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## Avinash Kumar



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

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# **THE IDEA AND INTERNALISATION OF COLONIAL CONSCIOUSNESS IN THE INDIAN CONSTITUTIONAL LAW REGIME**

**AUTHORED BY - KARTIKA RAJ KARNA**

## **Abstract**

The paper essentially deals with the application of post-colonial studies to the interpretation of Indian Constitutional law and theoretical analysis thereof. The phenomenon of colonial consciousness robs the civilians of their own experiences of the world. This phenomenon is pervasive even today, and is reflected recurrently in the legal discourse, such as- use of ERP test by the judiciary, anti-conversion laws, the western idea of liberal secularism and state neutrality as enshrined under Art. 25 of the constitution, the distorted idea of agency and its relation to religious freedom and liberty, and over-simplification of cross-cultural issues etc. The paper, tries to explore the idea and internalisation of colonial consciousness in the Indian constitutional thought particularly in respect of Article 21 and 25. It further tries to find out the reason behind the distortion in the meaning of secularism and liberty that arises in the Indian context while seeking the presence of psychological orientalism in the minds of the colonised. The methodology adopted for the purpose of conducting research is purely doctrinal. Considering the findings of the paper it could be authoritatively stated that the phenomenon of colonial consciousness is pervasive today and overall reflects itself in the decision-making approach of the Indian Judiciary. Orientalism has become a part of the psychology of Indians that refrains them from experiencing their own reality which in turn leads them to erroneous interpretations of socio-legal issues arising in the Indian context. The paper finds out that the eurocentric and the petitio principii fallacy are the main causes that give rise to these socio-legal problems and the distortions and suggests that a deviance from resorting to solutions that oversimplify socio-legal issues is required to be adopted, in order to avoid creating a pandora's box thereby.

**Keywords:** colonial consciousness, liberty, secularism, psychology, constitutional law

## I. Introduction

*“A major contribution in our understanding of the entire Indian past is that this understanding derives largely from the interpretations of Indian history made in the last two hundred years”<sup>1</sup>*

Colonialism creates a new perception of the world of the colonized. It robs the civilians of their own experiences of the world and the former substitute their own experiences with that of the colonizers. The colonized apply the assumptions of the colonizers to understand and provide answers to their world problems. The phenomenon of colonial consciousness pervades Indian thought, even today. There are various contemporary debate surrounding the issues of anti-conversion laws and use of essential practices test as a tool in the socio-religious diaspora by the Indian Judiciary; the distortion in the idea of agency (with special reference to women's agency) and perceived superiority of the notion of liberal state neutrality, as a result of proliferation of the idea of superiority of the West which in turn has deep fallouts on the principles enshrined under Article 21 and 25 of the Constitution.

The Indian Judiciary seeks to exterminate these distortions, problems, and fallouts by following a very normative approach. This approach, however, does more damage than remedy in as much as it resorts to solving the afore-mentioned issues by over-simplifying and casually ignoring the complex cross-cultural issues embedded at the heart of it. This problem, hence, relates to the thought-process which has semblance to the Western philosophy, behind such fault-marred interpretations and hence warrants the application of colonial consciousness. This post-colonial studies' concept would aid in the understanding and recognition of the eurocentric and the petitio principii fallacy at work herein, and provide solutions that are bespoke to India instead of being just an imperialist replica that leaves us forlorn in the long run.

The following paper attempts to identify and explain the idea and internalisation of colonial consciousness in Indian Constitutional thought in order to provide reasons for the development of the afore-mentioned problems in the first place and to suggest possible remedies for the same.

## II. Research Problem

The phenomenon of colonial consciousness robs the civilians of their own experiences of the world. The colonizers impose their own assumptions into the minds of the colonized. These

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<sup>1</sup> Lata Mani, *Contentious Traditions: The Debate on Sati in Colonial India* (Berkeley: University of California Press, 1998).

assumptions arise from the permeation of the notion of cultural superiority and application of Western Normative ethics by the colonizer. This phenomenon is pervasive even today, and is reflected recurrently in the legal discourse, such as- use of essential practices test by the judiciary, proselytization v. non-interference w.r.t. anti-conversion laws, criticisms surrounding the western idea of liberal secularism and state neutrality as enshrined under Art. 25 of the constitution, the distorted idea of agency and its relation to religious freedom and liberty, and over-simplification of cross-cultural issues etc. These problems have a significant fallout on Indian constitutional and legal thought. This problem can be analyzed by the application of the theory of orientalism to highlight the issues at the core of this problem such as-identity, quest for cultural homogeneity, power dynamics and the inter-connection between the culture and history of the west and the orient. The colonized have to psychologically go through the dilemma of choosing either individualist pagan traditions (the Indian way of thinking) or the allure of classical modernisation when posed with problems concerning the socio-legal aspects of liberty and secularism. The internalisation of imperialism in the experiences of the people is a major factor for problematic interpretation of aspects under constitutional law and the remedy therein, sought for.

### **III. Research Objectives:**

1. To explore the idea and internalisation of colonial consciousness in the Indian constitutional and legal thought.
2. To assess the presence of psychological orientalism in interpretation of Indian Constitutional Law
3. To determine whether there exists an Indian Way of Thinking.
4. To explain the distortion in the meaning of secularism and liberty that arises in the Indian context.

### **IV. Research Questions:**

1. Whether the idea of colonial consciousness subsists in the trends in contemporary Indian constitutional thought?
2. Whether orientalism psychologically impacts the interpretation of questions relating to Indian Constitutional Law?
3. Whether there exists an Indian Way of Thinking?
4. Whether the meanings of Secularism and Liberty face a distortion in the Indian Context?

## V. Methodology:

The methodology adopted for the purpose of conducting this research is purely doctrinal. Primary and secondary resources have been used for the purpose of conducting the research, such as statute, case laws, books, journal articles, newspaper articles and essays. It is a purely interpretative, analytical and exploratory study.

This section essentially attempts to study and point out the areas of convergence of post-colonial studies such as, but is not limited to - colonial consciousness, cultural heterogeneity, Orientalism and cross-cultural relations and that of Indian Constitutional Law thought specifically in relation to the notion of liberty and secularism and rights and procedures enshrined under Article 21 and 25 of the Constitution.

## VI. What is Colonial Consciousness?

The phenomenon of colonial consciousness robs the civilians of their own experiences of the world. The colonizers impose their own assumptions into the minds of the colonized. These assumptions arise from the permeation of the notion of cultural superiority and application of Western Normative ethics by the colonizer. The use of these ethics is popularized and permeated by propagating the idea of absence of ethics in Indian society. The colonized try to replicate the way the Colonizers would respond when posed with substantial socio-legal issues and use their terminologies to answer questions that are bespoke to a different demography altogether. It represents and is built on the notion of the cultural and civilizational superiority of the West. It is the creation of a certain perspective or consciousness of perceiving the world and its problems. Since, the colonized are robbed of their experiences they use the experiences of the colonizers, which they are forced to perceive as intellectually superior and employ the methods that resemble those that are likely to be used by them when dealing with such issues. Since, at the heart and core of the notion of colonialism lies the idea of, 'unless the colonized were weak how could they have been colonized?', they promote the idea of superiority of the West.

The Colonizers employ various techniques to aid in their narrative of establishing the accurateness of their act of colonisation to depict that whatever they did was nothing immoral but actually was aimed at the emancipation of a morally corrupt social structure<sup>2</sup>, or by demonstrating

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<sup>2</sup> S.N. Balagangadhara, *The Heathen in His Blindness: Asia, the West and the Dynamic of Religion* (Leiden: E.J. Brill, 1994; Reprint, Delhi: Manohar Publishers, 2005).

through various descriptions how India is a sans ethic society, or by showing how there existed no presence of the term ethics in Ancient Indian History<sup>3</sup>. Some of the techniques were the use of pedagogy or the practice of corruption or caste-system prevalent in the entire Indian population to depict and forward the notion that Indian society was inherently immoral and so were its social structures and organisation.

They also permeated this consciousness to create a particular image of the ethnographic descriptions by the use of a theological framework in their descriptions such as the use of the word 'heathendom' or the philosophy that the heathens have been swayed over by the Devil and his Minions and the notion that they are worshipping false Gods.<sup>4</sup> This description transformed and became the rule by implication for the West<sup>5</sup>. The colonizers' experiences were premised on and relied heavily on the concept of Truth. One facet of colonial consciousness can also be traced to the idea of the White Man's Burden or the civilizational Mission entrusted upon the Western civilization to civilise the barbaric Occident.

Since the phenomenon of colonial consciousness constitutes the exercise of the fallacy of *petitio principii* which translates to 'assuming the truth of the things that one wants to prove', it is double faceted in order to facilitate such exercise. It is based on both a cognitive premise and a conclusion which is wholly based on their own narratives and descriptions.

There exists a definitive link between the study of colonial relics and the interpretation of Indian constitutional legal thought.

The idea and internalisation of the phenomenon of colonial consciousness can be traced by the analysis of the myriad cross-cultural issues present in landmark judicial pronouncements. We often fail to recognise these issues and resort to adopting measures that over-simplify the problem at hand thereby rendering the deep-rooted problems unattended which in turn aids in the formation of more and more problems. One of them which closely encompasses nearly all of the problems raised in this paper is the Sabrimala case.

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<sup>3</sup> Richard A. Shweder, Manamohan Mahapatra and Joan G. Miller, Culture and Moral Development (Chicago: The University of Chicago Press, 1987)

<sup>4</sup> D. Spurr, The Rhetoric of Empire: Colonial Discourse in Journalism, Travel Writing, and Imperial Administration (Durham: Duke University Press, 1993).

<sup>5</sup> Supra note 1.

## VII. The Sabrimala issue and use of Essential Practices test

The Sabrimala Temple Authorities<sup>6</sup> prohibited the entry of women aged between 10 to 55 years in the sanctum-sanctorum of the Temple. This bar was challenged on grounds of violation of women's right to equality and life and personal liberty enshrined under Articles 14 and 21 respectively. The arguments of the Defendants in this case was that Lord Ayappa was a celibate and hence women of a certain age group were not allowed and that the grounds had nothing to do with the concept of purity. The Supreme Court in this case ruled in the favour of the petitioners and upheld the right to entry of women in the temple and also held such a bar to be constitutive of untouchability as it was built on the concept of purity. The Supreme Court during the hearing framed one of the issues, as whether the exclusion of women constituted an essential religious practice within the meaning of Article 25 of the Constitution. The test of essentiality<sup>7</sup> as employed by the Court means that only those practices encribed under those texts that are at the heart and core of the religion without which the religion itself becomes vitiated, would not be regulated by the State and would receive protection under Article 25.

**“what constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself”**<sup>8</sup>. The valid use of the essential practices test would hence ensue when there exists unity on the authority and superiority of a Single Text (that is supreme among all and from where all the others have sprung up) and where there does not exist contrary views or diversity of any kind. This position finds aid in the way Semitic Faiths exist: they have a single holy book, a prophet and the idea of One True God or the idea of Doctrinal truth. Hence, it can be said that technically, the application of the ERP test becomes problematic when the above prerequisites are not fulfilled. It leads us to an invalid interpretation where there exists no hierarchy in the superiority of one text over another, like in Hinduism. The Bhagavad Gita is not The Holy Book of All the Hindus. Many Scholars do not even believe Hinduism to be a religion<sup>9</sup>.

In the **Gram Sabha Case**<sup>10</sup> the Court relied on the wording of the Dharma Sastras to show how worshipping a live cobra was not an essential practice of the Hindu religion while the defendants tried to show reliance upon the Shrinath Lilamrut that prescribed such type of worship. The Apex

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<sup>6</sup> Indian Young Lawyers Association vs The State of Kerala, (2017) 10 SCC 689 (India).

<sup>7</sup> Comm'r, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, 1954 SCR 1005, 1021 (India)

<sup>8</sup> Acevedo Deepa Das, Gods' Homes, Men's Courts, Women's Rights, (International Journal of Constitutional Law, 2018).

<sup>9</sup> Shashi Tharoor and Sadhguru.

<sup>10</sup> Gram Sabha of Village Battis Shirala v. Union of India, (2014) SCC Online Bom 1395 (India).

Court did not take into account the gigantic religious diversity among Hindus itself. But the Court is not to be blamed entirely herein, as it was just applying the ERP TEST and in order to apply such test one has to assume that no diversity exists, that there is a supremacy of one single text (Dharma Sastra) and the one employed herein is certainly above the one that prescribes such behaviour (Shrinath Lilamrut).

The use of the ERP is problematic in India, but would not be that much of a problem in the Western Semitic faiths because in the latter the Court is just an interpreter of something which is already established by a doctrinal truth and by hierarchy of the religion<sup>11</sup>. However, it would cause structural and deep-rooted problems in India because, there is an absence of all of the prerequisites stated above. The Role of filling that gap would have to be taken up by the Judiciary which would transform its position to a clergy rather than a judicial court. And hence, the Court then in that situation seeks to protect and give precedence to rationality, neutrality and scientific liberty<sup>12</sup> (which theoretically have no place in the domain of religion). Hence any practice that springs up from religion if judged discriminatory is now no more a religious practice because it has been adjudged to be discriminatory<sup>13</sup>. Article 25 of the Constitution hence protects the autonomy of every religion however, the ERP test essentially impinges on that.

The liberal, normative, modern, privatized and secular idea of the genealogy of religion was propagated by the Christians became a prominent and pervasive idea of modern society<sup>14</sup>. Colonisation and neo-colonisation helped in the culmination of that. In accepting such an idea, one must necessarily let go of the distinctive dynamics that spring from our uniqueness. In the 1800s, the Queen of England issued a proclamation<sup>15</sup> that upheld the idea of tolerance and liberty in the religious domain in India for the Hindus. However, this led to the Indians being forced to giving proof of the authenticity and credibility of their practices and traditions in the way that the Britishers understood, i.e., showing their mention in the true religious texts and sacred doctrines of the Hindus.'

An excerpt from the Britisher observation w.r.t. Questions about allowance of the Hindus to

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<sup>11</sup> Quran> Hadith> Sunnat> Ijma> Qiyas

<sup>12</sup> Mehta, Pratap Bhanu. India: The Politics of Religious Reform and Conflict. In Religion, the Enlightenment, and the New Global Order, pp. 174–93, (New York: Columbia University Press, 2010).

<sup>13</sup> Acevedo, Deepa Das. Gods' Homes, Men's Courts, Women's Rights, (International Journal of Constitutional Law, 2018)

<sup>14</sup> Asad, Talal, Genealogies of Religion: Discipline and Reasons of Power in Christianity and Islam. (Baltimore: Johns Hopkins University Press, 1993)

<sup>15</sup> Governor General in Council to a letter requesting clarity on the official colonial policy towards the practice of self-immolation by widows, cited in Majumdar (1988, p. 102).

practice something was as follows: -

*“the true interpretation of the religious law . . . will no doubt diminish, if not extinguish the desire for self-immolation. The safest way of coming to a right understanding on a point so interesting to humanity, is a rigid investigation of the rules of conduct laid down in the books which are considered sacred by the Hindoos”*<sup>16</sup>.0

The Hindus tried to vigorously defend that their traditions and practices are protected by their sacred books in the same way the Colonizers’ practices are because only after proving it to the colonisers the way he understood would the latter approve of the same to be valid. Hence, pagan traditions that had no concept of doctrines and truth, hierarchy and superiority, now were forced to aggressively defend their traditions and portray their superiority which many authors believe is the cause of the rise of the Hindutva Movement. This vigor often takes the shape of fanaticism which in turn leads us to the inevitability of religious conflict.

The aspect of colonial consciousness hence arises in this context in form application of a test that is custom made for specific types of religions and when the same is applied to other religions that are religions cum pagan traditions it leads us to the discovery of a eurocentric and a petitio principii fallacy.

## **VIII. Non-interference v. Proselytization: A theoretical analysis of Anti-Conversion Laws**

Anti-conversion laws have been passed by various state legislatures and have succeeded the test of constitutionality as well<sup>17</sup>.

The Indian way of thinking has favoured the Role of the State in the protection of and management of religion as a public good<sup>18</sup>. This explains why the Indian Judiciary has had a likelihood of approving anti-conversion laws and prohibiting proselytization.<sup>19</sup>

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<sup>16</sup> From an ‘appreciative notice of Raja Rammohun Roy’s first Tract on Suttee’ in the Calcutta Gazette of December 24, 1818.

<sup>17</sup> In 12 out of 28 states as of February, 2023.

<sup>18</sup> Acevedo, Deepa Das, Divine Sovereignty, Indian Property Law, and the Dispute over the Padmanabhaswamy Temple, pp. 841–65 (Modern Asian Studies 50, 2018); Acevedo, Deepa Das, Gods’ Homes, Men’s Courts, Women’s Rights. (International Journal of Constitutional Law, 2018); Acevedo, Deepa Das, Pause for Thought, Supreme Court’s Verdict on Sabarimala, pp. 12-15 (Economic & Political Weekly, 2018).

<sup>19</sup> Bhargava, Rajeev, Introduction: In Secularism and Its Critics, pp. 1–30 (New Delhi: Oxford University Press, 1998); Jacobsohn, Gary Jeffrey, The Wheel of Law: India’s Secularism in Comparative Constitutional Context. Princeton, (Princeton University Press, 2009); 30, Sen Ronojoy, Legalizing Religion: The Indian Supreme Court and Secularism, (Policy Studies. Washington, DC: The East-West Center, 2007).

The Semitic Faiths however, believe in the idea of One True God and the observance of God's plans as the doctrinal truth and hence consider it their duty to propagate and to transform others to accept the message of the One True God. The pagan view however stems from the idea of respecting every religion as a tradition and believes that there are many truths and many ways to achieve the same and hence it will be immoral for him to allow people to come and interfere in other people's religions. Hence, he practices the policy of non-interference. However, for the other semitic faiths it is moral for them to interfere and proselytize in order to help others to follow the One True God's plan for humanity and to save the others from worshipping false Gods or committing the sin of idolatry.

Proselytization grows from the assumption that some religions or beliefs could be false or that some religions could be better than others. But for the pagan every religion is true and there are various forms of achieving the truth, therefore, he condemns proselytization. This difference in views can also be the likely cause for animosity between religious groups. This animosity is reflected via the criticisms to the anti-conversion laws passed in India. The Indian Judiciary has upheld the anti-conversion laws made and hence has chosen 'a' side that is the mirror image of the pagan view. In the case of Stainislaus<sup>20</sup> the S.C. upheld the constitutionality of anti-conversion laws.

In this aspect one arrives at the necessary conclusion that the Indian State cannot be neutral in the Western liberal normative sense, as it has in fact promoted one community's conception of good over another's.

Neutrality means, "Neutrality of justification requires that the state should not include the idea that one conception of the good is superior to another as part of its justification for pursuing a policy. Neutrality of effect, in contrast, requires that the state should not do anything which promotes one conception of the good more than another, or if it does so, that it must seek to cancel or compensate for these differential effects."<sup>21</sup>

It further brings us to the conclusion that even the semitism would fail to be neutral towards the issue of conversion and would naturally support their own theological good as the assumption even when condemning conversion, they support the idea that religion is all about Truth and hence bolster the idea of Freedom of Religion with liberty as its functional aspect and the freedom

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<sup>20</sup> Stainislaus v. State of Madhya Pradesh, 1977 SCR (2) 611 (India).

<sup>21</sup> Mason 1990, p. 434.

to convert as its by-product. Hence the Western normative Liberalism has employed the notion of truth to be paramount in religion and hence they themselves are not neutral as they think along the lines of semitic truths whenever dealing with questions relating to conversions.

Hence, the only way the Indian state would be able to replicate the stance of the West i.e., neutrality is to pretend to declare that they are agnostic but at the same time frame legislations regarding religious freedom. The West did not face the problem of such diversity of religion as all Semitic faiths have a similar religious framework and semblance hence, the idea that what works for the West would work for the East is not feasible in this context as India poses a unique and a distinctive problem altogether.

This is the problem that the current paper focuses on. It can be further understood by looking at the Constituent Assembly Debates w.r.t. Article 25 of the Constitution in which the Constitution makers although did not give the right to convert within Article 25, however, allowed for the freedom to convert to be inclusive of the word 'propagate' used in Article 25 of the Constitution to pacify the Christians and their apprehensions<sup>22</sup>. However, the Indian Judiciary has adopted one of the views by upholding the validity of anti-conversion laws and by that has upheld Secularism enshrined under Article 25 of the Constitution. However, it forgets that it has merely been successful in creating a pretence of state liberal neutrality / agnosticism when it has actually made a choice between two goods. How can the state be said to be neutral then?

## **IX. The Idea of Agency Under Article 21 and its Interposition with Postcolonial Thought**

This section essentially deals with the distortion in the idea of agency by using two Indian events as examples to showcase how this distortion is created by the application of Western normative ethics at the expense or by the preclusion of the unique problems posed by India. It aims at exploring the presence or essence of colonial consciousness in such interpretations of the two discourses.

### **i. The case of Nude Worship and issue of Agency**

As we have previously observed how the phenomenon of colonial consciousness works on the

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<sup>22</sup> 7 CONSTITUENT ASSEMBLY DEBATES (Dec. 6, 1948), <http://parliamentofmdia.nic.in/1s/debates/vol7p20a.htm>

trivialization of the experiences of the colonized and how there exists a substitution of their own experiences with that of the Colonizers. This leads to alienation of the people from their own beliefs who now only operate on the beliefs of the colonizer. This trivialization is often deep-rooted in as much as it leads to the distortion and denial of one's own experiences of the world. The experience of another culture gets engraved into the theory and formulates itself into another culture altogether. This ignorance of cross-cultural issues often leads us to these distortions or denials even today.

Colonial consciousness can be further broken down into two aspects when it comes to the approach of colonialism via discourse. They are- Forms of Knowledge and Modes of Description. The former relates to the creation of the rhetoric that helped in the permeation of the predominance and superiority of the West and the latter relates to the use of history and identity to establish laws and regulations that establish homogeneity in the world of the colonised. However, this dominance was not achieved because the permeation or penetration of the colonial thoughts happened unevenly and hence dominance was achieved and not hegemony. Practices like Sati became the torch-bearer for the argument for the classical modernisation of Indian society and it aided in the portrayal of a degraded picture of Indian society. Modernity hence, had two types in India- colonial and post-colonial which often creates problems in the current world.

The ritual of Bettale Seve or nude worship as performed in certain parts of North Karnataka was banned in the 1980s owing to the public outcry that it forced women to do the worship in nudity and hence was violative of Articles 21 of the Constitution. Article 21 of the Constitution guarantees to everyone right to life and personal liberty and one's agency over one's life lies at the heart of this article. This practice was based on two myths regarding the worship of Goddess Renukambha. The question regarding agency arises here because there existed a colonial framework under which the Sati subject was given no agency because the framework itself was built on the assumption that religious practices could never be observed by the application of consciousness but is always a result of passive obedience. Hence, the rumour that was promoted was that women that did the seve were either forced to do so or were intoxicated so that they do not know the nature and consequences of their acts. Hence, we can infer the mere assumption of the fact that coercion had taken place often negates the possibility that the ritual can be performed voluntarily.

In order to go beyond the popular discourse of traditions v. modernity one. We have to look into

the possibility that this modernity could just be quest for establishment of homogeneity in disguise and in doing the contrary one overlooks the very principle enshrined at the heart and core of the ritual i.e., the celebration of female sexuality.<sup>23</sup>

Furthermore, one needs to realise that the notion of tradition is native to India as it is based on instincts and feelings. However, the notion of modernity which is constitutive of scientific behaviour and application of reasoning and logic is non-native to India and is Western<sup>24</sup>.

Moreover, the ritual is not even based on the concept of shame or sex it has an altogether different underlying principle at the core, that is to emancipate the thought of the dalit women so that she becomes critical and sensitised to the ideas of shame and rationality and modesty and so that she does not become a puppet of the patriarch. In this sense the ritual upholds the idea of feminism. Furthermore, the whole ritual also can be interpreted to represent the events of death and rebirth from the way it is performed.

What prevents us from looking into these interpretations is the assumption that since the practice is discriminatory it fails to be a religious practice at all. What lies at the heart of this is therefore, the quest for homogeneity, the quest that bolsters the White Man's burden, the quest that makes other people realise that they do not possess any agency in their lives all of which stems out of a false presumption i.e., religious practices can never be an outcome of a conscious choice made by the individual. This assumption can only arise where the person making the assumption does not belong to or knows the culture of the subject making all of it a cross-cultural issue. Banning the practice involved over-simplification of the whole problem. Ascribing the aspect of agency on the basis of an invalid assumption furthers that oversimplification.

This in turn leads to the distortion in the idea of agency as we try to replicate the assumptions of the colonizers<sup>25</sup>, thereby reflecting the presence of colonial consciousness.

The Supreme Court of India has tried to use the test of essentiality as seen previously in order to clean all the superstitions in the religions to suit its own ideas of reform that match the 21st

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<sup>23</sup> Lata Mani, *Contentious Traditions: The Debate on Sati in Colonial India* (Berkeley: University of California Press, 1998).

<sup>24</sup> U. R. Ananthamurthy, *Bettale Puje Yake Kudadhu?* pp. 38-39

<sup>25</sup> *Id* at 92.

Century Classical Modernisation standards<sup>26</sup>. In doing so the custodian of fundamental rights does more damage than remedy in as much it takes away the religious autonomy of an individual that is protected under by the purview of Article 25 of the Constitution.<sup>27</sup>

It has also been observed by renowned jurists all over the world that, "What is religion to one is superstition to another."<sup>28</sup>

Under Article 29 of the Constitution the citizens should be allowed to have a say in what constitutes essentiality and what constitutes superstition<sup>29</sup>. If the Indian State is not allowing that, how can the state be said to be neutral and democratic considering the fact that rights enshrined under Article 25 are individual based rights.

## **X. Psychological Orientalism and Experiential Reality: A post-colonial perspective**

Orientalism in the most basic words is the explanation of the history, life, traditions, and practices of the East as seen through the lens of the West<sup>30</sup>. Colonial Consciousness as we have already observed is a phenomenon which causes alteration in the psyche and culture of the colonised. As Edward Said has rightly said, "psychologically, Orientalism is a form of paranoia, knowledge of another kind"<sup>31</sup>. Imperialism as defined by Edward Said is, "the practice, the theory, and the attitudes, of a dominating metropolitan centre ruling a distant territory; 'colonialism', which is almost always a consequence of imperialism, is the implanting of settlements on a distant territory and often involves untold miseries for others"<sup>32</sup>. Edward said in his work on Orientalism has stated how the Orientalist discourse attempts to divide the world into fragments of 'they' and 'us.' This perception of the Orient by the Occident was further popularised by the Colonisers in order to create a certain image of the East. This view aided them in defending the stance of the 'White Man's Burden.' The redefinition of various Indian concepts and the rewriting of Indian history by the Colonisers further aided them in defending their acts of transgression as their defence was that the Indian society was in need of civilisation.

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<sup>26</sup> Faizan Mustafa & Jagteshwar Singh Sohi, Freedom of Religion in India: Current Issues and Supreme Court Acting as Clergy, 2017 BYU L. REV. 915 (2017).

<sup>27</sup> Id at 933.

<sup>28</sup> Adelaide Co of Jehovah Witnesses v Commonwealth (1943) 67 CLR 116, 123 (Austl.).

<sup>29</sup> INDIA CONST. art. 29, § 1; Comm'r, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, 1954 SCR 1005, 1021 (India) at p 1025.

<sup>30</sup> Said, Edward W., Orientalism, (New York: Random House Inc, 1979).

<sup>31</sup> Id.

<sup>32</sup> Supra note 1 at p.8

Such dominance if not heterogeneity by the colonialists created a sense of consciousness that permeated thought, belief and understanding of the colonised. It penetrated into the domain of social, cultural, political, economic and psychological experiences of the people and replaced them with those of the colonisers.

Franz Fanon also believed that colonialism was inherently immoral as it made people alien to their own world in as much it internally coerced one to find the answer to the question of “*In reality, who am I?*”<sup>33</sup>

In other words, colonialism is considered degrading and dehumanising for the simple reason that it “*seeks to dehumanize them (inhabitants). Everything will be done to wipe out their traditions, to substitute our language for theirs and to destroy their culture*”<sup>34</sup>. This dehumanizing hence relates to the self in which one starts perceiving oneself as culturally, morally, intellectually and ethically less superior than the colonisers. This is the view that the colonists propagate and which permeates into the minds of the colonised. This is how colonial consciousness permanently establishes itself into the psychology of the colonised. This is what prohibits him from making use of his experiences or in other words his own experiential reality.

## **XI. The Indian Experience: Differences in the way people think**

There are various characteristics that are unique to Indians, the presence of which indicate that there exists a particular way in which Indians think and that way is clearly distinctive from the West or its descriptions thereof. The Indian thought believes that truth is not a universal categorical imperative as opposed to Kant’s views. Furthermore, truth in Semitic Faiths is associated with Godliness. Indian thought also lacks the presence of universality whereas, the Kantian view stands on the buttress of universalism of Truth<sup>35</sup>. Moreover, Indians tend to contradict themselves or to say different things at different times. This does not signify that they are liars but just portrays differences in the way of thought. They further place a lot of reliance on the art of contextualization.

In order to analyse how the Colonial Consciousness affects the thoughts and experiences of the colonised it is imperative to know how the Indians and the West have inherently different ways

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<sup>33</sup> Fanon, Frantz, *The Wretched of the Earth*. Trans. Constance Farrington, (London, 2001)

<sup>34</sup> Sartre, Jean Paul, “Preface.” *The Wretched of the Earth*, p.13, (London: Penguin Books, 2001).

<sup>35</sup> Muller, Friedrich Max, *India: What Can it Teach Us?* (London: Longmans Green, 1883);

6, Copleston and Friedrich Charles, *A History of Philosophy*, (London: Burns, Oats and Washbourne, 1946);

Mackie, John Leslie, *Ethics: Inventing right and wrong*, (Harmondsworth: Penguin Books, 1997).

of thinking. This difference in way of thinking leads us to the conclusion that the Orient and the Occident are in fact very different. Hence, the permeation of cultural superiority is established by the evolution of cross-cultural morality. In Richard Schweders views<sup>36</sup>, who conducted a survey and based on certain questions arrived at the conclusion that because the answers of the Indians are very different from that of the Colonisers, the latter are in fact moral imbeciles<sup>37</sup> He further goes on to provide reasons why Indians think in such a way and defends it. This reasoned defence however, leads us to the conclusion that he too believes that Indians are inherently immoral<sup>38</sup>.

Van Den Bossche, a philosopher analyzed a Jain text called the Vajjalaggam<sup>39</sup> to decipher the nature of Indian ethics and stated that the whole text and not mention of any term that even remotely resembled the term ethics. Hence, the colonists took the easy interpretation of this finding to show and promote the view that Indians therefore are immoral since Indian ethics are non-existent. Dr. Claudius Buchanan stated that, “Neither truth, nor honesty, honour, gratitude, nor charity, is to be found in the breast of a Hindoo”<sup>40</sup>. Similarly, Hastings stated that, “the standard of morality among the natives of India differed widely from that established in England. He knew that he had to deal with men destitute of what in Europe is called honour, with men who would give any promise without hesitation, and break any promise without shame, with men who would unscrupulously employ corruption, perjury, forgery, to compass their ends. His letters show that the great difference between Asiatic and European morality was constantly in his thought.”<sup>41</sup>

## XII. Conclusion and Way Forward

There exists a definitive link between the study of colonial relics and the interpretation of Indian constitutional legal thought. The idea and internalisation of the phenomenon of colonial consciousness can be traced by the analysis of the myriad cross-cultural issues present in landmark judicial pronouncements. We often fail to recognise these issues and resort to adopting measures that over-simplify the problem at hand thereby rendering the deep-rooted problems

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<sup>36</sup> A Canadian Professor and a cultural psychologist.

<sup>37</sup> Richard A. Shweder, Manamohan Mahapatra and Joan G. Miller, ‘*Culture and Moral Development.*’; in Jerome Kagan and Sharon Lamb, Eds., *The Emergence of Morality in Young Children* (Chicago: The University of Chicago Press, 1987).

<sup>38</sup> Id at 43-44.

<sup>39</sup> Frank Van Den Bossche and Freddy Mortier, *The Vajjalaggam: A Study in Virtue Theory*, (Asian Philosophy 7, no. 2, 1997).

<sup>40</sup> Id.

<sup>41</sup> The Life of Robert Lord Clive; collected from the Family Papers, communicated by the Earl of Powis. By Major-General Sir John Malcolm, K.C.B., (London: 1836) in Thomas B. Macaulay, *Critical and Historical Essays*, vol. 1.

unattended which in turn aids in the formation of more and more problems.

The aspect of colonial consciousness hence arises in this context in form of the application of the ERP test that is custom made for specific types of religions and when the same is applied to other religions that are religions cum pagan traditions it leads us to the discovery of a eurocentric and a petitio principii fallacy. This fallacy needs to be cured because the Corut establishes binding principles of Constitutional Law on the basis of the fallacy.

The Indian Judiciary has upheld the anti-conversion laws made(cite) and hence has chosen ‘a’ side that is the mirror image of the pagan view. In the case of Stainislaus<sup>42</sup> the S.C. upheld the constitutionality of anti-conversion laws. In this aspect one arrives at the necessary conclusion that the Indian State cannot be neutral in the Western liberal normative sense, as it has in fact promoted one community’s conception of good over another’s. This is a major challenge for the Indian Judiciary considering India is a secular democracy along with the problem portrayed w.r.t. use of the word ‘Propagate’ under Article 25.

With respect to the distorted meaning of agency and related aspects, colonial consciousness prevents us from looking into those interpretations that would help us tackle the issue in an effective manner. What lies at the heart of the interpretations made is therefore, the quest for homogeneity, the quest that bolsters the White Man’s burden, the quest that makes other people realise that they do not possess any agency in their lives all of which stems out of a false presumption i.e. religious practices can never be an outcome of a conscious choice made by the individual. Ascribing the aspect of agency on the basis of an invalid assumption furthers that oversimplification. This in turn leads to the distortion in the idea of agency as we try to replicate the assumptions of the colonizers, thereby reflecting the presence of colonial consciousness.

The Supreme Court of India has tried to use the test of essentiality as seen previously in order to exterminate all the superstitious beliefs in the religions to suit its own ideas of reform that match the 21st Century Classical Modernisation standards. In doing so the custodian of fundamental rights does more damage than remedy in as much it takes away the religious autonomy of an individual that is protected under by the purview of Article 25 of the Constitution. This in turn distorts the meaning of Article 25 in the Indian context.

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<sup>42</sup> Supra note 20.

The dehumanizing nature of colonialism hence relates to the self in which one starts perceiving oneself as culturally, morally, intellectually and ethically less superior than the colonisers. This is the view that the colonists propagate and which permeates into the minds of the colonised. This is how colonial consciousness permanently establishes itself into the psychology of the colonised that compels the colonised to forego their own experiences of the world.

Hence, the way forward is to try and eliminate the eurocentric and the petition principii fallacy that led the Indian Judiciary to arrive at such problematic interpretations that do more damage than good. Furthermore, the use of the ERP test by the Judiciary most of the times unknowingly becomes a quest for reform which must be discouraged and certain caveats must be established in form of policy reform that cater to India's unique problems.

