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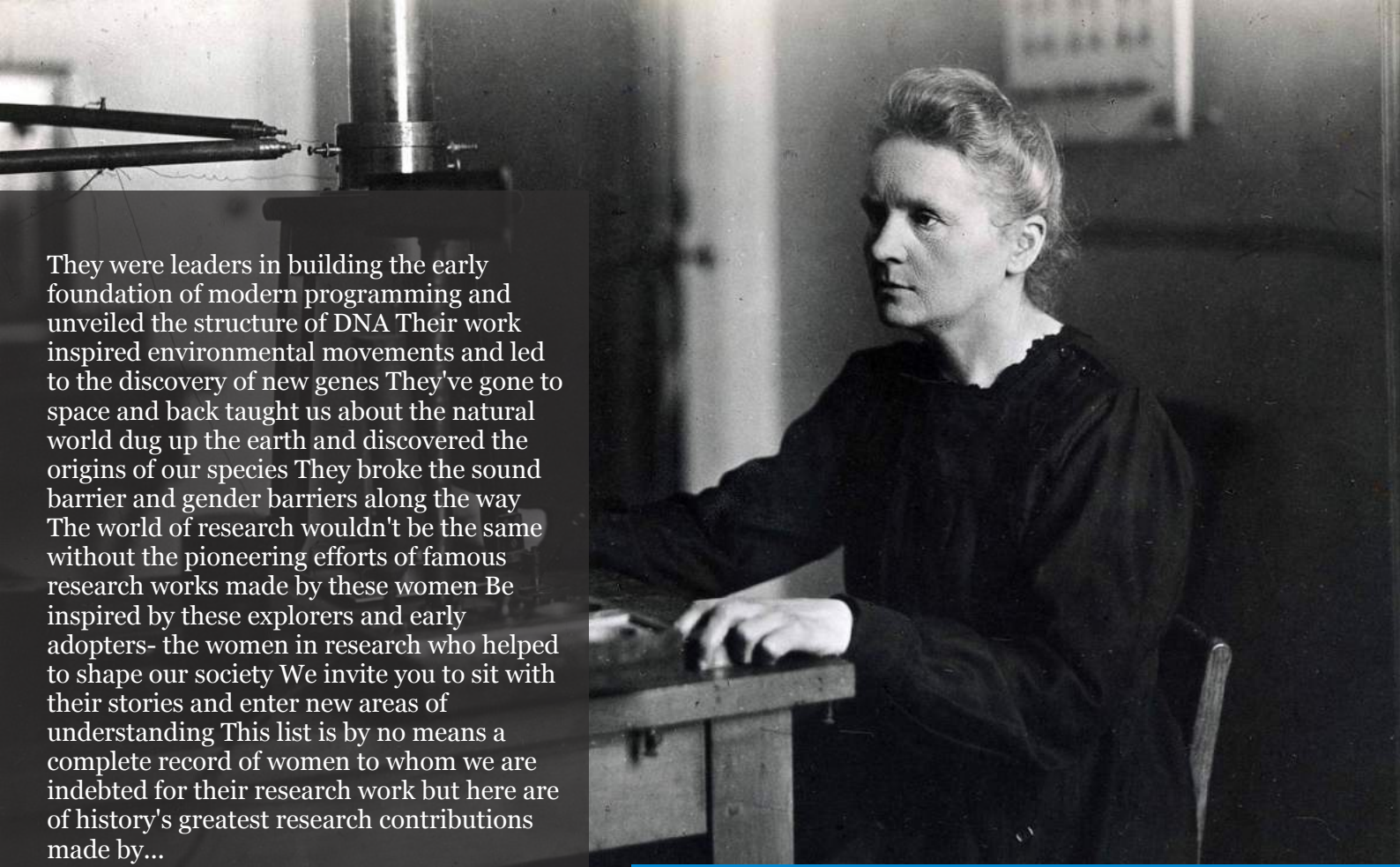
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# A Syntactic, Semantic, and Pragmatic Evaluation of the Translation of an Ethnographic Text by ChatGPT

*Servais Martial Akpaca*

*Université d'Abomey-Calavi*

## ABSTRACT

This study focuses on the English version of an ethnographic text translated by ChatGPT a new technology that utilises Artificial Intelligence (AI). The purpose of the study is to evaluate the translation in terms of syntax, semantics, and pragmatics to assess the strengths and weaknesses of this technology, presented as a formidable tool that is poised to replace translators and render them unemployed. The method used is qualitative. It interprets the text in the Source Language (SL) and evaluates the translation against criteria of fidelity to the meaning of the SL text, cohesion of the discourse in the Target Language, and respect for the cultural context. The data, manually extracted from the translated text, consists of errors and mistakes found in the translation. The data analysis is conducted following Andrew Chesterman's theory on the three aforementioned translation strategies. The results of the study reveal that contrary to the current propaganda, ChatGPT primarily engages in literal translation. It does not engage in oblique translation. Indeed, errors and mistakes of syntactic, semantic, and pragmatic nature are abundant. Procedures such as transposition, modulation, foreignization, domestication, adaptation, transediting, etc., are almost unknown to it. At the current stage, ChatGPT is a tool that contains a vast number of words and can effectively assist translators in their work. It is too early to envision a scenario where this technology would replace experienced translators. Current scientific research trends should incorporate ChatGPT.

*Keywords:* translation, chatgpt, strategies, syntax, semantics, pragmatics.

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**Keywords:** translation, chatgpt, strategies, syntax, semantics, pragmatics.

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## I. INTRODUCTION

This article focuses on the English translation of an ethnographic text titled *THE ORIGINS OF THE BAATONU (Bariba) PEOPLE* by ChatGPT, which stands for "Chat Generative Pre-trained Transformer." The article aims to evaluate the translation on syntactic, semantic, and pragmatic levels to assess the strengths and weaknesses of this new translation technology. The three aforementioned concepts have been the subject of numerous studies in linguistics. Indeed, in a book titled *An Introduction to English Syntax*, Miller (2002) explains why we study syntax.

We study syntax because it enables human beings to compose complex messages. Suppose a disgruntled worker utters the single word idiot! He or she might have muttered stupid, unfeeling, ignorant idiot, with four words combined into a phrase. The speaker might even have said That stupid, unfeeling, ignorant idiot is the new manager!, in which the phrase the new manager and the phrase that stupid, unfeeling, ignorant idiot are combined into a clause by means of is. (p. xii).

Miller also explains that syntax concerns how words are arranged to form word groups (*phrases*), how these word groups are arranged to form clauses, and how these clauses are arranged to form sentences. Moreover, he highlights the properties of clauses.

We can usefully begin by reviewing the major properties of clauses. [...] Each clause contains a finite verb; that is, a verb marked for tense. [...] Finite verbs are traditionally said to be

marked for tense, person and number. [...] In each clause, the finite verb is accompanied by its complements and adjuncts. [...] iii Each clause is marked for aspect, and the aspect can be changed. iv Each clause has mood. (Ibid, pp.60-61).

These properties of syntax as described immediately immerse us in the linguistic perspective of the concept. However, in addition to the linguistic perspective of the concepts of syntax, semantics, and pragmatics, this article approaches them from a translation studies perspective. Indeed, it draws inspiration from the theory developed by Andrew Chesterman (2016) in a book titled *Memes of Translation*.

The classification I shall propose is a heuristic one. It seems to work in practice; it uses accessible terminology; it seems to differentiate enough, but does not get bogged down in “unportable” detail; and it is flexible and open-ended. It comprises three primary groups of strategy: mainly syntactic/grammatical (coded as G), mainly semantic (S) and mainly pragmatic (Pr). It acknowledges that these groups overlap to some extent; that pragmatic ones usually involve semantic and syntactic ones as well, etc.; and that strategies of different types often co-occur. (2002, p. 90)

The author concedes that there are overlaps between these three categories. Indeed, there are textual elements that straddle syntax and semantics, pragmatics and semantics, or syntax and pragmatics. Concrete examples drawn from the source language (SL) text and the target language (TL) text will be given to illustrate this reality. Chesterman (2002) acknowledges that his theory is an effort to structure several translation theories developed by various authors. He states: "*The classification does, however, also represent an attempt to structure various proposals made by other scholars into an overall framework. Many of the strategies listed have obvious subtypes, but I shall not develop these in any detail here.*"

The method used in this paper is qualitative. It interprets the source language (SL) text and evaluates ChatGPT's translation against criteria of fidelity, discourse cohesion in the target language, and respect for cultural context. The data, manually extracted, consists of errors and mistakes observed in the translation. The study results reveal that ChatGPT essentially makes literal and word-for-word translations, which does not faithfully render the meaning of sentences in specific contexts, and does not recognize the grammatical functions of words (for example, subject, complement, etc.) in all cases. In several instances, ChatGPT does not perform *transediting*. Indeed, when a sentence is not well written in the source text, ChatGPT does not automatically correct it and translates it as is. When, for example, a comma is missing in a sentence, ChatGPT does not take this into account and translates the sentence as is, giving it a different meaning. The following pages provide more details on the results obtained.

Despite ChatGPT's numerous shortcomings in translation, it is useful to include it henceforth in scientific research tools.

## II. LITERATURE REVIEW

This literature review aims, first, to explain the syntactic, semantic, and pragmatic strategies from a translation studies perspective, using Andrew Chesterman's book *Memes of Translation: The Spread of ideas in translation theory* (2016) as a theoretical framework. Given that ChatGPT is a software that is part of a long tradition of translation aid tools, a brief historical overview of translation softwares will be presented starting from the mid-1940s, which mark the beginning of machine translation or computer-assisted translation (CAT) tools. The third stage of this literature review is devoted to the functioning and capabilities of ChatGPT as a translation tool. An interview conducted with ChatGPT about its translation skills is also included.

## 2.1 *Chesterman's Syntactic, Semantic, and Pragmatic Categories*

About syntactic strategies, Chesterman explains that:

These may be thought of as involving purely syntactic changes of one kind or another. Larger changes obviously tend to involve smaller ones too. Syntactic strategies primarily manipulate form. The main ones are these: G1: Literal translation, G2: Loan, calque, G3: Transposition, G4: Unit shift, G5: Phrase structure change, G6: Clause structure change, G7: Sentence structure change, G8: Cohesion change, G9: Level shift, G10: Scheme change. (2016, p. 91).

This list contains strategies such as literal translation, calque, borrowing, and transposition that we already know since they are discussed in Jean Paul Vinay's and Jean Darbelnet's *Comparative Stylistics of French and English* (1958). We will endeavour to explain only the less familiar concepts such as *Unit shift*, *Phrase structure change*, *Clause structure change*, *Sentence structure change*, *Cohesion change*, etc., which are nevertheless addressed in J.C. Catford's *A Linguistic Theory of Translation* (1965). In explaining the concept of *Unit Shift*, Chesterman (op. cit., p.93) states:

This is a term from Catford (1965). The units are: morpheme, word, phrase, clause, sentence, paragraph. A unit shift occurs when a ST unit is translated as a different unit in the TT: this happens very frequently, of course, and subclassifications can be set up for unit shifts of different types. Examples: ST: Wir akzeptieren folgende Kreditkarten und ersuchen Sie, jene, mit der Sie Ihre Rechnung begleichen wollen, anzukreuzen.

TT: We accept the following credit cards. Please mark the one which you would like to have charged. [One sentence to two; German clause becomes English sentence.]

On page 93, Chesterman explains the notion of *phrase structure change* which includes a number of changes at the phrase level, notably 'number,

definiteness and modification in the noun phrase, and person, tense and mood in the verb phrase.' A phrase from the source text can be translated by a phrase in the target text, but its internal structure changes. On page 94, the notion of *Clause structure change* appears. The changes concern the structure of the clause, which is composed of elements such as the subject, verb, object complement, adverb, voice (active or passive), finite or non-finite structures, transitive or intransitive form. The *Sentence structure change* induces changes at the sentence level, and the status of the clauses that make up the sentence. For example, a sentence composed of a single clause can become, in the translated text, a sentence with two clauses, namely a main clause and a subordinate clause. "ST: Schon der Name signalisiert ein sorgfältig durchdachtes Qualitätsprogramm... TT: As its name suggests, this is a painstakingly devised quality program... [German main clause to English sub-clause plus main clause.]" (Ibid, p.95).

*Cohesion change* affects intra-textual elements, for example ellipsis, substitution, pronominalization and repetition, etc. Examples: "ST: Diese Ausgabe... TT: In the present issue... [The German reference to "proximity" is made through a demonstrative; this changes to definite article + adjective.]" (Ibid) On page 96, the concept of *Level shift* appears. "In a level shift, the mode of expression of a particular item is shifted from one level to another." Chesterman explains that what some languages (like English) express in the form of interrogation, other languages (like German) express through word order, or morphology (the example of Finnish). "ST: Wir ... ersuchen Sie, ... anzukreuzen. TT: Please mark... [German expresses the sense of "polite request" here via lexis (a particular verb) plus syntax (main verb plus infinitive); English uses only the lexical item please.]" (Ibid).

### *The case of semantic strategies:*

Under semantic strategies I group kinds of changes which mainly have to do with lexical semantics, but also include aspects of clause meaning such as emphasis. Semantic strategies manipulate nuances of meaning. Several of these

strategies derive from Vinay and Darbelnet's concept of modulation. (Ibid, p.98)

The list of semantic strategies includes synonymy, antonymy, hyponymy, *converse*, *abstraction change*, *distribution change*, *emphasis change*, *paraphrase*, *trope change*, etc.

*Buy and sell* are an example of *converse*. *Abstraction change* involves moving from concrete to abstract or from abstract to concrete. *Distribution change: This is a change in the distribution of the "same" semantic components over more items (expansion) or fewer items (compression)*. (Ibid, p.100) *Paraphrase: This is a typical strategy for the translation of idioms, for instance, for which no corresponding idiomatic expression can be found in the TL*. (Ibid, p.100) *Trope change: This strategy applies to the translation of rhetorical tropes (i.e. figurative expressions)*.

*The pragmatic strategies:*

Pragmatic strategies tend to involve bigger changes from the ST, and typically incorporate syntactic and/or semantic changes as well. If syntactic strategies manipulate form, and semantic strategies manipulate meaning, pragmatic strategies can be said to manipulate the message itself. (Ibid, p.104).

Pragmatic strategies include 'cultural filtering, explicitness change, information change, interpersonal change, illocutionary change, coherence change, partial translation, transediting, visibility change. Chesterman (Ibid, p. 104) explains that "This strategy is also referred to as naturalization, domestication or adaptation." These concepts were developed by Vinay and Darbelnet and Venuti. "Explicitness change is either towards more explicitness (explicitation) or more implicitness (implication)". On page 106, the author explains that 'Information change' involves adding or removing information concerning the source text. In this case, the translator adds information not mentioned in the source text to make the translation more explicit. Conversely, they may remove information deemed irrelevant. 'Interpersonal change' implies a change in the relationship between the text, the author, and the

reader. For example, the formal "vous" used in French as a sign of politeness does not exist in English. In this specific case, the translator might use, for example, the word "please" instead of the formal "vous". Furthermore, Illocutionary change, "for instance, changes the mood of the verb from indicative to imperative". (Ibid, p.107) Regarding coherence change, the author states that "Whereas the cohesion change strategy listed under G8 has to do with formal markers of textual cohesion, coherence changes have to do with the logical arrangement of information in the text, at the ideational level." (See e.g. Blum-Kulka 1986.) Finally, "Transediting is a term suggested by Stetting (1989) to designate the sometimes radical re-editing that translators have to do on badly written original texts." (Ibid, p.108).

## 2.2 Brief History of Translation Softwares

In a presentation on the history of machine translation titled "HUMAN TRANSLATION: POST-EDITING AND MACHINE TRANSLATION. MORE FEAR THAN HARM - A Historical Retrospective on the Failures of Computational Linguistics and the Future of Translation," Dr. Stéphanie Engola from the Pan-African University (Cameroon) distinguishes five major decades in the history of Machine Translation:

1945-1955: The first steps. 1955-1965: From enthusiasm to disappointment. 1965-1975: The quiet period. 1975-1985: The awakening. 1985-1995: Maturity.

Then, she recalls that Andrew Booth, a crystallographer, and Warren Weaver, vice president of the Rockefeller Foundation, are the pioneers of Machine Translation (MT). Dr. Engola recalls that in 1947, Booth made a false analogy between translation and cryptography and began his work with Richens. In 1951, research teams were formed on the West Coast (Los Angeles, Seattle) and the East Coast of the United States (Massachusetts Institute of Technology, MIT). This marked the beginning of research in machine translation (MT). Also in 1951, Yeoshua Bar-Hillel debated the impossibility of achieving purely automatic translation. He indicated the necessity

of human intervention both upstream (pre-editing) and downstream (post-editing). The scientific reasons mentioned included: the difficulty of developing a universal grammar, the difficulty of transposing the grammar of one language into another, the specialisation of domains, the standardisation of languages, and artificial languages.

In 1952, the first conference on machine translation was organized at the Massachusetts Institute of Technology (MIT). In 1954, at Georgetown University, the first experiment of Russian-English machine translation was carried out on a computer in collaboration with IBM. This experiment fostered the growth of research in Machine Translation (MT) in the United States and in other countries such as Great Britain, Canada, Italy, and the USSR.

The period from 1955-1965 was characterized by the Cold War and massive subsidies to military bodies. MT nourished formal linguistics, which later became computational linguistics. The latter also inspired Artificial Intelligence (AI), which was born in 1956. At MIT, Ingve and Chomsky developed the formalisation of syntax. Working methods were diversified, but all teams started with direct translation (word-for-word), to which syntactic analysis was added. Three approaches were favored: the direct translation system, the interlingual system, and the transfer system. In 1959, Bar-Hillel published the report of a survey conducted on the evolution of MT research in the United States and Great Britain. The results were as follows: on the basis of the automatic treatment of ambiguity, he concluded that it was totally impossible to achieve a FAHQ (Fully Automatic High-Quality Translation). One can achieve mediocre automatic translation or realize a "high-quality translation by a machine-post-editor-partnership." In 1961, Mortimer Tauber published a book titled "Computers and Common Sense," in which he concludes: It is impossible to achieve an operational automatic system. It is impossible to formalize the language (relying on the impossibility of strict synonymy). After the installation of several systems, notably EURATOM, Ispra, IBM on Mark II, the automatic translations were of poor quality and always

required human intervention. In 1964, Peter Toma developed SYSTRAN (SYStem TRANslation) for English-Russian MT. This system was later used by NASA for the joint Apollo-Soyuz mission.

The decade from 1975 to 1985 was marked by two major events: Japan's entry onto the MT scene and the development of supranational organizations, notably the European Economic Commission (EEC) in 1975, the Pan American Health Organization in 1976, and the development of the Canadian TAUM-METEO program (English-French), which use machine translation. The decade from 1985 to 1995 was marked by the diversification of language combinations, the deepening of the transfer system, and the design of translation memories (Trados, Wordfast, MemoQ, Fluency). Despite several decades of technological and financial efforts, machine translation has not yielded the expected results.

### *2.3 Presentation of ChatGPT*

In an unpublished work titled "An Assessment of a Historical and Cultural Text Translated by ChatGPT," Monnon (2024) reports that:

In the ever-evolving landscape of artificial intelligence (AI), ChatGPT emerges as a revolutionary conversational tool, bridging the gap between humans and machines with remarkable finesse. .. The journey of ChatGPT begins with the introduction of GPT-1 by OpenAI in 2018. GPT-1 was the first iteration of the GPT architecture, based on the transformer model, and was trained on a vast corpus of text from the internet. In February 2019, OpenAI unveiled GPT-2, a larger and more powerful version of the GPT architecture. OpenAI continued to push the boundaries of the GPT architecture with the release of GPT-3 in June 2020. (2024, p. 67)

This quotation explains that ChatGPT was trained using a vast corpus of text extracted from the Internet. This corpus provides it with an enormous amount of words and contexts of language usage. ChatGPT 4 already exists. Since it is an interactive application, ChatGPT 4 were

asked questions about its translation skills. Its responses will be presented at a later stage.

### III. METHODOLOGY

#### 3.1 Problem Statement

The central issue of this research is the general outcry that ChatGPT is causing not only in academic circles but also in the professional world where some business leaders mistakenly believe that this new technology can handle the translation of their official documents. Furthermore, some university officials are questioning the necessity of maintaining translation training programmes due to the new translation technologies. Students also become hesitant about this field, which they believe offers less security because of stiff competition from translation softwares. Due to these doubts, it is time for translation professionals to take the floor and provide a professional opinion on the matter.

#### 3.2 Method

This research adopts a qualitative approach by requesting ChatGPT to translate an ethnographic text and by evaluating it on syntactic, semantic, and pragmatic levels. The evaluation involves identifying translation mistakes and errors and subsequently revising the translation accordingly. A questionnaire was submitted to ChatGPT, which it answered. Below is an excerpt from the questions and answers:

Do you know how to translate? Yes, I can help with translation. Please provide the text you need to translate and specify the target language.

*How did you learn to translate?*

As an AI language model developed by OpenAI, I was trained on a diverse dataset containing text in multiple languages. This dataset includes books, articles, websites, and other text forms, allowing me to learn patterns and structures in different languages. My translation capabilities stem from this extensive training, which enables me to understand context, grammar, and vocabulary across various languages.

While I strive to provide accurate translations, my outputs are generated based on patterns in the data I was trained on and do not involve actual language comprehension as a human translator would have. Therefore, while I can handle many translation tasks effectively, consulting a professional translator is recommended for complex or nuanced translations.

Do you know how to translate idioms and metaphors across languages? Yes, translating idioms and metaphors across languages requires a nuanced approach because these expressions often rely on cultural references and specific language structures that do not translate directly.

Do you have any weak points in translation? While I strive to provide accurate translations, there are some inherent limitations and potential weak points in my translation capabilities: Context sensitivity, idioms and metaphors, cultural nuances, technical jargons, evolving language, emotional and tonal accuracy, ambiguity and multiple meanings, idiomatic and dialectal variations.

*Some people fear that you take their jobs and render them unemployed. Are they right?*

The concern about AI, including language models like me, taking jobs is understandable. AI can automate certain tasks, which might lead to job displacement in some areas. However, it's important to consider a few points: Task automation, job creation in fields like AI development, human-AI collaboration, skills evolution, economic and policy factors. While some job displacement is likely, the overall impact of AI on employment will depend on how society manages the transition and leverages the benefits of AI technologies.

#### 3.3 Data

The data consists of numerous mistakes and errors that were manually identified and processed.

### IV. RESULTS

Given the title of this article, the research results are presented on the aforementioned three levels.



*Syntactic Errors*

1. ChatGPT's translations require restructuring efforts from the reviewer. Additionally, the software sometimes omits words.
2. ChatGPT fails to recognize vernacular expressions (e.g., the expression: "O mon na O bourou bèè" was translated as "O my na O bourou bèè," which is meaningless).
3. ChatGPT's translations are often 'out of context' (e.g., the use of "these" instead of "they"; "it" instead of "he"; there is confusion in the use of pronouns).
4. Unfaithful translation to the source text.
5. ChatGPT does not understand some words used in specific contexts well and gives them a general meaning.
6. Poor translation of the French "On" – ChatGPT interprets 'on' as "we," while in some cases, 'on' is neutral.

*Semantic Errors*

7. ChatGPT makes many lexical semantics errors due to a poor understanding of the context of word usage (e.g., the word 'pays' is translated as 'country' instead of 'homeland.' Indeed, the word 'pays' is used in a specific context where it means 'homeland' (pays baatonu); furthermore, the word 'mot' is translated as 'word' instead of 'remarks' (the word 'mot' is used in a context where it means 'remarks'); the term 'vol exprès' is translated as 'express theft' instead of 'stealing on purpose'; 'groupements dominés' translated as 'subject groups' instead of 'dominated groups'; the

- word 'appellation' translated as 'appellation' instead of 'name').
8. ChatGPT does not use the technique of transposition.
9. The dynamic equivalence technique is unknown to ChatGPT.
10. ChatGPT sometimes produces incomplete sentences.

*Pragmatic Errors*

11. ChatGPT does not change the expressive mode (e.g., imperative instead of indicative when necessary; present instead of subjunctive when necessary).
12. Inability to avoid neologisms in the translated text. The software retains French neologisms that make no sense to the English reader.
13. ChatGPT does not understand the concept of modality (e.g., 'il serait malade' is translated as 'He would be sick' instead of 'He is said to be sick'). When the narrator adopts a tone that allows them to distance themselves from information given conditionally, for example, ChatGPT translates in the conditional instead of using expressions like 'is said to be,' 'allegedly,' or 'reportedly,' etc.
14. ChatGPT is not eloquent in translation. It produces too much literal and word-for-word translation. It does not engage in free translation. It sticks too closely to the structure of the source text.
15. It does not perform oblique translation, such as modulation or change of perspective, transposition, equivalence, and transediting.

V. DISCUSSION

5.1 Syntactic Errors

1st Example

ST: Tous les chefs portaient le titre de Okoriko jusqu'au grand-père de celui qui est encore au pouvoir. (p.43)	TT: All chiefs bore the title of Okoriko until the grandfather of the current one in power.	Correction: All chiefs, including the grand father of the incumbent chief, bore the title of Okoriko.
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ChatGPT's translation is literal and meaningless. In this sentence, the subject of the verb is "All chiefs, including the grandfather of the incumbent chief," but ChatGPT's translation does not show

that the phrase "jusqu'au grand-père de celui qui est encore au pouvoir" is part of the subject. It should be noted that this phrase has been restructured; indeed, "jusqu'au grand-père de

celui qui est encore au pouvoir” is incorporated into the sentence before the verbal group “portaient le titre d'Okoriko.” Thus, this phrase becomes an integral part of the subject of the verb “portaient.” In summary, the subject of the verb “portaient” is “Tous les chefs ... jusqu'au grand-père de celui qui est encore au pouvoir,”

and the predicate is “portaient le titre d'Okoriko.” ChatGPT's translation contains a serious structural error that shows a lack of understanding of the meaning of the sentence as well as the grammatical functions of the different phrases within the sentence.

### 2nd Example

ST : Le chef de cette maison procède au cérémonial il rampe, tenant une calabasse contenant de l'eau qu'il remet au nouveau roi pour se débarbouiller. (p.38)	TT: The chief of this house performs the ceremonial act of crawling, holding a calabash containing water which he hands over to the new king to cleanse himself.	Correction: In performing the ceremony, the chief of this household crawls, while holding a calabash containing water which he hands over to the new king to wash his face.
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ChatGPT does not perform transediting; French text is also incorrect. Note that the revised otherwise, it would have improved the structure of translation replaced the pronoun ‘himself’ with the translation, which is incorrect because the ‘his’.

### Third Example

ST: Le conseil donna raison à cet homme venu de Savè et élevé dans la tradition baatonu qui voulait que le plus grand occupât la première place. (p.35)	TT: The council sided with this man from Savè, raised in the Baatonu tradition, who wanted the eldest to occupy the first place.	Correction: The cabinet sided with this man from Savè, raised in the Baatonu tradition, <i>which</i> wanted the eldest to occupy the first place.
---	--	---

The relative pronoun ‘who’ used in the Target Text (TT) is incorrect because it refers to "the man from Savè." The pronoun to be used should represent the term "Baatonu tradition." Therefore, ‘who’ is replaced by ‘which.’ This indicates that ChatGPT is unaware of the cultural context of the Baatonu.

### 4th Example

ST: A chaque sortie officielle, il était obligé de suivre à cheval ses jeunes frères dont les griots chantaient obligatoirement les louanges. (p.34)	TT: On every official outing, he was obliged to follow his younger brothers on horseback, whose praise was sung by griots.	Correction: On every official outing, he was obliged to follow on horseback his younger brothers whose griots compulsorily sang their praises.
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There is a structural change in the phrase ‘whose praise was sung by griots’ involving the introduction of the adverb ‘compulsorily.’ This adverb was omitted by ChatGPT. The plural form of ‘praise’ (i.e., ‘praises’) is used. Note that ChatGPT translates: "ses jeunes frères dont les louanges étaient chantées par les griots," but the revised translation is: "ses jeunes frères dont les griots chantaient obligatoirement les louanges."

### Fifth example

ST : <<O mon na O bourou bèè» (p.33)	TT : "O my na O bourou bèè"	Correction : <<O mon na O bourou bèè»
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ChatGPT failed to recognize a vernacular expression and translated only the word that resembles a French word. The result "O my na O bourou bèè" is meaningless. The word "mon" in

the nago language was translated into English, which is incorrect. Normally, this vernacular expression should not be translated.

#### Sixth Example

ST: Ces derniers étaient soumis à des taxes de douane au village de Wolou. (p.32)	TT: These were subject to customs duties in the village of Wolou. village on which Tourou depended.	Correction: They had to pay customs duties in the village of Wolou.
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Here is another translation: 'They had to pay customs duties.' Referring to the Hausa traders, ChatGPT used 'these' instead of 'they' or 'the latter.' ChatGPT's translations are often 'out of context' and literal.

#### 7th Example

ST: C'est un grand détenteur de gris-gris qui devient Baba Damagui. (p.30)	TT: He is a great holder of talismans who becomes Baba Damagui.	Correction: Only a great holder of supernatural powers becomes Baba Damagui. // An alternative translation: 'To become Baba Damagui you have to be a powerful juju man.'
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"ChatGPT's translation is incorrect. It is not at all faithful to the source text. That is why a change in sentence structure was deemed necessary to replace the phrase 'he is' with the word 'only'.

#### 8th Example"

ST : Le Kpébié Sounon (ou chef de Kpébié) est issu de Nikki par sa mère, du clan Yari Sannou à Danri. (p.29)	TT : The Kpébié Sounon (or chief of Kpébié) is descended from Nikki through his mother, from the Yari Sannou clan in Danri.	Correction: The Kpébié Sounon (or chief of Kpébié) hails from Nikki; indeed, his mother is from the Yari Sannou clan in Danri.
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"ChatGPT's translation is literal. The translation would be more understandable if the following structure were used: 'The Kpébié Sounon (or chief of Kpébié) hails from Nikki; indeed, his mother is from the Yari Sannou clan in Danri.' The revised sentence is clearer. The adverb 'indeed' confirms the assertion made in the main clause. This is an example of structural change. One clause is transformed into two.

### 5.2 Semantic Errors

#### 1st Example"

ST : Origine de la société politique wassangari du Baru Wu (pays Baatonu). (p.16)	TT: Origin of the Wassangari political society of Baru Wu (Baatonu country).	Correction: Origin of the Wassangari political society of Baru Wu (Baatonu <i>homeland</i> ).
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"The synonym 'homeland' is preferred because the word 'country' generally refers to a sovereign territory with defined borders, a central government, and institutions. This is not what the author means by 'pays Baatonu.' He is referring to a territory that encompasses regions and areas

within a larger country, and a place that often carries a personal sense of attachment, belonging, and identity. This type of semantic error is common in ChatGPT's translation.

2nd Example"

<p>ST : C'est par ce mot de Jacques Lombard que je voudrais introduire ces débats sur les éléments d'anthropologie et d'histoire du Nord-Bénin. (p.5)</p>	<p>TT : It is through this word of Jacques Lombard that I would like to introduce these debates on the elements of anthropology and history of Northern Benin.</p>	<p>Correction: It is through <i>these remarks by</i> Jacques Lombard that I would like to introduce this <i>discussion</i> on anthropological and historical elements of Northern Benin. The word 'mot' is literally translated by ChatGPT, but in this context, it means remarks. This translation error is both semantic and pragmatic. This sentence comes after a series of three remarks by Jacques Lombard; that's why the word 'remarks' is used in replacement of the word 'word'.</p>
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"Misunderstanding of the meaning of the word 'mot' in this context where it means 'remarks'.

3rd Example"

<p>ST : « Vol exprès»: à la naissance d'un enfant de ce clan, on doit aller «voler» tout le nécessaire pour la toilette du bébé; mais on doit d'abord aviser les gens chez qui on va &lt;&lt;voler ces éléments, d'où les louanges de «Kannou Gbinnou» ou «Kinnou-voleur». (p.9)</p>	<p>TT : "Express theft": upon the birth of a child from this clan, one must go "steal" all the necessary items for the baby's care; but one must first inform the people from whom these items will be "stolen", hence the praises of "Kannou Gbinnou" or "Kinnou-thief".</p>	<p>Correction: "<i>Stealing on purpose</i>": upon the birth of a child from this clan, someone must go and "steal" all the necessary items for the baby's care; but the people from whom these items are "stolen" are informed in advance, hence the praises of "Kannou Gbinnou" or "Kinnou thief".</p>
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"The literal translation 'express theft' by ChatGPT is replaced by 'stealing on purpose'. In fact, 'express theft' means 'vol exprès' in French.

4th Example"

<p>ST : Les Wonko sont réputés pour leur puissance sur le plan occulte. (p.9)</p>	<p>TT: The Wonko are renowned for their power in the occult realm.</p>	<p>Correction: The Wonko are renowned for their <i>supernatural</i> powers.</p>
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"The term 'supernatural' is a hyponym of the hypernym). By using it, the reader will better understand what it is about.

5th Example"

<p>ST : Les Baatombu font la distinction entre les assimilés lointains et les assimilés récents qui se réclament tous de la même appartenance bariba.</p>	<p>TT : The Baatombu make a distinction between distant assimilates and recent assimilates who all claim the same Bariba membership.</p>	<p>Correction: The Baatombu make a distinction between distant assimilates and recent assimilates who all claim <i>to be members of the same Bariba ethnic group</i>.</p>
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"The correction is more explicit by making a syntagmatic change.

### 6th Example"

<p>ST : dans le sens moins large, il pourra signifier l'ensemble culturel formé par différents groupes ethniques, déjà fortement intégrés, participant au système politique et ayant des genres de vie proches; et il faudra alors exclure les groupements assujettis ou étrangers: Gando, Peul et Dendi des caravansérails;</p>	<p>TT : In a narrower sense, it may signify the cultural whole formed by different ethnic groups, already strongly integrated, participating in the political system and having similar ways of life; and then it will be necessary to exclude the subject or foreign groups: Gando, Peul, and Dendi from the caravanserai;</p>	<p>Correction : In a narrower sense, it may signify the cultural whole formed by different ethnic groups, already strongly integrated, participating in the political system and having similar ways of life; and then it will be necessary to exclude the <i>dominated</i> or foreign groups: Gando, Peul, and Dendi from the caravanserai;</p>
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"By using the adjective 'dominated,' the corrected translation expresses a more concrete idea. 'Subject groups' does not accurately translate the term 'groupements assujettis.' This change, referred to as 'abstract change' by Chesterman, provides more precision and makes the correction more accurate.

### 5.3 Pragmatic Errors

#### 1st Example

<p>ST : L'expression suivante est assez significative pour caractériser les Booro: «Sou daara wa, sou kou werou wa, Booro», ce qui, traduit, veut dire «qu'on voit l'aller et qu'on ne voie pas le retour, Booro». En d'autres termes, lorsqu'un Booro voyage, la manière de lui souhaiter bon voyage, agréable séjour et bon retour, c'est de lui dire «qu'il perisse là-bas et qu'il ne revienne jamais».</p>	<p>TT: The following expression is quite significant in characterizing the Booro: "Sou daara wa, sou kou werou wa, Booro", which, translated, means "let them see the departure and not the return, Booro". In other words, when a Booro travels, the way to wish them a good journey, a pleasant stay, and a safe return is to say "may they perish there and never return".</p>	<p>Correction: The following expression is quite significant in characterizing the Booro: "Sou daara wa, sou kou werou wa, Booro", which means "<i>go and never come back Booro</i>". In other words, when a Booro travels, the best way to wish them a safe journey, a pleasant stay, and a safe return is to say: "<i>May you perish there and never come back</i>".</p>
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"The modification made in this section is an example of an 'illocutionary change.' Indeed, the mood of the expression in italics in the revised translation is imperative, which marks a change from the source text, which is in the simple present tense. This change in mood is the best way to faithfully convey what the author expresses through the explanation following the expression.

#### 2nd Example"

<p>ST : Certaines populations de Chabi Kouma (dans l'Atacora), se sont fusionnées dans ce clan, ce qui a fait soutenir par certains auteurs son origine «atacorienne». (p.11)</p>	<p>TT : Some populations of Chabi Kouma (in Atacora) merged into this clan, which led some authors to support its "atacorian" origin.</p>	<p>Correction: Some people from Chabi Kouma (in the Atacora region) merged into this clan, which led some authors <i>to confirm that its origin is indeed in the Atacora region.</i></p>
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"The adjective 'atacorian' is rendered by the noun 'Atacora' in the correction. This is an example of transposition. The adjective 'atacorian' is not a formal word that can be found in a dictionary. It is a word coined for the occasion.

3rd Example

<p>ST : Ainsi, contrairement aux membres des clans autochtones qui sont alignés sur le côté paternel pour leur appellation, les Wassangari sont différenciés par leur côté maternel. Mais pour la succession au trône, c'est le patriarcat qui est adopté. Ainsi, tous les clans Wassangari sont ceux de leur côté maternel.</p>	<p>TT: Thus, unlike members of indigenous clans who are aligned on the paternal side for their appellation, the Wassangari are differentiated by their maternal side. However, for succession to the throne, patriarchy is adopted. Thus, all Wassangari clans are those of their maternal side.</p>	<p>Correction: Thus, unlike members of indigenous clans who are named after their father, the Wassangari are different because they are named after their mother. However, as far as succession to the throne is concerned, patriarchy is adopted. <i>Thus, in all Wassangari clans, people are named after their mother.</i></p>
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"The current paragraph has undergone several modifications to make it clear for the reader of the target text (TT). In addition to the syntactic change, the final sentence has been revised to ensure that the reader understands its exact meaning.

4th Example"

<p>ST : Ils ont su, par certaines qualités exceptionnelles, usurper le pouvoir politique des autochtones pour devenir des éléments incontournables des sociétés qui les ont intégrés. (p.12)</p>	<p>TT: They have managed, <i>through certain</i> exceptional qualities, to usurp the political power of the indigenous people and become indispensable elements of the societies that have integrated them.</p>	<p>Correction: They have managed, <i>owing to</i> their exceptional qualities, to usurp the political power of the indigenous people and become indispensable elements of the societies that have integrated them.</p>
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"A pragmatic change: 'through certain exceptional qualities' is replaced by 'owing to their exceptional qualities.' Note that 'certain exceptional qualities' is replaced by 'their exceptional qualities.' The pronoun 'their' is a deictic reference specifically to the Wassangari. ChatGPT produced a literal translation that is meaningless. However, it is also important to note that the French text is not clear either.

5th Example

<p>ST : A l'origine, leur chef serait le premier fondateur du Mali. Ils sont souvent musulmans. (p.13)</p>	<p>TT : Originally, their chief would be the first founder of Mali. They are often Muslims.</p>	<p>Correction: Historically, their chief <i>was said to be</i> the first founder of Mali. They are often Muslims.</p>
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"The present conditional used in the target text (TT) is replaced by the phrase 'was said to be' in the correction. The author is not sure of the information they provide. The modal 'would' is not the most appropriate element to express the distance the author takes vis-à-vis their statement in this context. The phrase 'was said to be' better expresses the cautious position the author takes regarding the information they provide.

### 6th Example

<p>ST: Pour se faire, l'origine, la structure et le fonctionnement institutionnel de la société politique wassangari constituent les éléments fondamentaux sur lesquels doivent s'ouvrir des débats qui apporteront, nous l'espérons, un éclairage à la vie du peuple baatonu. (p.16)</p>	<p>TT: To do this, the origin, structure, and institutional functioning of the Wassangari political society constitute the fundamental elements on which debates must be opened, which we hope will shed light on the life of the Baatonu people.</p>	<p>Correction: <i>To this end</i>, the origin, structure, and institutional functioning of the Wassangari political society constitute the fundamental elements of a discussion that will hopefully shed light on the life of the Baatonu people.</p>
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"The expression 'pour se faire' is not well written. It should be 'pour ce faire.' This is an example of transediting, according to Chesterman. Moreover, the interpretation of the expression 'pour ce faire' in this context is incorrect. In reality, this

expression means 'to this end' in this context. Translating 'pour ce faire' as 'to do this' does not match the meaning it has in the target language. Indeed, English speakers often say 'to this end,' which means 'by working towards this goal.'

### 7th Example

<p>ST: Ces littératures laissent cette fausse impression qu'il n'y avait rien d'organisé dans le Baru Wu avant les Wassangari. (p.16)</p>	<p>TT: These literatures leave the false impression that there was no organization in Baru Wu before the Wassangari.</p>	<p>Correction: This literature gives the false impression that there was no form of organisation in the Baru Wu before the Wassangari's arrival.</p>
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"Note the change from 'before the Wassangari' to 'before the Wassangari's arrival.' Indeed, in this particular context, the arrival of the Wassangari is what the author is referring to.

deaths in operating rooms, bank failures, aeroplane crashes, and many others.

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### VI. CONCLUSION

ChatGPT contains a vast number of words, but it is not the quantity of words that a translator knows that makes them a good translator. This syntactic, semantic, and pragmatic evaluation of ChatGPT's translation has yielded disappointing results, leading us to say that, at its current stage, this translation tool is merely a translation aid, even though it is more advanced than other tools such as Systran, Google Translate, Microsoft Translator, etc. The concerns of translators about the future of their profession are not justified unless humanity insists on using machine translations, which will cause twice as much harm as good.

It should be noted that throughout human history, translation errors have caused tragedies such as the bombing of Hiroshima and Nagasaki,

7. Vinay, J.P. et Darbelnet, J. (1958). *Stylistique comparée du français et de l'anglais*.

Web site

8. <https://chat.openai.com/>.





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# Eternal Formalism: About the Judicial Reform in Mexico

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## ABSTRACT

This study offers a critical and hermeneutic analysis of some substantial points proposed in the latest project for reforming the federal judiciary of the Mexican state. The primary focus of this project is to propose a new model for selecting judges, aimed at legitimizing its members through citizen voting, similar to certain federal entities in the United States and to the constitutional model of the state of Bolivia. However, this project overlooks some fundamental elements, such as formation (*Bildung*), emphasizing that legal formalism remains a cornerstone in the teaching and practice of law in Mexico. Without overcoming this, achieving a paradigm shift that improves the Mexican judicial system and brings it closer to a new vision of understanding and applying the law becomes a highly complex task to resolve.

*Keywords:* judicial reform, selection model, judges, democracy, judicial politicization, formalism, education, judicial career, hermeneutics.

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# Eternal Formalism: About the Judicial Reform in Mexico

Carlos M. López Hernández

[...] el Estado siente como esencial el problema de la selección de los jueces; porque sabe que les confía un poder mortífero que, mal empleado, puede convertir en justa la injusticia, obligar a la majestad de las leyes a hacerse paladín de la sinrazón e imprimir indeleblemente sobre la cándida inocencia el estigma sangriento que la confundirá para siempre con el delito. Calamandrei, P. (2009) Elogio de los jueces escrito por un abogado, España: Editorial Góngora y Editorial Reus, p. 34.

## ABSTRACT

*This study offers a critical and hermeneutic analysis of some substantial points proposed in the latest project for reforming the federal judiciary of the Mexican state. The primary focus of this project is to propose a new model for selecting judges, aimed at legitimizing its members through citizen voting, similar to certain federal entities in the United States and to the constitutional model of the state of Bolivia. However, this project overlooks some fundamental elements, such as formation (Bildung), emphasizing that legal formalism remains a cornerstone in the teaching and practice of law in Mexico. Without overcoming this, achieving a paradigm shift that improves the Mexican judicial system and brings it closer to a new vision of understanding and applying the law becomes a highly complex task to resolve<sup>1</sup>.*

**Keywords:** judicial reform, selection model, judges, democracy, judicial politicization, formalism, education, judicial career, hermeneutics.

**Author:** Universidad de Monterrey (UDEM)<sup>2</sup>.

<sup>1\*</sup> All page notes are in Spanish, according to the original version of the manuscript. Also, all textual quotes were translated to English due to the author.

<sup>2\*\*</sup> PhD in Constitutional Law and Governance from the Autonomous University of Nuevo León (UANL). Professor at the School of Law and Social Sciences of the University of Monterrey (UDEM). Technical Secretary of the Mexican Academy of Legal Methodology and Law Teaching (AMJEDAC).

## I. INTRODUCTION

Similar like what occurs in other Latin American states, Mexico remains a country where legal education and practice have not managed to overcome legal formalism. This implies that theoretical proposals —such as theories of argumentation and legal interpretation—remain overshadowed by a tradition anchored in the past; in a system that, despite incorporating a human rights model into its constitution, still pursues ideals from the early 20th century guarantee system.

Luhmann, for instance, notes that “theories emerging from practice are rather a collateral product of the need for solid decision-making”.<sup>3</sup> Therefore, there remains ample room for other types of issues that are not immediately visible.

Consequently, legal education in Mexico is almost disconnected from legal reality, as it is not possible to reconcile two foreign paradigms. Gény, for example, expressed concern about the blind faith that some jurists had in formalism:

Dominated, fascinated by the results of codification, modern French commentators, implicitly at least, have accepted as a postulate the idea that formal legislation, i.e., the body of legislative acts promulgated and in force in France, should suffice to reveal all the legal

<sup>3</sup> Luhmann, N. (2005) *El derecho de la sociedad*. 2ª Edición. España: Herder, p. 62.

rules needed in the field of private law for the needs of social life.<sup>4</sup>

In this context, Mexico continues to rely on formalism as a solution to all the legal difficulties that arise in Mexican society, and at the same time, as a magic wand that dissipates the complexities of paradigm incommensurability highlighted by Kuhn,<sup>5</sup> because nothing can't change without changing the way of thinking.

Thus, although Mexico has made several reforms to its justice system in the past twenty years, these changes have not produced the expected effect, especially when analyzing how the judicial function unfolds, which remains mired in a whirlwind of complexities that cannot be resolved merely by creating or modifying laws.

This is also the main reason why the federal executive deemed it appropriate for the judiciary to gain legitimacy through a model of selecting judges, magistrates, and ministers via popular vote. However, this proposal does not sufficiently address the problems generated by formalism, as changing the selection model for judges will not make the judicial system more reliable or effective.

Primarily, because the reform project omits a substantial element, such as the judicial career, which has been persistently neglected: in Mexico, there are no institutions that teach how to become a judge. Thus, formation (*Bildung*) becomes an indispensable element for understanding legal problems differently as they develop in legal practice, but at one that can make it go beyond from instrumental knowledge.

This paper will analyze, from a hermeneutic perspective, why investing in a formation model is a preferable option to strengthen the judiciary at all levels, since this critical issue for the administration of justice is ignored and forgotten by those who naively believe that merely changing

to direct voting for judges, magistrates, and ministers will development a better justice system. Thus, the original measure does not overcome the issues related to legal formalism, which is why the same cycle of change without change persists and the formalism become eternal.

## II. HOW HAVE JUDGES LOST LEGITIMACY IN MEXICO?

Fundamentally, if the issue with the proposed constitutional reform to the judiciary focuses on the legitimacy of judges, the first question should be why trust in Mexican judges has eroded and how it can be restored.

Generally, the judiciary is not often criticized by civil society, as its work is largely unknown to citizens. However, with the change in government in 2018, «the public life of the Mexican state has become more public».<sup>6</sup> Today, for instance, Mexican society is more attentive to the political environment, leading citizens to learn about and become aware of constitutional reform projects and the legal process for their approval or rejection through judicial review by the Supreme Court of Justice of the Nation (SCJN), which functions as a constitutional court.

Another relevant aspect was when, less than a month into the new federal executive's term, Mexican society learned about the high incomes of the SCJN<sup>7</sup> ministers —a surprising issue considering that, until 2018, the Mexican state had over 51,890,000 people living in poverty, according to data from the National Institute of Statistics and Geography (INEGI).<sup>8</sup> This situation does not align well with one of the current federal executive's main policies, which is austerity, as:

<sup>6</sup> Concha, H. et. al. (2004) *Cultura de la constitución en México: una encuesta nacional de actitudes, percepciones y valores*. México: Universidad Nacional Autónoma de México, Tribunal Electoral del Poder Judicial de la Federación, Comisión Federal de la Mejora Regulatoria, pp. 37 y ss.

<sup>7</sup> De acuerdo a datos oficiales, el ingreso total mensual de un ministro de la SCJN es de \$792,258 m.n.

<sup>8</sup> INEGI (2024) [https://www.inegi.org.mx/app/tabulados/interactivos/?pxq=Hogares\\_Hogares\\_15\\_9954f9c6-9512-40c5-9cbf-1b2ce96283e4&idrt=54&opc=t](https://www.inegi.org.mx/app/tabulados/interactivos/?pxq=Hogares_Hogares_15_9954f9c6-9512-40c5-9cbf-1b2ce96283e4&idrt=54&opc=t)

«there cannot be a rich government with a poor people».

From then on, public scrutiny began to monitor the actions of the federal judiciary, especially those of the SCJN, which intensified following the change in presidency at the court, with Norma Lucía Piña Hernández assuming office and remaining distant from executive's and legislative's dialogues —a setback compared to the previous president, and former minister of the highest court, Arturo Zaldívar Lelo de Larrea, who had engaged with the federal executive to initiate dialogue aimed at reforming the federal judiciary, resulting in a new judicial reform in 2022 about judicial career.

However, despite increased public involvement in recent years, it appears that citizen demands align with the federal executive's rhetoric, which has not recognized that changing the model for selecting judges, magistrates, and ministers does not necessarily legitimize or strengthen the justice system. Also, ignores the reasons about why it is important the formation in judges, due they need to obey the Law not what they desire or politics demand. This is a matter that requires deeper examination.

Thus, it is not clear how judges elected by popular vote will necessarily improve justice delivery rates, nor how potential issues of politicization of justice can be avoided. This would mean that judges follow patterns aligned with public interest, so their decisions do not address the substance of issues but respond to majority demands, even if those demands are against the constitution.

For example, judicial independence would not be questioned in cases where judges do not decide according to majority interests, as it is now, but rather there would be more opportunities for dialogue and understanding of the judicial function. Therefore, attention should be focused on the problems generated by legal formalism, whose tradition is deeply embedded in judges' understanding.

Detailing why legal formalism remains prevalent in Mexico is a Herculean task. However, some

important data is useful: 1. In Mexico, there is no specialized preparation for judges, prosecutors, or other legal professions; universities predominantly offer a single perspective for understanding, analyzing, thinking about, and applying the law, which is that of the lawyer;<sup>9</sup> 2. The judiciary still believes that analytical capacity for performing judicial functions is an innate trait rather than the result of proper formation, which is why the judicial career is understood as a hierarchical system;<sup>10</sup> 3. Notable formalistic factors in judicial practice are expressed in rulings, case law, and even in judicial dissemination methods;<sup>11</sup> 4. There is a constant rejection of non-positivist legal models, especially interpretative ones, as it is still believed that legal bodies must be closed and written in a Cartesian style of *clarity* and *distinction*,<sup>12</sup> leaving no room for interpretation.

Therefore, the focus of interest regarding the illegitimacy of judges should not be how they are elected, but rather how judges understand and apply the law.

### III. PROBLEMS IN LEGAL EDUCATION IN MEXICO

All the above necessarily leads to considering how legal education in Mexico is structured and what its problems are. It is well known that, since the second half of the 20th century, the field of law has undergone various substantial changes, both in its static and dynamic aspects. However, it is no secret that the conception of law remains a set of

<sup>9</sup> Aguilar Morales, L. M. (2024, 10, 6) “Palabras del Ministro Luis María Aguilar Morales, Presidente de la Suprema Corte de Justicia de la Nación y del Consejo de la Judicatura Federal en la ceremonia con motivo del día del abogado, celebrada en el salón *Adolfo López Mateos* de la Residencia Oficial de los Pinos. [https://www.scjn.gob.mx/sites/default/files/discurso\\_ministro/documento/2018-07/12JUL18-CEREMONIADELD%C3%80DADELABOGADO.pdf](https://www.scjn.gob.mx/sites/default/files/discurso_ministro/documento/2018-07/12JUL18-CEREMONIADELD%C3%80DADELABOGADO.pdf)

<sup>10</sup> Caballero Juárez, J. A. (2006) “El perfil de los funcionarios judiciales en la unidad jurisdiccional”, en *Revista de del Instituto de la Judicatura Federal*, i. 22, p. 290

<sup>11</sup> Atienza Rodríguez, M. (2013) *Curso de argumentación jurídica*, España: Trotta, pp. 49 y ss.

<sup>12</sup> Primera Sala (2006) “Exacta aplicación de la ley penal. La garantía, contenida en el tercer párrafo del artículo 14 de la constitución federal, también obligan al legislador” (Jurisprudencia por reiteración) en *Semanario Judicial de la Federación y su Gaceta*, t. XXIII, p. 84. Registro: 175595.

legal norms where knowledge of current law is the only differentiator.

Professional legal studies in most of our law schools or faculties follow general curricula that provide graduates with a panoramic view. However, it must be acknowledged that they do not include specific training for different legal activities such as judiciary roles, public prosecution, notary work, etc.<sup>13</sup>

Thus, for legal education, what truly matters is what the code says, primarily; secondarily, as one progresses, there is a slight shift towards studying case law, which is primarily of interest to lawyers and judges. In Mexico, for instance, jurisprudence from the SCJN—that is, what is said about this or that in the courts—and in significant political contexts, extends to international courts such as the Inter-American Court of Human Rights (CIDH).

In summary, studying and teaching law, in a certain way, is limited to presenting the essence of law, as some important authors, including Calsamiglia,<sup>14</sup> assert. Therefore, the idea that “it seems everything has already been said”,<sup>15</sup> as Atienza Rodríguez and Ruiz Manero claim, resonates in legal education. Despite new proposals—such as the approach of law as argumentation—the foundation remains the legal theory from before the second half of the 20th century, which is disconnected from current legal reality.

Consider the paradigm shift from a system of guarantees to a system of fundamental rights established by the constitutional state. Or consider the non-positivist legal theories that have sought to give moral considerations more prominence in the legal world. Thus, Larenz's

words: «no one can seriously claim that the application of legal norms is merely a logical subsumption under abstractly formulated major premises» are not definitive.<sup>16</sup> Rather, they still contain mysteries.

Therefore, upon closer examination, it becomes evident that things are entirely different if the issue is no longer about why but about how, as legal positivism has been in crisis for over 70 years and seems unlikely to change soon, even despite the breakdown of some mechanisms that project the inclusion of principles such as *pro homine*, since the old tradition of *Gesetz als Gesetz* («the law is the law») still prevails.

For one reason or another, judges in Mexico believe they can «discover» the answers to all legal problems in a manner reminiscent of Shakespeare's *The Merchant of Venice*. However, very few recognize the consequences of the mechanistic application of law.

If one wishes to contradict this assertion, it opens the door to revealing another major problem in legal education—which reinforces the initial argument—as it would not be a fallacy but a sophism. Law faculties lack an approach to Hermeneutics; rather, there is an irrational fear of what lies beyond literal interpretation. The same can be said about knowledge of Logic and Argumentation.

It is clear that specialized training is required to know where to look and how to understand the arcane vocabulary with which decisions are written. The layperson does not possess this training or vocabulary, but lawyers do, and therefore, no controversy exists between them regarding whether the law provides compensation for injuries caused by a colleague, for example.<sup>17</sup>

<sup>13</sup> Flores García, F. (1984) “La independencia judicial y la división de poderes”, en Carpizo, J. & Madrazo, J. (coord.) *Memoria del III Congreso Nacional de Derecho Constitucional*, México: Universidad Nacional Autónoma de México, p. 113.

<sup>14</sup> Calsamiglia, A. (1993) “¿Debe ser la moral el único criterio para legislar?”, en *Doxa. Cuadernos de Filosofía del Derecho*, n. 13, p. 161.

<sup>15</sup> Atienza, M. & J. Ruiz Manero (2007) “Dejemos atrás el positivismo jurídico”, en *Isonomía*, n. 27, p. 8.

<sup>16</sup> Larenz, K. (1980) *Metodología de la ciencia del derecho*. 2ª Edición. España: Ariel

<sup>17</sup> Dworkin, R. (2012) *El imperio de la justicia. De la teoría general de derecho, de las decisiones e interpretaciones de los jueces y de la integridad política y legal como clave de la teoría y práctica*, [título original: *Law's Empire*], [traducción: Claudia Ferrari], Gedisa: España, p. 15.

Thus, the difference does not lie in the ability to interpret, argue, or use technical knowledge to decipher the vocabulary of judicial rulings or apply a different logic from formal logic, such as deontic logic or another divergent logic. It lies in the knowledge of the legal system.

Formal legal studies typically begin at the university level, and only after a doctoral degree does one achieve rigor in their knowledge, meaning that law is understood not just as a norm but as something much more. One might ask: is it necessary to wait so long?

Ignoring that law is more than just a norm leads to several significant problems, as law influences people and can transform them to varying degrees.

The way judges decide cases is important. It matters more to those who are unlucky, litigious, or merely in court because they are considered too saintly or otherwise. Learned Hand, one of the best and most famous American judges, said he feared a trial more than death or taxes. The difference between dignity and ruin can turn an argument that might not have struck another judge with the same force, or even the same judge on another day. People can gain or lose more from a judge's assent than from any act of Congress or Parliament.<sup>18</sup>

As Atienza Rodríguez mentions, formalism is not the only affliction affecting the law—that is, those who interpret and apply it “but it is perhaps the most pernicious in Latin countries due to its endemic nature in our legal culture”.<sup>19</sup> This implies that it is also a problem related to education since it reflects “a way of understanding the law in which the judge feels bound only by the text of the current legal norms, and not also by the reasons underlying them”.<sup>20</sup>

Therefore, diagnoses like Dworkin's are not a reality in Latin countries since “a formalistic resolution is often written in a way that an

educated reader, even a legal professional, does not understand or at least does not easily understand”.<sup>21</sup> Consequently, the use of obscure and evasive language is a daily characteristic of legal formalism.

In conclusion, if a genuine change in the justice system in Mexico is desired, efforts should be focused on deeper issues than those mentioned in the proposed constitutional reform of the federal judiciary. And to start, what could be better than addressing the issue of legal education.

#### IV. ANALYTICAL CAPACITY: SOME IRONIES OF THE JUDICIAL CAREER

For years, the topic of a judicial career has been quite frequent, but progress has been very slow. Del Río Govea noted that “[...] it has not yet been fully achieved that judges are appointed according to rules that demonstrate their legal capacity, their moral character, honesty, good conduct, and, most importantly, their knowledge to apply the Law [...]”.<sup>22</sup> However, similar to Flores García, his intention was not to have the formation as a model for teaching how to become a judge, but rather as “[...] the idea of a transition through stages or progressive steps [...]”.<sup>23</sup> To be a judge, it is essential to learn how to be one. However, this is not achieved with the premise that judges are lawyers who have chosen to dedicate themselves to the judiciary.

Vázquez Esquivel has insisted that the *ethos* of jurists differs significantly between their professions. He also points out that among lawyers and judges, there are antagonistic values that, in theory, can be understood quite well, but in practice seem to cloud everyone's judgment.<sup>24</sup>

<sup>21</sup> *Ídem*.

<sup>22</sup> Del Río Govea, M. (1960, enero-diciembre) “Implantación de la carrera judicial en México”, en *Revista de la Facultad de Derecho en México*, t. X, i. 37, 38, 38, 40, p. 522

<sup>23</sup> Flores García, F. (1960, enero-diciembre) “Implantación de la carrera judicial en México”, en *Revista de la Facultad de Derecho en México*, t. X, i. 37, 38, 38, 40, p. 355. Del mismo autor: (1967, enero-marzo) “La carrera judicial”, en *Revista de la Facultad de Derecho en México*, t. XVII, i. 65, p. 253.

<sup>24</sup> Vázquez Esquivel, E. (2008, julio-diciembre) “El entroncamiento del problema hermenéutico con el deontológico en la formación de los operadores del derecho en México (primera parte)”, en *Conocimiento y Cultura*

<sup>18</sup> *Ídem*.

<sup>19</sup> Atienza Rodríguez, M., *óp. cit.*, p. 49

<sup>20</sup> *Ibidem.*, p. 50

Therefore, the starting point should not be to discuss the different mechanisms for selecting judges or the various possible filters for entering and advancing in the judicial career. Instead, focus should be placed on defining the peculiarities of judicial function, that is, its *ethos*. Of course, instrumental knowledge in the training of a judge is important, but this distances the factor of what is desirable in the judicial function, turning it into an irony.

Moreover, it is legitimate to question who should be entrusted with the role of judge. This is mainly because SCJN ministers are not necessarily individuals with extensive experience in administering justice or necessarily the best at doing so, as the current selection model is based on a ternary model proposed by the federal executive and must be approved by the state. This has historically resulted in ministers with great ability but also others lacking in it. Therefore, it becomes ironic that the highest court is not composed of the best judges in the country, as they are detached from the hierarchical scheme of the judicial career in Mexico.

This issue recalls what Podetti once stated about the judicial career: “to enter the judiciary and undertake the difficult and august mission of ‘administering justice’, one only needs [...] to obtain a qualifying university degree and have a friendship with some influential political leader”.<sup>25</sup> This is technically equivalent to the requirement of the current Mexican federal constitution.

Additionally, it is noteworthy that one of the main concerns of the current judges, magistrates, and

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*Jurídica* a. 2, n. 4, 2<sup>a</sup> Época, Universidad Autónoma de Nuevo León, Facultad de Derecho y Criminología, Centro de Investigación de Tecnología Jurídica y Criminológica: Monterrey, México. Del mismo autor: (2009, enero-junio) “El entroncamiento del problema hermenéutico con el deontológico en la formación de los operadores del derecho en México (segunda parte)”, en *Conocimiento y Cultura Jurídica*, a. 3, n. 5, 2<sup>a</sup> Época, Universidad Autónoma de Nuevo León, Facultad de Derecho y Criminología, Centro de Investigación de Tecnología Jurídica y Criminológica: Monterrey, México.

<sup>25</sup> Podetti, J. R. (1942) *Teoría y técnica del proceso civil (ensayo de una sistemática del derecho procesal argentino)*. Argentina: Editorial Ideas, p. 113.

ministers of the federal judiciary is that the competitive exams proposed by the reform initiative might fall to a secondary level, as two-thirds of the candidates depend on the executive and legislative branches. However, as Caballero Juárez points out: “[...] to compete to become a judge, it seems that what is required is precisely not having judgment”.<sup>26</sup> This is because the opposition exam questionnaires generally consist of questions derived from contradictions in rulings issued by the SCJN, so instead of respecting the analytical capacity of the candidate, what is demanded is memorization. Another irony, since the concept of objectivity is interpreted incorrectly and, at the same time, the independence supposedly defended is restricted.

Worse still, these ironic issues go unnoticed by current judicial officials and become apparent when it is claimed that “popularly elected judges will hardly possess this knowledge”,<sup>27</sup> meaning knowing recent jurisprudence, with the argument that there would be a lack of certainty, but also turn out that jurisprudence is above the Law, which it is a major issue.

Another irony is that the judicial career pyramid is «inverted», that means that there are more problems without a solution despite those who are not interested to growth. As Caballero Juárez holds:

[...] it is assumed that in a healthy Judiciary, the idea of development and growth in the judicial career is: starting from the bottom and gradually moving up, but theoretically, there should be more judicial clerks than secretaries, more secretaries than judges, and more judges than magistrates. But here, this does not occur; this is a problem even of

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<sup>26</sup> Ortega García, R. (2021) “Entrevista con el Doctor José Antonio Caballero Juárez, sobre la Ley de carrera judicial del Poder Judicial de la Federación, en *EX Legibus*, i. 14-15, p. 281.

<sup>27</sup> SCJN (2024, 27, 6) “Análisis de la iniciativa de reforma al Poder Judicial de la Federación. Problemas asociados con la iniciativa de reforma constitucional del Poder Judicial presentada el 5 de febrero de 2024”, p. 26. [https://www.sitios.scjn.gob.mx/cec/sites/default/files/page/files/2024-06/Ana%CC%81lisis%20de%20la%20iniciativa%20de%20reforma.%20Problemas%20asociados\\_final.pdf](https://www.sitios.scjn.gob.mx/cec/sites/default/files/page/files/2024-06/Ana%CC%81lisis%20de%20la%20iniciativa%20de%20reforma.%20Problemas%20asociados_final.pdf)26



politics and management of the Judiciary, and I do not see that it was considered when it was decided [...].<sup>28</sup>

Finally, these ironies cause legal formalism to be more palpable, as there are visible remnants in judicial practice, which, as Atienza understands well, in such a situation: “[...] there would be no rule of law, simply because the rule of law would have become the rule or government of judges”.<sup>29</sup>

## V. FORMALIST VESTIGES IN JUDICIAL PRACTICE

A first sign is found in judicial rulings, as it is neither accidental nor uncommon for judicial decisions to be written in a convoluted legal language, which, in many cases, is even unintelligible to legal professionals. This is a common characteristic of formalism, meaning that judicial resolutions are not fully understood. For example, this has led to the practice of discussing a motion to clarify a judgment, a legal figure that was not contemplated by the relevant law until 2013. Therefore, the existence of such a legal figure, precisely, is indicative of legal formalism.

Another sign consists of the constant defense of legal certainty or due process. These issues are highly noticeable in the analysis document of the constitutional reform initiative on the federal judiciary with the SCJN's seal. In this sense, it seems very unlikely that a citizen would prefer the certainty of being judged according to the jurisprudence criteria issued by the SCJN over being judged in a fair manner.

A third sign is related to procedural elements. It is also not accidental that judicial resolutions often focus more on the form of the process than on the substance. Therefore, within the Mexican legal community, there is a motto that the primary function of an amparo judge is to «find reasons for its inadmissibility» before the principal matter.

<sup>28</sup> Ortega García, R., *óp. cit.*, p. 277.

<sup>29</sup> Atienza Rodríguez, M. *Curso de argumentación jurídica...* p. 50.

As a fourth sign, the logical rigor as the sole reliable source of reasoning appears, overshadowing other types of divergent logics, such as the logic of understanding. Thus, no opportunity is given to other legal paradigms.

Finally, a fifth sign relates to the incessant promotion of judges' profiles as professionals, neutral, impartial, objective, and independent, etc., but the interpretation of each of these virtues is often confused. For instance, it has already been pointed out how «objectivity» is understood by the SCJN, which apparently is only achieved when lower courts apply the criteria established by jurisprudence.

Of course, these are not the only traces of legal formalism present in judicial practice, but they are sufficient to highlight the main issue in this study, which is the importance of education as an appropriate measure for strengthening the judicial institution in Mexico.

In a world where the constitutional state has become so vibrant, the federal judiciary, at least in Mexico, cannot continue to be seen as an institution detached from the public. Even less should it be ignored that its decisions affect political life. Whether the Mexican legal community likes it or not, judicial decisions are a kind of «political message» to everyone, as judges are the ones who ultimately decide which reform proposals are consistent with the constitution. Hence, the issue of education remains crucial.

## VI. CONCLUSIONS

Thus, in countries where formation has not been given importance, the perception indices of the rule of law do not yield desirable results, despite constant updates in the necessary knowledge for administering justice. This is detailed in the latest World Justice Project: Rule of Law Index 2023 report, United States, for example, ranks 26th, while Mexico ranks 116th out of 142 countries studied.<sup>30</sup> This means that despite what SCJN says, the rule of law is related with how the citizens understand the judicial task.

<sup>30</sup> World Justice Project: *Rule of Law Index 2023*, pp. 22 y s.

On one hand, Mexico does not have a proper formation model that distinguishes legal professions as such. This has led to the mistaken idea that a legal professional can be a prosecutor today, a notary tomorrow, and a public official or SCJN minister the day after, as if none of these professions required specific formation, because the lawyers' analytical capacity it is the same for all those functions, which it is wrong.

On the other hand, as has been discussed, Mexico still lacks a true judicial career path aimed at establishing a solid rule of law and a successful legal education model, such as the National School of Magistracy (ENM) in France (1958).<sup>31</sup> Instead, Mexico continues to rely on technical and instrumental elements as if it were a mere superficial fix. Additionally, issues related to judicial independence, impartiality, and other important areas, such as the judge selection process, should be considered.

Certainly, the latter is perhaps the most striking, as Villegas pointed out,<sup>32</sup> the judiciary no longer has individuals properly trained in administering justice. Instead, the system itself has led to key positions being occupied not by judges *per se*, but by politicians, who are categorized by the judiciary as «political judges». However, beyond this controversy, what weighs more is Badinter's observation that judges must have a certain degree of *ingratitude* towards those who appointed them, which can only be the result of their formation.

As Dworkin has insisted, the world of law today is understood as the «age of judges»,<sup>33</sup> but few realize that the law has ceased to be monotonous and has evolved. The observation of the norm is no longer an absolute parameter for resolving legal disputes; rather, an effort beyond what logic prescribes is needed. The science of law is not about a cognitive understanding of nature but is a practical function, which involves resolving social

conflicts.<sup>34</sup> Hence, formation becomes of severe importance.

Therefore, instead of focusing on the best mechanism for selecting judges, it is crucial to first address questions such as: Where and how are judges formed in Mexico? Additionally, what kind of formation have those who are already part of the judiciary received? How they understand the law? In the end, all this pertains to an ethical and hermeneutic issue.

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<sup>31</sup> Flores García, F. (1967, enero-marzo) "La carrera judicial", en *Revista de la Facultad de Derecho en México*, t. XVII, n. 65, pp. 249 y ss.

<sup>32</sup> Villegas, J. (2016) *El poder amordazado. La historia oculta de cómo el poder político se ha infiltrado en la justicia española*, Ediciones Península: España.

<sup>33</sup> Dworkin, R., *óp. cit.*, p. 15.

<sup>34</sup> Atienza Rodríguez, M. (1994, octubre) "Las razones del derecho. Sobre la justificación de las decisiones judiciales", en *Isonomía: Revista de Teoría y Filosofía del Derecho*, n. 1, Instituto Autónomo de México, p. 64

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# Anthropolinguistic Analysis of form and Meaning Petung Weton Javanese Society Marriage

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## ABSTRACT

Culture as knowledge collective, has stored in minds every human. Function language as practices culture among other also for explains meaning sayings. Language Can be said alsoas wrong one wealth spiritual that owns by a group of humans and together said speech community. On 's research focused on study conducted atVillage Kesamben, Ngadum as wrong one focus study. On data interviews that obtained, community village Kesamben is still is very is thick will tradition which has, tradition which still maintained until now is calculation Petung Weton as wrong one thing which is obliged to be taken into account to bride woman and man when will starts a lives new. In research this uses study anthro linguistics with focuses on form and meaning.

*Keywords:* anthrop linguistics, weton, semiology.

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Fradam Hadi Suseno

## ABSTRACT

*Culture as knowledge collective, has stored in minds every human. Function language as practices culture among others also for explains meaning sayings. Language Can be said also as wrong one wealth spiritual that owns by a group of humans and together said speech community. On's research focused on study conducted at Village Kesamben, Ngadum as wrong one focus study. On data interviews that obtained, community village Kesamben is still is very is thick will tradition which has, tradition which still maintained until now is calculation Petung Weton as wrong one thing which is obliged to be taken into account to bride woman and man when will starts a lives new. In research this uses study anthropo linguistics with focuses on form and meaning.*

**Keywords:** anthropolinguistics, weton, semiology.

**Author:** Pendidikan bahasa dan sastra indonesia universitas pgri jombang.

## I. INTRODUCTION

Antropolinguistik merupakan sebuah kajian ilmu yang memiliki sifat interpretatif, yakni memiliki cakupan yang lebih jauh untuk mengupas fenomena bahasa dalam kebudayaan serta mendeskripsikan suatu cultural understanding (pemahaman budaya). Sementara itu, Duranti menyatakan bahwa antropologi linguistik adalah “study of language as a cultural resource and speaking as a cultural practice“, yang dapat diterjemahkan: kajian atas bahasa sebagai sumber daya budaya dan tuturan sebagai praktik budaya. Dengan kata lain, kebudayaan sebagai pengetahuan kolektif, telah tersimpan dalam pikiran setiap manusia. Fungsi bahasa sebagai praktik budaya antara lain juga untuk menjelaskan makna tuturan. Bahasa dapat

dikatakan pula sebagai salah satu kekayaan rohani yang dimiliki oleh sekelompok manusia dan guyub tutur (speech community). Sumber daya kebudayaan yang digunakan dalam bahasa direalisasikan dalam bentuk tuturan maupun tulisan (Almos, 2015:45-46).

Kebudayaan dan masyarakat jawa yang beragam ditandai dengan adanya kesamaan identitas baik secara fisik maupun dalam hal-hal yang lebih abstrak. Kesamaan identitas secara fisik terindra melalui adanya fisiognomi yang dihasilkan oleh suatu klan/suku/marga dan produk budaya. Sementara itu kesamaan yang bersifat abstrak berupa pandangan hidup, cara berfikir, susunan masyarakat, kepercayaan, dan lain sebagainya. Salah satu bentuk kesamaan dalam pandangan hidup dan kepercayaan masyarakat jawa dapat diamati pada upacara adat pernikahan. Masyarakat jawa memandang pernikahan sebagai salah satu rangkaian istimewa yang terdapat dalam perjalanan kehidupan manusia, yang bersifat sacral (keramat atau suci) dan dapat mendatangkan kebaikan, keberuntungan, keberkahan, keburukan, dan lain sebagainya.

Pada masyarakat jawa, terdapat budaya pernikahan yang menggunakan perhitungan tanggal lahir sebagai penentu apakah jodohnya akan memiliki takdir baik atau tidak kedepannya. Perhitungan tanggal dalam menentukan pasangan ini disebut dengan weton. Adapun tujuan utama perhitungan weton dalam pernikahan adat jawa adalah untuk mencari hari joyo atau hari baik yang dimiliki oleh pengatin pria dan pengantin wanita. Secara agamawi semua hari yang diciptakan oleh Tuhan aalah hari yang baik dan memiliki daya atau kekuatan. Akan tetapi masyarakat jawa meyakini bahwa Tuhan memberi wewenang kepada manusia untuk memilih sendiri hari yang dinilai paling baik atau tepat untuk pelaksanaan pernikahan. Konsep hari baik bagi

masyarakat Jawa adalah waktu-waktu tertentu yang dianggap sebagai bentuk usaha untuk mendatangkan kelancaran dan keselamatan dalam melaksanakan pernikahan. beberapa kajian yang mengacu pada tradisi lisan yaitu beranalogi pada sosiolinguistik, psikolinguistik, dan neurolinguistik, istilah yang lebih netral untuk digunakan adalah antropolinguistik (Sibarani, 2004:50).

Berdasarkan ulasan wawancara peneliti kepada salah satu calon temanten masyarakat Jawa di Jombang hingga kini masyarakat di Desa Kesamben Masih lekat dengan tradisi weton tersebut. Penentuan weton sebagai tradisi nenek moyang yang di wariskan turun temurun tidak disertai dengan refleksi secara ilmiah untuk membuktikan kebenaran dari tradisi tersebut, menggambarkan bahwa perilaku masyarakat desa Kesamben adalah tipe tindakan tradisional (Ritzer, 2012:200) yang berorientasi pada nilai, yaitu nilai keselamatan dan keberkahan.

Adapun penelitian terdahulu yang dikemukakan oleh Robert Sirabani yang mengkaji tentang Pendekatan Antropolinguistik Terhadap Kajian Tradisi Lisan yang berfokus pada tentang bagaimana kajian antropolinguistik mampu membedah suatu tradisi lisan dan menghasilkan suatu analisis yang apik dari hubungan keduanya. Dalam pembahasan ada tiga pendekatan utama dalam kajian antropolinguistik yaitu performansi (performance), indeksikalitas (indexicalty), partisipasi (participation), yang terbukti efektif dalam mengkaji hubungan struktur teks, koteks dan konteks (budaya, ideologi, sosial, dan situasi) suatu tradisi lisan yang dilatarbelakangi unsur-unsur budaya dan aspek kehidupan manusia yang berbeda-beda.

Berdasarkan pemaparan pendahuluan di atas, penelitian ini memiliki rumusan masalah sebagai berikut 1) Bagaimana bentuk perhitungan weton dalam pernikahan adat Jawa? 2) Bagaimana makna perhitungan weton dalam pernikahan adat Jawa?

## II. THEORETICAL

### 2.1 Understanding Calculation Weton

Secara harfiah weton memiliki arti hari kelahiran, sedangkan dalam bahasa Jawa weton berasal dari kata Wetu dengan makna keluar atau lahir, lalu kata Wetu diberi imbuhan -an sehingga berubah bentuk dari kata sifat menjadi kata benda (Ranowidjojo, 2009:17). Weton adalah sebuah penggabungan, penyatuan, atau penjumlahan hari lahir seseorang yaitu hari ahad, senin, selasa, dan seterusnya dengan hari pasaran yaitu legi, pahing, pon, dan seterusnya. Perhitungan weton memberikan dampak pada perhitungan baik dan buruk, dan sesuai dengan falsafah masyarakat Jawa yang mengedepankan kesesuaian, keselarasan dan kecocokan. Apabila terdapat ketidakcocokan pada neptu (hitungan pasaran), maka pernikahan tersebut sebaiknya dibatalkan saja untuk mencegah berbagai macam bencana seperti susah rezeki, sakit-sakitan dan ketidakharmonisan dalam rumah tangga, dan dampak lebih jauh lagi ialah mendapatkan pengucilan dari kelompok masyarakat. Perhitungan weton dijadikan sebagai acuan dalam menentukan baik tidaknya suatu hubungan, menentukan jodoh yang baik, dan memilih hari yang baik untuk melaksanakan pernikahan.

### 2.2 Marriage in Perspective Java

Latar belakang sejarah nenek moyang masyarakat Jawa yang merupakan penganut animisme, juga mempengaruhi pandangan mereka tentang pernikahan. Bagi masyarakat Jawa pernikahan tidak hanya dimaknai oleh orang yang masih hidup saja, akan tetapi para leluhur dari pasangan juga memiliki peran. Keluarga yang masih hidup meminta doa restu kepada para leluhur, supaya berkenan memberkati pasangan yang hendak menikah agar mendapatkan kebahagiaan setelah pernikahan sampai pada kekekalan. Dalam perspektif masyarakat Jawa, pernikahan adalah penyatuan dua keluarga dan dianggap sebagai pelestarian tradisi. Selain itu, pernikahan juga memiliki makna simbolis sebagai bentuk doa agar kedua belah pihak mendapatkan yang terbaik.



### 2.3 Definition Form, Meaning, and Function

Menurut KBBI makna adalah pengertian yang diberikan kepada suatu bentuk kebahasaan. Terdapat 3 corak makna yaitu, 1) makna inferensial adalah makna satu kata (lambang) adalah objek, pikiran, gagasan, konsep yang ditunjuk oleh kata tersebut; 2) makna yang menunjukkan arti (significance) merupakan suatu istilah yang dihubungkan dengan konsep-konsep yang lain; 3) makna infensional, merupakan makna yang dimaksud oleh pemakai simbol. Sehingga dapat disimpulkan bahwa makna adalah objek, pikiran, gagasan, konsep yang dirujuk oleh suatu kata yang dihubungkan dengan yang ditunjukan simbol atau lambang.

Bentuk adalah satuan-satuan yang mengandung arti baik berupa gramatikal maupun leksikal. Bentuk-bentuk dalam penelitian ini adalah yang terdapat dalam weton. Sedangkan fungsi adalah hubungan antar satuan dengan unsur-unsur gramatikal, leksikal, fonologis, atau peran sebuah unsur bahasa yang lebih luas. Penelitian ini lebih berfokus pada penyingkapan fungsi perhitungan weton dalam pernikahan saja.

### 2.4 Theory Semiology Ferdinand de Saussure

Teori yang akan digunakan adalah teori Semiologi Ferdinand De Saussure yang mengkaji makna tanda dalam kehidupan sosial manusia yang terbentuk oleh pengaruh sistem atau hukum yang berlaku di dalamnya. Menurut teori Saussure aspek peranan bahasa merupakan hal yang paling disoroti dalam pembentukan dan pelestarian tanda dalam masyarakat. Teori Saussure ini lebih lanjut dikembangkan oleh Roland Barthes melalui teori Semiotika yang menghasilkan dua tanda yaitu denotasi (makna pasti) dan konotasi. Keterkaitan teori tersebut dengan penelitian ini adalah upaya untuk mengetahui makna dari tradisi weton pada pernikahan dengan memanfaatkan pendekatan budaya melalui tanda denotasi yaitu tanda yang paling nyata dan tanda konotasi berhubungan dengan kenyataan atau emosi dari penafsir weton yang memiliki nilai subjek atau intersubjektif dari sebuah kebudayaan. Sedangkan untuk penentuan makna simbolik berhubungan dengan nilai-nilai atau pesan yang terkandung pada proses

pemilihan ataupun penentuan weton untuk pernikahan. Kemudian untuk menyingkap fungsi-fungsi apa saja yang terkandung dalam tradisi weton untuk pernikahan.

### 2.5 Anthropolinguistics

Pemahaman tentang antropolinguistik sebagai ilmu interdisipliner mendapat perhatian dari para pakar antropologi atau pakar linguistik yang mengaitkan hubungan antara bahasa dengan aspek-aspek kehidupan manusia termasuk kebudayaan. Hymes (1964: 277) mendefinisikan antropologi linguistik sebagai studi tentang berbahasa dan bahasa dalam konteks antropologi. Antropolinguistik membedakan proses berbahasa (speech) dari bahasa (language) sebagai bagian dari kajian seluk-beluk kehidupan manusia. Dalam kajian antropolinguistik, proses berbahasa sebagai hakikat bahasa yang berwujud kelisanan dan bahasa itu sendiri sebagai alat berbahasa kedua-duanya menjadi objek kajiannya. Dalam hal ini, perbedaan bahasa sebagai performansi dan bahasa sebagai alat komunikasi menjadi sangat penting.

Sebagai bagian dari performansi komunikasi dan aktivitas sosial, Duranti (1997:2) mendefinisikan antropologi linguistik sebagai ilmu yang mempelajari bahasa sebagai sumber budaya dan yang mempelajari berbahasa atau berbicara sebagai praktik budaya. Hal ini, bahasa (language) dianggap menyimpan kebudayaan sebagai seluk-beluk kehidupan manusia yang paling inti dan berbahasa (speaking) sebagai performansi aktivitas sosial budaya.

## III. METHODS

Jenis penelitian yang digunakan dalam penelitian ini adalah penelitian kualitatif. Penelitian kualitatif adalah penelitian alamiah yang digunakan dalam konteks tertentu untuk menggali dan memahami suatu fenomena atau peristiwa yang sedang dialami oleh subjek penelitian (Herdiansyah, 2020). Penggunaan pendekatan kualitatif ini mempertimbangkan kemungkinan data yang diperoleh di lapangan yang berupa data dalam bentuk fakta yang perlu di analisis secara mendalam. Dalam penelitian

kualitatif, peneliti menjadi instrumen utama dalam pengumpulan data yang berhubungan langsung dengan instrumen atau objek penelitian. Penelitian ini memanfaatkan pendekatan deksriptif kualitatif. Data primer dalam penelitian ini adalah teks yang diindera, seperti nama-nama weton itu sendiri, untuk dianalisis secara linguistik dan budaya. Sedangkan data sekunder dalam penelitian ini diperoleh dari wawancara.

## IV. RESULTS AND DISCUSSION

### 4.1 Determination Weton Marriage

“Apakah pada zaman ini, weton masih digunakan sebagai penentu dalam memilih seorang pasangan?”

DATA 1: *Di daerah saya sendiri hal tersebut masih sangatlah menjadi sesuatu yang memang diharuskan, apalagi jika ada beberapa keluarga yang memang masih sangat menjaga tradisi yang ada. Masyarakat percaya bahwa hal tersebut guna untuk memilih dan menetapkan hari baik/tidak baik dalam calon pengantin itu sendiri. “wawancara Bpk. Huda”.*

Pada dasarnya tradisi yang berkembang dalam suatu masyarakat memang akan terus terjaga ketika para masyarakat yang ada juga terus melestarikan apa yang sudah menjadi tradisi turun-temurun. Weton sendiri menjadi suatu hal yang memang wajib dilakukan pada suatu golongan masyarakat. Weton berarti hari kelahiran sesuai dengan hari Pasaranya. Hari Pasaran Merupakan hari jawa yang terdiri dari 5 hari saja, yakni Kliwon, Legi, Pahing, Pon, dan Wage. Kelima hari tersebut biasa dinamakan dengan hari Pasaran. Dinamakan hari pasaran dikarenakan dahulu mula yang masing-masing nama tersebut digunakan sebagai nama untuk menentukan dibukanya pasar bagi para pedagang, sehingga pada hari ditetapkannya tersebut suatu pasar akan banyak kunjungan pedagang untuk menjual dagangannya, dan sangat ramai pembeli yang berkunjung dan berbelanja dipasar tersebut. Apabila mengungkap dari leluhur pada zaman dahulu, penyebutan nama 5 hari pasaran tersebut diangkat dari nama 5 roh. Adapun nama-nama roh tersebut antara lain: Batara Legi, Batara

Paing, Batara Pon, Batara Wage, dan Batara Kliwon. Kelima roh tersebut merupakan bagian pokok dari jiwa manusia yang sudah menjadi suatu pengetahuan dan keyakinan leluhur orang jawa sejak jaman purbahingga saat ini.

“Apa yang akan terjadi jika kita tidak melakukan perhitungan dengan menggunakan Weton? Apakah akan ada hal buruk atau justru Weton hanya berperan sebagai hal yang belum terbukti kebenarannya?”

DATA 2: *“Secara garis besar begini, setiap masyarakat memiliki kepercayaannya masing-masing. Kita pun tidak bisa memaksakan seseorang untuk ikut dengan apa yang kita percayai, hanya saja dalam kalangan masyarakat jawa memang hal tersebut akan terus berkembang. Jikapun memang dilanggar biasanya akan ada hal-hal yang tidak diinginkan. Tapi hal-hal tersebut dalam masyarakat jawa masih bisa diatasi dengan beberapa cara. Seperti halnya dalam perhitungan jawa jika hasilnya bertemu “25” maka diupayakan untuk tidak dilanjutkan karena ditakutkan banyak hal buruk yang akan terjadi dikemudian hari. Jangan menggunakan hari cuplak (hari ketika putus tali pusar si bayi). Umumnya 5 hari. Misalnya Selasa pon (Rabu, Kamis, Jum at, Sabtu, Minggu) hari Minggu ini tidak boleh dipakai untuk pernikahan karena hari Minggu ini adalah hari cuplak. Lalu kalo tidak tahu hari cuplak ya diperkirakan 5 hari Sampai 1 Minggu. Kedua mempelai tidak boleh menggunakan hari cuplak ya. Setiap daerah itu hitungannya berbeda-beda. Misalnya di tulungagung tidak boleh memakai geblak bapaknya (hari kematian bapaknya).*

Pada data (2), dijabarkan bahwa pro dan kontra yang terjadi dalam lingkup masyarakat akan timbul pada saat penentuan Weton tersebut. Pada dasarnya kepercayaan pada diri manusia sangatlah sulit dihilangkan, apalagi jika kepercayaan tersebut telah menjadi budaya turun temurun. Pada penentuan Weton pernikahan dijabarkan bahwa perhitungan tersebut tidak selalu menghasilkan hal yang baik. Dalam adat

Jawa, terdapat beberapa larangan. Ada keyakinan orang apabila memiliki weton dan neptu tertentu tidak boleh sembarangan menikah. Karena apabila memaksakan kehendaknya akan berdampak buruk di dalam rumah tangganya. Berdasarkan Primbon Jawa terdapat beberapa pasangan weton yang pantangan menikah karena memiliki watak dan karakter yang sulit untuk disatukan.

Kedua pemilik weton itu pada dasarnya memiliki kepribadian yang bertolak belakang. Ibaratnya weton Wage adalah minyak dan weton Pahing adalah air. Jika keduanya disatukan maka sulit untuk menyatu. Apabila kedua weton ini tetap memutuskan untuk menikah maka kemungkinan kehidupan rumah tangganya tidak harmonis, dipenuhi konflik, perselisihan dan mungkin juga berakhir dengan perceraian. Selain weton, soal jodoh, nikah dan banyak hal lain bagi orang-orang yang percaya dengan primbon dapat dihitung dari neptu. Neptu adalah nilai angka dari satu weton dengan menjumlahkannya berdasarkan hari pasaran. Nilai neptu berkisar antara 7 hingga 18. Bagi pasangan yang angka neptunya apabila dijumlahkan menjadi 25 maka harus hati-hati. Bahwa itu bukan pertanda baik. Orang-orang yang percaya dengan hitungan ini menyarankan agar perlahan menjauh. Pasangan dengan neptu 25 diyakini merupakan salah satu dari pasangan yang tidak dianjurkan menikah. Hal ini karena, pasangan itu nanti kurang mendapatkan keberuntungan dalam rumah tangga. Hitungan weton bagi calon mempelai yang akan melangsungkan pernikahan yaitu menyangkut keserasian calon mempelai dalam membangun rumah tangga.

#### 4.2 Meaning of Petung Weton

##### a. Pegat (Divorced)

Pasangan yang hasil perhitungannya pegat akan menghadapi masalah yang berujung pada perceraian yang disebabkan oleh faktor ekonomi maupun perselingkuhan yang kemungkinan besar dapat menyebabkan perceraian. Pegat bukan hasil perhitungan yang baik. Weton ini banyak dihindari dikarenakan kemungkinan terburuk dalam perkawinan yang akan dijalani yaitu cerai. Kalau pasangan yang weton nya jatuh di pegat ada

sisanya empat dalam hitungan jawa yaitu sandang, pangan, papan, lara. Cara mengatasi perkawinan yang jatuh pegat, ada beberapa unsur yaitu sanggar waringin, lembu katiup angin, dan bumi kapetak. Sebelum melakukan pernikahan hindari hitungan tentang tibo wangke atau jatuh buntel mayit, jangan mengikuti nagahari yaitu cara pemasangan tenda (tarup). Solusinya ialah diwajibkan untuk memperbanyak berbagi kepada anak yatim piatu dan juga janda-janda jompo. Semua ketetapan hanya milik Allah, semua Allah yang menentukan. Pasangan yang hasil weton nya mendapat pegat usahakan untuk memperbanyak ikhtiar dan berdoa.

##### b. Ratu (Queen)

Sesuai dengan namanya, pasangan yang hasilnya ratu berarti pasangan ini akan hidup seperti seorang ratu atau diratukan dengan harta dan hidup harmonis, pasalnya pada pasangan ini sudah ditakdirkan untuk berjodoh sehingga disegani, dan dihargai oleh masyarakat. Pasangan ini juga membuat iri sebagian orang karena rumah tangga yang dibangunnya begitu damai. Hitungan weton ratu ini merupakan satuan yang istimewa, karena secara hitungan bagus. Weton ini merupakan salah satu hitungan jodoh yang paling bagus diantara hitungan weton yang lainnya. Dimana pasangan yang memperoleh hasil hitungan ratu ini merupakan jodoh sejati.

##### c. Jodho (Partner)

Jodoh artinya pasangan ini dipercaya dapat membangun rumah tangga yang harmonis hingga akhir hayat dimana hasil dari jodoh ini menunjukkan kesamaan yang dimiliki pada pasangan dan sudah ditakdirkan untuk berjodoh, pasangan yang mendapat hitungan ini dapat saling menerima kelebihan serta kekurangan pasangan. Bagi masyarakat jawa, weton jodoh ini dipercaya memberikan gambaran kecocokan pada pasangan yang akan berencana untuk melangsungkan pernikahan. Perhitungan dari weton jodoh ini meramalkan dua insan yang akan bersatu. Weton ini merupakan hasil hitung yang baik untuk pasangan yang mendapatkan perhitungan jodoh.

#### d. *Topo (Problem)*

Pada hitungan topo ini kehidupan awal rumah tangga yang dibina akan menemui banyak masalah, akan tetapi seiring dengan berjalannya waktu dan selama pasangan tersebut bisa bertahan rumah tangganya akan berjalan baik-baik saja dan harmonis, masalah yang dihadapi oleh pasangan ini disebabkan oleh beberapa faktor salah satunya ialah ekonomi, namun ketika pasangan ini sudah memiliki keturunan dan lamanya berkeluarga akan membuat kehidupannya berakhir bahagia. Pasangan yang jatuhnya di tibo topo banyak prihatin, banyak menghadapi cobaan, dan godaan. Pasangan yang tidak mampu untuk melewati permasalahan seperti banyaknya cobaan dan godaan yang terjadi di awal pernikahannya bisa cerai, namun sebaliknya. Pasangan yang perhitungannya jatuh pada topo harus tau bagaimana cara menyikapi permasalahan yang terjadi di dalam rumah tangganya.

#### e. *Tinari (Happy)*

Perhitungan hasil tinari ini pasangan ditafsirkan akan hidup bahagia dengan kondisi keuangan yang berkecukupan yang membawa hidupnya untuk mencapai sebuah kebahagiaan serta diberikan kemudahan dalam mencari rezeki dan hidup yang dijalani oleh pasangan ini tidak mengalami suatu kesulitan dan keluarga yang dibangunnya pun harmonis. Weton yang jatuh pada perhitungan tinari ini hasil dari perpaduan weton jodoh. Pasangan yang mendapat weton ini dipercaya hidupnya akan selalu diselimuti oleh keberuntungan. Masyarakat jawa beranggapan bahwa weton tinari lebih baik daripada weton jodoh. Menurut primbon jawa kesuksesan pasangan di kemudian hari dapat ditentukan menggunakan salah satu bagian dari pedoman neptu, yaitu Tinari.

#### f. *Padu (Quarrel)*

Kehidupan rumah tangga pada hasil perhitungan padu ini akan sering terjadi pertengkaran atau cekcok. Ada kemungkinan pasangan dengan hasil padu ini dapat berpisah, namun hal tersebut tergantung pada pasangan pengantin dalam menghadpinya, karena pemicu dari pertengkaran ini hanyalah suatu masalah sepele. Masyarakat

jawa percaya jika pasangan yang mendapat hitungan weton ini akan selalu cek-cok. Pasangan yang mendapat weton padu ini dinilai tidak cocok. Hal tersebut dapat dihindari dengan melakukan ruwatan atau memilih hari pernikahan khusus dan tertentu. Cara tersebut dipercayai dapat meminimalkan kesialan yang dapat terjadi dikemudian hari akibat ketidakcocokan weton pasangan.

#### g. *Sujanan (Affair)*

Sujanan memiliki makna yang mirip dengan padu. Dalam kehidupan rumah tangga sujanan ini pasangan pengantin akan mengalami masalah dengan perselingkuhan maupun pertengkaran, hal tersebut dapat disebabkan dari pihak laki-laki yang berselingkuh maupun dari pihak perempuan yang memicu perselingkuhan dalam keluarga yang dibinanya tersebut. Weton ini sangat dihindari oleh pasangan yang mendapat perhitungan jodoh sujanan, banyak masyarakat jawa yang memilih untuk tidak melanjutkan pernikahan akibat weton yang didapat memiliki makna yang tidak bagus. Masyarakat jawa percaya bahwa weton sujanan ini dapat mengandaskan rumah tangga yang dibina.

#### h. *Pesthi (Harmonious)*

Pesthi yaitu keluarga yang Sakinah, Mawadah, dan Warohmah. Kehidupan rumah tangga dari perhitungan pesthi ini nantinya akan selalu aman, damai, dan tentram serta rukun sampai tua. Meskipun di dalam rumah tangga terdapat suatu masalah namun hal tersebut tidak menjadikan rusaknya keharmonisan yang ada pada rumah tangganya. Hitungan jawa ini menurut masyarakat jawa yang agamis adalah yang terbaik karena kebahagiaan yang tercipta oleh pasangan bukan hanya di dunia saja, namun juga diakhirat. Pasangan yang mendapat hitungan jawa pesthi diyakini hidupnya akan harmonis. Masyarakat jawa banyak menginginkan hitungan jumlah weton yang didapaknya pesthi karena ingin membangun rumah tangga yang harmoni.

## V. CONCLUSION

Dari pembahasan di atas dapat ditarik simpulan bahwa antropinguistik mengkaji tradisi dalam beberapa tahapan. Tahapan yang dipaparkan di

tekanan pada pengkajian dalam perhitungan Petung Weton Pernikahan adat Jawa. Terdapat makna leksikal dalam perhitungan weton, yakni pegat adalah cerai atau berpisah, ratu adalah pasangan akan disegani, jodoh adalah pasangan akan rukun karena cocok/berjodoh, topo adalah pasangan akan sering mengalami kesusahan di awal tapi akan bahagia pada akhirnya, tinari adalah pasangan akan dipenuhi kebahagiaan, padu adalah pasangan akan sering terjadi perkelahian, sujanan adalah pasangan akan mengalami pertengkaran dan perselingkuhan, dan pesthi adalah pasangan akan rukun, tentram, damai sampai tua. Selain itu terdapat hari-hari pantangan atau dihindari dalam weton, yakni hari cuplak (Hari ketika putusnya tali pusar si bayi), Na'as tahun (Hari tidak baik), Tali wangke (Hari yang dinyatakan baik untuk mengikat segala jenis benda yang berhubungan dengan benda mati), Na'as nabi, Tragal tanggal, Na'as dino, Tanggal kosong (Selasa wage, Rabu wage, Kamis pon, Sabtu kliwon, dan Minggu pahing).

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**LAMPIRAN**

**TABEL HARI, PASARAN DAN NEPTU**

HARI	NEPTU	PASARAN	NEPTU
MINGGU	5	LEGI	5
SENIN	4	PAHING	9
SELASA	3	PON	7
RABU	7	WAGE	4
KAMIS	8	KLIWON	8
JUMAT	6		
SABTU	9		

TABEL HASIL PENJUMLAHAN WETON							intisari Smart and Inspiring
1	PEGAT	10	RATU	19	JODOH	28	TOPO
2	RATU	11	JODOH	20	TOPO	29	TINARI
3	JODOH	12	TOPO	21	TINARI	30	PADU
4	TOPO	13	TINARI	22	PADU	31	SUJANAN
5	TINARI	14	PADU	23	SUJANAN	32	PESTHI
6	PADU	15	SUJANAN	24	PESTHI	33	PEGAT
7	SUJANAN	16	PESTHI	25	PEGAT	34	RATU
8	PESTHI	17	PEGAT	26	RATU	35	JODOH
9	PEGAT	18	RATU	27	JODOH	36	TOPO

### Hitungan weton jodoh dan artinya

1 dan 1 Baik dan dikasihi	3 dan 3 Miskin	6 dan 6 Besar halangannya
1 dan 2 Baik	3 dan 4 Banyak bahayanya	6 dan 7 Rukun
1 dan 3 Kuat, jauh rizki	3 dan 5 Cepat Bercerai	6 dan 8 Banyak musuh
1 dan 4 Banyak bahayanya	3 dan 6 Mendapat anugrah	6 dan 9 Terombang ambing
1 dan 5 Cerai	3 dan 7 Banyak kesialannya	7 dan 7 Penghianatan
1 dan 6 Jauh dari kemakmuran	3 dan 8 Cepat meninggal salah satu	7 dan 8 Mendapat bahaya dari diri sendiri
1 dan 7 Banyak musuh	3 dan 9 Banyak rizki	7 dan 9 Tulus pernikahannya
1 dan 8 Terombang ambing	4 dan 4 Sering sakit	8 dan 8 Disayangi orang
1 dan 9 Menjadi beban	4 dan 5 Banyak rencananya	8 dan 9 Banyak kesialannya
2 dan 2 Selamat, banyak rizki	4 dan 6 Banyak rizki	
2 dan 3 Miskin	4 dan 7 Miskin	<b>1. Genthos (Susah punya anak).</b>
2 dan 4 Banyak cobaan	4 dan 8 Banyak halangannya	<b>2. Gembili (Banyak anak).</b>
2 dan 5 Banyak bahayanya	4 dan 9 Kalah Satu	<b>3. Sri (Banyak rizki).</b>
2 dan 6 Cepat kaya	5 dan 5 Beruntung terus	<b>4. Punggel (Meninggal salah satu).</b>
2 dan 7 Anaknya banyak yg meninggal	5 dan 6 Tersedia rizkinya	
2 dan 8 Tersedia rizkinya	5 dan 7 Tercukupi, makmur	
2 dan 9 Banyak rizkinya	5 dan 8 Banyak kendala	
	5 dan 9 Makmur	

NEPTU KETEMU 25						
Selasa Wage	7	18	Sabtu Pahing			
Selasa Legi	8	17	Sabtu Kliwon	Kamis Pahing		
Senin Wage	8	17	Sabtu Kliwon	Kamis Pahing		
Minggu Wage	9	16	Sabtu Pon	Rabu Pahing	Kamis Kliwon	
Senin Legi	9	16	Sabtu Pon	Rabu Pahing	Kamis Kliwon	
Jumat Wage	10	15	Rabu Kliwon	Jumat Pahing	Kamis Pon	
Minggu Legi	10	15	Rabu Kliwon	Jumat Pahing	Kamis Pon	
Selasa Pon	10	15	Rabu Kliwon	Jumat Pahing	Kamis Pon	
Senin Pon	11	14	Minggu Pahing	Rabu Pon	Jumat Kliwon	Sabtu Legi
Rabu Wage	11	14	Minggu Pahing	Rabu Pon	Jumat Kliwon	Sabtu Legi
Jumat Legi	11	14	Minggu Pahing	Rabu Pon	Jumat Kliwon	Sabtu Legi
Selasa Kliwon	11	14	Minggu Pahing	Rabu Pon	Jumat Kliwon	Sabtu Legi
Senin Kliwon	12	13	Kamis Legi	Senin Pahing	Jumat Pon	Sabtu Wage
Minggu Pon	12	13	Kamis Legi	Senin Pahing	Jumat Pon	Sabtu Wage
Rabu Wage	12	13	Kamis Legi	Senin Pahing	Jumat Pon	Sabtu Wage
Selasa Pahing	12	13	Kamis Legi	Senin Pahing	Jumat Pon	Sabtu Wage
Kamis Wage	12	13	Kamis Legi	Senin Pahing	Jumat Pon	Sabtu Wage

<p><b>Rabu Legi = 7 + 5 = 12</b></p> <p><b>Senin Pon = 4 + 7 = 11</b></p> <hr style="width: 50%; margin-left: 0;"/> <p style="text-align: right; margin-right: 10px;"><b>23</b></p>	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">1. PEGAT.</td> <td style="width: 50%;">19. JODOH.</td> </tr> <tr> <td>2. RATU.</td> <td>20. TOPO.</td> </tr> <tr> <td>3. JODOH.</td> <td>21. TINARI.</td> </tr> <tr> <td>4. TOPO.</td> <td>22. PADU.</td> </tr> <tr> <td>5. TINARI.</td> <td>23. <b>SUJANAN.</b></td> </tr> <tr> <td>6. PADU.</td> <td>24. PESTHI.</td> </tr> <tr> <td>7. SUJANAN.</td> <td>25. PEGAT.</td> </tr> <tr> <td>8. PESTHI.</td> <td>26. RATU.</td> </tr> <tr> <td>9. PEGAT.</td> <td>27. JODOH.</td> </tr> <tr> <td>10. RATU.</td> <td>28. TOPO.</td> </tr> <tr> <td>11. JODOH.</td> <td>29. TINARI.</td> </tr> <tr> <td>12. TOPO.</td> <td>30. PADU.</td> </tr> <tr> <td>13. TINARI.</td> <td>31. SUJANAN.</td> </tr> <tr> <td>14. PADU.</td> <td>32. PESTHI.</td> </tr> <tr> <td>15. SUJANAN.</td> <td>33. PEGAT.</td> </tr> <tr> <td>16. PESTHI.</td> <td>34. RATU.</td> </tr> <tr> <td>17. PEGAT.</td> <td>35. JODOH.</td> </tr> <tr> <td>18. RATU.</td> <td>36. TOPO.</td> </tr> </table>	1. PEGAT.	19. JODOH.	2. RATU.	20. TOPO.	3. JODOH.	21. TINARI.	4. TOPO.	22. PADU.	5. TINARI.	23. <b>SUJANAN.</b>	6. PADU.	24. PESTHI.	7. SUJANAN.	25. PEGAT.	8. PESTHI.	26. RATU.	9. PEGAT.	27. JODOH.	10. RATU.	28. TOPO.	11. JODOH.	29. TINARI.	12. TOPO.	30. PADU.	13. TINARI.	31. SUJANAN.	14. PADU.	32. PESTHI.	15. SUJANAN.	33. PEGAT.	16. PESTHI.	34. RATU.	17. PEGAT.	35. JODOH.	18. RATU.	36. TOPO.
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### HASIL WAWANCARA

Sesuai hasil wawancara pada bapak Huda selaku masyarakat yang masih mempercayai perhitungan weton, mereka melakukan perhitungan weton ini melalui orang yang dipercayai dapat melakukan perhitungan weton. Menurut bapak Huda perhitungan weton ini artinya tradisi keluarga yang semenjak dulu dilakukan ketika akan menikahkan anaknya, tetapi bapak Huda mempercayai hitungan weton

ini bukan menjadi syarat primer dalam menikahkan anaknya melainkan hanya antisipasi saja. Jadi waktu yang akan terjadi perhitungan weton anaknya tersebut tidak baik atau jelek buat masa depannya,

Nama narasumber :	Huda
Usia	52 Tahun
Waktu wawancara :	19 oktober , 2023 Pukul : 10.00 WIB
Tempat :	Keras, Jombang

*Pertanyaan: Kira-kira, dalam hal apa saja weton di gunakan ?*

Jawaban: Weton biasanya digunakan dalam menentukan hal-hal baik seperti dalam pernikahan, pertunangan, bahkan mencakup keberuntungan manusia. Namun, walaupun nyatanya bisa kita hitung sendiri, tetapi tetap saja yang faham adalah dukun-dukun yang ada.

*Pertanyaan: Bagaimana cara menghitung weton*

Jawaban: weton dihitung berdasarkan jumlah perhitungan antara diri sendiri dan pasangan. Perhitungan dilakukan berdasarkan jumlah neptu dan pasaran yang ada. Jumlah yang didapatkan nantilah yang akan diperhitungkan apakah akan mendapatkan hal baik atau malah justru sebaliknya.

*Pertanyaan: Apakah weton perlu dilakukan/ dilaksanaknkan ?*

Jawaban : weton sendiri merupakan suatu tradisi yang memang sudah ada sejak turun temurun, tak heran jika pada perkembangan zaman seperti ini banyak manusia yang mulai meninggalkannya. Maka dari itu, semua kembali ke diri masing-masing, apakah akan masih berpatokan pada apa yang sudah ada atau justru punya keyakinan lain dalam menentukan nasib baik dan buruk manusia.

*Pertanyaan: Bagaimana jika ada pasangan yang terkendala oleh weton ?*

Jawaban: beberapa hal yang memang dilarang dalam pernikahan Jawa memang sudah tertulis jelas adanya. Contoh kecil seperti jumlah weton yang berjumlah 25, maka kedua calon di larang untuk melanjutkan ke jenjang yang lebih serius, jikalauupun masih mau melanjutkan, maka ada beberapa persyaratan yang memang harus diwajibkan dilakukan oleh para calon mempelai.

Hal tersebut menjadi persyaratan wajib agar hidup yang mereka jalani mendapatkan berkah yang baik pula, contoh lain juga jika rumah calon mempelai berhadap-hadapan, hal tersebut juga dinilai akan membawa dampak buruk yang akan terjadi jika pernikahan tersebut tetap dilanjutkan.

*Pertanyaan: Apa tujuan weton bagi masyarakat Jawa ?*

Jawaban: weton sendiri memiliki tujuan sebagai salah satu pedoman hidup bagi masyarakat yang khususnya Kejawen dan masih memegang erat kepercayaan atas nilai leluhur.

*Pertanyaan: Adalah dampak jika kita tidak melaksanakan tradisi weton dalam adat Jawa ?*

Jawaban: seperti yang sudah saya sampaikan tadi, semua itu kini kembali kepada masyarakat atau orang yang bersangkutan, karena pada dasarnya setiap dari kita mempunyai kepercayaan dan pedoman hidup yang telah tertanam dalam diri sendiri. Jika dari awal kepercayaan atas weton telah ditanamkan maka tidak menutup kemungkinan bahwa hal-hal buruk yang datang bersumber dari hasil weton yang ditantang atau tidak dilaksanakan tadi di awal.





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# Moroccan Theatre Building the Nation

*Zakariyae Nabih*

## ABSTRACT

This article is about narrating the nation in the Moroccan theater. Nation is hard to define and some say it did not exist in the past because of brute force. For me, the intellectually-advanced Islamic Spain emerges as an intercultural, luminary beacon and constitutes a nation. Individuals, nowadays, make the nation by writing about things that truly matter. These individuals have things in common but coloniality made de-territorialization extremely hard. We do not live in imagined communities, but we narrate the nation by theater with a common cause, and transfer to posterity folklore as heirloom, which aims at preservation of Moroccan culture from historical erasure. Specifically, I will try to talk about how the Moroccan theater began through al-halka, al-bssat, sayid alkatfii; sultan al-Talba, Ebidat Erma; al-Maddahun; Munshidoo al-Mawloudia and finally Boujeloud. In the modern sense of the word, the Moroccan theater emerges as narration with its visual effects and stories that tell the Other our shared identity and sense of national belonging, making them live with us in imagined communities, helping us to define and redefine ourselves constantly in what is known as “becoming,” with the contingency of historical continuation and preservation of difference. I will try to sketch a brief history of the notion of nation and relate it to Moroccan theater. Then, I shall delve into analysis of some aspects of Moroccan theater in Morocco that help constitute the modern nation, by blending past and present with a springboard towards the future, and/or consent. I chose to talk about the inception of Moroccan theater because it is grounded in history.

*Keywords:* nation, narration, morocco, theater, inception, aspects.

*Classification:* LCC Code: PN3171

*Language:* English



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Renan (*I will try to debunk his ideas*); Homi Bhabha’s book *Nation and Narration* (1990) and the book by Mohamed Adib el Slaoui, *al-Massrah al-Maghribii: al-Bidaya wa al-imtidad* (1996).

**Keywords:** nation, narration, morocco, theater, inception, aspects.

## I. INTRODUCTION

Before I discuss the Moroccan theater, its forms and aspects, I want to share a few thoughts on what is a nation with major theorists in the field. First, it does not entail race or language, or religion. Islamic Spain understood that early on in history, which makes her a nation par excellence in the modern sense of the word. It understood this early on in the Middle Ages, and laid the grounds for the Italian Renaissance; and later on, to the Enlightenment ideals in the spirit of what is called *entente* or *convivencia*.

Nation exists in Moroccan theater. The inception of the Moroccan theater, its aspects and the narration strategies it uses to construct or build the nation will be discussed here. Before that, I will dwell a little bit on the notion itself. What does nation signify? Can it be defined? Does it exist in narratives? Is it new? What makes a nation? Politics? Ideology? Does it have a past? A future? What does it mean to have consent? A warm heart and mind? Besides, is it mythic? Imagined? Or real and aligns with memory and history? The central question which this presentation grapples with is how does Moroccan theater narrate the nation? By showcasing some aspects of Moroccan theater in its nascent, unfledged form, I aim to revisit the Moroccan theater in its early inception.

Homi Bhabha states that to write the story of the western nation demands that we articulate that archaic ambivalence that informs modernity. Questioning the progressive metaphor of modern

social cohesion is needed.<sup>1</sup> Two accounts hold here, which are representing the diametrically opposed world views of master and slave which “between them account for the major historical and philosophical dialectic of modern times.” John Barrell sees that the “positions open to an equally wide survey and demonstrates how the demand for a holistic, representative vision of society could only be represented in a discourse that was at the same time obsessively fixed upon, and uncertain of, the boundaries of society, and the margins of the text.”<sup>2</sup>

According to my knowledge, Homi Bhabha talks about the splitting of the nation and its ambivalent modalities/characteristics. Splitting the nation in terms of writing means that the temporality of the nation that can be understood/felt/lived in the third space of enunciation, that uncertain grey zone. For him, there is no locality to the nation in history but lies within the space of the present perfect. Moving in time and space, as an emigre does, splitting the nation in terms of writing happens and examples are many in this respect, Hanif Kureishi’s *The Black Album* is one such example. The time of nation for him is not linear or horizontal but contemporaneous, hence the diasporic seventh man, the émigré. He finds himself hurled into this splitted space of the nation as if lost in the ambivalence of time.

Specifically, Bhabha talks about the time of the nation, stating that the Western nation is as obscure as ubiquitous. Its form lives in the locality of culture. The locality of culture, for him, is only a temporal dure lived by what John Berger calls the diasporic seventh man, the times for gatherings as well as emergence for Bhabha. This state of ambivalent in-betweenness can be defined, in the diasporic space, as a form of “living more complex from country; less patriotic than *patrie*, more mythological than ideology, less centered than the citizen, more hybrid in the articulation of cultural differences and identifications—gender, race or class—than can be

presented in any hierarchal or binary structuring of social antagonism.”<sup>3</sup>

It is the mark of the ambivalence of the nation as a narrative strategy—and an apparatus of power—that it produces a continual slippage into analogous, even metonymic, categories, like the people, minorities, or ‘cultural difference’ that continually overlap in the act of writing the nation. What is displayed in this displacement and repetition of terms is the nation as the measure of the liminality of cultural modernity.<sup>4</sup>

In this liminal space, the émigré becomes a stranger to one’s own country, language, sex and identity.<sup>5</sup> Which brings about the question of nation as metaphor which Said describes as a secular act of interpretation. The nation as metaphor is “to take account of this horizontal, secular space of the crowded spectacle of the modern nation ... implies that no single explanation sending one back immediately to a single origin is adequate.<sup>6</sup> Their metaphoric movement, Bhabha suggests, requires a kind of doubleness in writing or “a temporality of representation that moves between cultural formations and social processes without a ‘centered’ casual logic.”<sup>7</sup>

Partha Chatterjee sees that to assert its sovereignty, as the universal ideal, Nationalism needs its others, “if it could ever actualize itself in the real world as the truly universal, it would in fact destroy itself.”<sup>8</sup> The cultural shreds and patches used by nationalism are often “arbitrary historical inventions. Any old shred would have served as well. But in no way does it follow that the principle of nationalism is itself accidental.”<sup>9</sup>

<sup>3</sup> Ibid., p. 292.

<sup>4</sup> Ibid.

<sup>5</sup> J. Kristeva, “A New Type of Intellectual: The Dissident, in Toril Moi (ed), *The Kristeva Reader* (Oxford: Blackwell, 1986), p. 298.

<sup>6</sup> Bhabha, “DissemiNation: Time, Narrative, and the Margins of the Modern Nation,” in *Nation and Narration*, p. 293.

<sup>7</sup> Ibid., p. 293.

<sup>8</sup> P. Chatterjee, *Nationalist Thought and the colonial World: A Derivative Discourse* (London: Zed, 1986).

<sup>9</sup> E. Gellner, *Nations and Nationalism* (Oxford: Basil Blackwell, 1983), p. 56.

<sup>1</sup> Bhabha, “DissemiNation: Time, Narrative, and the Margins of the Modern Nation,” in *Nation and Narration*, p. 294.

<sup>2</sup> Ibid., p. 296.

The other is not the double, but acts almost as an ambivalent twin laden with racial undertones and

The transgressive, invasive structures of the Black 'national' text, which thrives on rhetorical strategies of hybridity, deformation, masking, and inversion is developed through an extended analogy with the guerrilla warfare that became a way of life for the marron communities of runaway slaves and fugitives who lived dangerously, and insubordinately 'on the frontiers or margins of all American promise, profit and modes of production.'<sup>10</sup>

Both gentleman and slave, with different cultural means and to very different historical ends, demonstrate that forces of social authority and subalternity may emerge as displaced, even decentered strategies of signification ... indeed the exercise of power may be both more politically effective and psychically affective because their discursive liminality may provide greater scope for strategic maneuver and negotiation.<sup>11</sup> We then have a contested cultural territory where the people must be thought in a double-time; the people are the historical 'objects' of a nationalist pedagogy, giving the discourse an authority that is based on the pre-given or constituted historical origin or event, the people are also the 'subjects' of a process of signification that must erase any prior or originality presence of the nation-people to demonstrate the prodigious, living principle of the people as that continual process by which the national life is redeemed and signified as a repeating and reproduction process.<sup>12</sup>

It is very bold to state that Egypt and China were not nations. Such is the thought of a French Orientalist, Ernest Renan. He avows that nations are new to history: They were flocks led by a son of the sun or by a son of heaven. Such are his secular and mythological thoughts on nation, highlighting its mythological aspect in the past. For him, it did not exist in time immemorial, because of the use of brute force and the lack of a secular, enlightening alternative, but the

precursor Islamic Spain or Al-Andalus helped the West progress and constituted a fair polity. For Renan, then, force does not make a nation. Nor does force, language or religion, or any unifying force or fixity of meaning. Even though philosophers such as Max Weber stress that the most important aspect of power is violence, I think that in today's time power should be understood as a social relation, not as a repressive force leveled at bodies from a high, Ivory tower. Viewed in this light, one ought to analyze deeply the relations and practices of everyday life in what they are encountering and facing, in what oppresses them and in what they aspire to.

Frontiers are articulations, boundaries, are constitutively crossed and transgressed. It is across such boundaries, both historical and pedagogical, that Martin Tom places Renan's celebrated essay "What is a nation?"<sup>13</sup>

Renan avers that to depend on ethnographic analysis alone is to surrender the nation to a chimera, a mythic creature. A Frenchman/woman cannot call themselves a Gaul; a Frank or a Burgundian in today's history because that would entail the purity of race and hauteur. Rather, a nation, which I like a great deal, should never stop defining and redefining itself. It is in Bhabha "becoming" that nations, like narratives, lose their origins in the myth of time and only fully realize their horizons in the mind's eye. It is in becoming that a man and a woman can build the nation.

In the past, which Renan calls "classical antiquity," Republics, municipal kingdoms, confederations of local republics and Empires existed.<sup>14</sup> Though Athens was patriotic; Gaul a clan before the Roman invasion, they were not nations per se. Nor was the Empire of Alexander the Great a *patrie* either.

Though the purity of blood persists, no nation can trace its origins back because that would entail racist undertones. Sometimes it is positive in the case of the Granadinos who were forced to leave

<sup>10</sup> Bhabha, "DissemiNation: Time, Narrative, and the Margins of the Modern Nation," in *Nation and Narration*, p. 269.

<sup>11</sup> *Ibid.*, pp. 296-297.

<sup>12</sup> *Ibid.*, p. 297.

<sup>13</sup> Homi Bhabha, Introduction, *Nation and Narration* (London: Routledge, 1990), p. 5.

<sup>14</sup> Ernest Renan, "What is A Nation?," *Nation and Narration* (London: Routledge, 1990), p. 19.

their rightful homes in Islamic Spain. Here the Moorish identity should be brought to light as the place has spirituality in the heart and mind of Muslims. Nowadays, racial slurs and epithets extend from the past to the present against Arab peoples. But the case of Islamic Spain is an example of the rare and positive concept of descent, which is highlighted in *Necklace and Pomegranates* (2024).

To debunk western stereotyped images, the Moor emerges as a noble and brave persona: Sayfudeen narrates the loss of his great nation through memory but highlights the bravery and chivalry of the Moor: "Gibraltar means Jabal Tariq. It was here where the Berber chieftain, Tariq ibn Zayad, landed his warriors. Having burned all the vessels, he addressed his men, "The sea is behind you and the foe is in front of you."<sup>15</sup> The stress on the place and the endless chain of signification entails revisiting this enriching past in memory.

According to Benedict Anderson, nation is "large cultural systems" that came to being by replacing tight-held political ideologies, which has their own history<sup>16</sup>, different from ours. In this novel, I think that borders are fluid imaginatively speaking. Anderson views space and time in the modern nation as an extension of narrative culture in the realist novel. Post-imperial racism "infests the febrile, neo-romantic poetry."<sup>17</sup> The memory of an Islamic Spain, however, persists as the protagonist, Sayfudin, was born at sea, in a no-man's land, between Gibraltar and Spain, but sometimes the claim of descent is negative as Nazi Germany; Vichy France and Fascist Italy, and Inquisitorial Spain before that persecuted the Other relentlessly on racial grounds. Nation's narrator's antagonistic and ambivalent perspective leads to the establishment of the cultural boundaries which are pregnant with meaning(s) that must be crossed, erased and translated while attempting to produce culture.<sup>18</sup>

<sup>15</sup> Khalid Bekkaoui, *Necklace and Pomegranates* (Fez: Al Mawsoua, 2024), p., 15.

<sup>16</sup> Patrick Wright's *On Living in an Old Country* (London: Hutchinson, 1987) are significant recent contributions to such approach.

<sup>17</sup> Bhabha, Introduction, *Nation and Narration*, p.2.

<sup>18</sup> Ibid. ,p 4.

Still, power and cultural authority emerge as the irreducible excess of the syntactic over the semantic."<sup>19</sup>

What I like most about Renan's lecture in the Sorbonne is that the nation should be felt in the mind and heart. It sounds poetic, but it is not chauvinistic at least. Only poetical, which is accepted. For Renan, soul and spirituality constitute the nation, It is a common possession of a rich legacy of memories, and present-day consent; the desire to live together; the will to preserve the cultural heritage, its values that ancestors passed down as heirlooms unto us, in an undivided form. Nation, then, is a shared history and a future consent.

In the past, race was the common unifying marker. The sign of Sparta, Athens and some Arab tribes was race. With the Roman invasion, however, race was diluted as it came to be seen as a "great agglomeration of cities and provinces different from each other."<sup>20</sup>

Even frontier changes during the Middle Ages were not based on ethnographic divisions, the best case being Islamic Spain or Andalousia. Nation does not mean race, but a common desire to live together and a future consent: "The primordial right of races is as perilous for genuine progress as the national principle is just and legitimate."<sup>21</sup> In this way, difference insulates the dominance of race. Nation has a logical sentimentality to it as it is both soul and body, and wit if I may add.

Why not grant separation to those most recalcitrant to the idea of nation, on condition that in that self same separation, work should be done to unite, building and rebuilding the *patrie* constantly and practically. Two opposites working hand-in-hand to build the nation for it is in the debilitating dichotomies that the sources of all evil existed.

A nation, therefore, should share nothing and everything. Synthesis should hold so as to disrupt

<sup>19</sup> J. Derrida, *Dissemination* (Chicago: Chicago UP, 1981), p. 221.

<sup>20</sup> Renan, "What is A Nation?," pp. 13-14.

<sup>21</sup> Renan, "What is a Nation?," p. 13.

all the fixities that hamper the builders of culture, man and woman. Let us break asunder all disparities so as the nation could emerge as a “large-scale solidarity, constituted by the feeling of the sacrifices that are made and those that are yet to come in the future. It presupposes a past residing in the present by a tangible fact, consent, which would lead to the future, and the clearly expressed desire to continue a common life.”<sup>22</sup>

## II. HOW MOROCCAN THEATRE STARTED

Now let us discuss the Moroccan theater in relation to the nation. In the modern sense of the word, to write about a nation, for a nation is narration<sup>23</sup>, is to deal with serious matters that mean so much to culture, which is made by man and woman. There has to be an entente to write about the nation in the theater, which is my prime focus today. These writers should have a common national cause: The Moroccan theater is one such example. Here are some aspects and characteristics that are peculiar to it.

In Morocco, the inception of theater, as a European form, began in the second half of the 20th century with playwrights such as Mohamed el Quorri; Mohamed el Hadad; Abd elKhaliq Torris; Ahmed Tayib el Aleg; Tayib Seddiqi; Nabil Lahlou; Abd el Khalek Zerouali and others.

As an image, however, it dates back to the Alaouite Sultan, Al-Mawla Rachid (1666-1672). Morocco knew the art of theater and performed it long before it was introduced by the French and Spanish occupiers from 1912-1955 with their social structures, institutions, military and cultural so-called civilizing mission that tried to alter national landmarks or features, so as to replace it with other alien and odd ones of theirs,<sup>24</sup> and crush Arab pride if I might add.

The Moroccan theater in its Greek form, which is like a spectacle, deploys the tools of modern theater: actors, audience, mise en scene, song, dance and dialogue, which makes it close in form

to the improvised comedy and to open theater. It is an embryonic attempt and a dramatic form amenable to further progress and to be fledged out.<sup>25</sup>

## III. SOME ASPECTS OF MOROCCAN THEATRE

To unmute the place, the Moroccan theater in its initial phases used several strategies such as the metaphor, suggestion or insinuation, language and pantomime/mime. With the help of the audience, the writer hones his artistic talent and imagination. He even shares his feelings with them.<sup>26</sup>

Many Arab intellectuals realized that it was high time for them to reach a somewhat artistic independence in Arabic history. This helped them refurbish Arabic culture with its rightful distinction at the international level. It harkens back with its rich ancient roots, to the end of transcending the excluded self in the annals of history. To build a new reality that is in line with the expectations and hopes of the new Arabic human being. To this end, many Moroccan and Eastern writers sought to do research to lay the ground for the Moroccan theater and enshrine it in popular folklore with its different forms which we will introduce after this section. This is done because the continuity of culture in its different forms is a civilizational necessity, because any discontinuation in the making of it will certainly lead to historical gaps in terms of historical development/continuation as it would corrode its seminal characteristics.

Some academic research stressed the idea that the written and oral Arabic cultural heritage is pregnant with artistic forms that connect it to theater; and that these cultural forms are rooted in the history of the Arab human being and are capable of being theatricalized/dramatized, and thus Arabizing the Arabian theater. Cultural heritage is not devoid of theatrical instances that function as the modern theater does. In addition to texts that can be theatricalized, there are other forms that have a strong relation to the theatre as

<sup>22</sup> Renan, “What is a Nation ?,” p. 19.

<sup>23</sup> Bhabha, introduction, *Nation and Narration*, p. 1.

<sup>24</sup> Mohamed Adib al-Slaoui, *Al-Masrah al-Maghribii : al-Bidaya wa al-Imtidad* (Marrakesh: Oualili, 1996), p.7.

<sup>25</sup> Ibid., p.7.

<sup>26</sup> Ibid., pp. 184-185.

an art at the level of form and aesthetics, and at the level of its dramatic themes.<sup>27</sup>

#### IV. FORMS OF MOROCCAN OPEN THEATRE

##### a. *Al-Halqa*

It is a circular gathering in one of the public squares, where the narrator and his assistant stand in the center, in the middle of the crowd, recounting heroic stories, legends and fantastic tales in a dialogic manner that uses characterization and pantomime interacting with the audience. As well as incorporating songs.

As any theatrical endeavor, it relies on continuous interaction with the audience. Mixed with these mythic, fantastic stories is the human, the animal, imps/leprechauns and the devil. The narrator also sings and performs acrobatic moves using pantomime which is profoundly expressive. Accompanied by the narrator is an actor that plays musical instruments, who tells in a suspenseful language stories of heroic quests and terrifying, tragic battles that are mixed with love, chivalry, magic and adventures.

##### b. *Al-Bssat*

Al-Bssat means humor in Darija, which is a funny enactment that uses dialogue, pantomime, dancing and the active engagement of the audience in this humorous spectacle. This visual art was first introduced by the Palace. Then, it was appropriated by the public and was performed in open spaces, to become a popular visual art. Al-Bassatun are actors that perform, through this art, social problems which couldn't be resolved in public courts. Through improvisation, al-Bassatun try to find solutions for it. Some historians sources divulge that this form of art harkens back to ancient times and is part of the remnants of the Roman theatre that was widespread in some Moroccan cities like: Chala; Walili; Lukoos and Tangiers.

##### c. *Sayid el-Katfii*

Sayid el-Katfii is another art derivative of al-Bssat or humor, which relies on characterizing some

causes that have to do with Sufism and its Zawayas. It is performed in public squares, respectable houses or markets by chanting Sufi songs, dancing, improvising and some Sufi invocations of God.

On one special occasion, it celebrates the day of birth of the prophet PBUH. The spectacle of Sayiid el-Katfii is held in squares, markets and some houses in the capital of Morocco, Rabat. It seeks to introduce this form of art into the modern age.

According to Abdellah Chekroun, the followers of Sayid el-Katfii usually consist of twelve actors headed by a foreman or headman called Mqeddem in Darija, who takes care of the organization and the artistic and administrative matters. The headman (Mqeddem) opens the ceremony by giving the actors some instructions on how to perform in a serious manner away from laughter. It is not a comic. By falling into character in a tasteful, creative way, these plays deal with social, agricultural and craft matters.

##### d. *Sultan al-Talba*

The celebration of this event dates back to the Alaouite Sultan Moulay Rchid, the founder of the Alaouite dynasty, Who ruled from 1666-1672. The Sultan Moulay Rchid institutionalized this cultural event in recognition for the help He received from His subjects to defeat his enemies, far and domestic.

In the spring of each year, al-Quaraouine university convenes an imaginary, miniature Sultanate inside one week for the purpose of requesting royal patronage on matters educational and vocational.

Headed by a brilliant student given the title of sultan al-Talba, the ceremony commences by heading in a procession to Oued Fes, where tents are erected, and a cabinet appointed, consisting in a ministry of interior; of justice; of finance and an accountant for the state.

The king generously sends the brilliant Talib gifts and holds a meeting with him in one of the annexes of the Qaraouine university in Fez before the Friday Prayer held in al-Qaraouine mosque.

<sup>27</sup> Ibid., pp. 6-7.



When the King dismounts his mount, this Talib beseeches Him to look into the educational and vocational requests of his schoolmates. Tradition requires the Talib to address the King in a rhymed and improvised speech.

On the seventh day this event comes to a close, the make-belief sultan al-Talba goes back with his classmates to pursue their studies with the Royal the reassurance that their requests will be looked into.

e. *Al-Madahun*

Al-madahun are considered to be skilled artists at the level of pantomime and creation/characterization. Strolling about in squares, cities and villages, they praise big known political figures, novelists, religious scholars and Sufists using improvised and spontaneous poetry in different Moroccan accents. As well as recounting tales, legends and myths, they engage audiences with public matters using a language that verges on the symbolic.

f. *Munshidu al-Mawludia*

These Sufi groups chant religious, Sufi songs commemorating the birth of the Prophet PBUH at traditional houses, Zaouiyas, schools and mosques. They call their art form al-Mawludiyya. The ceremony commences by a choir chanting Sufi poetry. Then individual chanting, followed by a choir once more.

g. *Boujeluud*

Boujeluud is a theatrical clown. On Eid Al-Adha, he wears goat and sheep's skin troling about in streets, neighborhoods and suqs, serenading his audience with proverbs, words-of-wisdom and Sufi poetry. Then, he entertains the little ones with humor and laughter.

h. *Ebidat el-Rrma*

These are groups of imitators of an acting vocation that talk about various social problems. Their typical stages are Palace squares and public squares. Their themes revolve around modest people's matters. When they form their circle, they initiate dialogue with the audience, song and dance in groups. Using musical instruments like the tambourine, the flute and percussion

machines. This theater of theirs was very popular in Moroccan cities such as Fez, Meknes, Rabat and Marrakesh in the 17<sup>th</sup> century onward.

## V. DISCUSSION

Moroccan folklore is an extension to the collective memory as the continuous civilizational discourse is rooted in national culture, laden with sentiments and aspirations. Moroccan folklore uses visual tools, and is considered as an inspiration to other cultural forms such as dancing, music, novels. These are interconnected with history, space and society. Creative forms such as these are considered to be as a resilient memory amenable to the future as it is laden with the playwrights aspirations and dreams.

The colonial administration sought to undermine the Moroccan theater in its inception. As resistance, folklore emerged in cities and villages enshrining national heritage. Social squares became open stages for the sons and daughters of Morocco, where the narrator/actor of al-Halqa tried to reflect the misery under the occupation by telling heroic, Islamic stories intermingled with magic. The Moroccan national theater was founded in the second half of the 20<sup>th</sup> century with zeal and great patriotic excitement to narrate the nation/the *patrie* which is deeply rooted in history.

The Other is never outside or beyond us. Discourse makes a transnational culture possible, because when we think we "speak most intimately and indigenously 'between ourselves', the Other emerges forcefully.<sup>28</sup> Thus, Europe leads to Africa; the nations of Europe and Morocco meet in Tangiers; the margins displace the center, the peoples of the periphery return to rewrite the history and fiction of the metropolis through postcolonial Magical realism, theater and poetry.

## VI. CONCLUSION

Moroccan folklore serves as a profound extension of the collective memory, deeply intertwined with the continuous civilizational discourse rooted in national culture. Laden with sentiments and

<sup>28</sup> Bhabha, Introduction, *Nation and Narration*, p. 4.

aspirations, Moroccan folklore employs visual tools and serves as a wellspring of inspiration for various cultural forms such as dance, music, and literature. These creative expressions are not merely artistic endeavors but interconnected narratives that reflect the history, spatial contexts, and societal fabric of Morocco.

Historically, Moroccan folklore emerges as a resilient response to colonial efforts to suppress local theater traditions. In cities and villages, it became a vehicle for preserving national heritage and cultural identity, transforming social squares into stages where narratives of resistance and resilience unfolded. The tradition of al-Halqa, with its blend of heroic, Islamic, and magical stories, exemplifies this defiance and cultural assertion against the former French and Spanish Protectorates.

The establishment of Moroccan national theater in the latter half of the 20th century further underscored the nation's zeal and patriotic fervor to narrate/narrativize its rich historical tapestry. This cultural resurgence not only reclaimed narratives but also redefined them within a global context, bridging boundaries and engaging in dialogue with the broader world.

Moreover, Moroccan folklore and its cultural expressions challenge the dichotomy of Self and Other, asserting that transnational cultural exchange is not one-sided but reciprocal and transformative. Through postcolonial magical realism, theater, and poetry, Morocco asserts its presence on the global stage, reshaping the narratives of the metropolis from the perspectives of the periphery.

In short, Moroccan folklore is not just a repository of tales and traditions but a dynamic force that shapes the national consciousness, connects past with present aspirations, and fosters a resilient memory that continues to evolve and inspire future generations.



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# Analysing the Representation of Minorities in Governance and Decision- Making Processes Under Modi's Administration

*Dr. Rituj Kumar Yadav*

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This research paper examines the representation of minorities, particularly the Muslim community, in governance and decision-making processes under the administration of Prime Minister Narendra Modi in India. Through a comprehensive literature review and empirical analysis, it delves into the historical context, theoretical frameworks, and methodologies employed. The paper scrutinises Modi's administration's policies and their impact on religious and ethnic minorities, highlighting concerns over marginalisation and discrimination. It assesses decision-making structures and mechanisms, emphasising the exclusion of minority voices. Furthermore, it explores the implications of minority representation on governance, drawing parallels with international studies. Overall, the paper underscores the importance of equitable representation for minority groups in fostering inclusive governance and enhancing social cohesion.

*Keywords:* minority representation, governance, decision-making processes, narendra modi administration, political power, religious minorities, ethnic minorities.

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## I. INTRODUCTION

This research represents the backsliding of existing Indian minority rights as opposed to the liberal notion that rights are static and always expanding. When considering minority rights in general, one could be forgiven for assuming they are a twentieth-century innovation. As C.

A. J. Coady suggests, certain political and social theories have only recently recognised "the

principle that all nations and communities... ought to have...a certain minimum of political autonomy and cultural rights." While Coady talks about minority rights regarding nation- states, the same can be said about individual minority rights within a state. This is particularly relevant to India, a place where minority rights were largely ignored during colonisation and have had to be addressed, one issue at a time, by the Indian government since Independence in 1947. During this time, several measures, and safeguards for the political and individual rights of minorities were included in the Indian Constitution, which is probably the most important document in promoting and protecting minority rights in India. This period peaked during the premiership of Indira Gandhi and her attempts to win over the Muslim vote bank through several policies and provisions. However, it was short-lived due to the implementation of martial law during The Emergency in 1975. Since then, many have speculated about the commitment of the Indian government to minority rights, although their findings can be considered particularly pertinent in light of the current climate in India.

### 1.1 Background

Minorities and underrepresented groups are important in any democratic political structure as they can ensure fair treatment of their interests and demands. To some extent, political representation is a process that leads to the establishment of a system of communication between the representatives and the represented that is sustainable and responsive and ensures that it is faithfully responsive where the nature of the interests and the input of the representatives is in accord with the wishes of those being represented. Minorities and minority groups can

cause misunderstandings, misinterpretations, and ill feelings, which can lead to tension and conflict. It is easier for democracy to carry out its ideal of resolving differences peacefully if minority groups have access to policymakers and can voice their interests and grievances articulately and directly at the forums where decisions are made.

Studies have found that access to representative decision-making leads to positive outcomes for minority and indigenous groups, such as decreased discrimination and increased social and economic conditions. There is a direct link between representation in governance and improvement in the social, economic, and political conditions of any minority group. It is unfortunate for India to see that with a high number of Scheduled Tribes and Scheduled Castes being elected to parliament, analytical studies have mentioned that there is no significant increase in active participation or political representation. These studies have also found that marginalised groups and lower income brackets of the population, whose representation is crucial to bringing about a substantive change in the conditions of the people, are less likely to turn up to vote. This reflects a trend where these groups feel disconnected from the political system and feel that voting would not change their living conditions. As India is presently a functioning representative democracy, this is a troublesome sign as the situation of these minority groups will not show improvement unless there is an increase in their political representation and their access to policymakers in a democracy, as well as their substantive equality.

### 1.2 Objective

Based on the introductory section, this paper analyses how the Muslim community has been represented in the governance and decision-making process under the administration of Prime Minister Narendra Modi. The representation of "minority" is very blurry and arbitrary. In this essay, the term "minority" will denote Muslims. However, it is equally applicable to other minority groups, such as Christians or Parsis. The essay will attempt to analyse the

policy approach of the BJP in representing the Muslim minority. It will also discuss representation and misrepresentation of the Muslim community in state institutions. In this instance, representation denotes proportional and effective representation and the degree of participation in the decision-making process. The central theme of the representation of Muslims is related to the construction of their identity as "anti-national" or "outsiders" and hence, it is necessary to relate this construction to their representation in state institutions.

This essay will use academic political theory to discuss the concept of minority representation in liberal democracies. The BJP has been a very electorally successful party with clear dominance in the Lok Sabha. This has very important implications for the Muslim community and their future in Indian politics. For the above reasons, this essay will monitor the party from its formation in 1980 but will mainly concentrate on when it was in power, i.e., 1998 and 2004. This, in turn, enables an analysis of how the Muslim community has prepared for life under BJP rule in its governance of various states.

## II. LITERATURE REVIEW

A concept called political closure was developed by Pandey while studying the representation of Muslims. Muslims are known to be one of the most consistently underrepresented minority communities, and Pandey argues that there has been a decline in Muslim political representation since independence, and a difference between the political status of Muslims and Hindus in India is partly due to political closure on the part of the majority community.

Muslims are the only religious minority group with whom Hindus have had significant, prolonged, and widespread conflict. According to Pandey, the concept of political closure is a process whose net result is the dispossession of Muslims by Hindu upper castes from the political resources of the state. Muslims achieved unprecedented political power and bargaining leverage at the time of independence, and that led to resistance from upper-caste Hindus in many

states, but this phase was short-lived. The decline of Muslim political representation is a result of a loss in their ability to serve their political interests, which were/are common with other communal groups, through a position in the state. Muslims have lost ground to both SC/ST representatives and lower OBCs. He uses data on Muslim political representation to study the change in relative advantage inhibited by Muslims in comparison to the "non-lower OBC Hindu Community". Muslims have lost significant ground to this community, and the net result is the decline in Muslim substantive representation. Muslims are the only group with a notable advantage over SC/STs. He argues that Muslims must now vie with the lower OBC community over political positions. OBCs recently acquired reserved seats in many states; these are the same seats where there was once Muslim overrepresentation.

Previous empirical studies have emphasised the lack of descriptive representation of minorities in India. Descriptive representation is the numerical representation of people from different ethnic, racial, religious, and class backgrounds. Descriptive representation of religious minorities is an important issue for Indian democracy. In the wake of class-based or caste-based mobilisation in electoral politics and the rise of regional parties/movements, there is a growing concern that representatives of religious minorities may further lose ground as they face competition from other co-religious elites and political entrepreneurs from the majority community and different castes within their community. This may lead to further marginalisation of religious minorities from governance and a decline in substantive representation (Pandey, 2009).

### *2.1 Previous Studies on Minority Representation in Governance*

The Indian government is duty-bound to ensure equitable representation of all its citizens in governance and policy processes "without distinction of any kind, such as race, religion, language, or caste". This is enshrined in the Universal Declaration of Human Rights and

applies to India via ratifying various international covenants. In-depth, the provisions for affirmative action are envisaged in the Indian constitution via the various reserved seats and reserved policy-making posts in the executive. Whether affirmative action in governance has benefited the socio-economic status of the reserved castes/classes and minority communities is a point of contention and is beyond this analysis's scope. However, from the perspective of representation and decision-making advocacy, any substantial increase in the presence of reserved category candidates in governance is seen as beneficial to their cause.

Representing minority communities in power and governance is a vital issue as it focuses on protecting the rights and interests of marginalised communities. Rules are a part of the scientific study "Minority Representation in Multi-Party Governance: An Elite Theoretical Analysis" which states the importance of the issue by saying that "the specific nature of power utilisation and power impact by the elites can be assessed only by having the data of the decision-making roles and decision-making processes". It is imperative to discern whether minority groups' interests and rights are identified and addressed in governmental policy decisions. Tags: Minority Governance, Minority Rights. This issue has come to the forefront in the wake of Dalit and other backward caste politics in India.

### *2.2 Theoretical Frameworks and Concepts*

Historically, Shils and Young's (1953) definition of the 'unanticipated consequences of purposive social action' has been seen as an important organising concept for policy study (Snider and Faris, 2001; Tilly, 2002). Using an adaptation of the model in which policy is seen as 'decision making and the implementation of decisions', the policy initiatives of different administrations can be assessed on several levels in terms of their unanticipated consequences on the representation of minorities in governance and decision-making processes. The social engineering model is a further pathway linking policy decisions and changes in governance.

Esping-Andersen's (1990) welfare regime typology suggests that promoting social rights has been an important means of social integration and representation in Western Europe. Changes in policy regarding welfare rights have been associated with a change in citizenship rights and the quantum of political representation for minority ethnic groups in several European countries (Castles and Kosack, 2000).

### III. METHODOLOGY

A two-fold approach was taken to answer the question of the representation of minorities in governance and decision-making processes under the administration of Narendra Modi. Both qualitative and quantitative data were collected. As this paper is essentially an exploratory one (as the Indian case is vastly under-researched), this method is most appropriate. Little literature on this is skewed and often lacking in neutrality, given the divisive nature of Modi politics. It is resistant to any real methodological classification, so this piece is designed to be somewhat of a foundation for future research. An important decision was to use pre and post-election case studies of both Hindu and Muslim participants to gauge the general and subjective difference that political change has made to them - possibly the only way of measuring the impact of minority policy on the ground level and with the widest range of opinion. For instance, one idea behind the decision to amend the national study to this was Anand Teltumbde's impression after the first 100 days of BJP ruling, stating that it is necessary to: "...column results on 30 per cent of OBCs among Dalits now allowed to enter higher education through OBC reservation." If these case studies prove successful or unsuccessful and highlight certain issues, there is the option to continue this research with discourse analysis work on speeches in state elections across India and Gujarat, or by further case studies involving Dalits and other minority groups in Gujarat or other Indian states.

#### 3.2 Data Collection

The data was collected from government websites, web resources related to the Union

government, and other content reflecting government decisions. Two types of data were collected. One was content reflecting any formal decisions made by the government, such as legislation, executive orders, rules, regulations, and orders. The second type of data was administrative in nature, reflecting changes in the structure or process of delivery of the service or resource allocation decisions, which, though less tangible, have implications for the people and hence are policy decisions. The latter type of data was collected for two specific sectors: education and forests. For legislators and members of the SC, these two sectors are critical because of their implications for their constituents' social and economic mobility. Hence, the analysis is focused on these two sectors, though data has been collected on all government decisions for legislators and members of the SC. Data was primarily collected in most cases by finding the source of the decision, and in fewer cases by using secondary sources. In a limited number of cases where the source could not be located, attempts were made to get the data through RTI. Still, in many cases, this also proved futile; hence, the decision was noted without specific details.

#### 3.2 Data Analysis

For this analysis, governance and decision-making processes have been considered, including appointments to high-level government positions and the consequential formulation of policy affecting the Indian population. In looking at the representation of minorities in governance, the percentages of the total number of government positions held by each minority group are of primary importance. For this study, minority groups were defined as those not belonging to the upper-caste Hindu majority. - Having established that the upper-caste Hindus are themselves in a minority within India as a whole, it might also be considered that the Muslim community is the largest of several minority groups. However, for the analysis given here, the patterns of Muslim representation in high-level government positions have been considered separately from those of other minority groups, given the long-standing perception of hostilities and discrimination



between Hindus and Muslims. High-level positions have been considered to include all governmental roles at the Joint Secretary level and above. In the data analysis, a combined analysis of the participation of major minority groups in governance was found to be impractical since variations were often substantial between one minority and another. As a result, general trends will be highlighted, but the main focus of the study will be the representation of Scheduled Castes (SCs) and Scheduled Tribes (STs).

#### IV. MINORITY REPRESENTATION IN MODI'S ADMINISTRATION

India indeed had a history of having minority group members in high-ranking posts. But the present situation is not quite so. They hold less political power than their proportion of the population. A ceiling appears to have been placed on the political advancement of Muslims, scheduled castes (Tribals) and scheduled Tribe. Representation in decision-making processes has fallen off notably in the last 30 years. Low power distance scores in India concerning minorities show that their present leaders are admmissive of their poor political position. This trend has once been a reality and is now a perception due to many fresher classes IV and III employees and a dwindling number of top-class employees in the centre and state governments. A high number of class III and IV employees indicates low mobility of minority group members to higher positions. The trend of low representation is continuous and consistent for SC/ST. The current situation in India depicts minorities as the weakest element. Number of posts held by SC and ST members hasn't risen significantly over the years. This is despite efforts by unions and states to increase the same. However, an increase in the posts doesn't imply that the political power has increased; they have something more than menial labour. Many SC/ST employees are still in classes III and IV. A sudden peak in the mid-90s in the number of posts held in states by SC and ST members did force a few to believe that reservations were effectively implemented and that minorities were getting a higher status. An occasional SC/ST chief minister may give them

the impression of upward mobility, but this has usually not been sustained for long periods. High turnover rates may imply that either they are not meeting their followers' expectations or being forced to resign. JCT shows that it's more of the latter.

Level of representation of minority groups in India's Compositae society. The government attaches the highest importance to the satisfactory redressal of any grievances. This is clear from the fact that there are adequate safeguards to protect the interests of minorities. Special officers for linguistic minorities and the National Commission for Minorities are some of the statutory provisions to protect the rights and interests of minorities. Special component plans are in place for minorities. Reservations for them are ensured in the services of the Union and the states. But it's difficult not to notice their under-representation in the political sphere in India.

##### *4.1 Overview of Modi's Administration*

The aftermath of the general election has been an increasing trend of Hindu nationalism which has marginalised religious and ethnic minorities. There have been both formal and informal attempts to promote Hindu culture and traditions as seen by the attempts to rewrite Indian history books from a Hindu nationalist perspective. This creates a hostile environment for minorities in Indian society and may serve to alienate them, reducing their representation in governance and decision-making processes.

The BJP is traditionally a Hindu nationalist party. During the election campaign, Modi took up this rhetoric, continually presenting himself as a Hindu nationalist leader in the run-up to the election. This has caused considerable concern among religious and ethnic minorities about their status in Indian society under the Modi administration. These concerns have not been alleviated; since the election succeeded, Modi has made few public statements directly addressing the interests of minority groups or allaying their fears.

The Bharatiya Janata Party's (BJP) landslide victory in the 2014 general elections resulted in

forming a single-party majority government for the first time in three decades. This has significant implications for the representation of minorities, as single-party majority systems are particularly inclined to centralise power. This section explores the extent to which minority groups are represented in governance and decision-making processes under Modi's administration, firstly by providing an overview of the administration and then examining the representation of religious and ethnic minorities specifically.

#### 4.2 Representation of Religious Minorities

The researcher has correctly pointed out that minority communities are a significant part of Indian society, and any political change would impact them. A religious minority in India is defined in terms of the Indian Constitution as a community that does not profess the Hindu, Sikh, or Buddhist religions. When Modi was sworn into power, religious minority community leaders expressed their concerns and fears over their representation and position in Indian society being undermined. The "record of anti-Christian violence in India under BJP control is alarming" (Life and Peace Institute, 2003). Acts of violence against Christians have been recorded in Gujarat in 1999 and several places in India in 2000. Under the NDA government from 1998 to 2004, the Christian minority community experienced threats and coercion to change their religion, particularly in states like Gujarat, where there have been reports of Christians being denied access to public services unless they change their religion, and incidents of physical violence, arson, and desecration of churches. This has created a picture of fear and insecurity among the Christians in India. The most recent attacks on Christians in Orissa in 2008, where over 40 people were killed and thousands left injured and homeless, have also raised international concern. In 2008 and again in 2015, the Indian Bishops expressed their "fear and anxiety" over the community's treatment and stated their intention to approach the Indian president for assistance.

#### 4.3 Representation of Ethnic Minorities

The most recent communal-amity assessing concerns has been taken up by the Sachar Committee, which the Congress-led UPA premier Manmohan Singh appointed. The Committee deliberated on questions/issues of representation and participation of Muslims in various spheres of life, such as education, employment, and civic life. The results showed, in a nuanced analysis, that Muslims were seriously lagging behind the rest of the population, and even other SC/ST/OBC communities, in development indicators such as health and education. The reasons for this were in the historical tradition of the caste system, which affected all communities, including Muslims; ghettoisation of Muslim communities, which led to social and economic isolation; and principally, discrimination against Muslims by the state and public/private sector, most notably after Partition. Although the Hindu Right criticised the report as communal and pandering, PM Singh took up the mantle of 'Muslims as a major national minority' as a soft political strategy to counter the BJP's brand of aggressive Hindutva and, under various forms, still exists today. The UPA regimes during 2004-2014 made repeated attempts formally and informally to 'attract' Muslims as a minority vote-bank, evinced by PM Singh's advisor's calls to various intellectuals and activists to create a 'Muslim NREGA'. The lingering fear of the Muslim as the 'Muslim League voter' puts pressure on the BJP to reach out to Muslims, despite the simmering resentment by various groups, including Dalits and OBCs, that affirmative action for Muslims was cut from the same 'census-no castes' that they struggled out of. This has reached a pitch within the past few years as the BJP has challenged the primacy of the AMU and JMI as minority institutions, while the AAP is angering the BJP by approaching Muslim OBC communities.

## V. DECISION-MAKING PROCESSES IN MODI'S ADMINISTRATION

During his term in power, Modi invoked a presidential leadership style and tended to centralise decision-making within his office. This can be seen in the diverse range of committees he

has established to consider and coordinate various policy areas. These include the tight group of advisors that he has formed, known as the "kitchen cabinet", who are some of his closest political associates from his time as chief minister of Gujarat. While this style of leadership has its advantages, it can result in the bypassing of proper procedures for decision-making and has the potential to undermine accountability. Often, the more informal the decision-making process is, the more difficult it is to review how a decision was reached. This can be alarming in the instance that the decision in question is significant; an example would be the decision in May 2016 to impose the president's rule on the state of Uttarakhand following the results of the high court on a petition challenging the dismissal of the previous congress government. This decision was found to be of questionable legality by the Supreme Court of India. Establishing exactly who is responsible for making a decision is often important in ensuring the accountability of public authorities. It is often unclear to whom Modi himself or his various committees and councils are accountable in governance.

Decision-making is a key factor in governance and is a major way the government exercises its power. It involves making choices between policy alternatives and, in some circumstances, the establishment of normative policy goals and can take place at various levels with differing degrees of formality. It is very often the initiating of new policy proposals that require decisions to be made. Decisions may be made to solve a problem and make a one-time policy change.

### *5.1 Decision Making Structures and Mechanisms*

The administrative structure of the ruling party has been hierarchical with Modi at the top and the rest of the party operating through his control and decisions. The BJP follows a cabinet style of governance, and there have been very few official reports or information regarding the involvement of party members in any key decision-making. This has largely been the case with the controversial policies put forward (such as the 2016 demonetisation). Modi and the Reserve Bank of India closely guarded the policy details

with a small circle of people involved in the decision. In interviews with BJP members, they mentioned that they only found out about certain policies when public announcements were made. The lack of transparency behind policy details and the decision-making process have been strong indicators of the exclusion of minority voices in governance. An interesting observation has been Modi's direct contact programmes with citizens. He has directly contacted the public through radio or social media to support and explain policies. This bypasses the official BJP decision-making bodies and highlights how the public is the final target of his policies. Often, these policies are decided without proper consultation with the various BJP state government bodies and leaders. A prime example would be the recent COVID-19 lockdown, which was set with only 4 hours' notice. This has shown that the decision-making process for many policies is concentrated between Modi and select central government figures, largely excluding voices at the regional level.

### *5.2 Inclusion of Minority Voices in Decision Making*

Research in political science suggests that the most effective way to encompass minority interests in decision-making is to ensure diversity in the representatives. The representation of minorities in this report is focused on elected representatives. As stated earlier, some minority groups have low socio-economic status and may also be in rural areas, so there is some under-representation through implicitly discriminatory voting rules which may be in place. The data shows that although the number of Muslim MPs has increased in recent years, there is still an under-representation of the Muslim population in the Lok Sabha. Muslims comprise 13.4% of the population, but the average percentage of Muslim MPs in the Lok Sabha, India's lower house, from 1980 to 2008 is only 6%. At the state level, Somanchi's survey found that scheduled castes, scheduled tribes, and Muslims are under-represented.

Although SCs and STs were more under-represented, the difference shown in Table 17 is

still significant. Baru's case study found that many politicians' social backgrounds differed from those of minority groups. Muslims in the case study perceived that the political elite did not represent their aspirations. This perception was reinforced by Waseem's case study in UP and the 2006 Sachar Report on the conditions of Indian Muslims.

## VI. IMPACT OF MINORITY REPRESENTATION ON GOVERNANCE

Additional evidence on the causal effects of minority representation comes from natural experiments in the USA, where a change in electoral rules has led to changes in minority representation or redistricting has changed the probability of a minority candidate being elected. Finally, substantial qualitative or quantitative research also exists on the impact of minority representation on specific policy outputs in many other countries. Despite the variety of methods, the analysis here tends to support the broad claim that minorities are most likely to influence policy outcomes when their representation is strong and stable, and when their preferences are congruent with the median legislator and public on the issues in question.

Some of the clearest evidence of the impact of minority representation on policy outcomes comes from studies of the effects of descriptive representation of African Americans in the USA. Using roll-call votes in the US House of Representatives and relying on the racial identity of individual members of Congress (and their states), these studies generally find that black members vote more liberally than whites on a range of social welfare issues and that in the period since the late 1960s, their votes have shifted policy in the direction preferred by blacks. These effects seem to be due to the direct influence that black legislators have on policy rather than their ability to affect policy by influencing public opinion and, thus, electoral outcomes for their party.

The representation of minorities in governance can have varying effects on minorities, policy processes, and governmental outcomes. More

specifically, the degree and nature of the impact of minority representation on governance may vary across different types of polities, different groups of minorities, different public policies, and over time. I consider these issues here, with a primary focus on the effects of elected minorities on policy outcomes, and limited attention to the impact of non-elected minorities.

### 6.1 Policy Outcomes and Effectiveness

In studying black access to policy-making venues measured by representation in state legislatures, Cobb and Smiley assess how moving closer to a critical mass of black representatives has progressively increased the opportunities for black input on policy decisions affecting the black community. This has occurred as increasing numbers of black legislators have formed coalitions with their white counterparts to influence and change public policies and to influence their content and implementation, rather than simply engaging in advocacy to have others address what blacks perceive as their deserved results from the policy. This has caused demonstrable changes in the ways that policies affect black and other minority communities. Similar findings have been noted in studies of Latinos, and the impact of policy outcomes has quite often been traced by the increasing number of minority representatives at all levels of government and in various states in a plethora of policy areas.

The study has illuminated the critical role that minority representatives play in helping to shape policy and outcomes on issues of importance to minority communities. Most work finds that increased minority representation in political institutions enhances the substantive representation of minority group interests and the symbolic legitimacy and status of the government. Substantive representation refers to how representatives influence policies that will have differential effects on social groups, especially their own, directly, or indirectly.

The most prevalent way to measure this is to assess whether group-linked outcomes of certain policies differ from what would have occurred without a representative's intervention. On the

other hand, the symbolic effects, often seen as the consolidation of descriptive representation, concentrate on the psychological impact of seeing one's group having access to and influence political institutions.

One way to look at the larger issue of representation is to analyse specific policies and their outcomes. The logic here is simple: if having more minority voices in government leads to better policy outcomes for minority groups, this is a strong indicator that representation matters. And this is indeed the case. Scholastic research has amassed the impact of politically representative decision-making on policymaking for varied social groups and policy problems. This investigates whether politically representative bureaucracy influences the distribution of policy outcomes for distinct social groups or changes the extent of social groups to access policy-making venues.

### *6.2 Public Perception and Trust in Government*

A well-known consequence of Muslims' low levels of trust in public institutions post 9/11 in the United States has been their reluctance to seek information and assistance from government sources, including aid that they were eligible for. The absence of minority voices in governance exacerbates the cycle of distrust, as the perceived lack of fair treatment and inadequate policy outcomes generate and entrench negative attitudes towards government and public institutions.

The negative impacts of lower public trust in government are numerous and serious. The lack of trust in public institutions by various minority communities undermines social cohesion and stability. This, in turn, can result in lower levels of civic engagement and political participation by those communities and the reluctance to invest time and resources in activities and behaviours that would have long-term benefits for minority groups at both individual and collective levels. An illustrative example is the reluctance to engage with the education system and, in turn, the relatively low levels of educational attainment by minority groups.

As a direct result of Muslims' marginalised status and experiences of discrimination, they are less likely than other groups to trust government and public institutions. Studies of social and political attitudes have consistently shown that Muslims have lower levels of trust in British public institutions than other groups. For example, one recent study found that a key factor in accounting for the relatively low levels of trust of British Muslims in their non-Muslim counterparts was a perception of procedural injustice in treatment by policy officials and law enforcement agencies. The same is likely true in New Zealand, with implications regarding integration, social cooperation, and economic performance.

Public trust in and perception of government are vital for a stable and well-functioning democracy. Trust in government increases social integration, and people who trust the government are more likely to pay taxes and vote. Trust is also associated with better economic performance, though the causal relationship between the two is unclear. Numerous studies have identified how people's perceptions of fairness and justice, the prevalence of corruption, and the government's success are all determinants of public trust.

## VII. CASE STUDIES AND EXAMPLES

The essay concludes with two case studies examining the role of Dalits and Muslims, the two largest minority groups in India, in the Indian political process. This section attempts to build on the broader conclusions drawn in the rest of the essay by looking at the experiences of specific minority groups in trying to gain access to the Indian state. This process tends to involve attempts to articulate group identity and framing political demands around this identity rather than integration into existing state structures. However, the extent to which minorities have significantly influenced state policies or formulation and implementation has varied. This section analyses these varied experiences regarding the extent of minority groups' access to the state and the influence that this has had on state policies and actions affecting these groups. The two case studies are intentionally and by necessity specific. While the experiences of Dalits

and Muslims in engaging with the Indian state are not identical, they do illustrate the two broad patterns of minority engagement with the state and the subsequent impact on policy affecting minorities. Dalits, constituting approximately 16% of the population, have experienced a changed relationship with the Indian state since independence. During colonial rule, traditional practises of untouchability and the systematic exclusion of lower caste Indians from certain social and political activities were reinforced, and the British administration both indirectly and directly colluded with this discrimination.

However, the British also made some attempts to use affirmative action to include Dalits and other minorities in local government. With the devolution of power to Indian provincial governments between 1935 and 1947, minority representation acts were passed, and in the 1942 elections reserved seats for Dalits were introduced in provincial legislative assemblies. This early effort at minority representation and influence on governance was to be short-lived, as partition and independence led to the creation of exclusive national governments in India and Pakistan, and the retreat from positive measures towards minority inclusion by India, would leave Dalits on the periphery of the Indian state for the next 60 years.

### *7.1 Successful Cases of Minority Representation*

The clearest examples can be seen in the list of successful Muslim candidates in recent Gujarat and Himachal Pradesh regional elections. In Gujarat, Muslims gained 5.6% representation in 2002 despite constituting only 9.1% of Gujarat's total population. This was possible due to targeted efforts from the BJP to 'win over' the Muslim population in a post-2002 environment, and thus, the Muslim community turned out in large numbers to vote for the BJP. This objective was achieved using a dual strategy. Deviating from their earlier stance that the BJP did not believe in minority politics, the BJP directly addressed the Muslim voters by highlighting the development rhetoric and the 'Gujarat Gaurav' undertaken since Modi came to power. Parallel to this, the BJP demanded greater transparency

from the Muslims, saying they should not be taken in by other parties using scare tactics of further 'Gujarat-riots'. This was because the BJP attempted to take the wind out of the Congress party's Muslim vote bank tactics. This involved stating that they (BJP) should also be allowed to run the state since the age-old Congress party had been full of empty promises and corruption. The Muslim community in Himachal Pradesh is rather small, constituting around 1% of the state's population. Nonetheless, in a symbolic event in the 2017 Himachal Pradesh legislative assembly elections, a single Muslim candidate emerged victorious; this was the first time in Himachal Pradesh for almost half a century that a Muslim candidate had won an election. While these instances may seem exceptional, it's important to note that they should not be seen as the norm for Muslims or any other minority under the domain of BJP rule since they are rare occurrences.

### *7.2 Failures and Shortcomings in Minority Representation*

The fact that the BJP is a Hindu nationalist party has led to certain minority groups feeling very insecure politically. The anti-minority actions and sentiments of some extremist Hindu groups have often been associated with BJP rule, and the party has at times seemed reluctant to properly advocate on behalf of minority groups when they have been victims of discrimination. But overall, the Muslim community has been the biggest victim of political exclusion and marginalisation under Modi's governance. The Muslim community is disproportionately poor and has low access to education and public services. The Sachar Committee Report from the UPA era showed the glaring deficits in the development of the Muslim community. But more recently, the lack of Muslim political power was highlighted by the fact that no Muslim MPs were elected from the state of Gujarat in the 2014 General Election. This was a predictable outcome from the fact that the Muslim community in Gujarat has been overtly marginalised ever since the 2002 communal riots. Still, it also illustrated the lack of viable Muslim candidates and representation in Gujarati politics.

For the last 6 years, India has been under the rule of the Bharatiya Janata Party (BJP) and, more specifically, Prime Minister Narendra Modi. During this time, many minority groups have claimed that they have become increasingly marginalised politically, and more excluded in terms of receiving a fair share of development resources. Although Modi's governance has seen positive objectives in trying to develop the lower socio-economic groups with policies to improve education, sanitation, and financial inclusion by marginalised communities, the focus of these policies and level of access to the resources has differentially favoured the majority Hindu population.

India has a vibrant democracy comprising myriad voices striving to be heard in national decision-making processes. However, being a democracy does not guarantee a secure voice in the governance nor a share in the resources that the government apportions out. This is especially true for minority groups, who are often marginalised and whose voices and needs are drowned out in favour of more powerful interests. Nowhere is this more true than in the governance and structure of Indian democracy.

#### VIII. RECOMMENDATIONS FOR IMPROVING MINORITY REPRESENTATION

The policy recommendations section details the legislative changes necessary for better minority representation. Firstly, a national data bank should be established that will be able to provide solid statistics on the socio-economic position of the minorities within India. This is particularly important given that the socio-economic position of scheduled castes and tribes is still lower than the national average and that Muslims are considered to be even worse off at present. The "Rajinder Sachar Committee" recommended this to the central government in 2006. This is important as it will provide concrete evidence as to the success of future policy changes. This can be considered similar to the affirmative action policies in the US and worldwide implemented for disadvantaged groups, as identifying these disadvantaged groups leads to further consideration of their welfare. Step two is the

proper implementation of the PM's new 15-point programme. This was established in 1983 but was reviewed and revised in 2006, with the main aim of improving the welfare of minorities through the proper implementation of developmental policies and corrective measures. It provided various affirmative action policies such as forming a high-level council to monitor the programmes and special task forces to tackle issues such as socio-economic backwardness in disturbed areas to ensure intercommunity relations. This programme has had little success, and full implementation would benefit minority governance. Step three is the actual improvement of the representation of the scheduled castes and tribes and the minorities within politics. This can be done by modifying Articles 330 and 332, which provide for reserving scheduled castes and tribes in the Lok Sabha and state assemblies, respectively. Currently, the representation for SC/ST is 12.5% and 12.2% of total seats respectively, but the representation of SC/ST and minority candidates does not always match the percentage reserved for them. This could be achieved by increasing the number of reserved seats and ensuring that these are contested and won by the appropriate people. Further, affirmative action policies within political parties to "ensure" that they put forward minority candidates could also be undertaken. This policy change will benefit intercommunity relations given that proper representation will allow for cohesive bargaining and voice articulation of the needs of the minorities in the political arena. I have found a document from the government of India, specifically the Ministry for Minority Affairs, titled "Empowerment of Minorities: A Handbook," which outlines many of the aims, programmes, and policies that should be in place for true minority empowerment and proper representation. I can't chat with someone from the ministry during my visit and ask questions about it. However, the recommendations I have developed from my findings in Gujarat and Rajasthan are coherent with what the central government themselves acknowledge as necessary for minority representation. This is important in demonstrating the necessity of my recommendations for change and that the

situation I have seen in Gujarat and Rajasthan is common to the entire country and is not simply an isolated event that may have occurred during a certain period.

### 8.1 Policy Recommendations

Citizenship-based quotas have been successfully implemented to the benefit of Muslims in Karnataka and, more recently, in Andhra. However, success has been extremely limited due to the failure to implement auxiliary measures to improve access for underrepresented groups. SC and ST groups need additional measures that will improve access at the local level where discrimination is most acute. This will mean introducing reserved SC/ST constituencies in proportion to their share of the population at the Panchayat and Municipality levels. A study of the Karnataka Panchayats found that Dalits were treated significantly better where reserved seats did exist. The same research found that SC members elected from open seats were often treated much better than Dalits elected from reserved seats due to the latter's isolation from the power structure. Currently, most SC and ST representatives are elected from open seats. A system of dual candidacy should be introduced where SC/ST candidates contest elections for both general and reserved seats. If the candidate is elected from the general seat, the next highest polling candidate from that community will fill the reserved seat. This system would improve the status of SC/ST candidates by allowing them to form a broader voter base and avoid alienation from other community members.

### 8.2 Institutional Reforms

Institutional reforms involve addressing the issues in governance and public administration to ensure that policy recommendations can succeed. They are also important because lessons learnt from these institutional reforms can be applied to other areas of minority participation in public life, such as participation in political parties, general elections, or the private sector. In the long term, it is important that institutional reforms are holistic and benefit all citizens. Sometimes, institutional reforms designed solely to benefit minorities can

have negative repercussions and be self-defeating. An example of this could be seen in the United Kingdom in the 1970s. Positive discrimination policies designed to improve employment and educational opportunities for ethnic minorities were seen by some as unfair, caused resentment, and ultimately were abolished. It is beyond the scope of this brief to analyse the pros and cons of that example; however, it illustrates that good intentions can go awry if the wider implications are not considered. Any institutional reforms undertaken by the Indian government should also be impartial, instead of being seen as a political ploy to win votes from minorities. This would likely require a change of government to one less influenced by Hindu Nationalist ideology. Given the dominance of the current government and the influence of Hindu Nationalism, this is very idealistic and perhaps unrealistic at the current time. But what can be achieved at this time is still worthy of exploration. Institutional reforms could occur through internal government decisions, public pressure, or the Indian courts. Any reforms will likely require pressure from advocacy coalitions and minorities if they are ever to come to fruition.

## IX. CONCLUSION

The launch of Modi's 'Sabka Saath - Sabka Vikas' (Collective Efforts, Inclusive Growth) campaign in May 2014 is emblematic of his administration's desire to take all steps necessary to make government more inclusive and accessible to minority groups. The overall success or failure of this initiative will take time to assess. However, to ensure a nation where everyone feels valued, there must be continued focus, monitoring, and government accountability on this important issue. While many factors contribute to minority voice and participation in governance, enacting special provisions for minority populations at the highest levels of government is an indispensable element. This essay has demonstrated that, whilst modest progress has been made under Modi's administration, there are still many areas for improvement in enhancing minority representation in governance and decision-making processes in India. By addressing these concerns, the political voice of minority



populations can be effectively mobilised to protect and further their interests.

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# Femicide in International Law and ECHR Jurisprudence

*Elena Pîrău*

## ABSTRACT

Femicide, as a legal term, is not defined in international instruments. However, this crime is found in the criminal legislation of some countries. Many states have included femicide as either intentional homicide or serious intentional injury, often considering it as an aggravating circumstance of the offense. This study explores the concept of femicide, along with relevant provisions at the international and European levels. It also examines pertinent cases from the jurisprudence of the European Court of Human Rights concerning femicide.

*Keywords:* femicide, fundamental rights, gender, intersectionality, violence, domestic violence, positive obligations, family life, discrimination.

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## I. INTRODUCTION

Gender-related killings of women and girls, also referred to as femicide and feminicide, can broadly be defined as intentional killings committed on the grounds of gender-related factors. These can include the ideology of men's entitlement and privilege over women, social norms regarding masculinity, and the need to assert male control or power, enforce gender roles, or prevent, discourage or punish what is considered to be unacceptable female behaviour. Femicide represents the lethal end point of a continuum of multiple, overlapping and interconnected forms of gender-based violence. Such homicides usually follow prior experiences of physical, sexual or emotional abuse.<sup>1</sup>

<sup>1</sup> UNODC, Gender-related killings of women and girls (femicide/feminicide), Global estimates of female intimate partner/family-related homicides in 2022, p. 9, <https://www.unwomen.org/sites/default/files/2023-11/gender-related-kil>

Femicide is escalating worldwide and often goes unpunished, exacerbating the marginalization and powerlessness of women. Globally, nearly 89,000 women and girls were killed intentionally in 2022, the highest yearly number recorded in the past two decades. Moreover, available data suggest that while the overall number of homicides globally has begun to fall in 2022 after a spike in 2021, the number of female homicides are not decreasing. Most killings of women and girls are gender motivated. In 2022, around 48,800 women and girls worldwide were killed by their intimate partners or other family members. This means that, on average, more than 133 women or girls were killed every day by someone in their own family. While most homicides worldwide are committed against men and boys (80% in 2022), women and girls are disproportionately affected by homicidal violence in the home: they represent approximately 53% of all victims of killings in the home and 66% of all victims of intimate partner killings.<sup>2</sup>

The Charter of the United Nations<sup>3</sup> states that the peoples of the United Nations reaffirm their belief in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women.

Similarly, Article 2 of the Treaty on European Union<sup>4</sup> outlines the values of respect for human dignity, freedom, democracy, equality, the rule of law, as well as respect for human rights, including the rights of persons belonging to minorities,

[lings-of-women-and-girls-femicide-feminicide-global-estimates-2022-en.pdf](#).

<sup>2</sup> *Ibidem*, p. 5.

<sup>3</sup> United Nations Charter, <https://www.un.org/en/about-us/un-charter/full-text>.

<sup>4</sup> Treaty on European Union, Official Journal of the EU C326/13 of 26.10.2012, [https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0001.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0001.02/DOC_1&format=PDF).

characterized by equality between women and men.

Declaration No. 19 of the Declarations annexed to the Final Act of the Intergovernmental Conference that adopted the Treaty of Lisbon states that, as part of the European Union's comprehensive efforts to eliminate inequalities between men and women, the EU will actively pursue, within the framework of its various policies, the fight against all forms of domestic violence. Member States are obligated to take all necessary measures to prevent and punish these criminal acts, as well as to provide assistance and protection to victims.

## II. CHRONOLOGY AND EVOLUTION

The term "femicide" was first documented in John Corry's 1801 book *A Satirical View of London at the Commencement of the XIX Century*. In Corry's work, "femicide" was used to describe the murder of a woman. However, the term gained renewed prominence and a specific definition in the modern era in 1976, when expert and professor Diana E.H. Russell introduced it at the International Tribunal for Crimes Against Women. Professor Russell used "femicide" to highlight and address male violence and systemic discrimination against women. At its reintroduction, femicide was defined as "the killing of women by men motivated by hatred, contempt, pleasure, or a sense of ownership of women," and described as "the misogynistic killing of women by men."<sup>5</sup>

Marcela Lagarde took the notion of femicide proposed by Diana E.H. Russell and Jill Radford and developed it into the concept of *feminicidio*, rather than *femicidio* (which would be the literal translation). Lagarde argued that "*feminicidio*" more accurately reflects the gender-based reasons and social construction behind these murders, as well as the impunity often associated with them, compared to the term "femicide," which she believed might not fully capture these aspects. Lagarde employed the term „*feminicidio*” to

<sup>5</sup> Canadian Femicide Observatory for Justice and Accountability, What is Femicide? - History of the Term Femicide, <https://femicideincanada.ca/what-is-femicide/history/>.

analyze the murders of women in Ciudad Juárez, Mexico.

In the international sphere, however, the terms "feminicide" and "femicide" are often used interchangeably to address the same issue. In the Caribbean, there is no controversy over terminology, and "femicide" is used exclusively.<sup>6</sup>

In 1979, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the United Nations General Assembly.<sup>7</sup> This Convention is the first international treaty to provide for gender equality. CEDAW sets out an international bill of rights for women and provides a comprehensive framework for governments to ensure equality and eliminate gender-based discrimination in various aspects of public and private life.

According to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), States Parties condemn all forms of discrimination against women. The Convention establishes that States Parties to the International Covenants on Human Rights have an obligation to ensure the equal rights of men and women in the exercise of all economic, social, cultural, civil, and political rights. Discrimination against women undermines the principles of equal rights and respect for human dignity, hinders women's participation in political, social, economic, and cultural life on equal terms with men, and creates obstacles to the overall well-being of society and the family.

Article 15 of CEDAW specifically addresses the equality of women and men before the law, affirming that all individuals should be treated equally by the legal system.

<sup>6</sup> Organization of American States Inter-American Commission of Women, Declaration on femicide, <https://www.oas.org/es/mesecvi/docs/declaracionfemicidio-en.pdf>.

<sup>7</sup> Convention on the elimination of all forms of discrimination against women, Adopted and opened for signature by the General Assembly of the United Nations by Resolution 34/180 of 18 December 1979. Entered into force on 3 September 1981, in accordance with the provisions of Article 27 (1.). <https://anes.gov.ro/wp-content/uploads/2018/07/Conventia-asupra-eliminarii-tuturor-formelor-de-discriminare-fata-de-femei-cedaw.pdf>.

CEDAW identifies family violence as one of the most insidious forms of violence against women. It encompasses various types of violence, including battering, rape, other forms of sexual assault, as well as mental and emotional abuse. This violence is often perpetuated by traditional attitudes and societal norms that contribute to the marginalization and mistreatment of women within the family setting.

According to point 26 of General Recommendation No. 35 of the Committee on the Elimination of Discrimination against Women (CEDAW) on gender-based violence against women, updating General Recommendation No. 19<sup>8</sup>, all judicial bodies are mandated to avoid any act or practice of discrimination or gender-based violence against women. They must rigorously enforce criminal law provisions that punish such violence. Judicial procedures in cases involving allegations of gender-based violence against women must be impartial, fair, and free from gender stereotypes or discriminatory interpretations of legal provisions, including international law.

The recommendation emphasizes that applying preconceived and stereotypical notions of what constitutes gender-based violence against women, how women should respond to such violence, and the standard of proof needed to substantiate its occurrence can undermine women's rights to equality before the law, a fair trial, and effective remedy. Therefore, it calls for judicial systems to uphold these principles to ensure that women can access justice without encountering additional barriers or prejudices based on their gender.

On December 20, 1993, the Declaration on the Elimination of Violence against Women<sup>9</sup> was adopted as an essential instrument for the protection of human rights. In this Declaration, the UN General Assembly recognized violence

<sup>8</sup> General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, UN Doc. CEDAW/C/GC/35 <https://documents.un.org/doc/undoc/gen/n17/231/54/pdf/n1723154.pdf?token=SFO9zR85ZYTLxxJGRA&fe=true>.

<sup>9</sup> Declaration on the Elimination of Violence against Women, Proclaimed by General Assembly resolution 48/104 of 20 December 1993,

against women as a violation of human rights. It asserts that violence against women constitutes a violation of women's fundamental rights and freedoms, significantly affecting or nullifying their ability to exercise these rights and freedoms.

The Declaration expresses concern over the long-standing failure to protect and promote women's rights in the context of violence, acknowledging that such violence constrains women's opportunities to fully participate in legal, social, political, and economic aspects of society. It underscores the need for concerted efforts to address and eliminate violence against women to ensure their equal access to opportunities and protection under the law.

Article 1 of the Declaration on the Elimination of Violence against Women defines violence against women as any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women. This includes threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life.

Article 2 of the Declaration on the Elimination of Violence against Women specifies that violence against women encompasses:

- *Violence in the Family*: This includes physical, sexual, and psychological violence occurring within the family, such as battering, sexual abuse of female children, dowry-related violence, marital rape, female genital mutilation, and other traditional practices harmful to women.
- *Violence in the Community*: This covers physical, sexual, and psychological violence occurring in the broader community, including rape, sexual abuse, sexual harassment, and intimidation in workplaces, educational institutions, and other settings. It also includes trafficking in women and forced prostitution.
- *State-Tolerated Violence*: This involves physical, sexual, and psychological violence that is committed by or tolerated by the state, regardless of where it occurs.

According to Article 3 of the Declaration on the Elimination of Violence against Women, women are entitled to the equal exercise and protection of all human rights and fundamental freedoms in various fields, including political, economic, social, cultural, civil, and others. These rights include, among others:

- The right to life
- The right to equality
- The right to liberty and security of the person
- The right to equal protection under the law
- The right to be free from any form of discrimination
- The right to the highest attainable standard of physical and mental health
- The right to fair and favourable working conditions
- The right not to be subjected to torture or other cruel, inhuman, or degrading treatment or punishment.

In 1995, the Beijing Declaration and Platform for Action<sup>10</sup> was adopted at the Fourth World Conference on Women. This pivotal document addresses gender equality and women's empowerment globally.

Point 5 of Annex I of the Declaration highlights that inequalities between women and men have persisted and remain major obstacles, with some serious consequences for the well-being of all individuals.

Paragraph 9 of the Platform for Action specifically calls on states to ensure the full implementation of the human rights of women and girls, recognizing these rights as an integral and indivisible part of all human rights and fundamental freedoms.

The Beijing Declaration and Platform for Action affirm that women's rights are human rights, emphasizing that women's empowerment and full participation on an equal basis in all spheres of society—particularly in decision-making and access to power—are essential for achieving equality, development, and peace.

<sup>10</sup> V, [https://www.un.org/women\\_watch/daw/beijing/pdf/BDPfA%20E.pdf](https://www.un.org/women_watch/daw/beijing/pdf/BDPfA%20E.pdf).

The Declaration acknowledges that religion, thought, conscience, and belief can contribute positively to meeting the moral, ethical, and spiritual needs of both women and men, and help them realize their full potential in society. However, it also warns that any form of extremism can negatively impact women, potentially leading to violence and discrimination.

Sexual and gender-based violence, including physical and psychological, trafficking in women and girls, and other forms of violence, including sexual exploitation, place girls and women at significant risk of physical and mental trauma.

The Beijing Declaration and Platform for Action establishes, for the first time, a comprehensive platform for action to combat violence against women. The Beijing Platform for Action marked a pivotal moment in the global recognition of women's rights, serving as a crucial agenda for women's empowerment. It highlighted critical issues related to gender equality and women's rights, with the aim of accelerating the implementation of the Nairobi Forward-looking Strategies for the Advancement of Women.

The Platform sought to remove all obstacles to women's participation in both public and private life, ensuring their full and equal involvement in all spheres. This comprehensive approach aimed to address and eliminate barriers to women's work and overall participation in society.

In 2011, the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence,<sup>11</sup> commonly known as the Istanbul Convention, was signed in Istanbul. This Convention is the first instrument at European level to regulate and condemn violence against women and all forms of domestic violence.

The Istanbul Convention addresses all forms of violence against women and provides a detailed framework for preventing, prosecuting, and

<sup>11</sup>Council of Europe Convention on preventing and combating violence against women and domestic violence, Official Journal of the European Union, L143 I/7 of 2.6.2023, [https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:22023A0602\(01\)](https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:22023A0602(01)).



eliminating such violence. It also focuses on protecting victims, ensuring their safety, and promoting their rights.

On April 24, 2024, the Directive (EU) of the European Parliament and of the Council on Combating Violence Against Women and Domestic Violence<sup>12</sup> was adopted. This directive represents the first comprehensive legal instrument at the EU level specifically designed to address violence against women and domestic violence. It aims to establish a unified and robust framework across member states to prevent, address, and combat these issues, ensuring greater protection and support for victims throughout the European Union.

### III. THE CONCEPT OF FEMICIDE AND ITS CONCEPTUAL DELIMITATIONS

The concept of femicide and its conceptual delimitations are addressed within the framework of the Istanbul Convention. According to Article 1 of the Istanbul Convention, the Convention aims to:

- *Protect Women Against All Forms of Violence:* The Convention seeks to safeguard women from various forms of violence and to prevent, prosecute, and eliminate violence against women and domestic violence.
- *Eliminate Discrimination and Promote Equality:* It aims to contribute to the elimination of all forms of discrimination against women and to promote substantive equality between women and men, including through the empowerment of women.
- *Design a Comprehensive Framework:* The Convention calls for the development of a comprehensive framework, including policies and measures, for the protection and

assistance of all victims of violence against women and domestic violence.

- *Promote International Cooperation:* It seeks to foster international cooperation to combat violence against women and domestic violence.
- *Support Law Enforcement and Integrated Approaches:* The Convention provides support to government law enforcement organizations and agencies, encouraging them to cooperate effectively and adopt an integrated approach to the elimination of violence against women and domestic violence

Article 16 (3) of the Istanbul Convention emphasizes that the support for and the human rights of victims of violence against women and domestic violence are of paramount importance. It stipulates that, where appropriate, support programs for victims should be established and implemented in close coordination with specialist support services. This approach ensures that the assistance provided to victims is comprehensive and well-integrated with specialized services designed to meet their needs.

Article 18 (3) of the Istanbul Convention stipulates that parties to the Convention must ensure that measures taken under this chapter:

- *Are Based on a Gendered Understanding:* The measures should be grounded in a gendered perspective of violence against women and domestic violence, recognizing the specific ways in which such violence disproportionately affects women.
- *Focus on Human Rights and Victim Safety:* The measures must prioritize the human rights and safety of the victim, ensuring that their well-being and protection are central to the implementation of any actions or policies.

Article 3 of the Istanbul Convention defines "gender-based violence against women" as violence directed against a woman because she is a woman or that affects women disproportionately. This definition establishes that gender-based violence is rooted in the specific vulnerabilities and discrimination faced by women.

<sup>12</sup> Directive (EU) 2024/1385 of the European Parliament and of the Council of Europe Convention on preventing and combating violence against women and domestic violence, Official Journal of the European Union, L143 I/7 of 2.6.2023, [https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:22023A0602\(01\).of.14.May.2024.on.combating.violence.against.women.and.domestic.violence.OJ.L.2024/1385.24.5.2024](https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:22023A0602(01).of.14.May.2024.on.combating.violence.against.women.and.domestic.violence.OJ.L.2024/1385.24.5.2024), [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AL\\_202401385](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AL_202401385).

Consequently, femicide can be understood as a form of gender-based violence where the perpetrator targets and deprives the victim of life specifically because she is a woman. The gender of the victim is a crucial factor, indicating that the act of femicide is motivated by the victim's gender and the broader context of gender inequality.

It is important to note that not all homicides of women are classified as femicides. For an act to be considered femicide, it must involve a perpetrator whose actions are influenced by cultural patterns and misogynistic beliefs about male superiority and the inherent disrespect towards women and their lives.

Femicide is characterized by gender-related motives, where the aggressor's actions are driven by a belief in male dominance and a desire to uphold social structures that perpetuate female inferiority and oppression. These cultural elements and belief systems contribute to the perpetrator's justification for exerting control over women's lives and bodies, often viewing their violent actions as a means of punishment or enforcement of traditional gender roles.

Furthermore, these cultural patterns may lead the perpetrator to feel a sense of reinforcement or validation of their masculinity through such violent conduct. This reinforces the social order of gender-based power dynamics and oppression.<sup>13</sup>

UN General Assembly resolution A/RES/70/176<sup>14</sup>, adopted in 2016, calls on Member States to consider and utilize existing practical tools for addressing gender-related killings of women. Specifically, the resolution highlights the importance of referring to the Latin American Model Protocol for the Investigation of Gender-Related Killing of Women and the associated recommendations for the effective

investigation of femicide. These tools are designed to enhance the investigation and prosecution of gender-based violence, ensuring that femicide is properly identified and addressed.

The Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences<sup>15</sup>, outlines that gender-related killings can be categorized as either active (direct) or passive (indirect). This classification helps in understanding the various ways in which gender-based violence can lead to death, whether through direct acts of violence or through systemic neglect and indirect harm.

*Direct Gender-Related Killings include:*

- Killings resulting from intimate-partner violence
- Sorcery/witchcraft-related killings
- Honor-related killings
- Killings related to armed conflict
- Dowry-related killings
- Killings based on gender identity or sexual orientation
- Killings related to ethnic or indigenous identity

*Indirect Gender-Related Killings encompass:*

- Deaths resulting from poorly conducted or clandestine abortions
- Maternal mortality
- Deaths from harmful practices
- Deaths linked to human trafficking, drug dealing, organized crime, and gang-related activities
- Deaths of girls or women due to neglect, such as starvation or ill-treatment
- Deliberate acts or omissions by the State.

<sup>13</sup> Latin American Model Protocol for the investigation of gender-related killings of women (femicide/feminicide), [https://oig.cepal.org/sites/default/files/2014\\_latinamerican\\_protocolforinvestigationoffemicide\\_en.pdf](https://oig.cepal.org/sites/default/files/2014_latinamerican_protocolforinvestigationoffemicide_en.pdf).

<sup>14</sup> Resolution adopted by the General Assembly on 17 December 2015 [on the report of the Third Committee (A/70/490)] 70/176. Taking action against gender-related killing of women and girls, <https://www.unodc.org/pdf/rddb/CCPCJ/2015/A-RES-70-176.pdf>.

<sup>15</sup> Human Rights Council Twentieth session Agenda item 3 Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo. [https://www.ohchr.org/sites/default/files/Documents/Issues/Women/A.HRC.20.16\\_En.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Women/A.HRC.20.16_En.pdf).

The Vienna Declaration on Femicide<sup>16</sup> specifies various forms of femicide, defining it as the killing of women and girls specifically because of their gender. According to the Declaration, femicide can manifest in several forms, including:

- Murder resulting from intimate partner violence.
- Torture and misogynistic killing of women.
- Killings in the name of "honor".
- Targeted killings of women and girls in armed conflict.
- Dowry-related killings.
- Killings due to sexual orientation and gender identity.
- Killings of aboriginal and indigenous women and girls due to their gender.
- Female infanticide and gender-based sex-selective foeticide.
- Deaths resulting from genital mutilation.
- Killings based on accusations of witchcraft.
- Femicide associated with gangs, organized crime, drug trafficking, human trafficking, and the proliferation of small arms..

Article 1 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará)<sup>17</sup> defines violence against women as any act or conduct based on gender that results in death, physical, sexual, or psychological harm or suffering to women, whether in the public or private sphere.

The Convention further asserts that the violent death of women, including femicide or feminicide, is deeply rooted in the structural inequalities between men and women. Gender-based violence serves as an ongoing mechanism for the oppression of women. The patriarchal system

places men in a position of power over women, and social, cultural, and historical constructs reinforce the view of women as possessions or objects of domination. This systemic inequality is perpetuated through ideological and cultural systems that legitimize or normalize various forms of violence against women.

At its fourth meeting in Washington, D.C., on August 14 and 15, 2008, the Committee of Experts (CEVI) of the Mechanism to Follow Up on the Implementation of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Convention of Belém do Pará) recognized the serious problem of femicide in Latin America and the Caribbean. In their Declaration on Femicide, CEVI expressed concern about the increasing number of murders of women in the region.

According to this Declaration, femicide in Latin America and the Caribbean represents the most severe manifestation of discrimination and violence against women. Contributing factors include high rates of violence against women, their limited or nonexistent access to justice, prevalent impunity in cases of violence, and persistent discriminatory sociocultural patterns. These issues collectively contribute to the rising number of femicides in the region.

The statement from the Committee of Experts (CEVI) emphasizes that femicide is defined as the violent death of women that occurs due to their gender. This includes deaths within the family, domestic partnerships, or any other interpersonal relationships. Femicide can also occur in the community by any person, or it can be perpetrated or tolerated by the state or its agents through either action or omission.

Additionally, the statement notes that femicide victims can be women at various stages, situations, or circumstances in their lives. This broadens the understanding of femicide to encompass a range of contexts in which women might be targeted due to their gender.

Most femicides go unpunished as a result, among other things, of women's limited access to justice and of gender bias during judicial proceedings

<sup>16</sup> Commission on Crime Prevention and Criminal Justice Twenty-second session Vienna, 22-26 April 2013 Item 7 of the provisional agenda\* World crime trends and emerging issues and responses in the field of crime prevention and criminal justice, E/CN.15/2013/NGO/1, [https://www.unodc.org/documents/commissions/CCPCJ/CCPCJ\\_Sessions/CCPCJ\\_22/\\_E-CN15-2013-NGO1/E-CN15-2013-NGO1\\_E.pdf](https://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_22/_E-CN15-2013-NGO1/E-CN15-2013-NGO1_E.pdf).

<sup>17</sup> Inter-American Model Law on the Prevention, Punishment and Eradication of the Gender-Related Killing of Women and Girls (Femicide/Feminicide), <https://www.oas.org/en/mesecvi/docs/LeyModeloFemicidio-EN.pdf>

and police and investigative work. Cases are either closed because of an alleged lack of evidence or punished as simple homicides with lesser penalties, in which the extenuating circumstance of “crime of passion” is frequently cited to diminish the perpetrator’s responsibility.<sup>18</sup>

The Latin American Model Protocol for the Investigation of Gender-Related Killings of Women (Femicide/Feminicide)<sup>19</sup> categorizes femicides into several types:

- *Intimate Femicide*: The killing of a woman by a man with whom she had an intimate relationship, such as a husband, ex-husband, partner, boyfriend, or someone with whom she has a child. This also includes cases where a man kills a woman who refused to engage in an intimate relationship with him, such as a female friend or acquaintance.
- *Non-Intimate Femicide*: The killing of a woman by a man who is unknown to her and with whom she had no prior relationship. This includes murders resulting from sexual assaults by strangers or cases where a neighbour kills a female neighbour without any prior connection.
- *Child Femicide*: The killing of a girl under the age of 14 by a man who holds a position of responsibility, trust, or power over her, such as a caregiver or authority figure.
- *Family Femicide*: The killing of a woman by a family member, including those related by blood, marriage, or adoption.
- *Femicide Due to Association/Connection*: The killing of a woman who is an unintended victim “in the line of fire” when the perpetrator is targeting another woman. This might involve a friend, relative, mother, daughter, or a female stranger present at the scene.
- *Systematic Sexual Femicide*: The killing of women that involves kidnapping, torture, and/or rape. It has two manifestations:
- *Unorganized Systematic Sexual Femicide*: Women are killed following abduction, torture, and/or rape, typically by perpetrators acting independently.
- *Organized Systematic Sexual Femicide*: Involves an organized network of perpetrators who systematically abduct, torture, and/or rape women over an extended period.
- *Femicide Due to Prostitution or Stigmatized Occupations*: The killing of women involved in prostitution or other stigmatized occupations (e.g., strippers, servers, dancers) by one or more men. These crimes are often motivated by hate and misogyny towards the victim’s occupation.
- *Femicide Due to Trafficking*: The killing of women within the context of human trafficking, which includes activities such as recruitment, transportation, and exploitation, including forced prostitution, labor, or organ removal.
- *Femicide Due to Smuggling*: The killing of women in the context of migrant smuggling, where smuggling refers to illegal entry into a state for financial or material gain.
- *Transphobic Femicide*: The killing of a transgender or transsexual woman due to hatred or rejection of her gender identity or transsexual condition.
- *Lesbophobic Femicide*: The killing of a lesbian woman due to hatred or rejection of her sexual orientation.
- *Racist Femicide*: The killing of a woman motivated by hatred or rejection of her ethnic or racial origins or genetic features.
- *Femicide Due to Female Genital Mutilation*: The killing of a girl or woman as a result of undergoing genital mutilation.

According to point 18(d) and (e) of General Recommendation No. 33 on Women’s Access to Justice,<sup>20</sup> States are urged to enhance the quality

<sup>18</sup> Organization of American States Inter-American Commission of Women, Declaration on Femicide, <https://www.oas.org/es/mesecvi/docs/declaracionfemicidio-en.pdf>.

<sup>19</sup> Latin American Model Protocol for the investigation of gender-related killings of women (femicide/feminicide), [https://oig.cepal.org/sites/default/files/2014\\_latinamerican\\_protocolforinvestigationoffemicide\\_en.pdf](https://oig.cepal.org/sites/default/files/2014_latinamerican_protocolforinvestigationoffemicide_en.pdf).

<sup>20</sup> Committee on the Elimination of Discrimination against Women, General recommendation No. 33 on women’s access to justice, adopted in 2015 (UN Doc. CEDAW/C/GC/33), [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExtern](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExtern)

of their justice systems by ensuring that remedies are timely and effective, and that they lead to sustainable, gender-sensitive dispute resolution for all women. These recommendations aim to improve the justice system's responsiveness to women's needs and ensure that legal processes uphold gender equality and non-discrimination. This includes:

- Implementing mechanisms to ensure that rules of evidence, investigations, and other legal procedures are impartial and free from gender stereotypes or prejudices.
- Providing equal access to justice and protection for women by addressing systemic barriers and promoting fair treatment within both legal and quasi-judicial settings.

In its Recommendation (2002)5 of 30 April 2002 on the Protection of Women Against Violence, the Committee of Ministers of the Council of Europe<sup>21</sup> made several key recommendations for member States:

- *Obligation of Due Diligence:* Member States should exercise due diligence to prevent, investigate, and punish acts of violence, regardless of whether these acts are perpetrated by state or private individuals. This includes providing adequate protection to victims.
- *Penalization of Serious Violence:* Member States should penalize serious forms of violence against women, including sexual violence and rape, as well as abuse targeting vulnerable individuals such as pregnant women, those who are defenceless, ill, disabled, or dependent. Additionally, abuse of position by perpetrators should also be penalized.
- *Access to Justice:* Member States should ensure that all victims of violence have the ability to initiate legal proceedings. This includes making provisions for criminal

al/Download.aspx?symbolno=CEDAW%2FC%2FGC%2F33&Lang=en.

<sup>21</sup> Case of Tkhelidze v. Georgia (Application no. 33056/17) Judgment, Strasbourg 8 July 2021 final 08/10/2021, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-210854%22%5D%7D>.

proceedings to be initiated by the public prosecutor and encouraging prosecutors to view violence against women as an aggravating factor in deciding whether to prosecute in the public interest.

- *Protection and Support for Victims:* Measures should be in place to protect victims effectively against threats and potential acts of revenge. Additionally, specific measures should be taken to safeguard children's rights during legal proceedings.

Belgium passed a historic law against femicide on June 29, 2023. In Malta, femicide as a distinct crime came into effect in June 2022. In North Macedonia, amendments to the Criminal Code in February 2023 introduced a new provision that defines the killing of a female person as an act of gender-based violence, classified as an aggravated crime under Article 123, Section 2, which addresses the killing of a woman or a girl under 18 years of age in the context of gender-based violence.

In the Republic of Moldova, the concept of femicide is explicitly defined in Law No. 45/2007 on the Prevention and Combating of Family Violence. This legislation is notable for incorporating femicide into its legal framework, reflecting a commitment to addressing and combating gender-based violence.

The law explicitly recognizes femicide as a distinct category of violence, reflecting a focused approach to tackling gender-based violence and ensuring that such acts are identified and addressed within the legal system.

In accordance with the provisions of Article 2 of Law no. 45/2007, femicide "is the most serious form of violence against women and girls, which involves death because of crimes of intentional murder, serious intentional injury to bodily integrity or health or family violence, or suicide as a result of determination, facilitation or family violence, committed due to gender bias".

This legal definition and the associated measures signify Moldova's commitment to recognizing and addressing femicide as a serious issue, providing a structured approach to protecting women from

gender-based violence and ensuring justice for victims.

#### IV. JURISPRUDENCE OF THE EUROPEAN COURT OF HUMAN RIGHTS

In its jurisprudence, the European Court of Human Rights (ECtHR) established that the State's positive obligation is to prevent the risk of recurrent violence in the context of domestic abuse.

The European Court of Human Rights has articulated several key points regarding the State's positive obligations under Article 3 of the European Convention on Human Rights<sup>22</sup>, particularly in the context of domestic violence:

1. *Positive Obligation to Prevent Violence:* The State has a positive obligation to prevent recurrent violence in cases of domestic abuse. This obligation entails:
  - *Immediate Response:* The State must respond promptly to complaints of domestic violence. This includes processing such complaints with a high degree of diligence.
  - *Risk Assessment:* Authorities are required to undertake an autonomous, proactive, and comprehensive risk assessment to evaluate the threat of further violence.
2. *Preventive and Protective Measures:* Once a risk to a victim has been identified, the State must take preventive and protective measures that are:
  - *Adequate and Proportionate:* The measures should be suitable and proportional to the identified risk.
  - *Timely Implementation:* Actions must be implemented as quickly as possible to ensure effective protection for the victim.
3. *Coordination Between Authorities:* A proper preventive response often necessitates coordination among various authorities. This collaborative approach is crucial for effectively

addressing and mitigating the risks of domestic violence.

In its jurisprudence, the European Court of Human Rights has analysed violence against women under Articles 3 and 14 of the European Convention on Human Rights<sup>23</sup>.

Article 3 of the European Convention on Human Rights (ECHR) is a fundamental provision that enshrines the prohibition of torture and inhuman or degrading treatment or punishment.

On the other hand, Article 14 – prohibition of discrimination, provides that the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

*The Opuz v. Turkey case*<sup>24</sup> was crucial in the drafting and realization of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (the Istanbul Convention).

In this case, the European Court of Human Rights found that Turkey violated the applicant's rights under Article 3 of the European Convention on Human Rights, which prohibits torture and inhuman or degrading treatment. The Court highlighted the Turkish authorities' failure to prevent and protect the applicant from domestic violence, despite repeated pleas for help. This decision underscored the importance of a proactive and effective approach in safeguarding victims of domestic violence and had a significant impact on the development of international norms concerning women's rights and violence prevention.

<sup>22</sup> Kurt v. Austria [GC], no. 62903/15, § 190, 15 June 2021, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22002-13298%22%5D%7D>.

<sup>23</sup> European Convention on Human Rights, [https://70.coe.int/pdf/convention\\_eng.pdf](https://70.coe.int/pdf/convention_eng.pdf).

<sup>24</sup> Case of Opuz v. Turkey (Application no. 33401/02) Judgment Strasbourg 9 June 2009 final 09/09/2009, <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-92945%22%5D%7D>.

*Case of Tunikova and others v. Russia.*<sup>25</sup> The Court has acknowledged that, in addition to physical injuries, psychological impact forms an important aspect of domestic violence. In the present case, the four applicants suffered physical violence from their partners and (former) spouses, which was documented in medical records and police reports. The dismissive attitude of the authorities, who failed to provide any protection despite urgent requests for help, exacerbated the applicant's feelings of anxiety and helplessness caused by the threatening behaviour of the perpetrators. The unpredictable escalation of violence and the uncertainty about their safety increased the applicant's vulnerability, leaving them in a constant state of fear and emotional and psychological distress. The Court concluded that these psychological aspects were sufficiently serious to qualify, by themselves, as treatment falling within the scope of Article 3 of the Convention. There has therefore been a violation of Article 3 of the Convention under its substantive and procedural limbs.

*Case of Tkhelidze v. Georgia.*<sup>26</sup> Court finds that the law-enforcement authorities demonstrated a persistent failure to take steps that could have had a real prospect of altering the tragic outcome or mitigating the harm. M.T. and the applicant sought police assistance multiple times due to the violent behaviour of L.M. Towards M.T. In their statements, they consistently described L.M.'s aggressive actions, exacerbated by alcohol and mental instability, including pathological jealousy and anger management issues. L.M. also had a criminal history and substance abuse problems known to the police. Despite this, the authorities failed to act effectively, reflecting broader systemic issues in addressing domestic violence. The European Court of Human Rights found that this negligence contributed to a climate where violence against women thrived, violating the

rights of the applicant and her daughter to equal protection under the law.

In flagrant disregard for the panoply of various protective measures that were directly available to them, the authorities failed to display special diligence to prevent gender-based violence against the applicant's daughter, which culminated in her death. When assessed against the similar findings of the international and national monitoring bodies, the Court finds that the police inaction in the present case could be considered a systemic failure. The respondent State has thus breached its substantive positive obligations under Article 2 of the Convention read in conjunction with Article 14.

*Case of Luca v. the Republic of Moldova.*<sup>27</sup> The Court therefore finds that the Moldovan authorities failed in their duty to conduct an immediate and proactive assessment of the risk of recurrent violence against the applicant, and to implement operational and preventive measures to mitigate that risk, protect the applicant, and condemn the perpetrator's conduct. Despite their initial prompt reaction, they subsequently failed to mount a proper preventive response in a coordinated manner among multiple authorities. They remained passive in the face of the serious risk of ill-treatment to the applicant, and through their inaction and failure to take deterrent measures, allowed the perpetrator to continue assaulting and harassing the applicant without intervention.

In view of the manner in which the authorities handled the applicant's reports of domestic violence – notably their failure to conduct an effective investigation of credible claims of psychological violence and of physical violence and to ensure the prosecution and punishment of the perpetrator without undue delay – the Court finds that the State has failed to discharge its duty to conduct an effective investigation into the circumstances surrounding the ill-treatment suffered by the applicant. There has therefore

<sup>25</sup> Case of Tunikova and others v. Russia (Applications nos. 55974/16 and 3 others, Strasbourg 14 December 2021 final 14/03/2022, [https://hudoc.echr.coe.int/fre#%22itemid%22:\[%22001-213869%22\]](https://hudoc.echr.coe.int/fre#%22itemid%22:[%22001-213869%22])}).

<sup>26</sup>Case of Tkhelidze v. Georgia (Application no. 33056/17) Judgment Strasbourg 8 July 2021 final 08/10/2021, [https://hudoc.echr.coe.int/eng#%22itemid%22:\[%22001-210854%22\]](https://hudoc.echr.coe.int/eng#%22itemid%22:[%22001-210854%22])}).

<sup>27</sup> Case of Luca v. the Republic of Moldova, (Application no. 55351/17) Judgment, Strasbourg 17 October 2023 final 17/01/2024, [https://hudoc.echr.coe.int/#%22itemid%22:\[%22001-228151%22\]](https://hudoc.echr.coe.int/#%22itemid%22:[%22001-228151%22])}).

been a violation of Article 3 of the Convention under its substantive and procedural limbs.

In the Court's opinion, the combination of the above factors clearly demonstrates that the authorities' actions were not simply an isolated failure or delay in dealing with violence against the applicant, but in fact condoned the violence, reflecting a discriminatory attitude towards the applicant as a woman. Given that a criminal conviction based on the same facts followed five years later, it appears that at the time of the events, protection measures were rejected by using discriminatory statements and reasons. The above considerations, taken as a whole, led to the conclusion that in the circumstances of the present case there has been a breach of Article 14 of the Convention read in conjunction with Article 3.

*Case of Yazgül Yılmaz v. Turkey.*<sup>28</sup> A sixteen-year-old girl was taken into custody on suspicion of assisting an illegal organisation. A medical and gynaecological examination was requested by the police superintendent responsible for juveniles in order to establish whether there was evidence of assault committed during the police custody and to check if her hymen was broken. The examination request was not signed by the applicant. The next day she was remanded in custody and criminal proceedings were brought against her; then in October 2002 she was acquitted and released. Shortly afterwards, the applicant, suffering from psychological problems, underwent various medical examinations. Two medical reports concluded that she was suffering from post-traumatic stress and depression. In December 2004 she filed a complaint for abuse of authority against the doctors who had examined her in police custody. No disciplinary proceedings were opened and in March 2005 the public prosecutor's office discontinued the proceedings. A challenge by the applicant was dismissed by the assize court.

<sup>28</sup> Case of Yazgül Yılmaz v. Turkey - 36369/06 Judgment 1.2.2011 [Section II], [https://hudoc.echr.coe.int/tkp197/view.aspx?%22fulltext%22:\[%22Yazg%C3%BCI%20Y%C4%B1lmaz%20v.%20Turkey%22\],%22itemid%22:\[%22002-598%22\]](https://hudoc.echr.coe.int/tkp197/view.aspx?%22fulltext%22:[%22Yazg%C3%BCI%20Y%C4%B1lmaz%20v.%20Turkey%22],%22itemid%22:[%22002-598%22]).

The Court considers that the lack of fundamental guarantees during the applicant's police custody, in the conditions described above, placed her in a state of deep suffering. She believes, moreover, that the authorities who decided to subject this minor to a gynecological check-up could not ignore its psychological consequences. Given that this examination necessarily caused her a sense of extreme anxiety, taking into account her age and her status as an unaccompanied minor, she meets the necessary threshold to qualify as degrading treatment. 54. There has therefore been a violation of Article 3 of the Convention in this respect.

*Case of B.S. v. Spain.*<sup>29</sup> The Court considers that where the State authorities investigate violent incidents, they have an additional obligation to take all reasonable measures to identify whether there were racist motives and to establish whether or not ethnic hatred or prejudice may have played a role in the events.

Furthermore, the authorities' duty to investigate the existence of a possible link between racist attitudes and an act of violence is an aspect of their procedural obligations arising under Article 3 of the Convention but may also be seen as implicit in their responsibilities under Article 14 of the Convention to secure respect without discrimination for the fundamental value enshrined in Article 3.

The Court considers that the decisions made by the domestic courts failed to take account of the applicant's particular vulnerability inherent in her position as an African woman working as a prostitute. The authorities thus failed to comply with their duty under Article 14 of the Convention taken in conjunction with Article 3 to take all possible steps to ascertain whether or not a discriminatory attitude might have played a role in the events. There has accordingly been a violation of Article 14 of the Convention taken in conjunction with Article 3 in its procedural aspect.

<sup>29</sup> Case of B.S. v. Spain (Application no. 47159/08) Judgment [Extracts] Strasbourg 24 July 2012 final 24/10/2012, [https://hudoc.echr.coe.int/eng#%22itemid%22:\[%22001-112459%22\]](https://hudoc.echr.coe.int/eng#%22itemid%22:[%22001-112459%22]).



## V. CONCLUSION

Globally, the prevalence of different manifestations of gender-related killings is reaching alarming proportions. Culturally and socially embedded, these manifestations continue to be accepted, tolerated or justified—with impunity as the norm. States' responsibility to act with due diligence in the promotion and protection of women's rights, is largely lacking as regards the killing of women.<sup>30</sup>

The general concept of femicide pertains to the killing of a woman or girl due to her gender. Recognizing femicide as one of the most severe forms of violence against women in international law aims primarily to ensure the highest level of protection for women. It represents a societal response to prevalent phenomena where women fall victim to acts of violence rooted in misogynistic attitudes, prejudices, superstitions, and stereotypes.

Preventing and combating violence against women and domestic violence requires evidence-based policymaking. The systematic collection of comparable data from all relevant administrative sources is essential in this regard, as is gathering information on the prevalence of all forms of violence against women.

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