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## **Reclaiming Justice: The Indianization of the Legal System in Postcolonial India**

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### **Abstract:**

*India's legal system, though deeply rooted in democratic principles and constitutional ideals, has long carried the legacy of its colonial past. The Indian Penal Code (1860), Code of Criminal Procedure (1898), and Indian Evidence Act (1872) were designed by British rulers to control a colonized population, not to serve a free democratic society. Despite over seven decades of independence, these colonial-era laws remained the backbone of India's criminal justice system, often criticized for being outdated, hierarchical, and misaligned with the socio-cultural realities of modern India. In recent years, the Indian government has embarked on a mission to "Indianize" its legal system, culminating in the introduction of three new codes: the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Sanhita (BSS). These laws aim to replace their colonial predecessors with a more citizen-centric, transparent, and culturally relevant framework. The Indianization process is not merely about renaming laws; it reflects a deeper effort to align legal institutions with the values of justice, inclusivity, and human dignity enshrined in the Constitution.*

**Keywords:** Colonial, Indian legal, Indianization, transition.

**Introduction:**

India's legal system, a product of centuries of evolution, stands today at the cusp of a major transformation. Rooted in British colonialism and shaped by common law traditions, the system that independent India inherited in 1947 was designed to serve and control the people. The Indianization of the legal system is a movement to adapt legal frameworks to Indian realities that seeks to correct the historical mismatch. It is a response to the deep structural and cultural disconnect between the colonial laws that governed India and the post-colonial democratic society that emerged. At the core of this transformation is the recent repeal of key British-era criminal laws and the enactment of the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhiniyam (BSA). Together, these developments mark a significant step in the Indianization project that aims to reclaim the legal system as an expression of Indian values, culture, and contemporary needs.

The colonial legal structure, with laws like the Indian Penal Code (1860), Criminal Procedure Code (1898), and Indian Evidence Act (1872), were crafted by British administrators with the primary goal of maintaining imperial control. Though these statutes were retained and adapted after independence, their basic structure and language remained alien to many Indians. Legal proceedings continued in a language unfamiliar to most citizens, and procedures remained opaque, technical, and inaccessible. In effect, while India became politically independent in 1947, the legal system remained structurally colonial for decades thereafter.

The term Indianization encompasses multiple dimensions: linguistic accessibility, cultural relevance, procedural simplification, and the integration of indigenous traditions of justice. It calls for laws to be written and applied in a manner that reflects India's diverse society, ancient jurisprudential heritage, and contemporary democratic aspirations.

The Bharatiya Nyaya Sanhita (2023) is a clear manifestation of this shift. It replaces the colonial Indian Penal Code with a modern, India-centric criminal code. While retaining the structural clarity of the IPC, the BNS brings in important substantive changes. It removes Section 124A, the colonial-era sedition law, which

was historically used to crush nationalist voices such as those of Bal Gangadhar Tilak and Mahatma Gandhi. In its place, the BNS introduces provisions that address threats to “sovereignty, unity, and integrity of India”, shifting the focus from colonial-style suppression of dissent to the protection of national interest in a democratic framework.

Further, the BNS includes new categories of crimelike mob lynching, organized crime, cybercrime, and crimes against women and children, highlighting a shift from a colonial focus on state control to a contemporary focus on citizen protection. This modernization reflects a deeper understanding of the changing nature of Indian society and crime, making the legal code responsive and people-centric.

The Bharatiya Nagarik Suraksha Sanhita (BNSS) and Bharatiya Sakshya Adhiniyam (BSA) further this agenda by streamlining criminal procedures and updating evidentiary rules. The BNSS introduces time-bound investigations, electronic documentation, and digital case management, thereby reducing delays and increasing efficiency. This modernizes evidentiary principles, explicitly recognizing electronic and digital evidence, and ensuring fairer trials in an age dominated by technology.

However, the Indianization of the legal system goes beyond legislative reform. It also involves a rethinking of judicial attitudes, language, and access. Indian courts, especially at the lower levels, still operate largely in English, a language inaccessible to the majority of litigants. Recent efforts to translate Supreme Court judgments into regional languages and allow court proceedings in local dialects are part of this larger Indianization ethos. The idea is to make the courts more approachable, not just procedurally, but linguistically and culturally.

There is also a renewed interest in drawing from ancient Indian legal traditions, such as those found in texts like the Manusmriti, Arthashastra, and other Dharmashastras. These texts, while not directly applicable in modern law, offer foundational ideas about justice (dharma), governance, and dispute resolution that continue to influence Indian thinking. The revival of Lok Adalats, Gram Nyayalayas, and mediation centers is another way in which the legal system is reconnecting with India’s rich tradition of community-based dispute resolution-models that are often faster, cheaper, and more inclusive.

**Methodology:**

This article adopts a qualitative and analytical approach to examine the Indianization of the legal system in a post-colonial context. It relies on a review of Secondary sources such as academic articles, expert commentaries, and historical analyses are also consulted to trace the evolution of legal reforms. The article Interprets these developments through a socio-legal lens to assess how India's legal transition reflects broader goals of decolonization, accessibility, and cultural alignment.

**Purpose and Motivation:**

The purpose of this article is to explore the ongoing Indianization of the legal system as a crucial step in India's post-colonial journey toward legal and cultural sovereignty. It seeks to analyze recent legislative reforms, such as the Bharatiya Nyaya Sanhita, in the context of decolonization, accessibility, and relevance to Indian society.

The motivation stems from a need to understand how replacing colonial-era laws with contextually rooted statutes can bridge the gap between the legal system and the people it serves. It aims to highlight the significance of aligning legal processes with India's democratic values, traditions, and contemporary needs.

**Post Independence Legal Legacy:**

When India unshackled itself from British rule in 1947, it inherited not only a fractured economy and a divided nation, but also a legal system deeply embedded in the colonial ethos. The courtrooms, statutes, procedures, and legal vocabulary bore the unmistakable stamp of imperial design. They were constructed not for justice, but for governance, meticulously crafted tools of control, meant to serve the interests of the Crown. And yet, in the urgency to build a functional republic, this borrowed legal architecture was preserved almost entirely, as the young nation took its first steps.

In the immediate post-independence era, India's legal framework operated under a peculiar duality. On one hand stood the Indian Constitution which is a visionary document, progressive and inclusive, born of the dreams of a sovereign

people. It guaranteed liberty, equality, fraternity, and justice. On the other stood the Indian Penal Code (1860), the Criminal Procedure Code (1898), and the Indian Evidence Act (1872)- all relics of colonial authority. The contradiction was stark: a democratic constitution working alongside colonial criminal codes.

The laws were often written in archaic, legalistic English, alien to the common Indian. The judicial system, steeped in British formalism, became an intimidating edifice accessible only to the elite. In rural India, the law was seen not as a protector but as a distant, indifferent entity. Justice became a privilege rather than a right. The judicial process itself was riddled with delays, complexities, and corruption. Procedural rigidity often defeated the very purpose of justice. Courts became infamous for long-pending cases, where generations of families awaited verdicts that never arrived. The colonial legacy of prioritizing punishment over reform led to overcrowded prisons and a punitive system rather than a rehabilitative one.

Equally troubling was the system's inability to keep pace with modern realities. Crimes like cyber fraud, terrorism, gender-based violence, and organized crime demanded a legal framework rooted in present-day complexities. Yet the colonial laws, untouched in spirit, continued to govern 21st century India.

### **Reforming Law: From British Rule to Bhartiya Nyaya-**

In response to these mounting challenges the year 2023 marked a historic turning point in India's legal evolution, as the country undertook a comprehensive and bold reform of its criminal justice system. This transformation was not simply an administrative reshuffle or a symbolic renaming of colonial laws, but a fundamental reimagining of the legal structure that had, for more than 160 years, governed the conduct of justice in the country. The three foundational pillars of Indian criminal law, the Indian Penal Code (1860), the Code of Criminal Procedure (1973), and the Indian Evidence Act (1872) were replaced respectively by the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and the Bharatiya Sakshya Adhiniyam (BSA). These new codes represent a decisive step toward Indianizing the legal system by aligning it with the values, technological advancements, and social realities of modern India, while shedding the colonial vestiges that once defined it.

The Bharatiya Nyaya Sanhita (BNS) introduces numerous substantive changes that modernize and humanize the criminal code. One of the most significant reforms is the repeal of the sedition law, previously under Section 124A of the IPC. This colonial-era provision, often criticized for suppressing dissent and curbing free speech, has been replaced by a new section that penalizes acts that endanger the sovereignty, unity, and integrity of India, while including constitutional safeguards against its misuse. The BNS also introduces mob lynching as a specific offence, reflecting growing public concern over vigilante violence. In contrast to the IPC, which had no direct provision for such acts, the new code categorically criminalizes lynching, ensuring stricter penalties and targeted legal recognition.

Moreover, BNS provides for community service as a form of punishment in select minor offences, marking a shift from a purely punitive model to one that encourages rehabilitation and restorative justice. The new code also expands definitions and penalties for sexual offences, including technology-facilitated crimes like digital stalking, non-consensual sharing of private images, and online harassment. It introduces stricter penalties for crimes against women and children, and defines terrorist acts in clear legal terms for the first time, aligning domestic law with international standards.

Complementing these substantive reforms is the Bharatiya Nagarik Suraksha Sanhita (BNSS), which replaces the CrPC and brings a wide range of procedural improvements aimed at streamlining trials and investigations. Among its most impactful provisions is the mandate for time-bound investigation and trial: cases involving serious crimes must now be investigated within 90 days, and charges framed within 60 days of filing the charge sheet. This addresses one of the most chronic issues in Indian justice, judicial delays and backlog. The introduction of e-FIRs and Zero FIRs allows victims to report crimes digitally or from any jurisdiction, removing the barriers posed by geography and limited police access, especially for vulnerable individuals.

BNSS also requires the audio-video recording of statements and confessions made before the police and magistrates. This provision enhances transparency and helps prevent custodial torture or coerced confessions. Furthermore, the use of forensic science has been made mandatory in investigations of offences punishable by more than seven years, ensuring scientific rigor and objectivity in the evidentiary

process. Trials can now be conducted via video conferencing, saving time and resources while ensuring continuity in judicial proceedings. For the first time, victims' rights have been systematically codified victims are entitled to be informed of case developments, receive copies of FIRs, and be heard during bail proceedings.

The third major reform, the Bharatiya Sakshya Adhiniyam (BSA), replaces the Indian Evidence Act and brings the law of evidence into the digital age. It formally recognizes electronic and digital evidence including emails, text messages, cloud data, and social media posts as admissible in court, provided authenticity is ensured through technical safeguards. The new act introduces presumptions of validity for digital signatures and e-documents, thereby strengthening the legal infrastructure supporting digital transactions and communication. Confessions recorded via video technology before a magistrate are now considered valid, further securing the rights of the accused while maintaining evidentiary integrity. The law also includes provisions to protect witness identity, especially in cases involving sexual offences, terrorism, and whistle-blowers reports.

An overarching theme in all three codes is the shift in legal language and sensibility. Terms like "cognizable offence" and "bailable offence" are being gradually simplified, and Indian legal terminology like Nyaya (justice), Sakshya (evidence), and Suraksha (security) have been adopted. This linguistic shift is not just cosmetic; it signifies a deeper cultural and philosophical reorientation. It reflects a move away from the colonial mindset of criminal control toward a democratic, citizen-focused vision of justice.

### **Conclusion:**

The persistence of the Indian Legal System outdated laws well into the 21st century reflected a structural inertia a reluctance to critically engage with our inherited legal architecture. However, the enactment of the Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adhiniyam marks a bold departure from that legacy. These reforms are not merely legislative updates; they represent a philosophical and cultural reclamation of justice in an Indian context.

By repealing colonial relics like the sedition law, incorporating modern offences such as cybercrime and mob lynching, and streamlining procedures through digital FIRs and forensic mandates, the new codes attempt to bridge the widening

gap between legal ideals and ground realities. These laws aim to make justice swifter, more accessible, and more aligned with India's constitutional vision, which prioritizes dignity, equity, and human rights.

Importantly, the reform process recognizes that justice is not only a matter of law but of language, identity, and trust. The use of indigenous terminology such as Nyaya, Sakshya, and Suraksha repositions the legal system within the cultural and linguistic milieu of its people. This symbolic shift is more than cosmetic, it is part of a conscious effort to make the law feel owned, understood, and respected by the citizenry. It is a step toward transforming the courtroom from a colonial relic into a democratic forum.

However, the real test of these reforms will lie not in their letter but in their implementation. Legal transformation requires judicial will, administrative capacity, public legal awareness, and the strengthening of institutions from the grassroots to the apex. The Indianization of law must be accompanied by the Indianization of justice delivery mechanisms, legal education, and institutional accountability.

In conclusion, India's legal renaissance in 2023 is a long-awaited stride toward decolonizing justice, making it not just modern in its tools but also Indian in its spirit. If followed through with sincerity and care, these reforms have the potential to reshape not just the legal system, but the very relationship between the citizen and the state founded not on authority, but on justice.

## References:

1. Government of India. (2023) : The Bharatiya Nyaya Sanhita, 2023. Ministry of Law and Justice. (See Sections 113, 150, and Chapter V on sexual offences).
2. Government of India. (2023) : The Bharatiya Nagarik Suraksha Sanhita, 2023. Ministry of Law and Justice. (See Chapter XII on Investigation and Chapter XXII on trial procedures).
3. Government of India. (2023) : The Bharatiya Sakshya Adhiniyam, 2023. Ministry of Law and Justice. (See Sections 61-90 on electronic evidence).
4. Constituent Assembly of India. (1946-1949) : Constituent Assembly Debates. Parliament of India. (Vol. 7, pp. 892-904: Discussions on legal sovereignty and Indian law identity).

5. Law Commission of India. (2018) : Report No. 277: Sedition. Ministry of Law and Justice. Retrieved from <https://lawcommissionofindia.nic.in/reports/Report277.pdf>
6. Baxi, U. (1982) : The Crisis of the Indian Legal System. Vikas Publishing. (Chapter 1: Colonial Legacy and Justice, pp. 1-24).
7. Galanter, M. (1997) : Law and Society in Modern India. Oxford University Press. (Essay: “The Displacement of Traditional Law”, pp. 52-77).
8. Dhavan, R. (1977) : The Supreme Court of India: A Socio-Legal Critique. Tripathi. (Chapter 3: Colonial Roots of Modern Legal Methods, pp. 89-105).
9. Sathe, S.P. (2002) : Judicial Activism in India: Transgressing Borders and Enforcing Limits. Oxford University Press. (pp. 203-215 on legal reform and judicial transformation).
10. Indian Express. (2023, August 12) : Explained: What are the new criminal laws Bharatiya Nyaya Sanhita, BNSS, and BSA? Retrieved from <https://indianexpress.com/article/explained/bharatiya-nyaya-sanhita-bnss-bsa-new-criminal-laws-explained-8883274/>
11. The Hindu. (2023, August 11) : Centre introduces new bills to replace IPC, CrPC, and Indian Evidence Act. Retrieved from <https://www.thehindu.com/news/national/new-criminal-law-bills-india-2023/article67184622>
12. Chaturvedi, R. (2023) : A bold move to decolonise India’s criminal justice system. Observer Research Foundation. Retrieved from <https://www.orfonline.org/expert-speak/decolonise-indias-criminal-justice-system/>