
FROM CODIFICATION TO CONTESTATION: THE RISE OF LEGAL NATIONALISM IN COLONIAL INDIA

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ABSTRACT

“An unjust law is itself a species of violence”

– Mahatma Gandhi¹ (Gandhi M. K., 1922)

Under British rule, the Britishers mapped out the legal system to maintain order and reinforce control. Codified laws, structured courts, and formal procedures were introduced to regulate society and repression. However, the use of these laws often showed a significant gap between legality and justice. Dominating provisions such as the Sedition Law (Section 124A IPC) and the Rowlatt Act illustrated how the law was used to criminalize political opposition and restrict citizens' civil liberties² (Roy, 2010). Therefore, while these provisions were legally valid under the colonial structure, they lacked ethical justification, thereby opening the door to resistance.

By writing this paper, I aim to discuss how colonial law was used not only as an instrument of imperial control but also a tool of resistance in Colonial India. While the previous studies have examined the dual role of colonial law in maintaining British authority and having nationalist resistance, limited attention has been given to political trials, courtroom practices and legal debates which helped Indians to develop political awareness, legal understandings and constitutional ideas during the freedom struggle. Thus this study seeks to fill this gap by examining how Indian Nationalists used courts, legal proceedings and constitutional arguments to question British authority and political ideas during the freedom struggle.

Keywords: Legal Nationalism, Colonial Law, British India, Constitutional Nationalism, Political Trials, Sedition, Civil Disobedience, Nationalist Resistance, Constitutionalism, Section 124A IPC.

¹ M Gandhi, Young India (1922).

² Anupama Roy, Mapping citizenship in India (Oxford Univ. Press 2010).

I. Introduction

I.1. What is Legal Nationalism and how it came into Force

Legal nationalism is the process by which law was used not only as an instrument of government but also as an approach to political resistance and the proclamation of rights by a nation under foreign domination. In the history of Indian freedom struggle, legal nationalism played a very important role in showing the transformation of the courts which were made for the Britishers to crush dissent, became a place where Indian nationalists voiced the demand for legal to the whole world. Indian leaders, lawyers, and activists began to get involved within the legal system in innovative ways, for example, criticising the colonial authority in courts, disobeying laws, and even the trials of leaders like Mahatma Gandhi showed how he violated the law and challenged its legitimacy by saying that a law which suppresses freedom and dissent is unjust even if it is legally valid.

This phenomenon came into existence during the nineteenth century as a response to the Britishers attempting to codify Indian Society. While they were promising equality on paper (queens Proclamation), but in reality they were enforcing racial hierarchies in practice.³ (Kolsky, 2010) This movement was also shown in the trial of Bal Gangadhar Tilak in 1908 when he declared, “Swaraj is my Birthright, and I shall have it.”⁴ (Emperor v. Bal Gangadhar Tilak, 1908) Highlights the central topic of this paper which is that the colonial legal system functioned as both a tool of control and resistance.

I.2. Objectives

- To examine the dual function of law as a tool of domineering control and a site of contestation and resistance.
- To evaluate oppressive legal provisions and how they criminalized dissent.
- To investigate ways of legal resistance
- To discuss more about Indian leaders who shaped nationalist discourse.

³ Elizabeth Kolsky, *Colonial Justice in British India: White Violence and the Rule of Law*, 1-5 (Cambridge University Press 2010).

⁴ Emperor v. Bal Gangadhar Tilak, 10 Bom.L.R. 848, 877-880 (1908).

- To analyze the colonial legal system which includes (regulating Act of 1733 and Charter Act of 1833)

I.3. Scope

This paper mainly focuses on British operation of the British imposed legal system which is limited to the colonial period (late 18th century to 1947). It evaluated the establishments of provisions, institutions, and the functioning of courts as a tool of authority and resistance. The analysis includes certain practices and political movements such as non-cooperation movement and Civil Disobedience Movement and the contribution of leaders including Mahatma Gandhi, Bal Gangadhar Tilak and B.R. Ambedkar.

However, it does not provide an account of all colonial laws or movements. Instead, it focuses on a more selective and analytical approach covering only what represents the topic. This topic also talks about the historical developments to modern legal debate, but it doesn't evaluate modern day case laws or case studies.

I.4. Research Methodology

This research adopts a doctrinal and historical-analytical methodology to examine the relationship between colonial law and the Indian nationalist movement. The study is based on qualitative analysis of primary and secondary sources, including colonial legislations such as the 'Indian Penal Code', particularly 'Section 124A relating to sedition, the Rowlatt Act, judicial decisions, constitutional documents, political trial records, and the speeches and writings of nationalist leaders such as Mahatma Gandhi and Bal Gangadhar Tilak. The research also engages with existing historical and legal scholarship to analyse how colonial law was interpreted and contested within the nationalist movement.⁵ (Noorani, *Indian Political Trials 1775–1947*, 2005)

The paper analyses how colonial laws were used to maintain imperial authority and how Indian nationalists challenged them through constitutional arguments, political trials, and civil disobediences. The research also relies on books, journal articles, and historic commentaries relating to colonial history and constitutional development in India. A historical and critical approach has been adopted to evaluate law as both an instrument of repression and a

⁵ A.G. Noorani, *Indian Political Trials 1775-1947* 1-12 (Oxford Univ. Press 2005).

mechanism of resistance, while also examining the continuing relevance of colonial legal structures in contemporary India.⁶ (Mukherjee, 2010)

II. Historical Context: Colonial Legal Framework

2.1 Establishing British Legal Institutions

The establishment of the legal system by the British was a slow, contradictory process that unfolded over nearly two centuries. The beginning of the centralized legal provisions in India can be traced to Regulating Act of 1773.⁷ The Act was shown as the first serious attempt by the British which was intended to regulate the East India company's administration and to validate the administration of justice in its Indian territories which turned out to be controversial in Britain. However, when they constructed a Supreme Court at Calcutta with English Judges applying English Law alongside some of the company courts which applied a mixture of Hindu, Muslim and Customary Law, its implications left a deep impact on India. As for Indians, this was not just an administrative transformation, but instead it reformed the understanding of the Indians in disputes, authority and justice. Moreover, this new system was often put against the existing indigenous practices which were more flexible and community based.

The Charter Act of 1833 marked a shift in the history of colonial India.⁸ During this period, the British viewed law as an instrument to regulate administrations across different regions. This approach was the codification movement as it added a fourth ordinary member in the Governor-General's Council who was a legal expert in making laws which lead to the appointment of Thomas Babington Macaulay. Macaulay's tenure led to the making of the draft of the Indian penal code which would then be enacted in 1860 to govern criminal law in India. While this was presented as a modern legal system, it was also enforced to maintain authority over people.

The legal framework which was codified from these acts is often justified in the narrative of "Modernization". But there is a deeper logic which still not many people have learnt about it. When british codified the laws which they perceived as 'inconsistent' from pre-

⁶ Mithi Mukherjee, *India in the Shadows of Empire: A Legal and Political History 1774-1950*, 201-28 (Oxford Univ. Press 2010).

⁷ Regulating Act, 1773, 13 Geo. 3 c. 63(Eng).

⁸ Charter Act, 1833, 3 & 4 Will. 4, c. 85 (Eng).

colonial legal traditions, these laws made the governance more efficient, but it also made control and surveillance more organized. As M.P. Jain says, the creations of a uniform legal system allowed the colonial state to exercise authority with greater precision and consistency.⁹ (Jain, 1952)

2.2 Rise of a Legally Conscious Indian Middle Class

After the establishment of legal system, a new class of Indian professionals was made with the same tools which were being used for controlling.¹⁰ (Jain, 1952) The establishment of law schools, the growth of bar and the accessibility of legal text in English, produced a generation of lawyers, judges and intellectuals who understood constitutionalism. This can be seen in many dominant figures during the freedom struggle like **Mahatma Gandhi, Jawaharlal Nehru and B.R. Ambedkar** were many of the lawyers who used this as an opportunity to fight for freedom.¹¹ (Austin, 1966)

As Bipin Chandra points out, the early middle class became central to early nationalist movements. As they were the first to challenge the administration, petitioning for reforms and advocating for greater representation. Thus, we can say that their legal training was not just a professional qualification but also their perspective to not simply accept the colonial legal system as legitimate and their realization of the contradictions of the law which claimed to give freedom instead was just crushing dissent as their realization became a catalyst for resistance.¹² (Guha, 1997)

III. Law as an Instrument of Colonial Control

The British colonial government in India was not just about running the administration, it was deliberately designed to secure and maintain their political control over the region. To maintain control, it mostly relied on law which was strategically used to discipline dissent, to control the emotions and opinions on political issues and legitimize imperial authority. Simply to put, to stop a person from saying anything which goes against the legal system, the British used law as an apparatus to set some legal provisions which was made compulsory to follow. Thus, the

⁹ M.P Jain, *Outlines of Indian Legal History* 416 (1952).

¹⁰ *Id.*, at 416.

¹¹ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 1 (Oxford University press 1966).

¹² Cf. Ranajit Guha, *Dominance without Hegemony: History and Power in Colonial India* (Harvard University Press, 1997).

codification of laws and the institutionalization of courts created an appearance of legality and procedural fairness, while substantively reinforcing colonial interests.¹³ (Baxi, 1982)

3.1 Analysis of Repressive legal provisions

There were many instruments for maintaining the colonial control, but these provisions made the most impact.

- **The Sedition Act (Section 124A of Indian Penal Code), 1870**

The Sedition Act or Section 124A of IPC was enacted in 1870 by the British Colonial Administration as an amendment to the existing IPC.¹⁴ This act was introduced to punish sedition if any opinion or expression was made which could cause hatred towards the government. According to Section 124A of IPC, “whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.” This clearly explains how Britishers used law to punish people who attempt to create disaffection towards the government as “sedition”.

The Sedition Act can be further explained with its first case when Bal Gangadhar Tilak was brought to trial under the sedition act in 1897.¹⁵ (Queen-Empress v. Bal Gangadhar Tilak, 1898) Tilak apparently was brought to trial because of his lectures and songs at the Shivaji Coronation Ceremony and even though these speeches and songs did not mention anything against the government, the court broadened the interpretation by equating disaffection to disloyalty including dislike, hatred, hostility and every form of ill opinions towards the government.

Followed by, in 1908, Bal Gangadhar Tilak was punished and was charged with six years of imprisonment by the Bombay High Court because of his publication of an article in a

¹³ Upendra Baxi, *The crisis of the Indian Legal System* 32-35 (Vikas Publ'g House 1982).

¹⁴ Indian Penal Code, 1860, Section 124A.

¹⁵ Queen Empress v. Bal Gangadhar Tilak, (1897) I.L.R. 22 Bom. 112.

magazine called Kesari.¹⁶ (Emperor v. Bal Gangadhar Tilak, 1908)

Another significant sedition case is the Mahatma Gandhi's trial in 1922 where he was accused of the offence of sedition under section 124A of IPC due to his articles in the Young India Magazine. This trial takes a special place in the history of colonial legal framework because of Gandhi's decision to plead guilty to the charge and Justice Broomfield's respect for Mahatma Gandhi's moral character.¹⁷ (Emperor v. Mohandas Karamchand Gandhi, 1922)

- **Rowlatt Act, 1919**

The Rowlatt Act of 1919, officially called as the 'Anarchical and Revolutionary Crimes Act of 1919' was enacted by the British Government to reduce Nationalist movements in India.¹⁸

As WW1 was ending, the increasing number of extremist nationalists became a threat to the British administration which they termed as sedition. As a result, a commission was held by Justice Sidney Rowlatt set up in 1917, to examine unlawful conspiracies linked to anti-government movements and recommended the legislation to examine the activity. In 1918 a report was sent by the committee which revealed number of incidents since 1893 which were intended to destroy the British Rule. So, to tackle this situation it was recommended to extend the wartime emergency measures to make it permanent. Thus, this act effectively dismissed the civil liberties regarding the threat of growing nationalism. This led to a widespread protest and events such as the "Jallianwala Bagh Massacre" which showed how law and force were closely connected, with laws used as a tool of resistance.

3.2 Criminalization of dissent and political expression

During the Colonial rule, the colonial rulers imposed 4 restrictions on people's freedom of speech and expression which were Sedition, Contempt of Court, Hate speech and Defamation.¹⁹ (Chandrachud, 2017) This reformed dissent into criminal conduct as

¹⁶ Emperor v. Tilak, (1908) I.L.R 33 Bom. 1.

¹⁷ Emperor v. Mohandas Karamchand Gandhi, (1922) 24 Bombay L.R.301 (India).

¹⁸ Anarchical and Revolutionary Crimes Act, 1919 (Rowlatt Act).

¹⁹ Abhinav Chandrachud, Republic of Rhetoric: Free Speech and the Constitution of India 13 (Penguin Random

nationalist activities, ranging from publishing ill forming articles to having a protest or organizing public gatherings were interpreted as threats to public order and state security.

The Vernacular Press Act of 1878 required newspapers in local languages to obtain a license from the government before they could be published aiming to prevent the Press from issuing anti-colonial expressions and opinions.²⁰ By imposing this act, the government sought to restrict the dissemination of nationalist ideas among the wider population. While such measures temporarily restricted political expression and discouraged nationalist participation, they ultimately failed to suppress nationalist discourse as the press continued to serve an important medium of political mobilisation and contestation.

IV. Law as a Tool of Resistance (Core Analysis)

4.1 Courtroom as a political Space

The courtroom during the colonial period was not purely a site for adjudication of legal matters but it rather evolved into a political space where contestation, power and legitimacy were constantly negotiated.

4.1.1 Courts as Arenas for Ideological Contestation

While the Britishers designed the court as a tool to show authority, maintain control or regulate dissent, Indian nationalists used this as an opportunity to use their very own space to challenge the colonial validity.²¹ (Sharafi, 2014)

The foundation of this strategy draws on to what Antonio Gramsci defines the term ‘war of position’ as the struggle of hegemony conducted through the institution of civil society rather than by direct confrontation with state power.²² (Gramsci, 1971) Thus, a courtroom became a site of ideological contestation. So rather than being in a role of passive

House India 2017).

²⁰ Vernacular Press act, No. 9 of 1878, Acts of Parliament, 1878 (India).

²¹ Mitra Sharafi, *Law, and Identity in Colonial South Asia: Parsi Legal Culture, 1772-1947* 5-7 (Cambridge University Press 2014).

²² Antonio Gramsci, *Selections from the Prison Notebooks* 246 (Quintin Hoare & Geoffrey Nowell Smith eds. & trans, Lawrence & Wishart 1971)

defendants, the nationalists challenged the authority during their trial by transforming it into platforms of political speech. By doing this, they transformed the intended function of the courtroom, from a system of control into a forum for resistance.²³ (Baxi, 1982)

4.1.2 Strategic Use of trials by Nationalists

Indian nationalists used trials strategically as an instrument of political communication. They realized that instead of fighting and defending themselves, they can use trial as a means of gaining publicity through newspapers or political discussion to spread their nationalist ideas to more people. However, approaches towards colonial law were not consistent within the nationalist movement. While Gandhian nationalists often used courts as spaces for civil disobedience and accepted punishment as a form of moral resistance, Swarajists preferred constitutional and legislative methods and revolutionary nationalists used political trials as platforms to question the legitimacy of colonial rule. As stated by A.G. Noorani, “Since the dawn of time, political trials stand out as landmarks in man’s quest for truth, freedom and justice. Trials have been used for political ends by persons in power, as well as those who seek power or accountability from wielders of power.”²⁴ (Noorani, *Indian Political Trials 1775–1947*, 2005)

M.K Gandhi’s 1922 Sedition trial is one of the great examples of this strategy. On 10th March of 1922, Mahatma Gandhi was arrested at the Satyagraha Ashram, Sabarmati, Ahmedabad because of certain articles which he published in *Young India* under the charges of Section 124A of the Indian Penal Code.²⁵ However, it was not a regular trial, instead it intended to expose the injustice of the act and the colonial system. In the trial, Gandhi had openly pleaded guilty of writing and promoting disaffection against the colonial government. However, it was not the admission because of moral guilt but a strategy aiming to expose the legality of the Sedition Act. In his written statement before Judge C.N. Broomfield, Gandhi argued that laws such as the Sedition Act were made to suppress civil liberties and criminalize political dissent by describing as “the prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen.” And then declared “affection cannot be manufactured or regulated by law.” From these statements, Gandhi argued that the citizens have the moral right to convey any

²³ Upendra Baxi, *The Crisis of the Indian Legal System* (Vikas Publ’g 1982).

²⁴ A.G. Noorani, *supra* note 5.

²⁵ *Emperor v. Mohandas Karamchand Gandhi*, (1922) 26 Bom. L.R. 535.

dissatisfaction towards an unjust government as long as it does not involve violence.

Mahatma Gandhi further used the trial as a tool to explain how his views were transformed from having loyal cooperation with the British to opposing against the intentions of the colonial system. He mentioned events like 'The Rowlatt Act' and the 'Jallianwala Bagh massacre' in reference to how the British Rule had degraded and exploited India and how the colonial legal system functioned primarily as an instrument of repression rather than justice. While he accepted his responsibility of the consequences of certain campaigns including the 'Chauri Chaura' incident accepting that he was "playing with fire", he still stood on his grounds defending non-violence and civil disobediences as ethical duties against unjust government.²⁶ (Gandhi M. K., 1922)

4.2 Constitutional and Legislative Engagement

The struggle for Independence was not limited to protests, public discussions or campaigns. There was another important aspect of the anti-colonial movement which emerged from the constitutional and legislative engagement with the colonial state. Many Indian Political Leaders believed that constitutional reform, representations and legal advocacy would increase more political participation and equal treatment under law and will have the power to question the government and held it responsible for its actions. Therefore, early nationalism in India evolved through the language of constitutionalism, legality, representation and political reform.²⁷ (CHANDRA, MUKHERJEE, MUKHERJEE, PANKKAR, & MAHAJAN, 1989) The exposure of constitutional politics during the colonial period was mostly influenced by the spread of western education which led to a rise in educated middle class and the establishment of modernized legal institution under the colonial rule. Due to this, Indian political leaders and intellectuals began to call upon constitutional principles like equality before law, direct elections, civil liberties, representative government and responsible administration as essential foundation for India's political future.²⁸ (Austin, 1966) Thus Indian Nationalist Leaders challenged the British by using their own constitutional and democratic ideas against the colonial rule.

²⁶ Mahatma Gandhi, Great Trial of 1922, M.K. GANDHI INSTITUTION FOR NON-VIOLENCE (Mar. 18, 1922)

²⁷ Bipan Chandra et al., India's Struggle for Independence: 1857-1947 (Penguin Books 1989).

²⁸ Granville Austin, supra note 11, xii-xiii

One of the important constitutional methods used by the Indian nationalists was the use of Petitions, memorials and representations addressed to the British parliament and colonial authorities as these petitions raised issues like racial discrimination, non-involvement of Indians in administrative positions, economic exploitation, denial of civil liberties and most importantly the rise of taxation. So through strategic litigation, Indian leaders aimed to expose the contradictions between what Britishers claimed to believe in and how they actually were governing.

4.2.1. Role of Indian National Congress:

The Indian National Congress became the main organization for the Indian leaders through which they carried out political and constitutional activities against colonial rule. Founded in 1885, INC dominated Indian Movement for Independence from the British Rule as it represented the ambitions of Educated Indian Elites who wanted betterment through peace and lawful ways. Early congress leaders, saw the internalization and indigenization of political democracy as one of their main objectives. They based their politics on the doctrine of the sovereignty of the people, or as Dadabhai Naoroji says, “the new lesson that kings are made for the people, not peoples for their kings.”²⁹ (CHANDRA, MUKHERJEE, MUKHERJEE, PANKKAR, & MAHAJAN, 1989) Leaders such as Dadabhai Naoroji, Gopal Krishna Gokhale and Surendranath Banerjee Played a major role in developing constitutional nationalism in India.

Constitutional reforms founded by the British like ‘The Indian Councils Act 1892’ and ‘The Indian Councils Act 1909’, reduced participation for the Indians in governance. The ‘Indian Councils Act of 1892’³⁰ merely expanded the legislative councils and enabled limited discussions involving budgets and administration but still representation of Indian remained strictly forbidden and the legislative assemblies which were under the british rule had limited actual power. While ‘The Indian Councils Act 1909’ or ‘The Morley-Minto Reforms of 1909’ included more presence of Indian in Legislative Councils and allowed Indians to be involved in elections in certain cases.³¹ But still, british executive power continued dominating and the furthermore, the british introduced separate electorates which meant that people would be voting on basis of their religion which later became a

²⁹ Chandra et al., supra note 27, 79.

³⁰ Indians Councils Act, 1892, 55 & 56 Vict. C. 14.

³¹ Indian Councils Act, 1909, 9 Edw. 7, c. 4.

major issue and cause of political division. Despite these restrictions, nationalists used legislative councils strategically to challenge against the colonial administration.

An addition to this constitutional struggle was the opposition to the ‘Simon Commission. Simon Commission, a group appointed in November 1927 was established to report on the efficacy of the administrative provisions outlined by the Government of India Act of 1919. This provision became so controversial because it did not include any participation from the Indians leading to a limited understanding of India’s needs, and for prioritizing colonial authority over genuine reforms. Due to this, critics argued that this provision’s objective was more about maintaining colonial authority than offering meaningful reforms. Consequently, the commissions got boycotted by major Indian leaders and nationalist groups including the INC, under the slogan “Simon Go Back” and in the end, the boycott united various political parties, including the INC and the All-India Muslim League, creating a sense of unity against the colonial rule.³² (Commission, 1930)

Disputes and Constitutional discussions around representation ultimately resulted in formulation of Jinnah’s Fourteen Points by Muhammad Ali Jinnah in 1929. The demands involved federalism, adequate Muslim representation in legislatures, provincial autonomy and protection of minority rights. These points reflected the demands which aimed to address issues related to representation and rights within a unified India. Through the 14 points Jinnah declared of parting of ways with the INC as it highlighted the increasing complexity of representative politics under colonial rule.³³ (Siddiqui, 2025)

The growth of constitutional nationalism was also impacted by the restriction within colonial legal structure. While the British Authority established legal reforms and representative bodies, these were still intact with strict measures like sedition laws, censorship of the press and preventive detention which were formulated to minimize the criticism of the colonial authority. Court cases like Queen-Empress v. Bal Gangadhar Tilak illustrated how courts gave importance to maintain the reputation of the government instead of protecting an individual’s civil liberties.³⁴ (Queen-Empress v. Bal Gangadhar Tilak,

³² Indian Statutory Commission, Report of the Indian Statutory Commission (Cmd.3568, 1930)

³³ Tauheed Siddiqui, An Appraisal of Jinnah’s Political Paradox: Jinnah in His Own Words, 4(4) Journal of Regional Studies Review 193 (2025).

³⁴ Queen-Empress v. Tilak, I.L.R. 22 Bom. 112.

1898).

By the early 20th century, the demands led to rise like having a responsible government, dominion status, and eventually complete independence. Nationalists frequently argued that laws which are making decisions for the Indians should not be enacted without the involvement and consent of an Indian.³⁵ (Mukherjee, 2010) This constitutional awareness played a major role in shaping India's democratic system after Independence. Therefore, Constitutional and legislative Engagement became a major part of the resistance.

4.3. Civil Disobedience and Legal Defiance.

Civil Disobedience is presented as the most complex part of Legal Nationalism as it involved justification on violation of law as an act of political principle rather than realizing its illegality. Civil Disobedience had not emerged as a protest strategy, it rather developed from a distinction between Legality and Legitimacy. This idea was changing early in the freedom struggle where it was first clearly suggested by Mahatma Gandhi in his book *Hind Swaraj* (1909), where he stated a clear distinction between legality, on what the law of colonial state required and legitimacy, on what morality and the consent of the governed authorized.³⁶

Movements:

1) Non-Cooperation Movement (1920-1922)

The Non-Cooperation Movement was the first large mass political movement which was led by M.K. Gandhi against the British colonial authority. The movement aimed at claiming self-rule (Swaraj) through the withdrawal of cooperation in the ways of non-violent. Indian was encouraged and influenced to boycott government schools, courts, legislative councils and foreign goods while also boosting local institutions and Swadeshi practices. Moreover, this movement was largely participated by students, lawyers, and the working middle class which marked a transformation from educated elite politics to mass mobilization in the freedom struggle.

³⁵ Mithi Mukherjee, *India in the Shadows of Empire: A legal and Political History 1774-1950* (Oxford Univ. Press 2010)

³⁶ M.K Gandhi, *Hind Swaraj or Indian Home Rule*, (Navajivan Publ'g House 1938)

The movement was motivated by the growth of resentment against colonial policies which involved The Rowlatt Act, the Jallianwala Bagh Massacre, the economic hardship after World-War 1 and the merging with Khilafat Movement. However, it got Suspended in 1922 after the Chauri Chaura event where violent clash resulted in the death of police personnel, leading Gandhi to stop the movement on basis of maintaining non-violence. But despite its sudden end, this movement reformed the Center of Indian nationalism by making the Non-cooperation Movement as a primary method of political resistance.³⁷ (CHANDRA, MUKHERJEE, MUKHERJEE, PANKKAR, & MAHAJAN, 1989)

2) Civil Disobedience Movement (1930-1934)

The Civil Disobedience Movement was initiated by M.K. Gandhi as a mass protest against non-justified colonial laws, specifically the Salt Tax. It started with the famous Dandi March in 1930, where Gandhi broke the Salt tax, marking the start of resistance of British colonial authority. This movement represented a reformed transition from non-cooperation to active violation of specific colonial laws which involves boycott of british goods, refusal to pay taxes and breaking of salt laws across regions.

This movement was fully known across India which involved the participation of workers, women, peasants, and students which then led to regional participation where the movement was not limited to one place as different regions participated in their own way. After the Gandhi-Irwin Pact (1931) it got temporarily suspended but it was then resumed afterwards due to demands of nationalist not being accepted which was directed to a failure of negotiations at the round table conference. Despite extreme repression and a decline by 1934, the movement had expanded public participation in the nationalist struggle and gradually strengthened the demand for complete independence (Purna Swaraj).³⁸ (Vajiram, 2026)

During the freedom struggle, Law-Breaking Became a major form of Ethical and Political resistance specifically under the Civil Disobedience Movement as Indians Continued to believe that the colonial laws were unjust and were not morally right and was just used a tool for maintaining political dominance and to resist any exploitation towards the British Authority. Mahatma Gandhi emphasized the importance of moral conscience over state

³⁷ Bipan Chandra et al., supra note 29.

³⁸ Civil Disobedience Movement, Vajiram & Ravi, UPSC Exam Notes.

authority by stating that, “it is a superstition and an ungodly thing to believe that an act of a majority binds a minority.”³⁹ (Gandhi M. , Hind Swaraj or Indian Home Rule, 1938) This Idealism shaped historic movements such as Non-Cooperation and Bardoli Satyagrah, where people boycotted government institutions, refused to pay illegit taxes, and refusing to accept colonial regulations.⁴⁰ (CHANDRA, MUKHERJEE, MUKHERJEE, PANKKAR, & MAHAJAN, 1989) Such law-breaking acts were not regarded as an ordinary criminal offence, but as a peaceful and ethical forms of political protest against unfair laws.⁴¹ (Sharp, 1984)

4.4. Legal Consciousness and the Role of Press

4.4.1 Press as a Medium of Legal Awareness and Critique:

The rise of the legal consciousness during colonial period was mainly linked to the expansion of Press and Print culture. Journal, Newspapers, Pamphlets and vernacular publications became a medium through which political debates, new colonial policies announcement and legal developments were made accessible to the public. The publication of early colonial press like ‘The Bengal Gazette’ marked the beginning of openly criticizing and discussions of British governance and administrative practices.⁴² (Hussain, 2023) thus the spread of print culture shifted law from a colonial institution into a subject of discussion around public.

As the nationalist movement rose, newspaper became a major tool for exposing and condemning contradictions against the colonial rules, Newspapers and Journals regularly informed public on sedition trials, censorships, defiance laws therefore helping the Indians realize how colonial law was just shown being used for justice but instead was just a medium for political control.⁴³ (Hussain, 2023)

The colonial authority recognized the rising influence of the press and introduced many restrictive laws to keep it in control. Some of these were ‘The Censorship of Press Act 1799’, ‘The Licensing Regulations of 1823’, ‘The Vernacular Press Act of 1878’ and ‘The

³⁹ M.K Gandhi, supra note 36, at 124.

⁴⁰ Bipin Chandra et al, supra note 37.

⁴¹ Gene Sharp, *The Politics of Nonviolent Action* 64-70 (1984)

⁴² Imran Hussain, *Development and Significance of Press in Colonial India and Attitude of East India Company Towards the Indian Press*, 12 Eur. Chem. Bull. (Special Issue 4) 15982, 15982-83 (2023).

⁴³ Id. At 15984-15985

Indian Press Act of 1910". These laws were founded to restrict opinions from the nationalist and regulate political publications.⁴⁴ (Singh & Raghuvanshi, 2025) as these laws were introduced, it instantly showed the growing anxiety of the colonial authorities in relation to the role of press influencing mass-mobilization opinion and spreading anti-colonial views. Moreover, resistance to these restrictions increased the demands for freedom of expressing opinion and civil liberties during the nationalist movement.⁴⁵ (Singh & Raghuvanshi, 2025)

4.4.2 Public Engagement with Legal Rights and Injustices:

The Press Field played a major role in educating the public about legal rights, political injustices and constitutional reforms. Newspapers and reports on restrictions or prosecutions of nationalist leaders enabled people to understand how and why law related to colonial power.⁴⁶ (Prakash, 2024)

Nationalist Leaders utilized Newspapers very efficiently for spreading political education and mobilization. E.g. Publications associated with Bal Gangadhar Tilak, Mahatma Gandhi, and other Nationalist leaders circulated the idea of self-rule, civil liberties and political accountability.⁴⁷ (Prakash, 2024) Prime Publications which were very influential in widening the ideas of non-violence, constitutional resistance and civil-disobedience involved Gandhi's Articles including 'Young India' and 'Harijan'.⁴⁸ (Gandhi M. , 1953) Using press as a tool helped leaders to relate legal issues with more bigger political and moral questions, thereby encouraging more participation in the movements.

But apart from these publications, 'The Vernacular Press' created great awareness in the fields of legal and political among educated urban elites. Newspaper which was being published in regional languages allowed nationalists to share their ideas to rural population and different social groups across India.⁴⁹ (Prakash, 2024) Hence, Vernacular Journalism helped making more awareness on Politics and encouraged public anticipation in debates

⁴⁴ Aradhana Singh & Ritu Raghuvanshi, Evolution of Press Laws in India: A Historic Perspective, 5 Int'l J. L., Just. & Jurisprudence 427, 427- 428 (2025).

⁴⁵ Id. At 428-429.

⁴⁶ Prof. Ravi Prakash, The Role of the Press in Shaping Public Opinion During the Freedom Struggle, 6 Int'l J. for Multidisciplinary Rsch. 1, 1-3 (2024).

⁴⁷ Id, at 3-4.

⁴⁸ M.K. Gandhi, Mahatma Vol.4, at 3-15 (Publ'ns Div., Ministry of Info. & Broad., Gov't of India 1953)

⁴⁹ Prof. Ravi Prakash, supra note 47, at 3.

concerning justice, rights and representation.

4.4.3 Formation of a Politically Informed Citizenry:

All these interactions between press and nationalist's opinion and politics eventually created a politically informed citizenry in Colonial India. Newspapers enabled readers to analyze colonial rules and policies which led them to be a part of discussions. Reports, editorials and political essays on legislative developments guided people regarding these concepts like rule of civil law, civil liberties, representative government and democratic participation.⁵⁰ (Hussain, 2023)

Despite censorship and number of attempts at suppression, the nationalist press continued to act as a major institution of political contestation. Even though, journalist and editors often faced prosecution, confiscation of publications and imprisonment for criticizing colonial policies⁵¹ (Singh & Raghuvanshi, 2025), the consistency of press showed the importance of public opinion and legal awareness in the freedom struggle and therefore by the early twentieth century, newspaper became the main source to political communication and played a vital role in creating modern political consciousness in India.

4.5. Role of Legal Professionals and Intellectuals

Legal professionals and Intellectuals played a central position in the Indian Nationalist movement and the development of constitutional governance in colonial India. Most of the leaders were trained lawyers as legal education presented the idealism of civil liberties, constitutionalism, and political negotiations in addition of utilizing legislatures, courts and newspapers to question the colonial authority and articulate nationalist demands. Therefore, the legal profession became a major path between law and politics. As Justice Dipak Misra quoted, lawyers played a “pivotal and seminal role in the freedom movement” and contributed to nation-building through legal reasoning and constitutionalism.⁵² (Misra, 2012).

⁵⁰ Imran Hussain, *supra* note 42, at 15984-15988.

⁵¹ Aradhana Singh & Ritu Raghuvanshi, *supra* note 44, at 428-430.

⁵² Hon'ble Mr. Justice Dipak Misra, *Role of Lawyers in Nation Building*, 11 *Bharati L. Rev.* 11, 11 (2012)

4.5.1. Contribution of B.R. Ambedkar:

B.R. Ambedkar was one of the most profound constitutionalist and legal scholar of modern India. He was a renowned economist, jurist and social reformer who emphasized equality, liberty, fraternity and constitutional morality as the foundations of democracy.⁵³ (Ambedkar, 2016) Ambedkar was strictly against caste discrimination and untouchability, arguing that without social and economic equality, political democracy wouldn't still stand⁵⁴ (Ambedkar, 2016) and defined caste system as degrading and oppressive with the belief of social reform being necessary.⁵⁵ (Ambedkar, 2016)

B.R. Ambedkar saw the Constitution as a major tool used for social transformation which can ensure justice to marginalized communities and ensuring equality before law.⁵⁶ (Baxi, 1982) In 1947, Ambedkar became the chairman of Drafting Committee of the Constituent Assembly and performed a crucial role in framing the constitution of India.⁵⁷ (Khoth & Purohit , 2017) His contribution were majorly in relation to fundamental rights, abolition of untouchability, constitutional remedies, and safeguards for Scheduled Castes and Scheduled Tribes.⁵⁸ (Khoth & Purohit , 2017)

4.5.2 Contribution of Motilal Nehru:

Motilal Nehru was one of the famous lawyer-politician and constitutionalist of the Indian Nationalist Movement. Through legislative politics and constitutional advocacy, he promoted representative government and constitutional reform in colonial India.⁵⁹ (Shukla, 2026)

His most historic contribution was his leadership of the Nehru Committee, which drafted the Nehru Report of 1928.⁶⁰ (Nehru, 1975) The report demanded dominion status, federalism, parliamentary democracy and fundamental rights hence becoming a major part

⁵³ B.R. Ambedkar, Annihilation of Caste 41-42 (Navayana Publ'g Pvt. Ltd. Annotated critical ed. 2014) (1936)

⁵⁴ Id. 51-60

⁵⁵ Id. 74-75

⁵⁶ Upendra Baxi, Supra note at 23, 32-38

⁵⁷ Narendra Kumar Khoth & Yogesh Purohit, Major Role of Dr. B. R. Ambedkar in Framing the Indian Constitution, 4 Law Mantra 1, 1-2 (2017).

⁵⁸ Id.

⁵⁹ Published by Princy Shukla: Motilal Nehru: Architect of Early Indian Constitutional Thought, India Today (Feb. 6, 2026).

⁶⁰ Motilal Nehru, The Nehru Report: An Anti-Separatist Manifesto 1-10 (Michiko & Panjathan 1975)

in the development of Indian Constitutional thought.⁶¹ (Indira Gandhi National Open University, 2017)

4.5.3. Lawyers as Mediators Between Law and Politics:

Many leaders of the nationalist movement involving Mahatma Gandhi, Jawaharlal Nehru, Muhammad Ali Jinnah and Sardar Vallabhbhai Patel had legal training.⁶² (Misra, 2012) This was because lawyers utilized courts, trials and constitutional negotiations to go against the authority and expand their nationalist ideas.⁶³ (CHANDRA, MUKHERJEE, MUKHERJEE, PANKKAR, & MAHAJAN, 1989) According to Bar Council of India, Lawyers played an important role in defending political prisoners and embracing the courtroom into spaces of resistance.⁶⁴ (India)

M.K. Gandhi also used civil disobedience and legal ethics to challenge unfair laws. Justice Dipak notes that Gandhi's legal representations were based on principles of morality and justice.⁶⁵ (Misra, 2012) Through Satyagraha, Gandhi emphasized the relationship between ethics, laws and political legitimacy.⁶⁶ (Gandhi M. , 1953)

4.5.4. Development of Constitutional Thought:

Legal Professionals and intellectuals significantly created constitutional thought in India. Documents such as the Nehru Report of 1928 and the Karachi Resolution of 1931 showed the increasing demands for fundamental rights and constitutional governance.⁶⁷ (Indira Gandhi National Open University, 2017) These constitutional ideas later reflected the shaping of the Constitution of India in 1950, specifically in relation to federalism, democracy, social justice and fundamental rights.⁶⁸ (Austin, 1966)

⁶¹ *Indira Gandhi Nat'l Open Univ.*, MPS-003 India: Democracy and Development: Legacy of National Movement With Reference to Development, Rights and Participation 2–4 (*Indira Gandhi Nat'l Open Univ.*).

⁶² Hon'ble Mr. Justice Dipak Misra, *supra* note 52, at 12-13.

⁶³ Bipin Chandra et al., *supra* note 40.

⁶⁴ Bar Council of India-Lawyers in the Indian Freedom Movement.

⁶⁵ Hon'ble Mr. Justice Dipak Misra, *supra* note 62, at 12.

⁶⁶ M.K. Gandhi, *supra* note 48, at 3-12

⁶⁷ *Indira Gandhi Nat'l Open Univ.*, *supra* note 61, 2-6.

⁶⁸ Granville Austin, *supra* note 30, at 50-85.

V. Case Studies

Political Trials helped expose the coercive nature of colonial Governance in British India. The colonial state often used sedition laws and the power of emergence laws to restrict criticism, maintain the press and criminalize nationalist political opinions. At the same time, they also converted the courtroom into places of resistance where they argued against the legitimacy of imperial rule and speeded ideas of liberty, freedom and self-government. Some historic sedition trials of Bal Gangadhar Tilak and Mahatma Gandhi provide us with reference on how colonial law became deeply connected with politics and nationalism.

5.1 Gandhi Sedition Trial (1922)

Mahatma Gandhi's 1922 Sedition trial continues to be one of the clearest illustrations which exposed the conflict between colonial legality and moral legitimacy. Gandhi was charged under Section 124A of the Indian Penal Code in regarding of his articles which he published in his magazine 'Young India' where he degraded and criticized the colonial rules and encouraging non-cooperation. The prosecution argued that his articles promoted "disaffection" against the Colonial Government and threatened public order during the period of intense nationalist mobilization.

But, unlike other criminal defendants, Gandhi accepted the allegations based on the authenticity of his writings and accepted full responsibility of the following consequence. But even after accepting, Gandhi used this situation as an opportunity to argue morally against the colonial rule. According to his statement before Judge C.N. Broomfield at Ahmedabad Sessions Court, Mahatma Gandhi clapped back with the saying that "affection cannot be manufactured or regulated by law" and emphasized Section 124A as "the prince among the political sections of the IPC designed to suppress the liberty of the citizen."⁶⁹ (Gandhi M. K., 1922)

Gandhi stated further that the reason for the emergence of non-cooperation was the failure in hope in the justice of the Colonial Administration and it was a moral duty to have resistance towards an unjust state in the means of non-violation. By pleading guilty while also accepting colonial repression, Gandhi transformed the courtroom into a political platform rather than a

⁶⁹ Mohandas Karamchand Gandhi, Statement Before the court, in the Great trial of 1922, (March. 18, 1922), [M.K. Gandhi Archive](#).

site of legal defense. His Acceptation towards the punishment, emphasizes the Gandhian Principle of civil disobedience: unfair laws should be resisted freely, and punishment should be accepted voluntarily to confront the injustice of the colonial legal system.

Thus, the significance of the trial lay not merely in conviction, but in the sudden change of authority which occurred in the courtroom. Hence, the trial became a major part in the evolution of nationalist legal consciousness, showing how law can simultaneously be utilized as a measure of dominance and arenas of political resistance.⁷⁰ (Gandhi M. K., 1922)

5.2. Tilak's Seditious Trials

The seditious trial of Bal Gangadhar Tilak exposed the narrowly interpretation of seditious law by colonial authorities in the late 19th and early 20th centuries. Tilak, who was the editor for the Marathi newspaper named 'Kesari', used journalism as a medium for spreading ideas of nationalization. His writings criticized the British administration, defended nationalism and encouraged mass-mobilization among Indians.

In the 1897 seditious case, Tilak was arrested for publication of articles in Kesari in between the period of Bubonic plague unrest in Pune. The Government charged him by stating that his writings were creating hatred towards the British officials and indirectly contributed to the assassination of W.C. Rand, the plague commissioner. This prosecution was based on Section 124A of the IPC, which criminalized anyone who attempted to exempt a disaffection towards the government established by law.⁷¹ (Queen-Empress v. Bal Gangadhar Tilak, 1898) The case eventually reached the Privy Council in Bal Gangadhar Tilak v. Queen-Empress (1898), where the interpretation from the prosecutions was effectively upheld. This decision enabled the colonial government to arrest any nationalist criticism under the seditious act.

Tilak was arrested once again in 1908 for articles published in the Kesari discussing bomb attacks, revolutionary violence and colonial degradation. The trial before Justice Dinshaw Davar broadly cited Section 124A of the IPC and held that seditious did not required direct provocation to violence instead words like "hatred", "contempt" or "disaffection" were considered sufficient for criminalization towards the government.⁷² (Emperor v. Bal

⁷⁰ Emperor v. Tilak, (1908) I.L.R 33 Bom. 1.

⁷¹ Queen-Empress v. Tilak, I.L.R. 22 Bom. 112.

⁷² Emperor v. Tilak, (1908) I.L.R 33 Bom. 1.

Gangadhar Tilak, 1908) The court narrowly distinguished lawful criticism from writings that weakened loyalty towards the colonial state, making even the strongest nationalist criticism punishable.⁷³ (Emperor v. Bal Gangadhar Tilak, 1908) Despite all of this, Tilak Continued to defend political criticism and press freedom but he was still convicted and was sentenced to six years, making it a major symbol of contestation against British Colonial rule.

VI. Critical and Constitutional Legacy

VI.1. Law as an instrument of Domination and resistance

Colonial Law was used both as a medium of imperial control and as a tool for resistance. The Colonial authority introduced laws in relation to the sedition, censorship, preventive detention and emergence power authority to suppress any nationalist activities and maintain political authority. Section 124A of the Indian Penal Code, which criminalized sedition, became one of the principal mediums to charge Indian nationalist leaders, however, nationalist also used law in the form of resistance by strategically filing petitions, defending political prisoners, participating in legislative councils and most importantly transforming courtrooms into spaces of political critique.⁷⁴ (Noorani, 2005)

The sedition trials of Bal Gangadhar Tilak and Mahatma Gandhi exposed how the courtroom were turned into arenas where the legitimacy of imperial rule was unjust.

VI.2. Limits of Constitutional Resistance Under Colonial Rule

Even though, some of the constitutional reforms were introduced through laws such as the Indian Councils Acts and the Government of India Acts by the British, their scope was still limited. Real executive community which mostly included Britishers was continued to remain maintained in colonial hands, whereas the Indian participation was strictly controlled. Courts frequently prioritized imperial interests and public order over civil liberties and political freedoms.⁷⁵ (CHANDRA, MUKHERJEE, MUKHERJEE, PANKKAR, & MAHAJAN, 1989) These limitations increasingly provoked many nationalists to fight for constitutional reform because they realized it wouldn't change

⁷³ Emperor v. Tilak, (1908) I.L.R 33 Bom. 1.

⁷⁴ A.G. Noorani, supra note 26, at 1-12.

⁷⁵ Chandra et al., supra note 63, at 90-110.

unless and until they secure it by themselves.

VI.3. Legal and Extra-Legal Nationalist Strategies.

The Indian nationalist movement was a mixture of legal constitutional methods with extra-legal reforms of political resistance. Earlier leaders used to just rely on filing petitions, legislative debate and constitutional advocacy but when Gandhi incorporated movements like civil disobedience, boycotts, non-cooperation, and satyagraha alongside constitutional negotiations⁷⁶ (Gandhi M. , Hind Swaraj or Indian Home Rule, 1938), the resistance operated simultaneously within and outside colonial legal structures.⁷⁷ (Iyer, 1973)

VI.4. Transition from Colonial Law to Constitutional Governance

The colonial repression period deeply influenced the constitutional vision of an independent India. After the independence, the framers of constitution replaced colonial authoritarianism with a democratic constitution founded upon liberty, equality, justice and the rule of law. Fundamental rights under Part III of the Constitution were specifically designed to protect citizens against abuses of power and arbitrary state action which was characterized by the colonial governance.⁷⁸ (Austin, 1966)

VI.5. Influence on Fundamental Rights and Judicial Review

The nationalist movement was also involved in the development of right-based constitutionalism and judicial review in Independent India as the judiciary gradually became an important space for the protection of civil liberties and constitutional accountability.

The legal consciousness and constitutional ideas that emerged during the colonial period continued to shape constitutional and political developments in independent India. The engagement of nationalist with colonial legal institutions not only challenged imperial authority but also influenced constitutional debates on rights,

⁷⁶ M.K. Gandhi, supra note 39, at 87-124.

⁷⁷ Raghavan N. Iyer, *The Moral and Political Thought of Mahatma Gandhi*, 45-58 (Oxford Univ. Press 1973).

⁷⁸ Granville Austin, supra note 66, at 50-85.

governance and democratic accountability in Independent India.

VII. Conclusion

The Indian Nationalist movement demonstrated that law under colonial rule was not just a neutral system of governance, but a political mechanism used to preserve imperial authority and suppress dissent. Through provisions like the Sedition Law and the Rowlatt Act, the British colonial authority used law to justify their action in the form of repression and restrict civil liberties. However, Indian nationalists used the same legal system into a space of contestation by defaming colonial laws through political trials, constitutional arguments, public mobilization and civil disobedience.⁷⁹ (Noorani, 2005)

The interlinkage between colonial power and national resistance played a major role in shaping constitutionalism Consciousness in India. The felony of the colonial laws influenced greatly on the development of democratic ideals such as fundamental rights, freedom of speech, rule of law, and judicial accountability in independent India. Hence, Legal Nationalism became an important foundation for constitutional democracy by changing the demand for political freedom into a more increasing demand for constitutional justice and rights-based governance.⁸⁰ (Austin, 1966)

Thus, the importance of this history continues to be intact where debates surrounding free speech, state power, civil liberties and colonial-era laws persist. Hence understanding the role of law during nationalism is not merely essential for only analyzing India's colonial past but to also getting to know how constitutional values must continue to be defended in the present. Therefore, the legacy of legal nationalism continues to survive in the constant use of law to challenge authority, protect every citizen's right and preserve democratic accountability.⁸¹ (Mukherjee, 2010).

⁷⁹ A.G. Noorani, *supra* note 74, at 1-12.

⁸⁰ Granville Austin, *supra* note 76.

⁸¹ Mithi Mukherjee, *supra* note 6.