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Civilising the Hindu 'Rashtra': Decoloniality's Tryst with Nativist Palingenesis

As the Constitution marks 75 years as the founding text of independent India, some have argued for it to be repudiated because of its 'foreign' influences. Tarun Khaitan discusses why such arguments do not work in the context of India's Constitution, and provides an analytical reading of a recent hypothesis.

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*'Along with the internalisation of nation-statehood, concepts, such as separation of the Church and the State ('secularism'), separation of powers, 'toleration', 'liberty' and notions of rights and duties, were secularised with a view to universalise them. These 'secular' values found their way into 'national' constitutions, with the colonised natives being oblivious to the underlying Protestant origins of the Eurocentric abstract universals. In effect, national constitutions became the codified fount of coloniality and morphed into secular yet sacred instrumentalities through which Eurocentrism could be amplified and perpetuated in colonies' ~ J. Sai Deepak, *India That is Bharat: Coloniality, Civilisation, Constitution*, 2022; All subsequent references to Deepak are from this first book of a promised trilogy.*

India's *Constitution* of 1950 has now served the country for 75 years. The first existential threat to this constitutional order — Indira Gandhi's Emergency in 1975–77 — was an interruption. While it left the system hobbled and its institutional integrity deeply compromised, the injuries inflicted turned out to be less than fatal. Assaults on the *Constitution* over the last decade or so, which I have characterised as **killing a constitution with a thousand cuts** (inflicted largely without formal constitutional amendments), may be different. Some like democratic activist Yogendra Yadav have already **proclaimed** the First Republic all but dead.

Indira Gandhi — no doubt cynically — defended the Emergency as necessary for protecting the constitutional order whereas contemporary assaults not only undermine constitutional

accountability mechanisms and ignore constitutional values that get in the way of the ruling party's will, they are also accompanied by a full-throated ideological assault. This is epitomised in the epigraph to this post from the Hindu-supremacist decolonial public intellectual J. Sai Deepak, characterising the *Constitution of India* as a colonial/European inheritance unsuitable for independent India.

At its core, the decolonial discourse that originated in Latin America is an iteration of the critical intellectual tradition that seeks to explore and expose the subtle power relations — especially in the discursive domain — that structure human relations. Its particular focus is on the lingering effects of colonialism, especially in the epistemic fields of norms, laws, scholarship, and culture. Deepak, borrowing primarily from the oeuvre of two scholars from the Ghent University in Belgium (Balagangadhara and De Roover), portrays the *Constitution* and its morality as reflecting Euro-colonial ontologies and epistemologies, perpetuating them in the socio-cultural sphere. Thus, Deepak's claim goes, the *Constitution* has 'push[ed] Bharat further into the arms of coloniality in the name of constitutional morality and transformative constitutionalism'; he calls for an Indic renaissance which requires 'a re-inscription of indigenous consciousness onto contemporary Bharat', underscoring

- 'Bharat's indigenous identity must be traced to a period before the Islamic invasions (Middle Eastern colonialism) and European colonisation';
- 'the Hindu religion' was the 'glue that bound this civilisation'.

Deepak's, then, is a call for the palingenesis (i.e., rebirth) of the Indic (read 'Hindu') civilisation, society and people, who have suffered not only two centuries of European colonialism but also a millennium-long 'Islamic colonialism' preceding it. He defends Hindu supremacy by swapping the intellectually discredited hyper-nationalist fantasy of a Hindu *rashtra* (nation) for a more respectable vocabulary of decoloniality in order to re-establish an 'Indic civilisation'.

Here is a stylised structure of Deepak's argument:

The Argument from Decoloniality

Descriptive Premise: The values informing Indian constitutional morality — especially toleration, rights, secularism, separation of powers, nationhood — are 'European'.

Implicit Normative Premise: (see below)

Conclusion: India should repudiate its *Constitution* of 1950.

Many scholars have argued against the conclusion above, pointing out that it provides intellectual cover for targeting minorities and other marginalised groups, and imposing an authoritarian, anti-pluralistic, majoritarian culture on India (see Alpa Shah, Moiz Tundawala & Salmoli Choudhuri,

Theunis Roux, Meera Nanda, Sylvie Guichard, Nitasha Kaul, Chenchen Zhang, and Kate Sullivan de Estrada, among others).

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In this post, I outline four possible flavours or senses in which Deepak probably understands his descriptive claim that Indian constitutional morality is somehow European/non-‘Indic’. I also discern the distinct normative premises that must accompany each of these senses to logically lead to his conclusion. In other words, the stylised argument stated above in fact disambiguates into four distinct arguments. This disambiguation is necessary because Deepak’s book is highly polemical, making it difficult to pin down his claims with precision.

European Imposition

‘During the period of colonisation, European provincialism on each of these facets of life was introduced, rather imposed, and universalised in colonised societies, thereby replacing indigenous worldviews.’ (Deepak, emphasis added)

The first sense in which we may characterise Deepak’s decolonial objection based on the European character of liberal values is that they were ‘imposed’ on the colonies. Thus, the first argument from decoloniality can be stated thus:

Descriptive Premise 1: The values informing Indian constitutional morality are ‘European’ because they were *imposed* on India.

Normative Premise 1: Imposed values do not generate any normative implications.

Conclusion: India should repudiate its *Constitution* of 1950.

Both the normative and the descriptive premises above are problematic. *Normative Premise 1* is too strong — surely there have been polities which merited value imposition. Apartheid South Africa, for example, merited the sanctions and boycotts imposed on it by foreign governments and sporting bodies. Of course, we must be on the alert for any attempts to rationalise an adventure embarked on primarily for selfish gain as an altruistic ‘civilising mission’, as the British referred to their occupation of India (on colonial imposition generally, see Olúfẹ́mi Táíwò, David Law and Erin Delaney).

But more relevant to us is the difficulty with *Descriptive Premise 1*: it is undeniable that many of the liberal constitutional values were encountered and understood in much of the Global South — including India — through European colonisation. But the ‘imposition’ narrative needs a fair bit of nuance. Some of these values, such as statism, were indeed imposed directly by the colonial state on the colonised people. Others, like freedom and legality, were used strategically, selectively, and hypocritically by the colonial state for securing its own self-interest and legitimation. Many liberal values like nationalism, legality, and freedom were repurposed by native élites to fight against

colonialism itself, often by highlighting the colonial state's strategic, selective, and hypocritical invocation of these values. Such native engagement with these values in India started systematically if incrementally at least as early as the foundation of the **Indian National Congress** in 1885 (while sporadic engagement with liberal values by thinkers such as **Rammohan Roy** can be traced to a much earlier period of colonisation). As **Kannabiran** put it,

'Motilal Nehru's presidential address at Amritsar in the year 1919, the undelivered address of C.R. Das at the Gaya Congress, Satyamurti's speech in the Central Legislative Assembly in February 1936, or Gandhi's speech at his sedition trial before Judge Broomfield are excellent sources for working out a system of jurisprudence and a theory of rights even at the commencement of the Constitution.'

The local leadership that emerged over these decades would go on to frame India's *Constitution*, which would include some (but not all) of the liberal constitutional values, albeit with important additions, omissions, and tweaks. Whatever the truth of constitutional 'imposition' in other colonial contexts, *Descriptive Premise 1* simply does not stand up to scrutiny in the Indian case.

Adopters' Imaginations Colonised by Europe

'[Deepak's book is a] must-read tribute to the Indic civilisation for anyone serious about understanding the pernicious trajectory of invasive colonialism and the lingering colonial consciousness in the 'independent' Indian [...] mind.' ~ Vikram Sampath's endorsement of Deepak's book

A second sense in which Deepak understands the decolonial claim aims to rebut the rejoinder above: that the 'colonised imaginations' of native élites who incorporated European values into the *Constitution* amounts to an *indirect* imposition of European values through cognitively compromised (brainwashed) local agents.

Descriptive Premise 2: The values informing Indian constitutional morality — especially toleration, rights, secularism, separation of powers, nationhood — were adopted by Indians whose cognition itself was colonised by 'European' thought.

Normative Premise 2: Constitutions should not be made by persons who are cognitively compromised (due to coercion, manipulation, brainwashing, intoxication, etc).

Conclusion: India should repudiate its *Constitution* of 1950.

Descriptive Premise 2 also fails. That anti-colonial leaders had 'colonised imaginations' is a claim akin to what Marxists and feminists have called 'false consciousness'. The conceptual problem with such claims is that they are not falsifiable (or, for that matter, provable). For working class conservative voters or *hijabi* women, the 'false consciousness' claim simply assumes what it sets out to prove: that the only right way to be working class is to vote for left-wing parties or to be an independent woman is to reject patriarchal symbols like the *hijab*.

Similarly, the 'colonised imaginations' argument assumes, rather than proves, that decolonisation *must* entail a rejection of all values it deems 'European', and *therefore* that any native who fails to accept this must have a colonised imagination. The circularity of the descriptive premise of the second version of the decolonial argument leads to its failure.

In fact, the *Constitution* was drafted through an entirely Indian Constituent Assembly, admittedly created by indirect elections and a very limited franchise, but one which arguably represented more shades of Indian opinion than any assembly that might have been elected directly amidst the violent pogrom unleashed by a sudden, chaotic, and criminally unplanned British withdrawal from India (that came within days of announcing a religion-based Partition of the country). Although elected on a limited franchise, the Assembly did all it could to be inclusive and to decide by consensus rather than by majority to take everyone along. Ambedkar, Nehru, and a few other leaders of the Assembly especially sought to ensure that various accommodations were made, **even for those whose views they found unpalatable**. Rohit De and Ornit Shani have **explained the deep engagement of the Indian people** in the framing of this document.

To claim that the framers, many of whom fought colonialism for most of their lives, spending years, even decades, in prisons, were people brainwashed into imbibing a colonial consciousness reeks of the very same colonial temperament that assumed that Indians lacked the agency to think for themselves.

Based on Colonial Constitutions

'[T]he Government of India Act of 1919 was the first British-made Constitution for India, which provided the foundation for the Government of India Act of 1935. The 1935 Act, in turn, provided the broader framework for the Constitution of independent India.' (Deepak)

A third way in which the claim might run is that the post-colonial *Constitution* carried on the frameworks of the pre-independence constitutional statutes (Arghya Sengupta has **made a similar claim**):

Descriptive Premise 3: The value framework of the *Constitution of India* is the same as that of the colonial value framework that underpinned the colonial Government of India Acts of 1919 and 1935.

Normative Premise 3: An independent Constitution should not adopt the value framework of its colonial predecessor.

Conclusion: India should repudiate its *Constitution* of 1950.

Descriptive Premise 3 draws on the fact that the *Constitution* took the governmental architecture of the 1935 Act — itself enacted as an inadequate response to self-governance demands by Indians — as its starting point. But starting with a given text and retaining some of its verbal formulas can still result in a starkly different value framework.

The *Constitution of India* swapped the hyper-centralised, unaccountable and unrepresentative colonial Executive government of British India under the 1935 Act for a representative government accountable to a parliament elected through universal adult franchise in one of the poorest countries in the world. This was a time when a measure of affluence, male gender, and literacy was assumed to be a necessary precondition for democracy, and naysayers abounded. Women got the vote at the same time as men in India, well before they did in countries like **Switzerland**. **Brazil** removed the requirement of literacy for franchise as late as in 1988.

For better or worse, Indian framers also rejected the colonial state's capitalism in favour of a mixed economy, swapped a strict separation of the church and the state for an **equal respect for all religions**, put far greater emphasis on material equality than liberal practice typically demand, and sought to balance judicially-enforced individual freedoms (constitutional rights) and common goods (**constitutional directives**). The *Constitution* not only went well beyond the 1935 Act but also British parliamentary practice by creating an indirectly elected upper chamber, a federal structure with elected state assemblies, a promise of local government at a later date, a swathe of independent **constitutional guarantors**, and judicial review by independent courts to check the Executive. It sought to guarantee a free civil society and thoroughly rejected the colonial divide-and-rule policy in favour of a non-discriminatory inclusive governance model.

My argument is not that the *Constitution of India* is perfect. It has many design flaws, including its creation of the office of appointed Governors and its legitimisation of preventive detentions. But making the argument that the value framework of the *Constitution* is in essence the same as the 1935 Act requires a good deal of naivety or a greater degree of mischief.

The Argument from Indigeneity

'The political theology of the Protestant Reformation could not have been written clearer on the walls of the Enlightenment project. It is precisely for these reasons that De Roover calls both secularism and liberalism secularised versions of Christian onto-epistemology, obscured by the employment of secularism itself as a filter to understand history.' (Deepak)

'It is this alienation from one's own cultural experience that makes colonialism and colonial consciousness immoral.' (Deepak)

Finally, we can turn to what is probably the sense Deepak is most strongly committed to:

Descriptive Premise 4: The *Constitution's* value framework is non-indigenous (i.e., not 'Indic') inasmuch as it did not originate in India.

Normative Premise 4: A Constitution should be based entirely on its 'indigenous' value framework.

Conclusion: India should repudiate its *Constitution* of 1950.

I will forgo a discussion on *Normative Premise 4*, except to register my doubts about its static, hermetically sealed, imagination of a society's indigenous values, and to note that Deepak's own critique is based on a theory born in Latin America, popularised through US campuses, and applied to India by nativist scholars at a Belgian university.

What matters more is that *Descriptive Premise 4* cannot withstand scrutiny either. While it is true that as a *set* of affiliated values, liberal constitutionalism did originate in Europe, several important values embodied in the Indian *Constitution* – religious toleration in particular – have far more sophisticated and earlier historical roots, including in 16th century India under Akbar (Deepak, of course, characterises this period as one of 'Islamic colonisation').

Descriptive Premise 4 essentialises India, adopting a conveniently narrow, ahistorical, and cherry-picked view of what values can count as 'indigenous' in the Indian context. It ignores decades, if not centuries, worth of political discourse suffused with liberal tropes in pre-colonial, colonial, and post-colonial India. It proclaims, rather than establishes, a thoroughly Brahmanical conception of Hinduism ('Sanatan Dharma'), supposedly the foundation of India's culture and values until about 1,200 years ago, and subsequently corrupted by outsiders. It sidesteps the internal contestation over values within what Deepak calls the 'Indic' tradition itself: teachings of the Buddha and Mahavira, we are told, were falsely 'reimagined as rebellions against "Brahminical hegemony" [...] evidently inspired by the anti-clericalism of the Protestant Reformation.' (Deepak) The **Bhakti movement's** engagement with notions of caste and gender equality over centuries merits not even a mention in the book.

Whatever indigenous cultural palingenesis Deepak seeks, if it ever existed, was lost centuries ago by his own reckoning, and whatever value frameworks contemporary India possesses – as a socio-cultural matter – are very different from those of Deepak's lost utopia. Ironically, then, *Normative Premise 4* would itself get in the way of his palingenetic project, for what was indigenous then is clearly not indigenous today; unless one prescribes 'indigenous' to be understood as signifying a pristine cherry-picked culture that supposedly existed over a millennium ago. This, of course, is the main trick Deepak performs: smuggling in a palingenetic thesis by repurposing decoloniality's obsession with indigeneity.

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In Conclusion, none of the descriptive premises that Deepak uses to undergird the decolonial argument stack up. To be sure, I have not defended the *Constitution of India* or its value framework substantively in this post (for a critical explanation of this framework in Hindi, see ***Hum Bharat Ke Log: Bhartiya Samvidhan Pe Nau Nibandh***). The *Constitution* has defects that need to be corrected; despite being a reasonably good foundation it needs many improvements. All I have tried to show is that the arguments Deepak has deployed for its repudiation fail, and they do so comprehensively.

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