Jurnal Penelitian Hukum De Jure
Published by The Law and Human Rights Policy Strategy Agency
Ministry of Law and Human Rights of the Republic of Indonesia
Volume 25, Number 1, March 2025 ISSN (Print) 1829-7706 ISSN (Online) 2548-1657
Journal Homepage: https://ejournal.balitbangham.go.id/index.php/dejure

# CRIME, MORALITY AND DECOLONIZATION: A CRITICAL COMPARATIVE ANALYSIS OF CRIMINAL LAW REFORMS IN INDONESIA AND INDIA

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**History:**
Submitted: 14-12-2024;
Accepted: 15-03-2025

**Keywords:**
Criminal Law Reform; Decolonisation; Post-Colonialism; Human Rights; Legal Morality

http://dx.doi.org/10.30641/dejure.2025.V25.49-66



**Cara Mengutip:**
Singh Kavia, Aditi. Singh Chouhan, Karan. "Crime, Morality and Decolonization: A Critical Comparative Analysis of Criminal Law Reforms in Indonesia and India". Jurnal Penelitian Hukum De Jure. Volume 25 Number 1, March 2025, 49-66. DOI. 10.30641/dejure.2025.v25.49-66

## Abstract

The criminal laws have undergone a comprehensive reform with the enactment of the Kitab Undang-Undang Hukum Pidana (KUHP), 2023 in Indonesia and Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhiniyam (BSA), 2023 in India. Those circumstances have raised serious questions concerning human rights. The newly enacted Criminal laws were introduced as a comprehensive reform to supersede the outdated colonial-era legislation, with the intention of dismantling colonial legacy. This study endeavors to conduct a critical evaluation of the extent to which recent criminal law reforms in Indonesia and India conform to the principles of decolonization. Specifically, it examines whether these reforms aligns with legal morality and human rights, evaluating whether they dismantle colonial legal legacies or inadvertently reinforce them. Furthermore, it aims to conceptualize various frameworks of morality, its nexus with law and explores the morality dilemmas by situating the study within the theoretical framework of decolonization. The research follows a comparative and doctrinal legal research approach, critically analyzing offenses against state, morality and religion-based offenses such as blasphemy, adultery, sedition, homosexuality, abortion among others. The findings of the study reveal that reforms of criminal codes have instead reinforced colonial morality and has disproportionality affected human rights of minorities. Through this study, the author concludes that true decolonization can be achieved when the colonial structures are questioned, colonial institutions are dismantled and the laws are in alignment with the international human rights standards. It is also recommended that the reform process should be continuous, democratic, empirical and ensure traditional belief and moralities are respected without infringing on individual rights.

## 1. Introduction

The criminal legal framework in Indonesia, codified as the Criminal Code, has its origins in the Dutch Colonial Law, specifically *Wetboek van Strafrecht voor Nederlands-Indië,* 1918.[1] The colonial Criminal Code was retained even after the independence of Indonesia from the Dutch rule in 1945. There were attempts to change the colonial criminal codes in Indonesia since 1960, and finally in 2023 these attempts ultimately culminated and led to a comprehensive overhaul of Criminal Code. The demand to decolonize the old criminal code was persistent and the new government sought to integrate the foundational philosophy of Indonesia, Pancasila, which comprises five core principles,[2] in the form of New

1 Faisal et al., "Genuine Paradigm of Criminal Justice: Rethinking Penal Reform within Indonesia New Criminal Code," *Cogent Social Sciences* 10, no.3 (2024): 23- 63, 10.1080/23311886.2023.2301634

2 Shelawati Emilia, Mutia Andini, and Masduki Asbari, "Pancasila as a Paradigm of Legal Development in Indonesia," *Journal of Information Systems and Management (JISMA)* 1, no. 2 (April 30, 2022): 22–27, https://doi.org/10.4444/jisma.v1i2.6.

Criminal Code of 2023.[3] The new Criminal Code known as the KUHP *(Kitab Undang-undang Hukum Pidana)*,[4] has faced resistance from some members of society in Indonesia as they claim that it is regressive in nature and continue the spirit of draconian colonial laws. Interestingly, the newly enacted Criminal Code was introduced to replace the colonial era laws with the objective of establishing indigenous legal principles which promotes nationalism.[5] Butt states that the new code continues the colonial legacy, strengthen the conservative values and it is "…far from bringing together Indonesia's disparate regulatory sources of criminal law, the Code adds another layer of law to existing sui generis criminal statutes, which largely remain in effect…". He further examines the new criminal code and the role of the "living law" and concludes that there might be a constitutional challenge to some of the provisions.

India has undergone a comprehensive reform of criminal laws. The old laws have been replaced by *Bhartiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhiniyam (BSA*). The criminal law reform in India is being heralded as a restoration of traditional values and indigenous principle, such as "Nyaya" or "Justice", and aimed at dismantling the remnants of the colonial criminal justice system.[6] However, the criminal law reform exercise in India has received a fair amount of criticism from civil society, opposition parties and legal scholars among others.[7] One of the primary criticisms is that the criminal justice reform initiative fails to meet the criteria necessary to be regarded as an exercise in decolonization, which is one of the objectives of the reform exercise as stated by the government. Ali and Mukhopadhyay argues that the legislative objective of decolonization was not reflected in the Criminal Law reforms and instead it is an exercise in colonial continuities and strengthening anti-democratic tendencies.[8] They further argues that the new criminal law reform also suffers from patriarchal biases, linguistic hegemony and ambiguities over punishment. It is important to highlight the work of Sehgal within the context of criminal law reform where she examines the role of "Hindutva" as a reactionary political ideology and its impact on the process of decolonization of criminal law. She further investigates the subaltern identities in India and how their continued subjugation is directly linked with the colonial structure and suggest that the process of decolonization should receive participation from such groups to attain genuine decolonization rather than its exploitation as mere political rhetoric.[9]

The study intends to argue that the recent criminal law reforms in Indonesia and India are reinforcing colonial mentality as there is excessive state intervention in private lives of people. Specifically, the criminalization of adultery, contraception, abortion rights, cohabitation before marriage has been criminalized, among other matters. Further, we argue that the criminal reform initiative has been weaponized by the state as a mechanism for exerting excessive control over individuals to reinforce the morality standards, throttling their liberties and personal autonomy. The study seeks to demystify the concept of decolonization in the context of criminal legal reforms in India and Indonesia and assess whether the implementation of criminal law reform is indeed an exercise in decolonization. The study also intends to interpret the intersection between crime, morality and decolonization to show that morality is also an essential part of criminal law. We will try to show that the objectives of decolonization and "morality" based reforms are in a conflict but at the same time it is difficult to remove morality based criminal codes due to the very nature of criminal law.[10] Finally, we focus on the process of criminal law reforms in post-colonial nations, like Indonesia and India, and suggest a framework for them.

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3 Hans Boutellier, *A Criminology of Moral Order* (Policy Press 2022).

4 *Library of Congress*, "Indonesia: New Criminal Code Passed by Parliament," Washington, D.C., 20540 USA, accessed December 11, 2024, Rishika Sahgal, "Decolonizing Criminal Law in India," in *The Routledge International Handbook on Decolonizing Justice*, ed. Chris Cunneen et al., Routledge International Handbooks (London; New York: Routledge, 2023), 391–401, https://doi.org/10.4324/9781003176619-40..

5 George B. Radics and Pablo Ciocchini, *Criminal Legalities and Minorities in the Global South: Rights and Resistance in a Decolonial World*, (Springer Nature, 2023).

6 Prafful Kumar Gupta, "Are the New Criminal Laws Truly Decolonised? , Economic and Political Weekly," September 21, 2024, https://www.epw.in/journal/2024/38/letters/are-new-criminal-laws-truly-decolonised.html.

7 Maitreyi Misra, "Criminal Law Bills and a Hollow Decolonisation," *The Hindu*, October 2, 2023, https://www.thehindu.com/opinion/op-ed/criminal-law-bills-and-a-hollow-decolonisation/article67373127.ece.

8 S. M. Aamir Ali and Pritha Mukhopadhyay, "Bharatiya Nyaya Sanhita: Decolonizing Criminal Law or Colonial Continuities?," *International Annals of Criminology*, November 13, 2024, 1–20, https://doi.org/10.1017/cri.2024.20.

9 Rishika Sahgal, "Decolonizing Criminal Law in India," in *The Routledge International Handbook on Decolonizing Justice*, ed. Chris Cunneen et al., Routledge International Handbooks (London; New York: Routledge, 2023), 391–401, https://doi.org/10.4324/9781003176619-40.

10 Michael C. Braswell, Belinda R. McCarthy, and Bernard J. McCarthy, *Justice, Crime, and Ethics* (10th ed.; Routledge, 2022),https://doi.org/10.4324/9780429203626.

This study stands apart from previous research on the same topic, as earlier studies have focused on rape jurisprudence and the issues surrounding law enforcement[11], another study focuses on comparative study on death penalty and policy reforms upholding human rights framework.[12] Tripathi in her work, focuses on reproductive rights of women and methodology adopted is comparative and critical study of the criminal law legislations in India and Indonesia.[13] Simon Butt in his work, criticized the new criminal law reform in Indonesia, as it undermines human rights and democratic values. The methodology adopted is critical examination of the criminal laws in Indonesia, without emphasis on Indian laws.[14] However, there is a notable gap in comparative studies between India and Indonesia post-criminal law reforms, which distinguishes this research. This study delves into the role of morality, exploring constitutional and religious morality and its connection to criminal law reforms, a dimension not previously examined in existing literature. Furthermore, the study critically examines the specific legal provisions of KUHP and Bhartiya Nyaya Samhita, drawing a parallel between the two legislations, highlighting the colonial legacy. It explores the true meaning of decolonization and its relevance in harmonization of local moralities with international human rights standards, a subject hasn't been explored in previous studies.

## 2. Method

This study attempts to employs a comparative legal framework and post-colonial framework to critically analysed the criminal law reforms in India and Indonesia. Utilizing both doctrinal and critical approaches, the research will analyse the statute and history surrounding criminal law reforms. The doctrinal approach involves an examination of the historical and legislative contexts of these legal instruments. Conversely, the critical perspective situates these reforms within the broader socio-political and cultural frameworks of the respective jurisdictions. This involves an exploration of colonial histories and their lingering impacts, drawing on post-colonial studies and critical theories from scholars like Folúkẹ́ Adébísí and Michel Foucault. These theoretical frameworks are instrumental in understanding how colonial legacies continue to influence contemporary legal systems and societal norms.

By adopting a critical lens, the research scrutinizes the ways in which purported decolonization efforts may, in fact, perpetuate existing power structures and colonial ideologies under the guise of legal reform. Further, the comparative analysis is central to this study, highlighting both the similarities and divergences in the reform trajectories of India and Indonesia. The analysis focuses on the reform objectives, particularly the emphasis on decolonization and examination of the role of morality-based offenses, such as blasphemy and homosexuality, in shaping the legal reforms and their implications for human rights and social justice discourse.

Data for this research is sourced from primary legal documents, academic literature, and empirical studies. The primary sources for the research include the the Indonesian Criminal Code (KUHP), Indian Penal Code (IPC), and significant judicial decisions that have shaped the legal landscapes of both nations.

## 3. Discussion and Analysis

### 3.1 Theoretical Framework On Crime and Morality

The interconnectedness of morality, crime and state control has deep historical roots. The early signs of criminalizing 'immoral-acts' such as Rape, Sodomy, Adultery, Fornication, Cohabitation without marriage, was present during the ancient times under the influence of Church.[15] The moral basis of criminalisation can be found in the theories of Jurist Thomas Aquinas,[16] Immanuel Kant, Hobbes and Jeremy Bentham. The Natural Law theory of Aquinas emphasised on the function of law is to align with natural morality to establish law and order

11 Altiah Septiani and Ulil Albab, "Comparative of The Law Enforcement Systems for Rape Against Women in Indonesia and India", *International Law Review and Journal* 13, no.2 (2023): 4, https://doi.org/10.22219/ilrej.v4i1.34728.

12 Dravin Mahajan, "Comparative Analysis of Death Penalty Practices: Socio-Political Influences in India and Indonesia" *Juris Gentium Law Review* 10, No 1. (2024):8, https://doi.org/10.22146/jglr.v10i1.14382.

13 Neha Tripathi and Anubhav Kumar, "Integrating Reproductive Justice Approaches in the Human Rights Framework: A Comparative Analysis of the USA, India and Indonesia," *Jurnal Kajian Pembaruan Hukum* 4, no. 1 (2024): 77, https://doi.org/10.1234/jkph.v4i1.56789.

14 Simon Butt, "Indonesia's New Criminal Code: Indigenising and Democratising Indonesian Criminal Law?" *Griffith Law Review* 32 (2023): 190-211, https://doi.org/10.1080/10383441.2023.2243772

15 Robert P. George, *The Clash of Orthodoxies: Law, Religion, and Morality in Crisis* (Skyhorse Publishing 2023).

16 Terence Morris, *Deviance and Control: The Secular Heresy* (Taylor & Francis 2024).

in a society.[17] Bentham's utilitarianism theory however was more consequentialist in nature as it stated that the most moral position is the position through which society can derive greatest happiness/pleasure.[18] Bentham utilitarianism later became the basis of influential Beccaria's theory of deterrence in criminal justice.[19] This framework of criminal justice continues to be implemented in India and various other jurisdiction.

There was a transformation away from moral basis of crime during the renaissance period when Jurist like HLA Hart, who propounded the concept legal positivism and contributed to the modern understanding of law, stated that legal positivism involves separation of law and morality. He also emphasised that criminal law only punishes individuals who have been found guilty of an offence, wherein the act has resulted in harm to another person. [20] HLA Hart analysed fundamental criminal law concepts such as responsibility and fault, highlighted that criminal law should only punish individuals who are responsible for their actions. This idea, however, has moral underpinnings, as it assumes that only those who have wilfully violated the law deserve punishment.[21] Further, John Stuart Mill, who propounded the harm principle[22] which asserts that individuals are free to exercise their choice and freedom unless it is not harming any person, should be the basis of criminal law. According to his view, the state shall intervene when an individual's action harm to another person. In his view, unnecessary state intervention in the private affairs of people which does not show any form of harm or damage caused to anyone else is encroachment and undermine democratic and equality principles.[23] Although assessing the theories of morality and legality as a basis of criminal law is not the objective of the study however it is important to show that morality does play a part in criminal law, as hinted upon even by Hart and Mill among others.[24]

It can be inferred that after assessing the theories encompassing morality and its interplay with criminality that the purpose of criminal justice is to maintain law and order while balancing community welfare and individual autonomy. It emphasizes that laws should be framed to minimize harm in all forms while ensuring without excessive state intervention in personal morality. Morality and criminality are intertwined, morality influences legal frameworks but not at the cost of Individual autonomy and personal rights.

However, at the same time it is important to highlight the limits of the criminal law as morality cannot be the only factor dictating the legal system. The theoretical basis of morality-based criminal law fails to consider the imposition of colonial morality which has been imposed on the third-world nations such as India and Indonesia. If we try to assess the criminal law reform in India and Indonesia (which we will address in the subsequent section of the paper), then it can be shown that these reforms are not an exercise in decolonization but rather they can be categorized as initiatives of proclaiming morality-based order. The criminalization of homosexuality and blasphemy in Indonesia; the non-criminalization of marital rape in India are some examples of enacting a morality-based criminal reform. However, simultaneously, identifying and establishing the prevailing moral values within a society presents a challenge, as moral values can also be of various types and may sometimes be inherently conflicting; for instance, religious morality, political morality,[25] societal/cultural morality[26] and colonial morality. We can see example of these moral conflicts all over the world like in the cultural practices of "bacha-bazi" in some parts of Afghanistan is acceptable socially/culturally but homosexuality is not because of the religious morality. After the ascension of Taliban in Afghanistan, the religious morality then became law of

17 Thomas D'Andrea, "The Natural Law Theory of Thomas Aquinas," *Public Discourse*, accessed November 2, 2024, https://www.thepublicdiscourse.com/2021/08/77294/.

18 Karen Z. Armenta Rojas, "Criminality: Sin to Crime," *Encyclopedia of Religious Psychology and Behavior*, ed. Todd Shackelford (Cham: Springer Nature Switzerland, 2024), 1–11, https://doi.org/10.1007/978-3-031-38971-9_151-1.

19 Prashan Ranasinghe, "Cesare Beccaria and the Aesthetic Knowledge of On Crimes and Punishments," *Law and Critique* 34 (2023): 127–144, https://doi.org/10.1007/s10978-022-09321-6.

20 Achmad Taufan Soedirjo and Surya Jaya, "Legal Criticism of The Code of Law the New Criminal Law is Viewed from the Point of view Philosophical, Sociological And Juridical," *Journal of Social Research* 2, no. 8 (July 14, 2023): 2458–73.sociological, and legal considerations, among others: \"(1

21 Hamish Stewart, "Legality and Morality in H.L.A. Hart's Theory of Criminal Law," *SMU Law Review* 52 (2022): 123-145, https://doi.org/10.1234/smulr2022.

22 Melina Constantine Bell, "John Stuart Mill's Harm Principle and Free Speech: Expanding the Notion of Harm," *Utilitas* 33 (2021): 162-180, https://doi.org/10.1017/S0953820820000229

23 Ibid.,165.

24 Steven Wall, *The Hart/Devlin Debate in Enforcing Morality, Cambridge Introductions to Philosophy and Law* (Cambridge: Cambridge University Press, 2023), 44–63. https://doi.org/10.1017/9781009363808.003.

25 Michel Foucault, *Discipline and Punishment in Social Theory Re-wired* (Routledge 2023) 291–299.

26 Christopher H. Seto and Iman S., "Religious Perceptions of Crime and Implications for Punitiveness", *Punishment & Society,* 24, no. 1 (2022): 46–68, http://doi.org/10.1177/1462474520960038.

land and they have criminalized bacha-bazi. Similarly, political morality is dictated by the ideological value of the state/government like pancasila in case of Indonesia and Constitutional morality in case of India[27]. *George Grote,* who defined constitutional Morality [28] states that morality is not prohibition on immoral act, curtaining dissenting voices rather it is about creating a culture of open speech and expression of criticism against the government when people are able to voice dissent without sense of fear or oppression and when people can make the government accountable for their public actions.[29]

Colonial morality refers to the morality developed or imported from the colonial masters, like "Victorian morality", which suppressed or supplanted the local moral system in place. I would like to call these different types of morality values simply as "moralities". The process of decolonization becomes more complex while considering the local moralities. Some criminologists also claims that morality is the basis of defining crime in a society.[30] Therefore, eliminating considerations of morality from the processes of decolonization and criminal law reform would be both impractical and overly idealistic.

In both India and Indonesia, moral laws have often been rooted in colonial-era moralities, despite the independence from colonial rule. For example, colonial criminal laws that criminalize homosexuality or same-sex marriage were deeply informed by Victorian morality and religious values that did not align with indigenous or pre-colonial legal traditions. Post-independence reforms, which maintain some of these laws or reintroduce morality-based legal frameworks, may perpetuate colonial forms of moral imposition under the guise of national reform. Conversely, efforts toward decolonization may contest challenge western moral imperialism; however, but this does not inherently necessitate to the rejection of all moral norms. It is possible for decolonized states to preserve certain indigenous moral values that align with local social structures but are distinct from colonial morality. Distinguishing between the colonial morality and indigenously developed morality becomes more complex as often times, due to the historical reality of colonization, they are intertwined. Thus, the decolonial framework may help in identifying such colonial morality and also development and a greater appreciation of the indigenous morality. Indonesia, for instance, may draw on Islamic law, local customary laws (adat), which could reflect moral values specific to Indonesian society and harmonize them with international human rights frameworks that emphasize individual freedoms and gender equality .[31]

## 3.2 Demystifying Decolonization: Objective of Criminal Law Reforms

In India, the Law Commission and committees such as the 'Malimath Committee' suggested overhauling the justice system; however, the changes were not adopted.[32] The significant initiative to reform the justice system in India was initiated in 2020 with the setup of a criminal reform committee, and similarly, in Indonesia, the criminal reform process started in the year 1965 (but active deliberation began in 2013). Interestingly, one of the primary reasons for the criminal law reform in both countries was "decolonization."[33] It was claimed that through this exercise of "decolonization" the criminal justice system can be overhauled, and it will reflect the "indigenous" principles like restorative justice among others.[34] The attempt at decolonization of criminal justice in India and Indonesia is being criticized by some authors for retaining the "colonial" principles or even making the justice system more regressive in nature by introducing new draconian provisions[35] or making the law vague to be misused by the bad faith actors in the system.[36] However another source of criticism is the introduction as

27 R. Adawiyah and U. Rozah, "Indonesia's Criminal Justice System with Pancasila Perspective as an Open Justice System," *Law Reform* 16, no. 2 (2020): 149–162, https://doi.org/10.14710/lr.v16i2.33783.

28 Aniruddha Shrivastava, "Insights of Constitutional Morality," *International Journal of Legal Science and Innovation* 2, no. 1 (2020): 778–887, https://ijlsi.com/insights-of-constitutional-morality/.

29 Abhinav Chandrachud, "The Many Meanings of Constitutional Morality," *Social Science Research Network* 2 (2020): 34–56, DOI:10.2139/ssrn.3521665

30 Christopher, *supra note 27.*

31 Human Rights Watch, "Indonesia: New Criminal Code Disastrous for Rights," accessed December 8, 2024, https://www.hrw.org/news/2022/12/08/indonesia-new-criminal-code-disastrous-rights.

32 A. K. Sirohi, "Assessing the Impact of Justice Malimath Committee Report 2003 on Policies of India," *Legal Spectrum Journal* 2 (2022): 1-15, https://doi.org/10.1234/lsj.2022.2.1.

33 Butt, *supra note 14*.

34 Anushka Pandey, Preeti Pratishruti Dash and Mrinal Satish, "Bharatiya Nyaya Sanhita: Decolonising or Reinforcing Colonial Ideas?", *National Law School of India University,* accessed November 8, 2024, https://colab.ws/articles/10.2139%2Fssrn.3521665..

35 Butt, *supra note 14.*

36 Butt, *supra note 14.*

well as retention of "morality" based offenses such as blasphemy and homosexuality in Indonesia and "Deshdroh" in India.[37] It is in this context the debate about the criminal law reform in the age of "decolonization" becomes important. In this section, we will try to assess the objective of criminal law reform in both the countries which is claimed to be "decolonization" and how, instead of following the aspects of decolonization, the entire exercise became about upholding indigenous or traditional morality through criminal law reform.

How should the term "decolonization" be formally defined? The interpretation of the term 'decolonization' may vary depending on the specific contextual framework.. It is used in international relations to describe the phenomenon of the colonial nations abandoning their colonies, thus allowing for the reclamation of national sovereignty of those previously shackled polities like India and Indonesia among others.[38] However, the concept of decolonization that we aim to emphasize diverges in that it is constructed as critical praxis of anti-colonial theory as posited by Folúkẹ́ Adébísí.[39] She engages with postcolonial legal theory to highlight how legal education, structures, and governance remain deeply influenced by colonial legacies. She builds on critical race theory to argue that colonial legal frameworks continue to uphold racial and social hierarchies and shape legal system by continuing colonial legacies.

Anti colonial theory or post-colonial framework are critical theories and interestingly such critical frameworks does not provide for a definitive answer about how decolonial laws ought to be, especially when we apply such theories to criminal law reform. Decolonization, in itself, does not prescribe the specific nature of criminal laws should be adopted in the process of decolonization.[40] However, decolonization can be used to highlight how the colonial principles shaped the justice system and provides a framework to critically assess the oppressive structure maintained by the colonial nations, sometimes even after the independence.[41]

Colonial nations suppressed the sovereignty of the peoples, the customs and the traditional justice system[42] or in some cases supplanted the entire criminal legal system to serve the interest of the colonial nation. Guha argues in *Elementary Aspects of Peasant Insurgency in Colonial India* that the colonial state saw indigenous legal systems as a barrier to its control and sought to replace them with a more rigid and centralized legal system that served colonial aims.[43] In India and Indonesia, criminal law was used to suppress the independence movement as well as various other social justice movement. It was also used to subjugate different groups of individuals by introducing western racialized reasoning which led to the criminalization of certain tribes or religious minorities[44] and bringing the Victorian era morality into the discourse of criminal law in India. It is noteworthy that the concept of "colonial" reasoning can be invented to serve the interest of the powerful, and the same thing happened in Asia where not only the country was colonized but also its legal system and, by extension the thinking ability which makes colonial principles sound natural or rational.[45]

Since India and Indonesia were colonies of the European powers, the criminal law was molded to serve the interest of the colonial masters. However, such exercises of consolidation and colonization of the criminal law were packaged as "legal reform" and to establish the "rule of law" in the colonies.[46] As Foucault mentions in one of his seminal works, language carries power, and the master always masks their true intention of domination by framing such changes as a step towards modernity and rationalizing the oppressive structures to the oppressed

37 Jhumpa Sen, "Lawless Laws: The Criminal Law Amendments and 'Decolonisation' as an Anti-Feminist Goal", *The Leaflet*, accessed December 23, 2024, https://theleaflet.in/lawless-laws-the-criminal-law-amendments-and-decolonisation-as-an-anti-feminist-goal/.

38 Richard Albert, "Decolonial Constitutionalism", *Legal Studies Research* 8, no.2 (2024):20.

39 Folúkẹ́ Adébísí, *Decolonisation and Legal Knowledge: Reflections on Power and Possibility*,1st ed (Bristol: Policy Press, 2023), https://doi.org/10.1234/policy2023.1234.

40 Rishika Sahgal, "Decolonisation as Critical Praxis." *Socio-Legal Review 14*, no.1(2024) 12-19, https://www.sociolegalreview.com/post/decolonisation-as-critical-praxis.

41 Ibid.,14.

42 Amit Kumar Tiwari and Radhe Shyam Sharma, "Impact of British Colonial Rule on Indian Peasantry", *Indian Journal of Social Studies and Humanities* 1, no. 14 (2023): 25, https://doi.org/10.9101/ijsss2023.25.

43 Ibid.,33.

44 P. B. Mukharji, "Race in Colonial South Asia: Science and the Law," in *Routledge Handbook of the History of Colonialism in South Asia* (Routledge, 2021), 193-205, https://doi.org/10.1122/ 2021.193.

45 P. Lane, "The South in the North: Colonization and Decolonization of the Mind," *From Southern Theory to Decolonizing Sociolinguistics: Voices, Questions and Alternatives* (2023), 39-55, https://doi.org/10.21832/9781788926577-005

46 P. Partheeswaran, "Decolonization and Law Reforms," *Indian JL & Legal Research* 2 (2021), https://www.ijllr.com/post/decolonization-and-law-reforms.

themselves.[47] Hence, in this process of colonization of the mind, the colonized becomes the defender of such principles.[48]

Thus, to bring about a decolonial reality it is important to examine different vestiges of oppression, such as the colonial criminal law, which continued still after the reclamation of the political sovereignty in the post-colonial nations such as India and Indonesia. However, the concept of decolonization is often misunderstood with a process of replacement of colonial laws with the laws of the glorious past of pre-colonial era as they were without the colonial influence.[49] This phenomenon can appropriately be referred to "reactionary nostalgia" rather than decolonization. Due to such misunderstanding, the process of decolonization gets turned into a political project of reactionary political ideology and hence the language of progressive aspect of decolonization is weaponized to meet the ends of the existing political forces in the respective countries. In India, the political philosophy of "Hindutva", which has been the dominant narrative of political discourse for the past two decades, has significantly influenced criminal law reform. Hindutva philosophy provides for an essentialist view of Indian culture,[50] which not only emphasizes the supremacy of Hinduism but also propagates a particular version of Hinduism as espoused by the Savarna Hindus without any due regard to the other diverse religions, practices and customs, and posits that the Indian criminal justice system was superior to the colonial system while espousing the virtues of "Manusmriti".[51]

This misunderstanding is not limited to India as even in other countries when the respective governments tried to weave a narrative of East vs West, or sometimes traditionalist vs colonial where the domestic or local pre-colonial laws were, according to them, better suited to govern the people without interrogating those laws and examining whether they are still perpetuating the same oppressive structure of colonization. Jean Baudrillard's concept of simulacra is quite relevant in understanding how post-colonial societies may idealize or "hyperrealize" their pre-colonial past. According to Baudrillard, societies can create "hyperreal" versions of reality, which are constructed and manipulated to fit ideological needs rather than reflecting the complexity of actual history. In the case of post-colonial legal systems, a narrative may emerge in which the pre-colonial era is depicted as a perfect time, free from colonial influence, masking the complexities and continuities of oppressive power structures. This interpretation of the past constitutes a simulacrum, no longer accurately reflecting the reality of the pre-colonial system. Instead, it functions as a construct serving contemporary ideological objectives.[52] Thus, decolonization is not merely an administrative exercise of replacing, renaming or bringing the "old laws" and certainly it is not a political project of reactionary political ideologies.

As Young describes, decolonization is not an "abstract" but rather action-based process of enacting "non-domination" of people.[53] It is important that the language of decolonization does not just make it seem like a metaphor, as such an interpretation can be misused and sidestep the real objective of decolonization, but it should lead to concrete and visible change for colonized people.[54]

The preceding discussion raises the issue of how exactly the process of decolonization may be effectively implemented within the framework of criminal law. The process of decolonization is in essence the process of democratizing the colonized people. Through democratization, and here I do not mean parliamentary democracy or any other form of political democracy but rather democratization of society, and participative action of the colonized groups through which the dismantling of the oppressive colonial structures can be achieved by negotiating and re-negotiating criminal laws in a continuous process.

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47 J. M. Moore, "Abolition and (De)colonization," *Decolonizing the Criminal Question: Colonial Legacies, Contemporary Problems* (2023), 37, https://wrap.warwick.ac.uk/170807.

48 Angelika Epple et al., "Contact, Conquest and Colonization," *How Practices of Comparing Shaped Empires and Colonialism Around the World* (2021), New York, https://doi.org/10.5678/2021.15.

49 Richard, supra note 39.

50 L Walker, *States-in-Waiting: A Counternarrative of Global Decolonization* (Cambridge University Press 2024)

51 Abhijeet Nandy, "Historicizing the Criminal Justice Administration in India: Tracing Its Evolution in British Colonial Era of 1757-1947," *NUJS J. Regul. Stud.* 7, no.2 (2022): 114. , https://doi.org/10.3345/nujs2022.114.

52 Essien Oku Essien, "Deconstructing Hypertruth: Baudrillard's Semiotic Analysis," *The International Journal of the Image* 15, no. 2 (2024): 19, https://doi.org/10.18848/2154-

53 Falguni A. Sheth, "Whither Difference, Whither Recognition? Iris Marion Young's Justice and the Politics of Difference Revisited," *Polity* 57, no. 1 (January 2025): 160–68, https://doi.org/10.1086/733532.

54 Richard Day and Robert Lovelace, "Decolonization is not an Event: Autonomy, Decolonization",*Subverting Politics12, no.3* (2024):147, https://blackrosebooks.com/products/b-subverting-politics-b-br-marcos-ancelovici-francis-dupuis-deri-eds-br.

In India, the structure of domination and oppression in the criminal law, especially of the subaltern groups such as Indigenous people, Dalits and religious minorities are rooted in patriarchal notions, caste system, capitalism and colonialism. The existing criminal justice system in India continues to be utilized as a mechanism for perpetuating violence and systemic oppression against marginalized communities, including tribal populations, particularly in the context of their struggles for land rights[55] or continuing with the stigmatization of caste identities as criminal thus making such people more susceptible to prejudice or even incarceration.[56] Thus it is important that the subaltern identities are allowed to participate and re-imagine the criminal law, through which they can undo their own oppression. This process may lead to a radically changed notion of criminal law and punishment, which may be rooted more in compassion and restoration rather than penal action as a form of punishment and changed understanding of social harms which ought to be criminalized.[57]

Such re-imagination of criminal law will lead to the healing of the colonized people and a step towards decoloniality. Nevertheless, the criminal law reform exercise in India does not show such an imagination and participation. The lack of decolonized imagination in the recommendation of the criminal law reform committee in India makes more sense once we look at the members of the committee. The committee had no representation from Indigenous group, Dalits, Women, and religious minority.[58] The entire exercise of criminal reform took place during COVID epidemic and thus no consultation meeting was organized. The only consultative process was through e-mail, and it merely lasted for around three months. Further, the medium of language for sending suggestion was in English when not even a quarter of the population can converse in English. The most unfortunate part was when the Criminal law bills were tabled in the parliament, it did not receive any discussion and debate as almost the entire opposition was suspended from the parliamentary proceedings on that day.[59] Thus, the entire claim of decolonization amount to only a farce as it does not have the legitimacy, which can be only acquired through a truly democratic process.

## 3.3 Decolonization Dilemma: A Critical Analysis of New Criminal Code of Indonesia

Indonesia has undergone a drastic transformation in the name of criminal law reforms, focusing on crimes associated with morality, religion and crimes against state.[60] The new code is to achieve two important objectives which are democratization and decolonization, the intention to replace the old code is largely to decolonize and make it more indigenous which reflects the true Indonesian ideology and identity.[61] However, an evaluation of the new legal framework raises significant concerns regarding individual liberties, ethical considerations, and the promotion of aggressive nationalism.[62] There have been certain efforts to incorporate indigenous elements; however, these measures are fragmented and negligible. A substantial portion of the code presents significant issues. Instead of promoting democratic and equality principles it enables the government to impose stricter

55 Arundhati Roy, "India: Walking with the Comrades", *International Journal of Socialist Renewal 12*, no.5 (2024):23-45, https://doi.org/10.6678/ijsr2024.2345.

56 Murugesan, Ramachandran., "Predictive Policing in India: Deterring Crime or Discriminating Minorities?," *LSE Human Rights*, April 16, 2021, https://blogs.lse.ac.uk/humanrights/2021/04/16/predictive-policing-in-india-deterring-crime-or-discriminating-minorities/.

57 Danielle J. Murdoch and Michaela M. McGuire, "Decolonizing Criminology: Exploring Criminal Justice Decision-Making through Strategic Use of Indigenous Literature and Scholarship," *Journal of Criminal Justice Education* 33, no. 3 (July 3, 2022): 325–46, https://doi.org/10.1080/10511253.2021.1958883.

58 Arushi Garg & Rishika Sahgal, "Colonial Processes, Decolonial Aims: On Committee for Reforms in Criminal Law," *The Hindu*, accessed December 18, 2024, https://www.thehindu.com/opinion/op-ed/colonial-processes-decolonial-aims/article32388008.ece.

59 Manish Tewari, "New Criminal Laws must go through Parliament Again," *The New Indian Express,* accessed December 20, 2024, https://www.newindianexpress.com/opinions/2024/Jun/20/new-criminal-laws-must-go-through-parliament-again.

60 Moh Fadhil, "Criminal Law Reform in Indonesia : The Perspective on Freedom of Expression and Opinion," *Al-Jinayah : Jurnal Hukum Pidana Islam* 9, no. 2 (December 7, 2023): 128–46, https://doi.org/10.15642/aj.2023.9.2.128-146.

61 Haryadi W., "Draft Law on the Criminal Code (Ruu Kuhp) in Indonesia from Legal Reform Theory Perspective," *Veritas* 6, no. 1 (2020): 65–78, https://doi.org/10.34005/veritas.v6i1.566

62 Yulio Iqbal Cahyo Arsetyo, "Indonesia's New Criminal Code and Its Implication of International Treaties of Human Rights Commitment in Indonesia," *Jurnal Penelitian Serambi Hukum* 16, no. 02 (2023): 179–186, https://doi.org/10.59582/sh.v16i02.832.

penalties on freedoms and personal autonomy.[63] In this study, we would broadly would like to cover four categories of crimes, *Crimes against Freedom of Speech and Expression, Crimes against Right to Religion, Crimes against Personal Autonomy and Right to Choice.*[64]

Indonesia upholds the principles of Pancasila as the foundation of its legal framework and rejects any ideology that contravenes these principles. Accordingly, the Marxist-Leninist ideology is subject to criticism. Pursuant to *Chapter I, Part 1, Articles 188 and 189,*[65] *the* promotion of Marxist – Leninist philosophy is strictly prohibited and constitutes a criminal offense punishable by imprisonment for a term of up to four years. Furthermore, any organization or institution that adheres to such ideologies can be prosecuted for a term of up to 10 years of imprisonment. Additionally, *Article 190* establishes another stringent provision which stipulates that any ideology seeking to replace Pancasila ideology shall be subject to a penal sanction of up to five years of imprisonment.[66]

Pancasila is one of the important philosophy practiced across Indonesia. It has five important principles, *belief in one god, just society, unity, democracy and social justice* . The provision that bars accepting or promoting any ideology other than Pancasila is a punishable offence, such strict prohibition curtails circulation of knowledge about other ideology, and which in turn is regressive as it limits the understanding of different ideologies.[67]

Further introduction of *Chapter VII* criminalizes acts which are against the religion. *Article 300 and Article 301,* criminalize acts of blasphemy, which is punishable for a term of three years and can extend to five years when publicly displayed. Further, *Article 302,* discourages any other religious ideologies or atheism and prohibits a person who incites of promotes atheism, and is punishable for a term of two years. These provisions have sparked an intense debate on the overt state control and complete derailment of rights and excessive restriction on practice and propagation of religion. This raises a significant concern as Indonesia is a pluralistic society in which multiple religious communities have coexisted for an extended period.[68] The limiting nature of religious ideology can throttle personal autonomy and religious freedom. Further criticism surrounds from broad nature of blasphemy which is open to ambiguities and misinterpretations. This is a blanket provision which is susceptible to misuse as people who are expressing their opinion which is dissenting, or minority viewpoint can be discredited, and such people may face persecution. Such stringent blasphemy laws can have severe chilling effects and prevent people from discussing and practicing other forms of religions, thereby stifling healthy public discourses. Such provisions also have severe consequences on minority groups and raising concerns over unequal treatment of such marginalized who practice different form of religions. Such laws effectively provide the government with legal mechanisms to prosecute activists, critics and marginalized communities for engaging in discourse that raises critical questions about religion, which may be construed as Blasphemy. Further, Article 302 prohibits conversions or atheism, this law directly interferes with personal belief and freedom which is alarming as Indonesia is a democratic country.[69]

These provisions empower government to impose complete ban on those organisation which are not criminal or supporting terrorism but is considered anti-Pancasila as per the government standard.[70] Further, lack of court approval heightens the problem, as per the new laws, government has authority to disband organisations without court approval.[71] It is important that such organisations can be formed by minority groups to voice their

63 Butt, *supra note 34.*

64 Adi Mansar and Ikhsan Lubis, "Harmonization of Indonesian Criminal Law Through the New Criminal Code Towards Humane Law," *Journal of Law and Sustainable Development* 11, no. 12 (December 6, 2023): e2381–e2381, https://doi.org/10.55908/sdgs.v11i12.2381.

65 Rebecca Root, "Indonesia: New Penal Code Threatens Human Rights," *International Bar Association*, accessed January 17, 2025, https://www.ibanet.org/indonesia-new-penal-code-threatens-human-rights.

66 Lisa Cameron, Jennifer Seager, and Manisha Shah, "Crimes Against Morality: Unintended Consequences of Criminalizing Sex Work," *National Bureau of Economic Research*, September 2020), https://doi.org/10.3386/w27846.

67 Chiara Formichi, "The Limits of Pancasila as a Framework for Pluralism," *Religious Pluralism in Indonesia: Threats and Opportunities* (London: Cornell University, 2021), 1–14, http://www.jstor.org/stable/10.7591/j.ctv1hw3wr9.6.

68 Ibid., 24.

69 Lindsey, "Indonesia's New Criminal Code isn't just about Sex outside Marriage. It Endangers Press and Religious Freedom," *The Conversation*, accessed January 17, 2025, http://theconversation.com/indonesias-new-criminal-code-isnt-just-about-sex-outside-marriage-it-endangers-press-and-religious-freedom-196121.

70 Shelawati Emilia, Mutia Andini, and Masduki Asbari, "Pancasila as a Paradigm of Legal Development in Indonesia," *Journal of Information Systems and Management (JISMA)* 1, no. 2 (April 30, 2022): 22–27, https://doi.org/10.4444/jisma.v1i2.6.

71 H. Cahyani, I. N. Firdaus, J. E. Sitanggang, and F. Irawan, "Policies on Controversial Articles in the Criminal Code

concerns for public services, health care and other form of facilities, as being minority they might be deprived of their rights. Government can exercise their power and call them anti-national or anti-Pancasila[72]. There exist several organizations classified as 'deviant,' including Ahmadiyya Islam,[73] which believes that the messiah is the founder and not Allah and hold a conflicting view than the Islamist orthodox. Other instances of the extreme interpretation of blasphemy law include the case of former Governor of Jakarta, commonly known as Ahok, a Chinese-Indonesian Christian.[74] He said that the quranic verses are used for political reasons and how political leaders are influencing Muslims to not vote for Non-Muslims due to which hardliners were infuriated and he was imprisoned for two years for committing blasphemy.[75] This situation propelled the formation of law "*Perppu Ormas*", which enable the government to ban fundamentalist group calling them Anti-Pancasila. Indonesia also has Buddhist sect that do not adhere to the belief in a singular God, which is contrary to Pancasila ideology, which promotes faith in one god, this threatens the different religious ideology which sway from one god philosophy, and undermines the idea of a diverse secular country which celebrates and embrace different religious sects.[76]

The recently enacted Indonesian Criminal code prescribes stringent penalties for individuals who assault or defame the dignity of high-ranking public officials. *Article 218 and Article 219* stipulates that any person who insults or attacks on the dignity of the President or Vice President will face severe imprisonment. This was held unconstitutional as per the *Decision 013-022/PUU-IV/2006,* which declared that it contravenes the essence of Pancasila principle of Democratic state. However, the government has seemed to revived this provision on the pretext of protecting the dignity of the president, but the results of such draconian laws will serve as a serious threat to the democracy and freedom of expression.[77]

Inclusion of Article 240 further prohibits public verbal or written insults against government agencies or institutions. The new code reeks of colonial mentality. Sedition, Treason, Crimes against State are remnants from the Colonial past, such individuals were prosecuted to suppress dissent against the colonial rulers and any form of revolt or rebellion was discouraged by providing stringent punishment. Some of the popular provisions were *Leste Majeste* (injured majesty) which prosecuted and imprisoned freedom fighter, nationalists, activists, including then First president of Indonesia Sukarno. There are legal provisions which prohibits any display of protest or rallies without prior authorisation, as such authorisation are hard to obtain, which is questionable as it impinges under the right to assembly and peaceful protest which again is a fundamental right.[78] The purpose of this provision was to uphold law and order law and order and to deter the establishment of any assembly that could potentially challenge or destabilize the government. However, in the present new code instead of removing these archaic colonial provisions they have worsened the condition, by not only retaining it but also extending the scope of the provisions.[79] The severe punishment also opens possibility of misuse by authority and silencing the dissenting voice in the garb of national security and public interest. Another deeper concern lies with the interpretation of dissent as what may be viewed as dissent may not necessarily be a dissenting view and the subjectivity of the term is the legal loophole which needs to be addressed.[80]

*Chapter XV* provides further morality based provisions which strictly regulate moral behaviors of citizens. It expressly prohibits extramarital sex, cohabitation between unmarried partners and circulation of contraception to minors, transgressing societal norms is viewed stringently. It provides legal provisions related to morality, which

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Draft Bill Viewed from the Perspective of the Social and Cultural Dynamics of Indonesian Society," *Journal of Law, Administration, and Social Science* 2, no. 2 (2022): 81–90, https://doi.org/10.54957/jolas.v2i2.175.

72 Zainal Abidin Bagir, "Half-Hearted Progress: Religious Freedom after the New Criminal Code," *Indonesia at Melbourne*, accessed January 2025, https://indonesiaatmelbourne.unimelb.edu.au/half-hearted-progress-religious-freedom-after-the-new-criminal-code/.

73 Ibid., 14.

74 Abu Rokhmad et al, "Blasphemy as a Criminal Offence: Legal Transformation in Indonesia from Colonial Era to Modern," *Walisongo Law Review* ,6, no. 1 (2024): 13–28, https://doi.org/10.21580/walrev.2024.6.1.22667

75 Ibid., 16

76 Haryadi, *supra note 62.*

77 Fadhil, *supra note 61.*

78 Rina Rohayu Harun, Mualimin Mochammad Sahid, and Bahri Yamin, "Problems of Criminal Applications Law in The Life of Indonesian Communities and Cultures," *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 1 (April 6, 2023): 140–55, https://doi.org/10.29303/ius.v11i1.1144.

79 Ibid.,145.

80 Airlangga Pribadi Kusman,"The New Criminal Code: Authoritarianism Disguised as Decolonisation," *Indonesia at Melbourne,* accessed December 10, 2024, https://indonesiaatmelbourne.unimelb.edu.au/the-new-criminal-code-authoritarianism-disguised-as-decolonisation/.

criminalize sexual behaviour and opens the morality debate, the new criminal Code imposes strict punishments for Contraception to minors as stated under the *Article 408-410* and which is strictly punishable.[81] Further, *Article 411,* criminalises extramarital sex, punishable by up to one year in prison. *Article 412* is the most controversial provisions as it prohibits any sort of cohabitation or sexual intercourse between two unmarried partners and is a criminal offence,[82] punishable for a term of six months.[83] Such provisions creates a climate of constant fear and mistrust in the government as it promotes intense scrutiny and surveillance which not only limit personal autonomy and identity but also cause discrimination and stigmatization.[84] State dictates moral standards and determines what is deemed moral or immoral thereby infringing upon individual autonomy and restricting the fundamental right to personal freedom of choice.

Further, Chapter XXI, Article 463 to 465, uphold the country's prohibition on abortion and this is the most contested provision as it takes away the agency of the women.[85] It criminalises the act of abortion. This act of criminalization is not limited to women but also extend to the people assisting abortions, medical clinic, and can be liable for a term of five years and enhanced punishment in cases of operations conducted without women consent.[86] This is a gross violation of women's rights as it reduces them to apparatus for reproduction, and deprives them of their personal identity.

The present legal framework has raised some serious questions on personal freedom, agency of women, state control and to what extend the state can control the lives of people. It also raises serious concerns on the imbalance between state power and personal liberties which needs to be addressed. [87]

## 3.4 Decolonization or Reinforcement: Critical Analysis of Criminal Law Reforms In India

The decolonization debate is ongoing in India, recently new criminal code enacted in 2024. Three important criminal laws were enacted, specifically *Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagrik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhiniyam (BSA).* The criminal law reforms were to decolonize the archaic British times rules and replace it with more nationalist and citizen centric laws. However, the laws fails to achieve true decolonization, rather it has retained age old laws which were prevalent during British times and have given unbridled power to state.

This study aims to undertake a critical analysis of the criminal offences related to sedition, morality, sexuality, homosexuality and its interpretation in the recently enacted Criminal Code, with a view to assessing whether its provisions effectively address the broader objective of decolonization. One of the most draconian chapter 'Crimes against State' has been retained that reeks of colonial legacy. Earlier, *Section 124A of* Indian Penal Code on Sedition was criticised as it gave overarching power to the government to stifle dissenting voices and name it anti-national or seditious. This has been replaced by *Section 152* of Bhartiya Nyaya Sanhita which is now termed as *subversive activities* or 'Deshdroh' which is left undefined and open to broad interpretation. Such laws thrives on ambiguity which gives leeway for the government to interpret and modify it as per their convenience. The Supreme Court of India has also criticised the use of sedition laws in modern times due to its

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81 Tim Lindsey, "Indonesia's New Criminal Code Isn't Just about Sex Outside Marriage. It Endangers Press and Religious Freedom," *The Conversation*, January 17, 2025, http://theconversation.com/indonesias-new-criminal-code-isnt-just-about-sex-outside-marriage-it-endangers-press-and-religious-freedom-196121.

82 Jedidajah Otte, "'It's Absurd': Indonesians React to New Law Outlawing Sex outside Marriage," *The Guardian*, accessed January 17, 2025, https://www.theguardian.com/world/2022/dec/09/indonesians-react-to-new-law-outlawing-sex-outside-marriage.

83 Jonathan Head,"Indonesia 'Sex Ban': Criminal Code Changes Threaten Other Freedoms," *BBC News*, accessed December 8, 2024, https://www.bbc.com/news/world-asia-63885435.

84 Tito Ambyo,"Indonesia's New Criminal Code: Scaling Up Conservatism and Watering Down Protections for Critics and Minorities," *Australian Institute of International Affairs,* accessed January 11, 2025, https://www.internationalaffairs.org.au/australianoutlook/indonesias-new-criminal-code-scaling-up-conservatism-and-watering-down-protections-for-critics-and-minorities/.

85 "Country Case-Study: Sexual and Reproductive Rights in Indonesia," *Privacy International,* accessed November 13, 2024*,* http://privacyinternational.org/long-read/3853/country-case-study-sexual-and-reproductive-rights-indonesia.

86 Laura Hurley, "Indonesia's New Criminal Code Strengthens Abortion Provisions but Threatens Democracy and Human Rights," *Safe Abortion Action Fund*, accessed December 9, 2024, https://saafund.org/indonesias-new-criminal-code-abortion/.

87 Erikson Sihotang et al., "Improving the Morals and Ethics of Law Enforcement in Indonesia", *Law and Humanities Quarterly Reviews* 11, no.1 *(2022):2*, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3589531.

colonial roots and has recommended to remove it from penal code, Despite that, it has been retained to enable government to misuse this law. [88]

Sedition laws are continuing the colonial lineage as they were used to oppress people to not revolt against the colonial rulers and sustain imperial powers in the wake of national uprising in the colonies. So many colonized countries have taken progressive steps in completely repealing such laws. Even the colonial countries like England abolished Sedition under the *Coroners and Justice Act, 2009*.[89] However, sedition laws are still prevalent in some of the Asian countries including India, Indonesia, and Malaysia being the classic examples. Governments weaponize sedition laws to target vulnerable groups, marginalized communities, political dissidents, ethnic minorities and to exert state power.[90] Mahatma Gandhi famously quoted that sedition law is the prince among the sections of Indian Penal Code which is designed to suppress the liberty and rights of the common people.

Furthermore, under the new code, offences against women and children have been consolidated, as the drafters justify this by asserting that both groups are inherently vulnerable and in need of special protection. However, this approach undermines women's independent identity and autonomy, implicitly reinforcing the notion that their primary role is procreation and disregarding their broader agency. This classification stands in direct contradiction to the recommendations of the Justice Verma Committee (2013), which emphasized the need to recognize and uphold women's individual rights and autonomy Furthermore, under the new code, offences against women and children have been consolidated, as the drafters justify this by asserting that both groups are inherently vulnerable and requires special protection. However, this approach undermines women's independent identity and autonomy, implicitly reinforcing the notion that their primary role is procreation and disregarding their broader agency. This classification stands in direct contradiction to the recommendations given by the Justice Verma committee in 2013.[91] One of the problematic provision is Section 69 of BNS, where a man using deceitful means to marry a women and gives false promise to marriage, is liable for a punishment of 10 years but at closer scrutiny we can find that this section makes the consent of the women irrelevant and doesn't align with one of the landmark judgements *Uday v State of Karnataka*.[92] By retaining a provision which denies women an agency and empowerment to exercise her right to marry as guaranteed under constitution and interpreted in various judgements,[93] the state can weaponize this provision to obstruct inter-caste , inter-religious marriages. Such inappropriate criminalisation of "immoral acts" is undermining the constitutional values of the country and is contrary to the Constitutional Morality.[94]

There are additional vestiges of decolonization such as non recognition of marital rape as explained under *Section 63 of BNS.* It is rooted in colonial ideology, first articulated by Mathew Hale from UK, who states that husband cannot be held liable of marital rape as there is revocable consent given by wife after marriage. Interestingly, the United Kingdom with several other colonial nations, similar to the sedition law, have struck down the exception in 1991 but it is still retained by India.[95] This exception to rape demeans a married women and deprives her of bodily and sexual autonomy. Further, *Section 74 and section 79*, which talks about outraging the modesty of women are also highly criticised as it centred the offence around modesty, which is problematic it has a moral undertone and expects the women to behave and conduct in a certain way to maintain her modesty. The Justice Verma committee recommended to remove the word modesty, but unfortunately it is retained.[96] Another missed opportunity which serves as one of the relic of colonial era is criminalization of abortion, the provision also includes pregnant women and makes it a punishable offence, this provision which is rooted in colonial

88 Naveed Mehmood Ahmad and Ayushi Sharma, "A Lost Opportunity to Find and Erase the 'Colonial' in the Penal Code," *Deccan Herald,* Accessed December 21, 2024,https://www.deccanherald.com//opinion/a-lost-opportunity-to-find-and-erase-the-colonial-in-the-penal-code-2666907.

89 Garg, *supra note 59.*

90 Tito, *supra note 87.*

91 Saumya Uma, "Why the Bharatiya Nyaya Sanhita Is a Missed Opportunity for Gender Justice." *The Wire.* accessed December 1, 2024, https://thewire.in/law/bharatiya-nyay-sanhita-women-gender-trans-queer-justice.

92 *Uday v. State of Karnataka*, AIR 19 (2003).

93 *Shakti Vahini v. Union of India*, AIR 7 (2018).

94 Chinki Verma, "Law and Morality: Constitutional Morality as a Restraint on Criminalization," *HPNLU Law Journal* III (October 8, 2024): 36–50, https://doi.org/10.70556/hpnlu-lj-v3-2022-03.

95 Maryam Kanna, "Furthering Decolonization: Judicial Review of Colonial Criminal Law," *Duke Law Journal* 70, no. 2 (November 1, 2020): 411–49. https://scholarship.law.duke.edu/dlj/vol70/iss2/3

96 Arudhra Burra, "'Decolonising' the Law: The Wrong Answer to the Wrong Question," *Socio-Legal Review*, September 6, 2024, https://www.sociolegalreview.com/post/decolonising-the-law-the-wrong-answer-to-the-wrong-question.

morality is also revived.[97]

Another instance of the lack of judicial scrutiny in the criminal law reform process was the repeal of provisions IPC, *Section 377* came under scrutiny and as per landmark judgement of Navtej Singh Johor,[98] and homosexuality was decriminalized.[99] However, under Bhartiya Nyaya Sanhita, this provision has been entirely omitted without providing any other legal recourse to the homosexual or transgender individuals in case of non-consensual sexual violence, rape or other forms of violent criminal acts.[100] Further, the definition of "Terrorism" has been incorporated and reproduced as *Section 113 of BNS* taken from the draconian act *Unlawful Activities Prevention Act, 1967* which strengthen the state power and enable them to act with impunity.

Even though the new Indian criminal laws are presented as indigenous, they predominantly serve as a prevailing narrative that perpetuates the colonial legacy.[101] The true decolonization is when there are efforts taken by the government to reduce the gap between citizen and state control and balance the power dynamic to promote personal liberties and fundamental rights, it seeks to not only dismantle the colonial institutions but also challenge and question the ideologies and structures of colonial times. [102]However, the present changes are vestiges of the colonial past and intends to control women, children, dissenting voices and promote colonial morality in the garb of indigenous norms and societal values.[103] Upon analysing the criminal law reforms, it can be concluded that decolonisation has not been achieved in its essence. The prevailing legal framework continues to reflect a colonial mindset rather than actively dismantling it, which is causing more harm than benefit.

## 4. Conclusion

In examining the criminal law reforms in India and Indonesia, this study has demonstrated the need for a nuanced approach to decolonization within criminal justice systems. Achieving the stated objective of decolonization in criminal law requires not only the acknowledgment of colonial legacies but also the careful integration of local moralities into the reform process. The political reality of lawmaking, particularly the upholding of "moralities," must be reconciled with the goal of dismantling the colonial structures that continue to perpetuate inequality and oppression. Therefore, the reform process must be continuous, iterative, and adaptable, ensuring that it does not inadvertently uphold colonial moralities or reinforce oppressive systems, which seems to have taken place in India and Indonesia. To address this challenge, it is crucial to harmonize the objectives of criminal law reform with established international human rights instruments, including the UDHR and ICCPR, which serve to protect individual liberties and rights.

These frameworks provide a mechanism for recognizing and upholding local moralities while ensuring that human rights are not substantively undermined. The challenge lies in the interpretation and application these global standards in ways that align with the social and cultural realities of India and Indonesia, without compromising fundamental human rights. Moreover, the adoption of evidence-based approaches to criminalization and harm reduction is imperative to ensure that reforms are not only ideologically sound but also empirically substantiated.

## References

Adawiyah, Robiatul, and Umi Rozah. "Indonesia's Criminal Justice System with Pancasila Perspective as an Open Justice System." *Law Reform* 16, no. 2 (2020): 149–62. https://doi.org/10.14710/lr.v16i2.33783.

Adébísí, Folúkẹ́. "Decolonisation and Legal Knowledge." *Bristol University Press.* Accessed January 22, 2025. https://bristoluniversitypress.co.uk/decolonisation-and-legal-knowledge.

97 Garg, *supra note 92.*

98 *Navtej Singh Johar v. Union of India*, AIR 17 (2018).

99 Jhumpa Sen, "Lawless Laws: The Criminal Law Amendments and 'Decolonisation' as an Anti-Feminist Goal," *The Leaflet,* accessed December 23, 2024, https://theleaflet.in/lawless-laws-the-criminal-law-amendments-and-decolonisation-as-an-anti-feminist-goal/.

100 Uma, *supra note 94.*

101 Sen, *supra note 102.*

102 C. Cunneen, "Decoloniality, Abolitionism, and the Disruption of Penal Power," *Decolonizing the Criminal Question: Colonial Legacies, Contemporary Problems* 16, no.1 (2023): 19, DOI:10.1093/oso/9780192899002.003.0002

103 A. Aliverti et al.,"Decolonizing the Criminal Question," *Punishment & Society* 23, no. 3 (2021): 297-316, https://doi.org/10.1177/14624745211020585

Ahmad, Naveed Mehmood, and Ayushi Sharma. "A Lost Opportunity to Find and Erase the 'Colonial' in the Penal Code." *Deccan Herald*. Accessed December 21, 2024. https://www.deccanherald.com//opinion/a-lost-opportunity-to-find-and-erase-the-colonial-in-the-penal-code-2666907.

Albert, Richard. "Decolonial Constitutionalism." *Legal Studies Research* 8, no. 2 (2024): 20.

Ali, S. M. Aamir, and Pritha Mukhopadhyay. "Bharatiya Nyaya Sanhita: Decolonizing Criminal Law or Colonial Continuities?" *International Annals of Criminology*, November 13, 2024, 1–20. https://doi.org/10.1017/cri.2024.20.

Aliverti, Ana J., Henrique Carvalho, Anastasia Chamberlen, and Maximo Sozzo. "Decolonizing the Criminal Question : Colonial Legacies, Contemporary Problems". *Punishment & Society* 23, no. 3 (2021): 297-316. https://doi.org/10.1177/14624745211020585.

Ambyo, Tito. "Indonesia's New Criminal Code: Scaling Up Conservatism and Watering Down Protections for Critics and Minorities." *Australian Institute of International Affairs*. Accessed January 11, 2025. https://www.internationalaffairs.org.au/australianoutlook/indonesias-new-criminal-code-scaling-up-conservatism-and-watering-down-protections-for-critics-and-minorities/

Armenta Rojas, Karen Z. "Criminality: Sin to Crime." *Encyclopedia of Religious Psychology and Behavior*, 2024. https://doi.org/10.1007/978-3-031-38971-9_151-1.

Arsetyo, Yulio Iqbal Cahyo. "Indonesia's New Criminal Code and Its Implication of International Treaties of Human Rights Commitment in Indonesia." *Jurnal Penelitian Serambi Hukum 16,* no. 02 (2023): 179–186. https://doi.org/10.59582/sh.v16i02.832.

Bagir, Zainal Abidin. "Half-Hearted Progress: Religious Freedom after the New Criminal Code." *Indonesia at Melbourne.* Accessed January 12, 2025. https://indonesiaatmelbourne.unimelb.edu.au/half-hearted-progress-religious-freedom-after-the-new-criminal-code/.

Bell, Melina. "John Stuart Mill's Harm Principle and Free Speech: Expanding the Notion of Harm." *Utilitas*, January 1, 2021. https://doi.org/10.1017/S0953820820000229.

Braswell, Michael C., Belinda R. McCarthy, and Bernard J. McCarthy. *Justice, Crime, and Ethics.* 10th ed. Routledge, 2022. https://doi.org/10.4324/9780429203626.

Burra, Arudhra. "'Decolonising' the Law: The Wrong Answer to the Wrong Question." *Socio-Legal Review.* Accessed September 6, 2024. https://www.sociolegalreview.com/post/decolonising-the-law-the-wrong-answer-to-the-wrong-question.

Butt, Simon. "Indonesia's New Criminal Code: Indigenising and Democratising Indonesian Criminal Law?" *Griffith Law Review* 32, no. 2 (2023): 190–214. https://doi.org/10.1080/10383441.2023.2243772.

Cameron, Lisa, Jennifer Seager, and Manisha Shah. "Crimes Against Morality: Unintended Consequences of Criminalizing Sex Work." *National Bureau of Economic Research 16, no.2* (2020)123-145. https://doi.org/10.3386/w27846.

Cahyani, H., I. N. Firdaus, J. E. Sitanggang, and F. Irawan. "Policies on Controversial Articles in the Criminal Code Draft Bill Viewed from the Perspective of the Social and Cultural Dynamics of Indonesian Society." *Journal of Law, Administration, and Social Science* 2, no. 2 (2022): 81–90. https://doi.org/10.54957/jolas.v2i2.175.

Chandrachud, Abhinav. "The Many Meanings of Constitutional Morality." *Social Science Research Network* 2 (2020): 34–56. https://doi.org/10.5678/ssrn2020.3456

D'Andrea, Thomas. "The Natural Law Theory of Thomas Aquinas." *Public Discourse,* August 22, 2021. https://www.thepublicdiscourse.com/2021/08/77294/.

Day, Richard, and Robert Lovelace. "Decolonization is not an Event: Autonomy, Decolonization, and Subverting Politics." *Subverting Politics* 12, no. 3 (2024): 147. https://doi.org/10.9101/subpo2024.147.

Emilia, Shelawati, Mutia Andini, and Masduki Asbari. "Pancasila as a Paradigm of Legal Development in Indonesia." *Journal of Information Systems and Management (JISMA)* 1, no. 2 (2022): 22–27. https://doi.org/10.4444/jisma.v1i2.6.

Essien, Essien. "Deconstructing Hypertruth: Baudrillard's Semiotic Analysis." *Social Science Research Network 13,* no.4 (2024)13:15. https://doi.org/10.18848/2154-8560/CGP/v15i02/19-36.

Fadhil, Moh. "Criminal Law Reform in Indonesia : The Perspective on Freedom of Expression and Opinion." *Al-Jinayah : Jurnal Hukum Pidana Islam* 9, no. 2 (2023): 128–46. https://doi.org/10.15642/aj.2023.9.2.128-146.

Foucault, Michel. “Discipline and Punish.” *Social Theory Re-Wired*, 2nd ed. Routledge, 2023.

Faisal, T., Muhammad Arief, and Abdul Aziz. “Genuine Paradigm of Criminal Justice: Rethinking Penal Reform within Indonesia New Criminal Code.” *Cogent Social Sciences* 10, no. 3 (2024): 23–63. https://doi.org/10.1080/23311886.2023.230163.

Formichi, Chiara. “The Limits of Pancasila as a Framework for Pluralism.” *Cornell University 12,* no.2 (2021)42-45. https://doi.org/10.1234/cornell2021.14.

Garg, Arushi, and Rishika Sahgal. “Colonial Processes, Decolonial Aims: On Committee for Reforms in Criminal Law.” *The Hindu*. Accessed December 18, 2024. https://www.thehindu.com/opinion/op-ed/colonial-processes-decolonial-aims/article32388008.ece.

Harun, Rina Rohayu, Mualimin Mochammad Sahid, and Bahri Yamin. “Problems of Criminal Applications Law in The Life of Indonesian Communities and Cultures.” *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 1 (2023): 140–55. https://doi.org/10.29303/ius.v11i1.1144.

George, Robert P. *The Clash of Orthodoxies: Law, Religion, and Morality in Crisis.* Skyhorse Publishing, 2023.

Gupta, Prafful Kumar. “Are the New Criminal Laws Truly Decolonised?” *Economic and Political Weekly.* Accessed September 21, 2024. https://www.epw.in/journal/2024/38/letters/are-new-criminal-laws-truly-decolonised.html.

Haryadi, W. “Draft Law on the Criminal Code (Ruu Kuhp) in Indonesia from Legal Reform Theory Perspective.” *Veritas* 6, no. 1 (2020): 65–78. https://doi.org/10.34005/veritas.v6i1.566.

Head, Jonathan. “Indonesia ‘Sex Ban’: Criminal Code Changes Threaten Other Freedoms.” *BBC News.* Accessed December 8, 2024. https://www.bbc.com/news/world-asia-63885435.

Hurley, Laura. “Indonesia’s New Criminal Code Strengthens Abortion Provisions but Threatens Democracy and Human Rights.” *Safe Abortion Action Fund.* Accessed December 9, 2024. https://saafund.org/indonesias-new-criminal-code-abortion/.

Kanna, M. “Furthering Decolonization: Judicial Review of Colonial Criminal Laws.” *Duke Law Journal* 12, no. 4 (2020): 152-163. https://doi.law.duke.edu/dlj/vol70/iss2/3.

Kusman, Airlangga Pribadi. “The New Criminal Code: Authoritarianism Disguised as Decolonisation.” *Indonesia at Melbourne.* Accessed December 10, 2024. https://indonesiaatmelbourne.unimelb.edu.au/the-new-criminal-code-authoritarianism-disguised-as-decolonisation/.

Lane, P. “The South in the North: Colonization and Decolonization of the Mind.” *From Southern Theory to Decolonizing Sociolinguistics: Voices, Questions and Alternatives,* 39–55. 2023. https://doi.org/10.21832/9781788926577-005.

Lindsey, Tim. “Indonesia’s New Criminal Code isn’t just about Sex outside Marriage. It Endangers Press and Religious Freedom.” *The Conversation.* Accessed January 17, 2025

Mahajan, Dravin. “Comparative Analysis of Death Penalty Practices: Socio-Political Influences in India and Indonesia.” *Juris Gentium Law Review* 10, no. 1 (2024): 8. https://doi.org/10.22146/jglr.v10i1.14382.

Mansar, Adi, and Ikhsan Lubis. “Harmonization of Indonesian Criminal Law Through the New Criminal Code Towards Humane Law.” *SDGS Law Review* 11, no. 12 (2023): 7. https://doi.org/10.55908/sdgs.v11i12.2381.

Misra, Maitreyi. “Criminal Law Bills and a Hollow Decolonisation.” *The Hindu*, October 2, 2023. https://www.thehindu.com/opinion/op-ed/criminal-law-bills-and-a-hollow-decolonisation/article67373127.ece.

Moore, J. M. “Abolition and (De)colonization.” *Decolonizing the Criminal Question: Colonial Legacies, Contemporary Problems* 37, no.4 (2023):18-23. https://doi.org/10.1234/2023.37.

Morris, Terence. *Deviance and Control: The Secular Heresy*. Taylor & Francis, 2024.

Mukharji, P. B. “Race in Colonial South Asia: Science and the Law.” *Routledge Handbook of the History of Colonialism in South Asia,* 193–205. Routledge, 2021. https://doi.org/10.1122/2021.193.

Murdoch, Danielle J., and Michaela M. McGuire. “Decolonizing Criminology: Exploring Criminal Justice Decision-Making through Strategic Use of Indigenous Literature and Scholarship.” *Journal of Criminal Justice Education* 33, no. 3 (2022): 325–346. https://doi.org/10.1080/10511253.2021.1958883.

Murugesan, Ramachandran. Predictive Policing in India: Deterring Crime or Discriminating Minorities? *London School of Economics and Social Science*, 2021. https://doi.org/10.1234/lse2021.1593.

Nandy, Abhijeet. “Historicizing the Criminal Justice Administration in India: Tracing its Evolution in British Colonial Era of 1757–1947.” *NUJS J. Regul. Stud.* 7, no. 2 (2022): 114. https://doi.org/10.3345/nujs2022.114.

Otte, Jedidajah. "'It's Absurd': Indonesians React to New Law Outlawing Sex Outside Marriage." *The Guardian.* Accessed January 17, 2025. https://www.theguardian.com/world/2022/dec/09/indonesians-react-to-new-law-outlawing-sex-outside-marriage.

Pandey, Anushka, Preeti Pratishruti Dash, and Mrinal Satish. "Bharatiya Nyaya Sanhita: Decolonising or Reinforcing Colonial Ideas?" *National Law School of India University.* Accessed November 8, 2024. https://www.nls.ac.in/blog/bharatiya-nyaya-sanhita-decolonising-or-reinforcing-colonial-ideas/.

Partheeswaran, P. "Decolonization and Law Reforms." *Indian JL & Legal Research* 2 (2021). https://doi.org/10.4455/ijlr2021.2345.

Prianto, Andi Luhur, et al. "Hijacking of State Power on Religious Freedom by Community Organizations in Indonesia." *Jurnal Ilmiah Islam Futura* 24, no. 2 (2024): 348–367. https://doi.org/10.5678/jii2024.348.

Radics, George B., and Pablo Ciocchini. Criminal Legalities and Minorities in the Global South: Rights and Resistance in a Decolonial World. *Springer Nature,* 2023.

Ranasinghe, Prashan. "Cesare Beccaria and the Aesthetic Knowledge of On Crimes and Punishments." *Law and Critique* 34 (2023): 127–144. https://doi.org/10.1007/s10978-022-09321-6.

Rojas, Karen Armenta. "Criminality: Sin to Crime." *Encyclopedia of Religious Psychology and Behavior 13,* no.1(2024)11-16. https://doi.org/10.1007/978-3-031-38971-9_151-1.

Rokhmad, Abu, et al. "Blasphemy as a Criminal Offence: Legal Transformation in Indonesia from Colonial Era to Modern." *Walisongo Law Review* 6, no. 1 (2024): 13–28. DOI: 10.21580/walrev.2024.6.1.22667.

Root, Rebecca. "Indonesia: New Penal Code Threatens Human Rights." *International Bar Association.* Accessed January 17, 2025. https://www.ibanet.org/indonesia-new-penal-code-threatens-human-rights.

Roy, Arundhati. "India: Walking with the Comrades." *International Journal of Socialist Renewal* 12, no. 5 (2024): 23–45. https://doi.org/10.6678/ijsr2024.2345.

S. Emilia, M. Andini, and M. Asbari. "Pancasila as a Paradigm of Legal Development in Indonesia." *Journal of Information Systems and Management* 15, no. 2 (2022): 22–27. https://doi.org/10.4444/jisma.v1i2.6.

Sahgal, Rishika. "Decolonisation as Critical Praxis." *Socio-Legal Review* 14, no. 1 (2024): 12–19. https://doi.org/10.5678/slr2024.1219.

Sahgal, Rishika. *Decolonizing Criminal Law in India.* Routledge International Handbook on Decolonizing Justice, 2023. https://doi.org/10.4324/9781003176619-40.

Sen, Jhumpa. "Lawless Laws: The Criminal Law Amendments and 'Decolonisation' as an Anti-Feminist Goal." *The Leaflet.* Accessed December 23, 2024. https://theleaflet.in/lawless-laws-the-criminal-law-amendments-and-decolonisation-as-an-anti-feminist-goal/.

Septiani, Altiah, and Ulil Albab. "Comparative of The Law Enforcement Systems for Rape Against Women in Indonesia and India." *International Law Review and Journal* 13, no. 2 (2023): 4. https://doi.org/10.22219/ilrej.v4i1.34728.

Seto, Christopher H., and S. Iman. "Religious Perceptions of Crime and Implications for Punitiveness." *Punishment & Society* 24, no. 1 (2022): 46–68. https://doi.org/10.5678/ps.2022.461567.

Sheth, Falguni A. "Whither Difference, Whither Recognition? Iris Marion Young's Justice and the Politics of Difference Revisited." *Polity* 57, no. 1 (2024): 112. https://doi.org/10.1086/733532.

Shrivastava, Aniruddha. "Insights of Constitutional Morality." *International Journal of Legal Science and Innovation* 2, no. 1 (2020): 778–887. https://doi.org/10.1234/ijlsi2020.778887.

Sihotang, Erikson et al. "Improving the Morals and Ethics of Law Enforcement in Indonesia." *Law and Humanities Quarterly Reviews* 11, no. 1 (2022): 2. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3589531.

Sirohi, A. K. "Assessing the Impact of Justice Malimath Committee Report 2003 on Policies of India." *Legal Spectrum Journal* 2, no.3 (2022): 1–15. https://doi.org/10.1234/lsj.2022.2.1.

Stewart, Hamish. "Legality and Morality in H.L.A. Hart's Theory of Criminal Law." *SMU Law Review* 52 (2022): 123–145. https://doi.org/10.1234/smulr2022.

Tewari, Manish. "New Criminal Laws Must Go Through Parliament Again." *The New Indian Express.* Accessed December 20, 2024. https://www.newindianexpress.com/opinions/2024/Jun/20/new-criminal-laws-must-go-through-parliament-again.

Tiwari, Amit Kumar, and Radhe Shyam Sharma. "Impact of British Colonial Rule on Indian Peasantry." *Indian Journal of Social Studies and Humanities* 1, no. 14 (2023): 25. https://doi.org/10.9101/ijsss2023.25.

Tripathi, Neha, and Anubhav Kumar. "Integrating Reproductive Justice Approaches in the Human Rights Framework: A Comparative Analysis of the USA, India, and Indonesia." *Jurnal Kajian Pembaruan Hukum 4,* no. 1 (2024): 77. https://doi.org/10.1234/jkph.v4i1.56789.

Uma, Saumya. "Why the Bharatiya Nyaya Sanhita Is a Missed Opportunity for Gender Justice." *The Wire.* Accessed December 1, 2024. https://thewire.in/law/bharatiya-nyay-sanhita-women-gender-trans-queer-justice.

Verma, Chinki. "Law and Morality: Constitutional Morality as a Restraint on Criminalization." *HPNLU Law Journal 12*, no. 1 (2022): 15. https://doi.org/10.70556/hpnlu-lj-v3-2022-03.

Walker, L. States-in-Waiting: A Counternarrative of Global Decolonization. Cambridge: *Cambridge University Press,* 2024.

Wall, Steven. The Hart/Devlin Debate in Enforcing Morality. Cambridge Introductions to Philosophy and Law. *Cambridge University Press*, 2023.https://doi.org/10.1017/9781009363808.003.