COLONIAL RACE POLICY AND MODERN INDIAN GOVERNMENT

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Abstract

Citizenship in India is a complex construct. The rights and privileges enjoyed by citizens aren't uniformly distributed and what exactly constitutes citizenship is a deeply layered construct. This article looks at the influence of colonial racialism in shaping these constructs. It considers the somewhat fictitious nature of the claim of total equality of citizens in India's Constitution. It contrasts this claim against the more nuanced forms of citizenship that exist in practice against the constitutional ideal as imagined by people, and highlights the colonial roots of this nuanced existence. The legacy of the Colonial State doesn't simply live on in infrastructure or the structural body of the Indian Republic. It has seeped much deeper into its consciousness and shapes the way we imagine some of the most basic and foundational elements of nationhood. The article draws parallels between modern Indian policy and colonial attitudes to highlight the ways in which the legal conceptualization of citizenship in India continues to draw heavily on colonial precedents and ideations, and the deeply hierarchical layers of citizenship that it ends up creating.

Keywords: *Citizenship, British Empire, Colonial Policy, Indian Constitution*

The prompt for this paper comes from two policy initiatives of the Indian Government that had received significant attention at the time.The first was the abrogation of Article 370 of the Indian Constitution carried out between August and November 2019. Article 370 afforded to the Indian state of Jammu & Kashmir a special constitutional status, granting it significant autonomy from the laws that governed the rest of India, and the freedom to enact special provisions relating to residency, settlement, employment and property ownership for Kashmiris viz the rest of India.[1]

A consequence of the complicated history of the state during Partition, the article essentially created a duality of citizenship for citizens of the state of

J&K. [2] The abrogation of the article and the formal 'unification' of the state with India by the Government sought to address this long standing duality, but in the process has itself also created fresh constitutional questions on the status and divergence in treatment of citizens. [3]

The second prompt is the process of the National Register of Citizens' reformulation in the state of Assam. The NRC, maintained by the Indian Government, exists for the sole purpose of identifying Indian citizenship among the residents in the state of Assam. What is notable about it is that in contrast to entities such as the Census and the National Population Register, the NRC does not evaluate citizenship claims of residents across the country, but limits itself to a single state. The past few years have witnessed a Supreme Court ordered process to update the register by evaluating the citizenship status of Assamese residents. [4]

The point of flagging these two is to highlight an element of popular Indian thinking that exists both within administrative frameworks and seemingly at a broader populational level as well. This is the tendency to conceptualize Indians in a deeply hierarchical framework of citizenship with both rights and privileges accorded to different groups in graduated doses. This hierarchical attitude is often subsumed under a thin, somewhat fictitious, layer of adherence to the principle of equality of citizens. To put it simply; a basic, seemingly foundational, premise of Indian policy is an adherence to the idea that all Indian citizens are to be treated equally. Yet just above this foundation lies a host of caveats to the universalist principle of equality. Indian law and policy have frequently taken the position that the law can treat some citizens differently, that not all citizens may avail all the protections notionally available to them. More critically, these differences are often on the basis of inherent identities of citizens, rather than acquired or temporary statuses such as criminality.

This principle, of an overt statement of equality quickly caveated in numerous ways to produce a more complex and hierarchical citizenship structure, is seen at different levels of law in India. At the ideological apex of the Indian legal system is the Constitution, where this equality is presented as a fundamental right; Article 14 barring the State from denying equality before the law or equal protection before the law. [5] Article 15 reaffirms this by barring the state from discriminating on the grounds of religion, race, caste, sex or place of birth. Yet it quickly caveats this by asserting in section 3 that Article 15 does not prevent the state from making special provisions with respect towards women and children. Subsequent amendments, dating back to as early as the first set passed in 1951, added to these caveats by protecting provisions made for the "advancement of any socially and educationally backward classes of

citizens or for the Scheduled Castes and theScheduled Tribes." Article 16 similarly asserts equality of opportunity for citizens while again adding a host of caveats empowering the state to do so in the cause of advancing various groups considered backward. [6]

One step below the Constitution this becomes visible in legislation of various kinds enacted by Parliament. Thus, for instance, we have the example of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act of 1989 and its various amendments.[7] The Act exists to provide special redress for crimes committed against individuals belonging to the Scheduled Castes and Scheduled Tribes in India. A particularly contentious element of the law lies in its provisions of arrest and preliminary investigation. Actions covered under the purview of this law result in immediate arrests of individuals accused under its provisions as well as immediate registration of cases absent preliminary investigations by the police. They were contentious precisely because of the law treating acts committed against certain Indian citizens differently from the same acts committed against other citizens. The Supreme Court initially struck down these provisions for being unconstitutional on the principle of Equality before the Government resurrected them, while the Court reversed itself in 2019. [8]

The point here isn't to impute that this imagination of citizenship is inherently flawed. It simply represents an alternative way of conceptualizing citizenship, and on its own terms can have any number of outcomes, positive and negative. One can thus end up with policies such as those of affirmative action in India which explicitly recognize certain groups of citizens as inherently disempowered and seek to correct iniquity through inequality. Thus, you have India's "Reservations" policies which have created quotas in educational institutions and many (if not all) forms of employment over which the government has oversight. They set aside a subset of all open positions for individuals deemed to belong to "backward" communities, identities that are determined not by financial status but by ancestry and ancestral affiliation to the communities deemed backwards. [9] On the other side however, it also represents outcomes where the State often explicitly disempowers groups of citizens and the Judiciary finds itself paralyzed against a combined governmental and popular attitude determined to treat some citizens differently than others, as witnessed in the handling of detentions and habeas corpus petitions in the case of Jammu & Kashmir post the abrogation of 370, attracting criticisms of constitutional evasion on the part of the Supreme Court for its failure to uphold the principle of equality in how citizens of Jammu & Kashmir were treated. [10]

The question that this paper tries to explore is on the origins of this imagination

of citizenship. The initial response to such a question would be to presume an origin in the Caste system which so pervades South Asian thinking. And to an extent this would likely be correct. There are significant overlaps in the two systems of thought, the most fundamental being the broader imagination of such concepts as tied not to individual identities but community ones, with people defined by their religion, region, race, ancestry and caste. What I would like to suggest here though is that there is also perhaps an origin in India's colonial history, specifically the policies of institutionalized racism inherent to British Imperial rule from the late 19th century and onwards. It is worth noting moreover that the histories of the caste system in India, and of British Imperialism are themselves closely and perhaps inextricably intertwined. The various classificatory systems associated with the "caste" system in pre-colonial India often had varied conceptualizations of hierarchy, and much of the rigidity associated with the modern caste system is an outcome of interactions with British rule and the interpretive efforts of a British ruling elite seeking to understand the population it controlled. [11]

That racism had become an inherent and central part of British Imperial policy by the late 19th century probably doesn't need much by way of an explanation. The role of racialized thinking in the British Empire isn't necessarily understudied. Some scholars have commented on it directly, [12] while even more have highlighted the role of racial thinking in Imperial policies in surveys of Empire and Imperial systems of governance, law and politics. [13] What this paper seeks to note though is the interplay of hierarchical thinking and its intersection with racist imaginings of the world.

For a start we should consider the core of the British Empire; itself a complicated creature. The United Kingdom of Great Britain and Ireland came into formal existence only at the turn of the 19th century with the passage of the Acts of Union of 1801. [14] Great Britain itself had not formally existed till the Acts of Union of 1707, [15] when the Kingdoms of Scotland and England were merged into a single entity. And England herself, amoeba-like, consisted of an appendage it had swallowed almost completely but to this date hasn't fully digested; Wales. What you are left with then is a political chimaera, one that was constantly in the process of forging and reforging identities over a deeply layered societal structure. It cannot be surprising therefore that complex hierarchical attitudes shaped identity formation closely. Simple vertical hierarchies striated along social classes was one part of this structure, ranging from peasants to the urban classes to the aristocracy. As Linda Colley has shown however, there was more to Britishness than just this. A Protestant identity, envisioned in terms of standing valorously against the looming threats of Papal Catholicism. [16]

A Mercantile identity, of the island nation enamoured by the call of the seas yet deeply tied to an ideal of pragmatism as well. [17] And these intermixed with Englishness, gradually evolving into Britishness as union with Scotland created tensions and negotiations while influences from the peripheries in the settler colonies provided external shape to identities. [18] In parallel Colley, through the medium of captivity narratives, explores the wider role of the Empire, especially from those domains inhabited predominantly by non-settlers in shaping identities. Identity shaped by paranoia of the looming and mysterious native, by the growing confidence that game with Imperial conquests, and by the need to assert strength and justify weakness against the spectre of rival European Empires. [19] All of these came together to inform on how Britons saw not just themselves, but also the world and their place within it.

That a sense of superiority in English and British identity emerged is remarkable. What is worth noting however is that the sense of superiority did not overlay a simplistic view of the world. And this is where we return again to the issue of hierarchy. British imaginings of peoples in the wider world, influenced perhaps by the layers of hierarchy at an individual (from black or Asian servant to peasant commoner to lord) and communal (from Irishman to Englishman) level in British society itself, comprised a complex perception of other groups. Inferiority and Superiority were not rendered in binaries but instead in more layered and often fairly nuanced terms. Bayly for instance notes the problems of Whiggish attitudes in explaining Imperial history, but in doing so manages to communicate the deep-seated prevalence of the very same attitudes, describing an AncienRégimethat was fairly hierarchical in both practice and vision. [20]

The people of the world were thus mostly inferior in British eyes, but not uniformly so. Inferiority held many grades, and some groups were closer to the British ideal than others. The language of ranked inferiority seems to appear frequently in British descriptions of people. A people could be scarcely better than animals [21] whereas others could be noble and industrious, far along the 'path' of civilization. [22] These ideas about racial rankings become important to understanding ideas about Imperial policy. A less inferior community might earn British approbation, and with it a respect for their identity, their laws, their very existence. More inferior communities on the other hand ran the risk of inviting more aggressive policies in respect to their treatment. [23]

What were the factors involved in shaping these rankings of people? Distance certainly seems one element of it. The closer a community was to the British Isles, the more likely they were to consider them 'advanced' and in

that context evolve policies coloured by those ideas. In Malta therefore the British were actively open to the idea of a popular legislature, and would dispatch a commission to study the feasibility. [24] India in contrast would be a colony to be nurtured to self-rule, but never quite there yet until it was too late. [25] And in Australia, the natives were so uncivilized that they didn't even warrant the presumption that they even owned the land they lived on, with the whole continent declared *Terra Nullius* in short order after the arrival of the British presence in the region. [26] It is important to note here that "distance" could mean very different things in the 19th century, especially in the second half with the advent of the telegraph. As Berenson notes, information from the coasts of India could only be hours away, while the interior of Africa, closer geographically, was months away. [27] But perhaps equally important was the extent of familiarity. The British were after all much more familiar with the Western North African coastline, having been in the neighbourhood for centuries. And India had often loomed large over British imaginations for much longer than Australia had. The duration of the contact shaped imagery too, though it was hardly constant. India and its riches evoked not only Imperial greed but also fear of pollution and scandal in the late 18th century. [28] Concerns about this pollution, about being overwhelmed by native masses are as critical to understanding the racism of the late 19th century as patriotism and the self-assurances of superiority and liberality in Modern Britain. Moreover, as Colley has shown, identity formation was just as often a bottom-up process as a top-down, with the elite conforming to the demands of more subordinate groups. [29]

The point of the discussion up-till this point has been to offer a rough explanation for the complicated history underlying the rise of racism in Imperial Policy. It also aims to underscore the numerous layerings and rankings constituting it. We return then to India, to understand how racism and racialized attitudes drove the creation of policy at not just the meta-Imperial level but also within individual colonies. And more critically, how the layered and hierarchical ideation of racism played out in the imaginings of peoples in India. This is best demonstrated through two historical concepts; the Martial Race and the Criminal Tribe. The aim here is to show that they both represent a linked process and are exemplars of wider attitudes.

On Martial Races, we can turn to Seema Alavi who has outlined the underpinnings of the policy in the late 18th and early 19th century as British Rule expanded outwards from Bengal. She demonstrates how the search for the "good" soldier in British imagination was a deeply political exercise. Ideas about the martial inferiority or superiority of different communities were not always located in purely physical conceptualizations. A preference

for Indian soldiery was modelled on the imagined physical superiority of the Scottish Highlander, but also a preference for high caste troops, premised on the political presumption of the loyalty and natural leadership of these communities.[30] As the power-base expanded, the British would come into contact with newer groups, most notably the Gurkhas in Nepal and the Sikhs and Rajputsin the Punjab and the Northwest in general. [31] A change in preferences came with the growing spread of revolts and mutinies through the first half of the 19th century culminating in 1857, and contrasted with the fierceness of campaigns such as the war in Nepal. Slowly the Bihari upper-caste peasant soldier lost out to the newer "martial" groups. [32]

Imagined physical superiority was thus mapped onto communities along lines of loyalty. Communities which defied British rule found themselves relegated down the racial ranks, while communities declared loyal rose in British estimation which brought with it a rise in their relative racial standing. With social standing at both a communal and individual level extensively tied up in the ability to serve with the Colonial state, it cannot be surprising that Indians themselves became eager to reinforce attitudes of relative superiority. An exemplification of this can be seen in the demotion of the Mahars, a lower-caste Indian community who had been recruited in great numbers in the Madras Army. With the interlinking of martial attributes to racial groups in the aftermath of 1857, the Mahars found themselves declared a non-martial, and thus a physically inferior race. The reproduction of British notions of race and martial superiority in their petitions to have this marginalization reversed speaks to the extent to which the Anglophone conceptualization of race and identity was absorbed by Indians. [33]

Some communities thus found themselves valorised for their martial superiority and their privileged access to service on the basis of their physical attributes, or as in the case of subordinate civil and judicial service access for Bengali and Tamil Brahmins, their racial intellectual capability. [34] Other communities however found themselves at the other end of the racial ladder, not relatively superior, but relatively inferior. The Mahars are one example, but their marginalization pales when confronted by the policies enacted against the "Criminal Tribes" by the colonial state. The racialization of military service into the Martial Races policies was paralleled by the criminalization of communities which did not fit imagined ideas of enlightened and loyal subservience, and instead fell into ideas about inherent disobedience and criminality. Individuals from a Martial Race were considered naturally superior, and naturally predisposed to physical superiority and loyalty, thus deserving of enhanced treatment in comparison to their fellow natives. The individual who belonged to the Criminal Tribe however suffered the opposite.

Anyone unfortunate enough to be born into a Criminal Tribe was deemed to be inherently prone to criminality. And with this inherent character came the associated curtailments of freedoms and subjection to increased surveillance and suspicion by the colonial state. [35]

It is important to consider the parallel between the Colonial State and the more modern Indian policy landscape. The Colonial State too promised a veneer of equality for all subjects under the protection of the Crown, as evidenced in the 1858 Proclamation issued by Queen Victoria. [36] Beneath the nearly fictive proclamation of equality lay subject status that wasn't so much an entity as it was a continuum of rights and privileges premised on the conditions of race and birth. [37] Which brings us to the Indian state at present, and some of the policy initiatives it has enacted. Jammu & Kashmir finds itself the focus of any exploration on the question of rights and privileges. Indian citizens, particularly Muslim citizensfrom the state routinely find themselves subjected to a level of surveillance and suspicion which can arguably be paralleled by what the Criminal Tribes were subjected to. [38] At the other end of the spectrum lies perhaps a comparatively more benign legacy. The inversion of the theory of the Martial Races of inherent physical superiority has been replaced with an assumption of historical inferiority for communities, and the attendant affirmative action and positive discrimination to uplift said communities. As we discuss the parallels it is important to flag the differences too. The British conceptualizations of communities were strongly regionalist in its vision. Even as the Indian state flipped many of the narratives of its colonial predecessor, it also universalized many of its implications, though unevenly. Thus, where martial races and criminal tribes were strictly defined by the regions they belonged to, modern"backward" communities have often been able to have themselves classified as such throughout the country, even in areas where they have often been politically dominant. The Meenas of Rajasthan are an example of this. This in turn has pushed more communities to demand the application of these universal principles, citing the tribal or caste status in distant state classifications to push for national status, as the Gujjars, Jats, and Marathas have done so in Indian politics in the recent past. [39]

The citizen in India is thus a complicated creature. The rights and privileges enjoyed by citizens aren't uniformly distributed and what exactly constitutes citizenship is a deeply layered construct. The aim here has been to show the influence of colonial racialism in shaping these constructs. The legacy of the Colonial State doesn't simply live on in infrastructure or the structural body of the Indian Republic. It has seeped much deeper into its consciousness and shapes the way we imagine some of the most basic and foundational elements

of nationhood.

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Notes

1. "Article 370 in The Constitution of India 1949."
2. "Article 370."
3. Srivastava, "India Revokes Special Status for Kashmir. Here's What It Means."
4. "WHAT IS NRC.", Loiwal, "Assam NRC Final List."Loiwal, "Assam."
5. Constitution of India, retrieved from *https://www.india.gov.in/sites/upload_files/npi/files/coi_part_full.pdf pp 6*
6. Ibid. pp 7-8
7. Retrieved from *https://ncsk.nic.in/sites/default/files/PoA%20Act%20as%20amended-Nov2017.pdf*
8. Chaturvedi, "SC/ST Act: Cabinet Approves Bill to Overturn Supreme Court Order on SC/ST Act."Press Trust of India, "Supreme Court Recalls Verdict Diluting SC/ST Atrocities Act, Restores Earlier Legal Position on Arrests under Legislation."
9. Even in questions of implementation we often find the role of hierarchical thinking at play, with some types of claimants privileged over others again on the basis of an inherent characteristic. Thus, for instance, the Supreme Court was forced to clarify in 2012 that caste status doesn't simply pass patrilineally and that a child with a mother from a certain caste status can also make claims on the policy aimed at the community. Mahapatra, "SC Gives Mother's ST Status to a Kshatriya's Son | India News - Times of India."
10. Bhatia, "The Absentee Constitutional Court."
11. Dirks explores this interconnected history in significantly greater detail in (Dirks, Castes of Mind: Colonialism and the Making of Modern India 2011) in particular see pp 1-18. See also (Sharma 2012)
12. See for example (Huttenback 1976)
13. So commonplace were racial attitudes by the early 20th century that where overt racial hierarchies were even marginally weak, allowing natives to attain relatively senior positions or exhibit a degree of parity

to Europeans, it attracted special commentary, both at the time, and in historical scholarship since. The judicial systems in India are an example of this. See (Sharafi 2014, 103-105)

14. 40 Geo. 3 c.38
15. 1706 c. 11
16. See Colley, Britons: Forging the Nation 1707-1837 2003, 11-54
17. Ibid. 55-100
18. Ibid. pp 105-146
19. Colley, Captives: Britain, Empire, and the World, 1600-1850 2007
20. Bayly 1989, 11-17
21. Kennedy 1987, 130
22. (Banner 2009, 23-24, 48-50) How the British would describe the New Zealand Maori for instance, in contrast to the natives in Australia and Africa. Banner's work in particular highlights the extent to which commentaries about native communities was strongly pervaded with a sense of ranking and rating of the advancement/primitiveness of peoples. Though his own focus is largely on the Pacific world, the attitudes depicted on the part of the British were hardly a regional variant. There is a comparison to be found in the hierarchicalization of natives in India and Oceania. Likely Africa and other areas of British dominance too.
23. Ibid. 1-12
24. Bayly 1989, 197-198
25. Banerjee-Dube 2015, 207, 254
26. Banner 2009, 13-46
27. Berenson 2012, 39-40
28. Dirks, The Scandal of Empire 2008
29. Colley, Britons: Forging the Nation 1707-1837 2003, 155-194
30. Alavi 2006, 36-40, 45-50
31. British imaginations of Punjab loosely mapped onto the Sikh Kingdom of Ranjit Singh. As such "martial" communities often came from territories today under the Modern Indian states of Haryana, Punjab, Jammu & Kashmir and the Pakistani state of Punjab.
32. Ibid. 264-302. See also K.C Yadav's work on the mythology of a Loyal Punjab in Bhattacharya 2007
33. Constable 2001
34. Though this approval came with the attached stigma of physical effeminacy. (Banerjee-Dube 2015, 140-141)
35. Ibid. 145-147 For an examination of the racialized discourse to which the Tribes were subjected see Tucker 1923
36. Banerjee-Dube 2015, 136-140 see also "Proclamation, by the Queen in Council, to the Princes, Chiefs and People of India."
37. And certainly, there was no denying that the Indian was to be considered

uniformly and equally inferior to the British subject.

38. See for instance Kashmiri Muslims in Delhi: Compounding the Misery 2002 and "How Indian Surveillance Disrupts Ordinary Life and Lives in Kashmir."
39. Harshey, "Jats, Marathas, and Patels Want Quotas, But Do They Need Them?"; Singh, "Why the Gujjars Are so Aggrieved."

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