

DECOLONIZATION OF NYAYA (JUSTICE): RECLAIMING INDIGENOUS CONCEPTION OF LAW AND MORALITY

Prof. Anamika Prasad^{1*}, Kiran Basera²

¹Department of Political Science, ARSD College, University of Delhi, Delhi, India | Email: anamika40@gmail.com

²Research Fellow, Department of Political Science, University of Delhi, Delhi, India | Email: Kiranbasera05@gmail.com

*Corresponding Author: Prof. Anamika Prasad | Email: anamika40@gmail.com

Abstract

The history of human civilisation is characterised by continued deliberations epicentered at the ideational and philosophical conception of justice, and its epistemological deconstruction has been and still is one of the most belligerently contested phenomenological constructions of decolonisation. However, from Plato and Aristotle to Hobbes, from Locke, Kant, to Rawls, modern political philosophy and thought on the axis of justice have been associated within the narrowly placed Eurocentric hegemonic academic-intellectual horizons. Being one of the most potent instruments of power operating at subconscious echelons, these systems tend to present themselves as universal and were historically linked to colonial subordinations and imperial expansion of both body and mind, of colonized society and state. In the civilizational land of the Indian subcontinent, enriched with the diverse discourses of 'Dharma' since ancient times, tyrannical colonial legislations, particularly the Macaulay Indian Penal Code (1860), marginalized and destroyed indigenous dispute resolution processes and the natural flow of justice, and misinterpreted justice as rigid, procedural, and centered on punishment rather than morality and social considerations. The Indian concept of Nyaya, however, offers a holistic humanizing understanding of justice. It interweaves cosmic order *Rta* in the Rigveda, ethical duty (*dharm*) in the Mahabharata, culturally codified law, and pragmatic governance (*Arthashastra*) for the welfare of the citizens. Nyaya is contextual, plural, and sensitive to the ethical, moral, social, and political facets of law, in contrast to Eurocentric models that place a great emphasis on nonconcrete universality of conjunctures of codifications. This paper examines the decolonization of justice, traces the development of the notion of Nyaya, contrasts it with colonial and Eurocentric conceptions, and examines the Bhartiya Nyaya Sanhita (BNS), 2023, as an illustration of an indigenous philosophical interpretation of justice. It has been suggested applying Amartya Sen's distinction between Niti (institutional rules) and Nyaya (realized justice), and that justice must be integrated into breathed realities rather than just replacing colonial laws with indigenous language to achieve true decolonization.

Keywords: Nyaya, Justice, Decolonization, Colonial Law, Bhartiya Law Sanhita, Amartya Sen, Niti.

Research Methodology

This research uses a qualitative doctrinal approach to analyze the concept of justice and investigate morality and law in ancient India. This study attempts to combine the analytical, historical, and interpretive approaches. In this sense, the study attempts to answer how jurisprudence of ancient India defined the concept of justice through the lens of 'dharma'. Different from the modern systems of law of many jurisdictions, which distinguish law and morality, ancient Indian legal philosophy integrated moral duty, ethical conduct, and obligations, which regulated the life of individuals and society.

The research relies heavily on doctrinal analysis of classical Indian legal and philosophical literature. The primary sources included the Manusmriti, Yajnavalkya Smriti, Narada Smriti, Arthashastra, Mahabharata, Bhagavad Gita and the Vedas. These primary sources were studied to analyze the

fundamentals of justice, punishment, kingship, social order, and moral responsibility in ancient India. This study also relies on secondary sources like rest of the primary literature, research books, research articles, commentaries, and modern research in Indian jurisprudence, the Dharmaśāstra, and legal philosophy.

The study uses a hermeneutic method to analyze the socio-cultural and philosophical meanings in ancient legal texts. The study also uses a comparative analytical approach to evaluate indigenous Indian legal thought vis-a-vis Western jurisprudential theories of natural law and legal positivism. This comparative approach is used to bring out the distinctness of ancient Indian systems of justice where law was deemed to have its legitimacy from morality and social ethics.

Introduction

The idea of justice has long been employed in human civilizations to define law, political authority, social conduct, and moral behavior. In contemporary studies, however, the Eurocentric frames and forms of justice often have an advantage at the expense of indigenous conceptions and practices. From Plato and his Republic to Aristotle and his Politics, to Roman law and Christian scholasticism, and to the Enlightenment period of Hobbes, Locke, and Kant, philosophy's lineage eventually leads to Rawls (Nussbaum, 2006; Sen, 2009). Despite their influence of argumentations premised on rationality, these frameworks marginalize non-Western traditions and assert universality. (Chakrabarty, 2000; Mignolo, 2011). In India, colonial legislation intensified this marginalization and exclusion by destroying the centuries-old functioning practices. The British codification, which culminated in Macaulay's Indian Penal Code of 1860, established a standard legal system that prioritized the effectiveness of processes and punishment, often at the expense of regional systems like as guild arbitration and village panchayats (Cohn, 1996; Travers, 2007). Justice was stripped of the ethical, moral, and social considerations that were expressed in indigenous texts and was instead equated with the 'Enforcement' of alien values of Europe in its perverted manifestations. Whereas the Indian tradition of Nyaya provides a deeper comprehension of all the aspects of human life within the society. For instance, the Rigveda depicts *ṛta* as the cosmic order that guides both human and divine actions (Jamison & Brereton, 2014).

The Mahabharata, particularly the Santi Parva, depicts justice as contextual and morally intricate. Bhishma advises Yudhishtira that "dharma is subtle" (*suksmam dharmam*; Ganguli, 1883-1896, Ch. 110), emphasizing and recognizing the inevitable conflict between personal ethics and civic duty. The Dharmashastra, like the Manusmriti, codifies social obligations and laws (Olivelle, 2005). The importance of pragmatic rule is highlighted in the Arthashastra of Kautilya, who views law as an instrument of maintaining political power and social cohesion. (Olivelle, 2013; Trautmann, 2012). Presently, the Bhartiya Nyaya Sanhita (BNS, 2023) is aimed at substituting the colonial Indian Penal Code with the native law ideas in modern Indian jurisprudence. This raises some serious questions about whether this is a real decolonization process or a mere rebranding on the surface soil. The difference between *niti*, the institutional laws, and the sense of justice as it is practiced, known as Nyaya, provided by Amartya Sen, is an interesting perspective on this binary (Sen, 2009). According to him, true decolonization requires addressing reality, righteous inclusiveness, and substantive fairness rather than just codifying laws. This paper is laid out into four sections. First, it examines the Eurocentric concept of justice. Second, it assesses colonial epistemology and its impact on Indian legal systems. Third, it traces the evolution of the Nyaya in ancient India. Finally, it discusses BNS 2023 in light of Sen's stance on decolonizing justice.

Eurocentric Notion of Justice

The European concept of justice has long been viewed as a moral ideal and a systematized social order that reflects the evolution of Western philosophical and institutional traditions. In ancient Greece, justice was more than a category of law; it was a virtue that was inextricably linked to civic life. Plato, for example, defined justice as the sympathetic convergence of human activities with societal order, with an emphasis on the interpersonal connection between the citizen and the state

(Plato, 2000). Instead, Aristotle analyzed justice in terms of proportionality, which involved allocating and redistributing rights, duties, and resources within a hierarchical society (Aristotle, 1999).

Despite their intellectual complexity, both frameworks were based on cultural presumptions, which led to the prioritization of rational abstraction over local contextual reality. European philosophers codified these philosophical ideas into more formal legal and political systems during the Age of Enlightenment. John Locke defined justice as the capacity to uphold liberty with the aid of institutional order. He also gave considerable thought to the idea of natural rights and the necessity of preserving individual autonomy (Locke, 1988). To prevent arbitrary power, Montesquieu also established the separation of powers, which put the legal system in a position to ensure justice (Montesquieu, 1989). As it illustrated the balance between individual rights and community command, Rousseau's social contract placed a strong focus on collective sovereignty while maintaining its formalized rules (Rousseau, 2002). These developments solidified justice as a procedurally defined concept that prioritizes uniformity of law and abstract principles.

The promises of universality made by Eurocentric justice also served to justify the colonial expansion in the shades of 'White Gaze'. Native values and institutional frameworks were often pushed aside by European powers, who tended to impose their own moral and legal standards as the best practices. By portraying their laws as rational, impartial, and universal, colonizers disregarded other ideas and indigenous institutions that promoted moral responsibility, social cohesion, and the common good (Baxi, 2002; Mamdani, 1996). As a result, justice evolved into an administrative authority that bolstered European epistemology at the expense of regional traditions. The Eurocentric model's emphasis on formality above real outcomes is one of its main characteristics. Despite the said emphasis on equality before the law, codification, and procedural clarity, these frameworks are frequently out of step with the social and ethical elements that are central to many non-Western cultures.

According to Amartya Sen (2009), this approach is flawed because it views problems from the perspective of institutional formality rather than the real outcomes, such as equity, human potential, or social well-being. In the same vein, Martha Nussbaum (2006) observes that Western paradigms prioritize legal abstraction over ethical thinking, turning justice into adherence to regulations rather than the advancement of humankind. In the past, the implementation of Eurocentric justice served as both a theoretical and a political weapon. Colonial rulers established European legal systems to upend local institutions, change social delamination, and strengthen state authority. This illustration demonstrates how justice in this context was a combination of normative principles and the force of coercion, serving as both an ethical ideal and a tool of coercion (Mamdani, 1996). The nuanced understanding of this dual functionality is essential to any attempt to question or decolonize Western conceptions of justice. Stated in distinct ways, Eurocentric justice is a synthesis of historical power dynamics, legality, and European rationalist philosophy. It strengthens faith in codified law, procedural rigor, and individual rights, in contrast to situational moral difficulties, social equality, and social responsibility. This conception is antagonistic to comparative engagement with indigenous ethics, like the Nyaya in India, where moral and social concerns are incorporated into the definition of justice itself.

Colonial Epistemology & Justice: Narrowly Sited and Extensively Defined

In India, colonial authority profoundly altered the idea and application of justice. British rule's conception of justice was based on a narrowly defined and widely applied epistemology that prioritized punishment, rigorous procedure, and codified laws. The law evolved into a tool for maintaining imperial power, social regulation, and state administration rather than fostering moral thinking or social justice. Foremost, justice in this system was punitive and focused on community order, compliance, and obligations rather than ethical considerations or community-based standards (Dirks, 2001; Cohn, 1996). The prescriptive nature of colonial justice was narrowly rigid and institutionally tyrannical. The strict punishments that legal codes imposed on criminals left little opportunity for leniency, mediation, or moral analysis. Indigenous customs, such as local

panchayats and conflict resolution practices, which prioritized social harmony restoration, restitution, and reconciliation, were routinely marginalized. The formal courts, which brought procedural conformance to the moral reflection, gradually superseded these systems, which were based on moral judgement and local consensus, because they were thought to be incompatible with the logic of European law (Bhattacharya, 2010; Benton, 2002).

The basic foundation of colonial legal thought was punishment rather than justice. The Criminal Procedure Code and the Indian Penal Code (1860) established uniform penalties for a variety of criminal offences, such as political resistance and property crime. To demonstrate that colonial law was a formalized source of power and oppression, nationalist groups were frequently crushed by the use of sedition, conspiracy, and assembly restrictions. As a result, punishment was intimately associated with procedural justice rather than with moral or social healing (Mills, 2003; Sugirtharajah, 2010). The culturally and socially diverse population was subjected to homogenous laws and policies that typically ignored regional customs and local values, and moral principles. The colonialists were able to consolidate their dominance, limit Indian autonomy, and systematically restrict social resistance through this extensive enforcement. In this sense, rather than maintaining some equilibrium between morality and social harmony, justice functioned as a repressive control of society and a centralizing administrative structure (Dirks, 2001; Benton, 2002). Colonial law undercut ethical considerations, relational responsibility, and societal welfare by equating justice with adherence only to codified rules. Native knowledge of the epistemologies of *Nayaya* (justice) and *niti* (ethical governance), which are founded on proportionality, sensitivity, and social harmony, was eroded. The colonial government replaced delicate, ethically based adjudication with procedural and punitive institutions and a state-centered approach to justice (Merry, 2006; Santos, 2014).

This colonial legacy left several traits that persisted in the Indian legal system even after independence. Despite constitutional protection and progressive reforms, formal courts and codified laws remained focused on punitive consequences and procedural rigidity, imposing the colonial-era Indian Penal Codes. By itself, this continuity demonstrates how colonial epistemology continues to impact current Indian judicial practice, as well as the importance of critically addressing indigenous conceptions about justice and morality (Bhattacharya, 2010; Merry, 2006).

Nayaya (Justice) in Ancient India: Idea and Institutions

In the philosophy of ancient India, *Nyaya* was a comprehensive conception of justice that integrated political, social, and moral facets. *Dharma*, the rule of conduct that governed how people behaved both individually and collectively, was based on the idea of *Rta*, the cosmic law that brought harmony between human activity and the universal law (Kane, 1968; Radhakrishnan & Moore, 1957). Instead of being punitive, justice under this period served as a mechanism to uphold social harmony and moral equilibrium by bringing an individual's acts into compliance with broader social and moral norms. At the philosophical level, *Nyaya* includes rights and obligations, and an individual's entitlement is always predicated on fulfilling their dharmic duties. *Manusmriti* asserts that adherence to social and familial obligations was a prerequisite for the rights of inheritance and property (*Manusmriti* 7.3–7.4). Manu has properly defined the traditional Indian notion of punishment in the following words: *"Punishments have been prescribed by the sages, so that righteousness may not be outraged and unrighteousness may be cured"* (*Manusmriti* VIII. 122).

Ancient Indian law was based on the dual concepts of theology and agreement, and as a result, it is obvious that theology wielded power even over punishment and justice. Punishment signifies *danda*, where *Danda* is an important dimension. The term "*Dandniti*" Was first adopted by *Usanasa* (*Mudraraksas*1). The book *Dandniti* ascribed to *Prajapati* is mentioned in the *Mahabharata* (*Santi Parva* 59). *Prajapati* is regarded as the creator of *Danda* (*Manusmriti* VII 14). Manu perceives that the entire world is governed by *Danda*, and even the deities and demigods are subordinate to its might. Additionally, he associates *Danda* with *Dharma*, and this applies with *Dharma*'s approval (*Ibid.* VII. 15). *Danda* is derived from the term *Dama*, which means to restrain. This means by which a person is restrained from misconduct is *Danda* (*Sukaraniti*). Similarly, the *Yajnavalkya*

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Smriti emphasizes situational judgment of an action; therefore, justice was determined in large part by intent, societal consequences, and relational obligations (Yajnavalkya Smriti 1.9–1.11). As a consequence, the rights were relative rather than absolute, reflecting an ethical conditionality that was absent from succeeding colonial legal systems. Individual autonomy and societal obligation, for example, were inextricably linked since individual autonomy and social responsibility could only be practiced in ways that were specified within moral and social norms.

The multi-layered institutionalization of Nyaya included both centralized control and local government. As the initial level of adjudication, disagreements were resolved by the local panchayats through discussion, agreement, and reparation. In contrast to punitive enforcement, the Mahabharat emphasizes the importance of the process of repair and reconciliation (Sharma, 2011). To demonstrate how ethical principles can be applied to daily management, a land dispute can be resolved by financial compensation or negotiated ways to preserve communal harmony. In matters of greater importance to society, the royal courts assumed control, ensuring fairness and uniformity. The king, as guardian of Dharma, assessed wrongs based on purpose, social implication, and morality (Santi parva XII, 120). The Arthashastra of Kautilya also links moral principles with pragmatic administration by outlining procedural procedures, including investigation, evidence appraisal, and controlled enforcement (Kautilya, Arthashastra 1.18–1.20). All of these institutions represent a multi-level, morally acceptable legal system that reconciles local traditions, restorative cultures, and centralized power. Nyaya also protected moral and spiritual authority, such as the Yati Mudra Raksha, which supported ascetics and sages. These figures were protectors of dharma, and their presence supported the right of authority and moral pillars of social rule (Ollivelle, 2004). Nyaya went beyond material justice by incorporating spiritual supervision to protect ethical and cultural continuity.

Nyaya's restorative orientation, which prioritized mending harm, bringing people together, and preserving social harmony, was what made it such a distinctive school. To restore trust and societal standards, interpersonal conflicts were resolved through mediation, whereas theft or property damage typically required reparation. This approach reflected the system's relational and context-sensitive logic, which held that justice was a tool to maintain social stability rather than a form of punishment. Furthermore, Nyaya was an example of pluralism, which brought together regional customs, written dharmic precepts, and the concentration of authority. Panchayats incorporated regional standards, Manusmriti and Yajnavalkya Smriti texts provided doctrinal guidance, and royal courts throughout jurisdictions guaranteed uniformity (Mahajan, 1990). Justice was ethically sound, adaptable, and socially acceptable under this pluralist system of Indian civilization.

Bhartiya Nyaya Sanhita 2023 Manifestation of the Indigenous concept of Nyaya and Niti
The Bhartiya Nyaya Sanhita 2023 (BNS 2023), Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023, and Bhartiya Sakshya Adhiniyam (BSA), 2023, signify the substantial restoration of India's native legal and ethical frameworks. In contrast to colonial and post-war legal studies that prioritized punitive limitations and formalist codification, BNS 2023 aims to infuse modern law with the relational and ethical aspects of Nyaya and Niti. Historians believe that Nyaya consists of the values of justice, proportionality, and remediation, while Niti stands for the responsibilities of a sovereign and an administrator who acts *summa cum laude* and in accordance with dharma (moral rules) to benefit society, in the same way that the legislation pertaining to certain duties (Kane Ollivelle).

The colonial remnants of European jurisprudence the Indian Penal Code, 1860, the Code of Criminal Procedures, 1973, and the Indian Evidence Act, 1872 was replaced in the light of Indian philosophical tradition of Nyaya by Bhartiya Nyaya Sanhita (BNS), 2023, Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023 and Bhartiya Sakshya Adhiniyam (BSA), 2023 respectively, and become operational from July 1, 2024 in whole of India. Professor Neeraj Tiwari of National Law University appreciated that these new penal laws epitomized the profound shift from punishment to Nyaya, in line with the specified objective of the Indian government to decolonize the Indian Judicial System and Indianize the justice for Indians.

By combining these ideas, BNS 2023, BNSS 2023 & BSA 2023 create a judicial system that emphasizes accountability, balance, and a restorative model of consequences—all while using indigenous rather than communitarian terms that set them apart from colonial ideas. The emphasis on restorative justice and adjudication as participation is among the most significant innovations with BNS 2023. It contains enforcements for non-custodial actions, community mediation, and reconciliation. Nyaya relational method is also included here. Invoking social healing and moral accounting, rather than merely punishing wrongdoers, it ensures that justice is “done, not just declared.” Amartya Sen's capability-centered approach to institutional evaluation, which considers how legal institutions affect human capabilities, freedoms, and well-being, is similarly in line with this jurisprudence (Sen).

By emphasizing participatory frameworks, the three New Criminal Laws improve social legitimacy and ethical compliance while enabling communities to take part in the administration of justice. Most significantly, in accordance with Niti's governance concept, the Act also codifies the ethical duties of judges and administrators. Officials must make decisions with honesty, justice, and impartiality. Long-standing criticism of colonial and post-colonial regimes that prioritized procedural due process over other normative considerations is attempted to be addressed by this act. By codifying ethical imperatives, BNS 2023, BNSS 2023 & BSA 2023 aim to foster a consensus between the needs of society and the law, reflecting the idea that governance should be held ethically as well as legally accountable. However, BNS 2023 is not without its challenges. Certain regulations are draughted broadly, which leaves a lot of space for interpretation and could result in different court applications. Its restorative and participative aspects have not always been sufficiently realized without institutional capacity, education, and community legality, all of which are critical to its success. These contradictions highlight the conflict between practical feasibility and legislative will, serving as a reminder that the recovery of Nyaya and Niti requires rigorous regulation through constant monitoring, adaptation, and a critical analysis of social microcosms. Another intellectual reconciliation between the knowledge of the past and the demands of contemporary government in BNS 2023 is putting the concept of domestic redress in a modern legal framework, which is sensitive to the moral and pragmatic dimensions of justice. Additionally, the incorporation of indigenous ideas guarantees that justice arises from relational, ethical, and culturally grounded norms rather than being imposed from without.

Conclusion

The decolonization of justice in India is a difficult enterprise, balancing historical indigenous legal and moral orders with modern governance. The code-generated and centrally enforced models of juridical governance of colonial legal structures are known for their dichotomies, codifications, and punitive rationality that systematically suppressed moral and relational dimensions in Native understandings of Nyaya (justice) and Niti (ethical governance). By emphasizing procedural consistency over contextual justice, colonial law inhibited indigenous systems of conflict resolution, moral responsibility, and social solidarity. This legacy continued in post-independence legal systems, which showed that the mere abolition of colonial codes does not necessarily recover indigenous justice paradigms in practice. The Indian legal tradition, reflected in texts like the Dharmasutras, Manusmriti, and Arthashastra establish the idea of justice that brings together morality, societal obligations, and the rule of law. Nyaya included procedural justice and substantive ethical results, whilst Niti discussed the obligations and responsibilities of a king or leaders and administrators. Justice was thus about relationships; it focused on outcomes and the common good of communities, in stark contrast with alienating fictional models of justice introduced under colonial rule. This construction emphasizes that law and morality were not two different categories, but rather relations of governance, social mores, and behavior existed in an indistinct relation to achieving justice. Thus, the recent reform initiatives based on the indigenous justice system, particularly the Bhartiya Nyaya Samhita (BNS) 2023, Bhartiya Nagarik Suraksha Sanhita (BNSS) 2023, and Bhartiya Sakshya Adhinyam (BSA), 2023, have shown a deliberate attempt to articulate these native principles in the technicality of law, yet remain successful with enormous

endogenous knowledge.

In prioritizing restorative justice, community engagement, and ethical responsibility, BNS 2023, BNSS 2023 & BSA 2023 are in line with Amartya Sen's capability-defined theory of Justice as Dignity that allows for assessing the effectiveness of laws based on their impact on human capabilities, freedom, and well-being. The embracing of mediation, non-custodial sentences, and participatory opportunities is indicative of an orientation towards socially embedded outcomes that locate justice as a lived experience rather than merely procedural abstraction. Ethical responsibilities of the officials, enshrined in the Act, buttress the Niti aspect by making it imperative that power is exercised with honesty of purpose, accountability, and a sense of moral responsibility. Nonetheless, the revival of Nayaya and Niti in modern law faces numerous challenges. The more elastic the law, the more discretion the interpretation requires, leading to varying levels of implementation. Community involvement can also only be described as effective given the legislative consensus, legal awareness, and disparate social and structural conditions. Even inclusivity as a means of proper redistribution is inadequate; without a mode for how marginalized natives will be represented on par with the other constituents, restorative projects can accentuate inequality. Moreover, inclusiveness is essential; without provisions for an equitable representation of minority groups, restorative undertakings are likely to reinforce historical imbalances. So, we can infer that decolonization is not only legislative, but also substantial because it has to be accompanied by systemic overhaul and ongoing calibration and culturally responsive policy development to translate the operation of laws into ethically informed social processes. To conclude, the recovery of indigenous notions of law and morality in India is as much an intellectual as a practical exercise. By combining legal maternities with Nayaya and Niti, the legal system can work as a mechanism of justice, accountability, and social good that colonial deployments of legality and post-colonial codifications have persistently failed to deliver. BNS 2023, as a legal reform, is an example of how ethical reflection, participatory governance, and restorative justice can meaningfully implement decolonized justice.

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