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'All Rise (Except for…?)' – The Curious Case of Thind and the Evolution of Racism, Law and Exclusion in early 20th c. USA (1900s-1920s)

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Abstract:

The research delves into the complex interplay of immigration, racism, and citizenship, as illuminated by the *Bhagat Singh Thind vs United States* case. Despite the outward allure of the nation's 'Gilded Gates', this study unveils the paradoxical reality of racial exclusion and nativist sentiments that plague American society. Through an intricate examination of the Thind case, this paper serves as a lens to dissect the intricate nuances of racial identity and citizenship within the legal framework. Tracing the origins of Asian-Indian immigration, it navigates through a web of legislative measures aimed at curbing 'aliens ineligible for citizenship', revealing the deeply ingrained racial constructs shaping societal norms. The Thind case emerges as a pivotal moment, illuminating the evolving definition of 'whiteness' and its implications for naturalization.

Moreover, this research sheds light on the persistent spectre of racism that followed Indian immigrants, despite their pursuit of a better life away from despondency in India. Discrimination proved to be a constant companion, manifesting differently in various contexts and spaces. In colonial India, discrimination was not only institutionalized but also internalized by both the colonizers and the colonized. The British employed a policy of *divide et impera*, exploiting existing social hierarchies and fostering tensions among different

communities based on caste, religion, and ethnicity to maintain control and further their interests.

One of the most glaring forms of discrimination during the colonial era was the exploitation of India's vast resources and labour force for the benefit of British imperialism.

Remarkably, ‘Whiteness’ emerged as the common denominator across the United States, Canada, and the British Empire, forming solidarities against South Asians and other marginalized groups. By unravelling the fallacy of ‘scientific race’ notions and exposing the enduring legacy of exclusion, this study prompts reflection on America's ideals of equality and opportunity, urging a deeper interrogation of the nation's narrative of belonging.

Introduction:

The Gilded Gates of the US were a hotspot for worldwide immigration, but at the same time, racism, nativism and exclusionary sentiments on behalf of the white natives of the US proved that the said gates became narrower by the day. Immigration, especially from Asia and Africa, were frowned upon by the US white populace for a variety of reasons, and proved to be a catalyst in the enactment of a series of immigration bills from the US Congress which sought to curb and discourage any further ‘aliens ineligible for citizenship’ to the US.

A prerequisite case, denoted as a legal precedent established through a series of court rulings, pertains specifically to a cluster of United States court cases adjudicated between 1878 and 1952. These cases assumed significance due to the constraints imposed by the original American Naturalization Law of 1790, articulated in an Act to establish a uniform Rule of Naturalization, which limited eligibility for citizenship solely to ‘white’ immigrants. The *Bhagat Singh Thind vs United States* case of 1923, among these landmark cases, stands out prominently, shedding light on the legal definition of a ‘white’ person and delineating the parameters for naturalization and citizenship in the United States. Thind's journey, originating from the Punjab region of India, underscores the interconnectedness of racial exclusion and immigration experiences. Seeking refuge from dire social and economic conditions. Thind, like many others, migrated to Seattle in 1913, engaging in educational pursuits and labor while advocating for Indian independence through his involvement with the Ghadar Movement. However, enlisting in the U.S. Army during World War I led him into a legal

battle for citizenship, where despite initially being granted citizenship based on a claim of being 'Caucasian,' the Supreme Court's unanimous ruling in *United States v. Bhagat Singh Thind* in 1923 denied his whiteness, resulting in the loss of citizenship for many Indian Americans. Thind's case encapsulates the complexities and consequences of racial definitions within American legal history, forming the crux of critical considerations surrounding racism and immigration policies.

Different themes would be taken up in this paper, and the Thind vs US case would give an important context to the happenings as well as prove to be a crucible for the erstwhile 'scientific race' notions which would also be discussed in this paper.

But first, a brief overview of the beginnings of Asian-Indian immigration (as the US officials referred to them) would go a long way in giving a proper context to our study, followed by various legislations that were put into place before 1923 attempting to curb immigration into the US, then would come the notions of race prevalent & constructed in the legal forums, and the society in general, and as an apt conclusion, putting all the pieces of the puzzle together analysing the Thind vs US case as a watershed moment in the history of immigration to the US.

Welcome Guests – The Background, and Early Days of Indian Immigration in the US

The first Indian immigrant, in legal terms, arrived in the US in 1900, but Indian arrivals were few and far between in the initial years.[1] Indians were not new to leaving their homelands either by force, choice, or economic imperative. Indian men served the British Crown in varying capacities, working as policemen, soldiers, or merchants, labourers or workers in crown colonies across Asia, South Africa and Australia.

However, several factors worked in tandem around 1906-1907 enabling an exodus of Indians towards North America, which included the growing anti-colonial furore in Bengal which spread to Punjab, which in 1907 intensified when coupled with the outbreak of a deadly plague. Another factor was the restriction on the immigration of Indians to other Crown

[1] Chandrasekhar, S. *Indian Immigration in America. Far Eastern Survey* 13, no. 15 (1944): 138–43. https://doi.org/10.2307/3021823. 138.

Colonies especially South Africa and Australia, forcing Indians to try out their luck in the burgeoning economies of the North American western coast. Apart from labourers, Indian activists and intellectuals were also being cracked down upon by the British colonial regime, forcing them to seek refuge on the American East Coast. This "historic mix of radical intellectuals and labourers" was to constitute the foundations of the nationalist-revolutionary Ghadar movement.[2]

A major chunk of the immigrants had Punjabi origins, belonging to "relatively prosperous families of independent landholders (…)" ('*Jutts/Jats'*) with about half of them being "veterans of the British army or the military police" who after having a glimpse of cosmopolitan lifestyle "now had a taste for further adventures rather than settling back down in the sleepy villages of their birth."[3] The immigrants were overwhelmingly Sikh, but there were Hindus and Muslims among these men. However, in the US as well as in Canada, these men were referred to as 'Hindus', which proved to be a rather fluid ethno-religious category, and a misnomer at best.

There exists a wider consensus among scholars attributing the Punjabi sojourns to western North America as a response to poverty, or as a result of the shiny dreams of prosperity they were being sold by their fellows or the contractors, but Johanna Ogden asserts that this flight was "expressive of the changes colonialism wrought in Hindustan" and "people's creative adaptation to and use of the openings provided by the colonial empire" in the capacity of labourers for, or enforcers of, British rule.[4]

Most of those who landed in Canada settled in and around Vancouver City or British Columbia. Punjabis took up work in "lumber mills or laying roads, (…) canneries or construction"[5]; Punjabis accepted everything that involved "hard labour." Railway construction provided major employment opportunities. Others "filtered into the migratory agricultural labour force"[6] finding employment in the "building trade, dairying, fruit picking

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[2] Ogden, Johanna. *"Ghadar, Historical Silences, and Notions of Belonging: Early 1900s Punjabis of the Columbia River." Oregon Historical Quarterly* 113, no. 2 (2012): 164--197. https://doi.org/10.1353/ohq.2012.0018. 168.

[3] Ramnath, M. *Haj to Utopia: How the Ghadar Movement Charted Global Radicalism and Attempted to Overthrow the British Empire* (Berkeley: University of California Press, 2011). 17; Takaki, Ronald. *Strangers from a Different Shore: A History of Asian-Americans* (Toronto: Little, Brown and Company, 1989). *302.* "Most of the Asian-Indian immigrants had been farmers or farm labourers in Punjab. 80% came from the *jat*, or farmer caste."

[4] Ogden, Johanna. "*Oregon and Global Insurgency: Punjabis of the Colombia River Basin,*" M.A Thesis (Vancouver: University of British Columbia, 2010). 9.

[5] Ramnath, M. *Haj to Utopia*. 18.

[6] Ramnath, M. *Haj to Utopia.* 18.

and other kinds of farming."[7] But as "after 1908, Asian-Indian immigration was essentially banned in British Colombia" migrants came to the USA settled on farms in San Joaquin and Sacramento valleys in California or around lumber mills in Oregon and Washington, and worked in "mills, at land reclamation, and on farms."[8]

The Punjabis landed on the shores of America at a rather (in)opportune time during 1906-1907. This was the peak of the '*Yellow Peril*' era where the white workers' and their unions rallied under a nativist, exclusionist and racist banner of white supremacy against the Chinese and Japanese immigrant workers (starting from the 1880s). The Punjabis quickly filled in the labour shortage felt by the California farmers in their farms owing to the restrictions placed upon the Japanese and Chinese immigrants. Despite being a boon for the white employers working at low wages and living frugally, the 'Tide of Turbans' was sucked into the maelstrom (or rather, the hate-storm) of the 'Yellow Peril', and racism & exclusionary visions of the Americans in general. This hate manifested in various ways, including riots, and lynching among others, as well as in the almost concomitant legal construction of race in the US.

Not-so-welcome as Compatriots and Citizens

Perceived initially as favourable by the various white employers, the immigration of South Asians was soon adjudged by the Canadian white mass in British Colombia as an "invasion." The threat of a "Hindu invasion" was foreboded in both Canadian newspapers as well in those of nearby states of the US, drawing parallels to the preceding "Japanese invasion." *The Spokane Chronicle,* a Washington-based daily vociferous in its opposition to South Asian arrivals proclaimed that the these people were lacking the "qualities necessary for the making of good citizens", and that these immigrants would cause labour unrest with white workers by severe competition and by lowering the wage levels, and would pose severe health concerns for the community.[9] This proclamation was made at a time when the Indian labourers didn't even enter Washington en masse, but these local news outlets depended upon racialised

[7] Puri, Harish. *Ghadar Movement: A Short History* (New Delhi: National Book Trust, 2015). 17.
[8] Ogden, J. *Ghadar, Historical Silences.* 168-169.
[9] "East Indians Come in Masses" *Spokane Chronicle,* Oct. 3 1906. Quoted in Deol, Amrit P. "W*aves of Revolution: Interrogations of Sikh Political and Spiritual Subjectivities in Punjab and the American West, 1900-1928,"* PhD dissertation (Merced: University of California, 2021).

tropes against such immigration that were manufactured across the border, which is a testament to the unifying force of racism in North America.

The Indians rapidly scaled the social hierarchies of the US and Canada as the "Punjabi Sikh labourers spent very little on them" and within a few years saved up huge amounts of money to be sent as remittances back home.[10] Puri, quoting Nand Singh Sihra, states that "there may not have been a single Indian who didn't own any landed property and/or possess the equivalent of 7 to 8 thousand rupees", and in Canada alone, the residing Indians had "7.5 million dollars invested in real estate and business."[11]

The rapid ascent of Indians along with the perceived preference of mill and farm owners for 'cheap and hardy' Hindu labour over that of whites infuriated the white labourers. The white labourers were jealous and rancorous of the "immigrants' strength, industriousness, and ability to live with such (…) frugality."[12]

Long-simmering resentment, dating back to the 'Hindu invasion' of 1906, peaked during the 1907 economic downturn. Using Joan Jensen's framework, Ramnath argues that economic strain on low-income white labourers intensified anti-Asian sentiments, as incoming workers willing to accept lower wages were seen as direct competition.[13]

Some labour organisers were of the view "the American West was meant for whites only" and used variegated tactics to deal with the 'Yellow Peril' which included riots, murders, round-ups and expulsions among others.[14] The Asiatic Expulsion League (AEL), founded in 1905 in San Francisco, represents the latest form of Asian exclusionist organizing. Its core ideology, encapsulated in the popular bar song "White Canada Forever," is shared by both Canadian and American labour organizations:

For white man's land we fight.
To Oriental grasp and greed
We'll surrender, no, never.
Our watchword be "God save the King,"
White Canada forever.[15]

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[10] Puri, H. *Short History*. 18.
[11] Puri, H. *Short History*. 18.
[12] Ramnath, M. *Haj to Utopia.* 19.
[13] Ramnath, M. *Haj to Utopia.* 23.
[14] Ogden, J. Ghadar, *Historical Silences.* 170
[15] As quoted in Ogden, J. *Historical Silences*. 170.

Another of the major causes of white resentment against Indian (and against the Chinese and Japanese) workers was that "the South Asians threatened the public health, morality, and society of the entire Pacific coast", which formed another aspect of ideology of the white labour organisations.[16]

With restrictive immigration policies in place from mid-1906, South Asians crossed from Vancouver to Washington, US, seeking employment. This influx, dubbed the 'Hindu Invasion,' saw Punjabi workers finding jobs in the thriving mill town of Bellingham. The pivotal 1907 economic downturn escalated racial tensions, leading to anti-Indian riots in Bellingham, Washington, an Asiatic Expulsion League (AEL) stronghold.

Ogden states that "job insecurity in Bellingham combined with anti-immigrant hatred", and was followed by outbreaks of violence in several other Washington towns, Alaska and California.[17] Populist political leaders strategically aligned themselves with protests, including violent ones, against immigrant labourers. They capitalized on the wave of racial hatred, fuelling fears of unemployment within white labour unions, all to gain political power.[18]

The riots brought about a watershed moment in Canadian immigration history as well as the labour structure of Washington. The "Euro-American works established a hold over lumbering in Washington that would not be broken until the First World War."[19] Concerned about the potential erosion of loyalty due to Asian immigration, the Canadian federal government endorsed the province's "white Canada forever" initiative. They imposed quotas on Japanese emigration, "continuous voyage" regulations for Asian Indians, a $200 landing fee, and enforced head-tax laws on the Chinese. Subsequently, the Chinese Exclusion Act was enacted, along with sly attempts to displace Indians.[20]

Seema Sohi also highlights the "strong personal ties" of the federal immigration authorities to organised labour who were equivocal "advocates of anti-Asian legislation."[21] From the

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[16] Wallace, Sarah Isabel. *Not Fit to Stay: Public Health Panic and South Asian Exclusion* (Vancouver: University of British Columbia Press, 2017). 5. Wallace narrates an account in which a man, characterized as 'Hindu,' was falsely accused of breaking into a white household and sexually assaulting a woman on the premises. Following thorough police questioning, the implicated family acknowledged the fabrication of the incident, revealing that they had concocted the story with the deliberate intention of expelling South Asian residents residing nearby. Thus, we can see the Oriental ideology at play, projecting the Indian as a hyper-sexualised man whose body and morality, both are plagued.

[17] Ogden, J. *Ghadar, Historical Silences*. 171.

[18] Puri, H. *Short History*. 24.

[19] Cited in Ogden, J. *Ghadar, Historical Silences*. 171.

[20] Ogden, J. *Ghadar, Historical Silences.* 171-172. Puri, H. *Short History*. 26-30.

enactment of the Chinese Exclusion in 1882 until the Immigration Act of 1924, the immigration officials took it upon themselves "to regulate the entry of those they considered a threat to the nation and made clear their desire to restrict Asian migration on a long-term (…) basis."[22]

Hence, a complex interplay of race and class is visible, with an emphasis on class issues being laid by the various news pieces that followed. As Amrit P. Deol asserts, this tended to "single out the riot as a one-time looting action rather than a deep-rooted result of the racialisation of South Asians over the past few years."[23] Deol also concurs that riots and forced expulsions got established as the solution to this "new immigration problem" resultant of the "Hindu Invasion."[24]

Nativism, or more specifically what Alan Kraut calls "medicalised nativism" formed the core precept of the white workers and labour unions in the face of shrinking economies and job opportunities. This was compounded by the "ubiquitous racializing and 'othering' discourses of the Progressive era" which rallied workers not just against South Asians, but also against Jews, Italians and other Eastern European immigrants who were subjected to exclusion on charges of constituting a health menace to the host society.

The Indians, as Sarah Isabel Wallace postulated, with their colonial status had the "discourse on the Hindu issue" planted squarely "at the crossroads of medicalise nativism, eugenics and colonial theory."[25] Indians were perceived as unsanitary, and the not-so-conspicuous appearance of Sikh men with their turbans irked the white natives to the extent that they were pejoratively called 'ragheads.' There was also a contradictory belief in vogue at the time, viz. that the Hindus were hardworking, industrious, frugal and reliable, but at the same time, as with other non-white groups, they were perceived as lazy, diseased, slow-witted, and more importantly, extremely prone to immorality, sexual deviance and criminality, which compounded the racial and genetic inferiority of Indians in the eyes of the Americans. Wallace also asserts that with the "widespread popular acceptance of the disease argument" this hypothesis "soon became an important thread interwoven with the racial, social, political and economic arguments of South Asian exclusion."[26]

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[21] Sohi, Serma. *Echoes of Mutiny: Race, Surveillance and Indian Anti-colonialism in North America* (New Delhi: Oxford University Press, 2014). 29.
[22] Sohi, S. *Echoes of Mutiny.* 30.
[23] Deol, A. *Waves of Revolution.* 72.
[24] Deol, A. *Waves of Revolution.* 71.
[25] Wallace, S. *Not Fit to Stay*. 3.
[26] Wallace, S. *Not Fit to Stay.* 4.

From Open Doors to Selective Entry? – The Evolution of US Immigration Policy

Immigration, Roger Daniels asserts, is almost habitually described using "hydraulic metaphors" wherein immigration is described as a 'flood', and immigrants are described as coming in 'waves', 'torrents' and 'streams'; this lexicon stigmatises the immigrants as an eternal other, incapable of assimilation.[27]

American citizenship and restrictions have a history of their own, and go beyond the ambit of this paper to discuss meaningfully, but it would benefit us to gloss over its workings briefly. American citizenship from the beginning operated on dichotomies – of free and unfree, dependent and independent etc. – and had defined itself as "universal and inclusive" while at the same time, rather contradictorily, leaving out poor, women, slaves and Native Americans from the fruits of citizenship, thus, being "highly exclusionary in practice."[28] A sense of white masculinity was developed as the positive superior to women and blacks, which as we would see in later sections, tied into the Anglo-Saxon understanding of Americanism.

The 1790 Naturalisation Act was the first legislative piece outlining a uniform path to citizenship in the US. The 1790 law "granted naturalized citizenship to "white" immigrants only", thus being highly restrictive and exclusionary from the very beginning, and thus it should not come as a surprise in seeing it being used to deny naturalisation to non-white races as the Chinese and the Japanese.[29] This act also acted as the foundation of the claims of Bhagat Singh Thind for naturalisation in 1923, which we would touch upon later.

While European immigrants like Irish and Italians encountered discrimination and nativist sentiment, they still had a path to naturalization and, consequently, political participation. Citizenship bestowed suffrage, a crucial tool for influencing government and defending group interests. However, Asian immigrants were denied this avenue of empowerment. Their exclusion from naturalization effectively disenfranchised them, preventing them from wielding political influence through voting or building their own political machines.

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[27] Daniels, Roger, and Otis L. Graham. *Debating American Immigration, 1882-Present* (New York: Rowman & Littlefield Publishers, Inc., 2001). 7.
[28] Glenn, Evelyn Nakano. *Unequal Freedom: How Race and Gender Shaped American Citizenship and Labor* (Cambridge: Harvard University Press, 2002). 24.
[29] Takaki, R. *Strangers from a Different Shore*. 298.

The first explicitly race or ethnicity-based barrier to immigration was a "relatively late development" and came in the form of the 1882 *Chinese Exclusion Act*. The Chinese however were neither the first nor the last to fall prey to the illusory dreams of the 'Gilded Cages.'

The Chinese had immigrated to the US Western coast in the wake of the Gold Rush of 1850s, and played a huge role in the building the infrastructure of West Coast. However, their stay didn't stay didn't remain so welcome with mounting economic fears of white native labour painted by anti-Asian racism. The 1882 Act came in this context, and came as a successor to the unsuccessful 1875 Page Act. Roger Daniels eloquently states that "it (the 1882 Act) became the pivot upon which all American immigration policy turned, the hinge on which the golden of immigration began its swing to a nearly closed position."[30]

Ronald Takaki opines that "what enabled businessmen to degrade the Chinese into a subservient labouring caste was the dominant ideology that defined America as a racially homogeneous society and Americans as white. The status of racial inferiority assigned to the Chinese had been prefigured in the black and Indian past."[31]

The Japanese were next to catch the crosshairs of nativism and exclusion in the US. The Chinese Exclusion Act (1882) significantly altered Asian immigration patterns. In the late 19th and early 20th centuries, Japanese labourers, primarily from rural areas, filled the growing demand for agricultural workers in Hawaii and the West Coast. This influx differed from the earlier Chinese immigration, as Japanese arrivals included more families, leading to the establishment of permanent Japanese American communities (Ichioka, 1988). However, rising tensions with Japan and growing nativist sentiment in the US led to further restrictions. The *Gentlemen's Agreement of 1907*, an informal pact between the US and Japan, aimed to appease anti-Japanese sentiment on the West Coast by limiting Japanese immigration while at the same time not maligning the image of the ascendant Japanese empire at the time.

For Evelyn Nakano Glenn, race and gender have "continuously been organising principles of American citizenship" and simultaneously, race and gender have been "primary axes for contesting boundaries and rights."[32]

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[30] Daniels, R. *Debating Immigration*. 8.
[31] Takaki R. *A Different Mirror: A History of Multicultural America* (New York: Little Brown, 1993). 204.
[32] Glenn, E. *Unequal Freedom.* 26.

Concerning Civil Rights legislations outlining the eligibility criteria for citizenship and naturalisation in the last quarter of the 19th century, three important legislations stand out.

The most inclusive of all legislations, at least semantically, is the Civil Rights Act of April 9, 1866, which reads as:

> "All persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared citizens of the United States; and *such citizens, of every race and color, (...) shall have the same right, in every State and Territory in the United States* (…)"[33] (emphasis added)

1875 saw the Congress passing perhaps the most inclusive legislation vis-à-vis citizenship and naturalisation, viz. the Civil Rights Act of March 1, 1875, which laid down that:

> "It is the duty of government in its dealings with the people to mete out equal and exact justice for all, *of whatever nativity, race, color or persuasion, religious or political…*
>
> That all persons within the jurisdiction of the United States of America shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances (…) and places of public amusement; subject only to the conditions and limitations of law and applicable alike to *citizens of every race and color* (…)"[34]

In this way, at least in the second half of the 19th c., Asian immigrants seemed to have an opening to gain citizenship prescribed by the law. However, as we saw in the earlier part of this section, anti-Asian hate was stoked which led to this hate & fear translating into the legislative conservatism towards Asian immigrants, and the Naturalization Act of February 18, 1875 acquired the following form:

> "The provisions of this title shall apply to *aliens being persons*, and to aliens of *African nativity*, and to persons of *African descent*"[35]

This limited the naturalisation, and consequently citizenship rights to just 'whites' and 'blacks' while completely excluding the claims of immigrants from Asia and elsewhere for the US citizenship.

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[33] Civil Rights Act of 1866, ch. 31, 14 Stat. 27–30 (1866).
[34] Civil Rights Act of 1875, ch. 14, 18 Stat. pt. III (1875).
[35] Naturalization Act of February 18, 1875, ch. 114, 18 Stat. 318 (codified as amended at 8 U.S.C. §§ 1101 et seq.).

S. Chandrasekhar describes the evolution of American immigration policy in 1910s and beyond quite visually as one moving from "selection at first, restriction later" and finally became "one of exclusion."[36]

These laid the foundations of race-based legislations of the 20th c. specifically targeting the 'Hindus' and South Asians, creating anew the understanding of Whiteness all the while expanding its scope. A discussion on the relationship between law and whiteness would be worthwhile before we dive into these legislations, and through them the *Thind vs the US* case.

Tail Wagging the Dog? – The Legal Construction of Race or the Racist Construction of Law?

Whiteness as a legal category and as a social phenomenon, in general, has been a matter of intense debate among scholars, and its relation to law has been even more convoluted. Prerequisite cases[37] give us crucial insights into the legal definition and view of whiteness in the American context. As Ian Haney Lopez, a scholar who is central to this paper's argument, asserts, "the prerequisite cases are literally about the legal naturalisation of Whites" and simultaneously about "figuratively about naturalising White identity."[38] The emphasis on descent, along with the insistence on treating Whiteness as a matter of physical, and in turn, natural being defines the stance of legal institutions in the US, which Lopez lampoons as invisibilising the socially mediated parameters.[39] The 'Common Knowledge' notion emanated from this emphasis on physicality and ostensibility of 'Whiteness' manufacturing transparency and obscuring the exigency of race demarcations, and this notion was relied heavily upon by the courts to strike down immigrant litigations for naturalisation. This transparency, Lopez argues, while being a function of privilege, was "also the result of the physical and common-knowledge naturalisation of whites."[40]

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[36] Chandrasekhar, S. *Indian Immigration.* 138.
[37] A prerequisite case, as discussed in the introductory section, is understood as a legal precedent established through a series of court rulings, refers specifically to a group of United States court cases decided between 1878 and 1952. These cases were necessary because the original American naturalization law of 1790, as established by An Act to establish a uniform Rule of Naturalization (Ch. 3, 1 Stat. 103 (1790)), restricted eligibility for citizenship only to "white" immigrants. The prerequisite cases thus aimed to define the racial classification of "white" within the legal context of naturalization.
[38] Lopez, Ian Haney. *White by Law: The Legal Construction of Race*. Revised and Updated 10th Anniversary Edition (New York: New York University Press, 2006). 18.
[39] Lopez, I. *White by Law.* 18.
[40] Lopez, I. *White by Law.* 19.

Race is to be understood in the framework of "comparative taxonomies of relative difference", and the courts delineated 'white' through the mechanism of negation, systematically identifying who was White by identifying who was non-white. In addition to this, Gary Y. Okihiro emphasises the significant role played by Asian ethnic groups in the construction of both the 'white' and 'non-white' communities along with the creation of racial hierarchies[41], thus representing a sort of dialectic interaction between the white and non-white groups in the identification of the Self in the delineation of the Other.

Law operates both on the level of coercion & "behavioural control" as well as on the level of ideology in Lopez's framework, giving us a more holistic insight into the relationship between law and race.

Law, on the level of coercion, operates through normalising Whiteness first by shaping "physical appearances on which racial meaning systems are built"; this involves manipulating the demographic of the society through "literal exclusion and interference with marital choices" which in turn contribute to "the racialisation of the US population."[42] Secondly, the creation of racial meanings to be attributed to physicality are fostered by positive law by "efforts of the courts to inscribe on the bodies of individual applicants the term 'White' or 'non-White';" this practice of legally defining non-white identities helped create rather than elucidate the identities courts claimed to expound upon, thus "laws *created* racial identities."[43] And, finally, positive law plays a role in this construction of race by "establishing the material conditions which often code for race" like the correlation between citizenship and whiteness, segregation of non-Whites from the Whites, promulgation of laws determining 'permissible behaviour' and enforcement & operation of rules through violence.[44]

Law as an ideology, in Lopez's schema, works in a three-fold manner. Firstly, as "law is one of many cultural institutions that are constitutive of consciousness", it legitimates existing social relationships, and in this manner, "legal rules and decisions construct races through legitimation" while "affirming the categories and images of popular racial beliefs" rendering it impossible to attain a non-racialised consciousness.[45] Secondly, law with its universalist ambitions becomes a hub of "conservative force in racial construction", in which the role of

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[41] Okihiro, Gary Y. *Common Ground: Reimagining American History.* (Princeton, NJ: Princeton University Press, 2001)
[42] Lopez, H. *White by Law.* 82.
[43] Lopez. *White by Law.* 82-83.
[44] Lopez. *White by Law.* 84.
[45] Lopez. *White by Law.* 87.

precedent is essential, helping the "racial categories to transcend the socio-historical contexts in which they develop"; or as Lopez puts it so eloquently, "by giving great weight to superannuated racial definitions, precedent keeps alive restrictive notions of race."[46] Law also works in providing a newer, more subtle vocabulary to the lexicon of race and expanding racial differences freeing "racial categories (…) from contextual bounds, but also from the bounds society places on the use of race."[47] Thirdly, by linking the "cognitive and material worlds", law "constructs races through a process of reification"; this is most importantly done by concretising the racial categories and then "making the categories seem natural". In this way, through law, race becomes real through law "in a self-perpetuating pattern."[48]

This framework albeit quite useful in analysing *Thind vs US case* and other such cases seems to present some limitations. The quotidian workings of law are not seen to be taken into account, thus practically invisibilising a huge part of the Asian-Indian struggles in particular, and Asian immigrants' struggles in general in day-to-day life as well as in the courts as there existed little but important ways in which these groups resisted such exclusionary and racist legislative measures. For instance, facing potential exclusion at West Coast ports under the oft-misused public charge clause, Indian immigrants adopted legal countermeasures. Attorneys secured affidavits from businesses and individuals guaranteeing immediate employment upon arrival. Additionally, they emphasized the historical absence of public charge concerns among Indian migrants. The burgeoning presence of Indian social and religious organizations further strengthened their position, as these groups pledged financial support for newcomers.[49] This leveraging of community support was essential to the Indian diaspora in the US as such solidarities helped them weather the storms of poor living conditions, racial alienation & violence, as well as exclusion en masse.

As Evelyn Nakano Glenn argues, "less formal types of contestation have been even more neglected by scholars of citizenship than formal challenges."[50] Challenges to exclusion through the 'formal' legislative and legal channels were important because the "excluded groups by definition (…) often lacked resources and access to courts and other formal venues to mount such challenges" and thus, "most of their opposition has taken place in informal or 'disguised' ways and in informal sites."[51]

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[46] Lopez. *White by Law.* 88-89.
[47] Lopez. *White by Law.* 91.
[48] Lopez. *White by Law.* 91; 93.
[49] Sohi, S. *Echoes of Mutiny.* 33.
[50] Glenn, E. *Unequal Freedom.* 52.

Lopez's framework of the 'legal construction of race' is a crucial component in understanding the issue at hand. When combined with Lopez's and other major scholars' analyses of the prerequisite cases, particularly that of Bhagat Singh Thind, it provides us with a significant segue to the core issue of this paper.

Prerequisite Cases of the 1910s, *'Hindu Conspiracy'* and White Fears

Before delving into the meat of the paper, it would be important to understand the immediate background of Thind's naturalisation case, as it would provide a crucial vantage point into the perspective of the legislators as well as the modus operandi of the suitors.

The 1907 anti-Asian riots in BC, Washington and Vancouver shook the Asian community on the Pacific coast to the core, and the US & Canadian governments had to devise plans to ward off the Asian 'menace' to propitiate the enraged white labourers. Sarah Isabel Wallace notes "disparate official reactions to the riots" in the US and Canada. Wallace highlights the fact that anti-Asian riot in Vancouver in 1907 catalysed Canadian policy changes, leading to the exclusion of South Asians from immigration in early 1908. Notably, a similar anti-Asian riot targeting South Asians in Washington State did not prompt analogous action from US officials. This disparity suggests that factors beyond immediate events influenced policy decisions. While Canada invoked concerns about South Asians' unsuitability for the climate and susceptibility to tuberculosis, these arguments held less weight in the US Additionally, Canada's status as part of the British Empire likely influenced its approach to South Asian immigration, potentially fostering a different political context compared to the United States.[52] The American and Canadian officials however found a common ground in employing "climactic and especially health-based arguments to maintain exclusion."

However, there was one roadblock to this monolithic belief of Asians in general being 'undesirable' as immigrants. While all Asians were equally despised by the white natives, Asian-Indians were begrudgingly accepted "brothers" of their "own race" as they were "full-blooded Aryans" and "men of like progenitors with us."[53] Being frequently associated with

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[51] Glenn, E. *Unequal Freedom.* 52.
[52] Wallace, S. *Not Fit to Stay.* 4.

the Chinese and Japanese, lip service to the aforementioned put Indians in a different, more advantageous position legally vis-à-vis citizenship and naturalisation.

Takaki terms the Hindoos in America as "Dark Caucasians"[54] and rightly so. Anthropologists in the search for 'perfect' racial divisions ventured far and wide academically in the 19th c. still, as Thomas Gossett noted, it was a period of "exhaustive and (…) futile search for physical criteria to define and describe race difference."[55]

With the Naturalisation Act of 1875 in place, Asians were tried to be wholly excluded from naturalisation both for not being 'white', and for being beyond 'non-white' strictly speaking (as the African Americans gained new rights in early 20th c.). Deenesh Sohoni asserts that the courts "turned to the field of anthropology to provide the *'scientific' language and rationale* for distinguishing Asians from whites and blacks."[56] (emphasis added) Asians developed as a new category in the legal-racial hierarchisation of the US society, hovering somewhere below the 'Blacks' who were non-whites but had some rights as opposed to the Asians, who, were non-whites sans any rights, and the 'Whites' who had 'superior' rights.

Anthropology as a discipline being the source of racial hierarchisation and justifying immutable differences should come as no surprise as it came into existence and gained currency by the late 19th c. as the "academic discipline most concerned with the scientific study of racial differences."[57] Johann F. Blumenbach, in 1781, divided humans into 5 racial categories based on their physical characteristics viz. Caucasian, Mongolian, Ethiopian (or, Negroid), American Indian and Malayan. These categories were used extensively by the legal actors to justify their naturalisation claims and reject them.

Here, however, occurred the major contradiction in the scientific categories of race and immigration policies as Asian-Indians, unlike other Asian groups, were designated as "Caucasians", making them adjacent to the White Anglo-Saxons ("free white persons") of the

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[53] Buchanan, Agnes Foster "The West and the Hindu Invasion," 1908. pp. 308-313. https://www.saada.org/item/20111101-444

[54] Takaki, R. *Strangers from a Different Shore*. 295.

[55] Gossett, Thomas. *Race: The History of an Idea in America (Race and American Culture) (London: Oxford University Press, 1962)*. 69.

[56] Sohoni, Deenesh. *"Unsuitable Suitors: Anti-Miscegenation Laws, Naturalization Laws, and the Construction of Asian Identities."* Law & Society Review 41, no. 3 (2007): 587–618. http://www.jstor.org/stable/4623396. 602.

[57] Smedley, Audrey. *Race in North America: Origin and Evolution of a Worldview.* (Colorado: Westview, 1993). 274.

US, and putting them in a position to claim rights that other Asian groups were excluded from legally.

For instance, in *Akhoy Kumar Mozumdar vs US* case of 1913, we can see that Mozumdar, a "high-caste Hindu of pure blood" claimed in the court that "such Hindus have always considered themselves as members O'f the Aryan race" and thus "is entitled to naturalization as a white person." The court commented that "certain of the natives of India belong to that (Caucasian) race, although the line of demarcation between the different castes and classes may be dim and difficult of ascertainment" and that Mozumdar has brought his arguments "within the provisions of the Naturalization Act[58], and he will be admitted to citizenship accordingly, upon taking the oath prescribed by law."[59]

Mozumdar, thus can be seen using the loophole in the supposed 'scientific basis' of racism by arguing that Asian-Indians and (free) white men of the US share a common lineage, one which can be situated in some decrepit corner of history. This was a landmark ruling as this set a precedent for other Asian-Indians, and even other Asian groups to use racism and scientific explanations to their advantage to gain rights in the US, as we would see in the succeeding section.

But before that, a few crucial changes and events transformed the face of the South Asian immigration history of the US. The passage of the 1908 orders-in-council in the Canadian dominion stoked fears in the hearts of the US officials of an impending Hindu menace as under the said legislation, they feared that Indians leaving British Colombia for the US would be rendered frustrated to return to Canada owing to the 'continuous journey' clause. Seema Sohi asserts that the US immigration authorities and congressional representatives situated the calls for systematic Asiatic exclusion in a transnational context by frequently referring to "anti-Asian laws in white settler countries to buttress their own espousal of Indian exclusion."[60] The US along with other white settler countries across the Pacific seemed to be on the same page when it came to immigration in general and Asian migrant exclusion in particular, and they "even used other countries' exclusionary laws as model for its own restrictive immigration policies."[61]

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[58] Section 2169 of the Revised Statutes (U. S. Comp. St. 1901, [1] p. 1333), relating to naturalization, provides as follows: "The provisions of this title shall apply to aliens being free white persons and to aliens of African nativity and to persons of African descent."
[59] *In re Akhay Kumar Mozumdar*, 207 F. 115 (E.D. Wash. 1913)
[60] Sohi, S. *Echoes of Mutiny.* 28.
[61] Sohi, S. *Echoes of Mutiny.* 28.

A series of legislations were passed to impose literacy tests in 1897, 1913, and 1915 to clamp down upon Indian immigration but they failed to see the light of the day owing to presidential vetoes. The Immigration officials vexed by this laxity conjured up their own ways of denying entry to the Asian-Indians. The "likely to become a public charge" clause was used extensively to impede the Indian entry into the US. This tactic largely succeeded as in 1909, due to the manipulation of the said clause, 331 of the 708 Indian migrants were excluded by official procedure[62]; this is even more significant when seen in the context of 1908, when a record 1710 Indians entered the US.

Stricter border enforcement measures in US and Canada coincided with the First World War, the (repression of) Indian anti-colonialism with its apex manifestation being the Ghadar Movement emanating from Oregon and beyond, and incidentally, the passage of 'barred zone' act. Revolutionary movements were brewing in the US as emigres, workers and student radical intellectuals coalesced in the cities of US. The breakout of WW1 and the entry of the US into the war in April 1917 was used as a pretext to crack down upon these Indian revolutionaries. The Department of Justice initiated indictments against numerous Indian anti-colonialists for contravening national neutrality statutes. These arrests marked the department's first targeting of political agitators following the entry of the US into the war.[63] The British government and the US government were in cahoots in indicting these Indian subversive elements with their own ends in mind. The Justice Department officials of the US "used the trial to argue that US borders were too porous" and that these radicals plotting revolutionary operations in the US "threatened the country's safety and prosperity."[64] As Sohi underlines, this trial also "tapped into and fueled a narrative of anti-immigrant and anti-radical sentiment" which was in line with "popular American views of racial perils and foreign menaces at the time."[65] The "Red Scare"[66] of the wartime period and beyond also

[62] Daniel Keefe, Commissioner-General to Acting Secretary, April 7, 1913, file 53173/40, Records of the U.S. Immigration and Naturalization Service, National Archives, Washington, D.C.; U.S. House Commission on Immigration and Naturalization (HCIN), Hearings on the Restriction of Hindu Laborers (Washington, D.C.: Government Printing Office, 1913), 68-69.
[63] Jensen, Joan. *Passage from India: Asian Indian Immigrants in North America* (New Haven: Yale University Press, 1988). 222.
[64] Sohi, S. *Echoes of Mutiny.* 177.
[65] Sohi. *Echoes of Mutiny.* 177.
[66] The Red Scare was a period of heightened fear of communism and radical leftist movements in the United States following World War I. Fuelled by anxieties surrounding the success of the Bolshevik Revolution in Russia (1917) and a wave of labour unrest, the Red Scare witnessed a crackdown on suspected radicals, including anarchists and socialists. This period, lasting roughly from 1919 to 1920, saw government-led initiatives like the Palmer Raids, which targeted and deported suspected revolutionaries, and a general atmosphere of suspicion and repression of dissent. Kennedy, David M.

served as a pretext for purging the country of all 'un-American' body of ideas and influence, and further bolstered the justification for the expansion of "politically expansive practices and policies" in the US designed to "stifle all forms of dissent" by invoking the conspiracy statute and expanding the horizons of what constituted a 'military expedition.'[67]

The 'Hindu Conspiracy' trial fuelled anti-immigrant and racial prejudices prevalent in popular American sentiment, justifying those advocating restrictive immigration laws targeting Indian immigrants under the guise of national security concerns. The uncovering of the alleged conspiracy was portrayed as evidence necessitating the exclusion of Indian immigrants. Consequently, the trial manifested broader anti-Asian racism and anti-immigrant sentiments permeating society.

The Justice Department leveraged the trial to establish precedents for expansive interpretations of existing laws, applying the conspiracy statute against defendants and broadening the definition of military expeditions. This paved the way for a new antiradicalism wave, serving as a precursor to the Red Scare when the federal government sought to purge perceived "alien" bodies, ideas, and influences as inherently subversive. The judiciary shaped and justified expanding repressive policies and practices to stifle dissent, particularly targeting immigrant communities and radical movements. For U.S. and British officials, the trial demonstrated the efficacy of inter-imperial cooperation to quell perceived global threats like Bolshevism, revolutionary anticolonialism, and anarchism emanating from immigrant and radical movements.

It should come as no surprise that a legislation as exclusionary as the Immigration Act of 1917 was enacted during the same year as these trials. Apart from excluding "illiterate aliens", the 1917 Act sought to further restrict the immigration of Asian persons by creating the "barred zone" (known as the Asia-Pacific triangle) whose natives were "declared inadmissible."[68] The zone encompassed most of Asia and the Pacific Islands, south of the 20th parallel north latitude, west of the 160th meridian of longitude east from Greenwich, and north of the 10th parallel of latitude south. While often cited in isolation, the barred zone formed one facet of a more comprehensive legislative effort to restrict immigration. The Act also implemented a literacy test, a measure intended to curb European immigration alongside

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Over Here: The First World War and American Society. (London: Oxford University Press, 2009). 32-34.

[67] Sohi, S. *Echoes of Mutiny.* 177-178.

[68] Immigration Act of February 5, 1917, ch. 30, 39 Stat. 874 (codified as amended at 8 U.S.C. §§ 1101 et seq.).

the more overtly racialized barred zone. It was a "significant achievement for the restrictionists." This Act also "itemised the eugenically excludable" and severely limited Asian immigration.[69] These combined restrictions reflected a prevailing nativist sentiment within the United States at the time.

Will the Real 'Caucasian' Please Stand Up? – The Case of Bhagat Singh Thind

The intrigue of the Bhagat Singh Thind vs the US case lies precisely in the mental acrobatics that the legal system predicated on race in the US engaged in to exclude all those who were not Anglo-Saxons in origins, or 'Americans' as they were referred to in the legal lexicon.

As we have noted, despite the various exclusionary and restrictive immigration policies against South Asians in the US, the 'Hindus' were still technically considered 'Caucasian' within the anthropological framework, and hence, were eligible for citizenship rights (as being Caucasian was equated with being White). These "Dark Caucasians", to use Ronald Takaki's terminology thus attempted to circumvent the restrictions using this loophole on their path to naturalisation as US citizens.

One such "*Dark Caucasian"* was a Sikh man from the Amritsar district of colonial Punjab named Bhagat Singh Thind. Arriving at the shores of Seattle, Washington in 1913, he made ends meet by doing manual labour. Thind went on to settle in the "Hindoo Alley"[70] of Astoria, Oregon. This region was the hotbed of revolutionary activities, with the coalescing of Asian, Irish and other revolutionary energies, and the eventual establishment of the Ghadar Party. Thind was one of the founding members of the Ghadar Party and held posts of significance in the Party. Thind was soon placed under the surveillance of the MI5 (British Intelligence agency) for his radical activities and was labelled as a "dangerous extremist"[71] and "the soul of the revolutionary movement in Astoria."[72] However, as the Ghadar movement disintegrated due to various reasons including State suppression by the US-British

[69] King, Desmond. *Making Americans: Immigration, Race, and the Origins of Diverse Democracy* (Cambridge: Harvard University Press, 2000). 295.
[70] Leedom, Karen L. *Astoria: An Oregon History* (Pennsylvania: Local History Company, 2008). 119.

[71] De la Garza, Amanda. *Doctorji: The Life, Teachings, and Legacy of Dr. Bhagat Singh Thind.* (Dr. Bhagat Singh Thind Spiritual Science Foundation, 2010). 12.
[72] De la Garza, A. *Doctorji.* 13.

colonial nexus, infiltration by spies, lack of coordination among others, Thind opted out of the Ghadarite activity and decided to return to Oregon.

It is on his return to Oregon that Thind's uphill battle towards winning US citizenship actually begins. Thind's journey towards arguing for naturalisation is interesting yet representative of a legal odyssey through a maze of bureaucratic and statutory impasses. Thind, in July 1918, became the first Sikh to be enlisted in the US Army just when the WW1 was nearing its end. As the war drew to a close in December, Thind was able to secure a honourable discharge along with the official intimation that he was granted citizenship by the Washington state. However, Thind soon ran into a roadblock in the form of the Immigration and Naturalisation Service (INS) Examiner Thomlinson who revoked this citizenship by virtue of the fact that Thind was supposedly "not a free white man." Thind though dispirited by this ruling reapplied for citizenship in Oregon in May 1919. Thomlinson was to prove a thorn in Thind's side yet again as he went on to prove that Thind was involved in the radical activities of the Ghadar Party, and that this was sufficient enough grounds for the court to deny him citizenship. However, the court, under the justiceship of Wolverton, ruled in favour of Thind, and he was granted citizenship for a second time in November 1920.[73]

The third time wasn't to prove a charm in the case of Thind and his US citizenship. As Thind rejoiced this decision of 1920, the INS had submitted an appellation in the Ninth Circuit Court of Appeals, which forwarded the case to the US Supreme Court in October 1921, a trial which was to have long-term implications on both naturalised South Asians and newcomers alike.

This trial came to be known as United States v. Bhagat Singh Thind[74] and was presided over by Justice Sutherland. The INS argued to cancel Thind's certificate of naturalisation on the grounds of 'whiteness' (or lack thereof) and rescind his right to citizenship under the Barred Zone clauses of 1917 Immigration Act.

It is interesting, however, to note that just a couple of months prior to the hearing of the Thind case, the Supreme Court had put its weight behind the equation of 'white' and 'Caucasian' in the ruling of the *Takao Ozawa v. United States* case.[75] The Supreme Court had made Caucasian status the litmus test for whether a person was white or not, and as noted

[73] De la Garza, A. *Doctorji.* 17.
[74] Sutherland, George, and Supreme Court of the United States. *United States v. Bhagat Singh Thind*, 261 U.S. 204 (1923). 209-215.
[75] Sutherland, George, and Supreme Court of the United States. *Ozawa v. United States*, 260 U.S. 178 (1922).

earlier, Asian-Indians were classified as Caucasians in every relevant anthropological study. The Court, however, was to do a full 360 in the ruling of Thind. Another quite intriguing detail is that the same Justice i.e. Justice Sutherland heard and delivered both the verdicts.

Along with the ostensible precedential value of the Ozawa ruling, Thind had his status as a US Army veteran buttressing his claims to 'American-ness.' Thind and his attorneys sought to use the very rationalisation through "scientific explanation" that the Supreme Court furnished to deny the Japanese naturalisation creating a racial barrier. Thind appealed to the Court that being a "high-caste Aryan", he was eligible for citizenship vide the Naturalisation Act of 1890 (see footnote 55) which grants citizenship to "free white persons" among other groups. Thind asserted the high-caste 'Hindus', according to contemporary anthropological studies, were Caucasians owing to the linguistic similarities shared by the Indo-Aryan speakers, and constituted the Aryan race.

The Court didn't contest the claim of Thind, and Asian-Americans categorically, of belonging to the Caucasian race, but a vague and unsophisticated rebuttal followed that despite the common ancestry that can be traced by the "blond Scandinavian and the brown Hindu" in the "dim reaches of antiquity", but it is to be noted that "the average man knows perfectly well that there are unmistakable and profound differences between them today."[76] Thus, as Ian Haney Lopez notes, the Court was "willing to admit a technical link between Europeans and South Asians" but at the same time, they insisted on "their separation in the popular imagination."[77]

With this stance, the ever-growing contradiction between the rationales of the Supreme Court vis a vis prerequisite cases came to a head. The two rationales were the argument of "scientific evidence" and "common knowledge."

Thind's second assertion i.e. all Caucasians were white lay bare the theoretical hollowness of the Court, as the Court was forced to repudiate its earlier ruling in the Ozawa case, and reject the science of race in general. The Court asserted that the "Aryan theory as a racial basis seems to be discredited by most (…) modern writers on the subject of ethnography." It also rejected the prevailing scientific notion that language could serve as a proxy to trace lines of descent and 'racial' differences, stating that "a mere resemblance in language (…) is altogether inadequate to prove common racial origin."[78]

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[76] *United States v. Bhagat Singh Thind*, 261 U.S. 204 (1923). 209.
[77] Lopez, I. *White by Law.* 63.

In context of the crux of Thind's contention, the Court quickly distanced the connotation and connexions between 'white person' and 'Caucasian' by asserting that although these terms in conventional literature are "treated as synonymous (…)" they are "not of identical meaning – idem per idem."[79] The Court goes on to repudiate the flexibility of the term 'Caucasian' which was "at best a conventional term with an altogether fortuitous origin," which "has come to include far more than the unscientific mind suspects" under scientific manipulation.[80] The authority of A.H. Keans is quoted by the Court, Lopez opines, as "proof that science cannot be trusted to define whiteness", as the Court concluded that "the average well informed white American would learn with some degree of astonishment that the race to which he belongs is made up of such heterogenous elements."[81]
Thus, we see the dramatic reversal in the matter of just a few months between the Ozawa and Thind rulings, as while the Ozawa judgement relied on science to buttress the exclusionary ruling, in Thind the Court recanting the "speculations of the ethnologist" put its weight solely behind the "familiar observation and knowledge"[82] with an overt emphasis on the differential physical characteristics of the Whites and the Hindus.

The tussle between the scientific evidence and common knowledge to be the "arbiter of race" in prerequisite cases, Lopez asserts, was won by common knowledge as the "the Court adopted 'the understanding of the common man' as the exclusive interpretive principle" for the purpose of "creating legal taxonomies of race" rendering science completely out of the picture.[83]

The Court finally ruled that:

> "1. A high caste Hindu, of full Indian blood, born at Amrit Sar, Punjab, India, is *not a "white person "*, within the meaning of Rev. Stats., § 2169, relating to the naturalization of aliens. (…)
>
> 2. "Free white persons," as used in that section, are words of common speech, to be *interpreted in accordance with the understanding of the common man*, synonymous with the word "Caucasian" only as that word is *popularly understood*. (…) *Ozawa* v. *United States,* 260 U. S. 178

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[78] *United States v. Bhagat Singh Thind*, 261 U.S. 204 (1923). 210.
[79] *United States v. Bhagat Singh Thind*, 261 U.S. 204 (1923). 208.
[80] *United States v. Bhagat Singh Thind*, 261 U.S. 204 (1923). 211.
[81] *United States v. Bhagat Singh Thind*, 261 U.S. 204 (1923). 211.
[82] *United States v. Bhagat Singh Thind*, 261 U.S. 204 (1923). 215.
[83] Lopez, I. *White by Law.* 64-65.

> 3. The action of Congress in excluding from admission to this country *all natives of Asia* within designated limits including all of India, is evidence of a like attitude toward naturalization of Asians within those limits. (…)"[84] (emphasis added)

Thus, Bhagat Singh Thind was rendered sans US citizenship yet again as he was 'perceivably' not white, and neither did he fit into the legal categories of "person of African descent" or "alien of African nativity". The ruling laid the foundations of even more exclusionary immigration policies of the 1920s.

Under Maintenance? – The Tussle between Scientific Evidence and 'Common Knowledge' as the Arbiter of (Legal) Race

The perception that race was a natural construct, something that occurs in nature, was highly dubious to keep up as a social fact in the US in the 1920s. Scientific rationale was widely used by courts to admit citizens since 1909, but the Thind decision caused a rupture in the racial matrix of law in the US by choosing common knowledge as a source for and an identifier of racial difference and whiteness. The Court in the Thind ruling, relied on both "popularly conceived racial differences" and also on "popularly conceived racial distastes."[85] While, science and pervasive prejudices can be seen to have worked in tandem in the Ozawa ruling, in the Thind, the scientific proclamations rendered the very basis of racial differences untenable. Science, for the Court, "fell from grace (…) when it contradicted popular prejudice, as in Thind."[86]

Science was also, instead of fortifying whiteness and claims of white identity, eroding the very barriers of Whiteness. These collapsing parameters of Whiteness were stabilised by the Court "shifting judicial determinations of race off of the crumbling parapet of physical difference and onto the relatively solid earthwork of social prejudice."[87]
Justice Oliver Wendell Holmes Jr. opined that "the life of law has not been logic: it has been experience", which can be understood to encompass the "(…) prevalent moral and political theories (…)" and "even the prejudices which the judges share with their fellow men."[88] This

[84] *United States v. Bhagat Singh Thind*, 261 U.S. 204 (1923). 204.
[85] Lopez, I. *White by Law.* 66.
[86] Lopez, I. *White by Law.* 66.
[87] Lopez. *White by Law.* 67.

maxim proved especially apt with the apparent adaptation of popular prejudices by the Court to deny naturalisation and citizenship to immigrants because they were not whites in common perception. Science also, akin to law, doesn't exist in a vacuum and is heavily influenced and shaped by culture and society. Race, unlike other social constructs like gender, lacks a 'natural' basis, and was a product of the prevailing societal prejudices and cultural biases; race is "purely a social construction, and the science of race is purely the science of myth."[89] The problem started when science which was used as a go-to proof of racial difference actually started undermining the very basis of this difference, and the courts' firm belief in the scientific basis of the naturalness of race quickly metamorphosed into disbelief and repudiation of science as an unreliable discipline.

For the courts, race was a given; it was self-evident, and natural. But science now induced a cognitive dissonance in their perceptions by designating 'undesirable brown and black' people as whites, and failed to further buttress the racial prejudices of the courts. Ian Haney Lopez asserts that the Courts, and the people in general, believed that merely a glance was enough to ascertain one's race, but little did they know that "their collective and continuous assignment of social meanings to certain faces and features was creating the races they so readily identified."[90]

Time to Pay the Piper? – Repercussions of the Thind Ruling on Asian Immigration and Immigrants

"Is life worth living in a gilded cage? Obstacles this way, blockades that way, and bridges burnt behind."[91]

The aforementioned is an excerpt from Vaishno Das Bagai's suicide letter who took his life in protest against the Federal Government's decision to revoke his citizenship following the watershed Supreme Court judgement made by Judge Sutherland in Bhagat Singh Thind vs US, 1923. It was ruled, as mentioned in the previous section, that according to "common sense", 'Hindus' are non-white and thereby, ineligible for citizenship.

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[88] Holmes, Oliver Wendell. *The Common Law (Introduction by G. Edward White).* (London: Harvard University Press, 2009). 50.
[89] Lopez, I. *White by Law.* 68.
[90] Lopez, I. *White by Law.* 71.
[91] "Here's a Letter to the World from Suicide" The San Francisco Examiner. March 17, 1928. As quoted in Deol, A. *Waves of Revolution.* 61.

Bagai wasn't the only Asian-Indian affected by the Thind decision, and neither was he to be the last as the said decision was to have long-term ramifications for the Asian-Indian immigrants, both who were settled in the US and those who aspired to enter the US for various reasons.

For the sake of brevity, these consequences would be divided into two broad sub-headings namely the impact on Asian-Indian immigration, and secondly, the more exclusionary immigration policies that were framed in the 1920s after the Thind judgement. Both of these are intertwined and thus, in this paper, would logically flow together.

Following the Thind decision, hundreds of Asian-Indian immigrants were rendered nationless as their citizenship was nullified at the blink of an eye.[92] The US Government applied the Thind decision retroactively and went on to cancel the American citizenship of many naturalised Americans of Indian descent. Akhoy Kumar Mozumdar, as discussed earlier, was the first Asian-Indian to be given citizenship in 1913 was incidentally the first to have it revoked, along with hundreds of other such immigrants who were left stranded in the legal limbo of citizenship.

This retroactive rescindment was, however, effectively contested in the US vs Pandit case in which Chief Justic William Howard Taft ruled that "the US Government had to right to cancel the citizenship of Indians who had acquired their citizenship by due process of law" [93] per the principle of *res judicata*.[94]

Yet another interesting thing to note in the rollercoaster of a journey of Bhagat Singh Thind towards acquiring US citizenship is that Thind's perseverance ultimately paid off in 1935 when the passage of the Nye-Lea Act granted automatic naturalization to all World War I veterans, securing his long-sought citizenship. However, it wasn't until 1940 that Indians as a whole gained eligibility for naturalization through the standard process. Following this legal victory, Thind embarked on a new chapter, becoming a writer and lecturer who shared his knowledge of philosophy and the Sikh religion. He passed away in 1967.[95]

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[92] Deol, A. *Waves of Revolution.* 92.
[93] Chandrasekhar, S. *Indian Immigration.* 142.
[94] Res judicata Latin term translates to "a thing adjudged" and embodies the legal principle barring parties from relitigating a claim already decided by a court of competent jurisdiction, applicable in both civil and criminal contexts. It is a general principle that such a decision is binding and conclusive upon all other courts of concurrent power. (https://legal-dictionary.thefreedictionary.com/Res+judicata)
[95] https://www.nps.gov/people/bhagat-singh-thind.htm

As noted earlier, enterprising Panjabis like Jwala Singh and Bisaka Singh acquired considerable land and wealth in north America. But, following the enactment of the 1920 California Alien Land Law and the 1923 Thind decision, "Asian-Indians were denied the right to own land in California" as the latter decision placed them under the jurisdiction of the California Act by making them 'aliens' who cannot apply for naturalisation.[96] This act prohibited all "aliens ineligible for citizenship" from owning agricultural land or possessing long-term leases over three years.[97]

The Panjabi farmers weren't, however, going to take all this lying down and devised ingenious methods to evade the provisions of the Alien Land Law. They "developed a reliance on Anglos in their strategy to evade" the said law by employing 'silent partners' and getting into 'dummy partnerships' with the Americans.[98]

Deenesh Sohoni underlines the two further repercussions of the establishment of 'commonsense notion of whiteness' viz. creation of "a category of 'whites' ineligible for citizenship" which was "geographically bounded" including only those living in countries in the southeastern and central parts of Asia; secondly and more importantly, it "established a link between immigration and naturalisation policies in that immigrants from the geographic region of Asia were no longer eligible for citizenship."[99]

On the other hand, stricter immigration laws followed the Thind ruling, further restricting the Asian-Indian 'undesirable' immigration. Congress, exactly one year later, enacted the Immigration Act of 1924 which also came to be known as the Johnson-Reed Act. It established a quota system based on the 1890 census, heavily favoring immigrants from Northern and Western Europe.[100] Asians, however, were entirely excluded due to prevailing racial ideologies and fears of competition for jobs. This act effectively halted significant Indian immigration to the U.S. for decades, despite a small but established Indian community present at the time.

From 1927, immigration to the US was limited to a total of 150,000 annually from non-Western Hemisphere nations, of whom "nationalities resident in the United States according to the 1890 census could claim 2% each."[101] The Johnson-Reed Act also invested with US

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[96] Takaki, R. *Strangers from a Different Shore*. 306-307.
[97] California Alien Land Law of 1920 (codified at Cal. Civ. Code § 671 (repealed 1956)).
[98] Takaki, R. *Strangers from a Different Shore*. 307.
[99] Sohoni, D. *Unsuitable Suitors.* 607.
[100] Immigration Act of 1924 (The Johnson-Reed Act) - History Commisioner, U.S. Department of State (.gov) [https://history.state.gov/milestones/1921-1936/immigration-act]

consular officers the power "to conduct preliminary medical and 'good character' tests of those carrying visas."[102]

Desmond King notes how the immigration policy shifted in the 1920s to a "finely filtered regime of selection" and proved to be a "forum in which eugenicists and eugenic arguments flourished."[103] King also underlines the Federal public policy in the 1920s was geared towards dual discrimination, "externally, toward certain type of immigrants" and "domestically, in the system of segregation imposed on African Americans" which was topped off by the conception of an "American identity or nationality (…) biased toward the white Anglo-Saxon element of the US population over others."[104]

The Thind ruling also provided the justificatory logic for the application of anti-miscegenation laws to Asian-Indian men desiring matrimonial alliances with white women. The passage of state anti-miscegenation laws against Asian ethnic groups, Deenesh Sohoni asserts, were both "a response to increased immigration from Asia" and "a reflection of persistent concerns regarding racial purity and the nature of American citizenship."[105] Anti-miscegenation laws, however, weren't a novel occurrence and were used extensively by a number of states such as Nevada, Idaho among other against the Chinese and 'Mongoloid' (a racial category encompassing the Japanese and the Chinese). It was a hotch-potch affair to identify the labels for Asian ethnic groups as there was "no generalised term such as Asian or Oriental" which was created "to include all Asian ethnic groups", and hence, the states, at least up to the 1920s, had to rely upon a mixture of racial and national labels to earmark these Asian groups.[106] But, "by connecting immigration and naturalisation laws," Congress and the courts succeeded in achieving "a more consistent legal treatment of various Asian ethnic groups" and this connection was further reinforced by the invention of a new legal term to elucidate the exclusion of Asian immigrants viz. "aliens ineligible for citizenship."[107]

Conclusion:

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[101] King, D. *Making Americans.* 296.
[102] King, D. *Making Americans.* 296.
[103] King, D. *Making Americans.* 1.
[104] King, D. *Making Americans.* 3.
[105] Sohoni, D. *Unsuitable Suitors.* 587.
[106] Sohoni, D. *Unsuitable Suitors.* 599-600.
[107] Sohi, D. *Unsuitable Suitors.* 608; Lopez, I. *White by Law.* 129. Between 1912 and 1947, 12 states also utilized this phrase to enact 'Alien Land Laws' that banned individuals of Japanese descent from owning land.

In conclusion, the Bhagat Singh Thind vs United States case serves as a poignant illustration of the complex interplay between race, law, and immigration in early 20th century America. The legal odyssey of Thind, an Indian immigrant seeking naturalization, exposed the contradictions and shifting rationales employed by the Supreme Court to uphold exclusionary racial boundaries. While anthropological evidence initially seemed to favour Thind's claim to "whiteness" as a member of the Caucasian race, the Court ultimately rejected scientific notions of race in favour of "common knowledge" understandings of racial difference.

Race, as a spectre, never left the Indians unhaunted even as they moved from the British India to the US and Canada. The Canadian government in tandem with the British colonial government worked to make the Indians second-class citizens, although quite surreptitiously, by imposing very difficult pre-conditions on Indian immigration such as the continuous journey clause among others. The US government too collaborated with the British colonial government as soon as the former entered the war on the latter's side, initiating a crackdown on both the supposed revolutionary 'Bolshevik' activities of Indians against the US' new-found ally under the Hindu Conspiracy trial, as well as the passage of Immigration Act of 1917 with its 'barred zones' clause effectively banning Indian immigration.

This pivotal ruling crystallized existing prejudices into legal doctrine, rendering Asian Indians ineligible for naturalization and catalyzing further exclusionary immigration policies in the 1920s. The Thind decision retroactively stripped citizenship from hundreds of Indian Americans and facilitated the legal categorization of Asian immigrants as "aliens ineligible for citizenship" and imposed severe restrictions on the Asians with aspirations of immigration to the US. Coupled with the Immigration Act of 1924, which instituted national origin quotas favoring Northern Europeans, these legislative and judicial actions effectively closed America's 'Gilded Gates' to Indian and other Asian immigrants for decades to come.

Thus, we saw through the lens of the Bhagat Singh Thind vs the US case that race, law, and in a broader context, colonialism are all intertwined. Law, in a Foucauldian framework, is not a neutral arbiter of justice. It is a product of power relations within the society, and these laws, shaped by prevailing norms and prejudices held by dominant social groups, reinforce the existing power structures. Law has the power to crystallise existing social prejudices and make them seem natural and objective. This is precisely what happened in the Thind case where race was considered a given, a natural condition of difference in which Anglo-Saxon whites are distinct and superior from non-white populations. The evolution of the perceptions

of race and exclusionary legislations aiming at denying non-whites the right to naturalisation seem almost concomitant with both of them evolving simultaneously since the late 19th century, and evolved into its most mature form in the 1920s with various legislation explicitly drawing the lines of 'whiteness' while excluding large sections of the non-white populace as 'aliens ineligible for citizenship.'

By codifying racial distinctions as objective fact, the legal system perpetuated the very social constructs it claimed to define. The evolving racial paradigms that enabled the exclusion of Asian Indians reveal the pernicious confluence of xenophobia, nativism, and pseudo-scientific racism that plagued the American nation-building project. While celebrating rhetoric of equality and opportunity, the Thind ruling and its aftermath brutally underscored the contingent and circumscribed nature of belonging in the United States.

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