

TWAIL AND THE QUESTION OF CASTE AND MISAPPROPRIATION OF DECOLONISATION: SOME PROVOCATIONS

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Third World Approaches to International Law ('TWAIL') is a powerful alternative episteme to counter the hegemonic impulses of Mainstream International Law Scholarship ('MILS') that presents the partial knowledge of the Eurocentric worldview as universal. TWAIL attempts to decentre Europe by mounting a serious challenge to MILS by unmasking the colonial, capitalist, and patriarchal biases of MILS. It also refuses the epistemic gaslighting of scholarship coming from the Western geography that claims to have a 'correct' methodology of doing international law and international relations. TWAIL fights an unequal but brave battle that requires epistemic valourisation. However, TWAIL is no longer a suppressed epistemic vision. It cannot be tabooed as naïve knowledge. Serious scholars of international law cannot ignore a TWAIL voice anymore. We are at a moment of history where TWAIL, too, needs to interrogate its own hegemonic impulses. It must interrogate what voices long to be heard within TWAIL itself. In our modest contribution, we attempt to highlight TWAIL's inability to address the caste question within its scholarship and its contemporary failure to mount any serious challenge to the misappropriation of the decolonisation narrative by the Hindu right-wing in order to exclude minorities from claims in the national narrative. We fear that these failures may render TWAIL merely a performative critique.

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I. INTRODUCTION

The Indian subcontinent has served as the battleground for not only a range of rulers but also for a multitude of ideologies. Since the 1600s, the land has borne witness to the regime of various empires, with the consequences and evolution of various variants of hegemony still being posthumously present, vide Eurocentric international law and hegemonic socio-economic structures. The ever-grasping hand of imperialism was reliant on Eurocentric jurisprudence, such as Vitoria’s construction of Secular Natural Law¹ in order to establish the seeming legitimacy of the colonist’s *praedatorius* regime over the ‘Third World’. Subsequently, W. E. Lawrence² and Hart’s seminal writings on positivism upheld the neo-imperialistic façade of international law and its continuous scouring of the ‘Third World’. Contemporaneously, in light of the prejudiced entomology and contentious phrasing surrounding the ‘Third World’, the terminology of ‘The Majority World’³ seems far more apt with Vijay Prasad stating that the ‘Third World was not a place. It was a project. ... people of Asia, Africa, Latin America longed for human dignity above all else but also necessities of life.... The ‘Third World’ comprised these hopes and institutions produced to carry them forward’.⁴

Third World Approaches to International Law (‘TWAIL’) thus became a scholarly avenue for the hopes and institutions of the Third World. However, there are blind spots within TWAIL which, in our opinion, hinder its transformative potential. This paper identifies two such blind spots, particularly

¹ Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (CUP 2005) 4.

² *ibid* 23.

³ Shahidul Alam, ‘Majority World: Challenging the West’s Rhetoric of Democracy’ (2008) 34 *Amerasia Journal* 88 <<https://doi.org/10.17953/amer.34.1.l3176027k4q614v5>> accessed 5 June 2025.

⁴ Vijay Prashad, ‘Introduction’ in *The Darker Nations: A People’s History of the Third World* (The New Press 2007).

in the Indian context: the question of caste and the hegemonic rise of Hindu nationalism.

This paper first explores the relevance and achievements of TWAIL, tracing its history through its various stages and explaining its role in countering epistemological misappropriation. The subsequent sections address the two central concerns related to caste and Hindu nationalism respectively. The paper concludes by reflecting on how addressing these blind spots would contribute to a more inclusive and transformative TWAIL jurisprudence.

II. TWAIL AND ITS RELEVANCE

As affirmed by Anghie, the enduring significance of issues such as racial discrimination, economic exploitation and cultural subordination can best be understood by re-examining the relationship between international law and colonialism.⁵ Following the decline of the British Raj and the independence of India in 1947, there has been a plethora of literature critiquing the Eurocentric framework of international law with the Third World Approaches to International Law ('TWAIL') proving indispensable in altering the thus-far discriminatory discourse concerning the laws which dictate the terms vide which nation-states behave on the global stage. A component central to this paper, is the role TWAIL plays in establishing and advocating for a subaltern approach to international law, with it being prudent to first explain the history of TWAIL briefly and the critical complexities it brings into question. The history of TWAIL is rooted in the Harvard conference of 1997⁶ attended by eminent scholars from the Global South such as B.S. Chimni, James Gathii, Anthony Anghie, and others.

The primary prerogative of TWAIL is to challenge the hegemony of the dominant narratives of international law, in large part by teasing out encounters of difference along many axes – race, class, gender, sex, ethnicity, economics, trade – and in inter-disciplinary ways – social, theoretical, epistemological, ontological et cetera.⁷ As a consequence, a key dynamic concerning TWAIL's endeavour was to re-examine the nature of power and the dissemination of

⁵ James Thuo Gathii, 'TWAIL: A Brief History of its Origins, its Decentralized Network, and a Tentative Bibliography' (2011) 3 Trade, Law and Development 26 <<https://docs.manupatra.in/newslines/articles/Upload/D8CD65E2-41B5-4CA7-B9F9-AEFAD4B9E444.pdf>> accessed 5 June 2025.

⁶ For more in reference to the Harvard Conference of 1996–97, see Gathii (n 5) 14.

⁷ *ibid* 4.

knowledge in order to combat the traditional positivist approach to international law which thus far only served to impose ideological hegemony rooted in the Global North's civilising attempts of the 'savage'.⁸ Herein, the theme of knowledge ie, epistemologies being either entirely destroyed or tragically transformed becomes especially pertinent. In light of the systematic violence perpetuated against the Global South, the dismissal of all systems of knowledge which failed to meet the standards of the so-called universal tenets of rationality⁹ and law as set by the Global North – without accounting for the differences of culture, context, and experience – became a dire reality. Since the institutionalisation of TWAIL, the movement's core principles have spread across nations, with various noteworthy TWAIL conferences since 1997 whilst the basis of TWAIL has since, been consolidated by a plethora of prominent scholarly works.¹⁰

Having gained a preliminary understanding of TWAIL's founding and purpose, we can proceed to highlight the various strains of TWAIL and examine their relevance in today's globalist mire. The writings of TWAIL's foundational scholars extensively include Anghie's critical approach to post-colonial jurisprudence and B. S. Chimni's works which integrated a Marxist¹¹ and a Global South-centric approach to international law in addition to feminist, post-modern, critical race theory, and literary approaches.¹² Though an array of disciplines,¹³ one must also bear in mind that TWAIL has a fluid architecture of

⁸ Upendra Baxi, 'What May the "Third World" Expect from International Law?' (2006) 27 Third World Quarterly 713 <<https://www.jstor.org/stable/4017773>> accessed 5 June 2025.

⁹ Made in reference to Santos's critique of the Eurocentric construction of rationality ie, for the globalist neo-liberalist powers who believe in self-proclaimed universal concepts of reason, rationality, human nature, and human mind, all that does not fit such a concept is deemed to be irrational, superstitious, primitive, mysticism, prelogical thinking, and emotivism – thereby deeply instituting anti-cognitivism. For more, see Boaventura de Sousa Santos, *The End of the Cognitive Empire: The Coming of Age of Epistemologies of the South* (Duke University Press 2018), 52–54 <<http://www.jstor.org/stable/j.ctv125jqvn>> accessed 5 June 2025.

¹⁰ See Gathii (n 5) 9.

¹¹ Referring to the Integrated Marxist Approach to International Law (IMAIL). For more concerning IMAIL, see BS Chimni, *International Law and World Order: A Critique of Contemporary Approaches* (CUP 1993) 30–35; Rosa Luxemburg, Kenneth J Tarbuck and Nicholas Grey, *The Accumulation of Capital: An Anti-Critique; Imperialism and the Accumulation of Capital* (Monthly Review Press 1972).

¹² See Gathii (n 5) 13.

¹³ BS Chimni, 'Crisis and International Law: A Third World Approaches to International Law Perspective' in Makane Moïse Mbengue and Jean d'Aspremont (eds), *Crisis Narratives in International Law* (Brill 2022) 46–47 <<http://www.jstor.org/stable/10.1163/j.ctv2gjwx54.9>> accessed 5 June 2025.

many different individuals who mix, reuse, and re-combine various TWAIL and non-TWAIL ideas and, in turn, no single individual, or set of individuals has direct control of TWAIL scholarly production.¹⁴ Additionally, one also witnesses a necessary evolution in TWAIL since its inception in 1997, with the initial focus on *contributionism*¹⁵ leading to modern TWAIL-ers investigating, selectively embracing, and combining the egalitarian values of the Third World and those of the Global North. Doing so serves to prevent TWAIL's discourse from relying on dominant narratives which may serve to reinforce the hierarchical aims of either side.¹⁶

At this junction, it is crucial to briefly take note of how the Harvard Conference of 1997 shaped a new uprising in this Global South-centric approach to international law given that the scholars who met in 1997 were the bearers of a torch which had already been lit. The ideological basis of TWAIL was initially formulated in light of the Declaration of a New International Economic Order ('NIEO Declaration')¹⁷ and parallel international declarations.¹⁸ Various scholars such as R.P. Anand, Mohammed Bedjaoui, TO. Elias, and Kéba Mbaye wrote extensively on a fairer global system and how it could be achieved through a reformation of international law in a post-colonial world¹⁹ given that the wounds made by imperialism were still raw. This knowledge was duly labelled as the First Generation of TWAIL ie, 'TWAIL I' whilst the successive efforts resulting from the conference at Harvard were duly labelled as 'TWAIL II'. Preceding the rise of TWAIL II scholars of the Global South suffered from a degree of disenfranchisement with the impact of imperialism whilst anti-colonial nationalism had collapsed into racist politics that led to ongoing ethnic conflicts in many parts of Asia and Africa with various post-colonial regimes proving to be corrupt and authoritarian.²⁰ Disappointed in the promises of NIEO and its

¹⁴ See Gathii (n 5) 13.

¹⁵ As explained by Gathii, contributionism – devised upon the model of international participation by diverse entities in establishing global norms – overstates the participation by diverse constituencies in the creation of global norms and understates the biases and blind spots that evidence the interests that prevail at crucial stages of implementation of international legal norms. For more, see Gathii (n 5) 15.

¹⁶ See Gathii (n 5) 16.

¹⁷ GA Res 3201 (S-VI) (1 May 1974).

¹⁸ For more details regarding these international declarations, see Antony Anghie, 'Rethinking International Law: A TWAIL Retrospective' 34(1) *European Journal of International Law* 18 <<https://doi.org/10.1093/ejil/chad005>> accessed 5 June 2025.

¹⁹ *ibid.*

²⁰ Anghie (n 18) 19.

adjacent understandings, TWAIL-ers of the second generation such as M. Sornarajah, B. S. Chimni, and C. Raghavan were prompted to build upon the work of their predecessors, in turn writing targeted commentaries regarding the dominance of neo-liberal globalism, relevance of Marxist ideals, colonising ploys of the WTO, and a reimagination of the subaltern's rights in the international forum.²¹ As aptly put by L. Eslava, the resultant TWAIL II movement and those which may succeed it are hence combating the post-modern vestiges of 'formal' empires and expanding multi-dimensional forms of 'informal imperialism' over societies and nature.²²

III. TWAIL'S ROLE IN COUNTERING EPISTEMOLOGICAL MISAPPROPRIATION

Having noted the origins and workings of TWAIL, we can now elucidate upon this paper's prerogative ie, to build upon the critical approach to epistemological misappropriation and subsequently evaluate instances wherein certain socio-political narratives concerning our social roots and civilisational origins have been intentionally manipulated. Such *mala fide* manipulation thereby serves the agenda of hegemonic bureaucracy with the integral right to memory²³ witnessing further degradation. Moreover, the basis of knowledge established by TWAIL shall allow this paper to target specific instances wherein those who claim to represent the vox populi of the Global South have failed to fulfil the original purpose of TWAIL ie, to quote Arturo Escobar,

Dissolving the strong structures of Euro-modernity at the level of theory by favouring flat alternatives; positing the fact that epistemic differences can be – and indeed are – grounds for the construction of alternative worlds; calling on scholars and activists to read for difference rather than just for domination; or imagining that aiming for worlds and knowledges otherwise is an eminently viable cultural-political project.²⁴

²¹ *ibid* 21–23.

²² Luis Eslava and Sundhya Pahuja, 'Beyond the (Post)Colonial: TWAIL and the Everyday Life of International Law' (2012) 45(2) *Verfassung und Recht in Übersee* 195 <<https://www.jstor.org/stable/43256852>> accessed 5 June 2025.

²³ Boaventura de Sousa Santos, *Epistemologies of the South: Justice Against Epistemicide* (1st edn, Routledge 2014) 84–85.

²⁴ Arturo Escobar, *Territories of Difference: Place, Movements, Life, Redes* (Duke University Press 2008) 310–311.

Attempting to decipher such antagonistic usurpation of epistemological discourse is interestingly enough highlighted by Foucault's 'Regime of Truth'²⁵ given that such misappropriation proves paramount when organising and regulating relations of power.²⁶ As stated by Foucault,

The intellectual can operate and struggle at the general level of that regime of truth which is so essential to the structure and functioning of our society ... there is a battle 'for truth', or at least 'around truth'.²⁷

Concurrently, this unending battle concerning the realisation of epistemological truth – pivotal for totalitarian globalisation²⁸ – is not a new phenomenon, with Santos's commentary on *Nuestra America*²⁹ serving as one such instance of epistemological misappropriation. *Nuestra America*, as conceptualised by Jose Marti in 1891, is composed of certain principles; it is the *mestiza*³⁰ America; in its mixed roots resides infinite complexity being a new form of universalism from the Global South that has made the world richer; it focused on endowing itself with genuine indigenous knowledge; its political thinking, rather than being merely nationalistic is in fact internationalistic and strengthened by an anti-imperialist stance.³¹ Over the centuries this counteractive ideology contributed to various revolutionary movements such as those in Mexico and Bolivia, however this novel notion also witnessed the actualisation of internal oligarchies, civil and military dictatorships, foreign interventions, the war on communism, massive violations of human rights, extrajudicial executions by paramilitary militias et cetera.³²

Resultantly, seeing how the implications of *Nuestra America* were purposefully misconstrued in order to fulfil the domineering agendas of various

²⁵ Stuart Hall, 'The West and the Rest: Discourse and Power' in Stuart Hall and others (eds), *Modernity: An Introduction to Modern Societies* (Blackwell 1996) 184–227.

²⁶ As an example, note how the primary Western powers themselves built our current framework of international law used to further globalist agendas with the domineering influence of the WTO's compulsory dispute resolution procedure is one such example of a specific maintain the ever-hungry flow of mercantile capitalism. For more, see Hall (n 25) 208–209.

²⁷ Martin A Hewett, 'Michel Foucault: Power/Knowledge and Epistemological Prescriptions' (2004) Honours Theses, Paper 534, University of Richmond <<http://scholarship.richmond.edu/honors-theses/534>> accessed 5 June 2025.

²⁸ See Santos (n 9) 49.

²⁹ *ibid* 49–69.

³⁰ Mestiza ie, a concept of a mixed race originating from the violent intersectional interactions amongst indigenous South Americans, Europeans, and Africans.

³¹ See Santos (n 9) 51–54.

³² *ibid* 64.

political entities in turn proves counterintuitive to the original agenda of *Nuestra America*. Santos makes clear that such epistemological misappropriation took place given that its leading purpose of achieving total transculturation was overtly idealistic with the concept failing to wholly consider the true extent of the influence exerted by hegemonic forces. Simultaneously, *Nuestra America* also seemed unable to fully ground its ideology due to the fact that it chose to not take cognisance of the intricacies involved with distinctive racial/social groups whilst the downtrodden reality of subaltern identities remained majorly unresolved.³³ In turn, in order for one to bring light to this regime of truth, Santos's formative evaluation of the *Angelus Novus*³⁴ in relation to one's roots and options³⁵ provides the provident mind with insight necessary for confronting epistemological misappropriation.

The painting of the *Angelus Novus* as evaluated by Walter Benjamin is described as an angel with an aghast look upon his face with his face turned towards the past³⁶ as it sees an amassing wreckage which he is intent on reviving and making whole once again. To his dismay, a sudden paradisaical storm propels him into a future to which his back is turned while the pile of debris he faces grows skyward before him – this storm is *progress*.³⁷ Subsequently, this depiction represents a truly perilous situation wherein the past's capacity for redemption lies in the possibility of emerging unexpectedly at a moment of danger as a source of nonconformity.³⁸ Herein, the angel's dilemma serves as a critical metaphor concerning the manipulation of one's historical narrative. Though the painting itself may have multiple interpretations, for our purposes one can see the wreckage itself as representing one's socio-cultural zeitgeist and its *wrecked* state being indicative of the epistemic misappropriation and socio-cultural degradation wrought by any mala fide dominating entities. The 'revival of the wreckage' serves to cleanse the narrative in question ie, correcting the epistemological misappropriation in order to give justice to the subjugated, thereby granting peace to the angel. If we were to frame the angel as a representation of humanity, then it becomes essential to ensure that a sincere

³³ *ibid* 64–69.

³⁴ *ibid* 73–76.

³⁵ *ibid* 76–98.

³⁶ Walter Benjamin, 'Critique of Violence' in Bruce B Lawrence and Aisha Karim (eds), *On Violence: A Reader* (Duke University Press 2007) <<https://doi.org/10.1515/9780822390169-037>> accessed 5 June 2025.

³⁷ *ibid* 257.

³⁸ Santos (n 9) 75.

and unconditioned narrative remains consistent in order to prevent the dissemination of dangerous occurrences and ideologies. It goes without saying that the categorisation of a phenomenon as 'dangerous' can be subjective, yet a Jungian construction of *interpretation*³⁹ compounds upon the importance of identifying the disparity between one's own of their interpretation of roots in reality and the truth ie, reality in facts subsists well beyond our own so-inclined interpretations.

Sociologist Boaventura de Sousa Santos uses the metaphor of 'roots' and 'options' to describe the elements necessary for a healthy and balanced society. On the outset, Santos places 'roots' and 'options' in diametric positions with roots being large-scale entities, profound, permanent, singular, and unique, thereby providing one with reassurance and consistency – whilst options are smaller in scale, covering all that is variable, ephemeral, replaceable, and indeterminate from the viewpoint of roots.⁴⁰ Santos sees roots as one's memory ie, their memory may become an exercise in melancholy, neutralising its redemptive potential by substituting evocation for the struggle against failing expectations⁴¹ instead of consciously reviving the past. An essential constituent of this struggle is maintaining an equilibrium between the recognition of the past and the distribution of an overwhelming number of options.⁴² Casting aside utopian ideals of a perfect equilibrium, our current existence makes clear that our marginalised roots are entrapped in an ironic game, always playing from roots to options and from options to roots with the only variable being the power of each term as a narrative of identity and change.⁴³

IV. EPISTEMOLOGICAL MISAPPROPRIATION VIDE GLOBALISATION AND THE CREATION OF THE 'OTHER'

One must recognise that the neo-liberal political perspective, ie, the globalisation of identity and issues, shares an antagonistic relationship with the realisation of a separate identity, given the homogeneity strived for by the globalist agenda. Herein, one must take note of the role nationalism plays not

³⁹ Homan's reading of Jung stated that *interpretation* discerns the unconscious infrastructure of culture thereby freeing the interpreter from its oppressive and coercive powers. See Peter Homans, *The Ability to Mourn: Disillusionment and the Social Origins of Psychoanalysis* (University of Chicago Press 1989).

⁴⁰ *ibid* 76.

⁴¹ *ibid* 77.

⁴² *ibid*.

⁴³ *ibid*.

only as the realisation of a separate identity but also as an agent of epistemological misappropriation, resultantly impacting how we understand our roots. It can be understood that this disdain for homogeneity arises from a historically deep-seated metropolitan antipathy toward anti-colonial movements in the 'Third World'.⁴⁴ Following the 20th-century wave of decolonisation, neo-liberalism, as peddled by the West, has failed to efficaciously adjudicate⁴⁵ between the historical claims of Eurocentric globalisation and the specifically anti-Western and/or oppositional development of cultural nationalism⁴⁶ in the Global South. In turn nationalism takes root with the careful construction of the 'Other'⁴⁷ being essential to consolidating nationalistic sentiment *vide* stereotypical dualism.⁴⁸ The 'Other' as constructed by Hall, is meant to divide, and despairingly simplify complex discourses thereby forming separate camps whose prerogatives can be manipulated by those holding power⁴⁹ in a discourse.

Before one can elaborate on Hall's aforementioned contentions concerning the relationship between power and discourse, it is important to consider Foucault's understanding of discourse itself. Discourse is about the production of knowledge through language, with said production taking place via practice *ie*, the *discursive practice* – the practice of producing meaning.⁵⁰ When statements about a topic are made within a particular discourse, the discourse makes it possible to construct the topic in a certain way, whilst also limiting the other ways in which the topic can be constructed.⁵¹ Herein, as per Foucault's interpretation of power, the actions of the sovereign power⁵² become the driving force behind defining the discourse, thereby conferring legitimacy upon the determinations of that discourse,⁵³ in turn meaning that it also limits the other

⁴⁴ Leela Gandhi, *Postcolonial Theory: A critical introduction* (1st edn, Routledge 1998).

⁴⁵ And/or forcefully harmonise cultures.

⁴⁶ See Gandhi (n 44) 103.

⁴⁷ See Hall (n 25) 205–215.

⁴⁸ The term describes a fallacy wherein multiple characters are collapsed into a single one and this singularity is then used to represent an entity's entirety. See Hall (n 25) 215–216.

⁴⁹ See Hall (n 25) 201–203.

⁵⁰ *ibid* 201.

⁵¹ *ibid*.

⁵² This notion stems from a view of power as a thing to be held, to be exercised only in forms of domination and repression from above upon those below, which manifests itself only in putative mechanics and juridical forms, and whose operations can ultimately be reduced to the process of obedience. For more, see Hewett (n 27) 9.

⁵³ See Hewett (n 27) 12.

ways in which said discourse can be structured.⁵⁴ This leads one to question as to how exactly the integrity and sincerity of the discourse may be maintained in case the discourse itself is corrupted. Herein, the concept of Cognitive Justice,⁵⁵ as pioneered by Dr Shiv Visvanathan, establishes a fundamental ideological base for the emergence and liberation of those who have been purposefully harmed or neglected by the discourse in order to fulfil the agenda of the powers controlling the discourse.

It must be noted that cognitive justice places great importance upon how different forms of knowledge must be allowed to co-exist thereby granting a necessary *plurality*⁵⁶ to humanity's intersecting histories. This plurality must proceed beyond tolerance or liberalism to an active recognition of the need for diversity with it, demanding the recognition of knowledges which exist beyond the accepted epistemological nomenclature, not only as mere methods but as an established and respect-worthy way of life.⁵⁷ Additionally, a more juristic interpretation of pluralism highlights that,

The notion that *choices* determine *norms* rather than obey them does away with the idea that there are certain norms that ought to be chosen by societies and thus precipitates a radical cultural relativism. (emphasis supplied)⁵⁸

In this instance, the hegemon's ability to steer choice leads to a construction of norms counterintuitive to plurality and its associated principles, with it being necessary for 'the Other' to be the target of such radical ostracisation.

Furthermore, it must be recognised that though globalisation as advanced by the neo-liberal democratic tradition is guised as being 'all-inclusive', one must recognise that no form of knowledge can be forcibly museum-ised and that memory and innovation intrinsically go together.⁵⁹ The wishful construction of 'tolerance' – in a liberal sense – is too lazy a theory of difference given that *difference* becomes an aesthetic, ethical, and political tool which allows

⁵⁴ See Hall (n 25) 201.

⁵⁵ Shiv Visvanathan, 'The Search for Cognitive Justice' (*India Seminar*, 2013) <https://www.india-seminar.com/209/597/597_shiv_visvanathan.htm> accessed 5 June 2025.

⁵⁶ *ibid.*

⁵⁷ *ibid.*

⁵⁸ Paul B Armstrong, 'The Conflict of Interpretations and the Limits of Pluralism' (1983) 98(3) *PMLA* 341 <<https://doi.org/10.2307/462275>> accessed 5 June 2025.

⁵⁹ *ibid.*

democracy to guard itself against populism and majoritarianism.⁶⁰ Democracy itself requires a deeper interpretation of ideas beyond pluralism, with a group's right to knowledge ie, to different and diverse ways of knowing⁶¹ (and/or understanding) and the right to memory⁶² proving pivotal in redefining reductive conceptions of difference and tolerance. As a result, the application of cognitive justice is centric to taking cognisance of the dire damage envisioned by epistemological misappropriation. Using an extremely pertinent example, the necessitated role of cognitive justice as a deterrence against epistemological appropriation is lent further credence if one were to consider the deficient caste discourse in TWAIL.

V. THE IMPACT OF 'THE OTHER' IN UNDERSTANDING THE DISCOURSE ON CASTE

Though there exist multiple facets to TWAIL, one realm yet to receive the same coverage is the matter of a concrete caste discourse in TWAIL. Additionally speaking, whenever an analysis is made under the ambit of TWAIL, one is often bound to the dichotomy between the Global North and the Global South. Nevertheless, one must also focus on the fact that within the Global South itself, run a multitude of intersections amongst race, sex, gender, and class with the agenda of caste, specifically, receiving lackadaisical importance. As a consequence, most analytical lenses are often solely focused on the Global South's external battles and not on its own unresolved internal conflicts, considering that the idea of equality is not a prominent feature of traditional Asian political systems, which have often been based on hierarchies such as caste.⁶³ As detailed by Burra, the lack of answers to the caste question can primarily be attributed to the lack of comprehension concerning caste⁶⁴ and the absence of people belonging to lower castes in the knowledge production in the field of international law which creates a void of histories and lived experiences which should have otherwise become pivotal points in TWAIL and synonyms scholarship.⁶⁵

⁶⁰ Visvanathan (n 55).

⁶¹ *ibid*, see section on 'The Forest of Knowledges'.

⁶² See Santos (n 9) 84–85.

⁶³ See Anghie (n 18) 104.

⁶⁴ Srinivas Burra, 'Twail's Others: A Caste Critique of Twailers and their Field of Analysis' (2017) 33 *Windsor Yearbook of Access to Justice* 114.

⁶⁵ *ibid* 122.

At first glance, a reductionist reason for the lack of literature concerning caste-based discrimination would be blaming TWAIL's negligence in combating such discrimination though it remains especially distressing given that it compounds mainstream international law's own comparative neglect of caste even though TWAIL includes extensive commentaries on race, sex, gender et cetera.⁶⁶ A more poignant phenomena to consider would be the role played by Brahminic⁶⁷ supremacy in reinforcing the imperialistic façade of international law. The relevancy of Brahminic supremacy in the discussion of caste-based discrimination becomes terribly apt when one considers the staggering plight of those belonging to the 'lowest' castes such as Dalits⁶⁸ or untouchables. As put by Venkatesh, caste functions as a layered mechanism of immovable social hierarchy and absolute control that aims to dehumanise certain forms of labour through both structural and economical positions, as well as through the cultural practices of endogamy and ritual which is also deeply heteronormative and patriarchal.⁶⁹ Resultantly, pro-Dalit activism has instituted a radical resistance focused on caste abolitionism in order to combat the praxis of caste-centric discrimination. Brahminical hegemony has suppressed the propagation of various caste perspectives and much of the radical work regarding queer and feminist traditions are found outside of legal and social science scholarship (such as in art and literature).⁷⁰

The contentions regarding the terming and inclusion of caste under descent-based discrimination as per Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter referred to as 'the Convention') – at and after the Durban Conference⁷¹ – are a prime example of the disharmony which exists between the position of the India's internal state interests and their seemingly democratic and equitable stance in

⁶⁶ Sujith Xavier et al, 'Placing Twail Scholarship and Praxis' (2016) 33(3) Windsor Yearbook of Access to Justice 8 <<https://scholar.uwindsor.ca/lawpub/93/>> accessed 7 June 2025.

⁶⁷ Made in reference to the 'Brahman' caste ie, the collective of priests and other seemingly 'learned' men who constitute the highest strata of the Hindu caste system. For more, see Vasanthi Venkatesh, 'International Casteist Governance and the Dalit Radical Tradition: Reimagining a Counter-Hegemonic Transnational Legal Order' (2022) 3 TWAIL Review 171, 176-179.

⁶⁸ The Dalit is constructed as an outcaste from Hinduism who was legally subject to enforced landlessness and agrestic servitude/slavery. For more, see *ibid* 178.

⁶⁹ *ibid* 173.

⁷⁰ *ibid* 176.

⁷¹ Referring to the World Conference against Racism, Racial Discrimination, Xenophobia, and related Intolerance (WCAR) held in Durban in 2001.

the international forum.⁷² In 2001, Dalit groups from India, Nepal, and Japan argued for the recognition of discrimination based on caste and social origin and to incorporate such discrimination within the scope of descent based discrimination, yet nonetheless, the Indian representative at the UN stated,

We are firmly of the view that the issue of caste is not an appropriate subject for discussion at this Conference... It is neither legitimate nor feasible ... for this World Conference or ... even the UN to legislate, let alone police, individual behaviour in our societies the battle has to be fought within our respective societies to change thoughts, processes, and attitudes.⁷³

In 2006, the same position was reiterated in an Indian report submitted to the CERD which reiterated that caste cannot be equated with race or covered under 'descent' under Article 1 of the Convention.⁷⁴ Moreover, during the drafting of the Universal Declaration of Human Rights, even though India expressed interests to include caste as one of the prohibited grounds of discrimination, the caste-connotative term ie, descent was not used and instead words such as 'other status' and 'social origin' were deemed to be suitable for covering such discrimination.⁷⁵

Subsequently, one would not be wrong in saying that the Indian state has displayed ineptitude in adequately addressing the caste question, with the Bhima Koregaon incident of 2018 being a notorious example. On an annual basis proud Dalits, especially Ambedkarites, gather at the Vijay Sthamb monument in the Bhima-Koregaon village in order to celebrate the victory of outnumbered Mahar soldiers against the Peshwa forces of Bajirao II.⁷⁶ Many seemingly zealous patriots see their celebration as an affront to the 'Indian' national identity, given that the monument was erected by the East India Company and posthumously honoured by the Dalit community as a victory over their Brahmanical Peshwa overlords.⁷⁷ Moreover, multiple right-wing Hindutva affiliated parties choose to see the conflict as merely Maratha glory versus imperialist hegemony, however from the Dalit's perspective, the Peshwas exemplified Brahminical oppression,

⁷² See Burra (n 64) 112–119.

⁷³ *ibid* 118–119.

⁷⁴ *ibid* 119.

⁷⁵ *ibid* 119–121.

⁷⁶ Prabodhan Pol, 'Understanding Bhima Koregaon: Hindutva forces are worried by the conspicuous politicisation of Dalits' (*The Hindu*, 4 Jan 2018) <<https://www.thehindu.com/opinion/op-ed/understanding-bhima-koregaon/article22361017.ece>> accessed 7 June 2025.

⁷⁷ *ibid*.

hence their victory represents a legendary aspiration for those combating systematic caste marginalisation.⁷⁸ In 2018, tensions between the two political entities flared and led to brutal communal riots, with multiple leftist anti-caste activists who participated in the annual celebrations being unjustly prosecuted as ‘Maoist’ terrorists guilty of criminal conspiracy.⁷⁹ The egregious treatment of these anti-caste intellectuals at the hands of the investigating Maharashtra police force and the National Investigative Agency (‘NIA’)⁸⁰ is highly indicative of the caste experience being mediated by the violence of the legal and carceral governance systems of the Brahminical state and social practices of stigmatisation.⁸¹

Herein, it becomes integral to take cognisance of the subaltern subversion perpetuated by the combined forces of Brahmanical supremacy and imperialism. The hegemonic commonality between the two forces was first witnessed under the British Raj wherein the colonial rule further entrenched dominant caste supremacy out of administrative and reinterest.⁸² On the same parallel, the colonists policy of non-interference in *native* matters allowed for reinforcement of caste supremacy, whilst the subjectification of the Dalit body and identity as *impure* or *untouchable* made way for the blasé romanticisation of Brahminical practices and epistemes as a *pure* and *sacred* ‘higher culture’ which also portrayed them as being scientifically progressive.⁸³ This caste dichotomy allowed Brahmins to gatekeep the perceived standards of religious and/or moral decency while also taking advantage of their socio-economic class to dominate professions which required a literate and knowledgeable background⁸⁴ later

⁷⁸ See Venkatesh (n 67) 179–180.

⁷⁹ The anti-caste activists were defending themselves against multiple charges under the Unlawful Activities Prevention Act and the Indian Penal Code. For more, see Pol (n 76).

⁸⁰ ‘Editorial Note’ (2021) 49 Social Scientist 1 <<https://www.jstor.org/stable/27099712>> accessed 7 June 2025.

⁸¹ See Venkatesh (n 67) 180.

⁸² *ibid* 179.

⁸³ *ibid* 181.

⁸⁴ In today’s era, ‘skilled workers’ migration schemes in the Global North attract those from the dominant castes, who in turn maintain their ‘caste capital’ through networks of kinship, caste endogamy, and a discourse of intellectual superiority, all the while. This is an integral instance highlighting the apparent and unjust ramifications of caste standing atop the pillars of capitalism. For more see Venkatesh (n 67) 184; Sanam Roohi, ‘Caste, Kinship and the Realisation of ‘American Dream’: High-Skilled Telugu Migrants in the U.S.A.’ (2017) 43 Journal of Ethnic and Migration Studies 2756.

allowing for the generational accumulation of *caste capital*.⁸⁵ As highlighted by Venkatesh, simple examples of the diametric nature of the caste dichotomy includes:

practices such as privileging Sanskrit texts and literature, classical music, and dance (*at the expense of folk music*), vegetarianism (*prohibition of non-vegetarian food through 'food fascism'*), animal protection (*stigmatisation of leather workers, butchers, etc.*), purity rituals such as dining practices and social distancing (*that segregate people considered 'impure'*), caste endogamy through arranged marriages et cetera.⁸⁶

Resultantly, it becomes clear that the dehumanisation of Dalits relies on the stigmatisation of non-Brahminical practices – imbued with cultural and ideological legitimacy⁸⁷ – and in the India of post-modernity the principles of meritocracy and deservingness structure both Brahminism and white individualism and are deployed to create a discourse towards a post-caste system, where caste-blind narratives such as poverty alleviation are used to sustain hegemonic structures and epistemic violence.⁸⁸ In his extensive critique of caste, V Venkatesh provides one with poignant examples of the hegemonic nature of caste capital is the functioning of *Bochasanwasi Shri Akshar Purushottam Swaminarayan* ('BAPS'), a conservative, pro-Hindutva organisation founded in 1907 by upper class Gujaratis in the USA.⁸⁹

BAPS owns 3,850 temples across the world with their structures rooted in the Brahminical Vedas, which, according to their supremacist ideology, 'invented geometry, astronomy, plastic surgery and quantum physics' while maintaining high levels of 'spirituality'.⁹⁰ Though the carving of such stones was

⁸⁵ The economically polarising nature of caste capital is highly indicative of caste strongly supporting neo-imperialistic capitalist institutions.

⁸⁶ Along with the given examples, casteism, as highlighted by Ambedkar and Phule in the 20th century, is also inseparably interlinked to patriarchal hegemony and gender with strict endogamy, notions of purity, and the discursive/social control of the woman's body maintaining the multi-dimensional subjugation of Dalit women. Moreover, the heteronormative practices of Brahman supremacy fell in line with the Euro-centric constructions of gender and sex, whilst some colonized subjects romanticized the ostensible power of European culture and its intrinsic 'whiteness' so as to secure greater positions of authority for themselves in the social and economic hierarchy. For more, see Venkatesh (n 67) 179; Shefali Chandra, 'Whiteness on the Margins of Native Patriarchy: Race, Caste, Sexuality, and the Agenda of Transnational Studies' (2011) 37(1) *Feminist Studies* 127 37 <<http://www.jstor.org/stable/23069887>> accessed 7 June 2025.

⁸⁷ See Venkatesh (n 67) 181.

⁸⁸ *ibid* 183–184.

⁸⁹ *ibid* 185.

⁹⁰ *ibid*.

seen an occupation apt⁹¹ for Brahmin, the nature of industrial scale mandates for the temples to be primarily constructed by Dalit and Adivasi stone-carvers, working for a mere \$3 to \$7, with one in three workers suffering severe occupational diseases – also bearing in mind that the very same carvers cannot themselves enter the temple grounds post its consecration.⁹² In 2021, the FBI raided a BAPS temple construction site in New Jersey and consequently revealed the dire state of the Dalit workers on the site. The workers were paid \$1.20/hour and made to work 87 hours per week with it also being discovered that the workers' passports were confiscated immediately upon arrival, and they were fenced in the premises for the duration of their stay whilst also being abused with casteist slurs and were forbidden from talking to any visitors under the threat of docking their pay, dismissal, and deportation.⁹³ As a consequence, the BAPS case exemplifies the transnational perpetuation and propagation of casteism through discourse building, migration and citizenship laws, and the enmeshing of casteist capitalism and religion.⁹⁴ Aside from the presence of Brahmanical supremacy in economic activity it remains prominent at the highest levels of institutionalised epistemic creation – especially present in bodies representing India in the international forum.⁹⁵ Legal scholarship in India, in general, and international law scholarship, in particular, fails to take cognisance of the absent caste-perspective⁹⁶ and consequently, the lacking perspective – gained vide a detailed understanding and propagation of caste-centric lived experiences – of such a subaltern community in the Global South's discourse only proves detrimental to realisation of TWAIL's true intent.

VI. ON CASTE SUBJUGATION VIA MISAPPROPRIATED DISCOURSE

At this tangent concerning the caste-centric bias in epistemic discourse, a vital topic of importance is the role of Anglocentric norms concerning scientific understanding, academic recognition, and knowledge creation. Herein, such norms perpetuate yet another strain of neo-imperialism ie, by facilitating epistemicide of knowledge stemming from the Global South. Specifically

⁹¹ By apt, we refer to the fact that temple architecture and masonry was previously interpreted as *holy* and *clean*. For more, see *ibid*.

⁹² *ibid*.

⁹³ *ibid* 186.

⁹⁴ *ibid*.

⁹⁵ Of the seven Indian judges who have served in the ICJ, six of the seven are upper caste Hindus in addition to five of the six Indian representatives at the International Law Commission being of upper caste. See Burra (n 64) 123.

⁹⁶ *ibid*.

speaking, such practices include predatory journals, unethical review mechanisms, and unfair monetary barriers to knowledge.⁹⁷ Such practices serve to undermine the availability and legitimacy of scholarly works originating from the Global South thereby contradicting the universal ethos to make knowledge a more open and democratic process. The correction of this epistemicide vide cognitive justice⁹⁸ is not simply tolerance towards difference in knowledge representation but is also an active endeavour towards inter- and intra-cultural dialogues and recognition of diversity.⁹⁹ A prime example of such detrimental practices is the processing and accumulation of knowledge through the various journals of academia. As per our current pedagogies, the substance of science is built upon through consistent and novel publications, with such publications serving to expand upon our collective base of knowledge in order to benefit all.

Herein, however, the ethos of democratic¹⁰⁰ and open-source information is defeated by biased and/or false review systems, 'predatory' journals, steep costs of publishing, limited access to publicly funded knowledge et cetera. A primary part of this debacle are 'predatory' journals ie, journals which facilitate for expedited publication at the cost of exorbitant Article Processing Charge's ('APC's') and lacking qualitative fidelity. Our current times present us with a climate wherein publications from the spine of any decent academic are in demand, with predatory journals in turn taking advantage of this demand, hence, one must note how knowledge is now becoming strongly quantified and competitive in a more economic sense. In this instance, comprehending the importance of a knowledge democracy – ie, as per the theory of the commons, knowledge is original: it is a 'commons' that is both immaterial, since it is formed

⁹⁷ Hanika Kapoor, Sampada Karandikar and Arathy Puthillam, 'Flaws in Academic Publishing Perpetuate a Form of Neo-Colonialism' (*The Wire*, 11 May 2019) <<https://thewire.in/the-sciences/flaws-in-academic-publishing-perpetuate-a-form-of-neo-colonialism>> accessed 7 June 2025.

⁹⁸ See Visvanathan (n 55).

⁹⁹ See Rachel Fischer and Erin Klazar, 'Facts, Truth, and Post-Truth: Access to Cognitively and Socially Just Information' (2020) 4 *International Journal of Information, Diversity, & Inclusion* 5, 6 <<https://www.jstor.org/stable/48645282>> accessed 5 June 2025 (Note this paper's focus on cognitive justice).

¹⁰⁰ Referring to the congruent formation of a knowledge democracy that is fundamentally linked to sustainable development wherein, it aims to preserve a sustainable world in which communities use knowledge to flourish. Nonetheless, the knowledge-based economy is, instead, linked to the ideology of growth and neoliberal capitalism. For more, see Florence Piron et al, 'Saying 'No' to Rankings and Metrics: Scholarly Communication and Knowledge Democracy' in Budd Hall and Rajesh Tandon (eds), *Socially Responsible Higher Education: International Perspectives on Knowledge Democracy* (Brill 2021).

of ideas and cognitions, and material, since these ideas must be embodied in reproducible statements that can be shared and transmitted¹⁰¹ – becomes crucial given that currently our society's production of knowledge adheres to the globalist standards of techno-scientific knowledge.¹⁰²

Resultantly, our epistemic structures function akin to a knowledge-based economy¹⁰³ ie, detrimental towards the universal sharing of all knowledge for the common good vide the production of scientific publications able to generate wealth through their content – such as patents, marketable innovations – or their very existence on for-profit platforms where access to the articles is protected by a steep-fee.¹⁰⁴ The financial model of predatory journals thereby contributes to this knowledge economy with such an occurrence being especially concerning given that over half of total predatory journals are Indian¹⁰⁵ with many of the same predatory journals being on the 'approved' list of the University Grants Commission ('UGC').¹⁰⁶ Synchronously, one must also consider that the Global North does benefit from an epistemic ivory tower, given that West has maintained a stronghold on what is globally considered to be the highest echelon of education. Institutions from this very echelon have vast resources and can offer/make available opportunities which are unavailable to the academic community of the Global South. As a consequence, the ideal of a knowledge democracy and the purpose of cognitive justice become the victims of the epistemic gatekeeping reinforced by neo-imperialism.

The stranglehold over what is science, ie, 'made' knowledge being content that has been peer reviewed and institutionalised, is maintained by the Global North, thereby determining the value of knowledge from across the world. A focus on 'made knowledge' is subsequently formulated by the

¹⁰¹ *ibid* 81.

¹⁰² *ibid*.

¹⁰³ Michael Adrian Peters, *Knowledge Economy, Development and the Future of Higher Education* (Brill 2007).

¹⁰⁴ See Piron (n 100) 82.

¹⁰⁵ See Kapoor (n 57).

¹⁰⁶ Rashmi Raniwala and Sudhir Raniwala, "Predatory' Is a Misnomer in the Unholy Nexus Between Journals and Plagiarism' (*The Wire*, 10 August 2018) <<https://thewire.in/the-sciences/predatory-journals-fake-journals-plagiarism-peer-review-mhrd-ugc>> accessed 15 June 2025; Furthermore, research suggests that the self-referential and mutually reinforcing nature of the ranking metrics minimises the potential for the established Western universities to face ranking challenges from those outside the existing circle of privilege; For more regarding the concerning actions of the UGC, see Ralf St. Clair, 'Marginalizing the Marginalized: How Rankings Fail the Global South' in Michelle Stack (ed), *Global University Rankings and the Politics of Knowledge* (University of Toronto Press 2021).

most powerful discourse, with it being prudent to note that the whole notion of ‘discourse’ and a ‘discourse community’ is a circular one ie, a self-referential, self-justificatory practice which determines what may legitimately be considered as knowledge¹⁰⁷. This domineering discourse becomes *totalitarian*¹⁰⁸ in nature with its prerogative being the imperial colonisation of the target discourse’s entire social structure vide the engineered perspective of a singular institution.¹⁰⁹ A change for the better would mean making the process of knowledge accumulation and legitimisation more democratic by widening the ambit of the participatory process. Doing so would mean that non-scientists, non-academics, indigenous peoples, and other knowledge holders in the Global South become similar to actor-researchers¹¹⁰ thereby furthering the battle against cognitive injustices and decolonising our own systems of knowledge.

VII. ON HINDU NATIONALISM’S ROLE IN EPIDEMIOLOGICAL MISAPPROPRIATION

In the wake of the aforementioned totalitarianism, we must take cognisance of how such epistemic subversion occurs inside our own societies with the rise of the RSS’s nationalist and Hindutva-centric dogma in India, being a prime example. In today’s India, the central government – in addition to other right-wing nationalists and/or RSS-affiliated *entities*¹¹¹ – has proven highly proactive in advocating for the decolonisation of not just our society and institutionalised culture, but also, our history ie, the delicate narrative defining our roots and origins. On the same parallel, we must also understand that knowledge – such as TWAIL’s¹¹² contribution towards decolonising serving as an ode to cognitive justice – can also be usurped, biased and purposefully *misappropriated*. As a consequence, we see various instances wherein the hegemonic state propagates an anti-Western, decolonial agenda however they intentionally repeat certain biased narratives whilst using the episteme of decolonisation. In turn, the state and its agents are able to confidently manipulate specific narratives by tapping into the general

¹⁰⁷ Karen Bennett, ‘Epistemicide! The Tale of a Predatory Discourse’ (2007) 12 *The Translator* 151, 153.

¹⁰⁸ For more details concerning the nature of totalitarianism see *ibid* 153.

¹⁰⁹ *ibid* 153–154.

¹¹⁰ See Piron (n 100) 83.

¹¹¹ We will subsequently use cited examples of such *entities*, when evaluating specific instances of epistemic misappropriation.

¹¹² Also, in reference to other credible sources on post-colonial legal theory, existing outside of TWAIL, yet still contributing to the deterrence of epistemicide.

credibility of the scholarly works pertaining to post-colonial legal theory. Any attempt to bend history in one's favour or reshape the histories and understanding of an *other's* culture directly contributes to epistemicide and works against the intent of achieving cognitive justice. Such practices can be seen as a highly problematic expression of diatopical hermeneutics¹¹³ given that it involves the state adopting a terribly patronising stance whereby they not only explain, but also attempt to permanently imprint a set narrative even though the subaltern in such a situation already have their own independent conception of the same. Santos suitably states that,

The energy that propels diatopical hermeneutics comes from a destabilizing image that I designate *epistemicide*, the murder of knowledge ... unequal exchanges among cultures have always implied the death of the knowledge of the subordinated culture, hence the death of the social groups that possessed it (*emphasise supplied*).

The first tangent to study, would be the claims made in 'The RSS: A View to the Inside',¹¹⁴ a supposedly politically neutral book, which extensively details the philosophy and history of the RSS. One such claim directly correlates the Hindu religion with Indic culture¹¹⁵ thereby asserting that Indian is a civilisational nation state, sharing a common value system regarding individual and collective life.¹¹⁶ Afterwards, the author proceeds to perplexingly state that the RSS does not have the intent to make Hinduism the state religion,¹¹⁷ yet M. S. Golwalkar speaks of the same Indian civilisational nation state ie, a Hindu nation as being a 'living God'.¹¹⁸ As a result, we are faced with three problematic assertions ie, arbitrary separations between Hindu culture and religion, Hindu culture is synonymous with Indic culture, and the deification of the nation state.

Firstly, what we perceive as Hinduism has been practiced in a vast range of ways, with the diverse Hindu pantheon and varying religious practices across the nation proving the variance within Hinduism. If Hinduism is equated to a culture or 'Way of Life' would other faiths – in a democratic and equitable nation – enjoy the same identity, perception, and security. Penultimately, one cannot

¹¹³ See Santos (n 9) 91–92.

¹¹⁴ Walter Anderson and Shridhar Damle, *The RSS: A View to the Inside* (Penguin Viking 2018).

¹¹⁵ Referring to all cultures arising from the South-Asian Indian sub-continent.

¹¹⁶ See Anderson and Damle (n 114) 78.

¹¹⁷ *ibid.*

¹¹⁸ *ibid* 79.

draw such seemingly convenient boundaries between religion and culture when the two social phenomena exist in an intertwined manner with an attempt to sever, oversimplify or distort such common understandings being a blasé attempt at epistemicide. In turn, it appears that the text only draws a distinction between culture and religion when attempting to evade accusations of communal violence and discriminatory ideology. Such an understanding becomes even more troubling when one takes into account that multiple other faiths such as Islam, Buddhism, Sikhism and Christianity have subsisted and spread across the Indian sub-continent for centuries. From a broader perspective, construing the nation to be a God, worthy of worship, becomes even more agitative given that it grants the nation state, divine authority with such bureaucratic institutions being innately authoritarian. The authoritarian nature of a ruling religious institution is highly feudalistic, and a stark reminder of the hegemonic divine law and natural law professed by imperialist ideologues from the 13th century onwards.¹¹⁹ Additionally, the text states that ‘the Hindu cultural identity is applicable to all the inhabitants of India’,¹²⁰ yet, if one were to not identify with being a Hindu nor with being a patriot, would they be guilty of both treason and heresy? Accordingly, if one were to intrinsically equate Hindu culture to being the sole proprietor of Indic culture one would remain guilty of epistemicide by intentionally casting aside the memories and worth of countless peoples from non-Hindu’s who settled, lived, and thrived in India for countless generations.

Concurrently, this very same matter of generational and/or civilisation longevity – ie, for how long has the Indian sub-continent suffered under the imperial yoke – is also brought into this discussion by multiple Hindu nationalist ideologues. In seeming aid of the push for ‘decoloniality’, the current RSS-affiliated central regime has released various public statements attempting to fuse the perception of ‘foreign invaders’ and ‘Western colonists’. Herein, the espoused narrative of the Hindu nationalists intends to fuse our antagonistic perceptions of Middle Eastern invaders from the eighth century onwards, such as Mahmud Ghazni or Mohammad Ghori¹²¹ and the Western imperialists such

¹¹⁹ Aakash Singh Rathore and Garima Goswamy, *Rethinking Indian Jurisprudence: An Introduction to the Philosophy of Law* (Routledge 2018) 24–31.

¹²⁰ See Anderson and Damle (n 114) 79.

¹²¹ Vivek Katju, ‘Domestic Ideologies in External Settings’ (*The Hindu*, 7 October 2022) <<https://www.thehindu.com/opinion/lead/domestic-ideologies-in-external-settings/article65976825.ece>> accessed 7 June 2025.

as the British, Dutch, and French with the book *India that is Bharat*¹²² by J.S. Deepak espousing an extensive criticism on 'Middle Eastern Coloniality'. *Prima facie*, doing so firstly erases the culture osmosis that has occurred since people of Middle Eastern descent chose to settle in India over 1500 years ago and further demonises current day Islam as if they had never constituted the political rights beloved civilisational nation-state long before India's encounter with Eurocentric imperialism. It would seem that Jaishankar was reciting a shibboleth of Hindutva to demonise the Muslim rulers of Medieval India, thereby equating them with British colonisers, which is an attempt to portray Indian Muslims as foreigners.¹²³ Concurrently, such a notion was rejected when India was constituted as a pluralist and secular republic, spurning calls for the creation of a Hindu Rashtra ie, Hindustan, as a mirror image of a Muslim Pakistan.¹²⁴

When the 'otherisation' of minorities is produced through the epistemic misappropriation of decolonial logic, it is expected of established and emerging TWAIL scholars to counter such misappropriations. Young TWAIL scholars are honest to the caste question.¹²⁵ However, the courage to challenge the misappropriation of decolonisation is lacking. A young TWAIL scholar, Aman Kumar, reflects in this regard which is telling as he ruminates in his blog post:

I have always told myself that I am too busy with questions of international law and thus have no time to dive deep into India's constitutional law issues or more broadly, its domestic law issues. International Law, hence, was my invisibility cloak. I wear it and pretend to be unfazed by India's domestic law issues ... However, since past few years, a lot of holes have developed in my cloak; and while I try to stitch one hold, other one crops up.¹²⁶

Such reflections of young scholars of TWAIL are worrisome. If the established scholars of TWAIL do not give a pushback against misappropriation, young scholars of TWAIL may be forced to choose an exclusionary agenda of Hindutva in the garb of decoloniality to sustain themselves in academia.

¹²² JS Deepak, *India That Is Bharat* (Bloomsbury 2021).

¹²³ Sushant Singh, 'Paradigm Shift: Two recent articulations of Modi's "New India" paint a grim picture' (*The Caravan*, 1 November 2022) <<https://caravanmagazine.in/politics/recent-articulations-modi-new-india-grim-picture>> accessed 7 June 2025.

¹²⁴ *ibid.*

¹²⁵ Swati Singh Parmar, 'The Internationalisation of Caste' (*Völkerrechtsblog*, 15 June 2023) <<https://voelkerrechtsblog.org/the-internationalisation-of-caste/>> accessed 1 August 2025.

¹²⁶ Aman Kumar, 'What is the Worth of Doing International Law: A Personal Reflection' (*Indian Blog of International Law*, 12 April 2022) <<https://allaboutil.wordpress.com/2022/04/12/what-is-the-worth-of-doing-international-law-a-personal-reflection/>> accessed 1 August 2025.

Furthermore, such silences of established TWAIL scholars of India will allow critical insights of decoloniality to be abused by right-wing scholars to debilitate and disenfranchise a huge segment of the population by stigmatising a vast segment of the minority population by terming them a perennial enemy or invader.

Decolonial scholar Foluke Adebisi warns us that Hindutva ‘co-opts and distorts the language of decolonisation’ against those who are considered ‘other’ to construct a ‘pure’ national identity.¹²⁷ Though one needs to be cautious of uncritical celebration of European modernity, one cannot be oblivious to the fact of such co-optations and distortions. Meera Nanda, in her recent book, writes quite provocatively:

For its part, the Hindu Right sees itself as the true heir of Edward Said’s Orientalism. Indeed, a new generation of Hindu thinkers, who call themselves “*Bauddhika Kshatriyas*”, or “intellectual warriors,” has emerged that wants to proudly and unabashedly proclaim the superiority and universality of dharmic conceptions of divinity, nature, knowledge, and society, without seeking the West’s approbation or fearing its opprobrium. To that end, they strategically appropriate the Saidian framework of postcolonial theory to “provincialize” Europe from a dharmic perspective, and to whitewash Hinduism’s peculiar institutions of caste, untouchability, and patriarchy as “colonial constructions.”¹²⁸

Even if one may not agree with Nanda’s argument of putting postcolonial thinkers and right-wing Hindutva in the same epistemic category by calling them ‘two strange bed fellows,’ one cannot ignore the fact that postcolonial thinkers have failed and are failing to give a massive pushback against this misappropriation. In international law, too, the story is not different.

VIII. CONCLUSION

In India, TWAIL faces a unique challenge. As an alternative episteme, it came as an insurgent way of looking at international law and challenged the Eurocentric narrative of international law masquerading as a universal narrative. But as TWAIL has become a dominant narrative itself, it must address the question of, to use Frantz Fanon’s formulation, ‘internal colonies’ within the ‘Third World’.

¹²⁷ Foluke Adebisi, *Decolonisation and Legal Knowledge: Reflection on Power and Possibility* (Bristol University Press 2023) 24.

¹²⁸ Meera Nanda, *Postcolonial Theory and the Making of Hindu Nationalism: The Wages of Unreason* (Routledge 2025) 212–213.

There are two dominant themes of 'Otherisation' in India, which has been traditionally a strong seat of TWAIL scholarship. These themes are: addressing the question of caste and otherisation of the minorities through the exclusionary Hindutva politics. Hindutva forces have also misappropriated the language of 'decolonisation'. There are some murmurs on the caste question and the misappropriation of decolonisation by the far right in India, but TWAIL scholarship so far has been largely silent on these issues. The caste question is slowly being addressed, but the exclusion of minorities through the language of decolonisation must be resisted by TWAIL scholars, else it may risk becoming merely a performative critique.