation requires sense as well as sensibility, so that the moral uprightness and efficacy of law may be ensured. Many of the anomic problems related to social and public order shall be resolved and dissolved, if cultural plurality and linguistic federalism of India are taken care of by the policymakers.

Lastly, one may learn from Lao Tzu who writes, and justly so, that a good governor governs less. Indian laws should mirror the spirit of compassion instead of deploying a “logic of suspicion”, an archetypical character of a “disciplinary society”. ■

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