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Research Article

Countering Hegemony in Legal Academia in the Global South: A Critique of Upendra Baxi's Legacy

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ABSTRACT: Social Sciences are branches of science that deal with the study of human behavior in any social or cultural setting and demand to have an evolutionary interpretation of human behavior. Here, the consideration of changes in socio-cultural settings differentiates its scientific method from a traditional understanding of pure science. However, the impact of scientific imperialism has led to a universally accepted idea of supposedly valid knowledge even in social sciences such as legal sciences, where positivism and its methodological mantras still dominate. Moreover, scientific imperialism is achieved, enabled, and valorized by what Thomas Kuhn called "paradigm." This paper argues that Upendra Baxi's contribution to Indian legal academia is immense. Nevertheless, his legacy has created its own paradigm that has somewhat colonized the imagination of Indian legal academia. In particular, we seek to critique the extent to which it has been widely accepted as the universal paradigm of the Indian legal system and, by proxy, the legal education system of India. The ideology has become hegemonic, being glorified, celebrated, and studied by prominent scholars and Indian Supreme Court judges. This is, of course, much deserved. Yet, one may also need to critique the erasures and silences within this "Baxism paradigm." It is intriguing to see why there is no influx of curiosity about venturing beyond that paradigm. Why does it seem to be accepted as the universal paradigm that is timeless, boundless, and edgeless? By deploying the idea of hegemony from the works of Gramsci and also using the works of Foucault, Kuhn, and Santos, we have tried to identify the creation of abyssal thinking as influenced by "Baxism" and how it can suppress the creation of new knowledge.

KEYWORDS: Legal Pluralism, Epistemology of Knowledge, Global South.

I. INTRODUCTION

At its core, social sciences are branches of science that deal with the study of human behavior in any social or cultural setting.[1] It is a study that demands an

[1] "Social Science | History, Disciplines, Future Development, & Facts", online: *Britannica* <https://www.britannica.com/topic/social-science>.

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evolutionary interpretation of human behavior, considering changes in times, as well as changes in social and cultural settings. Unlike pure science, the results derived from social sciences are more varied and not constant. The wholesale import of scientific methodology in social sciences is impossible. Physical sciences deal with fixed variables and, therefore, may produce universal results. In social sciences, variables can not be constant, thus, the universality of outcome remains elusive. However, despite this truism, Baconian empiricism is still considered the main force behind empiricism in social sciences.[2] The reason is that the main variable, i.e., human beings, are not alike. Thought processes and interpretations cannot be conclusively predicted in a study that involves humans. This is why, historically speaking, there has been advancement in the growth and innovation of human society because humans evolve as they grow. No measurement of human growth or brain development can be universally applied to every person. This is how new ideas emerge. For instance, when Galileo Galilei learned how to operate a "spyglass" in 1609, his substantial contribution to modern astronomy was through building his version of the telescope.[3] His extensive observation led to the realisation that the Earth was not the centre of our solar system, but it was the sun around which all of the planets revolved. This created a paradigm shift in astronomical research, as well as with the understanding of our solar system. His constant observation of our solar system also enabled him to defend the Copernican cause further.[4] However such a

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2 Heiko Feldner explains this triumph of scientific methodology as empiricism in social sciences, "Just as Protestant Reformation insisted on each Christian engaging directly with scripture (without having rely on the readings of the priests), and just as experimental philosophers from Bacon to Newton urged their contemporaries to study the 'divine book' of nature for themselves…so late 18th century historians increasingly expected of each other that authority of secondary works should be resorted to only when experimental access to things was impossible." See Stefan Berger, Heiko Feldner & Kevin Passmore, *Writing History: Theory & Practice*, 1st ed ed (London: Arnold, 2003).

3 "Galileo's Observations of the Moon, Jupiter, Venus and the Sun", (2024), online: *NASA Solar System Exploration* <https://science.nasa.gov/solar-system/galileos-observations-of-the-moon-jupiter-venus-and-the-sun/>. Also see: "Galileo - Copernican Theory, New Scientific Method, and Two Chief World Systems", (2023), online: *Britannica* <https://www.britannica.com/biography/Galileo-Galilei/Galileos-Copernicanism>.

4 Nicolaus Copernicus was a mathematician and astronomer who had proposed that the sun was stationary and remains in the centre of the universe and that the earth, along with the other celestial planets, revolved around the sun.
See Sheila Rabin, *Nicolaus Copernicus* in Edward n Zalta, ed, (Stanford University: The Stanford Encyclopedia of Philosophy, 2019).

drastic paradigm shift in the then-astronomical society, as well as with the church, did not go without any consequences, and during his inquisition,[5] he was coerced to admit that he had overstated his case. This led to him being charged with heresy and he was sentenced to life imprisonment.[6] Galileo had managed to prove an entirely different reality, shattering the erstwhile assumed reality, creating a paradigm shift in modern astronomy - and all of this was successful because of his invention of the telescope.

This radical idea of scientific objectivity, neutrality, and universalism also has its drawbacks, and the custom of scientific rationality has resulted in scientific imperialism. Modern science's dominant model of rationality emerged from the scientific revolution of the 16th century, characterized by the Renaissance.[7] This rationality was developed primarily in the natural sciences in the last few centuries, and in the social sciences from the late 19th century.[8] From that point on, there existed a single global model of scientific rationality, which distinguished itself from two non-scientific (known as irrational) types of knowledge that were considered dangerous: common sense and the social sciences.

The new scientific rationality, which developed into Global Knowledge, was also hegemonic in effect, as it denied rationality to all kinds of knowledge that did not adhere to its epistemological concepts and methodological rules.[9] Everything slowly centralized to the point that only one form of true knowledge was allowed, which was clearly pointed out by Foucault.

> "…a whole set of knowledges that have been disqualified as inadequate to their task or insufficiently elaborated: naive knowledges, located low down on the hierarchy, beneath the required level of cognition or scientificity…It is through the

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5 It was a judicial procedure and then later converted into an institution which was established by the papacy to combat heresy.

6 *Supra* note 3.

7 Seyyed Hossein, *The Traditional Sciences, the Scientific Revolution, and Its Aftermath in Religion & The Order of Nature: The 1994 Cadbury Lectures at the University of Birmingham* (New York: Oxford Academic, 1996).

8 Helaine Selin et al, *Encyclopedia of the History of Science, Technology, and Medicine in Non-Western Cultures* (Massachusetts: Springer-Verlag Berlin Heidelberg, 2008) at 1928-1933.

9 *Ibid.*

> reappearance of this knowledge, of these local popular knowledges, these disqualified knowleges, that criticism performs its work (1980, 81-2)."[10]

As mentioned above, Galileo's observations of astronomy were critizised widely, and he was further prosecuted to discredit his findings. Similarly, Antonio Gramsci was prosecuted by Mussolini to life imprisonment out of fear of the opposition Gramsci posed to the then-Italian fascist government.[11] During Gramsci's trial, the prosecutor argued, "We must stop his brain from working for 20 years."[12] Yet, he managed to write one of the most renowned books, which comprised his studies and writing while serving his sentence.[13] However, the question of whether this all-pervasive science is objective has not been answered unambiguously by many in the past. The authors of this paper attempt to dissect science by undertaking a rigorous examination of the history of science to demonstrate the evolution of scientific discipline at every stage to assess its objectivity and precision.[14]

Similar to how pure sciences evolve with time, the same goes for social sciences. The aforementioned example of Galileo is not to state that the principles of pure sciences are to be applied within the ambit of social sciences. Rather, it is to state the fact that the understanding of pure sciences and social sciences may not conjoin at any one point, but they do run parallel to each other. Similar to the traditional understanding of science, social science demands constant study and observation of the variables within a set research area. However, in social

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[10] The strict adherence to scientific norm in social sciencess, which was replicated from pure sciences, marginalizes non-conforming knowledge as 'unscientific'. In this way, several knowledges coming from different cultures, anthropoligical groups and subaltern classes are disqualified. Thus, scientific impirialism has been able to produce epestimicide.
See M Foucault, *Power/knowledge, Selected Interviews and other Writings*, colin gordon ed ed (Suffolk: Harvester Press, 1980) at 81-82.

[11] "Antonio Gramsci", (2024), online: *Britannica* <https://www.britannica.com/biography/Antonio-Gramsci>.

[12] *Ibid.*

[13] *Ibid.*

[14] Thomas Kuhn punctured the notion of science being objective and value-free by highlighting its dependence on the consensus of peers of scholarly communities within disciplines. These communities act as gatekeepers and shape the accepted truths and control the discourse through editorial roles and produce curricula to justify the same. This power structure marginalizes alternative paradigms that lack influence over the mainstream consensus.
See Sandra Halperin & Oliver Heath, *Political Research: Methods and Practical Skills*, 3rd ed ed (Oxford University Press, 2020) at 61.

sciences, variables are extremely pliable, and every conclusion is interim as every conclusion is contextual. Hence, scientific universalism remains elusive in social sciences such as law. For example, the death penalty for committing theft may be an acceptable form of justice in certain parts of this world, but the same idea is not universally accepted. Additionally, constant observation of legal knowledge is a must. It is a known fact that law is not set in stone, and it is continuously subjected to changes and interpretations.

Despite the limitation of mimicking the scientific methodology in social sciences, its veneration in modern social sciences is at its zenith. The triumph of scientific imperialism is such that it results in negating the voices of the Global South as often they do not use the language of science and, therefore, not considered worthy of producing acceptable scientific knowledge.[15] It produces a lopsided development of knowledge in the Global South as several voices and epistemologies produced in this geography get subjugated while a few master scholars achieve a dominant and hegemonic presence in academia due to their social privilege and mastery over acceptable scientific knowledge.[16] The exclusion of works produced in the Global South from mainstream literature partly stems from the notion that all ideas can be represented scientifically using methodologies acceptable to the scientific community. This hubris of scientific methodology stems from scientific imperialism and obsession with positivism, which in turn is based on perpetuating epistemic violence against the voices and knowledge systems of the Global South.

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15 Santos posits that epistemology is a battle field where dominant epistemologies marginalize alternative ones, dismissing them for lacking scientificty. These sidelined knowledges, designated 'non-existent', diverge from accepted scientific methods or originate from disregarded subjects. He further argues that capitalism, colonialism, and patriarchy serve as primary agents in disqualifying knowledge from subaltern groups.
See Boaventura de Sousa Santos, *The End of the Cognitive Empire: The Coming of Age of Epistemologies of the South* (Duke University Press, 2018) at 2.

16 The authors aim to problamatise the dominance of 'acceptable scientific knowledge' as an exclusive and hegemonic concept. Drawing inspiration from Donna Haraway's epistemic stance, the authors refute the notion of knowledge as singular or uniform. Haraway's notion of 'situated knowledges' exposes the ties between science, militarism, capitalism, and male supremacy, unveiling its historical construction. Embracing Haraway's framework, the authors intentionally opt for 'knowledges' over 'knowledge' to signal a political stance against favoring perspectives of privileged groups.
See Donna Haraway, "Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective" (1988) 14:3 Feminist Studies at 575–599.

The methodological Eurocentrism is deeply pervasive in Indian legal knowledge production. Methodological Eurocentrism is what empowers certain researchers to give their concept of "proper training as a benchmark, assuming that knowledge-making has no geopolitical position and that its location is in an ethereal place."[17] It is this insistence that proper training is the key that enables some to reject requests for opening up disciplines like International Relations to make it more accessible and representative of other regions.[18] Walter Mignolo,[19] citing the Colombian philosopher Santiago Castro-Gómez, defines epistemic Eurocentrism as "the hubris of zero." Mignolo has claimed that such "hierarchical patterns of epistemic judgement" are now at play in the formation of knowledge, regardless of one's epistemological perspective (empiricism or interpretivism).

Scientific imperialism asserts that the voices and epistemologies of the Global South do not live up to the standards set by scientific methodology and, hence, should not be part of global scholarship on various subject matters. This very language of science kills the possibility of the Global South becoming the geography of knowledge. The objectivity of scientific methodology is a cover story to defend the dominant paradigm and is not necessarily one that is plural. The scientific methodology is primarily based on the process of peer review to determine the publishability of articles submitted to respectable journals. The process of peer review is built in such a way that it disfavors authors of the Global South by subjugating their epistemologies and shared experiences, which consequently creates an American-European hierarchy of knowledge production. Thus, deploying the language of science and its method in a brute fashion produces epistemicide and kills the possibility of alternative imaginations of knowledge(s).

II. METHODOLOGY

The idea of calling Baxi's presence in Indian legal teaching a hegemony is

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17 Walter D Mignolo, "Epistemic Disobedience, Independent Thought and Decolonial Freedom" (2009) 26:7–8 Theory, Culture & Society at 159–181.

18 Pınar Bilgin, "Opening Up International Relations, or: How I Learned to Stop Worrying and Love 'Non-Western IR'" (2020) Handbook of Critical International Relations, ed Steven Roach.

19 *Supra* note 17.

something that has not received a prominent form of discourse in academia. The authors have incorporated doctrinal research first to understand the impact of Baxi's paradigm in the Indian legal system and how law professors, scholars, and Indian Supreme Court judges alike have created an idealised image of Baxi's paradigm. The authors will examine how philosophers such as Antonio Gramsci, Micheal Foucault, Thomas Kuhn, and Boaventura de Sousa Santos have defined hegemony and the presence of hierarchy caused by this hegemony. The authors will also explore solutions to extricate from this hegemonic presence. As stated before, no prominent academic has ever questioned the overreliance on the paradigm created by Baxi. Thus, the authors have incorporated an exploratory research methodology aimed at clarifying the problems caused by this hegemonic paradigm, which we have collectively assumed to be true for the coming years. Moreover, inaction towards the problems caused by this paradigm can lead to the death of various epistemological traditions. Furthermore, the authors will discuss how one epistemic trajectory and imagination started by Baxi's paradigm can cause harm, as the possibility, the need, and the want to create alternative paradigms will cease to exist in Indian legal teachings. Here, the authors are not questioning the methodology or critiquing the works of Baxi. Rather, they are focusing on how his presence in Indian legal teaching can be termed as a hegemonic presence created by the Indian legal fraternity. The authors shall dive into the question of the essence of the study of science and, unlike pure science, whether there can be uniformity in the methodology used in the research of alternative paradigms. Finally, the authors shall follow the workings of Gramsci, Santos, and Kuhn closely to identify the root cause behind such overreliance on the works of Baxi in Indian legal teaching.

The problematization of this topic is that the authors need to identify and understand the problem Baxi's hegemonic presence can create in the future of Indian legal teaching. There has been no paper or no work, at least to the authors' knowledge, which identifies Baxi's paradigm be hegemonic in presence. In fact, authors Prakash Sharma, Partha Pratim Mitra, et al. have in their paper stated how his paradigm is to date glorified and celebrated, studied by prominent

scholars and Indian Supreme Court judges which, is much deserved.[20] Yet, why is there no influx in the curiosity of going beyond that paradigm? Why does the paradigm seem to be universally accepted as timeless, boundless, and edgeless? To understand these questions, the authors will have to apply the principles of hegemony, as stipulated by Gramsci, to find answers for the counter-hegemony against the influence of Baxism.[21] Additionally, by understanding and applying the principles of other prominent philosophers like Santos and Kuhn, we can not only identify the development of hegemony but also how to address it. Furthermore, it is pertinent to mention that the research conducted through this paper is intended to promote unique and unorthodox research methodology, which can be backed with sound logical reasoning; as such techniques are beneficial and can help enhance the quality of research and teaching conducted in the field of law.

In the end, readers are asked to keep in mind that this paper is not questioning the achievements and work conducted by Baxi. Instead, it is to address the created ideal of him as an overarching figure in the Indian legal fraternity – an ideal that has created an existing metanarrative based on which young lawyers and scholars are being molded.

III. INDIAN COURTS AND THEIR RELIANCE ON ACCEPTABLE SCHOLARSHIP AND THE RISE OF THE HEGEMON SCHOLAR

The Indian Supreme Court is one of the global activist courts that has intervened in several areas not considered a judicial domain in a strict, separation of power, jurisprudential prism.[22] For instance, on 16th April 2021, the Apex

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[20] Prakash Sharma, Partha Partim Mitra & Aaditya Vikram Sharma, *Upendra Baxi and Legal Education: An "Upen" Reflection of Illustrious Career* (New York: Gurgaon, 2021) at 417-456. See also: Sikri, A.K.,"Foreword" in Salman Khurshid et al, *Judicial Review: Process, Powers, and Problems: Essays in the Honour of Upendra Baxi* (Delhi: Cambridge University Press, 2020).

[21] Here the authors are not calling Prof. Baxi's presence to be a form of 'Baxism' but rather highlight the extensive reliance on the paradigm he established. 'Baxism' doesn't denote an ideology but signifies a liberal legal scholarship consensus shaping discussions on constitutionalism, constitutional morality, and human rights in India which has led scholars consistently referring Prof. Baxi's work as authoritative on the said fields, making his contributions a dominant force in the discourse of Indian Legal Academia.

[22] Mahendra Pal Singh, *Constitution of India* (Eastern Book Company, 2013) at 340-359.

Court, via suo motu writ petition, assigned an Amici Curiae to formulate guidelines for the speedy disposal of dishonoured cheques under the Negotiable Instruments Act of 1881 and directed all the High Courts to implement the same.[23] It has taken various routes to do so, such as a wide interpretation of its writ powers under Article 32 of the Indian Constitution and the use of scholarly writings of jurists to justify its ratio. Another example is in Vishakha v. State of Rajasthan,[24] where the Apex Court took it upon itself to formulate guidelines applicable to employers and other institutions to prevent sexual harassment in the workplace. These guidelines are now currently known as the "Vishakha" Guidelines, according to which the Prevention of Sexual Harassment Act (POSH) has been formulated.[25] The Indian Supreme Court has also given its interpretation pertaining to the Family Act, wherein the Court stated that if a Hindu man marries a second time, irrespective of him converting to Islam or not, the second marriage will be considered invalid until the first marriage is dissolved under the Hindu Marriage Act.[26] In Navtej Singh Johar v. Union of India,[27] the Indian Supreme Court measured the constitutionality of Section 377 of the 1860 Indian Penal Code (IPC).[28] This constitutionality was challenged under Articles 14 (Equality before law),[29] 15 (Prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth),[30] 19 (Protection of certain rights regarding freedom of speech, et cetera.),[31] and 21 (Protection of life and personal liberty) of the 1950 Indian Constitution.[32] Herein, the Apex Court had formed a Constitutional Bench which had partially struck down Section 377 of the IPC, leading to the decriminalization of same-sex relations between

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23 Ajoy Karpuram, "Supreme Court Frames Guidelines to Tackle Pendency of Cheque Dishonour Cases", (2021), online: *Supreme Court Observer* <https://www.scobserver.in/journal/supreme-court-frames-guidelines-to-tackle-pendency-of-cheque-dishonour-cases/>.

24 *6 SCC 241*, 1997.

25 *Sexual Harrassment of Women at Workplace (Prevention, Prohibition & Redressal) Act*, 2013.

26 *Lily Thomas v Union of India, 6 SCC 224*, 2000.

27 *10 SCC 1*, 2018.

28 *Indian Penal Code, Section 377*, 1860 states "*Unnatural offences.—Whoever voluntarily has carnal inter-course against the order of nature with any man, woman or animal, shall be punished with 1[imprisonment for life], or with impris-onment of either description for a term which may extend to ten years, and shall also be liable to fine. Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.*".

29 *The Constitution of India*, 1950.

30 *Ibid.*

31 *Ibid.*

32 *Ibid.*

consenting adults. The Bench observed that Section 377 was violative of the Fundamental Rights enshrined in the Indian Constitution and stated that the Section restrains an LGBT individual from fully realizing and expressing their identity.[33] Furthermore, it is pertinent to mention here that in National Legal Services Authority v. Union of India,[34] Justice Sikri stated:

> "By recognizing Transgenders as a third gender, this Court is not only upholding the rule of law but also advancing justice to the class, so far deprived of their legitimate natural and constitutional rights. It is, therefore, the only just solution that ensures justice not only for Transgenders but also justice to society as well. Social justice does not mean equality before the law in papers but translating the spirit of the Constitution, enshrined in the Preamble, the Fundamental Rights, and the Directive Principles of State Policy into action, whose arms are long enough to bring within its reach and embrace this right of recognition to Transgenders which legitimately belongs to them."[35]

In this case, the Indian Supreme Court had referred and applied to the principle of theory of justice established by John Rawls with the principle of distributive justice and concluded that transgender people are to be treated as the third gender identity and further recognized certain other rights.[36] The main objective of mentioning these cases is to establish how such analysis of the law and jurisprudence can come in handy when interpreting established laws and how such understanding can be utilized to raise questions subjugated to constant changes in socio-cultural norms.[37]

The Indian Supreme Court has also relied upon the works of one the of few Indian legal philosophers, Upendra Baxi. William Twining has termed Baxi's words to be the only ones that can catch the power, imagination, and scope of much of his illustrious writing.[38] Baxi's never-ending affiance between theory and custom made him examine the relation between theories of justice and

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33 *Supra* note 27.

34 *5 SCC 438*, 2014.

35 *Ibid.*

36 *Ibid.*

37 The authors are trying to establish how continuous evolution in societal thinking as well as cultural and harmonial understanding between human beings evolves with the change in times. Hence, the existing laws are also subject to such changes and interpretation.

38 "LGD 2007 (1) : Upendra Baxi - A Tribute", online: <https://warwick.ac.uk/fac/soc/law/elj/lgd/2007_1/baxi_tribute/>.

experiences of injustice.[39] Baxi is widely celebrated as one of the most influential and defining presences in the legal system, so much so that the Indian Supreme Court has also referred to his works for interpretation of laws and for understanding our grundnorm. The Indian Constitution reveres him to the extent that R. Venkata Rao has called him the "Legal Giant",[40] "Athenian in built",[41] "Spartan in wisdom",[42] and an "intellectual powerhouse."[43] Similarly, prominent Indian Supreme Court judges like Sikri have referred to Baxi as the "Sartorially elegant Professor of Law",[44] and "Judge of Judges."[45] This clearly demonstrates that the contribution to Indian legal knowledge by Baxi is immense and far-reaching, with prominent peers having no other words to portray him other than a "giant" or other terms that denote the same. Thus, there is no doubt that Baxi has an immense presence in the Indian legal knowledge and education.

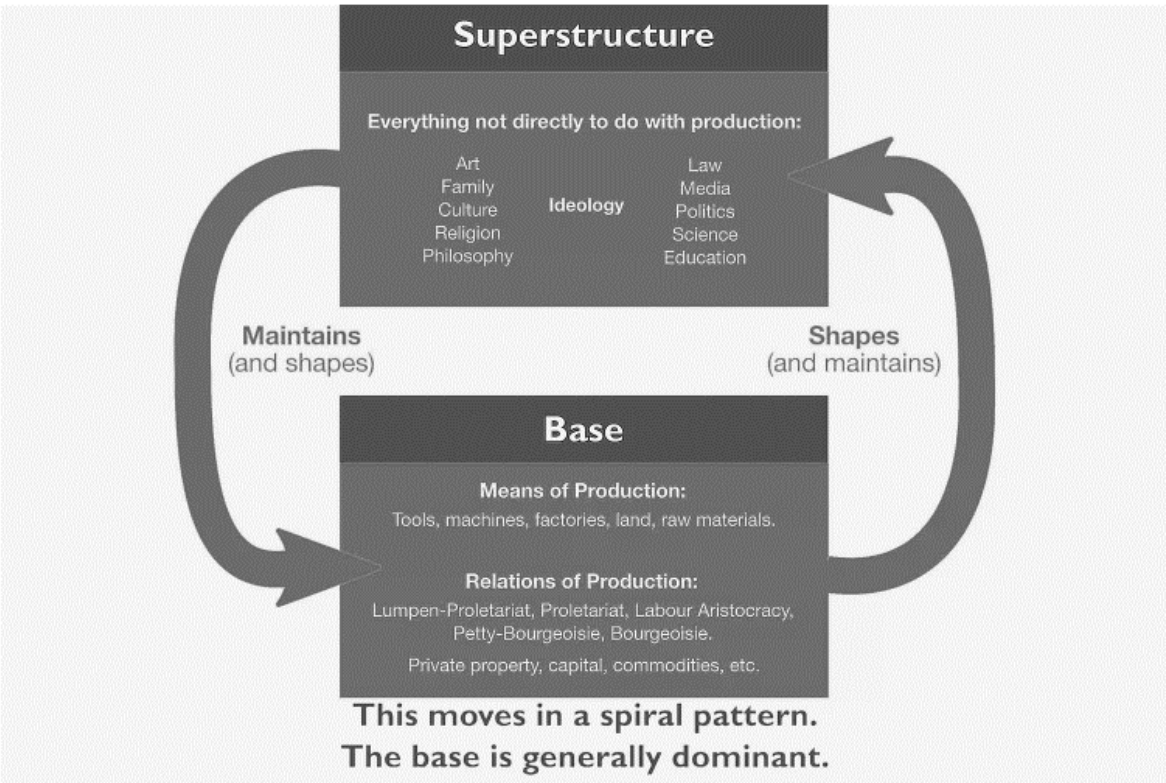
The issue that arises is whether this unintentional overreliance on Baxi's paradigm is so extensive that it stops the growth of novel ideas and research methodology in the Indian legal teaching field. The authors shall explore this throughout the paper by implementing the principles established by various philosophers of science and seeing how the same is applicable to the current understanding of the Indian legal system.

IV. THE HEGEMONIC PRESENCE OF 'BAXISM' IN THE INDIAN LEGAL TEACHING

Per Antonio Gramsci in his literary work "The Prison Notebooks," there are two forms of political control: Dominance and Hegemony. Dominance refers to the control over the people using force, whereas hegemony is the people's willing

39 Sharma, Mitra & Sharma, *supra* note 20.
40 R Venkata Rao, "Review of Salman Khurshid et al. Judicial Review: Process, Powers, and Problems" (2020) 56:1 JILI.
41 *Ibid.*
42 *Supra* note 39.
43 *Supra* note 39.
44 Sikri in Khurshid et al, *supra* note 20.
45 *Ibid.*

acceptance of the system as normal and natural.[46] According to Gramsci, hegemony is the "cultural, moral, and ideological" leadership of one group over the subalterns.[47] Gramsci has focused on the existence of the superstructure,[48] which includes the culture, norms, ideologies, and identities that people exhibit – including social institutions, the existent political structure, and the state's governing structure. Before going ahead, we need to understand the terms "superstructure" and "base," as formulated by Karl Marx. Per the core concepts of Marxist theory, base refers to the production forces or materials and resources required for the production of goods required by society. So, the base remains the dominant structure. There is a spiral pattern between the superstructure and base, wherein the base helps in shaping and maintaining the superstructure; the superstructure, in turn, has a vice-versa impact on the base. This becomes clearer with the diagram below.[49]



[46] Quintin Hoare & Geoffrey Nowell-Smith, *Selections from the Prison Notebooks of Antonio Gramsci* (London: Lawrence & Wishart, 1971).

[47] Juan Carlos de Orellana, "Gramsci on Hegemony - Not Even Past", online: *Not Even Past* <https://notevenpast.org/gramsci-on-hegemony/>.

[48] "Learn to Understand Marx's Base and Superstructure", online: *ThoughtCo* <https://www.thoughtco.com/definition-of-base-and-superstructure-3026372>.

[49] *Ibid.*

Gramsci argued that the capitalist control over the subaltern is not simply due to unequal opportunities created due to unequal economic and political power but rather by the hegemony of bourgeois ideas and theories.[50] As stated before, hegemony can be in the form of dominance or leadership and, in the case of ideological hegemony, it refers to the influence of the bourgeois ideology over the rival ideologies, becoming a current age common sense.[51] In this case, the ideology created by Baxism is now such common sense in the current age, where so much reliance has been placed that it may not allow the growth of other methodologies in the current paradigm. The ideology set by Baxi (and any other eminent scholar who thinks within the same paradigm) is the existing superstructure, and the young lawyers and scholars being accordingly molded are the base on which the structure builds.

A. *The Creation of a New Form of Abyssal Thinking*

It is necessary for readers to understand one primary point. The authors are not stating that Baxi's methodology and extensive insight into the interpretation of the Indian legal systems (and its accompanying statutes) is a cause for a hindrance or is wrong. In fact, Baxi's contribution to the Indian legal system is a boon for the system, wholeheartedly agreed upon by the authors. Without such observations made by Baxi, the authors do not think such advancement in the exhaustive paradigm like law would have been possible in a similar manner. Yet, does this negate the fact that our image of Baxi creates an everlasting shadow over other social science methodologies?

The philosophy of science is a "complex epistemic and social practice that is organized in a large number of disciplines, employs a dazzling variety of methods, relies on heterogeneous conceptual and ontological resources, and pursues diverse goals of equally diverse research communities."[52] This means that the concept of science is not only fixed to one study of science like pure sciences, but it is a study that comprises wider epistemic and social knowledge and tools. Many philosophers have believed in unification and reduction to find order in such "complexities",[53] but

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50 Andrew Heywood, *Global Politics* (Palgrave Macmillan, 2011) at 69-71.

51 *Ibid.*

52 Stephanie Ruphy & David Ludwig, *Scientific Pluralism* in Edward n Zalta (Stanford University: The Stanford Encyclopedia of Philosophy, 2021).

53 *Ibid.*

there are many philosophers who believed in something otherwise. They believed that there is not one unified scientific method or a fundamental scientific ontology that scientific theories do not often reduce. For any successful science, facts must be considered from both epistemic and social diversity.[54] To tackle the limitations that came with the unification of science, philosophers opted for the "scientific pluralism" approach with the notion of negating the ancient ideology of "philosophy as a unified knowledge."[55] This proves that the basic principle of this ideology was to ensure that there is no creation of a sense of following a mono-scientific method, but it substantiated the recognition of various scientific methods proven to be valid. It is paramount to mention this ideology is due to Baxi's eminent presence in the Indian legal teaching. Furthermore, Baxi has researched and written exhaustively in various fields of law to the extent that in the paper "Upendra Baxi and Legal Education: An 'Upen' Reflection of Illustrious Career," the authors of the article claim that: "There is perhaps no stream of law that is left untouched by Baxi."[56] Wherein they mention the comments and titles passed by various legal stalwarts like R. Venkata Rao and Sikri without providing any empirical data or writing to substantiate this assertion. It is therefore unsurprising to assume that this claim would be accepted widely by scholarly peers, leading to his "Legal Giant" anointment.[57]

Baxi's work is, to date, considered a paradigm of the Indian legal system (and its jurisprudence), to the point that it is arguably becoming one social reality. Such a creation of a paradigm can suppress the introduction and invention of new legal research methodologies should they be interpreted as deviating from Baxi's widely accepted axis. It is a creation of "abyssal thinking",[58] defined by Boaventura de Sousa Santos in his book *Epistemologies of the South: Justice Against Epistemicide*.[59] It consists of visible and invisible differences, where the invisible differences create the foundation for the visible ones. The invisible differences divide the social reality into two worlds:

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54 *Ibid.*

55 *Ibid.*

56 Sharma, Mitra & Sharma, *supra* note 20.

57 Rao, *supra* note 40.

58 Here Santos in his work referred to the creation of abyssal thinking and how such thinking can create a uniform understanding of a paradigm and does not allow a person to go beyond the abyssal thinking.
See Boaventura de Sousa Santos, *Epistemologies of the South - Justice against Epistemicide* (Paradigm Publishers, 2014).

59 *Ibid.*

the world of "this side of the line"[60] and the world of the "other side of the line."[61] This contrasting difference tends to cease the existence of the world of the "other side of the line," and whatever is produced in this world is excluded as it lies beyond the accepted reality. Therefore, the line of sight is limited to what is accepted within the line, and anything beyond this boundary is considered non-existent. This problem leads to the creation of a hierarchy wherein everything within the understanding of the current reality is accepted, while those who are bold and go beyond the said reality are a fallacy. Santos further explains that modern law represents the perfect manifestation of abyssal thinking. Modern law thrives on interpreting the distinction between what is legal and what is illegal. These are the only two forms of distinction before law, and they are considered a universal distinction. But then, such interpretation is also limited to the bounds of what is considered by human beings to be moral and immoral. To date, a global idea of justice is yet to be achieved, as the perception of justice differs from culture to culture. Hence, the interpretation of laws or types of epistemology is limited to that bound only, and anything beyond that line is considered lawless. The lines created by the great domain of law are so effective that they eliminate the existence of any other form of reality that lies beyond the accepted reality. But can this negate the idea of "Legal Pluralism?"[62] Law is an expansive domain of social science and something that remains dynamic and is affected by social, cultural, and geographical changes. How can one imagine that there is no alternative way of interpreting the law other than what is permissible within the limited view of the accepted reality?

B. "Open Your Eyes and See What You Can with Them Before They Close Forever"[63]

Here, the authors' main concern is related to how the Indian legal fraternity over-

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60 *Ibid.*

61 *Ibid.*

62 Legal Pluralism defined by Santos in 2002, is the existence of law beyond the dualism of State and Non-State Laws as due to globalisation and the heterogenous mixture of organisations, cultures, and individuals represents the global sphere. He has distinguished them to be local, national and global laws.
See Ralf Michaels, *Global Legal Pluralism*.

63 Anthony Doerr, *All The Light We Cannot See* (Simon & Schuster, 2014). Here the authors are using it to state that blindness towards the existing alternative realities whose existence we are not accepting at all because of the reliance on the existing paradigm.

rely on Baxi's foundation to be so successful that it is the only method of successfully conducting research in the legal field. The authors' concern is that without testing other epistemological legal research methods, how can they be decided as illegitimate parts of reality? To be able to make such in-depth opinions, one needs to first know about the knowledge that lies beyond that abyssal line and assess it. The paradox is the fact that the creation of this abyssal line causes a sense of "blindness" toward untouched epistemological research in law. In this regard, the rationale of Baxi is accepted and assumed to be universally applicable, whereas we fail to understand that the ambit of law surpasses the Baxism rationality. This leads us to a phenomenon called the "lazy reason",[64] Which Leibniz defines as a situation wherein the future is to happen regardless of what we do, and yet, we choose not to do anything and to care for nothing except merely enjoying the instant pleasures. It argues that we are "lazy" because we are voluntarily giving up the notion of thinking as a form of necessity. Santos substantiated this further and stated four important parts of the lazy reasoning are the "impotent reason, a reason that does not exert itself because it thinks it can do nothing against necessity conceived of as external to itself; arrogant reason, a kind of reason that feels no need to exert itself because it imagines itself as unconditionally free and therefore free from the need to prove its own freedom; metonymic reason, a kind of reason that claims to be the only form of rationality and therefore does not exert itself to discover other kinds of rationality or, if it does, it only does so to turn them into raw material; and proleptic reason, a kind of reason that does not exert itself in thinking the future because it believes it knows all about the future and conceives of it as a linear, automatic, and infinite overcoming of the present."[65] All reasoning mentioned by Santos are applicable when referring to the overreliance on the hegemonic paradigm since the 1980's and the inability to move beyond it. By going beyond his paradigm, the authors mean to argue that there have been no impactful foundational developments made by young and upcoming scholars. Even if some have made an impact, they have not been allowed to be limelighted in the Indian legal teaching. In Indian legal education, hegemonic thinking has been accepted without thorough consideration of its potential to harm the untouched epistemic knowledge

64 Santos, *supra* note 58.
65 *Ibid.*

necessary for the progress of both society and the legal system.

The need of the hour is to create an anomaly in the paradigm assumed to be the constant reality by coming out of this blindness created by ourselves to see the absent epistemic knowledge suppressed due to its difference from the assumed reality. This will take time, but the change must happen in some form now.

V. "THE OLD IS DYING AND THE NEW CANNOT BE BORN":[66] FINDING THE COUNTER-HEGEMONY

Gramsci had recognized that "the crisis consists precisely in the fact that the old is dying and the new cannot be born; in this interregnum, a great variety of morbid symptoms appear."[67] Here, Gramsci referred to a crisis of political and social transformation, where the old system is losing its power, but the new system is not yet established. During this transitional period, Gramsci believed that society undergoes a "crisis," which appears in various forms of instability, uncertainty, and social unrest. In essence, Gramsci argued that social change is a complicated, often turbulent process involving conflict and upheaval. He emphasized the significance of having visionary leaders who can guide society through this challenging time and create a new system that is fair and equitable for everyone. He posed the following problem: is the use of force required to curtail the rift between the "popular masses" and "ruling ideologies" that have emerged after the war, which can prevent the new ideologies from imposing on their own? Is the restoration of the old way the only way?

Santos,[68] had defined the change in the social construction of identity and change to be dependent on the equation between "roots" and "options."[69] Some instances cause a destabilizing effect on this equation. Such destabilization comes under three forms,[70] "the turbulence of scale," "the explosion of roots and

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66 Hoare & Nowell-Smith, *supra* note 46.

67 *Ibid.* In the Italian original, Gramsci says '*fenomeni morbosi*', literally '*morbid phenomena*'.

68 Santos, *supra* note 58.

69 The thought of roots concerns all that is profound, permanent, singular, and unique, all that provides reassurance and consistency; the thought of options concerns all that is variable, ephemeral, replaceable, and indeterminate from the viewpoint of roots.
See also *Ibid,* at 76.

70 *Ibid,* at 81.

options," and "the interchangeability of roots and options." The difference between the roots (large scale) and options (small scale) creates an equation between roots and options, and the stability is dependent on such differences. In the current scenario, the world is going through continuous unpredictable changes, leading to the creation of turbulence of scales. A recent example is the debate on same-sex marriage, currently happening in India. This debate has led to the creation of turbulence in the old understanding of the Indian social contract. It has also led to public horizons broadening and shifting how the Indian context may define an individual.[71] This continuous tussle between the old and the new dawn creates a destabilizing effect on the equation of the roots and options by creating "roots and options alike." It is creating more possibilities and opportunities to include more people, irrespective of their identity and gender, into the ambit of the law (i.e., the Special Marriage Act 1954).[72] This explosion leads to the creation of new roots and options, which provide more options for the suppressed. Such destabilization helps to unearth the hidden understanding and concepts of roots and options that were disguised or not allowed to come to the surface due to the hegemony of history. However, in this situation, some want to preserve the old as they feel that legalizing same-sex marriage goes against the "Indian Value System," expressing their concern to the President of India with the claim that 99.9% of Indians do not want the same.[73] But there are also the new who recognize the need to address this issue in the current Indian reality and have called out the old as ignorant and going against the ethos of the Indian Constitution.[74] This causes tension between the old and the new understanding of identity and rights in the Indian context.

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71 *Supriyo v UOI, SC WP(C) 1011*, 2022.

72 *Ibid.*
See Special Marriage Act, 1954, available at: Online: <https://www.indiacode.nic.in/bitstream/123456789/15480/1/special_marriage_act.pdf>.

73 The Bar Council of India on 23rd April 2023, had passed a resolution opposing the grant of same sex marriage. Around 16 retired High Court Judges and 104 bureaucrats have signed this open letter addressed to the President of India.
See Manjiri Chitre, "'India can't afford to…': Ex-bureaucrats write to Prez against same-sex marriage", (2023), online: *Hindustan Times* <https://www.hindustantimes.com/india-news/same-sex-marriage-hearing-supreme-court-ex-bureaucrats-write-to-president-murmu-101682682707424.html>.

74 The Queer and Allied Groups of Various Indian Law Schools, have released A "Statement Of Condemnation And Solidarity Against The Bar Council Of India's Resolution On Marriage

This is not only to challenge the hegemony of the old but to preserve the foundation upon which the ideology is built. After the 2008 amendment of the Information Technology Act of 2000, Section 66A was introduced. This section made it a punishable offense to send grossly offensive information using a computer or any electronic device. This rule restricted the Right to Free Speech and Expression, recognized by the Indian Constitution as a Fundamental Right. The section led to an increase in the number of arrests of people under its ambit, without the concerned authority conducting any due diligence to understand and identify the true concerned parties. This, in turn, led to people being more cautious in utilizing their freedom of speech and expression, even though this goes beyond the reasonable restrictions identified under Article 19(2) of the Indian Constitution. The same section was challenged in Shreya Singhal v. UOI,[75] wherein it was argued that the section has not defined what is meant by "grossly offensive," and that this vagueness causes confusion amongst people as to what act is legally considered offensive. A penal law cannot afford to be vague, as it directly affects the fundamental rights of the people. The Supreme Court of India held Section 66A to be unconstitutional, primarily on the grounds of the section being too vague.

Repetition of the old ways can be either progress or its opposite. Without tension between roots and options, it is impossible to achieve social change, which leads to the understanding that such changes are unnecessary. This creates intellectual appeasement, which can turn into conformity and passivity.[76] Walter Benjamin stated, "The current amazement that the things we are experiencing [i.e., Nazi fascism] are 'still' possible in the twentieth century is not philosophical. This amazement is not the beginning of knowledge — unless it is the knowledge that the view of history which gives rise to it is untenable." This can be considered one way of moving forward: to replace the current understanding of the theory of modernity as unattainable, with a new understanding that believes in its capacity: "wonder and indignation [are] capable of grounding a new, nonconformist, destabilizing, and indeed rebellious theory and practice."[77]

Equality" wherein they have collectively expressed their condemnation against the Bci's Statement.

75 *12 SCC 73*, 2013.

76 Santos, *supra* note 58.

77 *Ibid.*

Before 1947, the realization of Indian Independence came into effect as people understood the suppressive methods being enforced by the British Raj. These methods were challenged and led to the creation of an ideology of a united India against them, which, led to turbulence in the scale of the reality of that time. This led to the explosion of roots and options, which gave rise to a feeling of self-governance and nationalism amongst the people and instability to the extent of interchangeability between the old and the new roots and options. The idea of democracy and unity held more importance than going back to the old ways of governance of states through monarchy. This idea of democracy never existed before the British Raj, which can arguably be attributed to the suppression caused by their power. This understanding led to the questioning and identification of the suppressive old ideologies followed within Indian culture. Such understanding gave rise to India having the longest written constitution in the world, which highlights all people as equal with equal rights and obligations. It not only declared India as a self-governing state, but also a state of equals, which in totality defined Indian democracy.[78] Such powerful social changes are possible, and the same is proven historically and in the current reality. India could have chosen to impose the old ways because of the comfort it provides, but it instead chose to leave its comfort zone and explore the idea of living as a democratic state. The new triumphed over the old, repetitive traditions.

> "We, as Indian citizens and teachers of law, take the liberty of writing this open letter to focus judicial attention and public debate over a decision rendered by the Supreme Court…."[79]

In 1979, these were the opening lines of an open letter addressed to the then Chief Justice of India, Hon'ble Justice Y.V. Chandrachud, regarding the decision rendered on September 15, 1978, in Tukaram v. State of Maharashtra,[80] by the Apex Court. Herein, the court reversed the verdict of conviction passed by the Hon'ble Bombay High Court (Nagpur Bench) and acquitted the two police officers. Against the reversal, the open letter was drafted for the protection of the basic human rights of any Indian Citizen. This protection is enshrined under the Constitution of India. The

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78 "The India Constitution 2022", online: <https://legislative.gov.in/constitution-of-india/>.

79 Upendra Baxi & Vasudha Dhagamwar et al, *An Open Letter to the Chief Justice of India* (University of Delhi, 2009) at 191-195.

80 *2 SCC 143*, 1979.

letter stated, "Maybe on re-examination, Ganpat and Tukaram may stand acquitted for better reasons than those now available. But what matters is a search for liberation from the colonial and male-dominated notions of what may constitute the element of consent, and the burden of proof, for rape which affects many Mathuras in the Indian countryside." [81] Baxi wrote this open letter along with other authors, highlighting the mistrial and wrongful interpretation of "consent" in the case, further stating that the Apex Court was going against its findings in "Nandini Satpathy."[82] Here, Justice Krishna Iyer condemned the practice of calling women to the police station and found it to be a gross violation of S. 160 (1) of the Criminal Procedure Code of 1973.[83] In the said letter, it was expressly stated that there is a need for a review of the decision and the dangerous precedent it sets in the Indian Judicial System, along with its adverse impact at the grassroots level of India. Here we can see a collective effort by legal scholars to question the reasoning behind the judgement and reversal of the decision. This was accompanied by an effort to remind the Apex Court how contradictory the decision was, as it had decided on similar matters before (refer to "Nandini Satpathy" case), but it was going against its own settled decisions. This letter is a prime example of the capability of the collective thinking of legal scholars, led by Baxi, who took a stance for the upkeep of the constitutional ethos of India.[84]

As stated before, Baxi's impact on the interpretation of the law has been paramount. His methodology of interpretation of statutes is, to date, considered to be the Magna Carta by the elites of the Indian judicial society.

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81 Baxi & Dhagamwar et al, *supra* note 79.

82 *2 SCC 424*, 1978.

83 *The Criminal Procedure Code, Section 160*, 1973 states that "Police officer' s power to require attendance of witnesses. (1) Any police officer, making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required: Provided that no male person under the age of fifteen years or woman shall be required to attend at any place other than the place in which such male person or woman resides".

84 The Indian Constitution was adopted by the then Constitutent Assembly on 26th November, 1949 and came into force on 26th January, 1950.
See "Constitution of India| National Portal of India", online: <https://www.india.gov.in/my-government/constitution-india>.

Baxi's contribution to creating new discourses in the Indian legal landscape is immense. However, these contributions by Baxi have created a somewhat liberal consensus of legal interpretation and discursive practices in India. It has served the Indian liberal constitution and its democratic framework well, however, this overarching presence of Baxi has its drawbacks. It suffers from democratic deficits and its silences. For example, Nandita Haksar accused Baxi of being silent when the Rule of Law was sabotaged during the trial of Afzal Guru and Geelani.[85] Further, Dalit scholars have pointed out that often scholarship in India is a product of epistemic and caste privileges. For example, the news outlet The Print wrote a story titled "This is the next generation of Indian intellectuals",[86] in which giants of their field, such as Baxi, N.R. Madhava Menon, Ashis Nandy, et cetera., picked up the future scholars of India. Columnist Salil Tripathi criticized this exercise of picking upper-caste male intellectuals as an anti-democratic epistemic practice. He pointed out that this entire list had only "…upper-caste, upper-class, well-educated people active in the English discourse in India, who are seen frequently on op-ed pages, at literature festivals, on television, and increasingly on social media."[87]

These two examples tell us a story of epistemic privilege in a deeply hierarchal society. Baxi's silence during a constitutional crisis and when the rule of law is sabotaged makes a profound statement. His subtle support of the Ayodhya judgement also requires critique.[88] The exercise of choosing a list of legal scholars of the future proves Kuhnian's point that gatekeepers of academia decide who becomes a full and competent member of academia and who becomes a future defender of a scholarly paradigm. Such exercises remain subjective, partisan, and undemocratic.

This is where the legal scholars come into the picture. These scholars are the ones who find loopholes in the justice system and bring them to light. In fact, Article 124

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85 Nandita Haksar, *Framing Geelani Hanging Afzal: Patriotim in Time of Terror* (New Delhi: Promilla and Co, 2007).

86 "This is the Next Generation of Indian Intellectuals", (2018), online: *The Print In* <https://theprint.in/feature/this-is-the-next-generation-of-indian-intellectuals/168750/>.

87 Salil Tripathi, "ThePrint intellectuals list didn't make the grade. So, I nominate 36 brilliant Indian women", (2018), online: *ThePrint* <https://theprint.in/opinion/theprint-intellectuals-list-didnt-make-the-grade-so-i-nominate-33-brilliant-indian-women/170681/>.

88 Baxi Upendra, "Award of Five Acres for Masjid in Ayodhya is an Effort to do Complete Justice", (2019), online: *The Indian Express* <https://indianexpress.com/article/opinion/columns/ayodhya-verdict-babri-masjid-ram-janmabhoomi-supreme-court-6115052/>.

(3)(c) provides for the appointment of a "distinguished jurist" by the President of India,[89] as a judge of the Indian Supreme Court. Neither the definition of who is a "distinguished jurist," nor the process of consideration has been stated in the Indian Constitution, but there has to be a reason as to why said clause still exists in this day and age. India is not the only nation that has this clause. In the United States of America, Justice Felix Frankfurter was a professor at the Harvard Law School before being appointed as the Judge of the Supreme Court of America in 1938.[90] Contrarily, no Indian Jurist has ever been appointed for the post of Judgeship in India.[91] The importance given to the hands-on experience of Advocates and Judges at the High Court level in the field of litigation holds more importance in the appointment process, yet it remains blank in the consideration of jurists for the same post.[92] How can one assume that work experience is the only criterion considered for the post of judgeship at the Indian Supreme Court? If that is true, then why does the Indian Supreme Court hold Baxi's writing with such high regard? Why anoint him with titles and acknowledgment by the judges, new and old alike? Jurists, like any Judges and Advocates, do as much in-depth analysis and interpretation of the law and spend equal time, if not more, to hone their skills and understanding of law just like any practicing litigant in India.

The importance of basic structure has been understood since its landmark judgement of "Kesavananda Bharti",[93] and for the past 50 years has been upholding the ethos understood from the said case to date. Recently, the Vice President of India, Mr. Jagdeep Dhankar, questioned the said landmark judgement and implied that parliament should have the sovereign right to amend the Constitution irrespective of whether it goes against the basic structure doctrine. This also protects and defines the fundamental rights,[94] which makes him question whether India is a democratic state or not. The irony is that if the basic structure doctrine is questioned, then the entire

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89 *Constitution of India, Article 124 (3)(c).*, 1950.

90 "Felix Frankfurter", online: *Oyez* <https://www.oyez.org/justices/felix_frankfurter>.

91 "Time to Appoint a Distinguished Jurist Judge", (2022), online: *The Indian Express* <https://indianexpress.com/article/cities/chandigarh/supreme-court-time-to-appoint-a-distinguished-jurist-judge-8006199/>.

92 *Constitution of India, Article 124 (3)(c).*, *supra* note 89.

93 *4 SCC 225*, 1973.

94 "What Is the Basic Structure of Jagdeep Dhankhar?", online: *The Wire* <https://thewire.in/rights/what-is-the-basic-structure-of-jagdeep-dhankhar>.

framework of democracy that India has adopted and honed since its independence is questioned, which will take away the basic rights of the citizens and the main ethos of the Constitution (i.e., protecting the will of the people). If the government cannot upkeep that, then is India even a democratic state? There have been further instances of violation of civil liberties and human rights, such as the Delhi riots and the attack on the students of Jamia Millia Islamia due to the implementation of CAA-NRC, which led to chaos, detention, and the violation of human rights. Yet, the man who wrote such strong words in the 1979 letter remained silent, leading many legal stalwarts to follow suit. When the world needed guidance and clarity from the "Indian citizens and teachers of law",[95] people chose to remain silent. It is the doing of the entire legal fraternity that is divided and not united. Is this the precedent that the current fraternity wishes to set for the future generation of lawyers and critical thinkers? Is this the intellectual world the fraternity wants where no one speaks up against those who go against the settled laws of India? Then do tell the reasons behind having a grueling five-year course of law at a bachelor level, where students are taught about the importance of having the Constitution and acting as an officer of the court for administration of justice, which is even recognized as "Rules of Professional Standards" provided by the Bar Council of India,[96] as well as the Indian Advocates Act 1961.[97]

It is necessary to keep in mind that the current standing and functioning of the Indian legal fraternity is an addition to an already existing metanarrative of justice administration in India. Even the silence of those who share an equal stake in protecting the foundations of the rule of law can be considered as an active participant in going against these foundations. Such metanarratives will mold the future generation into believing in what they have been told rather than motivating them to hone their unique understanding and methodology of critical thinking. If this continues, then the old will die without ensuring that the new who are present can fill their shoes and bring the same level of achievements and clarity in law as demanded, which is in itself a large, but not impossible task. Some scholars and thinkers can fill such shoes and bring forth knowledge to the existing.

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95 Baxi & Dhagamwar et al, *supra* note 79.

96 *The Bar Council of India Rules, Chapter II, Part VI.*

97 *The Indian Advocates Act, Section 49(1)(c)*, 1961.

> "I am not writing this letter as a student should, to a favorite teacher. I am writing to you to charge you of being a part of the conspiracy to frame and murder an innocent citizen. I accuse you of not speaking out, then you were perhaps one of the few Indian citizens who were in a position to know and understand how the Rule of Law was being sabotaged…."[98]

These were the opening lines written by the author in her letter to Baxi, wherein she spoke against his silence during the Parliament Attack in 2001 and the procedure followed by the then Government of India. She further stated that Baxi cannot plead ignorance as he is one of the country's "best-known and loved jurists, of not upholding the values and principles enshrined in our Constitution."[99] Her anger was towards the fact that Baxi, the Jurist known for his in-depth interpretation of the Indian Constitution, chose to remain quiet after the trial concluded with the passing of the death penalty by the Special Sessions Judge under the 2002 Prevention of Terrorism Act. This was in particular reference to one of the accused, SAR Geelani. SAR Geelani was a Professor of Arabic at Delhi University, and the author, Nandita Haksar, was his defence lawyer during the pendency of the case. Later in October 2003, SAR Geelani was acquitted of charges by the Delhi High Court,[100] but her anger was towards the fact that even after the judgement was passed, Baxi could have voiced his concern regarding how a Sessions Judge misinterpreted the Rule of Law, going beyond the scope of the Constitution, yet there was not a single word from him. Baxi is one of the leading jurists whose writing and words are taught to Judges and Law students alike, and as the entire nation looks up to his work and his methods of interpretation, his voice would have mattered to many. "Baxi, if you had raised your voice in protest you would have most certainly created democratic space or at least preserved it."[101]

She also emphasized the support that Geelani received, not only from his own Professors Association of Delhi University but also from Colleges and teachers from West Bengal.[102] Despite being held in high regard by the entire nation, he chose not to voice his thoughts about it. Regardless of Baxi's reasons to remain impartial, a man

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98 Haksar, *supra* note 85.

99 *Ibid.*

100 "Targeting Geelani", online: *Frontline* <https://frontline.thehindu.com/social-issues/article30203807.ece>.

101 Haksar, *supra* note 85.

102 *Ibid,* at 101.

of his stature cannot stay quiet to protect the integrity of what he believes in. This silence has a profound impact.

It is said that "originality is a fresh set of eyes."[103] People who have been witnessing problems for too long often cannot see the forest for the trees.[104] When people are consumed by their day-to-day lives, the bigger picture is lost on them.[105] That is why viewing and interpreting the issues from a new perspective can create new solutions to existing problems. Perhaps this is why the Indian Constitution also provides for the selection of jurists as judges: to forge a link between the Indian judiciary system and the Indian legal education society, wherein both can benefit from each other's valuable resources and insights and tackle upcoming nuanced issues with better readiness. The law must always have a fresh set of eyes in tune with current socio-cultural changes happening within society and be molded to include such changes rather than exclude them. Change is a wave that cannot be stopped and will ultimately seep into all of society. It will bring tension between the old and the new. When that happens, the old guards and the new alike will have to stand together to understand the circumstances and make the general population aware of the same.

The Indian scholars have the ability and the power to create such intellectual tension within society. One way of countering the hegemonic presence of certain methodologies is to identify scholars and philosophers who have incorporated the paradigm of Baxism, included their novel ideas of reasoning and deduction, and found further developments in the field of law. The law is not set in stone, and it demands constant review as per the social and cultural changes of the country. Regarding the above discussion, the authors have supported the argument that one must keep certain phenomena in mind when identifying hegemony and how the epistemology behind said hegemony can suppress the voices of the unheard. This can lead to epistemicide of knowledge, which can be useful in understanding a study that requires such methodology and tools to decipher. To be able to do that, one needs to think beyond abyssal thinking that has been assumed to be the reality of the world.

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103 Said by Thomas W. Higginson;
See also: "Quote: A Fresh Pair of Eyes", (2013), online: *GovTech* <https://www.govtech.com/em/emergency-blogs/disaster-zone/quote-a-fresh-pair-of-eyes-082013.html>.

104 *Ibid.*

105 *Ibid.*

Knowledge beyond abyssal thinking cannot be rendered non-existent and ignored unless the same is understood and applied along with the current paradigm. It is imperative to first identify the "Epistemology of Absent Knowledges"[106] and then identify the alternative realities to be part of this absence. To understand this, one needs to first know the consequences of such knowledges are measured in terms of the unity it can create. Once such "Absent Knowledges" are identified, one must identify the agents. In this case, these are the upcoming scholars and researchers, who aim to create a destabilizing effect in the currently uniform, conformist, and repetitive social practice. All of this is possible only when there is tension between the old and new understandings of roots and options. In this case, one needs to see scholars who have tried to create an alternative paradigm. However, because of the overwhelming presence of the current paradigm, such alternative foundations are not brought forward or accepted since it does not follow norms. Coming out of such blindness and acknowledging the suppressed and absent knowledge helps to identify the oppressed and absent knowledges. That is how "Ecologies of Knowledges"[107] refers to knowledges that coexist and are dependent on one another. It is a form of counter-epistemology, which is the renouncement of general epistemic knowledge.[108] In this world, there are many diverse forms of knowledge pertaining to life, society, et cetera, and also many diverse concepts and methods of validating the same. In this transitional period, wherein one has to go from current abyssal thinking to post-abyssal thinking, a counter stance to the same is required, wherein "a general epistemology of the impossibility of a general epistemology."[109] This means having to forego the idea of having a general epistemology and accept that there are diverse knowledges and ways of validating the same. It is necessary to understand that the old are never everlasting and that the old only work well to a certain extent. For progress and diversification, new thoughts, ideas, and knowledges need to be brought forward and understood by utilizing the tools of the old and the new. This will create a new paradigm of legal research methods, which can help us address the prevailing social issues of society.

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106 Santos, *supra* note 58.

107 *Ibid.*

108 *Ibid.*

109 *Ibid.*

VI. CONCLUSION

"The old order changeth, yielding place to new, And God fulfills Himself in many ways, Lest one good custom should corrupt the world.[110] This is a passage from the poem Morte d'Arthur, where King Arthur comforts his favourite knight Sir Bedivere, that change is the order of the world. The old regime will have to be replaced by a new one, and even a good custom can be harmful if it is followed for as long as the essence of the custom diminishes, and the people will take that for granted.[111] The same principle can be applied in the case of the overreliance on Baxism as the unified paradigm in the field of law. The need for the Baxism paradigm was valuable and happened when many developments were occurring in India, resulting in drastic national socio-economic changes. He paved a path for upcoming legal scholars to come forth and contribute to knowledge. The main essence, however, was not for his foundations to become hegemonic. For the growth of knowledge, one cannot suppress the knowledge judged to be inferior without testing it first. Only when the suppressed knowledge is identified can there be a creation of diverse knowledges in this regard. Diverse methodology and research skills can then be understood and applied, and abyssal thinking can be widened. In this current era, the tension between the old and the new has already begun. Now is the time when further interpretation of laws should be dissected and scrutinized, giving each set of knowledge a chance. Similar to how the law is not set in stone, so is the human mind. With this in mind, the education system has been put in place to mold such minds, but this does not mean they should be programmed to think in only one way. There is no singular way to come to an end result. Even as researchers, one must use multiple tools and methods at their disposal to find reasonable and prudent suggestions - and with each research work, one can mold oneself.

There must be a continuous interpretation of the abyssal line created, and new forms of paradigms should be thoroughly studied without suppressing the same. It is said within academia that the LL.M. dissertations submitted as per the

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[110] Lord Alfred Tennyson, "Morte d'Arthur", online: *Poetry Foundation* <https://www.poetryfoundation.org/poems/45370/morte-darthur>.

[111] This is partially the authors' own interpretation of the passage taken from the poem Morte d'Arthur about what King Arthur actually meant by saying this passage.

requirements have low chances of creating an impact because their outreach cannot compare to the works of the PhD. Scholars. Such a comparison is not correct, as the PhD. Scholars have much more time to conduct in-depth research and analysis - whereas those pursuing an LL.M. are limited to one year to complete all requirements in addition to their dissertation. These two are very separate worlds, where few young lawyers join to complete their Masters of Law, and even fewer join to complete their PhD. Is time the only factor in assessing the quality of the research? Per the authors' observations, the quality of the research conducted by PhD. Scholars has been questioned as well.[112] Further, it has also been reported that PhD scholars have been subjected to various harassment for completion of their degree by their respective guides, which also affects the scholars' work, as well as their careers.[113] Understanding the research methodology of advanced scholars is thus essential, but even the LL.M dissertations should be assessed and addressed. They are, after all, the prerequisite to becoming a critical thinker in any field of research. It is important to understand the creation of knowledges and its impact from the grassroots level, as this would develop the metanarrative that the younger generation will follow.

The perception of what constitutes Global Knowledge did impact the interpretation of knowledge developed in the Global South. However, determining what was perceived as valid knowledge was controlled by a few. For any knowledge to be accepted, it needs to pass through the prism of what is perceived to be Global Knowledge, and since it does not speak the language spoken by many others, it is considered not worthy of acceptable scientific knowledge. This leads to the subjugation and oppression of voices, technologies, and methodologies as those few 'master scholars' who follow what is universally

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112 Kritika Sharma & Soniya Agrawal, "What is 'lota' Doing in PhDs? Why UGC is Worried about Indian Research", (2019), online: *The Print* <https://theprint.in/india/education/what-is-lota-doing-in-phds-why-ugcs-worried-about-indian-research/255625/>.
Also see: Kritika Sharma, "50% Jump in PhDs since 2011, Govt Wants Study on How Good Many of Them Actually Are", (2019), online: *ThePrint* <https://theprint.in/india/education/50-jump-in-phds-since-2011-govt-wants-study-on-how-good-many-of-them-actually-are/242206/>.

113 Shubhangi Misra, "Menial Chores to Sexual Harassment—PhD Scholars Trapped in Toxic Relationship with Guides", (2023), online: *ThePrint* <https://theprint.in/ground-reports/menial-chores-to-sexual-harassment-phd-scholars-trapped-in-toxic-relationship-with-guides/1686463/>.

accepted to be the true path, receive the limelight and legacy. The truth of the matter is that social science is not universal in nature. In law, what is interpreted to be legal and illegal differs. Understanding such knowledges from a holistic approach rather than following an atomistic approach will be beneficial.

Baxi is well-respected and idolized by the old and the new alike. To respect his legacy, one should not restrict the creation of knowledges but study and analyze it. Academia needs to keep pushing the paradigm because there is no set limit to its revelations. Limiting knowledges to just one hegemony will lead to an epistemicide which should not become a reality.

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COMPETING INTEREST

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