Decolonizing Public Order:
Law and Emergency in India, 1915-1955

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Abstract

This thesis sets out to investigate how law was used as a tool of governance in late colonial and early postcolonial India, with special reference to the invocation of states of exception or simply, extraordinary laws. The question is closely related to another issue, the creation of certain ‘problem categories’ to whom the normal process of law did not apply and which represented a legalised and permanent state of exception. With regards to both questions this thesis has found a consistency in perspective across the colonial – post-colonial divide. Bureaucrats in independent India were just as obsessed with maintaining peace and tranquillity as the colonial law and order administration. The case studies discussed in this thesis are diverse both in terms of their focus on different regions and the analytic angle of each instance involved. They include an analysis of the workings of the Defence of India Act of 1915 and the Rowlatt Bills in the 1910s, followed by more bottom-up case studies of how Section 144 CrPC was deployed in local emergencies in several provinces across India. Of particular importance in this context is Uttar Pradesh (UP) which is used to compare governmental practice under the pre and post-Independence Congress administrations. A certain overall pattern emerges from these case studies. For one, there was an increasing trend to normalize states of exception for the sake of maintaining law and order. At the same time, there was an important but subtle shift amongst the kind of situations leading to the invocation of extraordinary legislations and, the nature of those ‘exceptional categories’ of people- or problem categories to whom the normal rule of law was not believed to apply, from late colonial and early postcolonial India. The Raj started with a number of relatively clearly defined problem categories – badmaashes, dacoits, thugs, unruly labour, communists – it often had to totalise the potential reach of emergency legislation to the entire Indian populace. In post-colonial times, such a totalization was often reversed but a sense of problem categories nevertheless persisted.
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Introduction

Independence from British rule ushered in an era of unprecedented opportunity to construct a new polity in India according to the principles of democratic citizenship and nationalism. But not all civil servants of the new state were equally enthusiastic about the new political climate. Many of them maintained an underlying attitude of distrust towards ordinary Indian citizens that would have been more appropriate for colonial times. Ram Kinker Singh, the District Magistrate of Etah in the United Provinces, for instance lamented in an official communication in 1949, that since independence, “[T]he Police does not inspire fear” among the masses.¹ He further deplored that “ignorant and illiterate people have got erroneous and perverted conceptions of freedom” and believed that they now had “no respect for authority”. Many police officers in the new nation also did not have a very favourable opinion about the general public order and, the citizen population in particular. The Superintendent of Police (SP) of Bahraich, for example, came to the conclusion that “[W]ith the advent of freedom the public at large had developed a peculiar psychology of confusing liberty with license.”² This, he felt was the result of a basic distrust between the police and the public that had remained unchanged since the British departed. For this reason, the public did not provide much cooperation to the security forces when dealing with criminals.

These comments came in the wake of a complex discussion that took place between various departments of the bureaucracy responsible for maintaining public order and peace in what was soon to become the state of Uttar Pradesh. These high-ranking bureaucrats sounded uncannily like their erstwhile colleagues in the British Raj, who had stressed many times before that Indians could only be given good government because they were unsuited to enjoy free government. For the colonisers, the natives could not be trusted with their own freedom. When it came to policing and maintaining law and order, gathering evidence was often seen as a cumbersome process that led nowhere. Given the essential gulf between colonisers and colonised, between the administration and the public, on which the ideology

¹ See, Uttar Pradesh State Archives, Secret letter no. 205/ST, dated 10/6/1949, from District Magistrate Etah, Ram Kinker Singh, to The Secretary to Government (Police-C), Lucknow. Part of File No. 464/1948 Department (Police) B.
of colonialism ultimately depended, it was normal to distrust a non-cooperative public. In consequence, the British believed that the criminal justice system and the maintenance of law and order would be impossible without certain extraordinary legislative measures that circumvented and perverted the much invoked colonial ideal of bringing the ‘rule of law’ to a subcontinent plagued by oriental despotism. This extra-legal legislation remained in place throughout the career of the colonial state. When Ram Kinker Singh, and the Superintendent of Police in Bahraich voiced their opinions they were arguing in favour of maintaining precisely such an apparatus of extraordinary legislation which would short-circuit the due process of law and justice, even in times of independence when colonial divisions were no longer seen to apply.

This thesis studies various instances where extraordinary legislation of different kinds was invoked at various instances in late colonial as well as early postcolonial India. It maps the invocation and effects of exceptional laws like the Defence of India Rules or the Rowlatt Bills but also other more routine laws like Section 144 of the Indian Criminal Procedure Code, laws instituting curfews, laws allowing police firing to control crowds, which might appear to be ordinary and essential in maintaining public peace and tranquillity but exhibited exceptional tendencies. While grand laws like the Defence of India Act which applied to every corner of British India, were top down in nature, the invocation of ordinary criminal procedure laws like section 144 and curfews, and the decisions to open fire on protesting mobs were local. The figure of the District Magistrate (DM) and the local Superintendent of Police (SP) is specific in this regard. Also, once the process of decolonisation set in, provincial governments had a larger role to play when it came to deciding the actions to be taken in instances of provincial disturbances.

Situating the subject

Scholars of South Asian Studies have delved into various aspects of the law in India and its functioning. Earlier research has dealt with a broad range of issues from personal and religious law(s) to surveillance, the suppression of the vernacular press, civil and criminal procedure, racism embedded in the legal code and the association of legality and colonial liberalism. Many more scholars have touched upon various dimensions of law while discussing issues such as colonial racism, issues of colonial punishment, administrative
responses to labour issues or communal conflicts. Christopher Bayly, Eric Stokes, D.A. Washbrook, M.R. Anderson, Sumit Sarkar, Rohit De, Taylor Sherman, Radhika Singha, Partha Chaterjee, Mitra Sharafi, Elizabeth Kolsky, Mithi Mukherjee, are only some of the names that emerge in this context. However, the maintenance of law and order in India from a dedicated legal history perspective needs to be interrogated further. Radhika Singha and Elizabeth Kolsky have offered a dense scholarship on some aspects of extraordinary laws in colonial India by looking at the issue of colonial despotism and racism in colonial law. This thesis adopts a similar framework to evaluate the function of extraordinary legislation in India at a time when controlled decolonization had already begun.

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Some discussion about colonial state and nationalist politics is required here. The Cambridge historians, the nationalists and the subaltern historians, all have offered diverse set of perspectives and arguments to enable our understanding of colonialism in South Asia. Anil Seal has argued that nationalism in India was the work of a tiny elite who themselves were products of educational institutions set up by the British in India. In search for power and privilege, Seal further argued, this elite both ‘competed and collaborated’ with the British. Such scholarship has discounted the role of ideas and idealism in history and offered a narrow perspective on what constituted “interest.” Cambridge school, for example, has argued broadly that Indians were active agents in the making of their own history as opposed to the view that Raj was unilaterally responsible for all the transformations that happened in the Indian social and political order. Such an understanding does have a point but at a certain level simplifies the unravelling of Indian history by merely seeing anticolonial politics as a scramble among the indigenous elites who came together opportunistically and mostly around purposes formed along vertical lines of patronage. Such a granting of agency to the colonized, as John Gallagher has pointed out, was the penetration of the colonial state into the local structures of power in India that eventually and gradually drew Indian elites into the colonial governmental process. Such a penetration was prompted by the financial self-interest of the Raj rather than by altruistic motives.

Most notably, the relations of power in India changed to a great extent with the introduction of local and provincial elections. As Anil Seal has argued that the British introduction of electoral representation into India, especially in the twentieth century, allowed British to manipulate the political definition of particularistic ‘communities’ and drew them more closely into the structures of the state. Furthermore, the colonial state sought legitimation for itself by using nominations and elections to committees, councils, legislatures and boards in order to accommodate elites. Despite allowing controlled participation to the colonized, initiating reforms proposed as decolonization, the broader strategy of the colonial state remained concerned with maintaining the underlying structure of the Raj.

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Sudipta Kaviraj, has also discussed the significance of coalitional relations of ruling classes which is seen as phases of experimentation, instability and consolidation. Such phases, Kaviraj notes, are seen particularly in terms of a crucial stage of political realignments. Therefore, it is argued that the formation of a ruling bloc was pertinent in the strategy of a ‘passive revolution’. However, Ranabir Samaddar raises an important question when it comes to making sense of collaborations and competitions initiated in a colonial setup. Samaddar points out that, for example Kaviraj and others who tend to make arguments about passive revolution, do not discuss the role of force in “passivity”. What should also be considered is the particular nature of decolonization in South Asia in the progressive strategy of building the state. Such strategy relied on both government and coercion. Furthermore, there is a conceptual tendency to reduce the history of the colonial geography as just another episode in the history of Europe or in other words, the empire. David Scott has alerted us to all such tendencies which either focus only on studying the insertion of Europe into the life and history of the colonised or others which have suggested to just forget Europe altogether. Both these tendencies overlook the political rationality of colonialism, as Scott has argued. According to Scott, rather than focusing on the ‘break’ with the past that the insertion of Europe into the colony focuses on, it would be more useful to investigate “how this break is configured and what is it understood to consist in.” Scott has pointed out that as a result of the formation of the political rationality of the modern colonial state, notably not only the rules of the political game changed but the political game itself changed. Therefore, scholars of South Asia must evaluate not only the politics of accommodation of the colonial state but challenges of resistance it faced in relation to the altered situation. Any scholarship that merely recognizes ‘agency’(elite) of the colonised in the making of their history aims to avoid the potency and complexity of the anticolonial politics.

The combination of manipulated competition and collaboration facilitated by the colonial state, along with the use of force raises interesting questions about the nature of the colonial state and its strategy. Such a question needs to be raised in combination with what Patha Chaterjee and Ranajit Guha have argued in their conception of “rule of colonial difference” and “domination without hegemony” respectively, in the Indian context. For Chaterjee what

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19 Scott, David, “Colonial Governmentality,” Social Text, No. 43 (Autumn, 1995), pp 191-220
is distinctive about colonial power is the deployment of a principle by which across
differently inflected ideological positions within the field of colonialist discourse, the
colonized are represented as inferior and radically ‘Other’. This othering of the colonized,
this thesis will demonstrate, also took place though law. That is why, as David Washbrook
has rightly pointed out, that “The condition of law may be seen to crystallize the condition
of society.”

The relation between historiography and its willingness to engage with the Law cannot be
overlooked. The question is closely tied to the politics of the colonial archive itself. When a
file or a document is accessed for the purpose of writing history of the colonised, as Ranajit
Guha has noted, two intentions are at work, the law’s intention and that of the scholar’s.
The purpose of writing history then rests on the idea of reclaiming the document for history.
As a historian, one has to initiate the tactic of “transgression”, suggested by Guha, where the
scholar violates the intention for which the material is produced. Guha through “Chandra’s
Death” has precisely done that. However, Upendra Baxi has alerted us to the oversight of
overlooking alternate legalities i.e. legalities that operate as a legality of a community – like
Chandra’s Samaj- in contrast to the colonial state’s legality. But what is unique about the
colonial state’s legality, some scholars have already pointed out, is its tendency to generate
a mass of criminal statistics.

In order to understand the enforcement of colonial law a conceptual foundation evaluating
the question of sovereignty, law, government and society is required. Nasser Hussain, for
our convenience, offers us an overview of insights from the works of John Austin, A.V.
Dicey and H.L.A. Hart supplemented by inputs from Michel Foucault’s scholarship. These
studies allow us to make a quick point about the nature of law and sovereignty. For Austin,
law simply is the command of the sovereign. It is here that authority functions through the

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20 Washbrook, David. “Law, State and Agrarian Society in Colonial India,” Modern Asian Studies, 15, 3,
(1981), pp 649
22 Baxi, Upendra, “The State’s Emissary: The Place of Law in Subaltern Studies,” in Subaltern Studies, Vol
VII, OUP, Page 249
23 Arnold, David. “The Colonial Prison: Power, Knowledge and Penology in Nineteenth Century India” in
Subaltern Studies, Vol. VIII, OUP, pp 62-115. Arnold has highlighted in his work the dynamic contradictions
of colonial law enforcement in distress situations.
24 Hussain, Nasser. The Jurisprudence of Emergency: Colonialism and the Rule of Law, Ann Arbor: The
idea of a direct threat to its subjects and demands obedience accordingly. For Dicey, law and
more precisely ‘rule of law’ operates both as a political ideal and an institutional
arrangement. It is for Hart that law has a centre and a periphery. A structure of conducting
authority based on the letter of law, which to be actualised, is supplemented by the
interpretation/implementation of law. The conduct is defined through a primary set of laws
that are substantive and apply to all. However, the secondary set of laws apply to those who
implement law/authority. Such secondary law would amount to administrative procedure. It
is not difficult to make a point then that sovereignty/authority is exercised through a direct
threat as well as by conducting primary laws through secondary laws. Notably, the
discussion about authority and law undergoes a transformation from Austin’s law as the
command of the sovereign to Hart’s law as ‘theory of rules’. These rules, in modern law, as
Hart contends are not just descriptive of the sovereign but fundamental and constitutive.
Hart’s concept of law shows how the notion of sovereign orders virtually disappears in the
rule bound format of a modern electoral democracy. One can argue that such a virtual
disappearance of the sovereign could not be fully accomplished during the late colonial era
despite of the fact that electoral democracy (although controlled and limited) was introduced
in India.

Operation of sovereignty are aptly evaluated by Michel Foucault, who has argued that the
normative force of modern life and the power relations it exhibits are best understood not in
the prohibitory mechanisms of law but in the disciplinary mechanisms of the social. Foucault
calls this biopower. This form of biopower, appears at the site of a historical disjunction, as
it supplants older juridical modes and models of power. For Foucault,25 what is supplanted
is not law but a form of sovereignty that he calls the juridical. In the new regime, law in its
modern sense as a functioning of norms is pervasive. Rules are now required across an entire
terrain of life, and legislation proliferates, as do the institutions of bureaucratic government.
what is noteworthy is Foucault’s insistence to think of this movement from society to
sovereignty to one of discipline and then government in terms of a “replacement,” but rather
to conceptualize the modern (and in our case, the colonial) as a triangle of sovereignty-
discipline- government, which has its primary target the ‘population’ and as its essential
mechanism the apparatus of security.26 By security Foucault means, Akhil Gupta has argued,
regulating and managing the risks that affect the population so that negative tendencies do not get out of control.\textsuperscript{27} David Scott has drawn two distinctions in Foucault’s conceptualization of the political rationality of government. The first is between sovereignty and government, the second between discipline and government. Within the political rationality of sovereignty – individuals are dependent upon the absolute authority of the prince. They are subject ‘of’ and subject ‘to’ his power and protection. Here law is deployed as an instrumentality, a direct means towards the political end of commanding obedience. On the other hand, as Foucault has highlighted, with government “it is a question of not imposing law on men, but disposing things in such a way that, through a certain number of means, such and such ends may be achieved.”\textsuperscript{28} While with sovereignty the relation between ruler and ruled is such that power reaches out like an extension of the prince himself, announcing it periodically with clarity. With government, on the other hand, the governor and the governed are introduced to a new and different relation which is not merely the expanded capacity of the state apparatus, but of the emergence of a new field of social. In the colonial set up in India, we see an overlap of both these modalities. While command of the sovereign was maintained and displayed by invoking extraordinary legislation, and the government was established by the discipline of the social. Colonial legality and the accommodation of elites into government structures resulted in the birth of a new ‘rights’ bearing colonial subject. The disposition of instrumentalities and institutions such as the formation and manipulation of public opinion through the establishment of a Press, introduction of the idea of private property, the emergence of market resulting in the division of labour, and finally, the judiciary, sustained colonial government. As a result, the identification of ‘interests’ operates to ensure that the ‘rights bearing’ and ‘self-governing’ colonial subject does as (s)he ought to.\textsuperscript{29}

Despite all the mechanisms put in place to ensure that the rights bearing colonial subjects are disciplined in their conduct, the danger of indiscipline remains. In a colonial context, the presence of anticolonial politics serves as the governmental crisis that rests upon the idea of an insurgency- a threat of civil war. Upendra Baxi has noted that the nature of colonial law,

\textsuperscript{28} Fitzpatrick, Peter. and Ben Goulder (editors), \textit{Foucault and Law}, Oxon, NY: Routledge, Page 166
and indeed all law, expounded in the insurgency is inaugural. The question of insurgency/civil war remained a pertinent concern for Hobbes too. Hobbes believed that civil war resulted from disagreements in the philosophical foundation of political knowledge. Therefore, through Leviathan he argued for a plan for a reformed philosophy to end divisiveness which as a result, would end war. For Hobbes, civil war was the ultimate terror, the definition of fear itself.  

Recent scholarship especially by Giorgio Agamben, has emphasized that it is civil war that is the threshold between infrapolitics and politic per se. Civil war/insurgency remains an intimate possibility of the colonial, or for that matter any other political order. Such a threat from the ‘insurgent’ could legitimize a structure of domination.

Ranajit Guha has pointed out that the colonial state in South Asia was fundamentally different to that of the metropolitan bourgeois state that created it. While the metropolitan state was hegemonic and its claim to dominance was based on power relations in which persuasion overshadowed coercion. On the other hand, what was paramount to the colonial state was its structure of dominance and coercion. It was not possible for such a non-hegemonic state to assimilate the civil society of the colonized to itself. According to Guha, the colonial state was a paradox- ‘dominance without hegemony’. It raises some conceptual questions for the study of South Asian colonial history too. Did the colonial state survive merely by expanding structures of government and creating new social order or did it offer a combination of persuasion and coercion. If the nationalist elite dealt with the government and the persuasion side of the colonial order, the insurgent remained the subject of coercion and therefore, target of extraordinary legislation. Dipesh Chakrabarty has argued that the idea of a Pax Britannica in the nineteenth century lost its meaning once nationalism arrived. Any attempt at colonial sovereignty by the British was reduced to domination whenever the British faced nationalist demands of self-rule. Whenever the colonial state failed to establish sovereignty in the Hobbesian sense, colonial rule failed to transform its own war with anticolonial nationalism into battles internal to institutions. It was not in a position to banish its internal wars from the Indian social body. Instead, it exacerbated them. Nationalism offered an everyday sphere of politics. however, the political methods of this sphere, as Dipesh Chakrabarty argues, were like tactics in a war- the war to end colonial domination.

Otherwise, local acts of ‘law breaking’ would not acquire broader significance. Furthermore, there is another layer to this war. The war of the anticolonialists or the nationalists was not always with the British only because there were wars of caste, class, religion, etc., internal to Indian society too. Both the colonial rule as well as the nationalist movement failed to produce a Hobbesian society by banishing these wars to the edges of the social body. As a result, disorder in public and everyday life in the form of a culture of disrespect for the law, Dipesh Chakrabarty argues, became a major ingredient of colonial and postcolonial politics in India.

The relation between discipline and government is highlighted by the use of extraordinary legislation by the colonial state. Although a relatively narrow set of specific public order laws is very frequently mentioned in standard political history sources for the colonial period, but requires further investigation of how such laws were actually evoked and used, and how this use affected late colonial and earlier postcolonial politics in India. Most importantly, earlier studies have overlooked the problematic of invoking a ‘state of exception’ and the creation of exceptional legal categories by the colonial administrative regime in India. Some elements of this administrative framework have been studied in isolation – for instance the control of ‘Thugs’32, ‘Banditry’33 and ‘Goondas’34 – but they have not been connected up with a larger narrative of how public order laws worked in colonial, and then post-colonial India in a longer term perspective.

This thesis studies the use of extraordinary public order legislation in India over the first half of the twentieth century covering the time period from 1914 to 1955. In so doing it bridges the conventional divide between the colonial and post-colonial periods, and seeks to challenge conventional notions of decolonisation as a singular change that happened with the transfer of power in 1947. The thesis begins in the early 1910s where members of the

Ghadr party and the outbreak of First World War posed a serious threat to the British Raj. This decade is also significant because it was with the passing of the Government of India Act 1919, that the seeds for the long decolonisation of India were sown. But most significantly, this decade witnessed the invocation of the state of exception in the form of Defence of India Act and subsequent Rowlatt Bills. This time period saw major mass mobilisation in the form of anti-Rowlatt Bills agitation, non-cooperation movement and the Khilafat movement, later to be followed by civil disobedience movement in the early nineteen twenties. Much work has been done on the scope of these major mass mobilisations in the early twentieth century and the role of various nationalist parties and leaders played in it. However, what lacks is the analyses of law as such, its interface with the nationalist politics and the impact it had on the way such mobilisations unfolded.

The thesis looks closely at some of the major controversies of the decade of 1930s, especially focusing on case studies that occurred after the passing of the Government of India Act 1935. These case studies demonstrate the scope of legal governmentality once the process of decolonisation had already begun and provincial politics enabled a kind of shared sovereignty for the provincial governments.

The legal strategies of colonial government in India were complex and varied, became tied with the creation of a particular kind of knowledge – one based on classification, differentiation, enumeration and creation of hierarchies of culture, power, customs and normative orders. This ‘violent’ and ‘totalising’ control by colonial regime not only fossilized a certain normative legal order, but also dramatically altered the nature of law and justice in the colony as well as the post-colony. But this introduction of a particular tendency in relation to law and the state did not end with the moment of de-colonization; rather, it continued beyond the ‘Age of Empire’. Colonialism and post-coloniality should not be considered as specific, disparate historical events, but also as conceptual categories that are interwoven historically and interconnected in their logics. Research in the field of critical legal studies and sociology of law by scholars like Peter Fitzpatrick35, Upendra Baxi36,

Nasser Hussain\textsuperscript{37}, Piyel Haldar\textsuperscript{38}, Peter Goodrich\textsuperscript{39}, Camaroff & Camaroff\textsuperscript{40}, Achille Mbembe\textsuperscript{41} and the recent translated works of Pierre Legendre\textsuperscript{42} are important in this regard.

With reference to a wide range of contemporary political issues in India related to various laws which have their origins in colonialism, the thesis examines the question whether the promulgation of certain laws and legislative techniques and institutions inherited from the colonial past, has continued to the postcolonial. For example, recent incidents of state authoritarianism in the Singur and Nandigram areas in the state of West Bengal while acquiring land for the construction of a TATA car plant. State violence by means of police action was conducted in the name of ‘public good’. Similarly, detention of human rights activists like Binayak Sen under Unlawful Activities Prevention Act 2004 (UAPA), and the frequent invocation of Public Security Act (PSA) against protesting youth and separatist leaders in the state of Jammu and Kashmir in the name of fighting insurgency and protecting state sovereignty are noteworthy.

What difference in attitude took place when laws born out of distinctly colonial modes of governance were used in a postcolonial situation? To what extent did the legal techniques and tactics of invoking states of exception extend beyond colonialism and even the process of decolonization? When independence finally came, few had a clear idea of what precisely it would mean.\textsuperscript{43} What would happen to the institution of the colonial state which had made such intimate contact with the lives of people at both a private and a public level. Would the moment of breaking free from the Raj also end farcical social contract that the colonial state had imposed on the people of India? What this thesis will suggest is rather the entry into a second farcical social contract where the division between the state and its people was

\textsuperscript{40}Camaroff & Camaroff(ed), Introduction in \textit{Law and Disorder in the Postcolony}, The University of Chicago Press, 2006, pages 400.
carried over. The postcolonial Indian state, we notice, failed to formulate new rules and new standards of maintaining public order and conducting politics.

Studies discussing anticolonial mobilisations, labour strikes and communal confrontations have pointed out that maintaining public order was one of the most important preoccupations of governance in India. Generally, most studies tend to regard the years from 1947-1950 as part of the transfer of power period. However, this thesis agrees with scholarship that has argued that the transfer of power although initially minimal and aimed at preserving rather than dissolving the Raj, started way back with the first government of India act 1919, with the first major shift in the rearrangement of power to Indians with the Government of India Act 1935. However, the issue of decolonisation did not result in moving away from colonial attitudes but began with redrafting them to suit the nationalist rhetoric of Indian politics.

The entire question of decolonisation is also closely tied to the question of sovereignty and counter-sovereignty in late colonial India. Movements like Swadeshi, Ghadr, Non-cooperation, Khilafat, Quit India, and ultimately the entire framework on which nationalist leaders would contest colonial policies pivoted on the question as to who was the legitimate sovereign. It is here, that a study of public order laws like section 144 CrPC, the preventive detention, curfews and cases of police firing on crowds, and of the creation of other new extraordinary laws, offers us a unique analytical angle on this contest over sovereignty and the contingent process of decolonisation.

The geographic focus of this thesis shifts throughout the discussion. While a focus on several Indian regions prevails in the earlier sections, the latter chapters focus very closely on events in one single province – the United Provinces of Agra and Oudh, or Uttar Pradesh as the unit came to be known soon after independence. This focus is in part down to pragmatic

44 For example, Sandra Freitag, William Gould, Markus Daechsel, Taylor Sherman, and Chitra Joshi, have hinted through their works that underneath various activities of the colonial state legal governmentality often played a significant role.
46 For literature on decolonization see, Dipesh Chakraborty, 2007:3; Srirupa Roy 2007:27; Meera Ashar, 2015:255, 262-263; Jayanta Sengupta, 2015:9; Partha Chaterjee, 2004:7,12,29,34,36. (However Ted Svensson 2013, & Harshan Kumarasingham, 2013, have argued that the postcolonial state was quite dissimilar to the late colonial one, since it was a rupture rather than continuity and had starkly different South Asian characteristics to it.)
considerations to do with source availability and in part a reflection on how public order legislation in colonial and post-colonial India actually worked. This thesis is not meant to be a consistent regional study. However, it offers a comparative analysis between the Congress and the non-Congress ruled provinces after the Government of India Act 1935 was passed. It uses evidence from U.P. as well as other provinces where appropriate. The thesis discusses U.P. more than other provinces as a particular region or locality but without an assumed separate history from other parts of India. Case studies from Punjab, Calcutta, Bombay and U.P. not only provide us with a comparative overview of provinces but also offers local insights into the invocation of extraordinary legislation between the Congress and non-Congress ruled provinces. The selection of UP as a focus case study towards the latter half of the thesis allowed a provincial focus because it enabled us to compare directly Congress administrative practice before and after 1947. Govind Ballabh Pant, a prominent Congress leader, was in power on both occasions. Furthermore, such a provincial selection complemented the study of the process of decolonisation, another major theme that the thesis engages with.

The colonial state began to devolve power to the provinces in the aftermath of the First World War by bringing in the Government of India Act 1919, followed by the Government of India Act 1935. This was a deliberate strategy to forestall the development of an all-India political opposition whilst also offering real opportunities for self-governance to Indian political parties and organisations. In consequence, any study of administrative strategy over this period has by necessity to include a regional focus. The process of long decolonisation highlighted the practices of the Congress government at the provincial level both before and after 1947. Secondly, the invocation or imposition of the public order legislation is the centre of attention in this thesis – for instance the use of the infamous Section 144 of the Indian Penal Code which allowed preventive detention, the imposition of curfews, and other forms of pre-emptive legal action was always local in nature. It was the District Magistrate who would invoke such legislation, also involving police and other parts of the local administration, and the purview of such laws was always confined to certain specified localities. To observe the working of public order legislation in colonial and post-colonial India in action always necessitates a local focus, which again is most easily maintained by selecting certain provinces as case studies. This is also related to questions of source availability. Material from the National Archives in India and the British Library in London
provide a top down perspective and need to be supplemented by provincial material to really understand the operation and effect of extraordinary legislation at a local level. To repeat, our strong focus on UP for much but not all of the thesis, is for pragmatic reasons. The larger argument of the thesis simply needs to be geographically grounded in some way. The study does not aim to attribute any special status to UP, but merely utilises it as a site to study the invocation of extraordinary legislation in postcolonial India and to make a larger argument.

A few other issues regarding archival practice need to be mentioned right from the start. The thesis depends mostly on government documents and newspaper reports to track and study various instances that involved the invocation of extraordinary legislation. While the legislative, judicial and political files of the Home Department (both colonial and postcolonial) present us with the official version of the story, the newspaper reports, mostly, offer a different version of it. Thus, such a cross referencing facilitated the possibility of a nuanced understanding of events. The tone of both the colonial and the postcolonial archive is often patronising with the emphasis on the naivety of public protests and the obligation as well as the ability of the government to look at the larger picture. However, by following certain case studies and tracking them in detail could help us invert such a position and could enable us to understand both the immediate position as well as the larger picture.

There is more at stake than mere factual accuracy. Any use of the colonial archive needs to recognise how paperwork itself had agency, a life of its own that imposed a certain logic on how the law was used at the everyday level. Scholars like Jonathan Saha, Akhil Gupta and Emma Tarlo have demonstrated the potency of bureaucratic paperwork in the colonial and postcolonial contexts in India. Saha has outlined a creative way of looking at the colonial state as it was experienced in everyday life. His work has revealed complex world of state practices where legality and illegality were often inseparable. At numerous occasions the formal colonial power rested upon the informal world for its survival. Akhil Gupta, on the other hand, conceives the relation between the state in India and the poor as one of structural violence. He argues that neither the state is indifferent to the plight of the poor nor the poor are disenfranchised because the state offers numerous poverty amelioration programs. What is pertinent about Akhil Gupta’s intervention is that he offers insightful analyses of

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corruption in India, the significance of writing and written records, and governmentality, or the expansion of bureaucracies. He argues that ‘care’ is arbitrary in its consequences, and that arbitrariness is systematically produced by the very mechanisms that are meant to ameliorate social suffering. He notes:

No matter how noble the intentions of programs, and no matter how sincere the officials in charge of them, the overt goal of helping the poor is subverted by the procedures of bureaucracy.48

Akhil Gupta highlights specific modality of uncaring operating here. For him, uncaring indicates not a psychological state of government employees but a constitutive modality of the state. Emma Tarlo also has explored a period of deep civil unrest in India in 1975 when Indira Gandhi declared emergency. She offers documentation and analyses of a relationship between state archives (bureaucratic paperwork) and lived experience and has highlighted the process by which policies were subverted at the local level through a combination of violence, trickery and marked forces. She argues that files portray emergency “not as a moment of explosive drama, but as a humdrum fact of bureaucratic existence – a time when paperwork was prolific and when housing rights were redefined.”49 Through the case study of an unfortunate bystander detained for the violation of public order legislation this thesis will explore the sometimes fictitious nature of the official archive.

Sovereignty and the Law: some theoretical preliminaries

There has been a great deal of interest in the question of states of exception especially in the wake of various emergency laws that came into being after the events of September 11, 2001. Most of the countries both western and eastern have passed such laws which are frequently referred to as draconian.50 While the states have argued for the necessity for such laws for

49 Tarlo, Emma. Unsettling Memories: Narratives of India’s Emergency, Permanent Black: Delhi, 2003, Page 68
50 Singh, Ujjwal Kumar. The State, Democracy and Anti-Terror Laws in India. SAGE Publications India, 2007. Countries like the USA have passed The Patriot Act; UK has similar laws like the Terrorism Act 2000, Anti-Terrorism, Crime and Security Act 2001 and the Prevention of Terrorism Act 2005; Australia has The Australian Anti-Terror Act 2005; Canada has the Canadian Anti-Terrorism Act 2001, the Bill C-51, the Anti-Terrorism Act 2015; India has the Terrorist and Disruptive Activities (Prevention) Act (1985–1995),
the protection of its sovereignty as well as its citizens. Others see it as a license to violate the legitimate rights of the people denying them fair trials and depriving them of justice. Debates about the question of states of exception became further intensified since the Italian philosopher Giorgio Agamben published his work on ‘Homo Sacer’. Agamben rejuvenated the conservative ideas of Carl Schmitt on the question of sovereignty and argued that the problem of exceptional law lay at the heart of the question of sovereignty and its preservation. Agamben’s work came in the wake of some highly potent provocations thrown at philosophers and theorists of state and its citizenship by Michel Foucault in the 1970s and the 1980s. Foucault’s ideas reached debates in India a decade later in the 1990s. His ideas enabled scholars to understand the discourses and the practices of governmentality. Citizens participated in such governmental practices and disciplinary regimes without realising the effect they had on their political life. In addition, Foucault’s work consistently highlighted the presence of the ‘other’ in the state’s effort to manage life – behind normality always lurked the figure of the abnormal. The abnormal, as Foucault highlighted in his various works, is what made the normal possible. For the late colonial as well as early postcolonial state in India it was certain individuals, groups and populations that constituted a ‘problem category’ which provided these constitutive figures of the abnormal.

The ‘normal’ rule of law is constituted with reference to something outside itself – a state of exception when normality does not apply. As argued by various texts on sovereignty, it is the sovereign’s sole right to declare this state of exception. So by definition, any legal framework that depends on such a declaration for its existence is extraordinary in nature. Carl Schmitt has highlighted that the issue with liberal constitutionalism is that it contends that all legitimate acts of a state are supposedly based on general legal norms which aim to meet the general and predictable demands of law as opposed to the arbitrary authority of

Prevention of Terrorist Activities Act (2002–2004) and the Unlawful Activities Prevention Act. Many other European and non-European countries have also passed similar laws recently. Some of these laws were modified in each country and succeeded earlier milder laws.

52 Edward Said’s Orientalism is considered to be one of the first Foucauldian analyses by many scholars.
53 The entire subaltern Studies project (which runs into volumes) had a strong Foucauldian impression on it.
Contesting such a framework Schmitt argued that such general legal norms often lack the force to offer determinate guidance if not subject to circumstantial interpretation and interstitial legislation. Hence the unavoidable need for an authority to make a firm decision and effective interpretation of law. For Schmitt, what cannot be ignored is the fact that law does not interpret and determine itself, it is processed through a sovereign authority who would have to apply general rules to particular instances. Arguing in a Hobbesian vein Schmitt contends that it is authority and not truth that makes the law. Sovereign decision will override legal norm, or in other words, the sovereign will decide what interpretation of the law would apply to whom and in what circumstance(s). Furthermore, since it is impossible to legally ascertain the very nature of an emergency situation, the law can at best determine who can make a decision on when such a situation has arisen. Therefore, the power to act or make a decision during an ‘emergency’ also rests on the power to decide what constitutes a state of exception.

Once the question of the authority to decide on the ‘state of exception’ is resolved the second issue that arises regards the nature of the political. Here, Schmitt argued that the specific nature of the political rests on the distinction between friend and enemy/foe. This friend and enemy distinction works at two levels first, as hostility between two groups who are willing to kill(or harm) each other as a group; In the second instance, when a group sides with the sovereign authority in its declaration of an opposing group as enemy. Therefore, sovereignty itself rests on playing the political difference between friend and enemy. In a way, this boils down to a simplistic logic of collectivist self-defence. The significant point here, is the importance of a sovereign power to decide, to interpret general law in particular situations, to split communities into friends and foes, and finally, the justification to eliminate the enemy based on the sequence of such a configuration or arrangement of sovereign power.

A state of emergency can be described as the state machinery separating the population into friends and enemies and then waging a ruthless war against the latter. Sovereign power depends on the ability to separate out certain social constituencies as social problem

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38 Ibid. Pp 29-35
39 Ibid.
40 Ibid. Pp 33-34
41 Ibid. Page 26.
categories. The question arises as to how do we understand the elimination, control/subjugation or exclusion of these ‘problem categories’ or foes. Giorgio Agamben, who offered us a more contemporary reading and further understanding of the state of exception also provided us with the classificatory category of the ‘homo sacer’- ‘one who can be killed but not sacrificed’\(^{62}\). This approach will be important for our discussion of colonial and post-colonial legality as emergency legislation was always tied to decisions about who or what constituted a problem category that fell outside the law, or to whom the law applies in exceptional ways, often calling for the exercise of state violence. Contra Michel Foucault, who argued that the historical emergence of biopower marked the threshold of modernity\(^{63}\), Agamben brings the nexus between colonial sovereignty and biopolitical life to the fore. Inspired by such inputs from political theory and philosophy, this thesis examines public order through law and the invocation of emergency in late colonial and early postcolonial India.

The foundational role of a state of exception usually operates at a theoretical level, silently in the background so to speak, while the workings of the law as empirically observed belong to the internal universe of normal legality. Exceptional laws are not meant to be utilised in day-to-day governance or be invoked on a day-to-day basis. It is for this reason that the declaration of an emergency still comes as a shock and is linked to moments of historical importance. In India, for instance, the suspension of the Indian constitution and the declaration of emergency by the Indira Gandhi government in the nineteen seventies is one major and often referred to example in recent history.

There is an additional question regarding a situation when the constitution of sovereignty is itself consistently challenged. This was the case at moments of anti-colonial mass mobilisations when the British right to rule India was itself directly questioned. Such contestations expose the nervous nature of colonial sovereignty and the weak foundations of the paranoid politics in which it operated. In these moments, the colonial administration would adopt a manoeuvre that sought to hide issues of sovereignty behind notions of legality as far as it could reduce anti-colonial politics to legal battles which would enable it again to


\(^{63}\) Ibid. Also see, Michel Foucault, *History of Sexuality*, Volume 1.
decide on the nature of right and wrong, and, therefore, to win small sovereign victories. A politicization of legality was countered by a legalisation of politics.

These manoeuvres relied on the fact that legal exceptionalism operated in two modalities. At one level, it affected the everyday politics that unfolded in streets and factories, and relied on ‘ordinary laws’ of emergency like Section 144 CrPC, enabling preventive detentions and curfews. Then, there were major moments like the First and the Second World War, where special measures like the Defence of India Rules, a kind of martial law, would take over. What this thesis will demonstrate is that between the two world wars, we notice the emergence of another trend, the gradual conflation of these two modalities, or in other words the normalisation of exception. Laws to deal with anarchical and revolutionary crime or the Rowlatt Acts 1919 are precisely the kind of laws which highlighted the capacity of the sovereign decision and its legal machine to create and interpret laws armed with exceptional powers and insert them into the practices of maintaining everyday law and order. In a colonial situation, the state of exception is no longer simply a matter of life and death but becomes an altogether new relation of managing life by criminalising it to the extent where violent actions of the state become just normal/ordinary.

There is an important subsidiary theme at play which features repeatedly in this thesis but with particular prominence in chapter 4. Colonial legality was deeply embedded in practices of bureaucracy. The relation between bureaucracy and law is one where the latter replenishes the former through the consolidation of a strict procedure. Such a procedure maintained an order of life because it consistently maintained an order of files. The sheer volume of the records of the Raj available for study today are a proof of this. Such files, as numerous scholars have discussed, generate data and therefore evidence of social, political, economic and overall administrative transactions. Bureaucratic procedures were based on the argument that their operations were/are a necessity for the functioning of a rational and just society.

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On the other hand, such procedures also tightened the grip of state on its subjects gradually and persistently. In the colonial archive, we notice two kinds of public order that existed in the functioning of the colonial state in India. The one which existed on paper and in files, and the other which existed on the ground. The two were not necessarily the same. In fact, it was precisely because of this gap between paper reality and ground reality that colonial public order laws of the kind discussed in this thesis were needed.

The basic aim of this thesis is to study the connection between a certain understanding of public order and the invocation of apparently unavoidable emergency measures both in a colonial as well as postcolonial setup in India. This flirtation was connected to the rationale of pre-emption - legal action even before a crime had been committed. The pre-emptive nature of public order laws highlights their authoritarian character as well as their flexibility to manipulate political situations on the ground into governable outputs. One significant example in this regard is section 144 of the Indian Criminal Procedure Code (CrPC), which dealt with the prohibition of person(s) from certain activities and from the use of public space for designated persons and groups. This law was often supplemented by curfews, where public life was suspended in the name of maintaining public order and tranquillity. Whereas, the aforementioned laws were promulgated to avoid, most commonly, mob violence or a riot, related administrative tactics like preventive detention aimed to arrest a person even before a crime had been committed by the concerned person. An invocation of urgency permitted or enabled short-circuiting of due process. There were certain kinds of people at large to whom the normal rule of law did not apply and who could be subjected to severe restrictions without them having to commit any observable offence at all, let alone such an offence actually having to be proven.

While, as we shall see in a minute, the colonial government of the 19th century proposed an understanding of legal exceptionalism that rested on the criminalization of clearly pre-defined and limited groups of people, the late colonial state extended this criminalization to any anti-state/ anti-colonial activities and by implication potentially to the entire Indian population itself. This sense of general suspicion never left Indian governance, even after the achievement of independence. There was no root and branch reform of the relation between state and its people or a wholesale cleansing of laws from the colonial presumptions of generalized illegality. Racism, repression and a sense of domination survived.
When the state invoked emergency laws, it aimed to preserve a political order and to prevent physical violence, since it was the state which according to the law had the monopoly over physical violence. But the legal justification was far from straightforward, especially when we move from colonial to post-colonial times. Public order laws could be legitimate only if state sovereignty and popular sovereignty were ultimately imagined as one and the same, if the interests and ends of the state were projected to be the interests and ends of the subjects/people/citizens as well. (One could add, that even if homogeneity could be achieved it would not actually lead to the image of a democratic state in action: the total homogenisation of a public would have assumed its complete docility and subordination under a totalitarian state.) However, such a coming together was always illusory. The very operation of extraordinary law had material implications for the lives of the people too. It led to a compartmentalisation of various publics who were often at loggerheads with each other. It was the necessary heterogeneous nature of the public that brought confrontation between state and its people back to the debate. Hence, the matter of law would always remain a question of power rather than justice. Therefore, law always retained an underbelly, an illegality in its foundation and it is the provision of emergency in the name of maintaining public order that allowed it to cut loose from democratic procedure and its obligation to the people. It allowed the state to transform into a sovereign body with no obligations towards its people, acting mostly out of considerations of self-preservation.

**Colonial law and its exceptions: Historical background**

Having sketched the contours of the argument that this thesis will pursue it is necessary to provide a little more historical background to set our investigation into decolonising public order laws into a wider context. This requires a tour back into history to the beginnings of colonial legality in India, when the main poles of our discussion: the separation between normal process of law and extraordinary or emergency legislation, and its dependence on certain abnormal ‘problem categories’ was first established.

Law began to occupy an important part in the ideology of British colonialism in India in the final decades of the eighteenth century. Officials of the East India Company deputed
themselves to absolve Indians from the ‘despotism’ of their rulers.\textsuperscript{65} For example Lord Bentick and his moral crusade in India is noteworthy in this regard. He initiated ‘modernising projects’ which aimed at westernisation of Indian administration. He was influenced by the utilitarian ideas of Jeremy Bentham and James Mill. He started reforming the courts in India and made English rather than Persian as the language of the higher courts. Furthermore, he argued for a western-style education for Indians so that they could be incorporated into British bureaucracy. These officials also emphasized the absence of any proper sense of right to property in Indian laws or of any universal principles of justice more generally. The Pitts India Act 1784, marked the moment of transformation of the Company from a trading company to a governing body. The establishment of institutions and administrative structures was now required to enable and sustain the new order of governance. Security of property, the rule of law and the idea of moral improvement became the broader guiding principles to justify colonial rule in India. Simultaneously, in order to prevent any abuse of power, a case for embodying universal principles of justice was argued for. For this purpose, the first Law Commission for India was established in 1835.

From the very beginning of the process of formulating an Indian Penal Code (IPC), British colonial ideology often referred to utilitarian philosophy\textsuperscript{66} guided by a liberal constitutionalist framework of some sort. This discourse has been well-covered in the existing literature, for instance in the work of Eric Stokes\textsuperscript{67}, Uday Singh Mehta\textsuperscript{68}, and Karuna Mantena\textsuperscript{69} amongst others. Michael Mann\textsuperscript{70} has pointed out a very important element of the effect this legal code would have on its subjects. He argues that part of the colonized population, at least, had to accept their oppressors’ hegemonic claims about universal rationality imported from the ‘civilized’ West. ‘To be civilized’ was to be free from specific forms of tyranny. It was based on a scientific approach guided by reason and rationality. A legal system designed to abolish the tyranny of despotism over liberty was part and parcel of the civilizing mission. Right from the beginning, this mission was fraught with

\begin{itemize}
\item\textsuperscript{67} Ibid.
\item\textsuperscript{68} Mehta, Uday Singh. *Liberalism and Empire: A Study in Nineteenth Century British Liberal Thought*, The University of Chicago Press, 1999, Pages 245
\item\textsuperscript{70} Mann, Michael. Introductory Essay “‘Torchbearers upon the Path of Progress’: Britain’s Ideology of a ‘Moral and Material Progress’ in India” in *Colonialism as Civilizing Mission: Cultural Ideology in British India*, Edited by Harald Fischer-Tine and Michael Mann, London: Anthem Press, 2004, 1-28.
\end{itemize}
contradictions between the ‘inside’ and the ‘outside’ of the law. Since Indians were not full rational subjects yet, ‘normal’ legality could also not yet fully apply.

Legal exceptionalism was a constitutive factor in the making of the colonial legal regime right from the very beginning. If anything, it predated the compilation of a body of substantive law in India. By the early 1830s, the company administration had already embarked on a concerted effort to use the law in ways that were diametrically opposed to the enlightenment legal principles: no assumption of innocence until proven guilty, no notion of individual moral responsibility regardless of race, caste or creed, no due process of law based on the presentation of evidence. Instead law operated as a preemptive and extraordinary force.

The ‘discovery’ of Thuggee by the British Colonial administration in the 1820s initiated the development of a regime of legal suppression that was constructed not around the ‘rule of law’ but around a notion of legal exceptionalism which served as the proto-type for similar forms of legislation later on. The timing is highly significant: legal exceptionalism in the context of public order legislation actually predated institutionalised attempts to create a universal rule of law for India through the series of Law Commissions beginning in 1835. In short legal exceptionalism was an essential ingredient of how the colonial regime used the law right from the start. It was neither a later addition nor something that only applied in exceptional circumstances.

Thugs was the name given to gangs of ‘professional assassins’/robbers who the British perceived as a major public order problem in the early 19th century. They were locally known as Phansigars, from the Hindustani word for ‘noose’, referring to a person/people who kill using a noose. In many respects the identity of this group of criminals was obscure. Even though, many Thugs were assumed to be Muslims, the British administration claimed that they were a religious cult in themselves and worshipped the Hindu Goddess Kali and showed no influence of Islam. This raises questions whether Thugs ever existed outside the

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71 It is important to mention that according to the earlier recorders of cases of Thuggee, this specific tribe consisted of both Hindus and Muslims with as many as seven tribes of Muslims involved in this occupation.
72 It was claimed, they joined travellers and during journey gained the trust of fellow travellers and at an appropriate moment strangled them with a noose or a handkerchief around their necks. After robbing them off, these Thugs would bury the body of their victims. The term Thugg and Thuggee became popular after Philip Meadows Taylor’s novel Confessions of a Thugg got first published in 1939.
colonial imagination. It is incomprehensible that such a cult would have remained untracked during the Mughal period when politics around such a community could have been a sensation given the stress on Sharia law for administrative purposes. It is also interesting because if such a cult actually existed, the Ulama and Qazis would have given some religious statement on the operation of such a religious cult which violated the fundamental principles of Islam i.e., opposition to idol worship. But there are, by and large, no such records.\footnote{However, the only reference that can be traced in writings before British regarding Thuggs appears in Ziya-ud-Din-Barani’s \textit{History of Firoz Shah} written around 1356.}

By the early 1830s many even amongst those British administrators who did perceive Thuggee as a threat to public order had conceded that whatever its nature, such a threat had been successfully repressed. But this did not stop an extraordinary effort in ideological and institutional innovation. A dedicated police department, complete with its own trademark modus operandi and legal back-up was established under the Governor General Lord William Bentick in 1835. Its importance was far greater than the actual public order problem it was designed to tackle.\footnote{We must not forget that in this particular decade Britain itself was in the initial phase of setting up a police force back home.} Detective methodologies were applied as a new approach to understand ‘crime’. Of central importance was a process of profiling and the use of intelligence gathering. William Sleeman, an ardent self-promoter and evangelist of the anti-Thuggee cause, was appointed as the Superintendent of the Department in 1835 and, in 1839 became its Commissioner. The campaign that followed resulted in imprisonment, execution or expulsion of thousands of men from British India.

The kind of ‘legal procedure’ involved to convict \textit{Thuggs} is significant to understand the broader argument here. Radhika Singha\footnote{Singha, R. \textit{A Despotism of Law: Crime and Justice in Early Colonial India}, Oxford: Oxford University Press, 2000, 342.} among various others has emphasized the significance of a law called ‘Act XXX’. According to this Act, all the administration needed was an ‘approver’ to testify that the accused was a \textit{Thugg}.\footnote{The British administration scuttled its own claims of evidence collection through scientific methods and resorted to accepting a convenient and often cooked-up story as a method of collecting facts in order to nab \textit{Thuggs}.} This law did not identify any specific activity as criminal, rather specified the members of \textit{Thugg} groups as criminals. The punishment for belonging to such gangs was life imprisonment. Special courts were established for the trial of the \textit{Thuggs}, which lay beyond the jurisdiction of the Company at that point of time. The act permitted the arrest of entire families, including women and
children as legitimate means of arresting active Thugs, since Thuggee was understood as a family affair as per the officials of the East India Company. It was held that Thuggee was passed on from father to son. Therefore, wives and children of Thugs were also fit targets for the colonial state’s punitive and corrective measures. In addition, there was no right to appeal. But the strangest element of all was that the nature of the crime of Thugee itself was not actually precisely specified. Thuggee was not something one had to do to be guilty, one simply was a Thugg regardless of whether one committed any robberies or murders. This strange construction gained traction in the British colonial legal imagination at precisely the same time, as Radhika Singha notes, ‘when a penal code upholding precision and exactness was on the agenda.” 77 Most of the discourse about Thugs was based on the confessions extracted from arrested Thugs. Shahid Amin78 has rightly observed that the ‘confessions’ that dominated and drove all accounts of Thuggee were not confessions, but ‘approver testimonies’. An accused would escape severe punishment if he or she could help identify another ‘thugg’, thereby having a vested interest in keeping the myth of Thuggee as a criminal phenomenon alive.79 Therefore, the outcome of the trial was known in advance.

The ‘Thuggee department’ as in reality a ‘truth production department’ of central importance for the legal imaginary of the Raj. Most historians would now agree that Thuggee was in fact a construction, part of ‘colonial imaginings’ as Martine Van Woerkens put it. As Kim Wagner has pointed out, “the government went as far as removing a judge from his post because he claimed Thuggee did not exist and refused to cooperate in the operations against them.”80 This only highlights the significance which the campaign against Thugs held for the British colonial administration. Thuggee provides us an example of not only the new framework of classifying crime by the British administration in the early nineteenth century India but also how groups were being controlled after being declared criminal. Hence, it acted as a pseudo-scientific way of dealing with disorder, which not only essentialized crime but communalized it as well.

79 Shahid Amin further argues that a confession proper sees to dilute the guilt of the confession subject, while the approver’s testimony, to be fully credible in the eyes of the law must implicate its speaker as fully as possible in the illegality being described.
By 1870s the *Thugg* cult was declared extinct but the methodology and legal practice it had created was not abandoned. A very similar methodology but with a different target constituency was enshrined in law in the infamous Criminal Tribes Act of 1871. The ambit of ‘problem categories’ and ‘risk groups’ kept widening. The ‘criminal tribes’ were defined as communities who were addicted to committing non-bailable offences such as thefts etc. A campaign to systematically register them was conducted by the colonial government. These communities, in addition to the *Thuggs*, were referred to as ‘habitually criminal’ which led to the imposition of restrictions on their movement. Also, adult male members of such groups were required to report weekly to their local police station. However, the *Thuggee* Department lasted until 1904 and was replaced by the Central Criminal Intelligence Department popularly known as CID. This department formed in 1904 was a new initiative developed by the British to gather intelligence on criminal elements (read oppositional politics) operating in Indian society.\(^{81}\)

The question remains as to what such an obsession with a mythic/religious cult and ‘criminal tribes’ or ‘habitual offenders’ achieved for the British administration. There must be some logic to the extraction of *Thuggs* as the essential component of menace in Indian society in 1830s. The repression of *Thuggs* in a wholesale manner exposes the overt repressive tactic of the colonial administration. Michel Foucault warned us against understanding repression as something purely negative and alerted us to its productive capacity. As explained above the administrative persecution of *Thuggs* facilitated in the creation of a moral ‘non-criminal’ other. But this non-criminal other also helped to maximise the productive aims of colonial government. It delineated the space in which ‘normal’ legality in its universalist and utilitarian sense could be constituted. By creating extra-legal subjects like the thugs, the general parameters of conduct for the legal subjects of colonialism produced. Indians were reconfigured for a new state of legal incarceration. Such an incarceration was aided and achieved through new modes of conducting life as proposed by each law commission report. The seven law Commission reports in colonial India, one by one, founded a new quotidian legal and social order.

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\(^{81}\) In 1920, James Sleeman, the grandson of William Sleeman published his book ‘Thug, Or a Million Murders’ and re-emphasized the cult status of Thuggee. It classified Thuggee in a communal framework where the Goddess Kali appeared as the sole deity of the members of such a community.
It was at this precise moment that the colonial administration devised a legal-cum-moral yardstick to distinguish its various subjects. The first split is the creation of an immoral criminal ‘other’ – starting with the prototypal *Thuggs* - within Indian society. Such a situation created the space for the moral righteousness of ‘the non-criminal self’. When the ‘the non-criminal self’ realised its superiority in the given framework, it felt a moral responsibility to deal with the ‘criminal other’. This was essential for this process otherwise the moral superiority of the ‘non-criminal’ would not hold. This resulting binary thus operated on two levels. On one level, it criminalised a set of population amongst the Indians and, at the second level established a moral and racial superiority for the ‘white’/ European/ English. It was no real contradiction therefore to keep ‘whites’ out of the legal penalties applicable to Indians as Elizabeth Kolsky has pointed out in her work on the nature of ‘white violence in colonial India’. After all, it was the racial differentiation of law that made the second split among the subjects of colonial government, possible. What is more, it also divided the Indian population as ‘friends’ and ‘foes’ for the purpose of colonial governance. The *Thuggs* and the ‘criminal tribes’ were now the foes not only of the colonial administration since they apparently violated law and order but were also now foes of ‘other’ Indians as they posed danger to their lives and property. Most importantly, in the case of *Thuggee* and the criminal tribes, the enemy was known and could be described in advance. Therefore, specific measures were put in place to deal with such problem categories whilst on the second track of the colonial use of law, so to speak, an ideology of universal justice – ‘the rule of law’ – could be promulgated.

While *Thuggee* and its suppression remained a central preoccupation of British administration for almost a century, in 1835 the utilitarian philosopher and politician Thomas Babington Macaulay took charge of the Law commission to draft a penal code for India that represented the other side of colonial legality – an imposition of universalist values and due process. On July 10, 1833, he had made an argument before the British Parliament about the future role of British governance in India. He argued that the role of the British was to give ‘good government’ to Indians, to whom they could not give ‘free government’. The hallmark of such a good but not free government, for Macaulay, was the rule of law. Macaulay was then serving as the Secretary of the Board of Control under Lord Grey. With

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the Passing of the Charter Act 1833, Macaulay was appointed by the British Parliament as the member of the first law member of the Governor-General’s Council. He arrived in India in 1834 and became the Chairman of the First Law Commission in 1835 and was assigned the responsibility to draft a new legal code for India. Foregrounding the manner in which English law set out to level the ‘uneven’ field of Indian legal system(s), the set of seven law reports eventually published by the Law Commission over the following decades provide us with bird’s eye view of what most preoccupied the British lawmakers in their engagement with colonial society in India.

The commission’s reports – even though they were about aspects of civil law - highlight some of the general priorities that would also influence the design of penal law. The usual divisions of public and private fail to take into account that the domain of modern law began by a focus on the private in the first instance. It interfered in the personal lives of communities by converting everything into a universal ‘public’ which now had to be processed through the Law or a legal framework. The first of the law report published in 1863 observed:

[S]ubject to necessary consideration for the existing laws and usages of various parts of India, there is a necessity to prepare a body of Substantive Law.”

It recommended that:

[I]n preparing such a body of law, the law of England should be used as a basis. Also, once enacted, such a body of law should itself be the Law of India and its jurisdiction.”

The commissioners of the first report categorically stated that in accordance with the wishes of ‘various classes of persons who were neither Hindus nor Muslims’ there was a need for a substantive civil law. As the Hindus and the Muslims, according to the report, had laws of their own on the subject of devolution of property on death, on questions of

83 See IOR/L/PJ/5/430 Page 3
84 Ibid.
85 The members of the first Law Commission were Sir John Romilly, Sir William Erle, Sir Edward Ryan, Robert Lowe, Sir James Shaw Willes and John Macpherson Macleod.
inheritance and succession.\textsuperscript{86} the general law of India should make no such distinctions in the case of devolution of property. Additionally, the devolution of property of every kind should be governed by ‘one system of rules’.”\textsuperscript{87}

Similarly, the second report of Law Commission (1866)\textsuperscript{88}, illustrates how the commissioners – guided by their concern about the inviolable right to property - set out to deal with the theme of ‘contracts’. The report dealt with the provisions regarding consumer rights (purchaser rights) and law of suretyship. It initiated a mechanism of further making ‘certain’ the law and its relationship to its subject through the act of ‘definition’. Conduct was ‘legalized’ with the involvement of a procedure. It defined, ‘contract’ as ‘an agreement between parties whereby a party engages to do a thing or engages not to do a thing’. \textsuperscript{89} It further stated that Law Commission had considered whether it would be expedient to render binding in law promises made without consideration, because by the English law such promises were held to be binding only when expressed in writing under seal.

‘Contract’ followed the idea of devising a currency. Business could not take place unless ‘things’ were ‘revalued’. Such a revaluation is illustrated in the third Report of the Law Commission (1867),\textsuperscript{90} which dealt with ‘promissory notes and bills of exchange’. This report highlights the fact that it was “a subject to which the recent extension of mercantile enterprise in India”\textsuperscript{91} gave increased importance. Hence we can understand through this collage of facts that the idea of revaluation was inherent to the theme of profit making but took place through the mode of ‘governance’, through ‘legitimate’ means. These reports demonstrate the process of law making and its philosophy consequently leading to the understanding of the ‘legitimate’ and by extension, the criminal. In addition to this, we notice that there is an emphasis on the conduct of conduct, in a Foucauldian vein, a power to act on the actions of the colonised subjects. The rules of everyday social conduct were altered, with a new set of rules instituted by each Law report.

\textsuperscript{86} As regard to property laws the report states that the British subjects in India at that time saw property as an investment, and not in terms of any interest in settling. It mentions that Armenian, Parsees, or other classes like Hindus and Muslims are not in the habit of making a distinction between moveable and immoveable property. \textsuperscript{87} See IOR/L/PJ/430 Page 5
\textsuperscript{88} The members of this Law Commission were Sir John Romilly, Sir William Erle, Sir Edward Ryan, Robert Lowe, Sir James Shaw Willes, and John Macpherson Macleod. \textsuperscript{89} See IOR/V/26/100/11
\textsuperscript{90} The members of this Law Commission were Sir John Romilly, Sir Edward Ryan, Robert Lowe, John Macpherson Macleod, William Milbourne James, and John Henderson. \textsuperscript{91} See IOR/V/26/100/11
The philosophy of ‘substance’ and ‘procedure’ stood at the centre of the discussion of the fourth report of the Law Commission\(^92\) published on 18\(^{th}\) December 1867. It raised the problem of the definition of law itself. The Report highlighted the fact that Penal Law was a ‘Substantive Law’, the confusion, it felt was on whether the subject of the enforcement of the specific performance of contracts, properly belonged to substantive law or to the law of procedure. The body of rules that determine the rights and obligations of individuals and collective bodies is referred to as substantive law and, the body of rules that regulate or govern the process for determining the rights of individuals or concerned parties is called procedural law. Following this, the fifth Law Commission\(^93\), which was published on 3\(^{rd}\) of August 1868, elaborated the ‘law of evidence’ and its technicalities. Most importantly, ‘Law of Evidence’ was “oscillating between substantive law and procedural law.”\(^94\) The issues dealt with in the first and second report, had not succeeded in its purpose to clarify the matter. This is brought to our attention by the Sixth Law Commission Report\(^95\) published on 28\(^{th}\) May 1870, which remarked that the chief object of the draft was:

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[T]o \text{ bring the rules regulating the transmission of property between living persons into harmony with the rules affecting its devolution upon death. Thus, it provided an opportunity to furnish the necessary complement of the work which have commenced in framing the law of succession.}\(^96\)
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The Great Rebellion of 1857, opened up a political chasm between the coloniser and the colonised. The violent uprising saw many Europeans killed in India which resulted in the colonial administration becoming even more suspicious and hostile towards its own subjects. The events of 1857 destabilised the colonial pretence that it had successfully tamed Indians and served as a wakeup call for its ‘civilising mission’.

\(^92\) The members of this Law Commission were Sir John Romilly, Sir Edward Ryan, Robert Lowe, Robert Lush, John Macpherson Macleod, William Milbourne James.

\(^93\) The members of this Law Commission were Sir John Baron Romilly, Sir Edward Ryan, Robert Lowe, Sir Robert Lush, Sir John Macpherson Macleod, and William Milbourne James.

\(^94\) See IOR/V/26/100/11

\(^95\) The members of this Law Commission were John Baron Romilly, Sir Edward Ryan, Robert Lowe, Sir Robert Lush, Sir John Macpherson Macleod, and William Milbourne James.

\(^96\) See IOR/V/26/100/11
It was important in terms of legal theory because it was also a moment when the colonised subjects rose in arms with an aim to decide who the actual sovereign was, at least as far as mutineers/rebels were concerned. Events of 1857 highlighted that the British sovereignty in India was still not established completely. Scholars have pointed out in numerous studies that sovereignty in India had made a rather peculiar journey in the eighteenth and nineteenth century. The Mughal Emperor, who could be called a grand sovereign in the seventeenth century, was not a sovereign in the strict sense.\(^97\) For example, Farhat Hasan brought to our attention that the relationship of the Mughal government with the Indian subjects was more of revenue collection rather than a total system of direct and uniform government. Therefore, any aim of the Mughal empire to homogenise and centralise their polity, was internally fractured by the local administrators.\(^98\) Sovereignty in India in the nineteenth century until the 1857 at least, operated autonomously yet overlapped at different levels. On the first level, Bahadur Shah Zafar, was the Mughal sovereign, followed by the regional Rajas, Princes and Nizams. On the second level, East India Company with powers to control and regulate Fort William and Fort George in Madras and Bengal Presidencies respectively acted as the sovereign in its territories given the jurisdiction granted by the Royal Charters along with the diwani granted by the Mughals. Also, the company was an acting sovereign administrating on behalf of its superior and ultimate sovereign, the British Crown.

This was not how the colonial regime regarded sovereignty and the events of 1857 gave them the chance to overhaul political realities according to their ideological expectations. The colonial authorities responded to the rebellion with spectacular violence – like mass executions and deportations - motivated in part by vengeance but also to make an exemplary spectacle of its sovereign might. The Mutiny granted the British a reason to tighten their grip on the Indian masses by painting them as inherently rebellious and untrustworthy. It also provided them with a reason to emphasise the ‘barbaric nature’ of the natives. 1857 brought a certain administrative urgency that any dissent against the British rule must be crushed to avoid any future uprisings. This marked a change in British attitude towards the colonised subjects. It was a moment when the entire population was under suspicion of being the ‘enemy’ in Schmitt’s sense, not just some exotic and largely imaginary public enemies like

\(^{97}\) Because many other regional sovereigns like the Princes and Nizams would owe their ultimate allegiance (in terms of belief) to the Turkish Caliphate, strictly in the religious sense.

the Thugs. Over the following years, the suppression of any political opposition and the promulgation of extraordinary laws became central to this operation.

The Indian Penal Code was enacted in 1860, just three years following the mutiny of 1857. The content of the Law Commission reports illustrates that ‘law-making’ in colonial India was a well thought-through exercise. Noticeably, crime and punishment did not figure overtly in the law making process until the seventh report of the law commission, at a moment when other aspects of the law had already been largely clarified.

Historically, the primary concern of magistrates had been how to bridge discrepancies of punishment and of the dispute resolution process inherent in the Islamic justice system. The late Mughal model of government did not operate in a monolithic and linear fashion. Instead it allowed a different permutation of administration adopted locally at times. During the creation of a new penal code for India, Mughal justice administration system based on principles of Sharia was gradually replaced by colonial British law. It was argued that the Mughal law as an administrative system was unscientific in nature guided by the partial attitudes of Qazis and their disproportionate punishments.

The seventh report of Law commission published on 11th June 1870, stated as its purpose the revision of the criminal procedure code. A dispatch of 21st December 1868, the local Government of India observed that at that moment there could scarcely be said to be a Code of Criminal Procedure. It further recorded that the original code enacted in 1861, had already been amended by three subsequent Acts. A fourth short amendment was suggested under the instruction of Sir Stafford Northcote. It added that there has been a large amount of judicial decision on the construction of the code, and the decisions were most of the time not known, or were occasionally conflicting. Such a contradictory narrative complicates the entire system of administration and procedure itself.

The process of the formation of a new legal code was influenced by the utilitarian philosophy of Bentham and was emphasized on the axiom of ‘rule of law’. But the colonial law-making

99 See IOR/V/26/100/11
100 The members of this Law Commission were Sir John Romilly, Sir Edward Ryan, Robert Lowe, John Macpherson Milneod, William Milbourne James, and Sir Robert Lush.
101 Enclosed in the Duke of Argyll’s letter of 23rd April 1869.
102 See IOR/V/26/100/11
process faced complicated issues. Various laws operating over different provinces were resulting in an administrative hazard for the administration. This issue was resolved by the Indian Councils Act, which changed colonial ‘administration’ to a form of colonial ‘government’.

The foundation of a new legal subjectivity was laid when the British decided to venture into devising a legal code for India. The Law Commission worked for almost three decades to accomplish this project. The law reports sketch the displacement of indigenous modes of conduct by a new English one. Public order could only be maintained once the need for it had been created. Also, it opened up a space for colonial authorities to control and manipulate the conduct of the people. Redesigning the social through the legal allowed the colonisers to set up the rules of the colonial form of governance and, facilitated the immediate and efficient unleashing of colonial control of various populations.

In the process of displacing the earlier practices of Mughal judicial system, new English laws required new jurists. The English magistrates were already meting out decisions to various disputes in the light of the ‘new’ laws. Institutions were introduced or even transferred from Britain because ‘public justice’ was supposed to be introduced in contradistinction to ‘personal injury’, one of the most problematic elements of ‘Mohammedan law’ for the British in India. The new Courts of law would have a dramatic impact on the Indian masses because dispute resolution now was proposed to be much more ‘just’ and ‘impartial’. However, there were still issues unresolved. One of such issues was racial justice. Elizabeth Kolsky among various other historians has pointed out that in 1890s when the issue of ‘white violence’ was at its peak, the British administration was caught in its own trap because the champions of ‘rule of law’ had to deal with disputes ‘uniformly’, without favouring Europeans over Indians. The consolidation of laws in 1893 resulted in the birth of a universal subject in colonial India irrespective of race. Such equality before the law was deeply resented by the majority of the European settlers in India. In the spirit of resolving the ‘racial’ contradiction in the recently introduced English law, eventually a universal legal code was adopted by emphasizing the ‘norms of justice’ and the responsibility of ‘western civilization’. Even though bitterly opposed by the European settlers in India the universality of colonial law had to transcend race, at least in letter, in order to establish maximum control and authority.
The entire exercise of establishing ultimate authority of the British crown in India and the formation of the Indian Penal code in 1860s can be read as the initiation of a modern social contract in India. However, it was not until 1893 that the IPC was consolidated and became one universal overarching body of law. It was one of the sovereign’s problems of whether to govern by ‘rule of law’ or ‘rule by law’. While the idea of ‘rule of law’ simply meant that no one was above the law and the arbitrariness of power was kept in check by a set of written rules. However, rule by law meant written rules were applied yet did not presuppose equality before law. The consolidation of IPC in 1893 did claim to transition from a rule by law to a rule of law, but it did not alter the governance attitude which had already assumed in the beginning of the nineteenth century that since the Indians could not have a ‘free’ government, they should be provided a ‘good’ government.

The British articulated sovereignty in an Indian idiom, and second they felt obliged to justify their rule in a European idiom too. The most powerful tool of the civilizing mission was the colonizer’s claim that the purpose of the colonial enterprise was to improve the locals and was aimed at bringing the fruits of progress and modernity to them. Michael Mann has argued that ‘the point where the colonizers are about to give up their role as civilizers, the colonized ask to continue as objects of civilizing mission’. Therefore, it was inherent in the logic of colonialism that people who were different were regarded as inferior. In order to govern themselves they needed to be made similar. Such an understanding drove a seemingly sympathetic attitude of philanthropic enlightenment and the self-inflicted ‘duty’ of the ‘white man’. But this was only one part of the story. The very same ‘civilizers’ who were uncomfortable with ‘irrational’ Mughal as well as customary laws, did not necessarily follow the spirit and procedure of the so-called ‘rational’ laws they themselves had introduced. The complete absence of evidence collection and due legal process in the case of Thuggee demonstrates the ‘irrationality’ of the so ostentatiously ‘rational’ administration in India. While the Law commissions were busy drafting a universalist Penal Code for India, the suppression of the criminal cult of Thuggs remained a main obsession of the British colonial administration for a very long time.

The career of the colonial state in India highlights that right from the beginning of the colonial administration in India the functioning of law was not about justice but rather risk management. In ordinary times, social demographics that were seen as potential problems for the colonial administration were placed outside the operation of the law. The
establishment of a clear dividing line between the normal and the extraordinary could not
only make dealing with such problem categories easier whilst also maintaining the pretence
of a polity built on enlightenment ideals, it also set norms of conduct for all those who were
not perceived as problem categories themselves. But this game of ruling through sovereign
distinctions of this kind was not successful. As this thesis will demonstrate, the formation of
mass anti-colonial resistance in the twentieth century made the boundary between normal
and exceptional uses of the law very permeable indeed. At least potentially, the entirety of
the Indian population could become a problem category – or ‘enemy’ in Schmitt’s sense.
The legal exception in other words would increasingly become ‘normalized’ and began to
penetrate how public order legislation was used in an everyday context.

The Ghadr movement in the second decade of the twentieth century, the Congress mass
campaigns, the growth of the labour movement resource mobilization in India during both
first and second world war, were all instances extraordinary laws became part of the
everyday toolkit of the colonial state. What is more, the logic of extraordinary but
normalized law did not disappear with the transfer of power to a newly independent India.
The new Congress governments, for example in the United Provinces reenacted colonial
methodology by pursuing a similar sovereign decisionism. One could argue that there was
no great difference between colonial and postcolonial times when it comes to the application
of extraordinary legislation in India.

Chapter Summary

The thesis examines the character of extraordinary legislation in colonial and postcolonial
India and is divided into five chapters. The first chapter- *Invoking Exception and Defining
Enemies: Extraordinary Legislation and The Colonial War on Terror in the Early Twentieth
Century India* - is a broad survey that revisits the nature of legality in the early days of
colonial. It highlights the problematic nature of the colonial law that thrived on the creation
of problem categories since the beginning. The events of 1857 leading to suspicion of
various sections of population followed by strict regulation of the vernacular press are
important in this regard. The major eruption of problem categories arose once again with the
Ghadr movement where entire population was now suspect and branded potentially disloyal.
With the creation of the Rowlatt Bills we notice that there was a liminal outside to define
who fell under the rule of law. By the end of 1920s with the Rowlatt Bills, everybody became a potential suspect and lead to the production of a binary of the loyal and the disloyal subject. It asserted that those who were loyal had nothing to fear and it was only the disloyal who was discomforted with the creation of Rowlatt Bills. It once again produced a governmental distinction of its own thriving on the element of ‘problem category’ to define the entire population in colonial India.

The second chapter - *Dynamics of ‘Public order’ in late colonial India: A study of the tactical use of section 144 CrPC in the Punjab and Bengal Presidencies 1935-1940* - discusses how the use of emergency or extraordinary situation cannot be assigned to emergency/crisis only but had to be everyday. This chapter studies the use of a specific preventive legislation, section 144 CrPC, which was invoked to deal with ‘unlawful’ assemblies, riotous mobs, and was promulgated to prohibit access to various public or industrial spaces. The chapter takes two different case studies from two different non-Congress ruled provinces of colonial India. One case study each from the province of Punjab and Bengal are studied closely to understand and interpret the use of section 144. These case studies highlight the governmental emphases on the use of preventive legislation to deal with the political situations through the creation of problem categories like the *satyagrahi*, and the communists.

From the third chapter onwards, - *Controlling ‘Mobs’ and Maintaining Public Order in Congress-ruled Provinces, 1930-1947* - the thesis focuses on the politics of extraordinary legislation in the Congress-ruled Provinces of Bombay and the United Provinces. It undertakes a detailed study of two famous incidents in the United Provinces, the Cawnpore labour strikes and the Madhe Sahaba controversy in the 1930s followed by another case study from the Bombay province. It investigates attitudes of both the local administration and the Congress ministry among others towards the use of extraordinary legislation and shows that they were not very different from each other. It also points out why decolonization as a process had to start with the recalibration of laws than anything else. The case study from Bombay demonstrates that ordinary clashes could often escalate to major law and order issues. However, the case studies from Bombay and U.P. demonstrate that the Congress leaders succumbed to the same logic as the colonial administration when it came to the handling of crisis and the use of extraordinary legislation. They too were comfortable to govern by sustaining problem categories like *Goonda, Mawaali, and Badmash*
The fourth chapter - *When administration broke the law: Peter Budge scandal and the issue of race, name and law in UP* - brings together observations from previous chapters and focuses on the importance of proper names in a new India. The chapter tells the marginal but nevertheless important story of an elderly person named Peter Budge who got arrested in a time of heightened communal tension in the United Provinces. Peter Budge suffered a year of illegal detention without trial solely for the reason that he had an unusual/unexpected/different name. Also, his story highlights the gaps in bureaucratic procedure in such cases as opposed to the claims often made by the colonial government. The case led to great embarrassment for the Congress Ministry in the newly independent India and resulted in a judicial enquiry.

The final chapter - *Lineages of a Post-Colonial State: Understanding the 'New' Sense of Public Order in United Provinces 1947-1955* - focuses on the institution of Mukhiyagiri and Chowkidari. It is a longer study of certain laws and administrative practices in the United Provinces and highlights the practices of congress government after 1947. The chapter argues that there was a continuity in governmental practice of the United Provinces Congress government in postcolonial India and was no different from its predecessors. The United Provinces government after 1947 started with the reorganization of Police with the intention of reframing its outlook in ‘changed times’. It abolished the colonial institutions of local policing and public order and surveillance like Mukhiyagiri and Chowkidari but replaced them with nothing different. Also, the administrative bureaucracy in United Provinces despised the local population which it perceived had failed in maintaining sanitation and order in public places. To this, the UP government extended a specific law called the Police Act section 34 to most of the towns and villages of the province. The chapter also discusses laws, which reflected the force of the government, and were enacted or resorted to, in order to deter people from doing certain things/acts. This chapter looks at four instances where the UP government resorted to the use of extraordinary measures in order to achieve everyday peace and order. These measures were the issue of a gun to every village, the enactment of the UP Rakshak Dal Act 1948, extension of section 34 of the Police Act to more and more districts and towns, and most importantly, the UP Prevention of Crime Bill (Special Powers) (Temporary) 1948, and will argue that the postcolonial UP administration maintained
everyday public order by following a two-pronged strategy. On one hand it argued for the cultivation of responsible citizenship by militarising society and on the other hand it resorted to special powers and extraordinary legislation to inculcate fear of police in the mind of the masses. However, this was attempted by the creation of a binary between ‘reliable villagers’ and ‘social pests’. As noted in the first chapter of the thesis, colonial government in India had a career of violence and suppression. Such violence was often perpetrated through ‘law’ by classifying certain sections of Indian society as ‘criminals’ for instance, ‘thuggs’ and ‘criminal tribes’. In the late colonial period too, ‘goondas’ and ‘hooligans’ supplemented for such a criminal nomenclature. However, disciplining masses through the activation of similar laws did not cease after independence and remained one of the obsessions of the postcolonial state too. The United Provinces (UP) Prevention of Crime (Special Powers) (Temporary) Bill, 1948, is an important insight in this regard. This law had emergency powers to deal with persons of ‘bad character’ and operated by short-circuiting normal rules of criminal procedure. Therefore, this chapter would lay out administrative attitude towards ‘public order’ by engaging with the bureaucratic communication that emerged after the UP government considered taking action against such ‘persons of bad character.’ Such ‘preventive laws’ were helpful to the UP Congress ministry to take action against the political ‘others’. This chapter will demonstrate how the then UP government armed with the zeal to have better governance promulgated an extraordinary law to deal with ‘bad characters’. Elaborating on the functioning of extraordinary laws the chapter will highlight the regulatory urge of the UP administration. It will demonstrate how in addition to having a disregard for individual liberty, the provincial government had a certain romance for emergency measures. While on one hand such measures point out their use of serving the government’s desire for ‘swift’ action, on the other hand it also highlights how it sometimes opened up a debate and disagreement between different bureaucratic institutions about the possible punishment for such ‘bad characters’.

Overall, the thesis contends that the late colonial government in India thrived on the creation of problem categories. Strangely, the same colonial categories rather than being problematic for the postcolonial government in fact facilitated its manoeuvres to maintain law and order. This points out the fact that there was no decolonisation of political understanding but just handover of political sovereignty. Rather than establishing democracy through the legitimisation of juridico-political order, the early postcolonial state in India opted for the
‘reasons of the state’ logic. Presumably law should have undergone transformation once India attained independence, but the central postcolonial problematic remained the same, one where various groups in population were kept outside citizenship. Rather there is a continuity in the imagination between the colonial and postcolonial Indian state as to what was meant by public order. There was no transformation in modality of dealing with such problem. Emphasis was on frequent invocation of extraordinary laws deployed for everyday purpose of governance. Furthermore, the postcolonial Indian state was also distrustful of its subject population, which goes against any idea of popular sovereignty. As far as law is concerned, one can see a continuation between colonial and postcolonial governmentality so far as legal governmentality is concerned.
Chapter one

Invoking Exception and Defining Enemies: Extraordinary Legislation and The Colonial War on Terror in Early Twentieth Century India

The administration of public order in colonial India used the law by way of a twin strategy: on the one hand, it emphasized an ideological notion of ‘rule of law’ whilst on the other hand it created a catalogue of exceptions through the delineation of certain problem categories to which the rule of law did not apply in the usual way. Ever since the formation of the first law commission in 1835, the colonial administrators in India argued for the necessity of a new legal code which would deliver impartial justice, even though it took until 1893 for this promise to be truly realized, when racial exemptions to the rule of law were finally removed. At the same time, the operation of colonial law always remained dependent on a basic premise of exclusion. It started with the creation of problem categories like the Thugs and other criminal tribes in the 19th century, but was later extended – as the nationalist movement was gathering force - to include, at least potentially, an entire disloyal population. While the initial marking of problem categories depended on a moral distinction between criminality and non-criminality, the later extension of legal exceptionalism to potentially the entire population brought with it a new language of governance predicated on notions of war and emergency, and a categorical separation between friends and foe. To outline this process is the principal aim of this chapter.

As this chapter progresses in roughly chronological order through several important case studies, it will furthermore demonstrate the late colonial state could resort to three different tactics in times of disorder. It could declare an emergency in which civil authorities were
given special powers; it could call in the military in aid to civil administration; and it could also declare a state of martial law. The underlying logic of order was often based, not on any principle of ‘rule of law’ at all, but on calculations of risk management, that itself depended once again on the demarcation of certain classes of people as problem categories. The exceptional laws designed to deal with such people involved a short-circuiting of standard procedures of law. The authorities often argued, for instance, that the police administration was unable to collect and produce evidence against such persons, so legal procedures could not be conducted in the ordinary way. Such exceptionalism soon applied not only to certain categories of ‘criminals and offenders’ who could be identified in advance of any crime taking place, but potentially to the entire colonial population, now perceived as ‘enemy’. One could argue that in the nineteenth century, colonial governance was conducted through an ‘institutionalized exception’, whereas the twentieth century saw the foundations of a ‘normalized exception’.

This chapter will undertake an examination of three case studies; the formation and the emergence of the Ghadr Party, the anti-Rowlatt agitations and the Jallianwalla Bagh massacre. These case studies are already quite well known from the secondary literature. However, this chapter evaluates the laws that responded to each of these situations instead. For example, the formation of the Ghadr party also coincided with the arrival of First World War and therefore the invocation of the Defence of India Rules. Similarly, the Revolutionary Crimes Act or the Rowlatt Act was legislated to deal with the anticolonial revolutionary groups that challenged the British colonial rule in India, and the Jallianwalla Bagh massacre which resulted in a series of events that led to the invocation of Martial law in Punjab. Together, these case studies will further enable our understanding of the colonial state of exception.
Ghadr (1913-1919) and the Defence of India Act: Public Grievances, Revolutionary Diaspora and Anti-Colonial Insurgency.

By the beginning of the twentieth century, the colonial government in India had already witnessed significant mass resistance, not the least the activities of the Bengal revolutionaries and the Swadeshi movement. The next decade brought the First World War and the outbreak of insurgency in colonial Punjab. ‘Public disorder’ in colonial Punjab like in the rest of India had been largely limited to conflicts and contestations amongst various classes/religious communities. But it gained a rather unusual momentum in the 1910s when the colonial government itself became the target of political and revolutionary activities over the course of the Ghadr movement. Ghadr remains one of the most significant anticolonial revolutionary movement against the British in India. The post-Ghadr account of General O’Dwyer, the then Lieutenant-Governor of Punjab puts the story in perspective. He understood Ghadr as a major and dangerous threat to the British Empire. Scholars have highlighted the scope of Ghadr in numerous studies. Scholars have noted Ghadr as an anticolonial mobilisation against the British rule in India and Burma that took place from the west coast of North America. South east Asia served as a major route for Ghadr attempts to infiltrate propaganda and arms into India for the purpose to spark revolts and subsequently an armed insurrection against British rule. Others have noted that the

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Ghadr movement was a convergence of many strains of thought and agitation. A movement initiated by Lala Har Dayal - later on by many others, for example Ram Chandra after 1914- mobilized as well as organized Punjabi and Sikh migrant workers in the North Americas to return to India and reproduce a rebellion along the lines of 1857. Some studies have focused on the range of organizational skills of Ghadrites in Canada and the patterns on which the Sikhs were mobilized against the British rule in India. Others have elaborated the ideological dimensions of the Ghadr party, detailed the collaborative efforts of US, Canadian, and British officials to deport the Indian radical and Ghadar Party leader Har Dayal under the anti-anarchist law in 1914 and focused on the anti-imperial character of the Ghadr. The mobilization of the Sepoy working for the British rule as an important element of Ghadr has also been studied. Such studies of the soldiers of British Empire - both Sikh and Muslim sepoys- highlight the utility of religious mobilization to invoke rage amongst regiments of Indian soldiers in the British Army. In addition to references made to Sikh and Muslim honour and pride being the followers of great Gurus and Prophet Muhammad, the economic condition of the Sepoy was equally relevant for his mobilization for mutiny. All such studies demonstrate the significant role Ghadr had in the anticolonial mobilization in India and abroad. This chapter utilizes existing scholarship on Ghadr but expands on existing analyses by focusing on the invocation of extraordinary laws at different levels - unleashing a state of exception- were activated to curtail the momentum of Ghadr. The difference of this study lies in its focus on the colonial state of exception invoked by the British administration at a crucial time when anticolonial Ghadr mobilization coincided with the

First World War. Out of fear of rebellion, the British administration instituted extraordinary measures which did not rely on the everyday rule of law.

The influence of *Ghadr* not only mobilised the masses in a new active and aggressive manner but also had an overt revolutionary character. Due to the economic downturn in India, many Indians, the majority of them Punjabis, sought to emigrate to North America. Noticing a huge influx of Indian immigrants, the Canadian Government decided to bring in a set of laws aimed at checking the influx of South Asians. Such discrimination led to growing protests and a rise in anti-colonial sentiments, especially among the Punjabi community. It led the community to organise into new political groups. Many who had moved to the United States encountered similar problems there too.\(^{111}\) Initially their grievances were voiced through a small political organisation called ‘Hindustani Workers of the Pacific Coast’. This organisation later became ‘Pacific Coast Hindustan Association’ and finally, in 1913, the ‘Ghadr party’ was formed under the leadership of Har Dayal and others. The Urdu word *Ghadr* translates into revolt/rebellion, and the ultimate aim of this organisation was the overthrow of British Rule in India. A weekly paper ‘Ghadr’ was started to disseminate the views of the *Ghadr* Party. The aggressive posture of the *Ghadr* party was already spelt out with absolute clarity in its first issue from San Francisco on November 1\(^{st}\), 1913. It carried a caption on the masthead – *Angrezi Raj ka Dushman*, - which translates as ‘the enemy of the British rule’. It made a foundational distinction between the colonial government and the people of India, and then declared war against this newly declared existential ‘enemy’. The message of this move could not have been clearer as the timing of the movement coincided with the outbreak of the First World War.

Men and resources from India were immediately mobilised for the British war effort. In addition to the regiments of soldiers from India who were deployed overseas, many ordinary Indians were mobilised as labourers for building trenches, roads and bridges, and also to serve as porters. When Indians, mostly Sikhs and Muslims from Punjab along with Gurkhas were sent to fight in France, they experienced a different racial politics there. Once forbidden to confront Europeans, they were now deployed abroad to kill ‘White men’. The emergence of Ghadr and the possibility of a civil and military mutiny at the time of war was an alarming prospect.

Meanwhile, a stridently anti-colonial tone emerged amongst Indian radicals spearheaded by the Ghadr party. Publications with self-explanatory titles like Ghadr-di-Gunj (Echo of Mutiny – referring to 1857), Eilaan-e-Jung (Declaration of War), Naya Zamana (The New Era) and a leaflet titled The Balance Sheet of British Rule in India, were considered the most controversial publications at the time. Ghadr-di-Gunj consisted of a collection of poems or songs and was the first books which the ‘Yugantar Ashram’ undertook to publish. The first edition of 10,000 copies was printed in Gurmukhi in 1914 and a later edition in Urdu was also printed. The judgement of one of the Ghadr related cases known as the Lahore Conspiracy case,\(^{112}\) was conducted as per the Defence of India Rules. It described the writings of the Ghadr-di-Gunj as one which described:

“… The British as a nation, all white men as a race and the English Government in particular, are all maligned in a spirit born of a depraved nature. Facts are not only distorted but most maliciously perverted to appeal to the lowest passions of Indian subjects. In the most open, defiant and unmasked manner mutiny is preached. All

\(^{112}\) See Judgment for Lahore Conspiracy case.
sense of decency has given place to foulest abuse of the worst possible vulgarity. The entire pamphlet is meant to incite the masses against the British Government. … Sikhs are excited by the references to the doings of their Guru; Muhammadans are similarly excited by reference to the Balkan War, for which England is blamed. Political convicts and Hardayal are praised to the skies.”

Similarly, *Eilaan-e-Jung*, described India as a downtrodden land, trampled on by foreigners who export and drain away its produce. It further claimed that Indian soldiers were kept in the front during the war while Europeans were allowed to serve in the less dangerous rear. Muslims were specifically urged by the pamphlet to kill the “pork-eaters” and were also incited with reference to England fighting Turkey (the land of the Caliphate), while the imposition of a new Khedive in Egypt was also stated. Hindus and Muslims were exhorted to make common cause and to establish a republic in India. Finally, *Naya Zamana*, which was allegedly written by Hardayal himself, was a pamphlet that explained the role of Congress leaders in the cycle of British oppression and attacked Indians as popular as Gopal Krishna Gokhale, Pherozeshah Mehta and Dadabhai Naroji. The argument was that these men are members of the Imperial Legislative Council, which is headed by British. Congress was referred to as official assembly and all its members as “flatterers” and “timid men.” The pamphlet further accused Congress members of parroting sentences they had learnt over the years, and of begging the British Government for their rights. Such a politics could not prevent famines, reduce taxes, spread industry, conduct administration of real justice, feed the population and control plagues. This was a concerted attack on the Indian participation in the British colonial bureaucracy by exposing them as collaborators to the colonial project.

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Another important track of argument in these pamphlets was to invoke the sense of history and religious pride, which often glossed over the hostility that historically often existed between groups such as Muslims and Sikhs. But the resentment against British rule was meant to unite these communities. Though Sikhs dominated the Ghadr movement, Muslims also participated in large numbers. Ghadr was a larger pan-Indian plot to inspire insurrection against the British colonial rule in India during the First World War. The Ghadr movement not only created minor conspiracy cases but also resulted in certain regiments revolting randomly against the British in numerous places. The supposed ‘mutiny plot’ had many participants ranging from the Ghadr Party operating from San Francisco, many Indian revolutionaries working underground against the British Rule within India, the Berlin Committee comprising of Indians in Germany and the crucial support of the German Foreign Office through the German consulate in San Francisco.\(^\text{114}\) It was the reason that the ‘mutiny’ was referred to in some places in the colonial archive as the German-Hindu mutiny. Hence, it was a transnational movement and involved various ‘enemies’ of the British Empire, both internal and external.

Ghadr not only attempted to appeal and mobilise masses but also highlighted oppressive administrative practices of the colonial government. Above all, at the dawn of the First World War, Ghadr incited soldiers to turn their guns on the British. This was a very disturbing situation for the British. The Central Investigation Department (CID) – the successor to the Thuggee department first founded in the 1830s - came in handy when they

successfully infiltrated a spy named Kirpal Singh\textsuperscript{115} into the main group, which was planning to launch a wider mutiny all over British India starting from Lahore on 21\textsuperscript{st} of February 1914. The Police foiled this plan by arresting some key members, yet the most ‘notorious’ Bengali revolutionary Rash Behari Bose managed to escape.

Suspicious of a German-Hindu conspiracy and the migration of Indians to foreign countries, the colonial government had a precursor to the Defence of India Act - the Ingress Ordinance. It was passed a year earlier in September 1914 during the outbreak of First World War and enabled colonial government to detain, screen or restrict the movement of people entering or returning to India. The British colonial government in India reacted to the threat of Ghadr as well as the increasing challenges of the First World War by creating a new law called the ‘Defence of India Act’\textsuperscript{116} which came into being on 18 March 1915. This Act aimed to provide for special measures to secure public safety and the defence of British India. It also offered new and speedier procedures for bringing certain offences to trial, mainly revolutionary activities.

The Defence of India Act 1915 was a Criminal Law Amendment, which extended to the whole of British India. It stated that “it shall be in force during the continuance of the present war and for a period of six months thereafter.” But it would continue to operate even beyond these temporal limits for all cases which had been registered during its enforcement period. “Legal proceedings pending under this Act at the time of the expiration thereof may be


completed and carried into execution as if this Act has not expired." Once invoked the law had the power to make its own rules. As it was invoked during the War it had the power to bring almost anything under its authority. The law empowered both civil and military authorities to act against any person(s), group(s), and property, posing any ‘threat’ to British authority. It also dealt with securing harbours, trains, tracks and roads for this purpose. In addition to the powers to arrest and seize property, this law put at the disposal of Governor-General in Council, the whole or any part of the output of any factory, workshop, mine or other industrial concern for the manufacture, preparation or extraction of any article or thing which in his opinion, could be utilised in the war. Industry was required by this law to ‘facilitate’ the war efforts of the British authority in any possible way.

The Defence of India Ordinance III of 1915 was considered inadequate for the War situation and therefore, got repealed and the Ordinance had to be modified. The colonial authorities thought of it as insufficient to deal with the foreign threats since the revolutionaries were also actively supported and engaged by other anti-British European powers. Hence, the modified rules made under section 2 of this Act stipulated that any contravention thereof or of any other order issued under the authority of any such rule shall be punishable by imprisonment for a term which could extend to seven years, or with a fine, or with both. In case, if the intention of the person contravening any such rule or order was to assist the King’s enemies or to wage war against the King, the Act provided that such contravention shall be punishable with death, transportation for life or imprisonment for a term which could extend to ten years, to which a fine could be added.

117 The Defence of India, Act V of 1915, Page 1.
118 Ibid. Page 2-3.
120 Ibid. Page 4-5.
Little difference remained between actual transgressions and mere suspicion under this law. For instance, section 3 of this Act stated:

“Where in the opinion of the Local Government, there are reasonable grounds for believing that any person has acted or is acting or is about to act in a manner prejudicial to the public safety, or the defence of British India, the Local Government may, by order in writing, direct such person to relocate, extern or discipline themselves and abstain from such acts.”

Furthermore, section 6 of this law stated that any officer could direct person(s) by the general or special order of the Local Government, to be photographed, give fingerprints, furnish the designated officer with specimens of his handwriting and signature and attend at such times and places as such officer would direct for all or any of the foregoing purposes. Failing to comply or attempts to evade would be punishable with imprisonment of either description for a term, which could extend to six months or with fine up to Rs. 1,000 or with both. As this law was a wartime law, it enabled military authorities to make arrangement for the “purpose of securing public safety.” However, there was an element of compensation involved too. The law provided that the Chief Presidency Magistrate in a Presidency-town and the District Magistrate elsewhere could, on the application of the person who had suffered loss by exercise of such powers, award to the person compensation he thought to be reasonable, and such awards were to be final. In addition to this, military authority was given the right to access any lands or buildings and could also impose a temporary suspension of right of way over any such land, building or other property. Refusal to comply

121 The Defence of India, Act V of 1915, Page 6-7.
122 Ibid. Page 8.
would mean that the law had been contravened. Surveillance and control of sea, channels, and rivers along with tighter border controls that allowed the frisking of baggage, post, publication etc. was also part of this law. This law enabled the dormant absolutist tendencies of the late colonial state.

Justice under such a law was quick and avoided the usual process. Section 4 of this Act specified that Commissioners for the trial of persons under this Act were to be appointed by the Local Government. These Commissioners could be appointed for the whole province or any part thereof or for the trial of any accused person or class of accused persons. The trials under this Act could be held by three Commissioners, of whom at least two had to be persons who had served as Sessions Judges or Additional Sessions Judges for a period of not less than three years or were qualified under section 2 of the Indian High Courts Act, 1861, for appointment as judges at the High Court, were advocates of a High Court or, were advocates of a Chief Court or pleaders of ten years’ standing.

A Special Tribunal under the Defence of India Act, which was passed in March 1915, heard the ‘Punjab Mutiny’ event in 1914 popularly known as Lahore Conspiracy case. With 63 of the persons accused in the dock and 18 still absconding, the trial began on the 26th of April 1915. One of the absconder, Nidhan Singh, was arrested later and put on trial in the same case. Others were tried in supplementary cases. The final list of persons tried in the first instance numbered 82 because many of the absconders were arrested during the course

123 The Defence of India, Act V of 1915, Page 9-25.
125 The Commissioners were Major Irvine and Mr. Ellis, Sessions Judges, and Rai Bahadur Pandit Sheo Narain, a leading lawyer of the Chief Court.
of the trial. The total number of approvers was 10. Only one from the accused, Umrao Singh, became an approver during the trial in the first case.\textsuperscript{126}

All were accused of waging war against the Crown or conspiring to do so, inside and outside of India, seducing troops to mutiny, committing dacoities. In addition, two were also charged with murder, abetting murder or attempting murder. Some were further accused under the Explosives Act. Because the number of accused was high and due to the fears of an armed attempt to rescue them, the trial was held in Central Jail Lahore with no access to the general public. However, the proceedings were officially reported to the Press, a procedure that met with strong opposition from the English newspapers of the Province. The main trial lasted from 26\textsuperscript{th} April 1915 to the 13\textsuperscript{th} September 1915. The magnitude of the trial was huge, as the record comprised 704 pages of printed matter, containing abstracts of the statements of 404 prosecution witnesses, the statements of the accused and abstracts of those of 228 defence witnesses. Later, the same Tribunal tried a supplementary case which began on 29\textsuperscript{th} October 1915 and ended on the 30\textsuperscript{th} March 1916. One hundred and two accused were named in the plaint, of which 11 were absconders. Two of these were arrested after the trial had begun and were sentenced to death by the tribunal in cases taken up during a postponement of the main one. In the Lahore conspiracy case and later supplementary cases up to 1919, we know there were 154 persons tried. 24 were acquitted, 19 were hanged, 55 were transported for life and 56 were awarded lesser sentences of rigorous imprisonment.\textsuperscript{127} There were other cases related to \textit{Ghadr} too but the Lahore conspiracy demonstrates the scope of


such trials under the Defence of India Act. Rebels or the ‘enemies of the king’ were to be tried in a grand process aimed at a juridical demonstration of exception.

A similar case known as the Delhi conspiracy case\textsuperscript{128}, further sheds light on the nature of the invocation of Defence of India Rules. While hearing the Delhi Conspiracy Case, Sir Donald Campbell Johnstone on 10\textsuperscript{th} February 1915 stated the amended\textsuperscript{129} charges against the eleven accused persons\textsuperscript{130} as:

“That you between 27\textsuperscript{th} day of March, 1913, and 31\textsuperscript{st} March, 1914, both at Delhi and Lahore and other places in British India, did agree with one another, and other persons unknown, to commit the offence of murder under section 302, Indian Penal Code, and that you were thereby parties to a criminal conspiracy to commit the offence of murder, to wit the murder of Ram Padarath, was committed at Lahore on 17\textsuperscript{th} May, 1913, and that you thereby committed offences punishable under sections 302/102-B and 302/109 of the Indian Penal Code within my cognizance.”

The case to which the current case was an appeal lasted from 21\textsuperscript{st} May, 1914, to 1\textsuperscript{st} September, and on 5\textsuperscript{th} October passed orders, acquitting five of the accused persons\textsuperscript{131}, and convicting the other six\textsuperscript{132} under section 302/102-B, I.P.C. Three were sentenced to death\textsuperscript{133};

\textsuperscript{128} Appeals Nos. 851 to 854 and Nos. 905 and 921 to 924 of 1914 and Revision No. 2069 of 1914, against the order of H.M. Harrison, Esquire, Additional Sessions Judge, Delhi, dated 5\textsuperscript{th} October 1914.

\textsuperscript{129} The original case was heard by Sessions Judge on 11\textsuperscript{th} July 1914, in Trail No. 6, and further the charges against the accused were added or amended during the course of the trial.

\textsuperscript{130} A special bench comprising Sir Donald Campbell Johnstone, Kt., Judge and Justice Rattigan heard the case. Six prisoners named Balmokand, Abad Bihari, Amir Chand, Hanwant Sahai, Balraj and Basant Kumar Biswas filed appeals in their names against an order of 5\textsuperscript{th} October 1914 by H.M. Harrison, Additional Sessions Judge, Delhi.

\textsuperscript{131} Namely, Chota Lal (called Ram Lal in the rest of this judgement) alias Ram Lal, Charan Das, Mannu Lal, Raghobar Sharma and Khushi Ram.

\textsuperscript{132} Namely Basant Kumar Biswas, Abad Bihari, Amir Chand, Balmokand, Balraj and Hanwant Sahai.

\textsuperscript{133} Namely Abad Bihari, Amir Chand, and Balmokand.
and three were sentenced to transportation for life\textsuperscript{134}. Simultaneously to the above case the Court also tried two of the accused aforesaid on a charge under sections 4, 5, and 6 of Act VI of 1908 (Explosive Substances Act)\textsuperscript{135} in connection with a bomb cap said to have been found in their possession on 16\textsuperscript{th} February, 1914, and (again on 5\textsuperscript{th} October) found them guilty and under section 4 of the Act sentenced them to transportation for 20 years. Though the finding of the bomb cap came from a different case but was sufficient to frame them under the extraordinary law.\textsuperscript{136} The court created a brilliant narrative by forging evidence and concluded that “reasonable ground” existed for believing that:

“the accused had joined hand in conspiracy to wage war against the Queen and procured arms in Europe for the conspiracy. It added, that the accused collected money in Calcutta for the objective and persuaded other persons to join their conspiracy in Bombay. They published writings advocating the object in view at Agra and transmitted from Delhi to Kabul, the money collected at Calcutta. A letter giving the account of the conspiracy was used as evidence to prove the complicity of the accused.”\textsuperscript{137}

The details of the Lahore and Delhi conspiracy cases is pertinent as it demonstrates not only the scope of the use of Defence of India Act to curtail anti-colonial activities but also the narrative and level of threat the colonial government perceived. throughout the trial, crimes like murder or abetting murder -that could have been tried under ordinary criminal law - took

\textsuperscript{134} Namely Basant Kumar Biswas, Balraj, and Hanwant Sahai.
\textsuperscript{135} Namely Abad Bihari and Amir Chand. IS IT WORTH MENTIONING THEM IN THE MAIN TEXT?
\textsuperscript{136} Page 3 of the “Complete Judgement of the Punjab Chief Court, Lahore in the Delhi Conspiracy Case,” dated 10\textsuperscript{th} February 1915 together with the abstract of the findings of the Judges, 1915, Lahore, Printed by S.S. Deane, Manager, at the Punjab Steam Press.
\textsuperscript{137} Page 5 of the “Complete Judgement of the Punjab Chief Court, Lahore in the Delhi Conspiracy Case,” dated 10\textsuperscript{th} February 1915 together with the abstract of the findings of the Judges, 1915, Lahore, Printed by S.S. Deane, Manager, at the Punjab Steam Press.
a prominent place. The scope of revolutionary activities and conspiracies, according to the colonial government, spread across different provinces, all the way from Bengal to Kabul. *Ghadr* along with the Lahore and Delhi conspiracies had already made the colonial government paranoid.

The main fuel to the Ghadr panic came from overseas in the shape of the deportation of Indians from Canada and the United States. The iconic case was that of the ship *Komagata Maru*, which had been chartered by a Sikh, Gurdit Singh, carrying many Indians, mostly Punjabi Sikhs and some Muslims, and others from Manila, Hong Kong, Shanghai, Moji and Yokohoma. They all attempted to emigrate to Canada, but the ship was prohibited entry into Canada. When the Ship arrived at Vancouver on the 24th May 1914, the emigrants were told that, except for former residents and some students, no one would be allowed to land. An appeal against this order was lodged in the case of one passenger Mansa Singh, which was taken up at Victoria as a test case on which to decide the fate of all.\(^{138}\) Newspapers like *Amrita Bazar Patrika* were consistently reporting on the *Komagata Maru* episode. Thus, informing Indians of the developments in the case as well as the ordeal of Indian passengers. Meanwhile, Indians in Canada held many mass meetings discussing the situation. On 17th July 1914, orders were passed in the case of Mansa Singh and his appeal was rejected. Orders of deportation were then served on all the passengers but they assumed a defiant attitude, locked up the captain and his officers, and refused to allow the ship to leave. On 19th July, the immigration authorities attempted to board the ship to regain control but were prevented from boarding it by the people on-board.\(^{139}\) Later, the immigrants agreed to carry out the

\(^{138}\) Amrita Bazar Patrika, “Komagata Appeal, Thrown out by Canadian Court, Court’s ground of rejection,” Thursday, July 9, 1914, Page 5.

\(^{139}\) Amrita Bazar Patrika, “*Komagata Maru*’ Hindus and Police,” Tuesday, July 21, 1914, Page 5.
orders of the authorities to depart\textsuperscript{140} if they were provided with sufficient supply for their voyage.\textsuperscript{141} Amrita Bazar Patrika reported that the supplies were sent on board\textsuperscript{142} and the ship left with orders to proceed direct to Hong Kong.\textsuperscript{143} It was this ship that was later dealt with under the ‘Ingress into India Ordinance’.

After the contestation and confrontation in Vancouver with the Canadian authorities it was known that the passengers on the ship were discontented. It was evident to the colonial authorities that such a distressed crowd of three hundred failed emigrants (with Ghadr in the background) could constitute a serious challenge to public tranquillity if permitted to land in Calcutta and left to find their way to Punjab unassisted. Their arrival could easily trigger a renewed agitation over Indian migration to other colonies. It was therefore decided to make use of the ‘Ingress into India Ordinance,’ and to organise the immediate return of the passengers to the Punjab under strict government control, with a special train being supplied at Government expense. In the wake of First World War, owing to the fears that war conditions might provoke ‘enemies within’ to plot armed insurrection against the British government with support from outside led the government to promulgate the Ingress into India Ordinance 1914 and the Defence of India (criminal Law Amendment) Act IV of 1915.

While the Defence of India Act as an extraordinary ordinance aimed at dealing with challenges that arose within the territory of India, the Ingress Ordinance was aimed at the threats that might arrive from abroad at Indian ports. The Ingress ordinance authorised the government to seclude ‘foreigners’ from the local population, and restrict Indians coming

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\textsuperscript{140} Amrita Bazar Patrika, “‘Kamagata’ Hindus, Cost of this Venture, The Komagata Passengers, Will return to Hong Kong, Friday, July 10, 1914, Page 5. This news item puts the venture costs of ‘Komagata Maru’ at £14000.

\textsuperscript{141} Amrita Bazar Patrika, “‘Komagata’ Hindus, Government refuses to defray expenses, The Government proposes to make an example of the present case,” Monday, July 13, 1914, Page 5.


\textsuperscript{143} Amrita Bazar Patrika, “‘Komagata’ Case, Deportation difficulty settled,” Friday, July 24, 1914, Page 5.
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from foreign countries to certain areas. Furthermore, it was directed towards restraining the influx of Indian revolutionaries, mostly Ghadrites from abroad. Under this measure, thousands of Sikhs returning to Punjab from abroad were brought under surveillance and scrutiny.  

The then Lieutenant-governor of Punjab Sir Micheal O’Dwyer had noted that such extraordinary laws were the main “safeguards” available to the colonial administration against the “returning Ghadr conspirators.” He referred to the scenario for the British officials in India as “living over a mine full of explosives.” Ghadrites had appealed to Punjabis and Sikhs living in the North Americas to return to India to participate in an organized mass revolt against the British rule. Fearing the arrival of thousands of Ghadrites back into India was a major concern for the British officials. The circulation of Indian migrants and their revolutionary anticolonial political mobilization across the Pacific even before the First World war happened served as a pretext for the British Indian states to not only strengthen its exceptional character but also expand it in the name of ‘national security’. By 1917, the United States as well as the British Indian states had enacted laws precisely aimed at the mobility and activism of Indians. Gurdit Singh and certain of his immediate followers were to be detained at Ludhiana pending enquiries into the circumstances of the voyage of the Komagata Maru. Four Sikh Police officers and one British police officer from Punjab were deputed to meet the Ship, and a District Magistrate was sent to Calcutta to represent the Punjab Government with full powers under Ordinance

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144 Kannabiran, Kalpana. and Ranbir Singh, Challenging the Rule(s) of Law: Colonialism, Criminology and Human Rights in India, (Penal Strategies and Political Resistance in Colonial and Independent India), Sage Publication, New Delhi, 2008, Page 235
146 Ibid.
V of 1914 to deal with these passengers. The ship arrived at the mouth of the Hugli on the evening of 26\textsuperscript{th} September with 321 passengers on board, and was detained at Kalpi, six miles below Diamond Harbour, during the 27\textsuperscript{th} and 28\textsuperscript{th}, while the ship and the passengers were searched for arms. On the 29\textsuperscript{th} of September, the ship was brought up the river to Budge Budge, where the special train to Punjab was waiting for them. The passengers refused to disembark from the ship and stated that they would only land at Howrah. They declined to travel by the special train. What is important here is that the passengers of Komagata Maru were neither under arrest nor convicts or accused, or even foreigners. Therefore, there were no ordinary legal grounds to enforce their transportation on a special train to Punjab.

But the Ingress Ordinance evaluated the passengers of Komagata Maru as potentially dangerous and made them available for scrutiny and surveillance to the colonial state. Thus, altercations between the police and some of the passengers led to violent confrontation and later firing.\(^{148}\) A riot followed, leading to the death of a European officer of the Calcutta Police, a head constable and a constable of Punjab police, a shopkeeper, a Bengali spectator and an officer of the Eastern Bengal State Railway. Three of the officials were wounded including three Sergeants of the Calcutta Police, one Indian Officer and four men of the Punjab police. A cordon was placed around Calcutta to nab the passengers who escaped from the ship following the riot. By the 11\textsuperscript{th} of October, 201 of the rioters had been captured. Of the 321 passengers on Komagata Maru, 62 had left quietly for the Punjab, and 18 had been killed or died of wounds, one drowned, 9 were in hospital and 202 were interned in jail under the Ingress Ordinance.\(^{149}\) The colonial governments response to the arrival of the passengers of Komagata Maru at Calcutta highlights the flimsy reasons the government invoked to deal

\(^{148}\) Amrita Bazar Patrika, “Komagata’s return, Fatal array at Budge Budge, Sudden attack on Police officers, Deplorable loss of life,” Friday, October 2, 1914, Page 5.

with the already disgruntled emigrants. As a result, the passengers of Komagata Maru would now fit the colonial classification of Indian immigrants (all potentially Ghadrites) returning from North Americas as dangerous, seditious and therefore mutinous. The following section will discuss how even after the end of the First World War, the late colonial government in India continued to promulgate another set of extraordinary to deal with ‘revolutionary crime. The focus from potential Ghadrites who had returned from North Americas and assembled in Punjab for a violent mutiny against the British rule was now extended potentially to the rest of the population who could be conspiring against the colonial government in India. A civilian version of Defence of India Act in the form of Rowlatt Bills was enacted. Hence, the figure of the Ghadrite became a ‘problem category’ that necessitated and consequently justified action under extraordinary laws such as the Defence of India Act and the Ingress into India ordinance.

There is no ‘outside’ of War: ‘Revolutionary Crimes Act’ 1919 and the normalising of exception in colonial India

With immaculate structures of intelligence gathering in place, along with the swift use of extraordinary laws like the Defence of India Act and the Ingress into India Ordinance, the colonial government was successful in dealing with the Ghadrites. But a fierce movement like Ghadr was bound to influence the larger nationalist movement too, which was gathering pace in India against British colonialism. The spill-over effect of Ghadr needed to be contained in every possible way. The emergency triggered by Ghadr would exceed the timeframe of emergency legislation limited to the times of the First World War and the conclusion of the Delhi and Lahore conspiracy trials. Though the Defence of India Act was supposed to continue for only six months after the declaration of peace, the colonial
administration had plans to deal with the situation in the longer run. A committee was already working on a report that assessed the situation of revolutionary crimes in India. As a result, the Revolutionary Crimes Act 1919 was soon to replace the Defence of India Rules 1915. The following section analyses the politics around the promulgation of the Revolutionary Crimes Act 1919 and will demonstrate how it enabled the normalisation of a state of exception and of extraordinary laws in late colonial India.

Following the events of Ghadr, the colonial government in India, in the name of dealing with ‘anarchical and revolutionary crime’ started the process to pass the ‘Revolutionary Crimes Act’ popularly known as ‘Rowlatt Act’ owing its popular name to Justice Sidney Arthur Taylor Rowlatt, who was the president of a sedition committee already set up in December 1917 by the British Colonial Government to examine and analyse political terrorism in India. The colonial government decided to appoint the Commission to draft laws based on its recommendations. This Committee consisted of a President, Justice Rowlatt, who was a prominent Judge of the King’s Bench Division, and four members, two British, the Chief Justice of Bombay and a Member of the Board of Revenue in the United Provinces, and two Indians, a Judge of the Madras High Court and an Additional Member of the Bengal Legislative Council. The Committee presented the result of their recommendations which were then approved by the Governor General in Council, and finally assented to by the Secretary of State for India.\(^{150}\)

As discussed earlier, the Defence of India was a war measure and was to remain in force only until six months after the termination of the war. However, the colonial government

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felt that on its removal it might have to face new outburst of opposition activity resembling the ‘terrorism’ in Bengal from the years before the war. The colonial government was not convinced that ordinary laws or the Criminal Procedure Code could deal with such acts, persons or groups. The attitude towards ordinary laws was that they were utterly inadequate to deal with the danger faced by the British colonial government in India. The powers granted to authorities under the the Rowlatt Act, as discussed above, demonstrates its exceptional character. The ‘Rowlatt Act’ gave government vast powers, under special and carefully defined conditions for dealing with “anarchical and revolutionary movements.” The remit of this could be exceedingly wide, not only offences against the State, such as waging war, or conspiring to overthrow the Government, etc. but also more ordinary offences against persons and property, such as rioting with deadly weapons, murder, robbery, dacoity, damaging roads and bridges, house-breaking, criminal intimidation. Certain offences connected with the use of explosives and of arms; provided always that such offences are connected with “anarchical and revolutionary movements.”

The findings of the committee gave birth to the infamous ‘Rowlatt Act,’ which were to replace the Defence of India Act. The report identified dangerous conspiracies in Bengal which also engendered murders and robberies and were sustained by persistent propaganda conducted by young men belonging to the educated middle classes. Chitpavan Brahmins stirring Maratha nationalism was another source of disturbance in the Bombay Presidency. Insurgency in Punjab by emigrants returned from America was also stated as an additional source of disturbances against colonial rule. While the Defence of India Act 1915 was a

152 Report of Committee Appointed to Investigate Revolutionary Conspiracies in India (London, 1918), Cd.9190, p75. Other members of this committee were Sir Bail Scott, Chief Justice of Bombay, C.V.
wartime law and therefore ‘emergency’ in nature, the ‘Rowlatt Act’ was permanent and meant as a reincarnation of the Defence of India Act for ‘normal’ times. We notice that the colonial administration exhibited the desire to deal with everyday crime under emergency laws.

The Rowlatt Bills met with great opposition during the debates in the Imperial Council and other official forums. To aid deliberations and to dispel public suspicion, Oxford University Press brought out a booklet explaining details of the Act. The content of this booklet is important because it neatly laid out the administrative position of the colonial government.

Explaining the context of the situation in question, the booklet\(^{153}\) foregrounded the fact that “India is swept by a storm of political feeling … which is difficult to account for.” Protests all over India erupted with activists and nationalist leaders voicing their fear that the Acts would be used to silence political dissent against the colonial government. Humphrey Milford, who brought out the booklet asserted that most of the people who were opposing Rowlatt Act had never read it. He wrote:

“A little while ago, in Nasik, a political agitator who had spoken vehemently against the bill admitted in conversation with a Government officer that he has never read it. This was indeed a case of blind leading the blind. Are thoughtful Indians going to be content with such second-hand ignorance (we cannot call it knowledge)? Or will they read or judge for themselves?”\(^{154}\)

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Kumaraswami Shastri, Madras High Court Judge, Sir Verney Lovett, member of U.P. Board of Revenue, and P.C. Mitter, additional member of Bengal Legislative Council.  
\(^{154}\) Humphrey Milford made such an assertion on the first page of this booklet.
Humphrey warned readers that later in the booklet they would come across words like “anarchical and revolutionary crime”. He then proceeded to define against what the Act was directed at precisely. Most of such ‘crime’ was directly connected to the aim of “overthrowing the Government”. Challenging prevalent claims against the Rowlatt Act, Humphrey elaborated that neither (a) orderly rational criticism of Government and the peaceable expression of political opinion, nor (b) criminal offences not committed from political, anti-government motives, were included under the definition of ‘anarchical and revolutionary crime.’ As Bengal had already witnessed revolutionary terrorism, the booklet contended that “Bengal, in particular, during the ten years or so that preceded the war, was the scene of an unending series of violent outrages directed against the authority of Government and its officers, which while leaving government unshaken, succeeded in all events in rendering the property and even the very life of innocent and peaceable citizens unsafe.” Activities to fall under the purview of Rowlatt Act were divided into two classes; (1) murders, by members of revolutionary gangs, of officials and police officers who in some way or other had made themselves obnoxious to them, and (2) dacoities, that is organised and violent robberies, carried out with the object of securing funds for the furtherance of revolutionary schemes and often accompanied by murder or attempts at murder. The Rowlatt Act was a law devised for all of India and would give vast powers to the local government to deal with almost any oppositional situation.

Humphrey’s analysis, quite similar to colonial government’s statements, was not shy of pointing out that the ordinary laws were not able to deal with such a situation due to the difficulty of procuring evidence, the intimidation of witnesses and delays of normal legal procedure. The effect of these obstacles, according to Humphrey, was that anarchical crime
made swift headway against the authorities because the greater proportion of the ‘criminals’ were difficult to be brought to book, and of those that were tried, many had to be released because of the lack of proper legal evidence. Furthermore, it was felt that the Government, had failed in its duty of protecting law and order and safeguarding the life and possessions of its people. This was not owing to any lack of zeal on its part, but simply because of the ‘defective state of law’ when it came to “anarchical and revolutionary crime.” Humphrey argued for the necessity of bypassing ordinary rules and process in order to deal with the threat of revolutionary crime.

The Ghadr movement and the Lahore and Delhi conspiracy cases, it was claimed, provided British authority with alarming facts, and evidence that ‘seditious’ societies in India were in league with German agents for the overthrow of British power. To this, the colonial Government promptly adopted strong measures and claimed certain special powers, which were incorporated in the Defence of India Act of March 1915. What is pertinent to observe is that the rules under this Act, which although even more stringent than the new ‘Rowlatt Act’, were accepted by the country in general without any protest given that the invocation of these rules supplemented war efforts. The Defence of India Act gave the authorities facilities for the prompt arrest and internment of persons known to be dangerous and arranged for their quick trials by special tribunals. As a result, Government used the Defence of India Act to deal with revolutionary situation not only in Punjab but in Bengal too. Humphrey’s booklet argued:

“the effect of these wise measures for the defence of the country against both its internal and its foreign enemies was immediate and startling. Anarchy in Bengal and elsewhere was practically stamped out, a dangerous plot for the importation of
German arms and a general revolt in India was detected and thwarted, and, in a word
India during the wars was enabled to enjoy the blessings, the order and the
commercial well-being of peace, without any interference in the rights and liberties
of her law-abiding subjects.”

Such laws, we notice, were based on a Schmittian ‘friend’ and ‘foe’/enemy distinction. Any
activity, be it the conspiracies to overthrow the colonial government or collaboration with
Germans, would invite action under this law. The rest, who had the interest of the colonial
government and love for peace would come under the ‘friend’ category and had nothing to
worry about, apparently. The rest would be designated as foes (and hence as a problem
category) posing a serious challenge to the British rule in India. One cannot overlook
Humphrey’s observation as well as his manner of assurance when he noted:

“Indeed it is possible, and even, we hope, probably, that no part of India may ever be
subjected to it. It is a measure to be used in an emergency only and against a
particularly dangerous class of criminals; just as a wealthy man who saw a robber
entering his room, might seize up a stick with which to defend his property and life.
He might even, if he were wise, keep such a weapon handy in case of need. And if
he did so, would his family and his friends have a right to consider themselves
insulted and mistrusted? Obviously, the only people who would ever need to fear it
would be his enemies.”

155 See Rowatt Bills and also Milford, Humphrey. The “Rowlatt Act”, Its Origin, Scope and Object, Oxford
University Press, Elphinstone Circle, Bombay; Esplanade, Madras1919, page 9.
Such an assurance comes with a warning, a notice to correct oneself and to fall in line with the current order. Otherwise anybody could fall in the category of the seditious criminal.

It is noteworthy that once the Rowlatt Act would come into existence it was supposed to continue in force for three years from the date of the termination of the war and was to extend to the whole of British India. Humphrey’s pamphlet warned people from rushing to hurried conclusions and urged them to read the first section of each of the three main parts of the Act, in which it was ‘clearly and expressly’ stipulated that the special powers offered by the Act of Local Governments shall not come into force in any part of the country unless the Viceroy in Council (that is after due deliberation with his British and Indian advisers) would decide that “anarchical or revolutionary movements” are being promoted in that part and the situation was serious enough to make it necessary for him to apply some or all of the special provisions of the Act to that region of the country. Once again it was stressed that the act did not apply to ‘ordinary criminal offences’ but only to those included in a ‘special schedule’. However, how ordinary offences could be interpreted as offences in the ‘special schedule’ remained a significant source of ambiguity.

Humphrey’s booklet took great pains to explain, “What the Act is not”. In nationalist discourse the Act was seen as a measure that gave special and tyrannical powers to the police and robbed Indians of free speech and imposed restrictions on the expression of political opinion. Contrary to such nationalist apprehensions, Humphrey took pains to explain and assure that the government would not arrest people without reason and only a speech or a publication or a newspaper article, which incited the people to outrage and rebellion, would most probably come under the Schedule. But he also added that there was nothing new in
the prohibition of such speeches or writings. They been criminal offences for the last four years already. In fact, many sections of this law were already available to the authorities as the Criminal Procedure Code. However, by becoming an emergency measure, the Act had acquired the power to bypass ordinary procedures against the accused and hence aimed to strike terror in the minds of nationalist and revolutionary persons and groups in colonial India. Rowlatt Act was an extraordinary law, conferring on Government special powers in exceptional cases. But Humphrey was confident of the safeguards the ‘Rowlatt Act’ contained and therefore argued that it “can harm neither the purse, nor the liberty, nor the dignity, of any good citizen of India.”\(^\text{156}\) The image of a good, obedient, disciplined, non-revolutionary citizen, were clearly stated in these laws. Whoever would decide to be otherwise, had to be ready for the ‘consequences’. Rowlatt Act, being a civilian version of the Defence of India Act, made possible the swift transition of exceptional laws – until now primarily a sovereign prerogative- into extraordinary laws, which would still be exceptional in character but in contrast to Defence of India Act now available to the civilian government. War against the enemies of the state became extended, it did not cease with the end of the First World War. The nature of laws suitable to operate exclusively to deal with challenges of war were transformed to adapt to the civilian administration. Even though Rowlatt Acts were repealed three years later in 1922, they paved way for the rise of the surveillance state and succeeded in further enabling the dark side of colonial extraordinary laws to be used hereafter. Such laws normalised the capacity of the colonial state to use the ‘maxim’ of exception, permanently. The message was that hereon the late colonial state in India could not only do everything, but anything to protect its authority.

The following section takes the discussion further by discussing ‘Martial laws’, a scenario where the civilian administration failed to maintain law and order and requested military assistance. Consequently, if the situation got further out of control, the military could take over complete control of administration from the civilian administrative machinery. Such laws, again, were exceptional and further enlighten us about the various layers in which exception was invoked.

**Legality and moral legitimacy: Satyagraha, martial law and the massacre at Jallianwalla Bagh**

The ‘Rowlatt Act’ was finally passed despite the unanimous opposition of all non-official members of the Imperial council.\(^{157}\) Vast sections of the Indian population and their political leadership became agitated about the Governments’ indifference to their opposition to the Rowlatt Act. As part of the collective response, Mohan Das Karamchand Gandhi started *satyagraha* on 23\(^{rd}\) March 1919, to oppose the Rowlatt Act. 6\(^{th}\) April 1919 was declared as an All India Hartal day to be observed with twenty-four hours of fasting and suspension of business. On March 1, 1919, Gandhi in a statement to the press opposed the Rowlatt Bills. The arguments he made are of great relevance for the argument of this thesis. The report of the Rowlatt committee taking stock of revolutionary crimes in India had been of the opinion that secret violence was confined to “isolated and very small parts of India” and “to a microscopic body of the people.” Gandhi now responded that although the existence of such

\(^{157}\) *The Madras Mail*, Wednesday Evening, March 19, 1919, Page 5, “The Imperial Council, Rowllatt Bill Passed, Madras Member Resigns.”
men was truly a danger to society, the Rowlatt Bills would in fact affect the whole of India and all of its people. For Gandhi, the design of the Bill laid bare a colonial conspiracy of arming the Government with powers out of all proportion to its stated aims. In other words, Gandhi—himself a lawyer—was pointing out the capabilities of such extraordinary laws. He seems to be aware of the sweeping powers this law could have. It would make the distinction between ordinary and extraordinary disappear or make it so porous that ordinary crimes could be interpreted as part of a revolutionary conspiracy. For Gandhi, the Rowlatt Bill was a greater danger than revolutionary crime itself. He argued that “millions of Indians were by nature the gentlest people on the earth”. 158 He further considered the Bills to be “the unmistakable symptom of the deep-seated disease in the governing body.” 159 While pleading with the Government for the use of ‘ordinary laws’ to deal with revolutionary crime, he proposed that a strong ‘remedy’ like the Rowlatt Bills should only be prescribed once all the milder ones had been tried. His use of the metaphor of the body is noteworthy here. Without contesting colonial concerns of revolutionary crime, Gandhi seems rather concerned at the possibility of any opposition termed revolutionary. It could mean that even protests and anticolonial mobilization could invite action under Rowlatt Bills. It could endanger his own advocacy of non-violent protests and could endanger peaceful demonstrators. This said, we know that the British surely were not likely to listen to his hollow spiritual advice; instead they were the makers of an empire which had violence at its heart and legality in its head.

159 Ibid. Page 251.
The anti-Rowlatt Act political mobilisation resorted to Satyagraha. The Satyagraha vow against ‘Rowlatt Act’ was as follows;

“Being conscientiously of the opinion that the Bills known as the Indian Criminal Law (Amendment) Bill No. 1 of 1919 and the Criminal Law (Emergency Powers) Bill No. 2 of 1919 are unjust, subversive of the principle of liberty and justice and destructive of the elementary rights of individuals, on which the safety of the community as a whole and the State itself is based, we solemnly affirm that in the event of these Bills becoming law and until they are withdrawn, we shall refuse civilly to obey those laws and such other laws as a committee to be hereafter appointed may think fit and we further affirm that in this struggle we will faithfully follow the truth and refrain from violence to life, person or property.”

Despite nationwide opposition, the Rowlatt Bill was passed into Law on 18th March 1919. It was carried by the 35 Government votes and opposed by 20 out of 25 non-official Indians. REPETITION? There were in total 187 amendments proposed by the Indian Members and the official block defeated every one of them. Jinnah, Aiyangar, Mazharul Haque, Khaparde, Sunder Singh, Zulfiqar Ali, who all along strongly protested were absent as a protest on the last day of voting. Meanwhile, Gandhi was welcomed in Madras on 18th March and 20th March 1919, by huge mass meeting following his call for satyagraha. Gandhi opposed the Rowlatt Bills but described the character of the western form of Government in

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160 Details of some of the amendments can be seen in The Madras Mail, Monday Evening, March 17, 1919, Page 6. “The Imperial Council, The Rowlatt Bill, Plethora of Amendments.”
161 For discussion regarding the character of Rowlatt Bills and the positions on Indian members see, The Tribune, Saturday, March 22, 1919, Page 2, “The Rowlatt Bill, A Foregone Conclusion, Position of Indian Members.”
an interesting way in his speech of 20th March, which was read by one Mr. Desai because Gandhi was not feeling well. Gandhi’s message stated:

“By demonstrating to the party of violence the infallible power of satyagraha and by giving them ample scope for their inexhaustible energy we hope to wean that party from the suicidal method of violence.” 162

Gandhi’s message rejected Sir William’s contention that the movement had great potential for evil and retorted that it had only a potential for good. The appeal constituted an attempt to revolutionize politics and to restore moral force to its original importance. However, the government did not believe in a principled avoidance of violence or physical force. It, in a way, operated on a Weberian logic where only the colonial state had the monopoly over the use of physical force. Gandhi emphasised that the ultimate principle of Western modes of governance which the colonial government of India then also represented, had been succinctly expressed by President Woodrow Wilson in his speech delivered to the Versailles Peace Conference at the time of introducing the League of Nations Covenant where he said:

“Armed force is in the background in this programme, but it is in the background, and if the moral force of the world will not suffice, physical force of the world shall.” 163

Gandhi denounced physical force and affirmed the supremacy of moral force, which according to him India possessed and the West did not. Though Gandhi had already

162 See, Message sent by Gandhi to Madras meeting, The Bombay Chronicle, 22 March 1919 & 4 April 1919.
163 Broader context for Woodrow Wilsons quote can be seen in The Messages and Papers of Woodrow Wilson, (New York, 1924), Vol.2, Page 634.
announced *satyagraha* the first practical confrontation arrived on 23rd March 1919 when Gandhi gave a call for an ‘All India Hartal’ for 6th April 1919,164 against the Rowlatt Act. Gandhi issued four major instructions for the observance of this *hartal* which included twenty-four hours fasting, suspension of all work other than necessary in the public interest and finally, public meetings all over India at which resolutions for the withdrawal of these Bills were to be passed. All instructions were aimed at a moral, non-violent, mobilization of the anticolonial sentiment.

A message from Gandhi read to a mass meeting in Madras on March 30th 1919, draws our attention to the framework of his understanding of *satyagraha* and its relation to law and order. The message read:

“A *satyagrahi* is nothing if not instinctively law-abiding, it is his law-abiding nature which exacts from him implicit obedience of the highest law, i.e., the voice of conscience, which over-rides all other laws. His civil disobedience even of certain law is only seeming disobedience. Every law gives the subject an option either to obey the primary sanction or the secondary; and I venture to suggest that the *Satyagrahi* by inviting the secondary sanction obeys the law. He does not act like the ordinary offender who not only commits a breach of the laws of the land, whether good or bad, but wishes to avoid the consequences of that breach.”

What can be deduced from Gandhi’s statement is his positive expectation of justice from law. What distinguished Gandhi from many others was his political approach. We notice the

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element of obedience and discipline in Gandhi’s exhortations. It appears that Gandhi was quite aware of the scope of exceptional laws yet moralised conduct by referring to conscience. He appealed to the masses to accept the consequences of law rather than avoiding them.

*Satyagraha* committees were formed in every part of India. The *Satyagrahis* of Delhi under the guidance of Swami Shraddananda, who was popularly known as Mahatma Munshi Ram of the Haridwar Gurukul School, made arrangements to observe Sunday, the 30th March, as a day of self-humiliation and prayer among the citizens of Delhi. This was also a protest meeting against the Government’s passing of the Rowlatt Bills. On 30th March, as proposed by the Delhi *Satyagrahis*, no shops were opened and the few that did, speedily closed at the requests of the organisers. After the organisers had accomplished a shut-down of baazaars and transport, some workers proceeded to the railway station to persuade the shopkeepers there to comply with the call for *hartal*. These shopkeepers refused to close their shops because they argued that they were bound by their contracts to keep their shops open. This resulted in an altercation, resulting in a minor clash after which the police took two of the demonstrators into custody. Delhi was already observing *hartal*, and the news of the arrest led to more people rushing to the spot to request the release of the arrested, which was refused. Police caned the crowd and as a result a proper clash ensued. When the police were unable to control the growing size of the crowd intimation was sent to the administration of how to handle the situation.

By noon, an Additional District Magistrate arrived at the spot with a small military force and two machine guns. He ordered the crowd to disperse which was not obeyed. Following this, the machine gun was fired first in the air and then on the crowd killing a few and wounding more. The crowd withdrew to the Queen’s Garden, Clock tower and Chandni Chowk area. The crowd then tried to enter the garden of the municipality to form a procession but the military guarding the building fired at them killing a few and wounding many more. This was an extreme response from the authorities. Jacque Derrida in his famous essay ‘Force of law’ has worked out the entire logic of operations of law for our convenience. Derrida argued that since modern law is neither foundational nor antifoundational, it is law not because it is ‘just’ but because it has ‘force’. It has the quality of enforcing itself.

As a result of firing, the numbers of dead was around eight. Mahatma Munshi Ram arrived on the spot and pacified the crowd by explaining to them what had happened. By the afternoon the crowd had reached a number of around ten thousand. The District Magistrate and Commissioner were expecting more violence from the crowd and told Mahatma Munshi to at once call off the gathering as it posed a danger to public peace. Mahatma Munshi explained to them that the gathering will only observe peaceful protest and took the responsibility for peace and order, in case any untoward incident happened thereafter. According to various newspaper reports, after Mahatma Munshi Ram pleaded with the crowd to follow the principle of satyagraha and protest non-violently, the crowd agreed to observe a peaceful protest. This meeting despite experiencing military firing and deaths concluded with a peaceful passing of a resolution of protest against the Rowlatt Bills and the meeting terminated and later dispersed by 6 P.M.  

167 For a complete reporting on the Delhi firing see, The Madras Mail, Tuesday Evening, April 1, 1919, Page 5, “Satyagraha Day, Exciting Times in Delhi, Soldiers Fire on Protestors.” The Madras Mail, Wednesday
Though the 30th of March 1919 had passed off after the military firing, the following day there was tension when people refused to open their shops and demanded dead bodies of those killed in firing from the police. After much pleading and soliciting, the Chief Commissioner Mr. Barron ordered the release of the dead bodies. Delhi mourned on 31st March and both Hindus and Muslims cremated and buried their dead respectively with thousands participating in the funerals. Later in the evening, on 31st March, a conference of citizens was held when a commission of private and independent enquiry consisting of Rai Saheb Piyare Lal, Hazi-ul-Mulk, Hakim Ajmal Khan, Rai Bahadur Sultan Singh and others were appointed to record evidence and to report. A committee of 16 members was also appointed to help them secure evidence for the preparation of this report. Gandhi, who was visiting Madras at the time issued a statement to the press and condemned the firing on Delhi protestors. He said that “local authorities in Delhi have made use of a blacksmith hammer to crush a fly.” The Delhi Satyagraha Sabha decided that the City has already suffered in the Hartal of 30th March and should be spared participation in the hartial planned for 6th April 1919. But on 6th April Delhi observed a total shutdown like the rest of India. People defied government orders by organising mass gatherings and distribution of prohibited satyagraha newspapers. Following the success of 6th April hortal, Gandhi issued


The Independent, Thursday, April 3, 1919, Page 1, “The Delhi Tragedy, Impressive Funeral Processions, Alleged Use of Ball Cartridges.”

The Independent, Saturday, April 6, 1919, Page 7, The Delhi Tragedy, Mr. Gandhi’s Congratulations, Hindu Muslim Union.”


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a message\textsuperscript{171}, which said “We are now in a position to expect to be arrested at any moment. It is therefore necessary to bear in mind that if anyone is arrested, he should, without causing any difficulty, allow himself to be arrested, and if summoned to appear before a Court, he should do so.” Larger part of this message directed people not to offer any defence or engage any pleaders, in case arrested. If fines were imposed as alternative to imprisonment, people should opt for imprisonment.\textsuperscript{172} In a characteristic note, Gandhi also wanted the satyagrahi’s to follow prison rules if arrested, because he stated that the current campaign did not aim to make prison reforms. His emphasis could be understood as an attempt to demonstrate that by following law the truth of the illegitimacy of colonial law could be highlighted. His advice was to first violate the ‘untruthful’ law in the service of upholding truth- \textit{satyagraha}- by means of peaceful protest in the first place yet follow the rules once a prisoner in Jail. Gandhi appears to be quite aware that challenging colonial law through simple, straightforward and precise issues could bring success to the anticolonial protests. The political move to hold an all India \textit{hartal} based on satyagraha protests against colonial repression exposed the myth of the strong colonial laws. It enabled the emergence of a unique counter-tactic- \textit{satyagraha}- to challenge the nature of colonial legality.

The most prominent of these All India Hartals was the one at Lahore in the Punjab. On 2\textsuperscript{nd} April, the Superintendent of Police issued a notice requiring the convenors of processions and meetings to apply for a license not later than 10 a.m. the previous day. The Government, passed orders against two popular leaders Dr. Satyapal, who was a medical practitioner, and Dr. Saif-ud-Din Kitchlew, who was Bar-at-law, prohibiting them from addressing any public

\textsuperscript{171} \textit{The Independent}, Wednesday, April 9, 1919, Page 6, “Opening of Satyagraha Campaign, Laws regarding Prohibited Literature and Newspapers, Registration to be Civilly Disobeyed.”

\textsuperscript{172} \textit{The Independent}, Saturday, March 1, 1919, Page 1, “The Anarchic Measures, To Be Fought with Satyagraha, Campaign enunciated in Bombay, ‘Refuse Civilly to Obey’.”
meetings. On *satyagraha* day i.e., 6th April, a meeting was scheduled at Bradlaugh Hall, which generated a difference of opinion among the local leaders after the administration put official pressure on them to abandon the event. On April 2nd, a meeting was called and after deliberations two options were proposed. Ratan Chand moved for the cancellation of the Bradlaugh Hall meeting while Dev Raj Sawhney urged that the meeting should go ahead as planned given that the protest against the ‘Rowlatt Act’ was far more important than any other consideration. The proposals were put to vote and the latter proposal to go ahead with the meeting was adopted 18 to 2. As per the plan, on 6th April all businesses were suspended in Lahore and shops were closed without exception. The leaders of *hartal* in Lahore managed to keep the situation largely peaceful despite the intensity of the agitation and slogans against the ‘Rowlatt Act.’ The participation of Hindu, Muslims and Sikhs in large numbers was a salient feature of the protest. The Bradlaugh Hall meeting, which was supposed to take place at 5 P.M., began earlier as the Hall was packed. Three overflowing meetings were also held simultaneously in the adjoining grounds outside the hall. Pandit Rambhuj Dutt addressed the meeting in the Hall and a resolution was passed entreating the King Emperor to disallow the measure as they constituted an immediate insult to millions of his law-abiding and loyal subjects in India. Notably, Dutt’s address and the consequent resolution seems to propose that the general population in India must not be seen as ‘foes’. Such a position is the exact opposite of the Ghadrite strategy to declare upfront that they had become ‘foes’ of the British Raj. Dutt’s address aimed to consciously clarify that Indians did not deserve to be seen as a problem category. Three more resolutions were passed. They voiced a disapproval of the repressive orders against Dr. Satyapal, Dr. Kitchlew and others, strong disapproval of the recent firing on unarmed civilians by the Delhi authorities and finally, a resolution requested

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173 These leaders were already active organizing public meetings and protests, against the Rowlatt Bills in Punjab. One of the earlier grand mobilizations by them can be noticed in, *The Tribune*, Tuesday, March 11, 1919, Page 2, “Rowlatt Bills, Punjab’s Protest.”
the President of the meeting to forward resolutions passed to the Secretary of State for India, the Viceroy and the Lieutenant Governor of the Punjab.

Mahatma Gandhi was supposed to reach Delhi on 9th April from Bombay. But he was arrested at the earlier station Palwal, and sent back to Bombay. He was ordered neither to enter Punjab nor Delhi but to restrict himself to Bombay. The news of Gandhi’s arrest spread like wildfire and caused great resentment amongst people in Lahore, Amritsar and Delhi. It was alleged that Gandhi was arrested on instructions from the Punjab Government. It was barely a month after the Rowlatt Act was passed that a peculiar autocratic character of colonial administration started to emerge which not only confirmed the concerns voiced during the Rowlatt agitations in March 1919, but also raised questions as to whether a non-violent approach to colonial repression WAS a feasible approach.

The Government in Punjab intended to break the momentum of satyagraha in the province. The Deputy Commissioner Amritsar called the popular leaders of Punjab Dr. Satyapal and Dr. Kitchlew to his house where they were immediately arrested. News of their arrest spread quickly and all the shops shut by noon. By 12.30 in the afternoon, a large procession marched towards the residence of the Deputy Commissioner with a view to make a representation for the release of their leaders. But the crowd was fired upon and were forced back. Meanwhile, another huge crowd marched to the business area of the city. They burnt the National Bank, the Chartered Bank, the Alliance Bank, the Town Hall, the Mission Church and the Depot of the Punjab Religious Book Society. They also attacked and killed European officials (Mr. Stewart and Mr. Scott) of the National Bank and (Mr. G.M. Thomson) of the Alliance

174 The Independent, Saturday, April 12, 1919, Page 7, “Mahatma Gandhi’s Arrest, Scenes on the Train and on the Station, By an Eye Witness.”
Bank. The telegraph office was attacked which was rescued by soldiers from a Pathan regiment sent to the spot. Dr. Easdon, a Lady Doctor working in the Municipal Zenana Hospital was also attacked and she had to hide in a closet for hours after being rescued by her Indian friends. Seargent Rowland, a cantonment electrician was killed near Rego Bridge while he was walking towards the Fort. The railway guard Robinson, an ex-Northumberlander Fusilier was beaten to death with lathis in the goods yard. Another woman, Nurse Sherwood was also injured. The situation in Amritsar was now out of hand. Europeans were terrified and running for their lives and any of them unfortunate enough to be spotted by the protestors was dealt with immediately. Most pertinently, we notice in the newspaper reports that the Europeans attacked or killed had their names mentioned whereas Indians who got killed by the police or military remained nameless and were referred to simply as the ‘riotous mob’ in subsequent government reports. The ‘riotous mob’ had now become the foe/ the problem category that required exceptional response.

At the time of the riot, the Garrison in Amritsar consisted of one company of Somerset Light Infantry under charge of Captain Massey, half a company of Garrison Artillery and the 12th Ammunition Column. Since extraordinary laws like Rowlatt Bills were now at the disposal of colonial administration and revolutionary crime a stated enemy, additional forces were mustered to control the situation. A Company of the 9th Gurkhas on its way to Peshawar was stopped and armed under the Command of Captain Crompton who used them for patrolling streets and roads. Another company of the 6th Sussex Regiment from Lahore and the 24th Baluchis under the command of Major Donald was deployed, in addition to further troops

from Jullundur including the 25th Londons. On 11th, the next day, the entire city was surrounded by British and Indian troops and finally late in the evening Brigadier General Dyer reached Amritsar and by 13th April 1919, Amritsar was already under an undeclared Martial law. On 15th April, 1919, - as similar protests spread to other parts of Punjab - Martial Law was declared by the Punjab Government following a communiqué issued by the Home department of the Government of India a day before. It was known as the Martial Law Ordinance or Ordinance No. 1 of 1919 and came into operation on the night between 15th and 16th April 1919. This ordinance provided for the takeover of local ‘law and order’ administration by the military authorities. Promulgation of such a law proves that the civil administration in Punjab had failed and it was the protesting crowd that was ruling the streets, even though it was for a short period only.

The fear of Ghadr was still haunting the colonial administration. Offences were to be tried by Commissions appointed by Local government comprised of persons who had served as Session Judges and Additional Sessions judges for a period of not less than three years or Judges of the High Court. These Commissions had all the powers of a general Court Martial under the Indian Army Act 1911. The finding and sentence of such a Commission was not to be subject to the confirmation by any authority. In short, it was an imposition of military authority over the region of Punjab in response to the extremely violent riots of 10 April 1919.

176 Most of the official details can be seen in April 1919 issues of Civil and Military Gazette. Only Civil and Military Gazette was allowed to cover the disturbances in Punjab. The rest of the Press could only use official information from the C& M Gazette.
177 The Independent, Tuesday, April 15, 1919, Page 1, “Prussianism in Punjab, Publication of Accounts of Disturbances Prohibited.”
As stated above, Martial Law was declared in the entire Punjab province on 15th April 1919 but the military was requested to support the efforts of the local administration in Amritsar in maintaining law and order from 11th April onwards. Furthermore, April 13th coincided with the religious festival of Baisakhi. The civil administration did not feel confident to remain in charge of law and order administration in Amritsar in the wake of growing crowds who had come to observe Baisakhi festival. The administration already fearful and suspicious of its local population handed over the charge to military officials completely. Arrival of military in Amritsar sent a wrong signal to the local population who understood it as the formal invocation of martial law, whereas it was meant to prevent further escalation of violence. Since 11th April 1919, Amritsar was under partial military control. The administration punished the city of Amritsar by depriving it of electricity and water. Evening blackouts were intended to stop people from gathering or moving during the night. Trains stopped third class bookings for Amritsar from the neighbouring towns so that protests did not get outside support. General Dyer - himself in command of the 45th Brigade at Jullundur - also brought more reinforcements to Amritsar. Before his arrival in Amritsar, he has already sent one hundred British and two hundred Indian soldiers to Amritsar on the request of the local administration. On 12th April, he made a round of the city with 120 British soldiers and 320 Indian soldiers and two armoured cars. A plane was also hovering in the air. This was a tactic of intimidating the people of Amritsar and to send a clear message to the leaders that the administration had changed to military, and that no one should dare to think of it as any civil administration. It appeared to be a war-like situation, but a war that was not to be fought in the battlefield but in the streets and roads of a city where civil administration had failed. It was a moment of uncertainty for the British colonial government

178 The Independent, Thursday, April 17, 1919, Page 7, “Martial Law in Lahore and Amritsar.”
179 Details of Military Campaign in Punjab were published as an official version of events in the Civil and Military Gazette, whereas other publications were prohibited to publish details of the events unless sourced and produced from the Civil and Military Gazette itself.
who feared the political momentum, now that the mask of peace and order under colonial control had shattered. This was a moment when the naked claws of sovereign power and its ability to withdraw civil administration appeared in full sight were on display and made clear its ability to invoke its exclusive right to use physical force. The magnitude of confrontation had escalated to a higher level than in usual situations of crowd control involving the police. It was now an absolute distinction between friend and foe, and the entire population in Amritsar was now as if declared the enemy.

General Dyer while staging his military takeover of Amritsar on 12th April 1919 experienced some confrontation by the crowds in the streets. He made a proclamation warning people against damaging any property and against acts of violence, and against collecting in groups numbering more than four in the streets and other public areas. It is pertinent to note that this proclamatory warning of Dyer is similar to section 144 of the Criminal Procedure code - available to the civilian administration- which had the ability to ban public space for public gatherings. The next morning, Dyer marched through the streets with troops and issued another proclamation under the Seditious Meetings Act, warning the people against assembling and holding meetings, which were declared liable to be dispersed by the force of arms. The same fateful day, 13th of April, General Dyer got news that a huge crowd had collected at Jallianwala Bagh and a meeting was going to be held. He immediately marched towards the spot with 25 British rifles, 40 Gurkhas, 25 Indian rifles, and two armoured cars with machine guns. He arrived at the spot at 5p.m. The Bagh was also a spot for a Baisakhi mela and for this reason many people had come unaware of proclamations and orders. The proclamation of a law and its interpretation by subjects could be quite different. The crowd in the Bagh had come to celebrate Baisakhi but could equally be interpreted as a mob which had assembled for seditious purposes challenging administrative authority of the military
general at the helm of affairs. Also, the quick and effective overnight transmission of any official communication prohibiting public gatherings remains questionable. The estimated number of people in the Bagh at that time is put between sixteen thousand and twenty thousand. After reaching the spot, General Dyer, so enraged by the defiance of the people ordered firing immediately. It continued for ten to fifteen minutes. People ran in all directions and mostly towards the only narrow exit. Dyer kept directing fire towards the areas where the crowd was thickest. Firing continued until the ammunition ran out. Altogether 1650 rounds were fired. The Bagh was full of dead bodies and the number ran into hundreds at least. British official figures put the number of dead identified at 379\(^{180}\), while the number of dead claimed by Congress was over a thousand\(^{181}\).

Whatever the number of dead may be, it was enough to be considered as a massacre. Dyer did not warn the crowd because the enemy need not be warned but attacked ruthlessly and crushed. Later he submitted to the Hunter Commission that he could have dispersed the crowd without warning but then they would have assembled again making a mockery of his orders. This would have resulted in making a fool of himself. Therefore, ‘his duty was to fire and fire well’. Most interestingly, General Dyer left the wounded on the spot without any medical assistance. This was nothing short of not caring for the injured and dead of the enemy. Amritsar remained under the protection of ‘dutiful’ General Dyer for almost a month. A significant distinction in the application of state machinery is evident here. While a civilian administration was required to ‘maintain law and order’ only, the military administration was called-in to initially supplement and later overtake civilian


administration. The military administration was clearly aimed at crushing even the slight hint of disorder and any opposition to the government machinery.

One of the important point to be considered is that even though the martial law was proclaimed on the 15th April 1919, but Dyer understood- as his statements at the Hunter Commission point out- that martial law came into being *ipso facto* from the time he took command on 11th April 1919 i.e the moment the civilian administration failed or resort to military apparatus for maintaining order was first made. He had no doubts about his authority and control over Amritsar as a military general. Civilian subjects were now military subjects and any disobedience/disturbance would face a martial response only. Dyer held a durbar on the 14th and forced people to open shops even when the city was still disturbed and when the people were searching for the dead bodies of their family and relatives. Humiliation of Indians on the streets followed. Flogging for minor offences or defiance in the streets, making people crawl on the streets and ordering them to ‘salaam’/salute every European they came across were some of the initial steps General Dyer took after the massacre at Jallianwala Bagh. 182 The day following the massacre, a meeting of local residents, Municipal Commissioners, Magistrates and merchants were called at the Kotwali where the Commissioner Mr. Kitchin made a threatening speech at around 2 P.M. but only exposed his helplessness;

“Do you people want peace or war? We are prepared in every way. The Government is all powerful. Sarkar has conquered Germany and is capable of doing everything.

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The General will give orders today. The city is in his possession. I can do nothing. You will have to obey orders.”\textsuperscript{183}

Dyer, along with other British officials – all extremely angry- reached the Kotwali around 5 P.M. Dyer’s speech or rather threat to the meeting is noteworthy:

“You people know well that I am a Sepoy and soldier. Do you want war or peace? If you wish for war the Government is prepared for it, and if you want peace, then obey my orders and open all your shops; else, I will shoot. For me the battlefield of France of Amritsar is the same. I am a military man and I will go straight. Neither shall I move to the right, nor to the left. Speak up, if you want war.”\textsuperscript{184}

He also offered the attendees to turn collaborators. According to the deposition to the Congress Inquiry Committee, he further said;

“You must inform me of the budmashes. I will shoot them.”\textsuperscript{185}

Mr. Miles Irving, the Deputy Commissioner took Dyer’s speech as a cue and followed by making a simple and straightforward statement;

“You have committed a bad act in killing the English. The revenge will be taken upon you and your children.”\textsuperscript{186}

\textsuperscript{183} Congress Inquiry Committee to investigate Punjab disturbances and Jallianwall Bagh excesses. Chapter V of the report, Page 59
\textsuperscript{185} Ibid
\textsuperscript{186} Congress Inquiry Committee to investigate Punjab disturbances and Jallianwall Bagh excesses. Chapter V of the report, Page 59.
These threatening speeches created a difficult binary between an ‘abstract law-abiding citizen’ and a ‘wicked’ badmash that needed to be punished.

As soon as the news of Amritsar spread, the mood in Lahore turned tense too. The city was already observing protests since the 10th April but now it had become more violent. Like the military takeover of Amritsar, in Lahore too, military men belonging to the 43rd Brigade headquarters arrived on 11th April and posted pickets all over the city. On 12th the military under Col. Frank Johnson was ordered to go into Lahore city with eight hundred men. He entered the city through Delhi Gate and was supported by four planes overhead. He entered the city at 9.30 in the morning and left at 1.30 in the afternoon leaving three detachments inside the city. He ordered that no detachment should move about unless it consisted of at least two hundred men. The scale of military presence was grand. Amritsar and Lahore both became a sovereign spectacle.

On 13th and 14th April, hartal continued in Lahore and paralysed the life of the city. On 15th morning at 11, Col. Frank Johnson issued his first proclamation informing people of Lahore that Marital Law was now officially declared. Lahore remained under Martial Law until the end of May. Under Martial Law, orders were passed to immediately lift hartal and resume business. The military authorities began this campaign with Anarkali Bazaar following other markets. Badshahi mosque was closed to the public for six weeks. Minor arrests, flogging of people etc. followed like in Amritsar.

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187 The colonial military campaign against the Punjab disturbances of April 1919 also saw the bombing of civilians by planes. For example, see, The Independent, Friday, April 17, 1919, Page 1, “Fresh Shooting at Amritsar, Crowds Bombed at Gujranwala.”

188 For more details, see “Martial Law Administration in the Panjab as Described by the Official Witnesses, with an introduction by Sir, P.S. Sivaswami Iyer, Published by The Madras Liberal League, 1919.
As the disturbances were underway in India, the Secretary of State for India presented a draft for the new constitution for India – came to be known as The Government of India Act 1919- to the British Parliament in London. There were expectations in India that at the end of the first World War there would be colonial reforms in India. This was expected out of India’s support to the colonial government during the war. The opposition to Rowlatt Act and the extreme colonial repression in response to it did put some pressure on the British parliament.

Owing to the pressure of the anticolonial mobilisation in India in the wake of the upcoming Government of India Act 1919 to be passed later in December 1919, a Disorders Enquiry Committee, also known as Hunter Committee¹⁸⁹ was appointed on 14th October 1919 to enquire into the incident of Jallianwalla Bagh. It began on 29th October and sat for 46 days, 8 in Delhi, 29 in Lahore, 6 in Ahmedabad and 3 in Bombay. Congress was outraged and boycotted it and instead set up a parallel non-official committee of enquiry.¹⁹⁰ The Hunter Committee prepared a report of its findings. The three Indian members, called the ‘minority’, dissented from the European majority on some of the wider issues and produced a separate report, which was, however, published in the same volume as the combined report. The difference between them lay in the approach as well as conclusions. The European members held that elements of rebellion were persistent throughout the disturbances. The Indian members conceded that there were certain acts, which ‘may amount to waging war in a legal sense’, but they could not be described as an ‘open rebellion.’ Disobedience, according to this logic, did not make a person an enemy of the state. The European members stressed the magnitude of the movement and maintained that it might have ‘developed into a revolution’ with which the Indian members disagreed. Both European and Indian members reacted

¹⁹⁰ An Urdu compilation of Congress Committee report is by Lala Pandi Das, “Panjab Mein Pehla Marshal Law, Congress Committee ki report,” (Urdu), Lahore, Fiction House, 1996, Pages 452.
unfavourably to Dyer’s handling of the Jallianwalla meeting and the difference between their reports is one of a degree rather than substance. However, it cannot be overlooked that the iron fist response by the colonial administration to civilian protestors through a military takeover confirms the extent of mobilization by Ghadrites and the fear of a potential mutiny it had generated.

The committee criticised General Dyer in two respects: first, that he started firing without giving the people who had assembled a chance to disperse and secondly, that he continued firing for a substantial period of time after the crowd had started to disperse. Dyer himself never suggested any emergency circumstances for the use of firing without warning but expressed that he had made up his mind to shoot. Following the murder of Europeans in Amritsar during the 10th April hartal, the European community was supportive of the general policy and of Martial Law imposed by the then Lieutenant-Governor of the Punjab, Michael O’Dwyer. The element of racism resurfaced again. The hartal of April 6, 1919 was the highest point of the Anti-Rowlatt mobilisation. However, the events unfolded in manners unexpected involving violence of unimagined proportions. What is significant to remind ourselves that General Dyer was criticized greatly both in India and abroad. However, one newspaper in London ran a campaign to generate a reward fund for General Dyer, who was stripped of pension by the British Government. Morning Post, a Tory newspaper in London, succeeded in generating a grant of 26000 pounds and hailed him as the ‘saviour of Punjab’


192 The Punjab Disturbances of April 1919, Criticism of the Hunter Committee Report, by Sir Michael O’Dwyer, with a foreword by The Indo-British Association Ltd. And The European Association of India, published by the Indo-British Association Ltd., 6, Broad Street Place, E.C.2.

193 An interesting take on such issues can be noticed in “Political Problems and Hunter Committee Disclosures, by Alfred Nundy (Bar-at-Law), Published in 1920 and sold at Calcutta- The Publisher, Madras-Messrs. Natesan, Indian Review Press, Lahore- Messrs. Ram Krishna, Anarkali, Allahababd- The Leader Press.

who had served the British Empire and had guarded and avenged the honour of English women in Punjab during the disturbances. Despite the official criticism, while on duty Dyer was crushing opponents of British Empire, as a military general. Dyer is not just another example of bureaucratic rationality combined with military rationality that could justify sovereign commands as following orders to one’s best capability pure and simple. He was a battle hardened military man who delighted in getting his hands dirty and offered full justification for his actions. Jallianwala Bagh has indeed become one of the central focus of scholars studying violence of imperial Britain. While some have called Dyer as “The Butcher of Amritsar”, others have also joined chorus on condemning actions of Dyer in Amritsar. Taylor Sherman has noted that General Dyer justified his actions in Jallainwalla Bagh on the grounds of “necessity” and fired to produce a “sufficient moral effect” on the entire Punjab. The then Lieutenant-Governor of Punjab Michael O’Dwyer and Hunter Committee did condemn Dyer for his actions and criticised his strategy as well as questioned his judgement. Sherman notes that the then Secretary of State reiterated his commitment to the “minimum use of force necessary” and also held Dyer responsible for complete violation of the principle of the use of minimum force. However, most of the works pay lesser attention to military atrocities in the city of Lahore and other towns of Punjab province. Most of the criticism of Dyer emphasized his oversight of following the procedure by not warning the crowd. Even the Viceroy who shielded Dyer from criticism had to concede that Dyer did not act with sufficient humanity against the congregated crowd. Consequently Dyer was removed from command and forced to resign from his command. Despite highlighting the criticism of Dyer, scholars tend to focus more on the violation of rules.

197 Ibid. Page 34
198 For details see Chapter V of the Punjab Congress Inquiry 1919-1920, an Inquiry Committee formed by Congress to investigate military excesses in Punjab during the invocation of Martial law 1919-1920.
199 Taylor Sherman, State Violence and Punishment in India, Routledge, 2010, Page 34
prescribed for crowd control rather than offering us analysis of the “necessity” for his action -that Dyer stated in the first place- as a symptom of sovereign violence. As if, procedure-following colonial administration was utterly humane at other instances and this was an aberration from the usual pattern of upholding rule of law by all officials always. Such an analysis misses the point by putting the onus on Dyer only and understands it as a “single officer using his own discretion.” By singling out sole deviation from procedure by Dyer, most scholars unintentionally humanize colonial ‘rule of law’.

Before I attempt to discuss the concept of martial law itself, Kim Wagner’s argument about the Amritsar massacre highlights a trend. He argues that the Hunter Commission Report rejecting Dyer’s rationale in 1920 conceded that the use of violence might even be counter-productive. He argues that “colonial violence ultimately undermined colonial rule by alienating the native population and turning its victims into martyrs of nationalist movements.” Sites of colonial violence became central to anticolonial narratives and remain so. He further argues that “colonial violence was self-defeating” and “that the reliance on spectacles of violence was anything but triumphant and ultimately proved to be the undoing of empire.” He sees a continuity in such spectacles of colonial violence, for example, in earlier cases of repression during 1857 mutiny soon followed by the Kukka rebellion in the 1870s. Events of 1919, in the aftermath of Ghadr mobilization and preparation for mutiny could be noted as yet another episode in such a colonial cycle of violence.

Now let us turn our attention to the much-evaded question in this entire episode- the Martial law. Nasser Hussain facilitates our understanding in this concern. He noted that the central point of the entire exercise of Hunter Commission was highlighting Dyer’s “bad judgement”

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200 Wagner, Kim. “Calculated to Strike Terror,” Past and Present pages 223-225
and his flawed logic for justifying his actions, rather than finding fault with the invocation of Martial law - replacing civilian administration- in an already volatile political situation. The Hunter commission did recognise Dyer’s sense of duty but concluded that it was “misconceived”. The questioning of Dyer by members of the commission points out that even firing on the crowd was alright but firing continuously was wrong. Hussain extends his discussion of the event by dissecting the nature of “Martial law”. Hussain extrapolates the deeper relation between law and violence that martial law demonstrates by reading Amritsar massacre through a reading of Walter Benjamin. According to him, emergency covers the general situation of jurisprudential doubt that exists on a continuum from military aid to civil power to the more intensified manifestation of Martial law. Hussain highlights that Martial law occupies a profoundly ambiguous place in jurisprudential writing because it is considered to be both a properly legal question and a marker of law’s absence. According to Hussain, on the one hand, there is recognition of the inevitability of martial law in certain situations where it represents the force of the state at its purest, the necessary condition if both law and state are to survive. On the other hand, an insistence on rules that determine the moment of emergency can be noted– an insistence that the law shall appear at its own vanishing point to determine the rules of its own failure. He notes:

“Martial law, like other responses to emergency, simply rested not on an authorization of ordinary law but on the legal maxim Salus populi suprema est lex (safety of the people is the supreme law). Here it become the manifestation of both the highest law and no law at all. But while martial law is based on necessity, and

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201 Hussain, Nasser. Jurisprudence of Emergency, page 101
202 Ibid.
these rules are historically variable. It became possible, thus, to approach martial law as a changing cognitive question.”

Taking a clue from Albert Venn Dicey, a British jurist and constitutionalist, Hussain points out that in order to understand the ideological and jurisprudential significance of martial law, it must be read within the general prerogative of the Crown to resort to violence to check a challenge to its authority, be it in connection with the form of response to domestic riots or rebellions. In short Martial law could be seen as sovereign decree for swift and efficient control of a situation bypassing lengthy procedure of civil law and administration that had to rely on producing evidence. Exception highlights Law’s ability (Martial or Civilian) not to do everything but anything. Even though it can intervene at every level, it does not. The basic function of the myth of disturbance to law and order is the conferring of an identity to the population involved such as ‘unruly’ crowd, rebellious mob, mutinous subjects, insurgents, etc. In the case of Amritsar massacre too, Martial law became the interiority of General Dyer’s consciousness as a military general, which got reflected in the materiality of external circumstances. Therefore, Martial Law was not the standard law which could be understood on the usual ‘rule of law’ maxim. It served as an outside to civilian administration but once invoked controlled the inside in the process. Even though it enveloped everyday conduct of the population but remained dissociated from all interiority. In other words, it is a darkness that had no limits. It was an expression of sovereign’s dissatisfaction with the conduct of its subjects.

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203 Hussain, Nasser. Jurisprudence of Emergency, page 103
204 Ibid. page 104
After the Punjab disturbances, Gandhi had to withdraw his Satyagraha temporarily as he concluded that the masses did not understand the level of discipline and patience required in such political situations. The Anti-Rowlatt satyagraha was a failure because it failed to achieve its end i.e. the repeal of Rowlatt Act. It also failed to enforce non-violent political mobilisation on the masses especially in Punjab. But it did succeed in turning Gandhi into a national leader and satyagraha as a more acceptable and a moral political weapon which was now known and available to millions of colonised Indians. Also, once the Government of India Act 1919 was passed, both Congress and the Muslim League were unhappy with the new constitution, as it did not meet their demands. As per the new constitution although seats were kept for government and nominated members of the legislative bodies for the first time each body was about to have a majority of elected members. Also, in the central assembly a vast scope for the elected members was given ‘to argue’, ‘make noise’ and ‘create a fuss’ – but they would have no control over the government. All powers of government were reserved to the Governor General/Viceroy and his executive council. The government was not bound by assembly votes nor could it be dismissed by a vote. In the provinces, a half step was taken toward establishing a ‘responsible’ government. A set up was proposed in which the cabinets would include not only ministers who were elected and therefore were responsible to the councils but also executive councillors who would, as before appointed by the governor and therefore only accountable only to him. Under this arrangement, certain portfolios would be “transferred” and be under Ministers while others would be “reserved” and be under the executive councillors. The system at the provincial level was termed “diarchy.”
Conclusion

The first two decades of the twentieth century in India were marked by the invocation and promulgation of three different kinds of extraordinary laws - a combination of Ingress into India Ordinance and Defence of India Rules, the Rowatt Bills and the use of Martial law. While the Defence of India Rules - a proper wartime measure - might seem a logical legislative measure to safeguard law and order in exceptional circumstances, there was no such easy justification at play when the Rowlatt Bills were passed. The continuity of Defence of India Rules in the name of the Rowlatt Bills for the next three years - before they were repealed in 1922 - raised important issues in the study of colonial legality. The colonial state, which claimed to rule for justice and by law, often violated the premises of its own administrative ideology. It invoked the Defence of India rules to mobilise resources for military purposes but also to maintain order and to prevent the outbreak of an armed mass rebellion. The declaration of the Ghadr party to be ‘angrezi raj ka dushman’ and the charge of sedition used in subsequent trials of both the Lahore and the Delhi conspiracy case highlight a political environment in which Schmitt’s separation between friend and foe had become generalised and upended the normal operations of legality. The call to arms against the sovereignty of King legally necessitated treating the revolutionaries as the ‘enemy’ of the colonial state. However, the enemy was not selective or specific. The entire population was considered a potential hotbed of ‘revolutionaries.’ By examining the operation of extraordinary laws in late colonial India at the beginning of the twentieth century, from the Ghadr movement, the promulgation of the Defence of India Rules during the First World War to the infamous Rowlatt Acts and the subsequent events associated with anticolonial mass mobilization which invited use of Martial law, the discussion across various sections discussed in this chapter demonstrate the administration of public order in colonial India
through the use of the law by way of a twin strategy. On the one hand, it emphasized an ideological notion of ‘rule of law’ applicable to obedient subjects, whilst on the other hand it sustained itself by creating a catalogue of exceptions that rested on the delineation of certain problem categories or its enemies to which extraordinary laws were applied. This was best demonstrated not only in the Ingress into India Ordinance but in the Defence of India Act and its subsequent extension as the Rowlatt Act. Also, the reference to the use of ‘anarchical violence’ referred to the chaotic/uncertain nature of the insurgent tactics as opposed to the organised politics of the then emerging Congress party founded on ideas of liberalism and constitutionalism, within the colonial dispensation. The use of Defence of India rules and the further extension of pre-emptive legislation in the name of the Rowlatt Bills demonstrates the fact that colonial authority normalised exception by the successive implementation of extraordinary laws. The reason for the extension of these extraordinary laws was to maintain order, prevent civil war and contain revolutionary violence. In an era of anti-colonial mass nationalism, the scope of such laws is not very difficult to decipher. One of the main impacts of the passing of Rowlatt Bills was that it explicitly exposed the violent character of the colonial government in India. Furthermore, Jallianwalla Bagh served as a symptom of the possibility or the potential of the repetition of such a cycle of violence again. It also proved that peaceful mass gatherings were not always safe from colonial repression.

The invocation of exceptional laws in late colonial India demonstrates the governmental ‘crisis’ of the colonial administration. Also, the Defence of India Rules and the subsequent Rowlatt Bills as well as Martial law in Punjab highlight the fact that the colonial government was quite aware of the ‘exceptional’ tactics available at its disposal within the ‘fair and just’ laws framework it often boasted about. Such extraordinary laws facilitated the normalisation
of colonial violence at a quotidian level. The period 1913-1920 could be seen as the proper establishment of the colonial state as the ‘enemy’ of the Indian masses. A contestation for sovereignty on both sides hence ensued. On one hand the demand for Swaraj from colonial rule emerged at a mass level and on the other hand the attempts to preserve the colonial order from insurgency was intensified. The utilisation of extraordinary laws by the colonial state highlights not only its strategy to rule by fear rather than law but also exposed its own fragility and fear of uprisings.

The colonial state in India, which had created the myth of thuggee to push certain problem categories beyond the law, ultimately turned into what I would call a ‘Dissimulate State’ in its own right. The colonial narratives described the Thugs as stranglers/phansigars who posed as fellow travellers and attacked at an opportune moment. The colonial state similarly, posed as the one upholding justice, fairness, impartiality and rule of law, and often repressed its own subject population by the invocation of exceptional laws like Defence of India Rules and the Rowlatt Bills. What frequent use of exception did was to expose a monolithic character of colonial sovereignty in times of crisis. The colonial government – as demonstrated through various events in this chapter - declared a war on its subjects and immediately transitioned its activities from the maintenance of law and order to a repressive machine totally external to the usual everyday government. Surely, opposition was not a ‘War’, it was an everyday politics of protest in a colonial setup. But the colonial administration used its sovereign power to draw its own limits of what kind of protest stood outside the law and what could be allowed and tolerated. It was a limit negotiated by extraordinary laws where any relationship of responsibility of the colonial state towards its subject population could be denied or severed.
Chapter 2

The Dynamics of ‘Public order’ in Late Colonial India: A study of the tactical use of section 144 CrPC in the Punjab and Bengal Presidencies

1935-1940

Political mobilisation during the anti-Rowlatt Bill agitation, especially in the aftermath of the Jallianwala Bagh massacre brought in a new wave of bold anti-colonial protests. The Khilafat movement, the non-cooperation and the civil disobedience against the colonial government drew clear battle lines between an emerging anticolonial nation and the colonial governmental apparatus. As explained in the previous chapter, colonial legal administrative strategies depended on marking out certain groups and communities as criminal subjects with a special status in the law, and on institutionalizing legal states of exception. By the 1920s such notions of legal exceptionalism became increasingly visible at a quotidian level. Over the 1920s, 30s and 40s, a particular piece of legal of colonial legislation - section 144 Criminal Procedure Code (CrPC) - became an ever more useful tool for the administration to exercise its powers to control the operations of political mobilization. Its extended use became particularly significant in the 1930s when a major constitutional change further broadened the colonial regime’s strategies for maintaining public order. After the passing of the Government of India Act 1935, India’s various political forces ranging from the Congress and the Muslim League to the Indian Communists and the Backward Castes were invited to at least partly own the administration of public order through participation in new political institutions. Although the colonial regime maintained ultimate control throughout, political responsibility was devolved in a large measure to provincial governments established through elections. At the same time, however, mass mobilisation and mass confrontations between them and numerous small auxiliary organisations sharpened further,
making the issue of law and order maintenance a pressing concern of everyday administration. Political contestations often led to public confrontation between the followers of different ideologies, and between different political communities. Often that also resulted in confrontations between the people or groups and the local Police authorities. In all such cases, action under section 144 created conditions for the justification of administrative repression.

This chapter offers two case studies, one each from the newly empowered provinces of Punjab and Bengal to understand the everyday politics of public order laws. Further case studies from Bombay and the United Provinces will be introduced with a slight shift in focus in the next chapter. The aim is to understand the circumstances of the promulgation of a preventive law like section 144 CrPC and to offer insights into the administrative mind-set of the late colonial government when it came to maintaining everyday ‘public peace and tranquillity’. The selection of these case studies is a result of a broader survey of all significant instances when public order laws, especially section 144 CrPC, were deployed, as they were noted in the Governor’s Fortnightly Reports in a sample of different provinces. Although not comprehensive, this survey of top-level and routine government documentation, offers a bird eye’s view of how the colonial administration sought to tackle public order problems in the post-1935 environment and how Indian political activists, both subaltern and elite, responded to the new environment. The case studies were chosen to offer a broader understanding of the invocation of section 144 in quite different local circumstances. A key concern here was the nature of the provincial governments involved: both the Punjab and Bengal were governed by non-Congress coalition governments involving significant loyalist or regional parties. The case of provinces where Congress
emerged as the party in government, and where for this reason a direct connecting line exists between the public order policies of the pre and the post-colonial period will be considered separately in the next chapter.

The first case study examines a Muslim-Sikh confrontation in Punjab, followed by a case of labour agitation in Bengal. Communalism and the rise of labour militancy have both received considerable attention in the established literature – but the two case studies introduced here the Sikh Muslim confrontation at Kot Bhai Than Singh resulting in a wider Punjab agitation and the Bata shoe factory strike of 1939 - have not so far been covered in any detail.

Each case study focuses on how late colonial government’s law and order strategy thrived through the creation of new problem categories that were distinct from ordinary legal subjects and helped to formalise the normalization of states of exception are the centre of attention in this thesis. These categories were often very fluid and varied from one province to another, depending on circumstances. There were so called satyagrahis in Punjab, for instance, while a binary of ‘insiders’ and ‘outsiders’ was used to contain significant communist agitation in Bengal.

**Background: The Government of India Act and the use of Section 144 CrPC**

Following the politically charged and tumultuous 1920s, the year 1935 was a watershed moment in the late colonial history of India. In August, the new Government of India Act 1935 was passed. It would come into force after the upcoming provincial elections in
February 1937, when the newly proposed legislative assemblies would replace the old legislative councils. The Act was significant in many respects. First, it aimed at broadening Indian participation in the colonial government and secondly, it expanded the boundaries of democracy in the colonial government by increasing the total franchise to thirty-five million people as opposed to the mere seven million earlier. This Act broadened membership of the provincial assemblies by including more Indian representatives and enabled them to form majorities and to form governments. Federalism was originally a core project of this Act. However, it could not be achieved completely given the opposition from many princely states. The Indian National Congress opposed this Act because it wanted real power at central government level. While the Act was radical for British Parliament and aimed at meeting the demands of its Indian subjects, it did not receive a positive response from various Indian stakeholders during the drafting of the Bill and after, mainly but not exclusively from Congress.

Congress was dissatisfied because neither did the Bill include a ‘Bill of rights’ nor a new preamble. It retained the preamble from the Government of India Act 1919 which did not include full independence as a clear or imminent policy goal. Also, the 1935 Act limited the degree of autonomy to be introduced at the provincial level. For one, the provincial governors retained important reserve powers. Second, the right to suspend responsible government was retained by the British authorities. The Indian subjects of the colonial government were expecting dominion status by now but the British Parliament was not satisfied that India had ‘attained’ the maturity to run a responsible government on its own, like Australia and Canada at that time. Also, there was discontentment in Indian political circles over Egypt been granted dominion status while India was not. Given, enormous
contributions (economic and manpower) of India to Britain’s war efforts, many in India were puzzled as to what Egypt had done to secure dominion status or what India had not.

Andrew Muldoon in *Empire, Politics and the Creation of the 1935 India Act* has observed that “the vision many in British governing circles had of the Indian Act raises important questions about the ways in which the Raj worked.” Other scholars have noted that the supporters of the 1935 Act within the British Parliament believed that the plans for federation and provincial autonomy in India would effectively counter the growing nationalist movement by potentially creating a split in the All India National Congress and would therefore succeed in distracting Indians from a united nationalist movement. Public participation to elect representatives for provincial governments transformed the character of most political parties from merely being an anticolonial movement to independent political parties contesting to grab positions in Provincial governments and wield power.

Another significant aspect of the 1935 Act was the creation of a ‘Federal Court’ with Sir Maurice Gwyer as the first Chief Justice. Holding its seat in Delhi, the Federal Court was a judicial body established under the new Act, holding appellate and advisory jurisdiction. It held a right to appeal to the Judicial Committee of the Privy Council in London. Most importantly, given that the new Act aimed at a federal structure of government, the Federal Court had exclusive original jurisdiction in disputes between the central government and the provincial governments.

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The years 1936-1937 intensified contestation and political articulation in all sections of Indian society. The Congress party announced that it would reject the new Act, while also undergoing reconstitution of its provincial Committees. Both Jawaharlal Nehru and Sardar Vallabh Bhai Patel were interested in the top job being the Congress supremo and sought to react to the new reality in ways that furthered this aim. A columnist in *The Leader* in December 1936 summed up the available choices as follows:

“In December, the National Congress will decide its attitude towards the new constitution. Will it enter India’s new Parliament? If it does, will it enter to bring the legislative machine to a deadlock, wrecking and obstructing? Or will it accept office if in a majority, and work for the constitution?”

This column also pointed out that the Muslim League and other organisations would accept the new Act in a somewhat positive spirit, resulting in leaving Congress party no choice but to engage with it as well. Because the Hindu leaders would try to recover the ground they had lost among other sections of the society, a recovery for the Congress was now possible only through the new constitution that the 1935 Act had brought. The column concluded in a strong tone, “But - whatever happens - the new constitution is going to be worked despite Indian discontent with it.”

The two major constitutional moments of the late colonial period - the Government of India Act 1919 followed by the Government of India Act 1935-one Act followed by another, both aimed at widening the ambit of colonial model of democracy in India.

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208 Ibid.
Case study I

A case of Justice ‘Improper’: Magisterial Orders and Sikh-Muslim communalism in Attock District of colonial Punjab.

This case study discusses a case of communal conflict in the village of Kot Bhai Than Singh in late colonial Punjab where the Muslim landowner Sardar Muhammad Nawaj Khan and the local Gurudwara leadership clashed over drawing water from a local stream. The confrontation followed by a riot took place in July 1937 and was initially settled by the District Magistrate. However, it was pursued at the higher court by the Sikhs later. During the entire dispute, this case study will demonstrate, law and legality played a crucial role in the way politics unfolded. During the trial, the courtroom transformed into a theatre of politics offering performative space to religious communities to act out politics in their own ways and posed as an impartial referee to the dispute. The case study highlights the colonial tendency to imagine communities as mutually exclusive where the politics of the street was projected as disorderly and the legality of the British courts as apparently orderly. In the late colonial period, litigation not only allowed the colonial state to intervene in community lives but consolidated its position further by upholding litigated communalism.

Articulating religious identity through contested community rights

Community politics during the late colonial period is often seen in the context of nationalist movement which relegates the quotidian juridico-political machinery into oblivion and tends
to focus more on the nationalist metanarratives. Despite such attempts to obscure internecine communal conflict, there is a tendency for them to erupt nonetheless in the ‘public arena’. At the provincial level, politics unfolded in unexpected ways and drew political motivation guided by communitarian concerns. In certain cases, local conflicts infused energy into broader provincial political confrontations too. In such instances, the provincial government, when in a difficult position, would steer confrontations away from the streets into the courtroom. Communal confrontation continued at two levels. The case study will demonstrate that the courtroom did not de-communalize the situation and instead continued the communalism from the public arena to the legal arena. While litigation would continue in the courtroom, the suit would be argued simultaneously with the more raucous battle in the streets.

Punjab province experienced numerous clashes between Sikhs and Muslims in the late colonial period. A major incident of communal conflict arose in Kot Bhai Than Singh, Cambellpur, Attock District, over the contested right to draw water from a stream called Dotal Nullah. The immediate cause was Muslim discontent over Sikhs visiting the stream to fetch water when allegedly Muslim women were bathing there. It began as an issue of protecting the honour of women from one community but soon was to metamorphose into a provincial issue. Objections from Muslims followed by confrontation between the religious communities led to local riots prompting the District Magistrate to impose orders under section 144 Criminal Procedure Code (CrPC) barring Sikhs from visiting the stream. This is when the incident first came to attention of the highest echelons of the provincial administration and when this case study begins.
The river was a part of the property that belonged to Sardar of Kot Muhammad Nawaz Khan, who was a Muslim. On July 29, 1937, representatives of the Sardar of Kot and Sikhs from the nearby Gurudwara Kot Bhai Than Singh appeared before the District Magistrate to challenge the notices issued by him under section 144 Criminal Procedure Code (CrPC) over the river dispute. On this occasion, the District Magistrate defended his decision emphasising the urgency and significance of communal concord and reminded both the groups of ‘the spirit of give and take’. He further pointed out that the object of the administrative proceedings was to devise ways and means to ensure an agreement suitable for both the communities - a ‘desideratum’ to be achieved ‘in the interest of peace and tranquillity.’ Newspapers reported that the discussions between the District Magistrate and the counsels on behalf of the two parties lasted for about two hours. An agreement was reached according to which the Sikhs would draw water from the stream between 10 a.m. and noon, and again from 3 p.m. to 5 p.m. Also, the Sardar of Kot agreed to ensure that his Muslim employees would not visit the stream during these hours. In addition to his employees – over whom he had direct control - the Sardar of Kot was urged to use his influence to ensure that local Muslims from the general population also accepted this restriction. In case any party would decide to terminate this agreement, a notice of at least four days was to be provided to the District Magistrate. This agreement came into force the following day, July 30th, 1937.

The issue started on the issue of women who apparently felt violated by the presence of men from the other religious community while they washed themselves. The local administration rather than fixing separate timings for women and men instead facilitated an agreement which allotted different time slot for the use of stream to each religious community. It occurs as a blind spot of law or the local administration which failed to settle the dispute by focusing

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209 *The Tribune*, Sunday, August 1, 1937, Page 9, “Dispute about the use of village stream, Kot Bhai Than Singh, Muslims and Sikhs sign agreement.”
on the issue of women only. It could not imagine their religious coexistence and instead 
reified their mutual exclusiveness.

Before proceeding to discuss this conflict, some background to communal politics in late 
colonial Punjab is necessary. The Unionist Government led by Sir Sikander Hyat Khan came 
to power in Punjab following the first elections held under the 1935 Government of India 
Act in spring 1937. It was a broad coalition between Muslim Agriculturalists and Hindu Jat 
Agriculturists. Noticeably, Sikhs were not integrated well unlike the other two religious 
communities. Deprived of due representation in the then Punjab government, Sikh politics 
became sharper since it was effectively mobilising Sikh peasants since the 1920s through to 
1930s. As J.S Garewal210 has noted, the phase between 1920s and 1940s intensified with 
the introduction of the Government of India Act 1935. He argues that the struggle for 
freedom was not always constitutional but often involved agitation and militant in nature. 
Following the general meeting of Sikh leaders at Lahore in March 1919, and later at Amritsar 
in December 1919 led to the formation of Central Sikh league. Its objectives as published 
by its organ *Akālī* were to reconstruct the Gurudwara Rakabganj, transfer control over the 
Khalsa College at Amritsar to the representatives of Sikh community, to launch a movement 
to free Gurudwaras from the control of Mahants etc.211 Among many such exclusively Sikh 
community oriented objectives, intensifying Sikh participation in country’s freedom 
struggle was also pledged. In the wake of Gurudwaras becoming a significant point of 
contention, politics became prominent and militant, hence transforming the political mood 
of Sikhs in Punjab.

210 For a general discussion see Chapter eight “In the Struggle for Freedom 1920-1947” in Garewal, J.S. *The 
211 See, Fazal, Tanweer. *Nation-State and Minority Rights in India: Comparative perspectives on Muslim and 
Sikh Identities*, Routledge, 2015.
The Unionist government in Punjab which was unique in that different agriculturist groups came together to share political power. The landed class, which was feudal in nature, was the main constituent of this government. However, the British who earlier had been pleased with the loyalty of both Punjabi agriculturist Muslims and Sikhs to the Empire now became suspicious of political mobilisation in the aftermath of Ghadr and subsequent events. Moreover, local communal confrontations often challenged the conflict resolution capabilities of colonial authorities. Such local conflicts, as we will discuss in the following sections, often utilized meta-discourse in nationalist politics of that time to settle scores at the local level.

What is pertinent to this dispute is its occurrence in the aftermath of the passing of the Government of India Act 1935 as well as a phase in Punjab politics when broader Sikh mobilization was taking place on the ground. Both, the Government of India Act 1919 followed by the Government of India Act 1935 were the two major constitutional moments of the late colonial period. One Act followed by another, aimed at widening the ambit of colonial model of democracy in India. The passing of the Government of India Act 1935, further sharpened the political contestation at an all-India level among various stake holders like the Congress, the Muslim League, the Indian Communists, the Backward Castes and numerous small auxiliary organisations attached to one or the other major party. Politics changed in two ways. Firstly, because of the introduction of separate electorates which transformed politics. Secondly, the idea of separate electorates was vested on the provincial nature of politics which emphasised the idea of a shared horizontal governmental responsibility among Indians. However, the vertical hierarchy of power was always dominated by the colonial administrators. In the first quarter of the twentieth century Sikh
politics increasingly gained a tendency to revolve around numerous Gurudwara issues, most significantly two disputes - the Shaheed Ganj mosque\textsuperscript{212} issue in Lahore, and the Raqab Ganj Gurudwara\textsuperscript{213} issue in Delhi. The former dispute was between Muslims claiming Shaheed Ganj Mosque and Shiromani Gurudwara Prabandhak Committee (SGPC) which argued that the property belonged to Sikhs.\textsuperscript{214} However, on the night of July 7, 1935, while the dispute was in court, the Sikhs demolished the mosque.\textsuperscript{215} This was an incident that fed the local clashes between Muslims and Sikhs. The latter dispute concerned a Gurudwara constructed by Sardar Baghel Singh in Raisina (Delhi) in 1783. Much later, in the beginning of the twentieth century when the capital of colonial India was shifted from Calcutta to Delhi, the British demolished a portion of the Gurudwara Raqab Ganj while constructing a road to the secretariat.\textsuperscript{216} Because the SGPC was taking control of Sikh religious properties and the same site had already been a controversy in the past, the issue regained currency in the 1930s. Since the wall of Gurudwara had been demolished by the British officials, it allowed Akali’s to agitate for Sikh rights and stand up for Sikh honour against the colonial state.\textsuperscript{217} To some extent such a confrontational politics was also a result of variety of reasons such as the

\begin{footnotes}
\item[212] The mosque built in 1722, was taken over by Sikhs in 1762 after the occupation of Lahore by Sikhs under Ranjit Singh who established himself as the local ruler. During the Sikh control of Lahore, the land adjacent to the mosque building became the site of a Sikh shrine and the tomb of a Sikh leader named Bhai Taru Singh. After the second Sikh war, Lahore became part of British India by annexation. Soon Muslims filed a case to reclaim the mosque property which according to them was rightfully theirs. Sikhs opposed the complaint and in turn claimed the property in question as their religious site, a place according to them where Sikhs were martyred during the Muslim rule. The case ensued at different administrative levels involving claims put forth by both the communities. Later, the courts decided in favour of Sikhs in most of the instances including in 1938 and in 1940.
\item[213] The Gurudwara was constructed in memory of the ninth guru of Sikhs, Tegh Bahadur. However, before 1783, Muslims had built a mosque on the same spot. Hence, each party claimed the land to be their religious site. The issue was settled later in favour of Sikhs. Demolition of Gurudwara wall by the colonial administration once again mobilised Sikhs to safeguard the honour of Gurudwara Raqab Ganj and Guru Tegh Bahadur.
\item[215] For details regarding the case see Bombay High Court Judgement of 2\textsuperscript{nd} May 1940, by a bench comprising Justices George Rankin, Thankerton, Russel, Goddard and M Jayakar, in Masjid Shahid Ganj Mosque vs Shri Gurudwara Prabandhak Committee. Equivalent citations: (1940) 42 BOMLR 1100.
\end{footnotes}
repression of the Ghadr movement in Punjab, police and military atrocities at Jallianwala Bagh and the agitations that followed with the passing of the Rowlatt Bills.

A quick description of the state of legality is also worth mentioning here. In the 1910s Punjab had witnessed invocation of extraordinary laws to curb anticolonial revolutionary activities - like the Ingress into India Ordinance 1914, Defence of India Act 1915, Rowlatt Acts passed in 1919 (and subsequently repealed in 1922), followed by the promulgation of Martial law in Punjab- which aimed at instilling a fear of law in the protesting masses of Punjab as well as other provinces. In the aftermath of Punjab disturbances of 1919, the Sikh League had also adopted Gandhi’s non-violent satyagraha in the 1920s after Gandhi had extended his support to the broader Sikh religious demands. The frequent use of a more specific law - section 144 Criminal Procedure Code (CrPC) - became a manipulative administrative tool to control public space in the name of public order. Notably, it fell into a wider category of laws designed to maintain ‘public peace and tranquillity’, and could prohibit the use of public space for a person or a group. Section 144 of the Indian Criminal Procedure Code\(^{218}\) dealt with ‘Power to issue order in urgent cases of nuisance or apprehended danger’. It would be invoked in cases where in the opinion of a District Magistrate (or a Sub-Divisional Magistrate or any other Executive Magistrate specially empowered by the State Government with powers to execute this legislation) there was sufficient grounds for invoking this section and would result in immediate prevention of a disturbance to law and order administration. A magistrate in such situations could direct any person to abstain from a certain act in a certain place. Furthermore, a Magistrate could promulgate the section if he considered that

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\(^{218}\) Other dimensions of this law included that in times of emergency the relevant Magistrates could ban a person or persons from being at a specific place or area; such orders could only remain in force for two months but could be extended by notification by the Government if it felt any justifiable necessity in the name of maintaining public peace and order. However, the person, or persons affected by such a law could appeal to the court.
its invocation was likely to prevent obstruction, annoyance or injury to any person lawfully employed, or posed danger to human life, health or safety, or was a disturbance to public peace and tranquillity.\textsuperscript{219} As political confrontation became ever more prevalent on India’s streets over the 1920s, 30s and 40s Section 144 CrPC, as the colonial archive suggests, became an ever more useful tool for the administration to exercise its powers to control local political mobilization. Political contestations often led to public confrontation between the followers of different ideologies, and between different political communities. Often that also resulted in confrontations between groups and the local Police authorities. In all such cases, action under Section 144 created conditions for the justification of administrative repression. The Kot Bhai Than Singh case study not only will highlight the cunning of the administration to criminalise politics by creating the figure of the protesting Akali as a problem category which in turn exposed its own legal vulnerabilities. What is insightful is that though the character and composition of multiple conflicts could be different, but the law invoked (to maintain public order) was often the same.

Public arena to Legal arena: Between the disorderly streets and the orderly courtroom

The Sikhs at Kot Bhai Than Singh who had consented to the agreement of July 30\textsuperscript{th} 1937 in the presence of the District Magistrate soon started to express discontent. Dissatisfaction with the agreement soon emerged from within their ranks, drawing in Akali activists from elsewhere in the province. Part of the agreement had been an order by the District Magistrate prohibiting Sikhs from visiting the Dotal Nulla east of Pindigheb Road. This matter was now

\textsuperscript{219} See section 144 of the Indian Criminal Procedure Code (CrPC). The CrPC in India continues from the British era; hence, this section continues to be a part of the larger criminal procedure code.
challenged by Sikh community leaders in Kot who sought advice and assistance telegraphically from the Shiromani Gurudwara Prabandhak Committee (SGPC) at Amritsar. The matter had acquired such significance because it impinged on the Gurduwara’s ability to draw water for the Langar which was of considerable moral and religious importance for the Sikhs of Kot Bhai Than Singh. Master Tara Singh, who was at that point President of the SGPC, immediately telegraphed the Punjab Premier, Sikandar Hyat Khan as well as Sir Sunder Singh Majithia, one of the largest land owners in the Punjab and a revenue member of government. At the same time, the Akali movement decided to send out Morchas in batches of two to the stream to create a public confrontation with the government by court arrest. An issue that needed to be resolved at the village level acquired provincial proportions and began to be articulated as a violation of Sikh rights.

With the larger Shaheed Ganj Mosque and Raqab Ganj Gurudwara issue as the background which fuelled communal discord, the SGPC also instructed the Sikhs to initiate satyagraha against the imposition of Section 144 by the District Magistrate. Satyagraha was deployed as a performance of defying law. Two sewadars proceeded to the stream on August 4, 1937 and were arrested by the police for defying magisterial orders. While the satyagraha continued, sewadars refused to draw water from the western end of the stream which was still permitted according to the Magistrate’s orders. The sewadars refused to draw water from the western end of the stream arguing that the water there was polluted and unfit to drink. At the same time, the SGPC Committee opened an office at Rawalpindi to direct the Satyagraha movement at Kot Bhai Than Singh. The formula of truth and non-violence as upheld by Gandhian model of civil disobedience was actively adopted by the Akalis. Shortly

220 *The Tribune*, Wednesday, August 4, 1937, Page 9, ““Morchas” to court arrest, Akali plans, Kot Bhai Than Singh situation.”
after the arrest of the two sewadars, there were reports that two Akali members of the Provincial Legislature were also about to visit Kot with the intention of defying the orders of the District Magistrate. The colonial administration reacted by dispatching a large police force from Campbellpur to Kot Fateh Khan to keep the situation in control. What is pertinent is the attempt of the Sikh legislators to defy law while they themselves were part of the government and were supposed to be maintaining it. Participation by legislators would experiment with the potential to subvert law. However, such a subversion would not be possible through legality, but morality only.

An emergency meeting of the Gurudwara Committee Panja Sahib was summoned for August 5, 1937. It swiftly condemned the order under section 144 CrPC and conformed the decision to launch satyagraha. Additionally, it was decided to file a revision application in the Punjab High Court challenging the validity of the District Magistrate’s order. Meanwhile, the administration’s response was also escalated. Sewadars who continued to defy orders were produced before the Additional District Magistrate, Campbellpur, summarily tried and sentenced to pay a fine of Rs. 30 each or in default of which they had to undergo three weeks’ rigorous imprisonment. This was an arbitrary increase in punishment as the first volunteers had only been sentenced to two-week rigorous imprisonment for precisely the same transgression. More and more prominent Sikh leaders began to arrive at Kot Bhai Than Singh to study the situation, while the langer (kitchen) of the Gurudwara remained closed owing to the scarcity of water, sending an important signal that normal religious life had been suspended. The provincial administration reacted with incomprehension as to why such

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221 *The Tribune*, Friday, August 6, 1937, Page 3, “Akali M.L.A.’s to defy ban, Satyagraha at Kot Fateh Khan.”


223 *The Tribune*, Saturday, August 7, 1937, Page 7, “Satyagraha at Kot Bhai Than Singh, 2 more arrests, Revision application to be filed.”
escalation had taken place, insisting that the District Magistrate’s imposition of section 144 applied to the “taking of water from the Nullah only on the east side of Pindigheb road.”\footnote{The Tribune, Sunday, August 8, 1937, Page 11, “Drawing of water from Dotal Nullah, Restrictions only on eastern side.”}

There was no restriction against the drawing of water from the stream on the west side of Pindigheb road.

Regular arrival and arrests of 

\textit{sewadars} continued, while prominent Sikhs like Master Tara Singh, Gyani Kartar Singh, M.L.A, and Sardar Harnam Singh, Advocate, arrived to chalk out a line of action. As the \textit{langer} could not remain close for a long time, the Gurudwara Committee decided to import water from Fatehganj that was 12 miles away from Kot Bhai Than Singh. On one occasion a Tonga carrying water for Gurudwara was stopped on its way by the police constables seeking to restrict access to the area, but the Inspector of Police quickly ordered his men not to prevent \textit{sewadars} from taking water.\footnote{The Tribune, Tuesday, August 10, 1937, Page 2, “Satyagraha at Kot Bhai Than Singh, Sikh leaders studying situation.”}

In the light of the Akali satyagraha, Sandra Freitag’s understanding of the ‘public arena’ in India remains pertinent, where communities have been expressing and redefining themselves through collective activities in public spaces. The collective activities expressing these values, according to Freitag, tended to be of three types: public performances, collective ceremonies, and collective protests.\footnote{Freitag, Sandra B. \textit{Culture and Power in Banaras: Community, Performance, and Environment, 1800-1980}, Berkley, Los Angeles, Oxford: University of California Press, 1989, Pp 204-206} Freitag’s framework of ‘public arena’ enables us to make sense of the Sikh-Muslim communal clashes and collective protests in late colonial Punjab. As the conflict progressed, the performances of defiance of magisterial orders by Akali’s in the public arena, the street –we will see in the following section- would soon be transferred to the ‘Legal arena’ i.e. the Court. Legal arena became an extension of Freitag’s ‘Public arena’ where communalism of the street was continued into the courtroom.
The court as a theatre of politics: The other function of the law

Oliver Mendelsohn\textsuperscript{227} has highlighted two major gaps in the study of ‘Modern’ Indian legal system that the British established. He disagreed with Bernard Cohn\textsuperscript{228} who noted that the problem was to be rooted in the character of Indian peasant society which failed to accept the court system and therefore abused its processes. He disagreed with Robert Kidder\textsuperscript{229} too, who argued that the unsatisfactory results of the judicial processes in India should be attributed to an understanding of litigation more as negotiation rather than adjudication. Kidder’s understanding highlighted that the courts could not provide quick, decisive outcomes because they are complex social systems in themselves. Mendelsohn argues that understanding the concrete issues of litigation could shed light on the ‘pathology of the judicial process’ in India. He further argues that the British authorities perceived the establishment of courts as the corollary of defining and allocating rights and duties in land. This led to litigation by disputants who came to courts for defence of rights to be claimed under the new system. As a result, the British had dictated court use by the way in which they intervened in land (social) relations. Mendelsohn alerts us to consider the procedures and claims that are exploited in the litigation process because it “will be contingent on the character of the society in question.”\textsuperscript{230} In the light of Mendelsohn’s argument we cannot overlook the motives of the colonial state to transfer the conflict from the messiness of the public arena in Kot Bhai Than Singh to the more orderly legal arena. The court did not

\textsuperscript{228}Cohn, Bernard S. 'Some Notes on Law and Change in North India', Economic Development and Cultural Change, 8 (1959). p.90.
dissipate the communalism of the street while the litigation was under process, it only exacerbated it. The communalism of the streets continued in the courtroom.

In Kot Bhai Than Singh, by August 1937, the focus of the confrontation shifted back to the law courts when the revision of the original order to impose Section 144 came up for hearing before Mr. Justice Bhide of the Lahore High Court. The counsel for the Gurudwara, Advocate S. Harnam Singh, argued that the District Magistrate had no jurisdiction to use section 144, CrPC to restrict the Sikhs from drawing water from the nullah. His argument was that the District Magistrate was armed with these powers for the protection of civil rights of the people and not for their suppression. The Advocate quoted authorities and orders from Patna, Madras and other High courts in support of this contention.\(^{231}\) On behalf of one Sukhnandan Singh and six other sewadars, S. Harnam Singh, filed an application in the Lahore High Court for the transfer of their case from the court of the District Magistrate Attock to the Court of District Magistrate Rawalpindi, which was granted by Mr. Justice Bhide. The counsel on the behalf of the sewadars argued that “it was in the interest of justice that the case should be tried in a free and purely judicial atmosphere.”\(^{232}\) Thus highlighting the tendency of late colonial litigants to evaluate certain officials as communal and seek justice in the name of fairness and justice. Colonial administration would also attempt to depoliticise issues by maintaining that courts were the impartial avenues of justice only concerned with justice and legality, and therefore, dissociated from community interests. It aimed at shifting the expression and redefinition of communities from the public arena to the legal arena. The colonial juridico-political order was reflected as a machine. Ronald

\(^{231}\) *The Tribune*, Wednesday, August 11, 1937, Page 1, “Dispute over Dotal Nullah, Revision petition in High Court.”

\(^{232}\) *The Tribune*, Wednesday, August 11, 1937, Page 7, “Kot Bhai Than Singh riot case, Transfer application accepted.”
Inden has argued\textsuperscript{233} that the major effect of the comparison of a polity with a machine is to transfer the physical scientists’ notion of a ‘system’ from mechanics to a body politic. Such a perspective understands a system consisting of hierarchically arranged levels of discrete, interdependent parts. Such a system claims to order itself by principle of a binary opposition among its levels and not simply one of distinction. Therefore, the state and its administrative hierarchies possess absolute sovereignty. Like a natural system, such a perspective is also characterised by mutual exclusion among its parts. Similarly, the orderliness of the British late colonial state was based on principles of mutual exclusion of communities in society, unity of sovereignty across its administrative departments, determinacy of law for dispute resolution, and uniformity of procedure. The forefathers of the British colonial administration and law in India acted as the ‘transcendent knower of the Indological discourse’\textsuperscript{234} and proceeded by discovering mutually exclusive categories, reduced to a single order, the order of modern law. Such an order resolved disputes according to the socio-political distribution of power.

Rajiv Dhavan has noted that the British legal scholarship was self-protectively encapsulated in a ‘black letter law’ tradition which separated ‘law’ from morality and sought to interpret law as a distinct, relatively autonomous reality. Thus, emphasis was on the self-constitution of legal principles and concepts. Dhavan further argues that such a ‘black letter law’ tradition worked at two levels. At one level, it sought to redefine and reconstitute people’s understanding of their social, political and economic relations, guaranteeing exclusiveness and derived strength from the notion of ‘rule of law’. On another level, it presented itself as a fair arrangement drawing support from legal reconstruction of social reality while granting

\textsuperscript{233}Inden, Ronald. \textit{Imagining India}, Indiana University Press: Bloomington and Indianapolis, 1990, page 12
\textsuperscript{234}Ibid. page 88
full power to the State to contain transgressions of the letter and spirit of ‘rule of law’. In Kot Bhai than Singh too, the colonial administration upheld a similar strategy. But a trial might not be always what it appears. Despite the spirit of the ‘rule of law’ maxim there were often supplementary intentions behind such a trial. Judith Shklar asserts, “A trial, the supreme legalistic act, like all political acts, does not take place in a vacuum. It is part of a whole complex of other institutions, habits, and beliefs.” In Kot Bai Than Singh too, it had diverse meanings. It would establish the colonial state as the sole impartial arbiter of disputes and would reflect that the social and political life of religious communities was mutually exclusive. However, the consistent and elaborate newspaper reporting about the trial connected the inside, the court, with the outside, the street/public. The trial assumed the character of a theatre, a political performance. Various scholars have argued that performativity plays a pivotal role in how identities express themselves. Courts and therefore legal discourse also thrive on performativity that enables subjects to articulate their identity in a juridical idiom. John Austin argued that the meaning of a word depends on its use. Such understandings complement Wittgenstein who believed that deployment of speech-acts generate true and false sentences. Austin classified performative utterances as locution, illocution and perlocution. Most importantly the effect of a speech-act, perlocution, is what matters in performing politics through legality. Judith Butler has also highlighted that the effect of speech is beyond the intended semantic and syntactical meanings. Supplementing Michel Foucault, she argues that the constitution and reconstitution of reality

235 See introduction by Rajeev Dhavan, in Galanter, Marc. Law and Society in Modern India, OUP: Delhi, 1994, Page xvii
238 Austin, J.L. How to Do Things with Words, 1962, pp 1-11.
by subjects take place through language, gesture and sign. Foucault has argued that subject construction takes places through juridical notions of power. Juridical notion of power represents subjects that it had created in the first place. One that reiterates performances of a subject/citizen of law that conforms to a legal norm, which has the discursive function of re-inscribing subject/citizen performances and renders legal claims of the subject(s) intelligible. For Butler, “Law is not internalized, but incorporated, with consequences that bodies are produced which signify that law on and through the body.” What is pertinent is that law dictates the form of performance. In Kot Bhai Than Singh, courts enabled the realisation of such subjectivity. It allowed performativity of subject/citizen claims. By citing and reciting law in the court the satyagrahis/ Akalis temporarily staged subversive use of performativity. We will notice in the following sections that the staging of temporary subversion not only re-inscribed the normative hegemony of law but also demonstrated how claims could be made intelligible to seek justice from the colonial state. It reflected that articulating legal processes correctly had ontological effects on colonial subjects and naturalized assumptions that it was law that constituted reality.

The newspapers regularly reported the trials of sewadars arrested for defying magisterial orders under section 144 at the Dotal Nullah. Earlier the sewadars were sentenced to two weeks’ imprisonment, which was modified to Rs. 30 as fine or in case of failure to pay the fine, three weeks’ rigorous imprisonment. By August 10, as the newspapers reported, that the 7th batch of two sewadars was sentenced to 3 months’ rigorous imprisonment by the Additional District Magistrate. What is notable is that there is an enhancement of punishment for the same crime over the period of one week.

240 Ibid. pp 134-5
Sardar Ujjal Singh, M.L.A. arrived in Rawalpindi on the 11th of August in connection with the Kot Bhai Than Singh satyagraha. He took Sardar Kartar Singh, president of the Gurudwara committee, Punjab Sahib, along with him to have a meeting with Mr. King, Commissioner of Rawalpindi Division. When interviewed by the Associated Press, Sardar Ujjal Singh stated although the conversation remained confidential, that the attitude of the Commissioner was most sympathetic and he was hopeful of a settlement anytime soon. But these attempts to de-escalate the conflict were more apparent than real. Elsewhere a change in political vocabulary indicated an upping of the ante.

Some other prominent members of the Sikh Community issued a joint statement expressing the opinion that the Kot Bhai Than Singh affair had ‘reached such an impasse that no person who has some humanitarian feeling can sit quiet’ while reasserting that it was ‘undoubtedly the birth right of every human being to have a free access to light, air and water’. A conference of prominent Panthie workers was summoned along with representatives of various organisations in the Province to take a ‘concerted action in this direction and to create a keen sense of awakening amongst the masses to vindicate the cause of civil liberties’. They emphasised in their statement that they had been ‘forced to take this step not from the communal point of view, rather stirred by humanitarian actualities’. What is notable once again here is the capability of colonial(modern) law which enabled

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244 *The Tribune*, Tuesday, August 17, 1937, Page 7, “Sikh leaders meet, Kot Affairs, Conference to be called.”
Sikhs to argue that trials were impartial means, based only on rules and regulations and hence depoliticized in nature. The issue is pitched not to be a matter of community power and communal rights but a question of civil rights and a humanitarian issue. It turned into a derivative trial\(^{245}\) for the colonial state.

To mark a further escalation, the tactic of sending *sewadars* in the batches of two each to court arrest at the stream changed. The meeting of the Executive Committee of the Shiromani Akali Dal held on August 15\(^{th}\), 1937, decided to expand the scope of the protest and to send *jatha* of 100 Sikhs who would leave from Amritsar on August 25, 1937. At the above-mentioned meeting resolutions were passed which viewed with alarm the conditions prevailing in the Punjab since the Unionist had come to power in the Province. It also condemned any restrictions imposed on Sikhs with regards to taking water from the stream in question and appealed to the Sikh *Sangats* to help the Akali Dal in making the Kot Bhai Than Singh ‘morcha’ a success.\(^{246}\) Such resolutions adopted at the Executive Committee of the Shiromani Akali Dal highlight that the issue was larger than drawing water from the stream. The issue was now used as a weapon to assault the credibility of the Unionist government at large.

Lynda Mulcahy has pointed out:

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\(^{246}\)The Tribune, Wednesday, August 18, 1937, Page 5, “Morcha at Kot Bhai Than Singh, Akali Dal to assume charge, Jatha of 100 to leave Amritsar on August 25.”
public adjudication will always be enriched by the physical presence of participants and the absence of bodies can serve to impoverish the performance of important public functions and rituals.”

The SGPC and Shiromani Akali Dal must have felt ecstatic, when on August 19, 1937, a bench comprising of Mr. Justice Jailal and Justice Bhide delivered a judgement, to a court room packed to its utmost capacity as one newspaper reported, in connection with the revision petition filed by Advocate S. Harnam Singh on the behalf of Gurudwara Committee of Panja Sahib. The crucial element in this petition was to question the validity of the original order of the District Magistrate of Attock under Section 144, that restrained Sikhs from drawing water from the Dotal Nullah. The bench held that the order of the Magistrate as it existed was an improper one, thereby rendering it no longer valid. Moreover, it suggested that the Sikhs should be allowed to take water from the stream during certain hours.

Lynda Mulcahy’s assertion that face to face contact is much more likely to confer interaction with meaning and an important reason why mediators encourage litigants to the power of face-to-face interaction in dispute resolution. It presents itself as an opportunity for the disputing parties to have their say in the presence of those who had earlier failed to listen. It is an opportunity for acknowledgement of one’s narrative as the trial unfolds. This face-to-face interaction between litigants does not just have procedural value but, as Mulcahy notes “an intrinsic value because it speaks to our political morality.” The legal arguments made by the petitioning counsel in this case study are highly relevant for our discussion and

248 The Tribune, Friday, August 20, 1937, Page 1, “Attock Magistrate’s order set aside, High Court’s verdict, Sikhs should be allowed to take water from Nala during certain hours.”
deserve detailed scrutiny. Undertaking to administer law in the government’s courts, the British took the decisive step towards a modern legal system that initiated the process that is called by Marc Galanter as ‘expropriation of law’. Galanter argues that this expropriation made the power to find, declare and apply law as a monopoly of government. Elaborating on the design of the administrative action in the conflict, S. Harnam Singh argued that the District Magistrate should not have promulgated the orders unless he had found that the Police force was incompetent to cope with the first conflagration that started the whole episode, given it was a small village. He added that it had been possible for the District Magistrate to manage the situation simply by means of the police force which was posted in front of Gurudwara Kot Bhai Than Singh. He argued that under section 435, the High Court had to satisfy itself of the propriety and validity of such an order. The advocate stressed that whilst the legislature had undoubtedly given wide powers to the magistrate to issue order like a promulgation of section 144, and the wider the powers thus bestowed, the greater the Legislature’s responsibility to safeguard the exercising of such powers. He asserted that it was possible for the District Magistrate to manage the situation by means of police force and that such powers of ban or prohibition should have been used only if the District Magistrate thought that other measures were inadequate to meet the situation. Even after that, if such an order was to be enforced, the civil rights of the Sikhs would have to be protected. The maximum life of this magisterial order was two months given that the District Magistrate mentioned in his self-justification that there had been two riots on previous occasions. To this, the counsel replied that the men of the Sardar of Kot – not any member of the Sikh community - had been convicted on those occasions. The counsel then went further in emphasising that the dispute in question was in fact one between individual Sikh residents attached to the Gurudwara and the the Sardar of Kot rather than the ‘clashes of the

\[\text{\textsuperscript{250}}\text{Galanter, Marc.} \textit{Law and Society in Modern India}, OUP: Delhi, 1994, Page 17.\]
communities’. Therefore, once again prioritizing individual citizens over community rights here.

The colonial administration itself had become party to the conflict because the initial order under section 144 CrPC was being challenged in the court along with the right of Sikhs to draw water from the stream. Challenging S. Harnam Singh’s plea, Diwan Rani Lal, Advocate General arguing on the behalf of the Crown replied that the position taken by ‘the petitioner’s counsel ignored the circumstances forming the basis of the order of the District Magistrate’. He clarified that such orders were promulgated because a new situation arose even after an agreement had been reached and Sikhs from outside the locality went to the Nullah shouting slogans implying that ‘Jat women had taken possession of the water which was used by the Khalsa’. Therefore, the Sikhs had broken the terms of the earlier compromise and started taking water from the stream to provoke the other party. According to Advocate General’s submission each of the incidents mentioned by the District Magistrate showed that there was ‘a danger to the breach of peace’. In an interesting twist Justice Jai Lal, remarked that the District Magistrate had in fact upheld the right of the Sikhs whereas it was the Sardar of Kot who was responsible for the breach of agreement and not the Sikhs. The rights of the parties were settled by the District Magistrate subject to the approval of the Sardar, which had not been forthcoming. Justice Jailal’s remark aimed to protect the decision of the magistrate and reflect that it was the communities who did not provide sufficient support to the administration in mitigating the conflict.

Before the session was adjourned for lunch, discussions suggested that the bench was prepared to modify the order to the effect that a period of four hours be fixed for the Sikhs to draw water to which, the Advocate General requested time to consult Malik Barkat Ali,
counsel for the Sardar of Kot. After the resumption of the hearing, the Advocate General submitted that the four-hour time was excessive and three hours was more than enough and that Sikhs could draw water from nallah from 12 Noon to 3 p.m., when the Muslim women of the village did not go there. Malik Bartkat Ali counsel for the Sardar of Kot said that the order of the District Magistrate under section 147 CrPC which effected the compromise, was binding on the Sikhs and on the Sardar of Kot, but not on the other public of the village. He expressed that the dispute arose when the ladies of the village objected to the Sikhs taking water at the time when they were bathing in the nallah. He further submitted that the nallah was on the village Shamilat in the possession of the Sardar of Kot who could forbid the Sikhs from going into his land. The District Magistrate had given the Sikhs the right of taking water. But even if the Sikhs had been taking water from the nallah for the last fifteen months, it did not establish their right to take water. The District Magistrate, according to Barkat Ali, was well within his jurisdiction to promulgate an order under section 144 CrPC against a private person ‘to enforce public peace’. Notably, Barkat Ali was also a leading politician and in fact the only Muslim league MLA in Punjab after the 1937 elections. His involvement as the defence lawyer for the Sardar of Kot is noteworthy here.

S. Harnam Singh, on behalf of the Gurudwara Committee, then assured the Court that the Sikhs would abstain from provocative slogans and will take water from the stream peacefully during the fixed hours. After the arguments and counter-arguments were over, the bench held that the order of the District Magistrate was not a ‘proper’ order. This meant that according to the new agreement, Sikhs could take water from 10.30 a.m. to 1.30 p.m., while the counsel on the behalf of the Sikhs gave an undertaking that they would do so peacefully and would not offend the Muslims of the village. The Advocate General could neither give
assurance nor rejected the proposal, so the bench left this question to be decided by the District Magistrate if necessary by a supplementary order.\textsuperscript{251}

On August 26, 1937, in Rawalpindi S. Kartar Singh Advocate, president of the Gurudwara Committee Panja Sahib and of the Sikh All-Parties Committee in a press statement declared that the ‘morcha’ at Kot Bhai Than Singh had now ended and the right, which the Sikhs claimed, had been vindicated. While announcing the legal victory of Sikhs, he expressed his gratification that the decision of the Panja Sahib committee to file a revision petition in the High Court had proved successful. However, he added that the Provincial Government had not yet taken steps to release the prisoners convicted based on the original order under Section 144, which the highest court in the Province no longer approved. Appealing to the Unionist government and the Premier directly the statement read:

Will Sikandar Hayat Khan and the Government rise to the height of the occasion and without losing more time issue an order for the release of the prisoners in question before they appeal to the High Court to seek redress.\textsuperscript{252}

We know from the newspaper reports that at least until 28\textsuperscript{th} August 2\textsuperscript{nd} batch of Sikhs were released only after they had served the three weeks sentence in jail for defying the Magisterial prohibition order. Upon their release from jail they were taken in a procession through the bazaar in Campbellpur, and the women outnumbered men in the procession.\textsuperscript{253}

\textsuperscript{251} The Tribune, Friday, August 20, 1937, Page 9, “Judgment in Kot Bhai Than Singh Case, District Magistrate’s order set aside.”

\textsuperscript{252} The Tribune, Saturday, August 28, 1937, Page 9, “Release “Morcha” prisoners, S. Kartar Singh’s appeal.”

\textsuperscript{253} The Tribune, Tuesday, August 31, 1937, Page 5, “Dotal Nala satyagraha, Second batch released.”
Marc Galanter has noted\(^{254}\) that the strength of the British law lay in its techniques which were able to replace local laws by official law. The official law did not tolerate any rivals, it dissolved away that which could not be transformed into modern law and absorbed the remainder. As a result, it created a numerous class of professionals who form the connecting links of the nation-state and a vast array of vested rights and defined expectations.

The politics of challenging a magisterial order provided a boost to the agenda of Sikh politics in the Punjab. It was a tactical gain for the \textit{Akalis} to mobilise as well as radicalise Sikhs in the name of the Gurudwara issue. At the same time, the administration did not change the due process involved in such conflicts. During the conflict, at one level the colonial administration acted as a disciplinary power by instituting section 144 and banning public space, and on the other level, it created a new set of power filters by articulating administrative power allowing appeal in the higher court while recognizing community claims. It acted in the first instance with a prohibition order, instituted a police force to enforce it, and then steered the protest to the courtroom, which was the only ‘legitimate’ place and method of resolving the conflict. Such a tactic reinforced the administrations’ role as an impartial mediator upholding the ‘rule of law’. However, once the instituting of the initial magisterial order was challenged in the higher court, the administration also became a party to the conflict. In the end, the original order - that was deemed ‘improper’ in the face of a new agreement - remained largely intact in substance as the new settlement only slightly adjusted the time of the day when the Sikhs could draw water from the stream. In fact, according to the new order the Sikhs had reduced time to do so in comparison to the earlier settlement. In the entire episode, the courtroom facilitated not only the expectations of the religious communities but colonial administration too. Both the Sikhs and the colonial administration derived legitimacy by resorting to the courtroom and transforming the trial

\(^{254}\)Galanter, Marc. \textit{Law and Society in Modern India}, OUP: Delhi, 1994, page 36.
into a spectacle, which had effects on Sikh mobilization in Punjab province, much beyond the courtroom and the village of Kot Bhai Than Singh.

**Conclusion I**

In the light of the case study discussed above, few questions need to be raised. Had the outcome of the case differed, had the courts acted differently? Had the local administration or the District Magistrate or the local police had been more successful if they commanded a more powerful enforcement agency? Why was the local administration unsuccessful to secure compliance with the orders issued? Why did they not act to bring out a compromise so as the whole basis of conflict was removed? The issue gained currency because it was tied to the Gurudwara. However, the core issue, the women who bathed at the river, was entirely neglected in the entire litigation. What if a time slot could have fixed only for the women of the village, irrespective of their religious identity, to use river in the first place and not religious communities. Hence, the incident at Kot Bhai Than Singh provides us with important insights into the operation of prohibition orders and the responding local politics. Firstly, the argument made by the lawyer of Sikhs that the powers under section 144 CrPC were provided to the District Magistrate to protect civil rights of the people and not for their suppression highlights that at convenient occasions the colonised population was willing to participate in the game of law by demanding its proper enforcement. While the participation of Sikhs as satyagrahis and subsequent episodes of arrests was argued as issues of individual rights of human beings pure and simple, the dispute was framed by the Akali defence lawyer as an issue of rights of collectivities defined by religious customs. Moreover, the counsel on behalf of the Sikhs when argued that the earlier order of the local magistrate did not fulfil
the criteria necessary for issuing an order, he conceded that the order of prohibition would have been justified if the police had been ‘incompetent’ to cope with the situation. This signalled an agreement with the colonial legal procedure only if upheld in letter and spirit, and provided the colonial administration with the opportunity to serve as impartial judge in communal disputes, which it always claimed its real aim was. Furthermore, what is significant is the response of the administration itself. We cannot overlook the fact that law, which should be standard and firm, is indecisive in nature here: first, in the difference of assessing the judgement by the local and then the High courts. Second, in meting out divergent punishments for the same crime over the period of one week.

The contestation of issues arising from extraordinary legislation like section 144 cut both ways, however. The *Panthie* workers adopted the Gandhian strategy of *satyagraha* successfully by arguing that their struggle was championing the vindication of the cause of civil liberties. By doing so, they put the colonial administration in a difficult position by pressurising it to be more sensitive and alert to its own administrative philosophy. The entire philosophy of confrontation in the name of *satyagraha*, as was often emphasized during the trial, was motivated by ‘human actualities’ rather than ‘communal animosity’. However, the administration transplanted the communalism of the street into the courtroom. The trial transformed into a spectacle which became derivative for the colonial state as well as the religious communities. What can be observed from the arguments of Akali defence lawyer as well as the lawyer of Sardar of Kot Barkat Ali is that the entire issue is a conflict between individual citizens. While each Akali satyagrahi acted on his own volition, the Sardar of Kot could refuse water insisting his individual right to property. However, neither the issue of Muslim women in whose name the Sardar of Kot instituted the expulsion of Sikhs from the stream nor the issue of Sikhs collectively drawing water and arguing for the defence of their
religious rights gets discussed. The entire episode circles around the rights of individual citizens with occasional community rights. What is furthermore noticeable is the ability of the colonial administration to steer conflicts to the courtroom which served to depoliticise events and helped administration to paint these episodes more as cases of individual rights, citizenship and legality rather than everyday politics of the intense late colonial times. In this entire episode, what emerges is that the Akali satyagrahis repetitively defied administrative orders and exacerbated the law and order situation and that extraordinary legislation like section 144 CrPC got normalized whilst also reintegrated into the rule of law myth by opening it up to the courts. Law had implications of the language of legality with emphasis on human rights and citizens contrasted with language of communities and other special categories when the law acted pre-emptively.

The ban on the public arena by promulgating section 144 allowed the local administration to conduct the disorder of the streets in the orderly legal arena. In such a light, the use of section 144 CrPC was often more of a tactical purpose than aimed at actual conflict resolution. Confrontational situations provided the colonial government with opportunities to invoke public order laws and institute curfews and justify police action to enhance its own administrative calculations. However, it defeated its own principles at numerous occasions. The most important use of such orders was that it facilitated administrative intervention in community lives while arguing that they were mutually exclusive and hence incapable of resolving their own conflicts. Also, the late colonial state was not very interested in the day to day maintenance of civil liberties. It often resorted to politics of ban at every opportune moment. Banning the drawing of water from the stream for Sikhs and after arrests of satyagrahis, and the utilisation of laws like section 144 highlight the attempt to establish administration’s view of public order. The colonial administration through such laws aimed
to mark public space with invisible signs of state power. However, the criminalisation of local politics, by deeming protests unlawful, led to the emergence of a counter-public. For example, the Akali satyagrahis volunteered to court arrest to challenge the magisterial order. Another significant ability of such extraordinary orders of prohibition was the ability not only to declare spaces and political gatherings as unlawful but also the potential to take charge of the issue. However, any politics of ban was often challenged by defiance. In Kot Bhai Than Singh, it was not only the local Akalis that participated in satyagraha but when volunteers from Amritsar and Lahore started to arrive, it created an administrative challenge for the provincial government. Therefore, the usual binary of insiders and outsiders to a dispute was complicated. But in the end, it was often the influence of outsiders who would preside or bring settlements to such conflicts. The target audience of the trial too was not merely the litigants whose names were recorded in the courts but the larger religious communities who were following the trial in the press outside the courtroom. The entire theatrics of law and legality enabled colonial administration to both enforce its might as well as replenish a certain moral legitimacy for itself while also allowing parties to a conflict, a space to argue out their case articulated though a language of community rights case in an ‘impartial’ atmosphere, i.e. the court. Therefore, courts not only became judicial spaces but a theatre of politics where constitutionalism and ‘rule of law’, led, maintained and guided local politics.

Case Study II

Workers urged ‘boycott’ and the Management feared the ‘outsider’: public order and labour politics in the Bata Shoe Factory 1939
Calcutta was a very important production hub for the British Empire. Numerous factories and mills were set up in the city. It was also the capital of British India up to 1910, when the capital shifted to Delhi after the reunification of Bengal. The labour crisis in Calcutta began at the end of the nineteenth century when in 1890’s the Indian Jute Mill Association (IJMA) extended working hours and increased the work load in the factories. By 1895, strikes by factory workers had increased anxiety of the Mill owners to such an extent that the IJMA had to petition the government to mobilize police forces for the protection of European managerial staff from angry workers.\textsuperscript{255} During some instances of communal confrontation among mill hands in 1896, the colonial rulers deployed the military to subdue disturbances in mill areas. This brought protesting or rioting mill workers face to face with the armed forces of the colonial state. The colonial government saw the riots and strikes at the end of the nineteenth century as a clear evidence of the intrinsic volatility of rootless migrant peasants crowding the city and its suburbs in search of jobs.\textsuperscript{256} A general perception remained in the minds of colonial officials, mill owners and managers, and law an order administration, that the Indian worker was ignorant and lacked commitment to factory work. After 1896, Calcutta witnessed three more major waves of strikes in 1920-21, 1929 and 1937-38. Such prolonged industrial conflicts generated frequent confrontations between poorer urban dwellers and the law enforcement machinery of the colonial state. Despite numerous strikes the formal labour organisation remained considerably weak because the trade unions were few and had little influence whatsoever.\textsuperscript{257} Various scholars have studied

\textsuperscript{255} See, A petition from the Indian Jute Manufacturers’ Association, advocating the employment of a police force at Barrackpur and of a civil magistrate either at that station or some other station, in “Report on police supervision in the riverine municipalities” pp 7-12, West Bengal State Archives (WBSA), Judicial Police Branch, January 1896.


the figure of the urban mill worker in Colonial India facing numerous challenges to make ends meet in the industrial cities. Raj Chandravarkar’s approach to study urban labour advocated to view economy as constituted by production conditions, shaped by a relationship between rural and urban, considering the agency of the social classes, recognizing the political presence of the colonial state, and all taking place in the context of global economy.\textsuperscript{258} Railways also enabled mass migration within India and abroad, and migrants especially from Bihar and east United Provinces were found in great numbers in Bengal. Pertinently, Calcutta was located on this migration route.\textsuperscript{259} Migrants from rural India, distressed because of land and agricultural woes, migrated to cities and provided a continuous supply of mill hands to industrial urban centres. Scholars like Subho Basu has highlighted that migrant ‘peasant’ labourers wanted to supplement their rural resources from urban employment. The continuous arrival of labour to mills, however, soon glutted the labour market. Also, their earnings were not enough to bring their family to mill towns. Therefore, insufficient urban wages resulted in separation of male worker and their wives and children necessitating periodic migration back to villages.\textsuperscript{260} The narrative of such a migrant worker across various studies appears to be of an unsettled settler and highlights the demands of urban citizenship in late colonial India.

Calcutta in late colonial Bengal started to become a hotbed of labour politics. During the great depression of 1930s the management enforced and tightened discipline in the mill, the management adopted measures to restrict movement of workers during the working hours. Workers perceived such interference as gross violation of customary practices within

\textsuperscript{259} Leod, R. Mc. Annual Report on emigration from the port of Calcutta to British and Foreign colonies, 1890, Calcutta, 1891, pp7-8.
factories. In the early twentieth century Bengal, the Scottish managers of jute mills established a stranglehold over mill town administrations and not only dominated municipal boards, but controlled the local police force and acted as judicial magistrates of mill towns. This was sustained by forging alliances with propertied high caste Indians, generally white-collar professions. Workers often responded to such an arrangement of managerial authority and state power by organizing sudden strikes to avoid immediate victimisation by the factory management. Strikes extended beyond the confinement of factories and mobilised wider industrial action to avoid dealing with the management of single factory. Thus, becoming a ‘threat’ to factory management as well as the law and order administration in mill towns.

The passing of the Government of India Act 1935, was a major attempt at decolonization that allowed Indians more participation in decision-making process at the provincial colonial level. After 1935, Bengal Presidency became a regular province with an enlarged elected provincial legislature and increased provincial autonomy. The elections of 1937 resulted in Congress winning the maximum number of seats yet declined to form government providing A.K. Fazlul Huq, from the Krishak Praja Party, to form a government in coalition with the All-India Muslim League paving way for a non-Congress government. In the year 1939, communist efforts to mobilise workers in Bengal was intense. Especially in the city of Calcutta, frequent strikes not only imposed a heavy toll on various Mill and Factory Management, but on local administration too. The sheer number of workers who participated in strikes could easily be in thousands. Calcutta had numerous Jute Mills, but one of the most famous factory establishments in Calcutta was the Bata Shoe Factory on the Budge-Budge Road in 24 Parganas. This case study will discuss how the colonial administration used the

262 Ibid. Page 71.
invocation of Section 144 to deal with an important strike at the Bata Shoe Factory. This case study is important because it demonstrates how invocation of public order laws sometimes supplemented by police firing during labour protests, argued categories like the insiders and the outsiders. Whilst, ‘outsiders’ i.e. people who were not the direct employees of the factory and were blamed to be involved in encouraging political confrontations became the problem category here. Later, it became difficult both for the colonial administration as well as the factory management to sustain the binary of the ‘inside’ and the ‘outside’ of the factory. This case study will demonstrate that public order often did not know boundaries between the in-factory politics and the politics of the ‘outside’ i.e., the broader anticolonial movement.

Right at the beginning of the year 1939, on Sunday morning, January 1st, workers of Bata shoe factory who were not happy with certain attitudes of the management and held a meeting under the chairmanship of Soumyendra Nath Tagore, a famous Trade Union communist leader in Bengal during those times. In the evening workers came to Batanagar shouting slogans and expressed their desire to meet the management. The Managing Director assured them that their grievances would be considered on Monday, the next day, on the 2nd January. According to the newspaper reports, the management directed their supervisors to consider their respective departments and called them for a meeting to place the grievances of their departments in writing. After the meeting, the management of Bata Factory informed the supervisors that Company would reply on Saturday the 7th January. Despite the supervisors meeting with management the workers chose to go on strike on Wednesday 3rd of January at 4 p.m. in the Leather and Rubber section of the factory. The striking workers spent the entire night in the factory buildings but vacated the factory building on Thursday around midnight. The representatives of the workers approached the management for a
hearing of their grievances and settlement thereof. Meanwhile, many of the other departments were working as usual. By 4th of January six thousand workers were on strike. The demands that the Union had submitted to the management included issues like permanent service, introduction of provident fund, rent for worker’s quarter, free medical aid, right to bring their relatives and friends to their quarters, minimum wage to be fixed at Rs. 25, one month sick leave with half pay, Muslim workers should be allowed reasonable time for namaz, issues concerning victimisation of workers and the recognition of the Union by the Company.263

_Amrita Bazar Patrika_ reported that while the workers have no complaint regarding housing conditions in Batanagar, their demand is the quarters should not be roofed with corrugated sheets and the rent be reduced. The newspaper also reported that the management was considering making _pucca_ roofs and as regarding rents, in the case of lowest wages, the rent would work out to a proportion of 6 per cent and the case of lowest average wage the rent bears a proportion of 4 per cent. The issue of the right to return to work after long leave and permanence of service, the newspaper reported that the management felt that the condition in Batanagar in both cases is similar to other factories in Bengal. Also, the authorities were not opposed to a Worker’s Union but were opposed to the control of the factory union by ‘outsiders’. The management were willing to consider the ‘legitimate needs and reasonable requirements’ of the workers in the Bata factory.264

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263 _Amrita Bazar Patrika_, Friday, January 6, 1939, Page 7, “2,500 operatives idle, Strike in Bata’s, Directors’ effort for early settlement.”

264 _Amrita Bazar Patrika_, Saturday, January 7, 1939, Page 7, “Batanagar Strike, Employers’ views, Satisfactory settlement likely soon.”
But on the 9th of January, situation got out of control and due to a major clash at the factory gates between the Police and the striking factory workers, police had to open fire. A crowd of 400 workers who were demonstrating at the factory gates came face to face with a posse of armed Gurkha Police when the factory authorities arranged to escort the ‘loyal workers’ in lorries. The police attempted to drive back strikers away from the factory gates and had to resort to a lathi-charge which was reciprocated by the workers with brickbats, resulting in the police opening fire. The Inspector General (I.G.) in his statement alleged that Benoy Chaterjee, a communist leader and prominent trade unionist, was addressing a gathering of strikers outside the Nangi Railway Station even though section 144 CrPC was in force in the area. He added that when Inspector of Sadar ‘A’ Circle, Khagendra Nath Mukherjee, who was on duty at the Batanagar factory, saw that a meeting was taking place, he proceeded to the spot with 26 policemen in a lorry and found Benoy Chaterjee, addressing a gathering of around 2000. He asked Benoy Chaterjee if he knew that section 144 CrPC was in force to which he replied affirmatively but persisted that he would instruct the workers in their rights. He was arrested and put in the lorry and the police dispersed the meeting. Meanwhile, two buses belonging to the company and their ambulance was fetching clerical staff from Nangi Railway Station. When the buses and the ambulance arrived at the gates of the factory in Batanagar, the strikers, according to the I.G.’s statement attacked these conveyances and pulled the staff out of these vehicles. Though the workers statement claimed that they were pleading to the staff being ‘imported’ by management from Konnagar, to go away. The Inspector after dispersing the gathering at the Station and arresting Benoy Chaterjee for the violation of section 144 CrPC, when arrived back at the Batanagar factory, the workers had already confronted the company vehicles fetching the Companies ‘loyal’ workers, with brickbats. The inspector when reached inside the factory in the same lorry in which they had put Benoy Chaterjee after arrest, was confronted with a crowd of fourteen or fifteen hundred
men who attempted to rescue Benoy Chaterjee from the lorry. The Inspector quickly got his men and lined them up on the road leading from the main gateway to the office. The policemen were few and had lathis. They were attacked with brickbats when they started to move forward to charge on the protesting workers. The Inspector then ordered his armed policemen to fire five rounds, one round each. As a result of firing, two men were injured, one in the thigh, one sustaining a flash wound only and the other, a fracture of the femur.\textsuperscript{265}

The Inspector General who visited the place of incident later, according to the newspaper reports, found a lot of brickbats lying around at the place of this incident. He was confident that the Inspector acted strictly with the instructions for the procedure to be adopted in dealing with ‘riotous mobs’. Senior Additional Superintendent of Police, Alipore, R. Banerjee visited the spot immediately and ‘pacified the strikers by reasoning with them’. Regarding the administration K.A. Hill, Collector of 24-Parganas, Mr. A.D. Gordon, Inspector General of Police, R.E.A. Ray, Deputy Inspector General, Presidency Range and the Sub-Divisional officer, Alipore also visited the place. Mr Pollard, Additional Superintendent of Police was the first on the spot with the Armed Police force. The workers statement claimed that they were only protesting and pleading with the staff being ‘imported’ by the factory management from Konnagar and fell prostrate at the gates of the factory to prevent them from entering. To this, the police ordered the workers to disperse, which they did not, resulting in the police lathi-charge. Later due to firing, more than 10 workers had been seriously injured of which Mohammed Idris and Moklesh Mistry were in precarious condition. The management’s version claimed that it was very sorry about the incident but the strikers were obstructing ‘loyal’ workers and were led by an ‘outsider’ Benoy Chaterjee

\textsuperscript{265} \textit{Amrita Bazar Patrika}, Tuesday, January 10, 1939, Page 9, “Firing on picketers, Batanagar Labour strike Takes a serious turn, Three receive bullet wounds, Police version of the situation: Curfew promulgated to guard against further trouble.”
who was violating orders under section 144 CrPC. Meanwhile the Bengal Trade Union Congress Committee (BTUCC) under the chairmanship of Mrinal Kanti Bose also passed a resolution at its office where Soumyendra Nath Tagore was also present. The resolution condemned the firing on the workers and the one-sided communiqué issued by the Government of Bengal which justified the police firing. A demand for the appointment of an independent Committee to enquire into the incident by a higher judicial officer was also made. The meeting expressed its support to the workers’ demands. The high point of this meeting was a tactical move on the part of these ‘outsiders’. They appealed to the public to not to use shoes manufactured by the Bata Company till they removed the just grievances of workers. A ‘Bata Disputes Committee’ was proposed with members with powers to co-opt. Soumyedra Nath Tagore, who was the President of the Bata Shoe Factory Workers’ Union, and connected to the larger worker movement in Bengal during that time, in his statement also condemned the lathi charge and police firing, and maintained that there was no meeting at all of the sorts Police claimed. He expressed that the Bata Workers were not allowed to bring their relatives to their quarters without the permission from the Company. Calling it a ‘preposterous regulation’ Tagore argued that the workers were deprived of all civil liberties by the Bata Factory Management and the police was used only to intimidate the peaceful strikers. He stated that the Inspector acted ‘unlawfully’ because he arrested Benoy Chaterjee and took him to the factory compound rather than the police station. Various workers, civil society members and student organisations erupted in support of the strikers of Bata Shoe Factory. Meetings in parks and squares were held. Meanwhile, Home Minister, Nazimuddin paid a visit to the Medical College Hospital where Muhammad Idris who was injured in the

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266 See Governor’s situation report dated 19th January, 1939, especially page 3 of the report and Page 207 of the File IOR/L/PJ/5/144 and Governor’s situation report dated 8th March 1939, file IOR/L/PJ/5/144.
Batanagar firing was admitted and was recovering.\textsuperscript{267} It is pertinent to mention that the matter published in the newspapers concerning various meetings in support of the striking workers at Bata Factory points out that Idris was engaged in organising the workers on a union basis.

Another large meeting of strikers, students and residents of Calcutta took place in the Hazra Park on Wednesday at 4 p.m., which was presided by Kartar Singh, secretary, Motor Transport Workers Union. This meeting again reiterated the demand to the Government to institute an impartial enquiry lead by a judge of the High Court and exhorted the people of Bengal to boycott Bata goods till the Company accepted the demands of the Union. This meeting also passed a resolution and ‘emphatically protested’ the ‘cruel’ lathi-charge and firing on the Bata factory workers. It also resolved to carry out a ‘tearing campaign of boycott of all Bata goods till the strike is successfully concluded’.\textsuperscript{268} K.M. Ahmed, president of the Bengal Provincial Students Federation also held a meeting and issued a statement condemning the role of the police in the incident calling it “extremely deplorable” and urged to all ‘self-respecting citizens’ to boycott Bata products. Meanwhile claims of workers returning to work were made by factory management, which were met with denials by the Union spearheading the strike. The Bata Shoe Company started to get uncomfortable with the appeals of such protests to boycott Bata goods. On Jan 12, the Company issued a statement to the Press, which among other things emphasised the disadvantages of such a campaign. The statement stressed that while the people calling for boycott were claiming that they had the interests of labour at their heart, but they were ‘injuring’ the interests of the

\textsuperscript{267} \textit{Amrita Bazar Patrika}, Wednesday, January 11, 1939, Page 7, “Batanagar Incidents, Workers Union President’s Statement.”

\textsuperscript{268} \textit{Amrita Bazar Patrika}, Thursday, January 12, 1939, Page 7, “Firing at Bata’s condemned, Hazra Park meeting, Accuracy of police report questioned.”
labour by making boycott propaganda because even if it met with partial success would throw hundreds of workers out of employment. It reiterated its position that the management was already considering all these issues and was about to reach a decisive settlement before the ‘outside’ elements influenced and upset the possibilities of a peaceful solution to the dispute. Additionally, it expressed pride in the institution of Bata factory as recognised by hundreds of ‘distinguished persons’ who had visited it. It further argued about its greatness by stating that it employs thousands of Indian workers and supervisors, used indigenous materials as well as offered cheap and comfortable shoes to the public. The Company was not only facing an economic pressure due to the strike but also of moral credibility given the appeal for its boycott. Meanwhile the management was claiming in statements that many workers had returned to work and appealed to those who had not. But the Union trashed such statements as misleading.

The president of the Bata Shoe Factory Workers’ Union, Soumyendra Nath Tagore issued a reply to the management regarding such claims, which was published in the newspaper reports. He called the management’s version as ‘mis-statement of facts’. The statement claimed that despite all the attempts of the Company to prevail upon workers to join work, the strikers have not resumed work but few clerks were functioning in the office. As far as the factory was concerned, Tagore stated, it was at standstill. The Company management, according to S.N. Tagore’s statement, “indulged time and again in the cheap luxury of using the ‘unintelligent’ word “outsiders” in relation to the couple of officers of the Bata Shoe Factory Workers’ Union.” He responded that the Union is a registered Union and, non-worker of the Union is not necessarily an outsider. He expressed his expectation that the

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269 *Amrita Bazar Patrika*, Friday, Jan 13, 1939, Page 7, “Bata factory trouble, Authorities plea, Boycott propaganda will affect labour.”
Company would change its attitude towards the workers and their chosen representatives. We also notice that the formulation of workers’ politics along communist lines was taking place. Tagore’s statement retaliated to Company’s statement made a day ago, and emphasised that the company is hit hard and therefore was talking of economics, employing India and using indigenous raw materials, which he stressed, was simply prompted by the concern of capitalist profit. He also highlighted that the company worked to fill its pockets rather than serving the workers’ interest.270

While the newspapers reported that fifteen hundred workers were still on strike, the Management, which was struggling with the moral pressure of the calls of boycott of Bata goods, responded with a statement clarifying their position on their use of the term ‘outsider’. According to the statement, the Company used the term ‘outsiders’ to refer to the people who were not connected in any way with the Bata organisation.271 Subho Basu has demonstrated how Strikes and riots among Calcutta workers in the late colonial period revealed that working-class politics did not flow from ‘pre-bourgeois’ religio-communal consciousness of workers based on their lack of exposure to urbanization. On the contrary, Subho Basu argues, these conflicts were products of the new industrial situation where workers tried to adapt themselves to the processes of new work discipline. The Bata workers put forward fifteen demands. These included bringing back Mohammed Idris to the Calcutta factory, reinstatement of workers in the same position in case of suspension, freeway to relatives of workers to stay with them without the need for review by factory administration, reduction of workers rent from 5 annas/week to 3annas/week, old employees to be given

270 *Amrita Bazar Patrika*, Saturday, January 14, 1939, Page 7, “Batanagar strike, Reply to Management, Union President’s statement.”
preference in case of fresh appointments, permanency of service, arrangement for provident fund, expansion of the factory mosque compound for Eid and Bakr-Eid prayers, minimum monthly salary to be fixed at twenty five rupees, free medical attendance and doctor’s service, efficient workers to be given preference in case of promotions rather than outsiders. Furthermore, all workers should be given one month sick leave in a year with half pay, a provision for a temple for Hindu workers. Most importantly, the worker’s union already in existence and registered should be recognised by the factory management.

To this extensive list of demands, the company accepted a few, rejected some, and made assurances on many. It replied that Mohd. Idris could not come back on business grounds and a representative of workers could go to Bombay to see him working at the Bombay factory. Reinstatement of workers would only be made if not suspended for insufficient work, no person would be allowed to stay in workers’ colony without the permission from factory lodging department, rent would be reduced to 3 annas until a complete pucca colony was built in which case the rent would increase by one anna, preference would be given to ex-workers for new appointments only if they were not dismissed for misconduct or considered undesirable to new applicants, workers are themselves responsible for maintaining the permanency of their service, provident fund scheme was already under consideration and was about to be operational soon, Mosque could not be expanded but the factory grounds could be utilised heretofore for Eid prayers, subject to the usual statutory deductions, the minimum salary for rubber and leather factories would be rupees five per week and would come to twenty two rupees monthly provided the workers met the usual daily production mark. Some reduction in medical service charges were made corresponding to different weekly salaries, a leave of 14 days per year with half average pay was offered to only those who worked satisfactorily in a continuous service for one year. Promotions would
be made of efficient workers subjected to the opinion of the department heads and the
demand for the building of a temple was rejected. Most, importantly, the management
conveyed that the present union could not be recognised by the Company, but the Company
was preparing a scheme for forming its own organisation for the welfare of its workers. In
the said organisations there would be standing arrangements between the workers and the
management of the Company for representation and Disposal of worker’s grievances. 272

Shobho Basu has argued that urban workers were ‘unsettled settlers’ because of the lack of
investment in urban infrastructure like housing and public health by the colonial state and
the very nature of the urban ecology supplemented by a disposition of colonial industrialism
governance that preferred temporary workers. 273 Basu further argues that an understanding
that rests on the notion of workers’ entrapment into primordial loyalties 274 presents a static
image of migrant workers’ social and political consciousness and replaces the totalising
notion of class with another totalising notion of communities based on ethnic identities. The
entire purpose of regulating housing by the Bata factory management in the case study points
out that in urban areas migrants depended on village ties often based on caste, religion,
region and linguistic affiliation. Support from relatives or other community members was
essential for the migrant labourer to survive during the long waiting periods to find
employment. Often relatives of fellow villagers helped them to find jobs in the mills. 275 Such
an arrangement existed because of the demands of urban citizenship on the migrant casual

272 Amrita Bazar Patrika, Tuesday, January 17, 1939, Page 7, “Batanagar strike situation, Workers formulate
demands, Company’s views, Negotiations for settlement in progress.”
273 Basu, Subho. “The Paradox of Peasant Worker: Re-Conceptualizing worker’s politics in Bengal 1890-1939,
Modern Asian Studies, 42, 1, (2008), Page 52
274 Subho Basu is referring to scholars like Dipesh Chakrabarty. Chakrabarty’s understands questions of culture
and community by critiques frames which reduce culture to economic determinants yet such an approach reifies
culture by seeing identities in terms of fixed cultural meanings. Chakrarbarty sets out to capture the contrariness
of workers’ lives, their existence in class and non-class ways, but in the process, he privileges one kind of
identity over another.
275 Basu, Subho. “The Paradox of Peasant Worker: Re-Conceptualizing worker’s politics in Bengal 1890-1939,
Modern Asian Studies, 42, 1, (2008), Page 63
labourer and the labourer’s persistent struggle to initially enter and subsequently serve in the urban labour market.

Finally, on 16th January, a settlement was reached between representatives of the Bata workers and Management of Bata factory. The representatives of Bata Workers met M.L. Khaitan and J. Bartos, managing director of the Bata shoes. In the presence of M.L.A. J.C. Gupta, both the parties arrived at a settlement and it was decided that the strike had now ended and normal work would resume from Thursday, 19th January, 1939. The management assured the workers that there will be no victimisation and promised sympathetic treatment. The meeting was concluded by signing of a written memorandum by both parties.276 The settlement at Bata Shoe Factory was claimed as workers’ victory and all sort of statements about the struggle followed. Somyendra Nath Tagore’s statement explaining the terms of agreement was published in the newspaper and the Company also agreed to co-operate with the workers for getting orders under section 144 CrPC withdrawn and release those against whom charges have been brought during the incident. The statement concluded that the strike had now been lifted and therefore the boycott that was preached against the Company was also removed.277

As soon as the settlement between striking workers and the company was reached, the report of the Magisterial enquiry into the firing incident was submitted. The enquiry was constituted to deliberate on two issues (1) whether the firing on January 9th by police was justified and (2) whether the instructions contained in rule 776 of the Police Regulations,

276 Amrita Bazar Patrika, Tuesday, January 17, 1939, Page 7, a small section titled ‘strike ends’ in the middle of the news item “Batanagar strike situation, Workers formulate demands, Company’s views, Negotiations for settlement in progress.”
277 Amrita Bazar Patrika, Wednesday, January 18, 1939, Page 7, “Workers victory at Batanagar, End of strike, Terms of agreement explained.”
were complied with by the police. It is pertinent to note, that the Inspector General had already immediately after the incident issued a statement stating that the action of the Inspector was within the rules and instructions to deal with a riotous mob. The enquiring magistrate during enquiry, visited worker’s colony and asked the workers to select some witnesses to present their version of the case regarding firing. The workers selected five persons, who were examined by the Magistrate. The Magistrate examined sixteen witnesses in total, including the five workers’ witnesses, the injured men and the doctor. The report of the Magisterial enquiry about question (1) stated above concluded that (a) the situation was such as to threaten danger to life, (b) nothing short of firing by the police could have controlled the situation (c) the rioters were amply warned to desist, but no heed was paid to the warning, (d) the firing ceased as soon as the rioters showed signs of dispersing and (e) the wounded persons were attended to immediately after the incidents. Regarding question (2), the Magisterial enquiry concluded that the provisions of Rule 776 P.R.B. were complied with on both the occasions in as much as (a) blank ammunition was not fired (b) ball ammunition was used, (c) the rioters were duly warned; (d) the men were instructed to aim low and did so, as the position of the injuries indicates. The Magistrate also found out that the conduct of the police officer in-charge of the situation was above reproach, and averted what might have been a great calamity.\textsuperscript{278} The magisterial enquiry clearly absolved the factory management and police administration of any misconduct.

\textbf{Conclusion II}

\textsuperscript{278} \textit{Amrita Bazar Patrika}, Friday, January 20, 1939, Page 12, “Police Action justified, Batanagar firing, Govt. on Magisterial enquiry.”
The entire incident raises some important questions about the circumstances of strikes as well as incidents of firing and promulgation of section 144 CrPC to deal with labour protests. This is not a lone case of labour unrest in Calcutta during January 1939. In addition to Bata Shoe Factory workers in Batanagar, Indian Standard Wagons Works in Asansol, Bengal Paper Mills in Raniganj, and Busmen in Howrah, all were on strike for one or the other demands. Most of these situations in addition to firing or not, did experience orders under section 144 CrPC. But studying the Bata strike, we observe that there is a difference of opinion between the narratives of the police, the Bata Company, and the workers of Bata Factory Union regarding the authenticity of workers’ issues raised as well as the leaders of a non-recognised representative organisation. But the most significant feature of the entire episode related to the wider framework of law and legitimacy. The question of ‘outside’ and ‘outsider’ creates an interesting tool of analysis to understand the politics of such a situation. The ‘inside and outside’ framework has been utilised by Raj Chandravarkar, where he studied the continuities between the urban worker and the rural peasant, and by Radhika Singha in her study of Thuggs, where Anti-Thugge campaign laws not only applied to Company territories but to territories beyond it. A Thugg, no matter apprehended anywhere, could be tried under the jurisdiction of East India company and its laws. In the Calcutta case study, the Company considered Benoy Chaterjee as an ‘outsider’, and the workers did not, because he was part of their struggle. On the other hand, the company made Idris, one of the protestors ‘outsider’ by sending him to work for the Company in Bombay. Also, the Company was willing to have a union of the ‘insiders’ only. But at the same time once protest meeting against police action started to condemn police action and company’s attitude along

279 See Governor’s Situation report for the second half of January 1939, file IOR/L/PJ/5/144.
with the appeal to boycott Bata goods, the same company got involved in the politics of the ‘outside’, the larger anticolonial mobilisation. Laws like section 144 CrPC did succeed to keep such contestations ‘outside’ a certain area or persons ‘outside’ specific vicinity but it could not at times extern politics from the scope of the issue or incident.

Important things follow from this narrative. The use of section 144 CrPC in this case shows a clear collaboration of public order laws with the process of economic exploitation of the incipient working class by interrupting the political process that made them aware of their rights. If elsewhere, section 144 CrPC was used in the aftermath of violence, here it became a step facilitating the state’s exercise of violence against workers whose protest was rendered illegitimate. This demonstrates the degree of flexibility in the use of laws like section 144, which could be used to practically criminalise politics making economic demands, and seeking legal protection for basic rights as provident fund, security of tenure, and a certain freedom of socialisation. As pointed out above, one of the immediate moves involved was the use of the term ‘outsider’. In the case study discussed above, it can be noted that as the narrative progressed it was related once again to a tactical and flexible use of ‘outside’ and ‘inside’ as well as ‘insiders’ who could be made into ‘outsiders’ like Mohd. Idris. It is not easy to understand how leaders of workers like Somyendra Nath Tagore and Benoy Chaterjee became ‘outsiders’ while J.C. Gupta, the MLA, was not seen as one when he presided over the settlement. Here, the most important point is perhaps the subtle shift of function – the ability to criminalise a political situation in the name of a problem category called the ‘outsider’ and the obscurant total justification of state violence on workers. As Suchetana Chattopadhyay has noted that by criminalising early socialist politics and projecting it as a potent tool of anti-colonial action, the colonial state ironically facilitated
what it had tried to curb and destroy. A new category of opponents, aware of the mechanisms of colonial surveillance, emerged because of this exercise. The demands of the workers of Bata Factory and the response of the MLA and the factory management demonstrates that colonial apparatus not only created a system to supress the cultural life of factory workers but also provoked and developed cultural alienation. It highlighted a social gap between the elites and the working classes. As a result, the political elite assimilated colonial mentality and looked down upon the ‘ordinary’, migrant peasant-worker, who did not comprehend the efficiency and discipline of urban life and its cultural and economic demands. Colonial reports on workers’ unrest repeated their blaming of Congress and Communist activists for the creation of labour unrest. Especially, after the Government of India Act 1935, a fierce combination of worker grievances, anticolonial sentiment as well as incapability of dominant political parties to serve the interest of workers, drove a series of labour strikes and riots and resulted in major worker’s mobilisations like the Bata Shoe factory and beyond. Most significantly, when this case study is seen from a postcolonial perspective it has an added implication. On the one hand, it shows the use of section 144 ostensibly against demands by a section that nationalism saw as its supporters. On the other hand, it also displayed a standard tool for dealing with workers’ politics when organised by groups like communists.

**Conclusion**

The Kot Bhai Than Singh and the Bata Shoe Factory case study highlight two major points. One, these case studies point out that the local circumstances on the ground that led to the tactical use of section 144 by the colonial administration to curb potential of ‘mob’ violence

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by banning public protest were diverse in nature and secondly, these case studies further
demonstrate that the dichotomy of ‘insider(s)’ and ‘outsider(s)’ was often difficult to sustain
by the colonial administration. Political configurations invigorated by community interests
or class interests found it convenient to resist prohibition to protest or assemble in groups by
adopting methods of civil disobedience. Limiting political claims of various groups by
legitimizing ‘insiders’ problematized colonial state’s legitimacy because in the course of
these instances, owing to broader anticolonial mobilization, the inside did not remain
separate from the outside. Infact, as this chapter has demonstrated, there was no outside
anymore. Colonial tactic of marking problem categories and deeming them outside or the
outsider(s) began to be challenged in the late colonial period.
Chapter three
Controlling ‘Mobs’ and Maintaining Public Order in Congress-ruled Provinces, 1930-1947

Dealing with ‘unlawful assemblies’ to maintain ‘public order’ was one of the primary concerns of the colonial government. The use of ‘Section 144 Criminal Procedure Code’ (CrPC) was central in this regard. Prohibiting mass gathering, banning both public places for public access and individuals from addressing the public were often the basis of invocation of this law. All this was done in the name of maintaining ‘public peace and tranquillity’. The analysis of the case studies presented in the previous chapter suggests that public order laws like section 144 CrPC remained an unchallenged part of administrative tactics even after the passing of the 1935 Government of India Act and the subsequent elections that took place in 1937, when more powers were granted to Indians, allowing them for the first time to form majority governments at the provincial level. The continuing and widespread use of colonial tactics of law and order control by the administrations in which Indian nationalists held at least a position of responsibility if not power raises important questions about how the history of public order legislation would continue after decolonization. Decolonization here simply refers to the moment when the colonial state expanded native participation in the structures of governance and decision making. This was particularly relevant in those parts of India where the future governing party of Independent India – the All India National Congress- could form provincial administrations. Analysing how public order legislation was used in UP and Bombay under the guardianship of provincial premiers like Govind Ballabh Pant or B.G. Kher - who also became the long-time Chief Ministers of the same respective provinces after 1947- allows us to make a larger argument about the decolonization of legal regimes in India in the long run.
This chapter will argue that public order laws in India were a manifestation of a sovereign intention and that they remained an unchanging product of the regulatory will of the government in Congress led Provinces like Bombay and UP even after the passing of the government of India Act 1935. The chapter will further demonstrate the functioning of the everyday state in maintaining law and order, but most importantly, it will point out the nexus between the creation of notions of ‘public order’ and the discourse that normalised the use of force to deal with them. Such a discourse normalised the use of force by relying on the creation of problem categories, a tactic that continued from early colonial administration as discussed in earlier chapters through the example of the Thuggs, the Ghadrites, the Akali satyagrahis or the agitating workers. In addition to the identification of a ‘problem category’, this chapter will exhibit that a binary of outsider-insider was crucial to such an administrative strategy. Legal theorist Thanos Zartaloudis while engaging with Giorgio Agamben’s scholarship on sovereignty lays out certain paradigms of law. According to Zartaloudis, law performs various functions addressing four paradigms namely the ‘reference paradigm’, the ‘salvation paradigm’, the ‘universalism paradigm’ and, the ‘consensus paradigm’. The case studies will discuss these paradigms towards the end of this chapter and will evaluate their impact on the way the law and order situation would unfold in the case studies. In the following sections, the narrative of the case studies would point out that the provincial Congress ministries in the late colonial period operated on a tightly knit relationship between sovereignty, law, and control, at least when it was in government from 1937-1939.

284 These paradigms are offered to us by critical Legal Scholar Thanos Zartaloudis. See the preface to Zartaloudis, Thanos. *Giorgio Agamben: Power, Law and the Uses of Criticism*, Oxon, New York: Routledge, 2010, pages 327.
The chapter will discuss case studies from Congress-led provinces. One case study from the Bombay province and two instances from the towns of Lucknow and Kanpur in the United Provinces. The case study from Bombay will discuss a major incident of ‘communal violence’ which started over a game of cards and resulted in the arrest of around 2500 people. It enabled the Bombay administration and the provincial Bombay government to invoke the category of the ‘hooligan’ or badmash and deploy it as an administrative currency when it came to deal with ‘offenders’ in the city. In the U.P case studies, the first is the Cawnpore strikes of 1936-38 where Cawnpore was brought to a halt by serious conflict between workers and the mill management. The second example to study the use of section 144 is the Shia-Sunni conflict in Lucknow in 1937-38 often referred to as Madh-e-Sahaba controversy or the tabarra agitations. Both conflicts took place in two major towns of UP and lasted for much of the 1930s. However, it was only after 1935 that they emerged as a major law and order problem for the UP government. The cities of Cawnpore and Lucknow remained a significant ‘law and order’ concern for the colonial administration of the then United Provinces Congress government. Though both labour and Shia-Sunni issues continued until 1947 and beyond, the period under review represents the height of tension and governmental crisis in UP. Both the cases to be examined in this chapter demonstrate how majority congress governments in late colonial period, in this case in Bombay and the United Provinces, despite having autonomous Congress-led governments resorted to time-tested colonial tactics to contain civil disturbances or riots. Through the case studies, the chapter will also illustrate how Congress as an organisation did not move away from the colonial understanding of an alienation between state and society.

The instances of urban conflict to be discussed in these three case studies fit in with a wider debate about the relationship between the urban growth and the nature of late colonial
politics. Scholars like Raj Narayan Chandravarkar, Nandini Gooptu, Prashant Kidambi, Subho Basu, Chitra Joshi etc., have elaborated on issues concerning rural to urban migration, survival of the migrant workers through the sustenance of rural networks while working or struggling for jobs in the city, the emergence of a class of ‘troublemakers’ from amongst the informal non-regularised workers, contingent workers’ mobilizations within the factory and outside or, communal confrontations between communities because of the direction of politics at a broader (national) level. But my concern in this thesis is different. I am more interested in utilising the existing scholarship such as mentioned above and focus more on the questions of law or legal regime, which earlier had only been dealt in passing.

**Responsibility without Power: Congress and the Government of India Act 1935**

The two major constitutional moments of the late colonial period - the Government of India Act 1919 followed by the Government of India Act 1935- one Act followed by another, both aimed at widening the ambit of colonial model of democracy in India. However, the 1935 Act faced resistance and rejection, most vociferously from the Congress. Much had to do with the internal ideological shifts within the congress party as well as outside it, that later left no choice for the Congress but to engage with the new Act. A little context of this situation is worthy here.

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By 1934, the Civil Disobedience movement had fizzled out and Gandhi had temporarily withdrawn from political events. Disagreements among various groups within Congress emerged mainly on the issues of council entry and office acceptance. Notably, disagreements had also erupted earlier when Gandhi withdrew from the Non-cooperation movement. In May 1934, the left wing of the Congress formed the Congress Socialist Party within the Congress. It was an elusive arrangement of radical nationalism influenced by Marxian scientific socialism. The year 1935 was a watershed moment in the late colonial history of India. The Government of India Act 1935 was passed in August 1935, but came into force only after the provincial elections that took place in February 1937. With the passing of the Government of India Act 1935, the late colonial state introduced controlled and limited decolonization broadening membership of the provincial assemblies by including more Indian representatives and enabled them to form majorities and to form provincial governments. Federalism was a core project of the original Act but was never introduced. The new Act also increased franchise from seven million to thirty-five million, aimed at widening the ambit of colonial democracy. Congress opposed the Act because it argued for real power at the central government level, which the colonial state was unwilling to consider. Though the Act of 1935 was an important moment in the long process of decolonization in India, it achieved two goals simultaneously. It offered increased yet limited participation to Indians in provincial decision making and, it also succeeded in distracting Indian National movement from demands of an immediate dominion status. In this regard, the Lucknow Congress of 1936 was significant in some ways. Senior Congress leaders like Rajendra Prasad and Vallabhai Patel accepted the fact, with Gandhi’s approval, that contesting elections and subsequently accepting office, under the Government of India 1935, was a better option rather than direct confrontation. Next year, a meeting of the All India Congress Committee was held in Bombay in the month of August where a decision to contest
elections was made. However, the meeting resolved that decision regarding acceptance of office should be deferred until the conclusion of elections. Andrew Muldoon in *Empire, Politics and the Creation of the 1935 India Act* has observed that “the vision many in British governing circles had of the Indian Act raises important questions about the ways in which the Raj worked.”

Other scholars have noted that the supporters of the 1935 Act within the British Parliament believed that the plans for federation and provincial autonomy in India would effectively counter the growing nationalist movement by potentially creating a split in the All India National Congress and would therefore succeed in distracting Indians from a united nationalist movement.

Furthermore, according to the new Government of India Act 1935, the British central Government retained the right to suspend provincial governments and the provincial governors retained important reserve powers. Even though the Indians believed that they deserved dominion status and powers to run responsible governments on its own like Australia and Canada at that time. The British Parliament disagreed with such claims. Moreover, Egypt was granted a dominion status and India was not despite the enormous contributions of India (both economic and manpower) to Britain’s war efforts. Many in India were puzzled as to what Egypt had done to secure dominion status or what India had not.

The years 1936-1937 intensified contestation and political articulation in all sections of Indian society. The Congress party had announced that it would reject the new Act. while also undergoing reconstitution of its provincial Committees. Both Jawaharlal Nehru and Sardar Vallabhbhai Patel were interested in the top job of the Congress supremo and sought...

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to react to the new reality in ways that furthered this aim. A columnist in *The Leader* in December 1936 raised questions regarding Congress’ dilemma as follows:

In December, the National Congress will decide its attitude towards the new constitution. Will it enter India’s new Parliament? If it does, will it enter to bring the legislative machine to a deadlock, wrecking and obstructing? Or will it accept office if in a majority, and work for the constitution?²⁹²

This column also pointed out that the Muslim League and other organisations would accept the new Act in a somewhat positive spirit, resulting in leaving Congress party no choice but to engage with it as well. Because the Hindu leaders would try to recover the ground they had lost among other sections of the society, a recovery for the Congress was now possible only through the new constitution that the 1935 Act had brought. The column concluded in a resilient tone, “But - whatever happens - the new constitution is going to be worked despite Indian discontent with it.”²⁹³

Political organisations other than Congress highlighted its dilemma and did not hold back from challenging the indecisive Congress on the issue of the new constitution and the upcoming elections. Increasing pressure and sharp political attacks from the Muslim League, National Liberal Association and National Agriculturists and the Communists forced the Congress to make its position clear on the new constitution, which the party had planned to postpone until after the elections.²⁹⁴ As the nominations concluded and Nehru was re-elected

²⁹³ Ibid.
as the President of the Indian National Congress\(^{295}\), Congress clarified its policy. One objection to the new constitution, was that it was imposed from without. But a far greater objection was the understanding that it did not give true self-government. In the end the matter had to be approached pragmatically:

If the new constitution can be utilised in any measure to take us nearer to that supreme goal, there would be no point in refusing to put it to such a use simply because it has been imposed by an outside authority.\(^{296}\)

The Congress party further explained that even though the party’s manifesto started with the presumption that the new legislatures could not yield substantial benefits, it could not be ignored that many of the reforms that the manifesto promised it would try to achieve were very much within the competence of the new legislatures. The Congress party emphasised that the activities of the upcoming legislatures could be to expand the development of administrative measures essential to freedom and to help with work on the ground - outside the assembly and the Councils - among the masses.

There was also pressure from others. Given the increasing pressure from trade union sentiment and peasant leaders, Congress leaders like M.N. Roy made appeals to ‘radicals’ to understand and find a pragmatic and country-specific solution to the problem of ‘socialism’.\(^{297}\) Meanwhile, Mohammad Ali Jinnah of the Muslim League made it clear that

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they would positively contest upcoming provincial elections with an open mind.\textsuperscript{298} Chimanlal Setalvad of the Indian Liberal Association and Liberal Federation, Cowasji Jehangir also urged the masses to make the new constitution work by extracting the greatest possible good out of it. He suggested that Congress should not outright reject the new constitution but rather should try to engage with it. In case if the Governor would interfere with the provincial government unreasonably, the new government could always resign.

In UP, there were other voices appearing in newspapers supporting the new constitution. For example, a letter to editor in \textit{The Leader} by one A.A. Zakaullah (probably a Muslim League supporter) stated:

\begin{quote}
The advantages of the new constitution are so self evident and obvious for the Indian states and the disadvantages of the refusal to federate so patent that it is difficult to understand why the states should not have been able to make up their minds in this regard long, long ago and should still be hesitating.\textsuperscript{299}
\end{quote}

When Jawaharlal Nehru toured UP regarding canvassing both for an extension of his role as the Congress President and for the possible candidates for the upcoming elections in February 1937. An important issue in the election would be the Congress’s openly socialist rhetoric arguing for the abolition of the zamindari system under Nehru’s leadership. The right wing of the Congress was not very happy with this new departure as zamindars constituted an important part of the provincial party. Meanwhile peasants and mill and factory workers were growing closer to communist organizations. Many zamindars

\textsuperscript{298} See, “Muslim League’s Aim, Mr. Jinnah Explains, We Stand By the Interests of the Country,” \textit{Amrita Bazar Patrika}, Wednesday, December 16, 1936.

\textsuperscript{299} See, Letter to Editor, by A.A. Zakaullah, \textit{The Leader}, December 2, 1936, Page 7.
threatened by the socialist posture of Congress moved towards the National Agriculturist party of the Nawab of Chhatari, which represented the interests of the landlord class.

To attract peasantry towards Congress in UP, Nehru took a strong position against the zamindari system. By December 1936, when the ‘Indian Congress Agrarian Committee’s Report’ came out, it proposed “drastic curtailment of the zamindars’ rights, writing off the arrears of rent and the wiping out of debts and alteration of the law of inheritance.” The Committee also urged the imposition of death duties on zamindari property above a certain level and suggested that the rent should be a charge on surplus produce after deducting the cost of production and maintenance expenses of peasants. Broadly, the report aimed to appeal to a broader mass of people by acknowledging their problems and by taking a very comprehensive view of the various defects of the agrarian system. Many letters to the editor during this period warned how the drastic curtailment of zamindari rights could have adverse effects. The recommendations of the Congress report were more an attempt to emphasise the movement’s commitment to the cause of the peasantry and the working classes, rather than practical policy suggestions.

To deliver on any of these promises, Congress would have to enter the upcoming elections whole-heartedly and win government power at the provincial level. On December 6, 1936, the United Provinces Congress Committee elected its new office bearers. Acharya Narendra Deo became the new President of the U.P Congress, replacing Rafi Ahmed Kidwai. Jawaharlal Nehru, Rafi Ahmed Kidwai, Babu Purshottam Das Tandon, and G.B. Pant became the vice presidents. Pandit Keshodev Malviya, Sampurnanand, Pandit Mohanlal

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300 See, “Indian Congress Committee’s Report,” The Leader, December 5, 1936, Page 19.
Gautam, and Damodar Swaroop Seth became the secretaries. Numerous members were elected, too. It is apparent from the composition of this new committee that the left wing of the Congress was now dominant in the United Provinces Congress Committee.

When Congress entered the electoral arena with full commitment it stated that its sole purpose to play along with the new colonial constitution was to ‘wreck’ it. Congress already announced in advance that it would observe a hartal on April 1st 1937, the first day of the working of the new constitution after the provincial elections, although there were many who were sceptical about such policies.

Popular leaders like Madan Mohan Malviya along with other senior leaders had started campaigning for the Congress party by December 15th, 1936. However, anxiety over who to stand and contestations within Congress was appearing in various constituencies, for instance in Pilibhit. At times, there were more than one popular Congress leaders in a constituency, with local candidates nervous about having to make space for a party stalwart from elsewhere. Nominations for the new provincial government had to be completed by December 20th, 1936. The election to the new provincial assembly and Councils in the United Provinces under the new constitution (1935 Government of India Act) had to be concluded by the end of February.

After nominations were finalised and candidates declared, elections took place amongst
great enthusiasm. For the United Provinces assembly of 228 seats, Congress won 133, the
Muslim League 26, the National Agriculturists 22, and independents 47. For the United
Provinces Legislative Council of 60 seats, Congress won 8, the Muslim League none, the
National Agriculturists 4, Independents 40 and Europeans 8. The major outcome of the
election was that Congress emerged as the strongest party in the United Provinces. The
Muslim League won less than half of the seats reserved for Muslims, only 26 out of 64. For
the Bombay province assembly of 175 seats, Indian National Congress contested on 110
seats and won 88, Independents won 32, Muslim League 20, Independent Labour Party 12,
Europeans, Anglo-Indians and Indian Christians won 8 and the rest were won by Non-
Brahmans, Democratic Swarajya Party and the Peasants party. Both the provinces saw the
emergence of Congress as the dominant party in the legislature.

The election process as well as the results released a new potential for Congress in the United
Provinces. On one hand the Congress Party humiliated the Muslim League by securing a
majority of the Muslim reserved seats, and emerged as the dominant political voice in UP.
On the other hand, even after Nehru’s declaration of socialist policies in the election
manifesto, it failed to secure broad and formidable backing amongst the small-holders of the
United Provinces because peasants were not usually enfranchised unless they owned some
land, given the substantial success of the National Agriculturists. Also, there started to
appear general discontent amongst socialists and Muslims over whether they should be part
of the Congress’s nationalist movement or not.

The situation in Bombay, the other Congress-led provincial government under review in this
chapter was subtly different. After the conclusion of 1937 provincial elections, Congress
emerged as the winner with majority in the legislative assembly as well as the legislative council. However, it declined to form the provincial government. As a result, the Governor invited Sir Dhanjishah Cooper, an independent member, to form an interim ministry. The interim ministry could not last in the face of an elected majority. In the end, Congress ministry under B.G. Kher formed the Bombay government. Kher was a lawyer and the owner of a major law firm in Bombay. He served as the premier of Bombay Province in 1937 and continued until October 1939, when Congress ministries resigned. Later he resumed the premiership of the province from March 1946. A *Times of India* report published in March 2007 discussed declassified MI5 documents referring to the ‘Anglophilia’ of the London High Commissioner Krishna Menon. The same set of MI5 documents, however, described B.G. Kher, the successor of Menon as “a good choice” as the London High Commissioner because he was “discovered by a European solicitor” earlier in the late colonial period. He was acceptable to the MI5 because he was perceived to regard British or Anglo-Saxon “ways” as superior to others. Notably, such a British perception of Kher had sustained itself through the tumultuous post 1935 late (anti)colonial politics in India. Another Congress legislator K.M. Munshi, who served as the Law Minister in the 1937 Kher led Congress in Bombay province would also be appreciated by the colonial officials in the Bombay case study for his colonial-like response to the law and order situation in Bombay at a time when Congress was at the helm of provincial government in the province.

**Case Study I**

304 See, the following web link to the news item published on the *The times of India* website date March 3, 2007, 12:56 AM, IST.  
From a game of cards to a full-blown riot: Instant communalism, ‘hooligans’ and the passing amendment to the City of Bombay Police Act in 1938.

Like the Punjab, Bombay province experienced a period of heightened communal tensions in the 1930s. Political conflict between the Congress and the Muslim League was particularly intense, and with it debates about how to police and safeguard law and order. This case study will discuss communal confrontation between Hindus and Muslims in the city of Bombay, when men belonging to these communities had a disagreement during a game of cards. A seemingly insignificant and ordinary incident became a larger communal event leading to rioting at different localities in the city leaving quite a few dead and many more injured. The consequent police action led to the arrest of hundreds of people. A broader survey of Governor’s fortnightly reports from Bombay did offer a diverse set of case studies ranging from occasional communal conflicts and labour riots but the case study being focused on in this section offers a distinctive understanding of maintaining law and order in the Bombay province. In addition to the communal riot that initiated the entire episode necessitating the invocation of a preventive law like section 144 followed by curfew, this case study demonstrates the significance of ‘problem categories’ in the dynamics of utilising law and order issues for larger administrative benefits. Swift decision of instituting extraordinary measures by the Bombay administration was followed by instituting a new provision for the expulsion of ‘problem categories’ by the Police Minister. Later, the judicial proceedings of people arrested for the violation of such preventive orders add to our understanding how ‘extraordinary’ times made the judiciary act while conducting trials for the violation of such orders. This case study highlights that the colonial mind-set got normalised amongst the Indian Ministers too, eventually.
Bombay city and the casual immigrant worker

The city of Bombay was significant to the British empire because of its location, as a port, and remained one of the central points of its trade. In 1872, a formal census recorded the total population of the city to 644,405. These figures kept growing with the influx of migrants from various parts of the country, seeking work at ports and various mills and factories the city had. By the end of 1930s, the total population of the city had increased to 1,489,883 as enumerated in 1941. In the beginning of the twentieth century Bombay as a province enjoyed special status in the colonial government.

The city had many informal labourers because of the diverse industry such as ports, cotton mills, railways etc., that offered employment opportunities not only to the educated but the distressed peasant from outside Bombay who did not benefit as much from cultivation anymore and sought a steady income. The migration of labourers into the city of Bombay commenced in the 1880s and accelerated in the early twentieth century. Scholars have noted that the supply of labourers was reinforced by migration from Northern parts of India and majority of them were employed on a casual basis or in the small manufacturing units evading regulations of the Factory Act. Prashant Kidambi has argued that the crises in the form of large scale urban riots that the city went through in the 1890s initiated changes.

305 Royal Commission on Indian Labour: Memorandum from the Government of Bombay (Bombay, 1929) page 3.
306 See, Claude Markovits, Claude. ‘Bombay as a Business Centre in the Colonial Period: A Comparison with Calcutta’ in Sujata Patel and Alice Thorner (eds), Bombay: Metaphor for Modern India (Bombay, 1996).
309 Prashant Kidambi has noted that there were two large scale riots in the 1880s. The first, a sectarian conflict between Hindus and Muslims, took place on 11 August 1893 resulting in the death of 80 people. It led to fifteen
between the state and society in Bombay. As a result, the colonial state hereon adopted a more interventionist approach to urban governance.\textsuperscript{310} The Royal Commission on Indian Labour published its report in 1929 and noted that the unruly labourer in Bombay was primarily an “agriculturist” and not a disciplined one. To transform the “agriculturist” into an “effective” worker, the Commission recommended significant changes to the existing regime of production through new technologies of labour management. Valerian DeSousa has argued that the Commission’s recommendations along with other studies and reports on labour, became the basis of a series of labour laws that were enacted between 1911 and 1936 and saw the arrival of the “modern” labour subject.\textsuperscript{311} An interventionist approach led to a fractious relationship between the colonial state and the society but it also led to the growth of a civil society comprising of association of educated Indians who came to believe in a new ethic of social service that aimed to improve and uplift the urban poor.\textsuperscript{312} The large scale urban riots that took place in the 1890s also led to the “rapid growth of an unregulated proletarian ‘secondary economy’ and public culture centred on street”\textsuperscript{313} which came to be seen as a threat to the public order of the city that had already undergone massive industrial urbanisation and labour migration. This case study tends to agree with Prashant Kidambi’s framework where he alerts us to see colonial state neither as omnipotent nor too fragile. Kidambi has highlighted that focusing merely on the processes of mutual accommodation and reciprocity between the colonial state and the society downplays the conflictual logic


\textsuperscript{311} DeSousa, Valerian. “Modernizing the Colonial Labour Subject in India”, \textit{Comparative Literature and Culture} Vol.12, Issue 2, Article 3, (2010).


that governed the relationship between the colonial police and the urban working classes. Everyday relations between the colonial police and the poor were marked by persistent antagonism and friction. Kidambi has highlighted the significance of the new police Act which was introduced in 1902. The 1902 Police Act, according to Kidambi, “rendered the police an increasingly obtrusive presence in the social relations of the street and the urban neighbourhood.”

He noted:

[T]he wide powers granted to the police by the new act, in a context where its very limitations precluded a comprehensive and consistent enforcement of the law, served especially to amplify the scale and dimensions of the potential friction between the police and the urban poor in the years leading up to the First World War.

### An army of leisurely rioters

The growing army of casual workers in the city of Bombay, who, given the nature of their employment, would resort to playing cards in parks in their past time while waiting for new job opportunities. On April 17, 1938, it was a usual evening in Bombay when men gathered in local places to play a game of cards and smoke beedis and cigarettes and sip chai, when trouble broke out. A group comprising both Hindus and Muslims were playing a game of cards at Northbrook Gardens around 6 p.m., fell out and had an argument. Soon groups of men, who most probably were casual workers, which were later referred to as ‘hooligans’ in the newspaper reports, belonging to both the communities formed in the garden which was generally frequented by members of both communities. The altercation escalated and these

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315 Ibid.
groups confronted each other resulting in a fight with sticks and stones. Soon after, a police force from Mahar Bavdi police station under Deputy Inspector Sohrabji rushed to the spot and stopped the fight. One person was injured in the fight and given the volatile situation a police picket was posted on the spot. The city appeared to be quiet for almost two hours after the incidence, but a rumour spread in the meantime that a serious communal fight had taken place in Northbrook Gardens. By 9 p.m. the tension had spread to localities like Bapu Khote Street, Null Bazar, Erskine Road, Chowki Mohalla, Duncan Road and Bhendy Bazar. Most of the clashes took place in Duncan Road where the police had to open fire thrice. But the first serious fight between the two groups took place at the junction at Bapu Khote Street and Erskine Road, near Null Bazar. By 9.15 p.m., a tramcar passing Golpitha towards Pydhonie was stopped by a mob at the junction of Bapu Khote Street and Erskine Street. The mob pelted stones at the tram, injured the driver, and then attacked passengers, three of whom were stabbed with knives. There was a general scene of violence in various localities and, stones and soda-water bottles were hurled at each other from all directions by the mob. The police did arrive on the spot after some time and dispersed the crowd. The initial altercation over the game of cards, which had now become a full-blown riot spread to other localities, especially to Null Bazar and Duncan Road areas. Many people returning home from work that day were taken unawares and were assaulted with knives in lanes and street corners. Within half an hour of the commencement of the disturbance, over 25 people were taken to the J.J. Hospital. The assaults continued until 10 p.m. that night resulting in more people taken to J.J. Hospital.

The police by now had the sense that situation was getting out of control which prompted them to post pickets at all strategic points in Mahar Bavdi area. The situation did not get any calmer as even after 10 p.m. groups of Hindus and Muslims began to collect at Duncan Road.
When these groups were throwing stones, brickbats and soda-water bottles at each other near Mutton Street, the police officer on the spot Inspector Lyon had to fire two shots to disperse the crowd. Shortly after, two other groups started fighting in a similar situation. When Inspector Sohrabji with some constables rushed to the spot and asked the crowd to disperse. The mob turned abusive towards him and shouted, ‘beat the police’. Sensing the situation spinning out of control, Inspector Sohrabji fired three shots to disperse the mob. Five people were killed that night including a faqir sitting near the Round Temple at Golpitha, and a fitter in the G.I.P. Railway, who was going along Sir Ibrahim Rahimtoola Road. Both were stabbed by a group of ‘hooligans’. The fitter Ganpat died on the spot while his friend was taken to the J.J. Hospital. Bhimbai, a film actress, who was going in a bus at Null Bazar was also stabbed in her left arm and was also taken to J.J. Hospital for treatment. Many stray assaults took place that night resulting in altogether fifty persons being taken to J.J. Hospital, of whom thirty had to be admitted. Eleven persons who sustained knife injuries in the Null Bazar area were taken to the G.T. Hospital where six of them were admitted.

The traffic was stopped in the city following assaults in various localities. The Minister for Law and Order (Home Minister) K.M. Munshi had to cut short his visit to the south of the Bombay Presidency after being informed about the situation. He immediately visited the affected areas and held a conference at the police headquarters. As a result, the Chief Presidency Magistrate Mr. Kandalawala, issued orders under section 144 CrPC prohibiting any gatherings of five or more people and the carrying of lethal weapons. At the same time, he issued a curfew order, which was to operate between 10 p.m. and 6 a.m. for fourteen days beginning from 18th April 1938, the next day.316

316 The Times of India, Monday, April 18, 1938, Page 10, “Card games leads to serious rioting in Bombay, Prompt measures taken by authorities, Disorganisation of Tram & Bus in affected areas.”
In the meantime, the police began strenuous efforts to round up the ‘Mawalis\textsuperscript{317}, as they were referred to in the newspaper reports, in the disturbed area of Null Bazar. Next day, the newspapers reported, “the greatest safeguard of all has been the arrest of over 400 men on suspicion of being what can be described as badmashes.” These ‘Badsmashes’ according to the report were “carefully hand-picked by police during the day” and were to be detained for fourteen days at least. Many of them had knives, sticks or lethal weapons in their possession. Orders were served on several vernacular newspapers like Khifat-e-Roaznamah, Insaf, Prabhat, Al-Hilal and Sadaqat, warning them against publishing anything that might inflame the ‘religious susceptibilities’ of the people. However, they were permitted to publish news and articles with the previous approval of the Director of Information.\textsuperscript{318} It is unclear as to why the vernacular press had to be regulated if it were the ‘hooligans’ who were responsible for the mayhem. We know that the political climate in Bombay was particularly confrontational between the Congress party and the Muslim League after the introduction of provincial politics with the passing of the Government of India Act 1935.

**Instituting curfew and prosecuting the ‘hooligans’**

The government enforced the curfew orders very strictly arresting anybody who even unknowingly or innocently violated it. 10 p.m. was the time everybody had to be indoors or else police would arrest. The Commissioner of Police, Mr. W.R.G. Smith, visited all the

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\textsuperscript{317} *Mawali* in the late colonial period would be used to refer to the lowest class of male street ruffians. However, the word has originated from the Arabic word ‘Mawali’ which meant non-Arab Muslims. Originally, Mawali referred to persons captured and later converted to Islam mostly from Byzantine regions during Islamic expansions. Basically, someone who was not equal to Arab tribes.

\textsuperscript{318} *The Times of India*, Tuesday, April 19, 1938, Page 11, “Peace in Bombay riot areas, Curfew strictly enforced, Over 400 Hooligans arrested, Vernacular newspapers warned.”


disturbed localities and discussed with the police officials the arrangements for the enforcement of the orders meant for the ‘preservation of peace’. By 19th April 1938, headlines were reporting that the ‘situation is (was) under control’. The total number of deaths resulting from the disturbances was eight and the injured were 89. The total number of arrests made by the police from the commencement of the disturbances on Sunday night up to 9.pm on Tuesday was approximately 740, most of them were the ones rounded up by the police as ‘bad characters’ while the rest were the ones arrested for disobeying curfew orders. Over 500 persons who were arrested either on the suspicion of being involved in the disturbances or for the breach of Chief Presidency Magistrate’s orders or the Police commissioners ban were placed before Mr. Oscar H. Brown and Mr. W.K. Mankar on Monday and Tuesday immediately. Some of the arrested were allowed bail while others were sent to jail. Many people who were arrested for defiance of orders of curfew were people who got late to reach their home from work. The Magistrates were very strict while dealing with these cases. In the case of a man who was arrested at Abdul Rahman Street by the Commissioner of Police himself, his lawyer pointed out that ‘there was a misunderstanding’ that led to the arrest of his client. The Magistrate replied sternly that the “[t]he misunderstanding is all on your side.” The judge, in a way, made it clear that the administrative decisions are final. Any assessment of a situation by the administration during a disturbance to public order was reasonable. Later, when a batch of four persons wanted to make a speech about their innocence, which the magistrate cut short and responded that “[y]our speeches are all very well in normal times. But these are abnormal times and your place is everywhere.” The reference to time and space by the magistrate is significant here. In instances of public disturbances, when the administration had instituted a curfew, the permission to be present in a public place was restrictive. A person could not be in public place after the curfew had begun which meant the public time would be before 10 PM only.
Therefore, a peculiar fracture between the public and private emerged. However, after 10 P.M., one will only have a private time, within the four walls of their home, with their family.

Another case emerged when the railway police arrested a woman under the Arms Act who arrived from Delhi with a swordstick. Her lawyer pleaded with the judge that she bought the stick at Mathura station because she fancied it and was ignorant of the law. The magistrate observed that he was allowing bail in this case just because she was a woman, otherwise she would have been sternly punished. Similarly, numerous such cases were tried. Some accused were remanded to jail custody for a fortnight while others were allowed a bail of Rs. 500 with a surety of Rs. 200 to be deposited. Some managed to get a bail on lesser amounts. \(^{319}\) In total some 2500 persons were arrested for defying one or the other order. \(^{320}\) The sheer scale of the arrests during this riot, made by the Bombay police, was ostentatious. Recurrence of the disturbances once again began after a comparative peace and quiet of three days following rumours, which unfortunately, could not be traced in the archive. These renewed clashes did not last but resulted in the death of one person and seven injured. \(^{321}\) Meanwhile, on April 28\(^{th}\) 1938, there were talks scheduled between Jinnah and Gandhi on the communal question related to representation, participation and other political contestations in India.

**Legislating new extraordinary law for the sake of public peace: the desperation of the provincial government in Bombay**

\(^{319}\) *The Times of India*, Tuesday, April 19, 1938, Page 12, “Bombay riot situation under control, Effect or prompt measures, Strict enforcement of curfew order.”

\(^{320}\) IOR/L/PJ/5/156, Governor’s Situation report for May 1938.

\(^{321}\) *The Times of India*, Friday, April 22, 1938, Page 11, “Renewed trouble in Bombay, Cases of stabbing & Assault, One killed and seven hurt, Sequel to mischievous rumours.”
What is significant about this incidence of riot, which is one among many such instances in the Bombay Presidency, is that it had an administrative dimension involved too. In a confidential letter\textsuperscript{322}, Roger Lumley, the Governor of Bombay to Lord Linlithgow, Viceroy and Governor-General of India appreciated the measures taken under the guidance of the Congress Ministry as prompt and effective and expressed that Munshi, the Home minister deserved considerable credit for his efforts to deal with those riots. He also revealed that even though the Commissioner of Police as well as the Secretary to the Home Department and the Governor himself were away, Munshi, shouldered the entire responsibility for containing the situation himself and “set the Police arrangements for the situation working at once,” and “instituted a curfew order”, “promulgated section 144 and forbade the carrying of weapons.” This act on the part of Munshi anticipates decolonization, where a Congress Minister acted by himself to use a notorious preventive legislation from the colonial era. This points out that the colonial state was considerably successful in normalizing its administrative strategy of calculated repression to Indian Ministers. Munshi, a Congress minister, acted exactly like a British administrator, by making large scale arrests, instituting a curfew and branded unruly mob as ‘hooligans’.

The Governor, as the letter reveals, did not believe that the outbreak of riot could be put down solely to the card-playing incident. He believed that the main cause was the growing tension amongst the ‘Mahomedans’, due to the propaganda of the Muslim League that Mahomedans were in danger of being swamped by Congress. Meanwhile several Muslim newspapers that published some ‘very inflammatory’ articles were to be prosecuted once the situation would stabilise. Roger Lumley asserted that he had no doubt that ‘this tension

\textsuperscript{322} Report No. 15, Confidential, Yellapur, 1\textsuperscript{st} May 1938, (Page 88 of the File L/PJ/5/156) from Roger Lumley, Governor of Bombay to Lord Linlithgow, Viceroy and Governor-General of India. This is part of the Governor’s situation report dated 1\textsuperscript{st} May 1938.
amongst Mahomedans was the main cause of the trouble’ and some Ministers had expressed that ‘it was a deliberate plan by the Muslim League in order to discredit the Congress Government, which is(was) anyways perceived as a weak government’.

This letter also provides us with evidence that Munshi, the Home Minister of Bombay Government had much more than controlling the immediate situation on his mind. As Lumley wrote, “Munshi has taken the opportunity provided by this situation”323 to introduce in Assembly a Bill intended to restore to the Police the power deporting undesirable elements from Bombay City. Most pertinently, powers of such nature existed in the Bombay Police Act just a couple of years earlier but was rendered inoperative by a decision of the Bombay High Court. Lumley was quite hopeful that the Bill would not be unduly whittled down because he thought that the power to deport ‘bad characters’ who congregated in Bombay was an “important weapon for helping to preserve the peace of the City.”324

Thus, the fractious relationship between colonial state and society, as argued by Prashant Kidambi, was rejuvenated in the aftermath of these riots. The case study demonstrates that the Bombay Police Act 1902, which was repealed, was now to be replaced by a similar stringent law. It appears that the late colonial state, even after provincial governments were setup, sought to replenish its power by resorting to legislate extraordinary laws which would aim to create the image of a strong government. However, in the process it also exposed administrative vulnerabilities, now not only of the colonial administrators but Congress Ministers too.

323 Report No. 15, Confidential, Yellapur, 1st May 1938, (Page 88 of the File L/PJ/5/156) from Roger Lumley, Governor of Bombay to Lord Linlithgow, Viceroy and Governor-General of India. This is part of the Governor’s situation report dated 1st May 1938.
324 Ibid.
Another confidential letter\textsuperscript{325} from J.M. Sladen, Secretary to the Government of Bombay to J.A. Thorne, Secretary to the Government of India, Home Department, reveals to us that the Bill was introduced on April 25\textsuperscript{th} and was passed in its third reading on April 29\textsuperscript{th} and even the usual seven days of time required in the process was also waived off in this matter. The recent riots in Bombay ‘emphasised the urgency of the necessity’ for a law empowering police to outlaw/deport individuals from the city in order to restore peace and. The object of this Bill, Sladen’s letter points out, was to ‘rearm’ the Commissioner of Police. He clarified further that the older section was dealing with such issues quite irregularly. This law now had safeguards and among others right to appeal to the Government against Commissioner’s order. The person aggrieved by the order of the Commissioner was given the right to appeal to the Provincial Government. The Government was already anxious to get ‘the Bill to amend the City of Bombay Police Act, 1902’ passed as soon as possible given the elections to the District Local Boards in the Northern and Central Divisions were due to take place very soon. Some sections of the opposition were not ready to accept the ‘urgency’ of the Bill and therefore the second reading of the Bill took about ten days and the Bill was passed only on the second instant. On April 25\textsuperscript{th}, during the discussion of this Bill the Speaker for making an objectionable remark against the Chair expelled one of the opposition members S.L. Karandikar for a day because he was unwilling to withdraw that remark. Unfortunately, we know nothing of this remark. Sladen’s letter brings to our attention that many perceived the Bill as ‘reactionary’, giving excessive powers to the executive. However, the Government managed to pass this Bill ‘almost unchanged’ by the House. In fact, Dr. Ambedkar proposed adding a section, which gave Police wider powers for expelling bad characters during a period of emergency such as riots. The question of declaration of an event as an ‘emergency’

\textsuperscript{325} IOR/L/PJ/5/156, Confidential letter No. S.D.-1261, Home Department (Special) Bombay, 1\textsuperscript{st}/4\textsuperscript{th} May 1938, from J.M. Sladen, Secretary to the Government of Bombay, to J.A. Thorne, Secretary to the Government of India, Home Department. Part of the Governor’s situation report dated 17\textsuperscript{th} May 1938.
calling upon such powers to be used, as incorporated in Dr. Ambedkar’s amendment arose only in case of riots or factional fights, when people had to be deported. The Government accepted the section with certain amendments. But the Governor in his report of 17th May was quite pleased with what he described as Munshi “getting away” with ‘something’ that no one realised. It appears what J.M. Sladen was delighted about in his communication with J.A. Thorne, was the success of the colonial government in making the Congress Ministers see the ‘mob’ as always unruly and unpredictable, and accepting the administrative logic that such threats to public order could only invite stricter, extraordinary laws. The Congress ministers, it would seem, had graduated in colonial administrative tactics now.

Meanwhile, carrying on with the commendation for the Government and particularly Munshi’s handling of the riot situation, the non-Muslim League press continued to shower praise on him. They emphasized that Munshi had ensured that the City of Bombay Police Amendment Bill was aimed at ‘hooligans’ and ‘pucca mawalis’, and thus it was an attempt to prevent violent outbreaks only. Because similar laws in the past had been used against thieves, ‘dadas’, ‘mawalis’, pimps and smugglers but in no case, it had been applicable to any political worker or a worker in an economic cause. Earlier, preventive sections of law were used ordinarily when riots occurred. But in 1935, as one of the newspaper reports, although there were no riots, 282 persons were dealt with using such powers. In 1936, when riots occurred between October and December, 577 persons were dealt with this law and in May 1937, when there were riots 540 persons were dealt with using such laws by the police.326 It is pertinent to mention, that though the law was promulgated by the District

326 The Times of India, Tuesday, April 26, 1938, “Move to grant powers, Bill introduced in Bombay Assembly, Attempt to prevent violent outbreaks, Expulsion of member from House: Refusal to withdraw remark.”
Presidency Magistrate, carried out by various police officers of different ranks, cases in hundreds tried by judges, yet Munshi remained the centre of colonial praise.

Ambedkar in his speech during the discussion on the amendment bill called the amendment ‘thoroughly justified’ even though others like Jamnadas M. Mehta representing Railway Labour, felt that the Bill was ‘objectionable’ and moved an amendment aiming to restrict the life of the measures till the last session of the Legislative Assembly. Jamnadas M. Mehta argued that a measure of such character, hurriedly drafted and rushed through, could not stay on the Statute book permanently. He further contended that the Bill once placed permanently on the statute book would affect the 1,200,000 people in Bombay city and therefore, violated the fundamental right of citizens, which were guaranteed by one of the resolutions passed at the Karachi session of the Congress. R.R. Bhole representing Poona moved another amendment to Mehta’s amendment seeking to limit the life of the Bill to two years. I.I. Chundrigar representing Ahmedabad, adding to Bhole’s amendment remarked that the right to determine whether the person was mawali or not was left solely in the hands of the Commissioner of Police which could turn out to be quite autocratic. Both Mehta’s and Bhole’s amendment was rejected by 53 to 27 votes and 54 to 28 votes respectively.

What the legislative assembly debates highlight is that extraordinary laws or exceptional laws were perfectly acceptable to both the British and the Congress if it did not deal with imminent politics but focused on known problem categories. Similar strategy was adopted by the colonial administration in the nineteenth and the early twentieth century too as demonstrated by the earlier chapter. In the subsequent chapters of this thesis, the issue of

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327 *The Times of India*, April 28, 1938, Page 13, “Powers for police from Bombay, Dr. Ambedkar’s amendment to bill accepted, Government agreed to safeguards, Steps to preserve peace: Checking communal disturbances.”
problem categories will emerge frequently, highlighting the continuous relation between problem categories and the invocation of extraordinary legislation. Gramsci had argued that the ruling class could manipulate the value system and mores of a society, so that their view becomes the world view. 328 Terry Eagleton proposes that Gramsci’s use of the word hegemony refers to a governing power which wins consent to its rule from those it subjugates. 329 However, Ranajit Guha from the subaltern school of thought proposed hegemony to be a kind of persuasion. As per Guha’s subaltern thesis, the Indian case experienced dominance without hegemony. In colonial India, political coercion outweighed persuasive cultural hegemony in civil society and this carried over to the post-independence period as well. The postcolonial elite had distinctly different interests that the subaltern groups in the new nation. Guha argues this split in the politics of the state meant that the Indian bourgeoisie, unlike the European bourgeoisie, failed to establish Gramscian cultural hegemony over Indian subalterns. The inability of the colonial state and the independent nation to assimilate civil society into political society led the state to exercise dominance without hegemonic consent. 330 However, we notice that the Congress ministries even before independence had internalized the colonial administrative strategy of dominance. The colonial state had to often resort to dominance because it partially failed to establish hegemony in the face of a persistent anticolonial mobilization. We notice, that the provincial government in Bombay in 1938, could not persuade the inhabitants of the city to remain peaceful, now that they had their own ministry. Munshi’s first administrative reflex was to resort to the time-tested formula of the colonial state, depending on extraordinary laws and problem categories.

We know that Bombay was a major industrial centre in colonial India with numerous mills and factories in the city. It was also an important port for sea trade. It was a city which was full of migrant labour from United Provinces, Bengal, Hyderabad and the nearby Konkani region. These workers both in factories and outside served in formal as well as informal labour sector. The new law that the provincial government aimed to legislate to control ‘hooligans’ appears to be aimed at them. Also, the unrestricted powers granted to a Commissioner to declare person(s) as hooligan or badmash highlights the autocratic tendencies present in the late colonial administration, now provincially led by Indians, when it came to maintaining ‘public peace and tranquillity’. The Bombay Amendment Bill got passed despite reasonable objections and the Governor was right in saying that Munshi had got away with something nobody realised. The Al-Hilal and the Khilafat, two Urdu daily newspapers of Bombay which were publishing objectionable matter for some time and tended to excite communal hatred, were finally booked. As the Governors situation report for 2nd June 1938, highlights that action against them for exciting communal hatred had been under consideration for quite some time. The outbreak of communal rioting in Bombay and the consequent emergency orders issued against these papers under section 144 CrPC had caused the postponement of further action. However, Al-Hilal and Khilafat, the Urdu daily newspapers of Bombay moved an application to the High Court challenging the validity of the orders served on them under section 144 CrPC by the Chief Presidency Magistrate. The case was heard by the High Court and judgement was given on 30th September where the court found that there was insufficient material to justify the order and that the Magistrate’s delegation of discretion to another officer to censor the newspaper articles was ‘illegal’ and directed that the orders be set aside. It is noteworthy that like in the case of Punjab case study discussed above pre-emptive legislation was open to scrutiny from the courts after the event.
Being one of the most important trade cities for the empire, the Government of Bombay enjoyed direct access to the Secretary of State, on all matters except financial. Therefore, it could appeal against virtually any order of the Government of India. Furthermore, it possessed a special cadre of the Indian Civil Service and had full autonomy in making provincial appointments. Overall, the political framework after the passing of the Government of India Act 1919 and later 1935, delegated powers to provincial governments. It meant that the provincial governments enjoyed a considerable measure of autonomy from the central Government of India. Decolonization here, is understood as the moment when the colonizer was willing to allow limited decision-making participation of the colonised in the everyday government. They had substantial financial and law-enforcement powers. In a way, the ends of the colonial government would now be pursued by the provincial governments, lead by Indians, autonomously in their own ways.

The above discussed case study highlights some important issues. The case study offers a very clear illustration of several watermarks in the career of laws like section 144, curfew etc. containing emergency provisions in the late colonial period. It is evident that these laws were being invoked regarding specific cases of disorder but furthered other aims like dealing with vernacular media and marking certain individuals/classes as hooligans as well as replenishing the ambit of coercion entailed by foregone administrative reforms. However, administrative tactics of invoking extraordinary legislation, like in the case of Al-Hilal and Khilafat newspapers in Bombay, sometimes did get rescinded in the court of law highlighting the fact that such orders were not always logical. Also, the creation of new provisions when similar laws were already available only points out the colonial hunger for

extraordinary laws. Moreover, it also shows that such law-making always had certain calculations in mind mostly ambitions to bypass basic rule of law or to cover up administrative vulnerabilities. Notably, sometimes Congress politicians like Munshi themselves took charge of the situation to actively argue in favour of such extraordinary provisions.

Munshi’s course of action was like earlier British colonial administrators, whose perspective stemmed from an urge to act against crime as acting against degeneration. The creation of a yet another extraordinary law by Munshi to tackle ‘hooligans’ was both judicial and extrajudicial at the same time. It was commanded by the principle of universal justice but was simultaneously informed by a sense of constant surveillance of hooligans i.e. mostly the casual immigrant workers. The scope of the new extraordinary law on the inhabitants of Bombay was based on an understanding of surveillance as observing, controlling and intervening in the details of social life. Bombay like the Punjab case study, involved problem categories within city/society as constant and universal. A defined problem category of the hooligan had the undefined potential of universality. New extraordinary law was established by the congress minister to be applied to his own constituency. We can notice that in the name of problem category there was ample room for universal surveillance. The resultant prosecution under the new law would lead to either banishment from the city limits or confinement in jail. Furthermore, large scale riots, like in the case of Bombay, did not just establish a staging for collective action, but constituted it. Riots in such a context should not be seen merely as weakening or abolition of administrative power but rather a theatre of power. Large scale collective action like riots managed to reconstitute power, often in the hands of administrators who would expand the ambit of law much beyond the actual rioters. Colonial administrative power while responding to disturbances did not just repress riots, it
continued it, in the form of penal practices, and in general everyday activities of law. Both the British colonial and the late colonial congress provincial government demonstrate an agreement that the criminal/ badmash/ hooligan/ mawali, etc., was the enemy of ‘public order’. The delinquent figure of the ‘hooligan’ could be like that of a vagabond in a Foucauldian vein, where a vagabond’s status as a criminal emerges from lack of work and lack of firm identity in the community. The non-belonging of the mawali or the vagabond, it can be argued, was based on the lack of his exact location in the immediate society that put him outside the established system of responsibility accrued by defined crimes. Above all, a hooligan was proposed to be one who stood outside society, threatening it with both individualised as well as collective unauthorized violence. Such a wholesale definition of the enemy of public peace, based on the social contract itself, aimed to define the ‘mawali/hooligan’ as the enemy of the state and society and, led to evasion of thinking about crime more in terms of very particular transgressions, which was the original stated intention of criminal procedure code. The colonial state had already institutionalised and professionalized criminal justice system by the 1930s, however, we notice that in the late colonial period like in Bombay, resorting to extraordinary laws citing threat to public peace by specific problem categories opened way for a sociological takeover of persons or groups by the extraordinary laws enabling possibility of heterogeneous outcomes.

Case study II

The Mazdur Sabha and the Mill Strikes in Kanpur 1936-1938
The Bombay case study discussed above and the Calcutta case study discussed in the earlier chapter highlight late colonial tendency to criminalise the agitating worker or the ‘urban poor’. There was substantial conflict between the right wing and the left wing of the Congress over the socialist rhetoric adopted by the latter. Such an approach destabilised Congress’ hold over mass organisation, leading to open disenchantment of the Congress Socialist Party. As mentioned above, the Congress Socialist Party was an organisation floated in May 1934 within the larger Congress party by its left-wing members. The possible connection between the emergency of a socialist wing can be deduced from what Shahid Amin and Gyan Pandey have written on the nature of peasant mobilization in the United Provinces (then Oudh/Awadh) in the early twentieth century and have amply demonstrated its militant character. Shahid Amin has highlighted how the local peasant commodity-production often depended on questions such as timing of harvest, the timing of the need for money and the dates when rents would fall due. Misalignment between any of these factors would lead to peasant distress at the hands of moneylenders and zamindars. Gyan Pandey has demonstrated how peasant mobilization against the Oudh Rent Bill during the 1920-1922, created a peasant political consciousness which was at times inspired by the figure of Gandhi and at other times motivated by very local factors. But what remains most notable in Gyan Pandey’s analysis is the emergence of Kisan Sabha as the most potent organization wielding substantial influence on the UP peasantry. It was also during the period when peasant unrest in the rural United Provinces was prominent that Jawaharlal Nehru ‘discovered’ the ‘peasant’. Pandey had noted that despite the ‘localism’ and ‘isolationism’ of the peasant movement in Awadh, “it needed an ally among other anti-imperialist forces in the country. But the chief candidate for this role, the party of the

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growing urban and rural petty bourgeoisie, had turned its back on the peasant movement long before that time.”\(^{334}\) When the Kisan Sabha signalled that it was ready to learn organized politics from the Congress, the Congress ignored, if not declined, Kisan Sabha’s offer of association because Congress an organization was pledged to Gandhian idea of non-violence. The Kisan Sabha, on the other hand, had revolt as its guiding principle which did not rule out the use of violence, if required. It is evident that Congress did not want to alienate the political interest of peasantry and the working class in joining the anticolonial efforts. At the same time, it did not want to steer away from its commitment to the principle of Gandhian non-violence. Hence, Congress Socialist Party could deal with the drawbacks of following the principle of non-violence which was often ignored by the working classes and the peasantry.

On the other hand, in the upcoming elections after the passing of the Government of India Act 1935, the right wing of the Congress was to become dominant in the Legislative Assembly, the left wing remained in control of much of the provincial congress organisation.\(^{335}\) While the left wing was active in organising labour and the peasant movement and mobilised workers, the right wing that came to dominate the new UP government saw strikes as disorder. The use of section 144 Criminal Procedure Code to prohibit strikes and pickets by the United Provinces Congress government posed uncomfortable questions about the nationalists’ attitude towards the colonial legal system and the purpose of provincial government.

**Industrial towns, casual workers and the ‘problem’ of the ‘urban poor’**


\(^{335}\)Gooptu, Nandini. *Politics of the Urban Poor in Early Twentieth Century India*, CUP, 2001, pages 400-401
Kanpur, when compared to other bigger towns of UP, was of more recent origin. It was put on the urban map of north India after the arrival of British forces in 1778. The commercial activities of the East India Company had developed in the city under the protective presence of army. It was one of the important centres during the 1857 uprisings. After the events of 1857, the British took control and reconstructed the town. It led to the stationing of British Indian Army in the town and establishment of an expanded cantonment, a new civil line and district offices. Development of commerce and manufacturing industries led to the phenomenal growth of the town. It became one of the only important manufacturing centre in the province, largely serving military demands and supplying local weavers in upper India for cotton twist and yarn. In 1860s, the arrival of railways opened the town to trade with its hinterland and became a distribution point for cotton yarn, and textiles, piece goods, grain, sugar, oil, oilseeds, animal hides and skins. In addition to British Merchants who owned most of the mills and factories, indigenous bankers later also became small-scale industrial entrepreneurs in the first quarter of the twentieth century. As a result, rural labourers, mostly peasants, gradually began to migrate to Kanpur.

With time, growth in trade resulted in increasing demand for workforce, Kanpur became one of the main sites of workers’ agitation in the United Provinces. It was an industrial city with numerous Cotton Mills and factories, and during the interwar period became a key centre of rural to urban migration. Three new mills were set up immediately after the Great War. During the slump, there was little impact on steady growth in Kanpur. Especially during 1930-37, the total number of millworkers in the city increased by 31.2 %. The 1930s was a decade of “political change and urbanisation, steady development of industrial activity and

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changes of social lives of Indian workers and peasants." 337 Migrant labourers often resided in slums or Bastis that were neighbourhoods of the city largely organised around caste and religious community, a situation that was reinforced as a wider array of peasant communities made their way to the city. 338

The new and urban setup threw numerous challenges to the migrant peasant labourer. A major repercussion of the changing demography and occupational relations in the towns had significant impact on the urban politics. Employed as a casual worker, the peasant labourer had inadequate workplace patronage relations. Also, with no permanent and dignified place to stay, the peasant labourers aggravated concerns about maintaining or enforcing social control over them. To deal with this challenge, “a range of measures was introduced to discipline them, to regulate their living and working habits, and to control their cultural expressions, public conduct and political behaviour.” 339 Nandini Gooptu has argued that “material deprivation” of the ‘urban poor’ went hand in hand with more “overt forms of discipline and social subordination.” 340

In the 1930s, the workers in Kanpur city had a powerful political presence and had the capability to threaten the industrial life of the entire province. Labour unrest became a significant element of late colonial politics in the United Provinces. The Indian Penal Code, the Criminal Procedure Code and a range of special coercive regulations were introduced during periods of intensified political disturbances. The coercive instruments were often used to deal with the menace of tumult associated with crowds of onlookers, supporters and

340 Ibid.
participants at demonstrations, pickets and processions were sought to be governed and regulated by an elaborate set of rules. Such rules were supplemented by an armed police force, who frequently resorted to baton charges or firing. Nanidini Gooptu has argued that “the aim of such intervention in collective activities was to impose restrictions and discipline on the ‘turbulent’ and ‘lawless element’”. Particularly, the year 1936 turned out to be an exciting one. In addition to the upcoming Congress elections to choose new party office bearers in UP, the provincial elections according to the newly created Government of India Act 1935 in the following February were set to take place. Pertinently, this was also a major year for strikes. In the interwar years, the deprivation and dispossession of the poor had worsened in the towns of the United Provinces. The urban poor were further marginalised due to the decisive shifts in local town improvement measures and taxation policies which ‘impinged more directly and extensively on the economic activities and housing and settlement patterns of poor.’ The ‘urban poor’ faced a housing crisis because of the new local policies. As a result, “urban living became more conflictual and unstable, and all experienced greater vulnerability and insecurity.” This sharpened class differences in Kanpur resulting in bitter opposition and often hostility among the ‘urban poor’ not only against urban authorities but against the propertied classes too. Moreover, the urban poor became aware of the unrepresentative nature of their existence, their exclusion from power and rights, in the political system.

Henceforth, the ‘urban poor’ of which the industrial labour were a substantial number, became militant. Force and coercion involving police action, often began to be employed by the local administration which contributed in an important way to the extensive political

unrest and violence in urban north India in the interwar period. As a result, the image of the poor as “lawless, disorderly, violent and criminal,” got amplified and “provided justification for their control and discipline through policing.” It is in such a context that the Kanpur case study begins.

**Workers’ strikes at the Cooper Allen Factory**

From November 1936, workers at the Cooper Allen Factory in Kanpur went on strike over a supposed cut in salaries and the issue of recognising the *Mazdoor Sabha* as the union for factories in Kanpur. On December 5, more than 3000 workers who were supposed to resume work failed to turn up at the factory, though a day earlier, 15 representatives of the workers had met for two hours with M.L. Carnegie, the managing director of the company to discuss the issues. It was reported that the management decided to agree to the demands of the representatives of the workers provided the workers returned to work at eight, the next morning. The workers did not turn up for their work the next morning and the management put up a notice stating that no further negotiations would take place until the workers would return. A notice then appeared at the factory gates (though without any signature of the management) that the 150 workers employed by the factory for clearing hides as strike breakers would not be dismissed to allow the return of old workers. Also, the management maintained that no cut in the wages had taken place. Meanwhile the striking workers resorted to picketing to keep others away from attending the factory. Meetings were

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regularly held at the Parade Grounds Kanpur, which had become the main venue of labour meetings during the strike.346

By December 8th, the twenty-second day of the strike at the Cooper Allen factory, the situation got from bad to worse. Picketing by strikers continued at the gates. The unwillingness of the management to take back the 150 workers who had been dismissed during strike was the main point of contention. The striking workers saw this as victimisation, as a way to penalise striking workers.347 At this point an important link emerged between factional infighting within the Congress party preparing for the upcoming elections and the labour issue. A resolution of 14 votes to 9, was passed on December 12, at a meeting of the members of Kanpur Municipal Board sympathizing with the workers, with B.P. Srivastava as the Chairman. The resolution requested the board to allot rupees 10,000 for the immediate relief of the striking workers who had been out of work for three weeks by that time.348 Also, a committee consisting of five persons with B.P. Srivastava as Chairman was appointed to bring about a settlement of the issue.349

Meanwhile, a notice was served to some of the striking workers by Rai Bahadur Vikramjit Singh, the legal adviser of the Company. The legal notice demanded that some of the strikers who were living in the factory quarters in the Allengunj Settlement vacate their quarters. Police was deployed at the gates with some of the European employees escorting workers into the factory with the help of police. Some of the European employees also visited the Allengunj settlement under a police escort to persuade workers to return to work, but failed.

The factory management tried to employ hundreds of strike-breakers, but later had to drop them, as they did not have the required skills. In the meetings at the Parade grounds that followed, the workers condemned the interference by the police in an industrial dispute.\(^{350}\)

When the situation could not come to a settlement by the end of December, “fearing a breach of peace,” the district magistrate Cawnpore (Kanpur) extended an existing order under section 144, CrPC, to the whole city of Cawnpore for a period of two months. According to newspaper reports, the order stated specifically noted that in the processions of strikers, the Red Flag was displayed and “slogans advocating revolution were shouted to the disturbance of ordinary trade and terror of peaceful citizens.”\(^{351}\) It is pertinent to mention here that the elections for the next Congress president as well as the nominations for the upcoming legislative assembly and legislative council elections in the United Provinces were taking place at the same time. Political parties, in general, were busy in their election affairs and paid little or no attention to the situation in Kanpur. We also notice that the order under section 144 CrPC was part of a calculated tactic by the local administration in Kanpur keeping in mind that the upcoming elections would conclude by the end of February 1937, when the promulgation would expire.

The factory workers on strike decided to organise a huge procession moving “through all the important thoroughfares of the city” which was regarded by the authorities with great apprehension. In the wake of the procession, several “important persons” connected with the strike were arrested for violating the terms of Section 144 CrPC. Both, Hindu and Muslim shops observed \textit{hartal} on December 20\textsuperscript{th}, 1936, in sympathy with the strikers. According to

one report, “Fierce attacks against the attitude of the proprietors of the Cooper Allen Factory as well as the police were made in a public meeting held at Shraddhanand Park on December 20\textsuperscript{th}. Various leaders from the Congress party attended the public meeting.”

This is the first time an active Congress involvement in the campaign was recorded.

Though they coincided with the upcoming election activity, nothing substantial resulted from the various meetings and the United Provinces remained busy with elections for the new legislative assembly and legislative council. When the elections concluded in February 1937, the results reshaped the political forces in the United Provinces. The major outcome was that Congress emerged as the strongest party in the United Provinces. Once the newly formed Congress government started functioning with Govind Ballabh Pant, as the Prime Minister (or, the Premier), the issue of factory strikes once again preoccupied matters of governance in Kanpur. The strikes, to which little attention was paid during the elections, now resurfaced creating a difficult situation for the newly formed Congress government. Letters to the editor were questioning the strategy of the Congress party to attain swaraj under the new constitution and sought clarifications about its plans to ‘wreck the constitution,’ as congress had declared, before and during the elections. Meanwhile, workers were getting restless over the growing virtual mistri raj in the Kanpur mills, who would serve as low level supervisors often supporting factory management rather than ordinary workers and did not bother much about regulations.

Several other mills joined in the strike, and later almost all major factories became involved in demanding the recognition of the Mazdur Sabha as a legitimate representative of the

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workers in Kanpur factories. By the end of July, the representatives of the Sabha had offered to mediate between the strikers and the mill management but the offer was declined. Representatives Harihar Nath Shastri (a Congressman) and Sant Singh Yusuf (a Communist) met the District Magistrate in this connection and the District Magistrate promised to arrange a meeting between the management and the Mazdur Sabha representatives.

The banning order under section 144 CrPC that had been imposed on the whole city and expired in February, continued to be in place in the factory areas since then. It was reported that some clerks working at the mills had been attacked and assaulted by the striking mill workers. A meeting was then held, where Harihar Nath Shastri who was the representative of the Mazdur Sabha, was congratulated on being nominated to the UP Legislative Council. It was further resolved to request the government – now under Congress control - “to lift the ban under section 144 CrPC in order to enable the workers to organise.” The incorporation of Mazdur Sabha representative into the UP Legislative council by the Congress highlights the subtle yet important link that Congress had with this agitation, and as a result maintained successful control of the situation hereafter.

**Provincial Government and labour mobilization in UP**

An editorial in the daily *The Leader*, highlighted the publication of a bulletin by the government called ‘Industrial Disputes in India, 1926-36.’ According to the editorial the bulletin published statistics that suggested that the number of disputes as well as loss of working days dropped since 1928. The editorial mentioned that the improvement was

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attributed to the appointment of the Royal Commission for Labour in India. This Commission had had considerable influence in turning the thought of more moderate labour leaders towards constructive activity and cooperation. Labour Commission was further credited with having enabled labour leaders to realise that the strike weapon was unlikely to achieve more for the worker in comparison to the atmosphere of peace in industry and cooperation with official efforts to improve working conditions. The main point of the editorial was that such an approach could help undermine the influence of the extremist section of leaders. When employers aimed to crush the trade union movement, the editorial emphasised, it failed and resulted in the moderate section of the labour leaders losing their influence with the workers and an increase in the influence of extremist leaders. Hence, it intensified conflict rather than resolving it. The editorial argued that legitimate grievances should be paid attention to by the factory managements. However, it criticised the labour leaders who resorted to strikes “on every conceivable occasion.” It argued that the condition of workers even when there was no strike was of “great poverty and distress” and the recurrent strikes made it worse. Most the all-India strikes organised during the year 1934, according to the editorial, resulted in failure. This was the reason why the influence of extremist labour leaders declined in 1935. The editorial demanded that the workers “who are so easily misled” should be more careful in future in the choice of their leaders, which would save them “misery and suffering” and, further hoped that the employers would “adopt a more progressive attitude towards labour so that extremist leaders may not be able to acquire influence.”

It is not difficult to interpret this editorial within the context of the factory strikes in Kanpur, which were continuing since November 1936 and remained unresolved. But now that

356 See, editorial titled “Workers and Employers,” The Leader, Sunday, August 1, 1937, Page 8.
Harihar Nath Shastri of the Mazdur Sabha was nominated for the U.P. Legislative Council, we notice that the situation began to change. Neither the assurances of the UP premier to look into the workers’ issues sympathetically nor the appeals made by labour leaders to the workers of Kanpur factories had any effect to calm the unrest. Instead, labour politics in Kanpur re-energised itself with the formation of a 60-member committee to run the strike and to demand the withdrawal of section 144 from various areas of Kanpur.

The labour situation in Kanpur began to give ‘considerable anxiety’ to the colonial administration. In addition to the Copper Allen Mill and the Muir Mill, the Swadeshi Cotton Mills had joined the strike too. The secretary of the Mazdur Sabha Yusuf, wrote a letter to the Premier of UP requesting him to constitute an enquiry committee to look into the details of the wage-cut issue. Since labour was seething with unrest, the local administration noticed that more factories were about to join the strike. Yusuf was arrested on the evening of August 3, 1937, to prevent the labour unrest from spreading. The district authorities became more vigilant and began drafting more police from outside the district to cope with the “emergency.”

The deteriorating labour situation in Kanpur required immediate attention from the Congress government. The UP Minister of Industries, it was reported, was expected to mediate between the strikers and the mill-owners. The “mill magnates” also held a meeting in the face of increasing crisis and decided to form an association called “The Northern India Mill-owners Association” with representatives of the concerned factories on it. The Minister for Industries, K.N. Katju, finally arrived in Kanpur on August 5th to make efforts to bring a

settlement to the strikes. Labour leaders Harihar Nath Shastri, Suraj Prasad Avasthi and Rajaram Sastri, met the minister to convey their terms for an agreement. They included the recognition of the *Mazdur Sabha* by the mill-owners, the appointment of a committee to examine the question of wage-cutting and other grievances, non-victimisation of labourers for having participated in the strikes or normal trade union activities. Mill representatives Sir Tracy Gavin Jones, Lala Padmapat Singhania, H.A. Wilkinson, C.W. Tosh, R. Menzies, and T.I. Smith, also met the minister. The mill-owners expressed their inability to recognise the *Mazdur Sabha*, because according to them, it was “not sufficiently representative nor influential enough to impose its decision on labourers.” The Minister failed to resolve the matter and returned to Lucknow.

The *Mazdur Sabha* demanded that government set up an enquiry committee of five members, with three government nominees, and a representative each from the mill owners and the workers, in order to look into the grievance of the workers. Most importantly, it demanded the re-instatement of workers dismissed during strikes and the withdrawal of section 144 CrPC and the ban on holding meetings and processions. The mill owners did not agree with these demands as stated earlier. Congress leader Balakrishna Sharma who was accompanying the minister on this trip, deplored the attitude of the mill-owners in not recognising the *Mazdur Sabha* and expressed that “if the situation was allowed to develop, a first-class labour crisis was anticipated in Cawnpore(Kanpur).” The crisis moved further away from any resolution, when 4000 workers from the Kanpur Textile Mills downed their tools and joined the strike. These workers held their meeting at the Muslim high school grounds as it was outside the purview of section 144 CrPC. They also passed a resolution

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359 See, “Cawnpore Labour Crisis, Minister’s Failure to Bring About Settlement,” *The Leader*, Tuesday, August 10, 1937.

criticising the policy of the Government of the United Provinces and expressing resentment at the arrest of their “comrade” Yusuf.\textsuperscript{361} For the first time, the workers began to blame the UP government for their problems. The onus of responsibility in the entire crisis began to shift from factory management to the Congress ministry of the UP government.

By August 6, almost 20,000 workers from seven Mills had joined the strike. The Superintendent of Police G.A. Pearce, Assistant Superintendent D.P. Kohli and Joint Magistrate W.G. Raw were confronted and pelted with stones by workers near the Elgin Mills. The factory premises were then under a banning order under section 144 CrPC. The police in order to disperse the crowd resorted to a \textit{lathi} charge and later armed police was drafted in. A similar situation was witnessed at the Kanpur Cotton Mills. Six thousand workers of Juggilal Kamlapat Mills were on strike and while attacking the factory damaged buildings and equipment. As a result, police opened fire, wounding a worker with a pistol shot. Around 40 workers were arrested at the Juggilal Kamlapat Mills.

M.L. Owen, the District Magistrate was taking stock of the situation. The Premier, Govind Ballabh Pant was in touch with authorities as well as congressmen in Kanpur. Acharya Narendra Deo, president of the U.P. Provincial Congress Committee was sent to Kanpur by the premier to intervene in the situation and to survey all possible solutions.\textsuperscript{362} As more workers from other factories were joining the strike, it was reported that around 4,000 workers of the New Victoria Cotton Mills went back to work. Local Congress leaders met the managing committee of the Employers’ Association of Northern India with proposals


forwarded by the *Mazdur Sabha*. After meeting with local Congress leaders, the Employers’ association passed the following resolution:

> Provided all mills in Cawnpore (Kanpur) resume normal work by Monday morning, Aug 9, the *Mazdur Sabha* will be recognised by the Employers’ Association of Northern India. It, however, has to be understood that recognition will only be accorded provided no further strikes take place without reasonable and due notice of such intention being given to the association.363

The minister for industries Katju, having earlier failed to resolve the crisis had returned to Lucknow. However, he had made a rather ambiguous speech in the capital addressing the workers’ situation. On one hand he recognised workers’ hardship, yet, also criticised them for going on a strike. On the other hand, he praised the mill owners of Kanpur and recognised their services to the growth of industry in the United Provinces. The mill owners, according to Katju, were “generous and sensible persons” and could not have tyrannised workers.364 Katju’s statement reflects Congress motivation in the post 1935 scenario to maintain support from urban liberal bourgeoisie without overtly undermining the protest of the working classes.

The number of workers who joined the strike had swollen to between 25,000- 30, 000 by August according to news reports. Lathi charges for demonstrations and violation of section 144 continued. The Commissioner for Allahabad, Panna Lall, who was touring the division, cancelled the tour midway and proceeded to Kanpur. The Governor’s situation report

recorded that the *Mazdoor Sabha* were anxious to bring about a general strike. Therefore, the District Magistrate had to issue new orders under section 144 to prevent the assemblage of persons at street corners and at the Mill gates.\(^{365}\) With the rise in labour unrest in Kanpur, the government issued a government Communiqué stating that it had decided to appoint a committee of enquiry to investigate and report on the relations between employers’ and labour and the conditions of labour in Kanpur. It appealed to strikers to maintain calm and argued that it could not carry out the enquiry in an atmosphere of unrest and disturbance. However, it also added that it was the duty of the government “to maintain order and tranquillity” and hoped that the district magistrate would act in “a spirit of impartiality” and would ensure that the police acted with restraint while discharging their duties.\(^{366}\)

It is pertinent to point out that the government communiqué is a perfect example of a calculated and forceful governmental decision. It assured investigation into the condition of workers yet asserted the necessity of “public order and tranquillity.” It also recognised that the use of force was inevitable and that it was the duty of the governmental apparatus to deal with it. The question remained as to how to judge, at what point exactly a police *lathi* charge and firing became “excess.” Given that around 30,000 workers were now on strike one expected that such a massive “rowdy” crowd could only be dispersed or controlled by *lathi* charge and firing.

The strikes in Kanpur were making other sections of Congress sympathetic to workers and the socialists anxious about the situation. The executive committee of the all-India Congress

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\(^{365}\) Governors Fortnightly Report, United Provinces, 5th August 1937.

Socialist party passed a resolution in Patna criticising the United Provinces Government. The resolution stated, “the Congress Ministry in U.P. should not have permitted the promulgation of section 144, lathi charges, shooting of strikers and imprisonment of the leaders.” It demanded the U.P. government to “withdraw all repressive orders” and release “imprisoned workers”. The most important part of the resolution was the reference to Congress’ election manifesto where it had emphasised “the rights of workers, a living wage, and freedom of speech, association and strike.”367 The Congress Socialist Party in Allahabad368 and Benares369 passed similar resolutions too.

By August as the situation did not change, the premier, Govind Ballabh Pant, personally headed to Kanpur to resolve the situation. Pant’s intervention resulted in the Employers’ Association accepting the Mazdur Sabha’s eighteen demands with some modifications. According to the communiqué of the Labour Welfare Officer of Kanpur, the Premier, in addition to congratulating mill-owners and labour leaders also gave “chief credit” to the district collector and magistrate L. Owen who had promulgated banning orders under section 144. The premier stated, according to the communiqué that the magistrate had worked consistently for the “cause of industrial peace” and showed “uncommon tact, patience, and ability in dealing with an extremely difficult situation.” The Superintendent of Police, G.A Pearce, was also appreciated for his role in handling the crisis.370

But the crisis was not actually averted yet. The strike situation took a complicated turn when the workers rejected the settlement between the Employers’ Association and the Mazdur

Sabha. They continued the strike and therefore, failed the principle clauses of the agreement that workers should resume work. The strikers objected to the agreement on the ground that the Mazdur Sabha did not consult the strike committee that was recently formed. Also, they demanded immediate increase in wages irrespective of the findings of the enquiry committee that the government promised to set up. A new group of workers called the “blue shirts” sprung up. It comprised of workers who discredited the agreement and called on the workers to hold on to their position. Both members of the Mazdur Sabha and Congressmen made frantic efforts and exhorted workers to resume work. On the workers’ side, one of the issues that came to light was that when workers turned up for work at some factories as originally agreed, the work could not be started. Many workers took it as an evidence for the dilly-dallying attitude of the factory management, though it was reported later that the real issue was that the factories had not generated enough steam to start the equipment until that afternoon.

It was reported later that due to the massive number of workers at the parade ground (30,000-40,000) when the agreement was announced, proper information could not be communicated to the workers due to the unavailability of a loudspeaker. According to newspaper reports, nearly 40,000 workers were still out of work in Kanpur by August 10, 1937. Editorialists appeared exhorting government to reform the executive of the Mazdur Sabha to ensure the confidence of workers in it.

373 See, the entire Page 11 of The Leader, Thursday, August 12, 1937, especially, “Mazdoor Sabha Repudiated, Mammoth Meeting of Strikers.”
**Congress and the argument for the use of force on agitating workers**

In the face of the strike continuing the Employers’s Association stated publicly that they felt cheated in the entire process of recognising the *Mazdur Sabha*. They reiterated that the Employers’ Association would have recognised the *Mazdur Sabha* earlier, had it been satisfied that the *sabha* members possessed the “powers and experience necessary for the efficient handling and administration of such a body.”

We notice that the disagreements within the various sections of Kanpur labour put the status and ability of the *Mazdur Sabha* in question. Another possibility could be that disgruntled non-congress socialist elements, primarily communists, perceived the settlement as a Congress triumph and expansion of its labour base.

The Congress party had contested elections vehemently opposing the new constitution stating that the 1935 Act did not give maximum freedom to India. Yet, at the same time when in power, the Congress ministry actively curtailed workers’ right and freedom to organise and protest. An attitude of government was reflected in Jawaharlal Nehru, the then National President of the Congress party as well as member of the U.P. Provincial Congress Committee. When Nehru was asked as to how the firing at striking workers by police in Kanpur was consistent with the Congress policy of non-violence, Nehru replied:

> Open violence should only be met by force. Open violence, if it is allowed, will dislocate the whole business, trade and normal life of a city, and so it should be.

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supressed by any Government. Whether it is violence by Labourites, or a communal
riot, which is only looting innocent people, it must be met by effective measures.\textsuperscript{376}

He further stated that a Congress Minister would instruct the police not to take peremptory
action and to judge each case on its merits before resorting to violence, although, he also
conceded that the thought of violence as something “vulgar.” However, elucidating
Congress’ philosophy of non-violence. Nehru clarified that it depended upon “the
psychological approach to the subject.” He differentiated non-violence as creed propagated
by Gandhi, as different to non-violence as a policy. He added:

\begin{quote}
Idealists Utopia where there was no war, no violence, no strife, did not exist. All the
same violence seldom solved a problem. \textsuperscript{377}
\end{quote}

Nehru’s statement sheds a light on the policy of Congress as government. It followed a
pragmatic path, which though would claim to be influenced by Gandhi, was hardly different
to the earlier colonial policy of suppressing labour unrest or protest. Labour unrest in Kanpur
Mills provides us a window into the politics of public order laws and demonstrates that
different issues influenced politics locally. It also demonstrates how governments and
political organisations, specifically the UP Congress, the spearhead of the nationalist and
anti-colonial mobilisation, responded to various issues that fell in the category of ‘public
disorder’ or required ‘emergency’ measures to deal with them.

\textsuperscript{376} See, “Violence Must Be Suppressed, Congress President on Firing on Cawnpore Workers, Questions to be
Discussed by Working Committee, Attitude, Towards Coronation in India and Federation, Mr. Jawaharlal
\textsuperscript{377} Ibid.
Congress emphasised its role in calming the situation in Kanpur in a reply to the accusation of the Employers’ Association that it was forced by Congress to agree to the settlement. The Congress further claimed that in order to overlook the “economic” causes of the strike, the management had called it “political.”

Owing to the increasing criticism of local authorities over resorting to police firing on strikers, the Commissioner of Allahabad Panna Lal issued a statement. It read:

The Statements appearing in the press that the police opened fire on the strikers of Cawnpore/(Kanpur) is entirely incorrect. The truth is that a small party of police, two sub-inspectors and six constables, were in danger of being overwhelmed by an angry crowd of ten to 12 thousand strikers who had already stoned them and injured two constables. The senior sub-inspector in order to keep back the crowd drew his revolver and fired one shot over the head of the crowd. A man at some distance away behind the crowd was injured by a spent bullet. He is in hospital, doing well.

The Commissioners statement demonstrates the nature of police action in case of disorder. Limited number of policeman often when faced huge crowds responded with firing. The instruction of the Congress ministry to police, suggesting restraint and use of violence only in exceptional circumstances appears ambiguous. The commissioner’s statement points out that the explanation of any situation endangering lives of policemen justified police violence. Also, the Commissioner was not a Congress man but an Indian Civil Services officer appointed by the British.

While the workers had started to resume work in most of the factories, some issues remained. *Mazdoor Sabha* Secretary Sant Singh Yusuf, complained about the hardships inflicted on workers who participated in strikes and suggested it could become a reason for another strike. 2500, workers, who earlier worked in night shifts at the Cawnpore Cotton Mills were not re-employed. The *sabha* conveyed to the Northern India Employers’ Association that it considered it as a breach of the settlement agreement. 380 Both, the labour leaders and the Employers’ Association blamed each other for the non-observance of the settlement agreement. The Premier invited members of the Sabha, Raja Ram Shastri and Yusuf, after they sent a letter blaming the Employers’ association. the latter had already repudiated the Sabha’s allegations and even accused it of “communistic tendencies” and of raising a “Red Workers’ Army” for the next fight. 381 Chitra Joshi has done an elaborated discussion regarding the militant spirit of Kanpur workers in 1937 in this regard. 382 Discussions held during the formation of the inquiry committee point out that little consensus guided the scope of the enquiry committee. Govind Ballabh Pant, the premier, held discussions with the representatives of workers and the Employers’ Association to find a common path for the establishment of the enquiry committee. Finally, Babu Rajendra Prasad was appointed as the chairman of the enquiry committee. The premier was grateful to him for “accepting the embarrassing responsibility of chairman of the committee”, but was hopeful that he could come up with a solution which will be both acceptable and satisfactory to the labour as well as management. 383 Meanwhile, there were reports of workers assaulting *mistris* and clerks in some factories. 384 This put extra pressure on the Inquiry committee.

383 See, “Cawnpore Labour Problem, Inquiry to Be Made, Premier Meets Members at Lucknow, Dr. Rajendra Prasad to be Chairman,” *The Leader*, Thursday, September 2, 1937, Page 12.
Congress was facing general criticism regarding the firing on workers during strikes. For instance, a Congress sympathiser from Benares, in a letter to the editor wrote:

The Congress Ministries, in Provinces where they are in power, profess that theirs is a ‘civilized Government’. It is right that this be so. Only one is a little surprised to hear certain Congress Ministers say that *lathi* charges are not taboo even now and it was shocking to read the statement of the Congress president justifying the recent firing and lathi charge on the Kanpur strikers. Firing and lathi charges on a crowd which is unarmed are acts which no civilised Government can allow, much less perpetrate. The best way of dispersing such crowds is the use of tear bombs. May I hope that Congress Ministers will introduce this avowedly more civilized method of coping with similar situations in future and save their supporters from being disappointed in them?385

Jawaharlal Nehru, while addressing a meeting of the University Law Society at Allahabad indicated that he was well aware of the need to get rid of old laws. However, his reference to ‘old laws’ was rather confusing. He often referred to old laws as traditional customary laws. While talking about Hindu laws, Nehru said that if law students “wanted to have good laws then the laws should be such as would suit the conditions prevailing and should be changed when the conditions changed.” Little did he deal with the need to decolonise Indian law, now that Congress was in power in most of the provinces. He further stated that “behind every law there was some power – it was public opinion, and if public opinion went against

law it would become impossible for the law to have any force. The present laws have proved
to be useless, considering the conditions of the world and of India.” Nehru lectured the
law students regarding changed times and the then changing international situation arguing
for India to enter the modern world. But, he did not speak about the change in repressive
laws.

Congress was quite aware of the revolutionary potential of the striking workers in Kanpur.
It wanted to impose its own way of thinking on the workers influenced by Communism. A
statement by Tej Bahadur Sapru shed some light on Congress’ frustration with revolutionary
politics. Sapru made a statement offering help to bring back Lala Hardayal, the most
important leader of the Ghadr movement. He stated that Hardayal had “recanted his past
activities.” This statement came in the light of the debates that took place in the Council of
State in Simla on the question of permitting political exiles to return to India. Sapru added
that Hardayal had “confessed” to him that he had come to the “conclusion that India’s
salvation did not lie in revolution but in continuing as a member of the British
Commonwealth.” Sapru believed that Har Dayal was no longer, a revolutionary. Such
statements demonstrate the urgency that the Congress government in the United Provinces
felt when dealing with the brewing revolutionary politics among the striking workers. Nehru,
towards the end of the September 1937 had enough of recurring strikes in Kanpur mills. He
wrote a special article in the daily Pratap, denouncing labour action. In this article Nehru
emphasised that though Kanpur labour faced great problems, it had to bear in mind that out

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388 This special article in Pratap was also discussed in The Leader, Saturday, September 25, 1937, Page 5, “Cawnpore Labour Crisis, Mr. Nehru Rebukes Labourers, Deprecates Strikes for Minor Grievances, Advice to Call of Strike”.

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of 50 million people living in the United Provinces, the workers in Kanpur numbered only 50,000. He added, that the majority of the population was one of peasants, and unless the problem of poverty was solved, restlessness in the country could not be removed. He argued further that if the condition of the ‘peasant’ did not improve, the condition of the ‘labour’, who came from among the peasants, could not be bettered. Nehru pointed that it was on the account of the unemployment of the peasants that the mill owners could take advantage and recruit workmen from the cultivators. Hence, strikes failed despite the strength of labour organisations.

Nehru’s article was both an offer of conciliation, an attempt to bond with the working class, as well as advocacy for Congress policy of abolishing the zamindari system. However, Nehru’s statement also tried to draw up ‘an order of things’ in the United Provinces. He attempted to attract support by highlighting his own awareness of issues beyond the labour question. The latter would be eventually resolved, but only once the peasant question had been dealt with. In the end, for Nehru, the emancipation of labourers related to achieving the freedom of India. The main difficulty, according to Nehru, was that “as soon as [the labourers] realised that they had obtained strength they began to think they could do anything they liked and forgo they had to contend with bigger forces.” Noticeably, when Nehru himself arrived in Kanpur towards the end of September, his tone had changed from warning to threat. He emphasised that a strike should only be an action of last resort. In a letter addressed to the striking workers in Kanpur workers he argued:

Our work and our organisation can only proceed if we are non-violent and peaceful. There are people who believe that they can terrify and browbeat others and force them to concede their demands by threats or by violence. Such people are living in a
fools’ paradise and are completely deluded. If violence is resorted to it is impossible that the Government should not interfere, and the army or the police should not be called. The workers should remember that the Government is very powerful, and that it must put down violence by violence, and that the workers in no time will be subdued, and this will have a very bad effect on the workers’ organisation as a whole. It will become weak and the attention of the public will be diverted from the reasonable demands of the workers to the quarrels. 389

A change of tone in Nehru’s remarks can be observed. But what can be further noted is a possible course of action that the Congress government could take to deal with the on-going strikes in Kanpur. Mohandas Gandhi had expressed his views on the law and order situation in the October issue of Harijan. 390 He wrote, “civil Liberty is not criminal liberty,” and when law and order were under popular control “ministers of that department cannot hold their portfolios if they act against the popular will.” Emphasising that assemblies were not sufficiently representative of the whole people, suffrage was nevertheless wide enough to make them representative. Gandhi added that “in provinces where the Congress ruled it has been assumed by some persons that individuals can say what they like. But so far as I know the Congress mind, it will not tolerate any such license.” Most importantly, Gandhi explained that the extraordinary provisions in the Criminal Procedure Code, the penal Code and other special legislations which foreign rulers (British) had enacted for their own safety and which can be easily identified, should be ruled out from the operation of the Congress ministers, who must be guided by the working committee’s interpretation regarding law and order. He suggested that “such powers must be exercised by the ministers against those, who

389 See, “Organize yourselves, When Strike should be resorted to, Congress President’s appeal to Workers, Analysis of Situation,” The Leader, Monday, September 27, 1937, Page 5.
390 This summary of this article published in Harijan was reported in The Leader, Monday, October 25, 1937, Page 16, as “Law and order, ‘Civil liberty is Not Criminal Liberty’, Mahatma Gandhi’s Views.”
in the name of civil liberty preach lawlessness in the popular sense of term.” He concluded that “non-violence is a new weapon still in the process of evolution. Its vast possibilities are yet unexplored.” While Nehru made threats, Gandhi made a ‘moral’ appeal.

We recall that during the non-cooperation movement, Gandhi instructed Indians to disobey certain laws that curtailed the liberty of Indians. Many did get arrested during that time for the violation of prohibition laws, for instance, the Salt Law. The Congressmen challenged Section 144 CrPC (unlawful assembly) and 124A (sedition) on many occasions during the non-cooperation movement. The line on which both Nehru and Gandhi were trying to justify their arguments appears flimsy and hypocritical. Meanwhile, the Governor of the United Provinces, Sir Harry Haig while delivering a speech at the annual Police parade at Lucknow, on November 27, 1937, congratulated the UP police on standards of efficiency and discipline. The Governor did mention though that peace could be maintained only with the cooperation between the public and the police. While referring to the Kanpur labour strikes, he said:

We all know how difficult and dangerous have been the conditions in Cawnpore (Kanpur) for some months past. It is not vain exaggeration to say that almost at any moment the city of Cawnpore (Kanpur) might find that nothing but the power, the authority, the discipline and the courage of the police stood between it and serious disorder. Nothing in these circumstances could be more reckless than to organize an attack, as was recently done there, on the authority of the police.391

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391 See, Essential Service, Danger of Impairing its Authority, Appeal to Public for Cooperation, Governor’s Tribute to U.P. Police” in The Leader, Tuesday, November 30, 1937, Page 17.
The Governors fortnightly report points out that administration constantly kept a keen eye on the situation in Kanpur. The friction in certain Mills, the development of issues into definite strikes, involving thousands of workers was a worry for the administration. Most importantly it was because of a labour unrest at a massive scale, the governor reported, that many additional police were drafted into Kanpur, and an order under section 144 was issued prohibiting assemblies of more than five persons within half a mile of the Mills concerned.\(^{392}\)

It is pertinent to mention here that the main concern of workers regarding the strike was their ‘victimization’ by the management, whereas the management accused them of ‘indiscipline’. We note that an earlier Governors report recorded that the labour in Kanpur was ‘undisciplined’.\(^{393}\) Thus, it can be noticed that the administration took the line of the management.

Demands for the release of arrested striking workers were also an issue. The Congress Ministry was criticized by the Left Wing of the Congress because of the delayed release of the prisoners and the action taken under section 144 and 107 CrPC in Kanpur.\(^{394}\) The story of labour trouble did not end there. The labour conditions in Kanpur were still unsatisfactory. Some 600 to 700 men of one of the mills went on strike against the wishes of the Mazdoor Sabha and that too without giving notice. Conditions in Kanpur needed ‘careful watching’ by the administration, and the District Magistrate kept issuing orders under section 144 prohibiting meetings at Mill gates and in the Mill area generally except on the Parade ground.

\(^{392}\) Governors Fortnightly Report 22\(^{nd}\) September 1937

\(^{393}\) UP Governors’ reports (Governors Fortnightly Report 6\(^{th}\) September 1937 and 20\(^{th}\) September 1937) pointed out that the labour situation and the attitude of the communist leaders in Cawnpore were still giving ‘cause for anxiety’ to the UP administration. The attitude of Mill owners as well as Communist leaders was assessed to be getting stiffer. Numerous mills were reported closed. Also, it was emphasised that labour in Cawnpore mills was ‘indisciplined’

\(^{394}\) Governors Fortnightly Report, United Provinces, 6\(^{th}\) December 1936.
During the peak of workers’ militancy in Kanpur, the commissioner directed the District Magistrate to examine the notes of speeches delivered by labour leaders and striking workers with a view to take action against the most ‘intemperate speakers’ if ‘considered advisable’. There were occasions when clashes took place amongst workers and their leaders. In Kanpur, a meeting held outside Swadeshi Mills resulted in a minor clash between the mill-workers of Swadeshi Mills and the organizer of the meeting. Trouble outside Cooper Allen Mills is also reported along with a strike occurring at the Bevin Co. Mills without notice and against the wishes of the Mazdoor Sabha. Orders under section 144 were issued, the effect of which was reported to be ‘very satisfactory’ and having resulted in ‘calming down a situation which was tending to get out of control’. In a secret letter (personal) dated December 23, 1938, the Governor wrote that he visited Kanpur to attend the jubilee dinners of the India Chamber of Commerce, where he had a talk with the District Magistrate. The Governor writes that the District Magistrate was very pleased with the effects of his order under section 144, because it had the result of practically stopping ‘undesirable’ speeches and demonstrations organized by the communists. The Governor wrote that the District Magistrate was not interested in pressing for any action in the direction of prosecution in respect of the speeches of any individuals. However, the condition in Kanpur was not ‘satisfactory’ anymore and orders under section 144 continued resulting in ‘resentment’ against these orders. Notably, the administration saw the strikes as undisciplined labour and deployed police and invoked section 144 as a tactic to control them.

Not only leaders of Congress and the Governor of UP, but also the press were very critical of the striking workers. A distinction was drawn between the unorganised, spontaneous and

395 Governors Fortnightly Report, United Provinces, 2/5th December 1938.
396 Governors Fortnightly Report, United provinces, 19th/22th December, 1938.
397 Governors Fortnightly Report, United Provinces, 6th January 1939.
398 Governors Fortnightly Report, United Provinces, 20th /22nd January 1939.
violent actions of 1937 and the organised and peaceful strikes of 1938. Terms like ‘violent’, ‘aggressive’, ‘defiant’, ‘unruly’, ‘threatening’ were used in the daily news reports as well as official accounts to describe the striking workers who were always ‘a mob of workers’. Contemporary newspapers like The Aaj, the The Pioneer and Leader were full of such accounts. Most importantly, the police were always reported to have “fired in self defence.” Also, any police violence was seen as justified because the workers had supposedly violated section 144. We see a ménage- a- trois between congress politicians, the administration and the press, when it came to legitimise violence on workers. Public order and peace were the terms, which could neutralise any claims by workers of police atrocities.

The Cawnpore Labour Inquiry Committee appointed by the government of the United Provinces finally recommended methods of improving the living conditions of workers and published data describing labour conditions in several cotton mills in Kanpur. The findings of the committee highlighted the uncooperative attitude of the employers in supplying information. It also reported employers’ hostility to the only organized trade union in Kanpur- the Mazdoor Sabha. The wages at Kanpur mills were much lower than in other centres of industry in India, and such low wages were found unjustified by the report when compared to the level of profitability in those mills. The committee suggested some increments in workers’ wages. For instance, increments ranging from 2 ½ annas in the rupee in the case of workers getting between Rs. 13 and Rs. 19 per month to half an anna in the rupee in the case of workers getting between Rs. 40 and Rs. 59 per month.

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The relationship between the labour organisation and the Congress remained chequered. After the death of Ganesh Shankar Vidyarthi in 1930, the leadership of the Mazdur Sabha had passed to Harihar Nath Shastri. Shastri as a congressman was devoted to build a Congress labour movement in Kanpur and in the rest of the country. As we noticed in the earlier sections, there was for a time close coordination between the Sabha and the Kanpur City Congress Committee. Such coordinated action gave strength both to the Congress as an organisation and to the trade union movement as a whole. However, it also ran the risk of Congress factions getting involved in the affairs of the Mazdoor Sabha. They were acceptable as long as they served Congress’ interest by serving as its instrument. However, it was during the Kanpur strikes that local Communists entered the Mazdoor Sabha and worked in coordination with Congress for a while. During the strikes the Sabha gained prominence and strength with Harihar Nath Shastri as its president and Sant Singh Yusuf, a Communist, as general secretary. As the strikes extended from late 1936 to late 1937, the Communists soon acquired a representation of seventeen or eighteen members on the forty-member Council of the Sabha, though, the Congress still had a clear majority. Internal factionalism in congress (between the right wing and the left wing known as Congress Socialist Party) weakened its hold over the Mazdoor Sabha and it was in the 1938 Sabha elections the Communists acquired complete control with the support of Balakarishna Sharma and his supporters who were opposed to Harihar Nath Shastri. As a result, Sant Singh Yusuf became the new president of the Sabha in 1938. It can be noted that a Congress leader, whose primary interest did not lie in the labour movement and had little interest in controlling the affairs of the Sabha - which was anyways getting out of hands - allied with the Communists for the
sole purpose of defeating a factional opponent in the Congress party.\footnote{Brass, Paul R. \textit{Factional Politics in an Indian State, The Congress Party in Uttar Pradesh}, Berkeley and Los Angeles, University of California Press, 1965, pp 196-197.} Also, when the Enquiry report was released the Employers’ Association rejected it the following month.\footnote{Menon, Visalakshi. \textit{From Movement to Government: The Congress in the United Provinces, 1937-42}. Sage Publications, 2003, Page 117.} As a result, workers in all the Kanpur mills went on strike simultaneously with the total number of workers participating up to 40,000 approximately. \textit{Mazdoor Sabha}, which was stronger than ever, extended its full support to the strike.\footnote{Joshi, Chitra. \textit{Lost worlds: Indian Labour and its Histories}, Anthem press, 2003, Page 213.} The consolidation of workers’ movement in Kanpur under the communist dominated \textit{Mazdoor Sabha} declined after 1938. This was partly because of the ‘People’s War’ politics of the communists. Later, during the Second World War, the communist support to the British war efforts led to a thinning of the ranks of the \textit{Mazdoor Sabha} to a significant level. The working class in Kanpur and people generally perceived it as a betrayal of the struggle against the British and the fight for complete \textit{Swaraj}. Moreover, during the war period, the promulgation of the Defence of India Rules restricted political activity and made political organisation difficult.\footnote{Ibid. Page 236} Any political organisation creating ‘unrest’ or ‘disorder’ would amount to sedition.

\textbf{Case Study III}

\textbf{Reciting ‘Public disorder’: Madhe Sahaba and the politics of section 144 CrPC in Lucknow 1937-1940}

In addition to the mill workers’ strike in Cawnpore, the United Provinces government also struggled to control communal conflict between the \textit{Shia} and the \textit{Sunni} Muslims of
Lucknow, known as the Madhe Sahaba controversy or the tabarra agitation. Again, the UP Congress and the local administration in Lucknow had to resort to the use of section 144, and curfews to maintain ‘public order and tranquillity’. A brief description of the city of Lucknow is necessary before discussing the case study. Historically, Lucknow was the seat of the Mughal government of the Suba of Awadh from the late sixteenth century. Asaf-ud-Daulah, the Shia Nawab of Awadh, founded Lucknow as his capital city in 1775 after the decline of the Mughals. Lucknow became one of the most flourishing towns of north India in the late eighteenth century and early nineteenth century, under the Nawabi court patronage. With its majestic Nawabi buildings and the artisan industries, it also became famous as a literary, commercial and cultural centre. Artisanship comprised of chikan, kamdani, zardozi (embroidered lace, silver and gold-thread work), silver ornaments, calcio printing, bleaching, dyeing, shoe-making and ivory work. Events of 1857 brought about the demise of the Nawabi culture and polity of Lucknow. As a result, the Muslim courtly classes who depended on Nawabi patronage became the most notable casualty after 1857. Their decline led to the emergence of Hindu and Jain bankers and merchants who gained social prominence in the town as moneylenders to the indigent wasiqdars or royal pensioners and as financiers of artisan industries and trade. Kanpur emerged as the chief trading location in UP due to the railways, but Lucknow also had a railway junction with large workshops connected to it. Lucknow retained its significance as a centre of grain trade in Awadh. However, many of its artisan industries received a serious setback due to the loss of royal and courtly patronage. Muslims constituted much of the city’s population. Most importantly, Lucknow housed the provincial legislative council and was maintained as an administrative centre by the British.  

One of the greatest contributing social factors of Shia-Sunni conflict throughout the 1930s was the massive shift in population and demography taking place in Lucknow. Before the 1920s colonial Lucknow had been slow to modernize and remained largely stagnant both in terms of economic and population growth. However, Lucknow’s quick development thereafter into a major provincial centre of industry and trade saw the city’s population spiral after 1921 from 217,000 to 387,000 in just twenty years. This sudden increase stemmed partly from a wider trend of urbanization in inter-war north-India, but also owed to the establishment of Lucknow as the United Provinces’ political capital, becoming the location of the seat of the provincial governor and the United Provinces Legislative Council in the aftermath of the 1919 Government of India Act. As a result, Lucknow suddenly became a magnet for ever increasing number of politicos, officials and investors, quickly transforming the city’s size, composition and character.\textsuperscript{407}

The Madhe Sahaba controversy was a very prominent case of sectarian conflict and a core administration concern of the Congress ministry of the United Provinces in 1930s. Scholars like Francis Robinson, Mushirul Hassan and Farzana Sheikh have demonstrated how developments in the wider Islamic world influenced the political ideologies of North Indian Muslims in the 1920s and the 1930s. But the conflict in Lucknow had much older roots. It was connected to the ancient religious debate and the Shias and Sunnis over the identity of the ‘legitimate’ Caliph/Imam after the death of the Prophet Muhammad. The Shias and Sunnis have different views on this issue. While the Sunnis believe in a notion of Khilafat (a purely worldly political leader who succeeded the prophet in his political and military

capacity), the Shias believe in *Imamat* (a religious as well as political and military leader who also inherited parts of the Prophet’s religious charisma through direct family descendence). Central to this distinction was the role and status of the Prophet’s son-in-law and nephew Ali.\footnote{Gould, William. *Hindu Nationalism and Language of Politics in Late Colonial India*, Page 213.} The Sunnis consider all the four immediate successors to the prophet including Ali in high regard and as rightful. The Shias, in contrast, hold that the first three successors of the Prophet and Ali’s rivals were usurpers and guilty of acts of tyranny and oppression against the Prophet’s kin. Muharram represents a period of mourning for the sons of Ali – Hassan and Hussain- who were massacred by the Caliphate’s army in a civil war between the two parties. Sectarian confrontations between the two groups, which were often violent, occurred especially during the month of *Muharram*. Francis Robinson has noted that where the Shia live in South Asian towns and cities, arguably, no community has been more visible or more audible. Visible because of their great processions at Muharram, and audible, certainly at Muharram, but also throughout the year in their *majlis*, where they gather across localities to recount the events of karbala, often transmitting them by loudspeaker to the *muhalla*.\footnote{Introduction ‘The Shi’a in South Asia’ by Francis Robinson in *The Shi’a in Modern South Asia: Religion, History and Politics*, edited by Justin Jones and Ali Usman Qasmi, Cambridge: Cambridge University Press, 2015, Page 1.}

Scholarship on Muslim politics during colonial rule has implied that during the late colonial period both Shia and Sunni overlooked their religious and sectarian differences and worked on a common platform for the broader Muslim interest. Many have agreed that such a perspective is especially true for the formative moment of the Muslim separatist politics. for example, the period from the Muslim deputation to Lord Minto in 1906 to the end of the Khilafat Movement in 1924.\footnote{Jones, Justin. *Shi’a Islam in Colonial India: Religion, Community and Sectarianism*, Cambridge: Cambridge University Press, 2012, Pp151-152.}
Towards the end of the nineteenth century and later, Shia public figures had to abrogate their Shia identity and had to project themselves as the representatives of the broader Muslim community due to the nature of the political climate. Justin Jones has argued that many Shias later, departed strongly from such a position even in Muslim cities like Lucknow, which was seen as a significant centre of the major ideologies and edifices of Muslim separatism in late colonial India.\textsuperscript{411} Justin Jones has demonstrated the discourse of community formation that emphasized the differences and separateness of Shia from Sunni that eventually led to the systematization of their political differences too.\textsuperscript{412}

The sectarian clashes between Shia and Sunni Muslims of Lucknow, went back to at least 1905. Ashutosh Varshney\textsuperscript{413} has noted that in that year, quite a while after the end of Shia princely rule in Lucknow, the Sunnis began to insist on holding processions involving the public recital of verses in praise of all four caliphs (the so-called Madhe Sahaba). Shias responded with \textit{Tabarra} processions of their own, which involved public curses on the first three caliphs and praises to Ali and his family. Due to serious violence and conflict between the two communities between 1905-1909, a British Committee headed by Arthur Pigott, determined that Madhe Sahaba was a recent Sunni invention and prohibited its public recitations.\textsuperscript{414} Varshney has pointed out that Sunni rituals were considered to be an innovation because such public expressions of Sunni dominance had simply been unconceivable under Shia princes earlier. In the subsequent decades of mass politics, the

\textsuperscript{412}ibid.  
issue resurfaced in the year 1935 adding to the administrative difficulties of Lucknow administration. In 1936, Madhe Sahaba verses were recited every Friday for three months leading to confrontations between the two sects and resulting in arrests. Lucknow witnessed a series of riots when clashes between Shias and Sunnis erupted again in June 1937.

The Provincial Ministry of Govind Ballabh Pant was already having a troubled time with the British colonial government over the release of political prisoners of the Kakori case and others in Andaman jails, as well as with the striking workers in Kanpur. The number of prisoners awaiting trial in UP prisons was already rather large owing to the Kanpur labour crisis, communal riots at Allahabad and Benares, and now the continuous Madhe Sahaba riots in Lucknow. The Governor’s situation report regarded the Madhe Sahaba controversy as the ‘most important event of this kind’. In June 1937, curfew orders and orders under section 144 CrPC were promulgated to control the situation. Premier of the United Provinces, G.B. Pant, and his Minister of Education visited the affected quarters of Lucknow city and appealed to Muslims, both Shia and Sunni, to bring about a ‘better atmosphere’. Sheikh Iqbal Ali, who was the Chairman of the Education Committee, Lucknow District Board while appealing to his coreligionists to maintain ‘peace and harmony’ congratulated the deputy Commissioner, Mr. H.J. Frampton and Mr. Charles, the City Magistrate for the tactful handling of the Shia-Sunni riot. He was convinced that they both deserved gratitude of the Muslim community. Sheikh Iqbal Ali expressed that for the first time in Lucknow, a riot has been brought under control within such a short time. Efforts at compromise between Shias and Sunnis even after the formation of a joint conciliation board appeared to

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415 Gould, William. Hindu Nationalism and Language of Politics in Late Colonial India, Pp 214
416 Governor’s Situation report dated 4th June 1937 for the United Provinces.
have failed in its purpose because both sides refused to express regret for their share in the origin of the riots. Meanwhile serialized sectarian newspapers like the Sunni *al-Najm, Haram, Asad, Naqqara* etc. and the Shia newspapers represented by publications such as *Safaraz, Zulfiqar, al-Wai’z, Hukumaran* etc. continued to propound the causes of their respective communities throughout this conflict.\(^{418}\)

The Provincial Muslim League on June 6, 1937, also discussed the question at length and passed a resolution at the meeting of the executive committee of the provincial unit under the leadership of Mr. Ali Zaheer. But the resolution failed to reach any clear decision. This meeting authorised Mr. Ali Zaheer and Mr. Ahsanul Rahman to invite the annual session of the All India Muslim League in Lucknow for consultation of the general opinion there.\(^{419}\)

The language of the Muslim League resolutions was rather clever. Though it tried to deal with the situation in its own way, much of the emphasis was put on the failure of the Congress government. For it regretted the riots, loss of life and property of Muslims, and opined that such ‘lawlessness’ did not benefit any party and therefore was a ‘menace’ for the growth of nationalistic ideas in the country. A second resolution was a lengthy and tricky one. It expressed the apprehension of the Shias that the Madhe Sahaba agitation was started with a view to put pressure on the Government to alter its previous decision to class the Sunni procession ritual as an ‘illicit’ innovation. The aim would be to coerce Shias to surrender their ‘legitimate and old established rights’. This along with the ‘Futwas’ and organized processions denouncing Shias as ‘Kafirs’ and their *Azdari* as an act of sacrilege that brought rupture between the two communities/sects. Deploiring the attitude of some


\(^{419}\)See, *The Leader*, Tuesday, June 8, 1937, Page 2, “Lucknow Shia-Sunni Dispute, Compromise Efforts fail?”
Sunni leaders who persisted on carrying out ‘nefarious propaganda’ and refused to join Shias on conciliation board, the resolution also stressed that peace and order was essential at this political juncture. The meeting resolved that the U.P. government should not be influenced by predesigned propaganda and threats by a section of Sunnis bearing in mind that Shias were a minority within a minority and deserved a right and just resolution of the dispute.

The third resolution of the ‘Central Standing Committee’ of the Muslim League Conference observed that the Shias of Lucknow had shown great restraint and forbearance in the face of continuous and organized provocation, and sympathized with the relatives of those who have lost lives or were injured during the riots. The Shias in the Muslim League tried to convey their position to the Government both as a request and a covert threat. Through its resolutions, they claimed to take responsibility as ‘citizens’ for the maintenance of law and order by identifying the origin of disorder.

The Majlis-e Ahrar, a Sunni organisation, which was close to Congress at the time, and opposed to Jinnah’s ideas also organised a meeting of its working committee on June 23rd, 1937. Presided over by Muhammad Ahmad Quazim, M.L.A., the meeting passed resolutions requesting the government to expedite the publication of the report of the Madh-e-Sahaba enquiry committee. The resolutions argued that any delay was causing anxiety in the minds of both sects and apprehended that it might create ‘fresh intrigues’. The meeting also deplored the recent riots and requested the government to release political prisoners. Justin Jones has pointed out that Madh-e-Sahaba and Tabarra processions were used as a garb under which political battles were fought. Certain Congressman in the Tabarra leadership

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420 See, *The Leader*, Friday, June 18, 1937, Page 5, “Shia-Sunni riots and after, Shia political conference resolutions.”
421 See, *The Leader*, Friday, June 18, Page 14, “Madhe Sahaba enquiry, Early publication of report urged.”
like Wazir Hasan and Sayyid Haider Mehdi, emphasized that the conflict was not sectarian but aimed at the government’s restrictions on their religion. The Congress party had to suffer the wrath of *Tabarra* agitators when along with the first three caliphs, names of Gandhi and Nehru were also included to be cursed. To this Jones adds that there were social and class rivalries involved in this issue. The *Madh-e-Sahaba* front was constituted mostly of *Ahrrars*, from the urban, middle-class and artisan backgrounds who were considered by the British as lacking moderation and frequently criticised as ‘degenerates’; whereas, on the *Tabarra* front, noble, aristocratic Shia families close to the municipal government were in evidence. Therefore, the sectarian controversy could be seen as an attempt by the poor Muslims to seize political control and initiative in the urban space of Lucknow.\(^{422}\)

We notice an interesting contrast between both the groups, the language of their resolutions and the framework of their demands. The Shias used the tactics of pressurizing the Congress government and invoked the favourite punchline of the administration i.e. ‘the need for urgent peace and order’, regretted the riots. The Sunnis, on the other hand, could not hide their anxiety and haste and demanded that the enquiry report be published at the earliest. The conflict could not be resolved in the year 1937 but temporary calm was restored. Justin Jones has pointed that that as early as 1932-3 “Muharram was becoming ever more schismatic, increasingly marked by the separation of Shi’ a and Sunni *majlis* assemblies and processions, and the conflation of mourning and *munazara*.” A wider range of new associations such as the Darbar-i- Hussaini, the Idara-i-Yadgar-i-Husaini and the prolifically active Ajnum-i-Nasr-ul-‘Aza, emerged within a few years and continued to invigorate *ta’ziyadari* and emphasized the specifically Shi’a understanding of Muharram as an occasion of

lamentation.\textsuperscript{423} As a result, Muharram increasingly became a month that Shi’a and Sunni began to experience in isolation from each other in an atmosphere appropriate to emphasize their differences. While earlier some Sunni figures had argued that ‘taking of \emph{ta’ziya} had to be accompanied by the recitation of praises for the Caliphs’, the agitating Majlis-i-Ahrar went a step further. They believed that Shi’a ‘innovations’, particularly \emph{ta’ziyadari}, should ceased entirely among Sunnis.\textsuperscript{424}

However, the U.P government failed to resolve this intra-religious conflict in Lucknow in the year 1938, too. The problem for the district administration had increased further because of its inability to intervene in a direct way. Moreover, given that the Muslim community of UP was involved, Congress was cautious not to let them slip into the hands of the Muslim League. We know from a confidential letter from the Government of United Provinces to R.M. Maxwell who was the secretary to the Government of India, Home Department, that on December 31, about 1500 Sunnis attended an \emph{Ahrrar} meeting at \textit{Tila} mosque, Lucknow. The meeting criticized the delay in the publication of the \textit{Madhe Shaba} Committee enquiry report, and threatened to launch a civil disobedience if the government did not publish the report by January 7, 1938. The threat was later withdrawn, this letter points out, partly on the advice of Maulana Habibur Rahman who argued that such conduct could embarrass Congress government, and partly because they could not organize it properly in the wake of a parallel agitation which was going on in Lahore in connection with the Shahidganj mosque issue.\textsuperscript{425}

\textsuperscript{424}Ibid. Pp190-191.
\textsuperscript{425}Confidential Letter D.O.N. F.12/2-C.X. dated January 8, 1938, from the Government of United Provinces, Lucknow, to R.M. Maxwell, the Secretary to the Government of India, Home Department, New Delhi. Part of
We know from another confidential letter to Maxwell, that meanwhile attempts were made to bring about a compromise under the guidance of Maulana Abdul Kalam Azad. The Congress had made it a regular observance to celebrate ‘Independence Day’ on 26 January. The occasion would usually be celebrated by taking out prabhat pheris, and later many flag hoisting ceremonies and meetings would follow where the ‘Independence Day’ pledge was taken. But in January 1938, the celebrations of such an ‘Independence Day’ interfered with a Madhe Sahaba procession, which attempted to take over the park where the Congress ‘Independence day’ meeting was held. Police managed to intervene on time and averted a serious clash, however, considerable excitement prevailed in the city and police had to patrol the streets. A confidential letter from the Government of United Provinces to the Government of India, emphasized that because the Madhe Sahaba controversy continued to be a matter of contention and had by now assumed a more political complexion, the Government started contemplating to publish the report of the Madhe Sahaba Committee along with the U.P. Governments resolution to the conflict. But owing to the resignation of the U.P. Cabinet the publication of the report had been postponed until after Muharram. The Ministers who tendered resignation in connection with the release of political

the Governor’s situation report dated January 10th, 1938. Page 2-3 of the letter and page 278-279 of the IOR/L/PJ/5/265.
428 Confidential letter D.O. No. F.2/1-C.X. dated 18/21 February 1938, from the government of United Provinces, Lucknow, to R.M. Maxwell, the Secretary to the Government of India, Home Department, New Delhi. Part of the Governor’s situation report dated 22nd February 1938, Page 4-5 of the letter and page 221-222 of the file IOR/L/PJ/5/265.
prisoners reached a settlement on 25th February 1938. The report of the enquiry of Madhe Sahaba Committee was finally published on March 28, 1938.

The Governor of U.P., H.G. Haig in a secret letter to the Viceroy and Governor-General of India Lord Linlithgow expressed that contrary to many apprehensions the report was received ‘very quietly’. It further reported that the Ahrars, who initiated the trouble on the Sunni side “seem definitely unwilling at the present stage to embark on any direct action.” Moreover, the Shias expressed their satisfaction with the conclusions of the Madhe Sahaba report, which stipulated that “while the Sunnis have the right to recite the Madhe Sahaba under suitable conditions and at suitable times, they must not do so to annoyance or danger of the public, or in manner provocative to Shias.” However, the Governor’s letter immediately doubted whether in practice Sunnis could be allowed to make any public recital of the Madhe Sahaba in Lucknow, and that this matter therefore would remain a matter of executive decision and hence might prove to be a difficult problem. The Allsop Committee that led the enquiry, stated in its report that though the Madhe Sahaba recitations were allowable ‘in theory’ but because of its provocative nature, should be disallowed in practice.

Unfortunately, rioting between Shias and Sunnis, again took place on the occasion of Chehlum, where according to the Governor, ‘Sunnis most evidently were the aggressors’. Sunnis attacked a Shia procession, which was returning from the Karbala burial ground resulting in conflagration. Police managed to control the situation late after 11 persons had


died in various assaults and about a hundred injured. The situation was so tense that the authorities had to summon the Military. The government was also considering a temporary addition to the Lucknow police force though owing to political apprehensions they were not prepared to make the Muslim inhabitants pay for it. Congress governments’ hesitation to invoke punitive policing by making the inhabitants pay for maintaining order can be noted here. Both Sunni and Shia leaders were arrested to contain the situation. While the Shia leaders deposited the security in Courts to secure release from detention, the Sunnis, Maulana Adbul Shakoor and Zafar-ul-Mulk, chose to go to jail. 432

The Sunnis in Lucknow displeased with the finding of the committee report threatened civil disobedience at numerous occasions if recitation of Madhe Sahaba was not allowed. The issue intensified once again. Both Shias and Sunnis clashed at numerous occasions regarding the reciting of Madhe Sahaba and carrying out Muharram Tazia processions in Lucknow. By mid-May 1938, the Sunnis have given up their ‘civil disobedience’ and as a result 115 persons, who were arrested during the Chehlum riots were released. Meanwhile, Maulana Zafar Ali Khan, Shaukat Ali and the Raja of Pirpur were touring on the behalf of the Muslim League and delivered ‘intensely provocative speeches’ particularly at Bara Banki and Allahabad.433.

Congress’s involvement in the Shia-Sunni dispute further complicated the issue. We know that there were two Muslim ministers in the new Congress ministry of 1937, and both were

Sunni. Due to this fact, the Congress was more inclined to support Sunni claims for *Madhe Sahaba* recitation. This obliged the Congress ministry to offer ‘theoretical support to the Sunni side.’ However, Congress also had the support of Shias in Lucknow city, where unlike elsewhere in the province most Sunnis supported the League. The All India Shia Conference had a substantial support base in Lucknow. Syed Ali Zaheer, a prominent Shia leader was a Congress member elected to the legislative assembly from Lucknow. Chaudhary Khaliquzzaman, who was a prominent League member, was elected to the Legislative assembly from the city with a substantial Sunni support.

Given political circumstances, it is not difficult to decipher that Congress was interested in winning Sunni support in the city of Lucknow and sought to use the controversy for this end. Some leaders of the Jamiat-e –ulema convinced G.B. Pant that it was possible to enter into an alliance if the Ministry allowed Sunnis to take out a procession during *barawafat* and recite *Madhe Sahaba*. Pant was inclined to allow Sunnis to recite *Madhe Sahaba* to work political calculations in favour of Congress, but Rafi Ahmed Kidwai, a Sunni Muslim and congress leader, was opposed to the idea. In such circumstances, positive political signals from Congress ministry in UP emboldened Sunni claims.

On May 30, 1938, after clashes between the two groups, section 144 CrPC was promulgated in Lucknow for a month. It was reported that the Sunnis were reciting *Madhe Sahaba* by holding *Milads*, and Shias in adjacent places were holding *Majlis* reciting *Tabarra*. On a couple of occasions the local D.S.P. Sardar Sunder Singh handled the situation quickly and averted serious clashes. The authorities assumed that now that the more aggressive party,

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436 *The Leader*, Thursday, June 2, 1938, Page 13, “Sec. 144 promulgated in Lucknow, Strained feelings between Shias and Sunnis.”
the Sunnis, had given up the civil disobedience, situation might improve. But, by the first week of June, the crisis once again flared up. Surprisingly, Shias who had taken modest positions until then were responsible. Apprehensive that the Sunnis would obtain some concession from the Government, they passed a series of resolutions and threatened to recite *Tabarra* if the Sunnis were shown any consideration and allowed any opportunity to recite *Madhe Sahaba*. As a result, the Sunnis began organizing religious meetings where recitations of the *Madhe Sahaba* would take place. As expected, clashes erupted and the District Magistrate again promulgated section 144 CrPC. On June 2, in the face of severe tension between the two communities, Lucknow authorities decided to enforce another curfew order for a fortnight between 7.30 p.m. to 5.30 a.m. The peculiar feature of the orders promulgated under section 144 CrPC was its applicability to Muslims only. The situation did not improve as both sides organized *Milad Sharif* (Sunnis) and *Majlis* (Shia) frequently in a tit-for-tat spirit. Given that feelings were running high, according to one newspaper report, many members of both the communities were now unwilling to listen to reason and were behaving in such a manner as to give an impression that they had no other desire except to ‘fly at each others throat’. The Deputy Superintendent of Police Sardar Bahadur Sundar Singh and officiating City Magistrate, Mr. Kacker were kept awake at night because of the situations. In this highly charged atmosphere, special police arrangements were made in connection with the *Alam* to be taken on the occasion of ‘Nauchandi Jumerat’ (the first Thursday in the Lunar calendar of every Islamic Month). Nauchandi Jumeraat which is considered pious (Thursday evening) and usually involved prayers only, was used to make a political statement by taking out a procession.

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438 See, *The Leader*, Sunday, June 5, 1938, Page 11, “Curfew order at Lucknow, Assembly of more than 5 prohibited, Continued Shia-Sunni tension.”
Four Sunnis including Maulana Abdul Qayum were arrested on June 3, for the holding of *Milad* at Masjid Bisatyan. As the *Milad* was commencing, the police asked the organizers to finish soon with a view to avert trouble owing to the nearness of a Shia mosque.\(^{439}\)

The next day an emergency meeting of the Lucknow Municipal Board was held to consider a resolution expressing anxiety over the frequent imposition of curfew orders and requesting the authorities to withdraw such orders. This resolution also requested the authorities to call a representative meeting of Shia and Sunnis to settle the dispute. The resolution was passed by 9 votes to 5, deplored the strained relations between Shias and Sunnis and appealing to them to sort out their differences.

The most important element of the resolution for our discussion was the argument that the curfew order caused hardship to innocents rather than actual ‘culprits’ and therefore appealed to authorities to adopt measures by which only ‘culprits’ would be punished.\(^{440}\)

This is an important break from the earlier resolutions adopted by Shia and Sunni organizations. This resolution expanded the scope of the conflict by emphasizing the nature of its impact on non-participating parts of Lucknow society. In a different register, it suggested an exit route to people of both the communities to exit the cycle of violence by recognizing them as ‘responsible’ for their own actions. It also aimed to create a binary between the innocent and the culprit and therefore provided one with the moral opportunity to claim oneself as innocent. Embedded in this proposition of ‘culpability’ was a moral discourse of ‘criminality’, opening up the possibility that everyone had a duty to discipline

\(^{439}\) See, *The Leader*, Monday, June 6, 1938, Page 12, “Madhe Sahaba, Four Muslims arrested.”

\(^{440}\) See, *The Leader*, Wednesday, June 8, 1938, Page 11, “Shia-Sunnī differences, Govt. requested to withdraw curfew order, Resolution passed by Lucknow Municipal Board.”
oneself and a choice not to participate in sectarian violence. This ran directly counter to the preemptive logic of emergency orders that imposed bans and other restrictions to all members of an identified problem category regardless of their actions – in this case Muslims.

None of the three resolutions had any effect on the conflicting parties. On June 7, 1937, 100 persons were detained for the violation of the curfew order but were however, allowed to go the next morning. The curfew order from June 8, was reduced by one hour and instead of 7.30 p.m. would start at 8.30 p.m.\textsuperscript{441}

Finally the curfew order under section 144 CrPC which had been promulgated on June 2 for a fortnight, was lifted on June 15 by the District Magistrate. According to a newspaper report, various conciliatory meetings requested the authorities to withdraw curfew orders, which greatly harmed trade in the city. Most importantly, the newspaper reported that picture houses were hit hard by the curfew orders and two of them were at the verge of closing down.\textsuperscript{442} The Governor lauded the Premier, Pandit Govind Ballabh Pant, for his ‘reasonable attitude’ towards protests and clashes. Pant regretted that “even if people [ordinary] were not encouraging the agitation, they must suffer this inconvenience because they did not discourage it.”\textsuperscript{443}

The controversy did not cease to exist nor did the clashes stop. Lucknow remained a hotbed of political and religious conflict between Shias and Sunnis. In 1939, after the \textit{Madhe Sahba} report was published and a government communiqué allowed Sunnis to carry out \textit{Madhe}

\textsuperscript{441} See, \textit{The Leader}, Friday, June 10, 1938, Page 17, “Curfew order at Lucknow, 100 arrests for violation.”
\textsuperscript{442} See, \textit{The Leader}, Saturday, June 18, 1938, Page 15, “Curfew order lifted, Situation much improved, Sequel too Shia-Sunni tension in Lucknow.”
\textsuperscript{443} Secret letter No. U.P.-90 dated June 17, 1938, from M.G. Hallet, the Governor of United Provinces, to Lord Linlithgow, Viceroy and Governor General of India. Page 9 of the letter and page 12 of the file IOR/L/PJ/5/265. Part of the Governor’s situation report dated 17\textsuperscript{th} June 1938.
Sahaba recitation and processions but only on the condition that the authorities would decide the route and time. Shias were to be also allowed to carry out a Tabarra procession on the same conditions. However, this did not please the Shias who saw it as the betrayal by the Congress ministry. Justin Jones has argued that these agitations by the Shia as well as the Sunnis “can be interpreted as having taken style and idioms of popular politics as it matured during the interwar period, commonly characterized as the era of ascendant mass-nationalism.” Both agitations were craftily mobilised and over the period were peaceful resistance or just organised disobedience, which were primarily Congress tactics. Majority of the “leading protagonists of both the agitations were attached to the Indian National Congress” in one way or another. For example, the nationalist Majlis-i-Ahrar and the followers of Husain Ahmad Madani on the Sunni side, and among the Shia politicians, figures such as Sayyid Wazir Hasan and Sayyid Ali Zaheer directed the Shia Political conference.\textsuperscript{444} Conflicts in the machinations of party politics during the Congress Ministry of 1937 can also be noted.

It was the provincial Congress government that conceded to the demands initially and reignited the controversy that was suppressed if not settled by the colonial administration. Two sets of observations can be deployed here. One, that prominent Muslims like the two Muslim members of the UP Congress Committee, other than just Husain Ahmed Madani, were sympathetic to the Sunni cause. Second, that Congress attempted to expand its fragile support among the UP Muslims in the face of not to be ignored growing popular support for the All India Muslim League in the province. Therefore, it appears that Congress was in a way willing to grant concession to the demand of the Sunni majority. Administratively,

Congress, as noted in the description of the clashes and subsequent mobilizations in the sections above, exploited the dispute in order to benefit from the divisions amongst Muslim vote-bank, when the League was attempting to establish its ideological platform with the advent of provincial politics.\textsuperscript{445}

The Congress administration, to a great extent, handled Shia-Sunni relations with a manipulative skill quite similar to their British predecessors who had attempted earlier to find cracks in Muslim unity during the issue of Muslim University, jihadist and pan-Islamic agitations, as discussed by Justin Jones.\textsuperscript{446} Therefore, Madhe Sahaba or the Tabarra agitations were a garb under which not religious or sectarian but political battles were fought. The “unprecedented volume of British, Congress, Muslim League and other political activity and the accompanying increase in journalistic output that accompanied Lucknow’s new status as provincial capital gave wider resonance to municipal events.”\textsuperscript{447}

A Shia civil disobedience campaign resulted in the arrest of more than 1800 people. In August 1939, the Punjabi Khaksar leader Allama Mashriqi visited Lucknow along with many of his followers and offered the UP Congress ministry his help to resolve the crisis. Members of both sects appreciated Mashriqi’s intervention and agreed to stop the recitations for the time being.\textsuperscript{448} But this only shifted the source of the problem. The Khaksars were non-sectarian but they were also trained paramilitaries subscribing to an idiosyncratic version of fascism.\textsuperscript{449} They kept arriving in Lucknow increasing administrative fears of more disorder.
Justin Jones has argued that the Sunni and Shia agitations of the 1930s were different from earlier events. The *Madhe Sahaba* conflict or the *Tabarra* agitation differed in their “public impact, advanced organization and heavy public participation.” These prolonged agitations were “actualized as mass mobilizations, couched in the language of government petitioning and highly resonant of the political activism that typified north India from the 1920s.” These agitations were no more restricted to episodic limits of Muharram and just sporadic local clashes between Shias and Sunnis. Slogans of “collective piety” transformed into “demonstrative slogans and tools of communal politics.” The Lucknow agitation did not remain an isolated Lucknow event but expanded in scope not only to other towns of UP but to other provinces too. During the agitations, numerous ‘outsiders’ from outside Lucknow as well as the province arrived to participate in these grand religio-political spectacles. The *Majlis-i-Ahrar* recruited most of its volunteers from neighbouring qasbas and towns such as Kakori, Malihabad and Barabanki etc. and from Punjab more widely. The Shia agitation, even after the arrest of its substantial population, was sustained by an influx of activists from Rampur, Agra, Fayzabad, Barabanki and Allahabad.

When processions of both Sunnis and Shias, duly authorised and announced by government communiqué, were about to take place, a massive riot ensued resulting in the district authorities banning the recital of both the *Madhe Sahaba* and *Tabarra* for an indefinite time. Moreover, one of the biggest problems for the district administration was that now both Sunnis and Shias from outside Lucknow and even outside UP began to arrive in Lucknow.

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451 Ibid.
to join Madhe Sahaba and Tabarra recitations. Ian Copland et al.\(^{452}\) have rightly pointed out that despite G.B. Pants criticism of past British practice of prohibition orders and police action, the Congress ministry in UP stuck firmly to the ‘tried and tested’ mechanisms for dealing with religious quarrels that the Raj had devised. On one hand ‘customs’ continued to be the guiding principle for mediating public ritual. On the other hand, whenever situation got out of control, standard containment strategies were resorted to in the usual order starting with appeals for restraint, negotiating with community leaders, lathi charges, promulgation of section 144, curfews and firing by police and troops. Justin Jones has argued that prior to the provincial elections of 1937, the Madhe Sahaba or the tabarra agitation, when in its earlier phases, offered a convenient opportunity for inciting anti-government protests. Colonial administration often responded by suppressing public processions in the name of maintaining peace and public order. As a result, it often meant “direct government involvement in the regulation of religious rituals and festivities.” Colonial administrations’ intervention thus, transmuted matters of religious procedure into political and legal disputes.\(^{453}\)

Banning public space and police action were the tried and tested measures of the British colonial government before 1935 and would be equally vigorously deployed by the new Congress ministry in the United Provinces. In Lucknow, the controversy resulted in the ban on processions of both Shias and Sunnis in the end, but we notice that during the course of action the administrative tactic of using section 144 and bringing in troops served not only as a handy tool to control the immediate situation, but also as a political manoeuver to incarcerate society at large. It sent a message to the larger community of Lucknow that unrest

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\(^{452}\)Copland, Ian., Mobett, Roy, et al., A History of State and Religion in India, especially the Chapter “Rule of Law”, page 226.

could paralyze life not only of a particular community but of the whole town. These were also the moments when the institutional character of the Congress-in-government would become visible as it also resorted to banning access to public space and interfered with religious practices. It highlights the fact that whether it was British Raj before 1935 or partial Swaraj after 1937, the weapon to deal with unlawful assembly, section 144, would never become obsolete. It would only intensify, now that Congress was in power and opposition to ‘partial’ Swaraj was unacceptable.

**Conclusion**

In the Bombay case study, Congress Ministry led by B.G. Kher did not shy away from legislating an extraordinary law where K.M. Mushi gave unbridled powers to the Bombay Police in the name of maintaining public order. The Informal labourers that participated in communal riots, emerged as a danger to urban governance and came to be branded as hooligans in the city of Bombay. As a result, Munshi was commended by the colonial officials for understanding the tactics of (colonial) governance and the necessity for a government to make strict and exclusive laws to deal with problem categories or the source of ‘nuisance’ to public order. Whereas, in the light of Cawnpore Mill strikes and the Madhe Sahaba controversy in Lucknow, we notice how the Congress ministry sought to control two kinds of problem categories, labour under increasing control of Communists in the Kanpur case, and the Muslim community in Lucknow under the influence of sectarianism in the other. In both the U.P. case studies Congress first, attempted to intervene through political manipulation but when this failed, resorted to the repressive mechanisms similar to the tactics of the pre-1935 colonial government. what is consistent in these case studies is the
theme of the outsider-insider binary. The regulation and control of a situation often depended on marking a territory as an inside and its population/residents/members as insiders. Though the conflict or case of ‘disorder’ would initially be termed illegal and subsequently prohibited but later when ‘outsiders’ would involve themselves in the matter, the insiders were marked as the only legitimate party to the conflict. This colonial binary of inside and the outside failed frequently in the face of broader political mobilisations. However, such a process succeeded in allowing the administration to first create problem categories and then criminalize them. This trend continued even in the Congress led provincial governments after 1935. For example, the immigrant worker in the city, the hooligan, the labour leaders from outside the factory, supporters of political mobilizations from outside the town etc. were all termed as outsiders when situation got out of control.

Certain paradigms of law were stated in the initial sections of this chapter. These paradigms could enable us to understand the nature of the legal regime in the case studies discussed above. Legal theorist Thanos Zartaloudis has argued that the four paradigms of law are important to understand any process of the making and enforcement of law. In this chapter, we observe that the attitude of the UP Congress ministry towards cases of “public order” enforced such four legal paradigms the United Provinces. It fulfilled the ‘reference paradigm’ because it conducted a government according to the Indian Penal Code drafted by the British colonialists in 1860, therefore the Congress ministry in UP stuck to its meta-references to natural law or the availability of a self-sufficient legal code. It is ironic how Congress first wanted to wreck the 1935 Government of India Act, but not the overtly

455 Thanos Zartaloudis has discussed how in contemporary times, the four classic paradigms of legal theory have lost their meaning. I have tried to use these paradigms analytically in a different manner to look at the operation of public order laws in the post 1935 Congress Ministry in UP.
repressive Indian Penal Code drafted in a colonial context. The frequent invocation of section 144, *lathi* charges, curfews and occasional police firing were derived from the ‘salvation paradigm’ of law because the justification of the police violence progressed from the fact that a situation of disorder necessitated state violence in achieving the ideal of justice as law’s end, i.e. violence calls for violence. Public order laws also enforced the ‘universality paradigm’ of legal theory by imposing a legal culture on people who were not direct stakeholders in the conflicts in Kanpur and Lucknow. Finally, it enforced the ‘consensus paradigm’ by rejecting a social consensus that criticised police violence and section 144. The consensus in support of section 144 CrPC was generated by multiple interventions from Nehru, Muslim and Socialist leaders within Congress, the statement of governor and the publications of official reports mediated mass media through continuous reports, letters to the editor and editorials.

Cases like these, I would like to argue, show a blurring of the line between the potentiality of public order laws and their actuality. These instances not only emphasise but expose, the limits as well as the power of public orders laws. They highlight how the logic of ‘maintaining public peace and tranquillity’ for the Congress government in Bombay and UP in situations of anti-government mass mobilisations or other kinds of public action such as riots safeguarded the self-sufficiency of these laws. We notice that the Congress ministry’s use of public order laws and the justification it used, points towards a certain biopolitical thinking, where the use of public order law in various circumstances would aim to establish a normalised understanding of how populations ought to behave or were expected to behave once such laws were promulgated. The public order laws, such as section 144, as a practice of colonial state power blurred ‘norm’ with ‘fact’ and ‘ought’ with ‘is’. The brutality of dominance of colonial government and later the congress ministry was achieved in the name
of a certain apolitical rationality which thrived on criminalising mass politics. It was a far cry from Congress politics in legislature.
Chapter Four

When the Administration Broke the Law: Peter Budge Scandal and the Issue of Race, Name and Law in UP

This chapter deals with the story of an elderly man named Peter Budge who was arrested in the city of Lucknow for the violation of magisterial orders under section 144 CrPC and the Indian Arms Act. Subsequently he fell prey to repetitive official errors regarding his name in administrative files resulting in his detention for almost a year. This story may be marginal to the great drama of decolonization in India but it offers a unique window at what decolonization actually meant at the grass-root level in terms of legal governance, and it led to a scandal in the United Provinces administration. Budges’s legal case disappeared between the cracks of bad record keeping and insufficient information sharing and led to his lengthy and unlawful detention at the precise moment of India’s independence. His ordeal raises important questions about the complimentary relation between law and violence and about the sometimes fictitious nature of public order laws. The everyday reality of public order enforcement is key to understanding the nature and operations of the late colonial state in India. Additionally, it highlights the embarrassment and anxiety the newly independent UP government faced when the story of Peter Budges’ detention surfaced. His case is particularly poignant, since he was arrested before 1947 and was only released after India had attained Independence. Forgotten in jail, he missed the glorious opportunity of his transition from a colonial subject to the citizen of an Independent India. This story is also significant in that it is not about a member of a political party, it is not about a person arrested for protesting against the colonial government, the local administration or while participating

456 See ‘Inquiry about the detention of Mr. Peter Budge about a year without produced before court’, File no. 814/48, Home Department (criminal), UP State Archives, Lucknow.
in a riot. It is a story of an ordinary person who in addition to being in the wrong place at the wrong time was subjected to bureaucratic manhandling simply because of his name, a name which was not Indian but could be easily confused with other names available. This story also highlights the quotidian practices of the local police, jail and judicial bureaucracy while handling cases of ordinary citizens who would appear to be politically insignificant.

Recalling the political context of 1946-48 is important to understand the location of Budge’s case in the larger scheme of things. In 1946, a year after the Second World War had concluded, the Cabinet mission was sent to India to discuss the modalities of transfer of power to the Indian people. Two major parties, the Congress and the Muslim League were both dissatisfied with the proposal of creating groups of religiously demarcated provinces yet to retain some form of unity at the federal level. While Muslim League wanted safeguards for Muslims in the Constituent Assembly with the power to veto, Congress on the other hand was not content with the ‘communal’ framework the Muslim League proposed. As a result, the Muslim League renewed its agitation for a separate Muslim state of Pakistan. Such a politics exacerbated communal tensions between Hindus and Muslims all over India. In the United Provinces, too, communalism gained momentum. A particularly alarming point was reached when Meo Muslims were reported raiding Jat Hindu villages near Agra, Mathura and Meerut and, in retaliation Jats attacked villages populated by Muslims. There were reports that weapons including swords, lathis and guns were being brought into the province in preparation for communal clashes. A press-note from the District Magistrate Lucknow on 21st May 1947 is important in this regard. It mentioned

458 Mayaram, Shail. Resisting Regimes: Myth, Memory and the Shaping of Muslim Identity, Oxford University Press, 1997, Pages 298.
the strong possibility that ex-servicemen who had just returned from serving in the War had brought a large number of firearms into the Province from warzones. The District Magistrate’s note emphasized that “the possession of a firearm without a license is an offence under the Indian Arms Act punishable with imprisonment up to three years and with a fine.”  It was decreed that ex-servicemen in possession of unlicensed arms should produce such arms before “the nearest stipendiary magistrate or the police station officer within one month” of the notification. Such ex-servicemen were encouraged to report such weapons with an assurance that their application for a license would be considered favourably and that they would be exempted from prosecution.

The rise of communal temperament in the months preceding partition resulted in the promulgation of the U.P. Communal Disturbances Prevention Ordinance 1947, just five days after the notification for the declaration of unlicensed arms. The communal disorder ordinance incorporated a Government Bill for the suppression of communal disorder in the province. The law granted the local authorities responsible for the maintenance of law and order the powers to take “special measures” for the prevention of disturbances. Such special powers included the power to shoot at sight any person violating a curfew and, to declare whole towns as “disturbed areas.” Also, punishments for certain offences were enhanced. The United Provinces Congress Ministry promulgated this ordinance after a passage of the Bill through both the Houses of the Legislature because the normal process of getting the assent of the Governor General would have entailed considerable delay. The U.P. Government defended the suspension of due procedure by maintaining that given the

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461 Ibid.
463 Ibid.
464 See National Archives of India, File No. 38/37/47- Public (A).
high communal tensions in the province, the situation necessitated immediate action and could not afford the delay involved in getting the Governor’s assent. Bypassing Governor’s assent in the face of an emergency highlights that since the process of decolonisation was now advanced, provincial governments could make such decisions for themselves within a legal framework. The gradual transfer of sovereignty made such autonomy possible.

Under the new law, the powers of the police and magistrates gained a different impetus. The Communal Disturbances Prevention Ordinance enabled ordinary policemen to use their discretion to decide as to who would fall in what category of crime. For example, they would now be able to decide whether or not a person was participating in disorderly activities or was in possession of a weapon. First class Magistrates, on the other hand, were now empowered to award all the heavy sentences, including transportation for life. The Magistrates were earlier empowered to award only two years’ imprisonment and a limited amount as fine for similar offences. Furthermore, no appeals could now be made to intermediate courts over the decisions of these magistrates, they would now go directly to a High Court only. This law extended to ordinary non-gazetted employees, too. Such government servants who were to be found guilty of bribery, loot or partiality during communal disturbances were to be dismissed by their appointing authority.

In the light of such laws, the relationship between the police and the judiciary stands at the very heart of the policies of control. While the function of the judicial wing appears to be clear i.e., conducting trials on the basis of evidence, the purpose of the police remains more difficult to define. Unlike the judge, the policemen (or one of his superiors) had a great deal of discretion over whether or not to take action in a particular situation of public order. But uncertainty did not wholly lie on only one side of the relationship of the two institutions.
Late colonial police and juridical practice, as I will explain in the following sections, was prone to bureaucratic errors and shared with the police a basic disinterest in the liberty of individual persons.

William Gould has highlighted corruption as well as the lax character of administrative bureaucracy in the United Provinces. He discusses the case against one Lekh Pal who when applying to a bank for loan discovered that his proof of identity was wrong, since he was registered as dead in local records. This error was later discovered to be a conspiracy of his uncle who arranged the registration of Lekh Pal’s death by bribing a clerk in order to inherit his property. Lekh Pal spent almost two decades to prove that he was alive. The story gains significance since the death certificate recorded and ratified by a bureaucrat would be difficult to refute. In fact, it would prove impossible to prove that he was still alive even though he existed in the flesh. This particular case came to light when covered by an American journalist in 1975. The case finally concluded in 1994 after prolonged suffering by Lekh Pal at the hands of UP bureaucracy. Through the case study of Lekh Pal, Gould demonstrates the structure and effects of bureaucratic corruption on the lives of ordinary Indians. The case study is from the nineteen seventies, which is much later than the period under consideration in this chapter, and it serves as an insight into the scope of corruption and of the workings of the bureaucratic order in the life of an ordinary citizen much further into the career of the postcolonial Indian state.

The case study of Peter Budge will demonstrate that the wrong decision to arrest somebody in a public space was not always related to corruption but sometimes to simple and utter

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disregard for the liberty and rights of an ordinary citizen. This was by no means unique. Just to offer one parallel example for how the legal process could be pursued so sloppily as to disregard ordinary lives is that of one Raghubar, brought to public attention in an article in The National Herald on May 14, 1948. Raghubar, a resident of Mohanlalganj in United Provinces, had been arrested in 1946 in connection with the theft of a bullock. The Tehsildar then hastily convicted Raghubar on the charge of the theft. However, Raghubar preferred an appeal to the sessions judge against the conviction order. In response, the sessions judge ordered a retrial on the basis that Raghubar was not given the chance to defend himself. The prosecution had the case postponed at every hearing for more than a year on various pretexts. Finally, when the magistrate fixed the hearing for April 31, 1948, the witness presented by the prosecution during the hearing was ignorant about the case and, in fact, turned out to be a witness for some other case. Following this, the Magistrate passed serious strictures on the negligence of police and discharged Raghubar immediately. The case of Peter Budge’s suffering, meanwhile, throws up an uncanny resemblance to other cases like Raghubar and Lekh Pal. It is of added interest for the argument of this thesis as it involves very specifically the administration of public order legislation.

At the Wrong place at the wrong time: public disorder and the misfortune of Peter Budge

Amidst heightened communal discord building up to the partition of India, curfews and prohibition orders became frequent. With the promulgation of the Communal Disturbances Prevention Ordinance 1947 and the invocation of the Indian Arms Act supplemented by curfews and orders under section 144 CrPC, life on the street became ever more difficult.
These disturbances were not directed against the colonial administration now but rather violent attacks by religious communities on each other in the wake of numerous uncertainties that arose with the possibility of the partition of India. In such uncertain times, Peter Budge made the unforgiveable mistake of taking a walk with a walking stick in his hand on the 2nd of June 1947, two months before India achieved independence.\(^{466}\) While walking, he was confronted by two constables Mohammad Saghir and Dudd Nath from Alambagh Police Station of Lucknow, who were patrolling the Charbagh area at that time.\(^{467}\) The constables confronted Budge and asked about his motives and presence on the street. Following arguments with the constables, Budge was arrested and his walking stick confiscated. This was around 11.15 a.m. according to the First Information Report (FIR). He was registered as an Indian Christian, with sanwala rang (brown skin colour) and as a resident of Kandhari Bazar, Lucknow.\(^{468}\) The reason for his arrest was that “he was found carrying a bamboo stick in contravention of the orders under section 144 CrPC and refused to give up the stick when asked to do so by the constables.”\(^{469}\) It is difficult to understand why the walking stick was requisitioned by the constables and how it could violate orders under section 144 and the Indian Arms Act. His refusal to hand over his walking stick led to the recording of the stick as a “weapon” which contravened the prohibition orders in place. He was arrested and taken to the police station, detained in the hawalaat for a day then sent to the City Magistrate’s Court next day at 12.25 P.M. The challan stated that he was booked under section 152 CrPC and section 188 IPC. After obtaining a complaint from the District Magistrate, Budge was

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\(^{466}\) See, *The Pioneer*, May 11, 1948, ‘Released after nearly a year’s jail as undertrial’.


\(^{468}\) See, Appendix 2, containing roman transliteration of “Naqal rapat number 22 roz namcha-am muwarakha 2nd June, 1947, 111/4 bajey, Thana Allambagh, Lucknow”, part of file no. 814/48, Home Department (Criminal), UP State Archives.

\(^{469}\) See, Judicial Enquiry report and the draft of the report by District Magistrate, Pages 20, part of File no. 814/48, Home Department (Criminal), UP state Archives.
sent to Jail the very same day. He would stay incarcerated for almost a year from then, without anyone noticing his detention or his legal case being advanced or dealt with.

The case became prominent after a newspaper reported the story of Peter Budge and questioned the functioning of law and order administration in the Province.\textsuperscript{470} The Premier (Chief Minister) of United Provinces personally rang the Deputy Secretary from Nainital to enquire about the progress of the enquiry and ordered to deal with the ensuing scandal.\textsuperscript{471} Since India was an independent country now, the story of such an administrative lapse causing such suffering to a common man embarrassed the government. The news story pointed to a potentially dark legacy that the postcolonial Indian bureaucracy had yet to overcome. This story is significant to understand just how everyday legal practice had yet to be decolonized, suggesting that decolonization was an extended process lasting several decades rather than a mere moment – which as it happens, the unfortunate victim of bureaucratic error was not allowed to enjoy. Also, it highlights the contradictions of a government now run mostly by Indians themselves but still following a colonial legal code.

To deal with the Peter Budge fiasco, the UP government finally appointed Justice M.C Desai, District and Sessions judge of Lucknow to conduct a judicial enquiry into the case.\textsuperscript{472} It was only in a letter dated May 15\textsuperscript{th} 1948, that Deputy Commissioner Lucknow A.D Pandit enclosed a note on Peter Budge informing the Deputy Secretary to UP government about the progress in the judicial enquiry of the case.\textsuperscript{473}

\textsuperscript{470} See, \textit{The Pioneer}, May 11, 1948, ‘Released after nearly a year’s jail as undertrial’.
Law and its lies: the detention of Budge under incorrect laws.

During the colonial government, police action and judicial interest was directed towards political activities of various kinds. It appears that the post 1947 government of United Provinces initially followed a similar path. Communal clashes, the activities of Hindu organisations like the Rashtriya Swayam Sevak Sangh, maintaining law and order etc. remained primary concerns of the government, alongside other colonial obsessions such as the control of rural banditry to which we will return in later chapters. An ordinary bystander like Peter Budge did not fit into any colonial problem category and hence received little attention while ‘more important’ issues were being dealt with. Justice M.C. Desai eventually submitted a twenty-eight-page report on the whole affair. His enquiry was meant to demonstrate the sincere readiness of the Congress government in United Provinces to pay immaculate attention to each and every case.

According to the report:

On 21.5.1947, the District Magistrate Lucknow issued an order under section 144 Cr.P.C. prohibiting any person from going about armed with any lathi or stick in any street or thoroughfare or assembling together in parties or groups of more than five persons. The order was passed on account of strained communal and party feelings and was to remain in force for two months.474

Peter Budge was arrested on the 13th day of this order on 2nd June 1947 and almost two months before India’s independence. The scope of the section 144 CrPC order is significant to understand the case. As stated by Justice Desai’s report:

“If a person disobeys an order lawfully issued under section 144 Cr.P.C. and if the disobedience causes or tends to cause obstruction etc. to any persons lawfully employed, he is liable to be punished under section 188 I.P.C. An offence under section 188 I.P.C. is non-cognizable and bailable. The police have no power to arrest a person accused of this without warrant. Government have the power of issuing notification under section 10 of the Criminal Law Amendment Act 1932 making an offence under section 188 I.P.C cognizable but no such notification was issued by the government in June 1947. … According to section 195 Cr.P.C. no court can take cognizance of an offence under section 188 I.P.C. except on the complaint in writing of the public servant concerned.”

Most importantly, the report concluded that “the arrest by the constables without a warrant or order from the magistrate was altogether illegal.” Though there was a provision under section 54 that empowered a police officer to arrest without warrant when a person has been implicated in any cognizable offence. However, such was not the matter in Peter Budge’s case. Moreover, this section could not be invoked when the offence of Section 188 IPC is non-cognizable. Also, under section 57, a police officer has the right to arrest a person who has committed a non-cognizable offence in the presence of a police officer along with

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477 Cognizable offence is an offence, where a police officer can arrest without a warrant.
478 Non-Cognizable offence is an offence, where a police officer can arrest only with a warrant.
refusing to give his name and residence address when asked. This is only aimed at ascertaining the name and residence of the person in question. This did not apply to Peter Budge’s arrest under section 57 because the constables did not even ask Peter Budge his name and residence, therefore, the report argued, they could not have relied upon this provision. Furthermore, when his name and residence was ascertained at the police station his detention would have to cease. So, we now know that Peter Budge’s detention itself was unlawful.

The police case further stated that Peter Budge was arrested under section 151 Cr.P.C.479 The report also pointed out that such a provision was relied upon for arresting the man for a non-cognizable offence. Moreover, there was no question of preventing the commission of any offence because mere disobedience of an order under section 144 Cr.P.C. is not an offence. It is an offence only if the disobedience causes, or is likely to cause obstruction, annoyance or injury, or risk of obstruction etc. to any person lawfully employed. But the statements of Police Constable Saghir Ahmad and Sub-Inspector Manzoor Ali did not suggest anything of this sort. Also, it was mentioned in the FIR that there is a chance that Peter Budge was of unsound mind because a report was made for his medical examination, which never took place. It is incomprehensible as to how such a “half-witted man,”480 when disobeying the order could have caused obstruction. His resistance and refusal to surrender his stick could have been a cognizable offence but the police or the court did not bring any such charge against him in the first place. Therefore, the constables had no authority to

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479 This section laid down that a police officer knowing of a design to commit any cognizable offence may arrest, without orders from a magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

demand that the stick should be surrendered to them, the report said. District and Session Judge M.C. Desai concluded, “the arrest itself was illegal.”\textsuperscript{481}

During the enquiry it was found that the chaalan report (chargesheet) sent by the Alambagh police station was untraceable now\textsuperscript{482} because according to the Prosecuting Inspector a large number of papers from his box were stolen at the time and it was presumed that the chaalan of Peter Budge was included amongst those papers. Also, not only was there no warrant of custody for Peter Budge addressed to the Superintendent District Jail, he was also admitted to District Jail in contravention of the Jail Manual (Para 15). The enquiry note pointed out that under Para 39 of the police regulations it was the duty of the Court Moharrir to obtain Magistrate’s orders for the detention in the lock-up both in the first instance as well as subsequent remands. The Court Moharrir of the City Magistrate’s Court responsible during the case had retired by the time of enquiry and was blamed for his negligence. According to the note, “each Court Moharrir maintained an unofficial register of undertrial prisoners in which the details of the case against them, the various dates of remand and the date of bail etc. are mentioned. Therefore, entries regarding his case were not made in the register prescribed in Form I of the Oudh Criminal Rules (the Misalband Register) because no actual papers reached the City Magistrate.” As a result, it became impossible for the City Magistrate to know about the case. According to the report, the City Magistrate Mr. Sanwal was subsequently replaced by Mr. Dube in September for a month before Mr. Kaul finally took over in the beginning of October 1947.

\textsuperscript{481} See, File No. 462/1948, Home Department (Police) B, “Criminal Law Amendment Act, Question of issue of orders under section 144”, Page 2, Part of file 814/48, UP State Archives. \textsuperscript{482} Ibid.
In addition to the Magistrate in whose court cases were under consideration, there were other mechanisms available to check on the unnecessary detention of under-trials. According to the rules, a monthly inspection of the District Jail had to take place by the District Magistrate, followed by periodic inspections by Commissioner and Sessions Judge or non-official visitors. Finally, a monthly list of under-trials was to be sent to the District Magistrate by the jail, under para 439 of the Jail Manual.

The first inspection after the detention of Peter Budge was carried out by the Additional District Magistrate on 15th September 1947 followed by another inspection on 10th January 1948. The Additional District Magistrate mentioned the name of Peter Budge in the list attached to the inspection conducted on January 10th, 1948 and a note was sent to the City Magistrate for report ten days later (on 20th January 1948). Though the City Magistrate responded on 27th February 1948 with regards to other prisoners he could not report on Peter Budge as reportedly he had no documents in his Court about his case. During the enquiry it came to light that he did promise to make enquiries from the Sadr Lock-up of the Moharrir but apparently forgot. The Magistrate also reported that the monthly lists of under-trials received from September 1947 to the first week of April 1948 were untraceable in his office. His roundabout excuse was that it was impossible for his office to have received any lists between February and April 1948, as “the jail staff was heavily worked owing to the R.S.S. and other detenues” following the assassination of Gandhi. In addition, the District Magistrate stated that the monthly list of under-trials received from the jail was sent by the Judicial Assistant, in the original, to courts for circulation. Therefore, owing to a large

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483 These two lists were sent to the Inspector General of Prisons.
484 This list contains under-trial prisoners in Sessions Court who have been in Jail for more than six months from the date of committal and those in Magistrate’s Court who have been in custody for more than three months. The District Magistrate gets from the Jail a list of under-trials over one-month old.
number of courts involved, the lists sometimes got lost and reports were never received from courts in time.\textsuperscript{486} The lapse in following stipulated regulations was justified with reference to the shortage of staff in the Courts and it was argued that the office of the District Magistrate had to deal with a huge volume of correspondence. Although, the District Magistrate’s office did file a request for increase in staff no official sanction had been received at this point. An attempt to shift the burden of error from individuals to blame general overwork is evident here.

The note of the District Magistrate was not shy to admit that the jail inspection notes by various officers did not receive adequate attention of the magistrates largely because there was heavy congestion in the Courts. He stated that the average of the total number of under-trials belonging to all courts was around 500.\textsuperscript{487} According to him, this led to inefficiency of the court staff leading to improper entries in warrants of custody when cases were transferred from one court to another. As a result, the jail authorities or the Prosecuting Inspector were unable to point as to if a case was pending and with what office. Even the Superintendent of the Jail complained about the over-work that the under-trial clerk was subjected to, even though he worked overtime.

Along with the submission of this note, the District Magistrate issued instructions that no prisoner was to be admitted to Jail without a proper warrant of custody or a detention order from a magistrate. The District Magistrate pointed towards a ‘fault’ in the system where Magistrates did not record cases in their cause-list in which a charge sheet has not been received but only remands were being granted. Orders were now also issued to the

\textsuperscript{486} See, Note (pages 3) (Judicial enquiry report) by District Magistrate, Lucknow, A.D. Pandit, dated 15 May 1948. Part of file 814/48, Home Department (Criminal) UP state Archives, Lucknow.
\textsuperscript{487} Ibid. Pp 4-5.
magistrates to record such cases in their cause-list and they should insist on the production of under-trials from the jail on the expiry of their remands. The note admits without any further explanation that remands were granted on paper on the request of the police and, the under-trial was never taken out of jail until the hearing of the case started.488 This points out an indirect confession by the judicial administration of the normalisation of the violation of the due process.

Disregard for individual liberty was not uncommon during in the late colonial period. Various communal riots, worker’s agitations, nationalist protests were handled by the administration on a day to day basis. When the administration was burdened with political unrest, individual cases were often dealt with carelessly. Sometimes, the police officer on the spot would use their judgement to decide whether the case falls under violation of public order or not. Peter Budge’s case was also decided by the two constables, who without sufficient information about him lodged a report for violating a curfew and carrying a weapon. Clerks both in the police station and in the courts, did not pay attention to detail and due to multiple paperwork registered his details incorrectly. The judicial system was also inattentive to the possible errors that could be committed in the process. It overlooked a general disregard for details and followed a standard habit of issuing warrants and conducting trials without ascertaining the details of the trial or the accused.

Problem of language and legibility: Chinese whispers, Administrative misconduct and the disregard for individual liberty

Peter Budge’s detention case when investigated turned out to be the result of clerical errors while recording his personal details. In addition to the unlawful initial charges under which Peter Budge was booked, he was subjected to a conclusively unfortunate spelling blunder. Such errors were primarily owed to Urdu-English transliteration problems. Budge’s name was sloppily written in Nastaliq and was later wrongly romanized. The report in the general diary of the Head *Moharrir* Munis Khan recorded the name of the accused as “Peer Bajar s/o Tanik Bajar” whereas the real name was “Peter Budge s/o Tommy Budge.” Justice Desai’s report highlighted the fact that it is this simple carelessness “responsible for all the trouble that had arisen in this case.” Though Munis Khan did not know English, the report opined, he should have taken care when he was confronted with a strange name and should have written it down correctly. Therefore, Munis Khan, according to Desai, could not be absolved from the blame for writing down the name incorrectly. Sub-Inspector (SI) Zahir Khan’s report, which was treated as *chaalan*\(^{489}\) report also recorded the name as “Peer Bajar.”\(^{490}\) The Inspector without checking the facts for himself copied information as was recorded in the general diary of the Moharrir Munis Khan. Though the SI opined that the man was “cracked head and insane” and suggested that he should be medically examined to find out whether he should be sent to an asylum. As mentioned above such an examination never took place and the question of arresting a person with an unsound mind and to remand him in custody still remained.

Police constables Saghir Ahmad Khan and Ram Lakhan took Peter Budge to the District Jail on 3\(^{rd}\) June 1947 with the warrant and he was admitted to the jail. But when the inquiry was

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\(^{489}\) *Chaalan* means chargesheet.

conducted into the papers of this transfer, the report highlights that the warrant was lost and was declared untraceable. The second level of error occurred when the same man Peter Budge was entered into jail under the name “Peer Buj s/o Tomi Buj,” adding to the confusion of administrative bureaucracy. We know from the observations in the enquiry report that the courts did not adopt the practice of returning the warrants immediately after examining the period of remand. But the courts in Lucknow district repeatedly failed to return the warrants. In the case of Peter Budge too, the “City Magistrate signed the warrant remanding the man in jail custody up to 17.6.1947, he did not open any file and did not make any entry about the matter in any register.” Now, as the arrest was illegal in the first place, “the remand to jail custody was also illegal.” The problem on the part of the City Magistrate was that he did not take cognizance of the offence under section 188 I.P.C. and could not do so without the complaint by the District Magistrate. Hence, he could not remand Peter Budge for even one day. But we know from the report that he was remanded for 14 days.

The story of clerical errors did not end here. On 4th June 1947, the City Magistrate’s court moharrir sent the chalani report of S.I. Rashid Ahmad together with the connected papers to the District Magistrate for sanctioning the prosecution of Peter Budge under section 188 IPC. In such a case, when the Police Inspector required District Magistrate’s sanction for any case, he had to fill a form and send it to the District Magistrate for his signatures. When Prosecuting Sub-Inspector Yusuf Ali Khan along with the chalani report sent the form to

492 Ibid.
493 Ibid.
494 Ibid.
the District Magistrate, he wrote the name of the accused as “Peer Bakhair s/o Tank Bakhair,” leading to further alteration in Peter Budge’s name in police and court records. Evidently, the ahalmad took 15 days to get District Magistrate’s signature on this form.

On 21st June 1947, the PI’s office sent the report to the City Magistrate’s Court but the City Magistrate at first transferred the case to the court of the Addl. City Magistrate, and the complaint did not go to his office. Finally, on 16.7.1947 the case was registered in the court of the City Magistrate. The ahalmad opened a file of the case but wrote the name as “Pir Bakhair.” In the Misilband register No.1 he wrote down the name as “Pir Baksh s/o Tank Bahadur.” This kind of alteration was the final nail in the coffin of this case, making it now impossible to trace the man later. By this time, the name Peter has been altered to ‘Pir’ and Budge had been changed to ‘Bakhair’. Errors did not even spare Peter Budge’s father’s name. Budge’s parentage was also recorded incorrectly by different authorities. Peter Budge’s father’s name being Tommy Budge was written incorrectly first as ‘Tanik Bakhair’ and later as ‘Tank Bahadur’.

We know that by the time of inquiry the ahalmad of the City Magistrate’s Court Ram Sudhrisht Lal was under suspension. Nobody even noticed that the City Magistrate had opened a file, though under a corrupted name. Also, nobody took any notice of the suggestion in the Police report that the man should have been medically examined with a view to find out whether he was of unsound mind or not. No letter was sent to the Superintendent Jail for his medical examination either.

496 Ahalmad is also a junior clerk in courts, responsible for maintaining the judicial record of the cases pending in a court. S/he is also responsible for maintaining case files according to dates of adjournment and to issue notices in the case.
The period of remand of Peter Budge expired on 17th June 1947, but he was not sent to the court on that day in accordance with the rules. In the paperwork, the next day fixed in the warrant was 8th August 1947. The report pointed out that “this means that the warrant was not sent on June 17, 1947 for extending the period of remand and that the man was detained in the jail without any authority up to August 8, 1947.” The enquiry report held the Assistant Jailor Radha Raman Tewari responsible for this unlawful detention.

When the city Magistrate fixed the next date as 8th August 1947, he also ordered summons to be issued against Peter Budge. This was more evidence for the the carelessness of the judiciary as when an accused was already in jail there was no need for the summons to be issued. Neither the ahalma nor the magistrate seem to have read the chalani report and the copy of the report of the general diary. The issue became even more complicated when the reader of the Court of Oudh Behari stated during the inquiry that on the complaint there was Urdu writing. According to the inquiry the words read “mulziman muqayyad hain” (the accused is under detention) but Oudh Behari claimed that he read it as “Muqayyad azad hain (the detainee is free).” The inquiry report disagreed with the possibility of reading “muqayyad” as “azad”. Adding to the confusion, Prosecuting Sub-Inspector Yusuf Ali Khan stated that these words did not even exist when he sent the form to the District Magistrate for his signature. Therefore, the inquiry report owed this error to Oudh Behari’s negligence for not going through the papers properly. It can be observed that the issue of legibility, transliteration and the vernacular, all made official records confusing. Also,

501 Meaning, the accused is/are in detention/under arrest.
502 Meaning, the detained is/are set free.
certain bureaucratic habits contravening rules and regulations had become unofficially acceptable practices. Be it the careless handling of papers or different authorities be it police, jail or judiciary copied each other’s information (sometimes incorrectly) without due investigation.

Finally, when on 8th August 1947, Peter Budge was sent by the jail authorities to the City Magistrate’s court on requisition. The Court Moharrir Mukhtar Ahmad now understood that the case was against “Peer Bajar.” We know of the Moharrir’s false assumption because he sent the requisition note in this name to the jail for the accused’s attendance on 8th August 1947. When the date arrived, the City Magistrate fixed another date for 15th September 1947 because the accused was not produced in court and was noted as absent by the Magistrate. Hence, he ordered another summons to be issued. The reason was once again that no person of the assumed name existed. In addition, the issue of summons to a man who was already in jail custody was technically wrong. Moreover, the Magistrate could not note an accused as ‘absent’ when it was the Jail authorities who did not produce him. However, the inquiry report stated that “it was the duty of the City Magistrate to make an inquiry into the cause of the absence of the accused” in which he failed. Also, the court Moharrir carelessly put down a fictitious date 23rd August 1947 in the warrant and returned it to the jail. Therefore, Mukhtar Ahmad, the court Moharrir, was held responsible for entering fictitious dates. But Mukhtar Ahmad stated as an explanation that the City Magistrate gave him a standing order “to fix a date 14 days ahead in every warrant.” This was a highly irregular order, if at all passed. When the issue of the fictitious date was raised, the moharrir stated that he never used to inquire of the reader about the next date in any case. Also, his jurisdiction for this

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task was that the under-trials had to be returned to the jail before 5 p.m. and therefore, he did not always have an opportunity to find out the next date either from the reader of the court or from the file. The inquiry report noted, “Since an accused would be sent to court by the jail only on requisition, the noting of a date in the warrant was only a formality meant to justify the detention in the jail.”

Also, if the moharrir would have inquired from the reader about the next date fixed in this case, the reader would have noted that the accused was in jail. But the practice prevailing in the court was to not pay attention to such details and hence there were many facts of which the court administration itself was not aware.

Justice B.D Sanwal who was hearing the case got transferred at this stage and Justice C.B.L. Dube began presiding over the court now. Even on 15th September 1947, no one enquired about the ‘absence’ of the accused and the court issued another summons. But this time the City Magistrate ordered the summons to be issued against the accused for 25th September 1947 and to be given dasti to a constable. But apparently, there was no summons, which might have been issued for 15th September 1947. According to the statement of the clerk, the chalan bahi of the ahalmad did not contain any entry about the despatch of the summons.

This points to the fact that the then ahalmad Ram Sudhrisht Lal failed to issue the summons. Once again, a new date, 3rd October 1947, was carelessly endorsed by the court moharrir. Also, the court moharrir was supposed to maintain a register of the under-trials remanded by the magistrate in jail. But in the lock-up register, Head Constable Liaqat Ali had recorded that Peter Budge was released on bail on 10th August 1947. The issue was that no correspondence existed for this date, so head Constable Liaqat Ali must also have entered a

506 Dasti means ‘By hand’.
fictitious date in the cause list. It can be noticed that the clerks often recorded information without checking papers and were used to record dates and names carelessly and sometimes fictitiously. Noting the ‘absence’ of Peter Budge in the Court, Justice C.B.L. Dube once again issued fresh summons for the hearing on 13th October 1947. The Magistrate again failed to inquire about the successive absence of the accused from the hearing. The later inquiry report noted:

When the accused was absent again and again it was his (magistrate’s) duty to give personal attention to the matter and to find out why he was absent.507

At this time, the City Magistrate M.G. Kaul had taken over as Magistrate from C.B.L. Dube. When the accused was absent again on 13th October 1947, Justice Kaul at once ordered a bailable warrant to be issued against the accused for 11th November 1947. We must note that the summons issued for 13th October 1947 was issued late on 30th September 1947 against “Pir Bakhair s/o Tank Bakhair.” On the top of the summons was written “Pir Baksh Isai” in Hindi and “Pir Baksh” in Urdu. The error regarding the recording of an incorrect name that began from the local police station returned back to the point of origin without anyone noticing any familiarity with the case.

Budge’s fate was complicated by issues of legibility, race and bureaucratic culture. Throughout, Peter Budge was treated like a non-descript, a Christian by religion and Indian by race but with an English name. Therefore, he did not fit into any readymade problem category. The Police Station Qaiserbagh returned the summons on 12th October 1947 to the

507 See ‘Inquiry about the detention of Mr. Peter Budge about a year without produced before court’, File no. 814/48, Home Department (criminal), UP State Archives, Lucknow.
effect that no trace of “Pir Bakhair Christian” could be found in Mohalla Qandhari Bazar and that there did not live any person by that name. The issue here is that the ahalmad of the court failed to endorse the date on which he received the summons back. If he received the order on or before 13th October 1947, the order of the City Magistrate would have been wrong. The next step would have been to find out the correct address of the accused instead of ordering a warrant to be issued. Because a warrant could only be issued if it was found that the accused was evading service of the summons. Magistrate M.G. Kaul too “failed to go through the file and discover that the man was rotting in jail since 3.6.1947.”

On 11th November 1947, the City Magistrate transferred the case to Special Magistrate Dr. S.N. Bose without noting anything about the presence or absence of the accused. Even the office of the Special Magistrate did not discover the error that the address of the accused was incorrect and instead kept issuing summons. The next date of a hearing was 5th January 1948 and the accused was absent once again. The Special Magistrate once more issued summons for 16th January 1948, but this time he took the precaution of issuing it through the challaning authority, which meant careful recording of facts which would make any follow-up on the case easier. The Special Magistrate still did not bother to inquire himself about the ‘absence’ of the accused. When the summons order to be issued for the date was not received back from the police station, the case was adjourned to 26th January 1948 and, another summons was issued through the challaning authority. When once again the accused was ‘absent’, the Special Magistrate dismissed the complaint on the ground that the accused could not be traced. The case against Peter Budge came to an end on 26th January 1948 without anyone noticing that Peter Budge was still rotting in jail. He was the present absent that was

physically present but absent in the bureaucratic paper trail. His existence in the paperwork was more important than his physical existence. It was the paperwork that legitimated his presence.

One of the Appendices in the inquiry report includes a letter which the Superintendent Jail wrote to the District Magistrate on 7\textsuperscript{th} November 1947 enclosing a total of 93 warrants including the one for Peter Budge for fixing new dates. Another letter attached as an Appendix to the report proved that the warrants had been repeatedly sent to the Courts for fixing dates but were received back as is. The letter sent to the District Magistrate was lost in his office and nobody had any idea about it either. The issue pertains to the indexing of the 93 warrants sent together. It is at this point that the warrant was received but apparently not indexed. We come to know later that the Judicial Assistant received the letter in the District Magistrate’s office as he sent the letter together with warrants on 8\textsuperscript{th} November 1947 to the Prosecuting Inspector. The error was the despatcher’s who made an entry in the \textit{Rasid Bahi}\textsuperscript{509} though he wrongly put down the number of the letter as 222 instead of 272.

The inquiry report argued that there has been inefficiency in the office of the District Magistrate because nobody took any interest in the paperwork after sending it to the Prosecuting Inspector. Had the letter been indexed it would appear in the register of unanswered references after a month, and the District Magistrate would have been able to see that full compliance was not done. The Head Constable Mukhtar Ahmad was responsible for the detention of Peter Budge upto 29\textsuperscript{th} October 1947 because he kept on endorsing fictitious dates in the warrant without any authority from the City Magistrate. The Superintendent of Jail, meanwhile, should have refused to admit an accused to jail whose

\textsuperscript{509} Receipt book.
case is not authorized by the criminal court because he derived his authority only from the warrant of custody. The inquiry report also argued that if the warrant authorised detention up to a certain date he was bound to send the under-trial to the court and must refuse to accept him again unless the date is extended. There is a failure on the part of the jail Superintendent too.

The inquiry report concluded that the initial blame lied with the magistrates and court moharrirs who were in the habit of doing fictitious work and did not realise their responsibility in such matters. But it was the court too that was inattentive even though the Jail Superintendent kept sending warrants time and again. According to the inquiry report, “it was a question of liberty of an individual who had already undergone unlawful detention.”

In the end, Superintendent at some stage actually sent the accused (Peter Budge) to the court on three occasions after January 1948, but on each occasion he was returned by the court. Finally, when no notice of this matter was taken by anybody, the Superintendent wrote on 28th April 1948 another letter to the District Magistrate bringing to his notice this unlawful detention. When this letter reached the City Magistrate Peter Budge was sent for from jail on 6th May 1948 and the next day, he was released immediately under section 249 Cr.P.C. The Magistrate released him on the ground that there were no papers connected with his detention and he was never produced before the court. Therefore, his detention was held

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511 Ibid.
illegal. The irony remains that the court did not bother to inquire if there was any mistake on their part or whether the system was itself inefficient and careless. Moreover, Peter Budge had himself sent two applications from the jail drawing the City Magistrate’s attention to his detention without trial. The first application was sent on 13th March 1948, followed by another on 24th April 1948. Even these applications were not traceable in the City Magistrate’s Court but the ahalmad admitted during the inquiry to having received them. More accurately he was forced to admit it because he had signed the jail dak book (postal register), otherwise even this instance could have been denied. The entire fiasco highlights the fact that the neglect to deal adequately with the inspection notes of the various inspecting officers contributed to the unlawful detention of Peter Budge. We now know that the police, the magistracy and the staff of the jail and of District Magistrate’s office were all responsible in one way or another for the unlawful detention of this innocent man Peter Budge.

The case of Peter Budge resonates in a way with Franz Kafka’s waiting ‘before the law’ framework. But this Kafkaesque ordeal owes much to the everyday functioning of file-based bureaucracy in India and elsewhere. A few scholars have written about the life of bureaucratic file/paperwork/ documents. Matthew Hull for example, has pointed out that the foundations of the East India Company itself were based on a Hobbesian framework of “body politik,” where there had to be a clear chain of command and hierarchy. The movement of paper through various channels ensured the conduct of business of the Company. This was later reflected in the late colonial government too, when Crown had taken over the business of government. Peter Budge’s case enables us to understand “the

implications of such a thorough paper mediation of relations among people, things, places
and purposes,"515. It demonstrates the Kafkaesque nature of the justice system in India by
analysing a case of illegal detention of an individual in the name of ‘public order’. Ben Kafka
in *The Demon of writing: Powers and failures of paperwork* has argued that bureaucracy is
as much a myth as material reality. Both the materiality of bureaucracy and its conceptual-
fantastical fashioning should be grasped together. Ben Kafka’s work is an exercise in the
‘psychohistory’ of paper work as he himself calls it.516 Bureaucratic myths, like most myths,
as Ben Kafka suggests, are about managing structural contradictions in how we are governed
and how we govern ourselves.517 For Kafka, it was the structural contradictions of the liberal-
democratic project, which was responsible for the amount of paperwork that was required
not only to govern, but also to be governed in the modern world.518 Bureaucratic rationality
has always demanded that “governing paper-work” creates a sense of certainty in order to
infuse legal order with legitimacy. But the case study of Peter Budge demonstrates that at
the heart of this “Government of Paper” is a Kafkaesque element of error, neglect, and
confusion. As Matthew Hull has argued that the “Government of Paper” established a system
where “vouching was done by artefacts, not people.” All official documents had to be
‘vouched’ by a different official at each level. In the case of Peter Budge trial, we observe a
very neat system of commands, recording of facts, registration of documents. The structure
of a system where a conduct of papers is supposed to ensure that individual official did not
commit error(s) in the process. We note how a system where the logic of the system was
supposed to defy errors, the entire system of vouching collapsed when an incorrect name
was registered. This not only endangered the liberty of an individual but also exposed how

515 Matthew S. Hull, *Government of Paper: The Materiality of Bureaucracy in Urban Pakistan*, University of
16.
517 Ibid.
518 Ibid. Pp 81-82.
fragile the conduct of papers was. As a result, the chance of a human error, in a way, destabilised the government of papers. I would like to argue that such an uncertainty of law was the potential site of everyday injustice in late colonial U.P. I would further argue that such errors in the justice system should not be seen as ‘accidental’ only, but should be taken as ‘constitutive’ of the larger legal practices in late colonial and early independent India. The case of Peter Budge proves that the juridical-bureaucratic rationality was often punctured by moments of small decisions that each official made at every step.

Conclusion

Peter budge’s suffering at the hands of local administration of Lucknow above all points out the mismanagement of paperwork bureaucracy in colonial India. Three major points emerge out of Budge’s illegal detention. One, the process of decolonisation had implications on transfer of sovereignty even before 1947 as highlighted by the passing of public order legislation without seeking the assent of the Governor. Second, non-political individuals like Budge did not figure in the bureaucratic calculations of the law and order machinery. And third, colonial bureaucracy was inefficient and ill trained in handling its own paperwork.

British colonial government in India saw as a strength its bureaucracy and the paperwork it generated. Legal formality and bureaucratic management of life as the case of budge reveals aimed to reinforce elements of precise control at each level. Though legal procedure specified the rules of conduct, the conduct itself was not always legal. Technically, each procedure in turn promised a certain outcome but the story was different if a single line of procedure was carelessly entered in the paper trail. Legal procedure functioned as a
rationality where the colonial state could in principle, master or control all things by calculation. Colonial administration had always argued from the beginning that its governance was based on the establishment of a depoliticised bureaucracy, impartial judiciary, rule bound norms and a dutiful police. What breathed life into such a bureaucratic order was the ‘order of files’ which were argued to be laden with facts and therefore, truth. Throughout this chapter, Budge’s story and the inquiry report has challenged such a convenient understanding of colonial bureaucracy. The entire process of legal conduct right from Budge’s arrest to the dismissal of his case was conducted by Indians throughout. A general disjunction between the coloniser and the colonised fails to highlight the nuances of the participation of Indians themselves in the structure of governance even after decolonisation had begun.

Furthermore, Peter Budge’s ordeal demonstrates the illegality of law in various forms. In situations of ‘public disorder’ police officials on the spot would make decisions declaring a presence a violation of public tranquillity or declare an object a weapon. What is pertinent is the basis on which such action could be taken. Charging a person with a particular extraordinary crime and then proving it were two different sides of the administrative machinery. Ideally, respite from injustice could be expected by fighting/challenging the miscarriage of justice or official prejudice involved. But in the case of Peter Budge, official incompetence both in language and law complicated this process further. In Peter Budge’s case we notice that the laws invoked by the police constables to book Peter Budge did not follow the administrative protocol. The sections of law invoked were to make the accusations stronger regardless of whether they made any legal sense or not.

Also, in the immediate phase of decolonisation, legibility and the vernacular were important in this regard. Unfamiliar names like in the case of Peter Budge could be subjected to incorrect or unfair transliteration resulting in the suffering of the accused. Informal rules and fictitious records, were also commonplace in clerical practice, enabling further confusion in various cases. The case study of Peter Budge becomes highly illustrative in the sense that his existence is non-descript. His appearance in the world and on paper left different footprints each time. According to the FIR, his skin colour was mentioned as ‘sanwala’ which is brown skin. However, his name Peter Budge was an English name. He was the quintessential Indian citizen—somebody who did not really belong to any pre-state community. His name and the description of the body recorded in files did not go together. It was this dissociation between the two that his name could have been recorded incorrectly in the first place. The later errors could be owed to the same issue but was followed by repetitive bad Urdu-English transliteration. Moreover, Peter Budge was always a present-absent throughout the case. He was physically present in jail but unaccounted for in the paperwork. The administrative scam of the UP police, jail and judicial authorities comes to light when we notice that all the three departments did not follow rules and conducted their own informal administration which often illegally extended remand days, recording of facts, issuing summons etc. It remains difficult to ascertain as to how summons were issued again and again for Peter Budge when his case file in the court would have mentioned that he was arrested and is under detention for the violation of ‘public order’ laws. This only highlights the unofficial acceptable rules of conduct between various law and order institutions.

Had Peter Budge been politically motivated or active member of a political organization, the story possibly would have been different. His suffering, it can be said, was also because he
was a non-political individual. The late colonial state that boasted of meticulous ways of keeping record of its opponents failed to do so in this case. His only crime was that he had confronted and argued with the two police constables who were empowered with special powers in an unstable law and order situation. Hence, empowered by ‘special powers’, decisions of such individuals would often result in serious consequences for ordinary citizens with disregard to individual rights and liberty.

What is central to Budge’s ordeal is that he was a person who was neither political nor part of a major religious community or even a ‘problem category’. It is precisely because of this reason he fell by the way side. Subjects like Budge, who were not legible to political society in effect did not exist especially when person(s) did not constitute a ‘law and order’ problem for the state. Budge neither managed to enjoy a state-guaranteed citizenship nor participated actively in the non-state political society. He did not figure in the everyday calculations of the administration and hence remained a present-absent. Most pertinently, Budge suffered greatly while further decolonisation was taking place and missed the moment of India’s independence too, a moment of transformation of his basic political identity from a colonial subject to a citizen of an independent country. Later, his case was only picked up by the Press which augured that there was at least some promise for situation to become better with the onset of Congress sovereignty. Whether things became better or not with the independence of India with Congress at the helm of affairs after independence, would be discussed in the following chapter.
Chapter Five


Partition is usually seen as the great dividing line of South Asian history. But the colonial project did not die with independence. Through analysing a range of legal reform initiatives aimed at the United Provinces public order administration, this chapter will demonstrate that the colonial past was not rejected wholesale but often rather inspired the foundations of the postcolonial state. Colonialism was over in a narrow political sense, no doubt, but its philosophy and structural legacy still thrived. The Indian Penal Code and the organisation of the police were still based on colonial policies and bureaucratic structures. As William Gould points out there was very considerable confusion over what freedom from colonial rule actually meant. In a situation of uncertainty and flux, legality often occupied the moral-political vacuum. Extraordinary laws, especially, enabled the continued production of ‘problem categories’ to whom the rule of law did not apply fully or in the same way as for the much invoked modern, civilized and responsible citizenry of an independent India.

Partition continued to provide the context for a case of ‘emergency’ for the state. The assassination of Mohandas Karamchand Gandhi in January 1948, added to a sense of ongoing political crisis following the transfer of power in August 1947. Granville Austin, amongst others,\(^{520}\) has argued that there were many anxieties among Indian leaders during the constitution making process that followed the achievement of independence in 1947.

Many Indian leaders were highly conscious that the compartmentalised nature of Indian society along the lines of caste, class, religion, region and language, was a powerful obstacle to national integration, which remained their highest priority and determined how they envisioned the codification of the state (province)-centre relations. Distressed by the recent experience of Partition, the Constitution of independent India was to ensure that the centre could overrule state(s) when it came to matters of national integrity. Austin called it the “the Union’s long arm” which had a direct and immediate impact on ‘Emergency Provisions’ at the state/province level. But emergency powers and the legislation they were based on remained rooted at the provincial – now recast as ‘state’ – level. As this chapter will show, it was here that the shape of key institutions of intelligence gathering and law enforcement was decided, and a new dialectic between ‘insiders’ and ‘outsiders’ – ‘problem categories’ and the new ‘normal’ –brought into play.

The United Provinces was renamed Uttar Pradesh in 1950. It was a province where the ongoing impact of Partition was particularly strongly felt.  

There was an urgent and continuing need to maintain public order which led to the enactment of a range of extraordinary legislation. Administrative dominance in postcolonial UP, continued to rely on a functional effect that arose from the combined impact of certain political and legal regulations. Giorgio Agamben has argued that the problem of exception (extraordinary laws, in our case) lay at the heart of sovereignty. Utilizing some insights from Agamben, it can

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be argued that the measures adopted simultaneously created a sense of legal precariousness, and introduced regulations and policies to protect its ‘normal’ citizens against such existential precariousness. The legitimization of domination depended on measures that attempted to safeguard ‘precarious’ citizens from the dangerous ‘others’. As will be shown in this chapter, the privilege of protection or security was based on legal distinctions which once again created problem categories who were precarious precisely because they were considered less worthy of protection or safeguards.

As the case studies introduced in previous chapters have shown, colonial control depended both on making essential distinctions between ‘normal’ and ‘problematic’, while also and often deliberately blurring of other distinctions central to the rule of law. On the one hand, it distrusted the population and consistently occupied itself with identifying problem categories, therefore trying to maintain a distinction between the governing and the governed. And on the other hand, its policies increasingly resulted in blurring the dividing line between society and the state. Intelligence gathering, the prevention of crime and disorder, reading and classifying populations and identifying problem characters were some of the central activities of the colonial mode of governance. Often, there was little or no separation between the executive and the judiciary. The duplication of functions of some offices - especially when it came to maintaining public order - highlights the blurry legal and institutional nature of the colonial governance. The office of the District Magistrate (DM) was especially important in this regard. The office of a DM was responsible for administering the bureaucracy of a district, and he could also serve as a first-class magistrate invoking extraordinary legislation when required or deemed necessary by him. One of the most striking manoeuvres of blurring and distinction at the same time, finally, was the deeply-entrenched notion that all administrative work was by definition ‘non-political’.
A variety of scholarly studies suggest that law and order remains one of the main preoccupations of the post-colonial state. Maintaining peace and tranquillity is one of the important stated aims of all administration. As this chapter will demonstrate, the United Provinces/Uttar Pradesh were no different in this respect. The question of how to make the old colonial system of police administration, intelligence gathering and special and emergency legislation fit for a democratic India introduced a further blurring of lines into law and order administration. As this chapter will demonstrate, there were often wide fluctuations in how the new Congress administration sought to address the new reality. It accepted that the colonial-era police and judiciary had to continue to operate as obvious foundation of state functionality, while some other tried and tested institutions like *Mukhiyagiri* and *Chowkidari* came under criticism and became matters of debate in the United Provinces.

On the whole, the post-1947 UP government failed to avoid the seductions of the colonial art of governance. All too often it resorted to simply rebranding old institutions in the face of ‘changed times’ when the Congress had to actively function as an independent government rather than just a mass mobilising front opposing colonial power. While old distinctions between ‘safe’ and ‘unsafe’ and a deeply held suspicion of society amongst law enforcement institutions continued unabated, there were also attempts to almost abolish any boundaries between ‘the state’ and ‘the people’, even in the case of the most sensitive and definitive of all state functions, the sovereign protection of people’s lives and property. On one hand, the administration argued for the cultivation of responsible citizenship by militarising society, while on the other hand it resorted to special powers and extraordinary legislation to inculcate a fear of the police in the mind of the masses. For this purpose, a
binary distinction was created between ‘reliable villagers’ (the insiders of the nation building project as per state directives) and ‘social pests’ (the outsiders, the non-compliant person, group or set of populations).


The Congress government in the United Provinces was keen on dealing with all kinds of public disorder swiftly. Almost immediately after independence, the new (and in many ways old) government of Govind Ballabh Pant introduced the United Provinces Maintenance of Public Order (Temporary) Act 1947 and the United Provinces Communal Disturbances Prevention Bill 1947. Ironically, these legislations were enacted under section 88 and 89 of the colonial Government of India Act 1935 respectively, as free India did not have a constitution yet. Once again, this highlights how colonial principles continued post 1947.

The United Provinces Maintenance of Public Order Ordinance, 1947, could prohibit the entry into the province of any document or newspaper, and imposed collective responsibility on the inhabitants of specified areas to perform or abstain from performing certain duties or acts. In the second amendment of this act section 10A was added empowering the provincial government to seek civil assistance to perform administrative duties for “securing public safety” or the “maintenance of public order” or “to maintain essential services to the life of community.” This law made it mandatory for the entire population of UP to act as the

523 National Archives of India, File No. 87/12/47 – Public (A), The United Provinces Maintenance of Public Order (Second Amendment) Ordinance, 1947.
524 National Archives of India, File No. 87/12/47 – Public (A), The United Provinces Maintenance of Public Order (Second Amendment) Ordinance, 1947.
extended organs of the state in the maintenance of public order, thus considerably blurring the boundary lines between ‘state’ and ‘society’. This included an obligation to provide knowledge of any information of activities that could lead to disorder. Failing to do so, the provincial government could impose collective fines on the inhabitants of an area for any contravention of such orders. In case of failing to pay such a fine, a person would be punishable with imprisonment up to a year, even though the ordinance stated that while fining individual persons for contravention of such orders, the court should take into account the amount of collective fine apportioned on the accused. This law (second amendment) came into existence on October 9, 1947.\textsuperscript{525}

Later, this extraordinary law was further amended and extended since it was to expire on December 22, 1947. The new amendment empowered the provincial government to confiscate or seal “property of persons engaged in activities detrimental to public peace and to impose collective responsibility for the protection of property and the furnishing of information.”\textsuperscript{526} Imposition of collective punitive measures in the form of fine was a salient feature of this law.

The United Provinces Communal Disturbance Prevention Bill, 1947, in its summary stated:

\begin{quote}
The object of this Bill is to meet the threat to public peace and order from communal strife in the United Provinces and to empower the authorities responsible for the
\end{quote}

\textsuperscript{525} See, National Archives of India, File No. 87/12/47 – Public (A), The United Provinces Maintenance of Public Order (Second Amendment) Ordinance, 1947.

maintenance of law and order in a communally disturbed area to take special measures for the prevention or extension of such disturbances.\(^{527}\)

The communal disturbance ordinance was legislated to enable the provincial government to take effective steps to maintain public peace and order. Chapter III of this law under “offences and punishments”, a section (13) stated that:

> Notwithstanding anything contained in section 188 of the Indian Penal Code\(^{528}\), whoever wilfully disobeys in any communally disturbed area any order lawfully promulgated under section 144 of the Code of Criminal Procedure, 1898, passed in connexion with the prevention of any communal activity or communal disturbance, shall be liable to a sentence of imprisonment for a term of not less than two years and not more than five years and with fine in the discretion of the court.\(^{529}\)

At the height of political uncertainty and communal violence, to ‘disobey’ the administrative order, according to such a law, could turn a person into a pariah or a ‘problem category’. Such pariah would be treated as outsiders since they refused to obey the government directives and declined to participate in the government policy.

Section 144 CrPC, which dealt with unlawful assemblies and potentially riotous mobs, was utilised simultaneously with the abovementioned laws. But whereas earlier the use of section 144 was restricted to unlawful assembly, the new prevention of communal violence and

\(^{527}\) See National Archives of India, File No. 38/37/47- Public (A), The United Provinces Communal Disturbances Prevention Bill, 1947.

\(^{528}\) Section 188 of Indian Penal Code broadly deals with ‘disobedience to an order duly promulgated by a public servant’.

\(^{529}\) See National Archives of India, File No. 38/37/47- Public (A), The United Provinces Communal Disturbances Prevention Bill, 1947.
maintenance of public order ordinances expanded state’s reach to activate ordinary citizens as its machinery. In a way, the content of these legislations as the following sections will demonstrate, point to one fact, that UP broadly turned into a constitutional edifice where boundaries between state and society were no longer meaningful. India became a nation-state after the transfer of power in 1947 and the relationship between the society and the state had also become different as compared to the colonial state. Whoever did not follow the directives of the state, as discussed in the section above become the outside/outsider. Nation building became a project of the state in collaboration with the ‘true’ and a ‘qualified’ citizen and the rest became the problem category. The provincial government in newly independent India remained obsessed with extraordinary measures and often resorted to such laws to conduct everyday governance in the aftermath of partition.

The Congress government of the United Provinces also went all out to overhaul the image of provincial police with the Police Reorganization Committee (PRC) of 1948. It not only made several changes towards further formalisation of police institutions in UP but also sent out instructions to the Superintendents of Police that the First Information report (FIR) would now have to be written in Devanagari script. This move posed as an act of decolonising the use of official script but also had other subtle designs. The shift from using Urdu and sometimes English to Devanagari had strong ‘communal’ undertones that everybody in the aftermath of Partition would have immediately understood. Urdu-using Muslims were vastly overrepresented in the police (at about 50 per cent) and after the creation of the Muslim nation state of Pakistan their continuing presence aroused at the very least suspicion. The introduction of Devanagari was not only an attempt to make official files easier to read to the general public (which would have been more literate in that script than in Urdu or English)- it was also a concerted attempt to Hinduize the Police.
At the same time, Pant’s administration was contemplating to introduce a new extraordinary law called ‘The UP Prevention of Crime (Special Powers) (Temporary) Bill, 1948.’ The main premise of this Bill was that “it will not automatically apply to the whole of the province but only to such area(s) and for such period as the Government may by notification in the Gazette.” Moreover, it was directed against a specific list of potential offenders. Therefore, it was deemed useful if “all the District Magistrates” would get lists of the persons coming under this law. It was emphasized that lists of such persons “should be checked and rechecked” and every effort was to be made to eliminate undue hardship or harassment to any person. Also, “complete secrecy” was to be maintained in the preparation and maintenance of such lists.\(^{530}\)

The main element of this Act was that a Magistrate on a police report or otherwise, could act against persons if he was satisfied that the necessary preconditions under this Act were met. The main reason for such an action by the magistrate was that the person in question was “by repute a bad character.” Four kinds of activities would testify to the bad character of a person. First, if a person was a habitual offender and second, if the person habitually manufactured or imported, or sold any intoxicant in contravention of the United Provinces Excise Act 1910. Third, if a person was a keeper of a “gambling den.” And fourth, if a person had committed or was about to commit a non-bailable offence contained in Chapter XVI or XVII of the Indian Penal Code. Other descriptions of a bad character were that he was a person who habitually committed or attempted to commit or abetted the commission of offences involving a breach of “the peace.” Also, a person who was so dangerous as to render

\(^{530}\) See letter no. 7591-Z/VIII dated 9/12/1948 from Under Secretary to UP Government, Govind Narayan, to all District Magistrates, United Provinces. Uttar Pradesh State Archives, File No. 464/1948 Department (Police) B.
his being at large, without security, hazardous to the community, was classified as a bad character according to this law.531

As per the proposed new law, when a notice was to be issued to such a “bad character” by the Magistrate, he had to appear before the Magistrate in person and submit a personal bond of two sureties not exceeding one thousand rupees each. This bond was a security deposit “for good behaviour” or for keeping “the peace” or both until the case was disposed of in accordance with the law. A person failing to appear before the court and refusing to submit the bond would entail arrest until the security bond was deposited. Generally, filing a case against a person in addition to producing witnesses and gathering evidence was the supposed duty of the administration. The most interesting aspect of this law, however, was that it gave an opportunity to the person against whom the order was passed to give an explanation and produce evidence in support of his own representation. But the Judge could also disallow any evidence which in his opinion was unnecessary for disposing of the case. If, jurors adjudicating such a case were unanimous in their opinion but the Judge disagreed with their opinion, the Judge after recording his own opinion and the reasons of the disagreement would have to submit the entire record of the case to the Chief Justice of the High Court of Judicature at Allahabad and send information thereof to the concerned Magistrate. On the other hand, if the jurors were divided in their opinion, the Judge could pass such order as might appear to him to be just and proper. This legislation repealed “The United Provinces Goondas Act 1932,” a colonial law notorious for its operation outside normal legal procedures.

531 See, United Provinces Prevention of Crime (Special Powers) (Temporary), Bill 1948.
The “Statement of Objects and Reasons” signed by the then Minister for Police for the United Provinces, Lal Bahadur Shastri, read:

The United Provinces Goonda Act (No. I of 1932) was enacted to deal with the problem of habitual bad characters. But in the light of the changed conditions it is considered antiquated. It is proposed to repeal that Act and replace it by a more suitable enactment. The object of the present Bill is to enact a short and speedy procedure to be applicable in dealing with habitual bad characters and social pests whose criminal and anti-social activities may require speedy preventive action. This new enactment will be in force for a limited period of twelve months unless the Legislature extends it further. It will be applicable only to specified areas which may be notified from time to time by the Provincial Government.\(^{532}\)

Notably, under the new law the earlier precise and well-defined problem category of a ‘Goonda’ now extended to potentially the whole population, although supposedly aimed at the prevention of crime broadly and particularly aimed at, ‘bad characters’ and ‘social pests.’

A letter by order of the Home Secretary U.P., was sent to all District Magistrates of the province. It categorically stated:

\[\text{Before taking any further action under this Act, Govt. wish to make it clear that in dealing with crime they would like that action should, as far as possible, be taken under ordinary law.}^{533}\]

Action under the new law should only be recommended to government “if the law is not found to prove effective in dealing with notorious criminals.” In this light the UP Government asked for revised lists of persons to be booked under the new law. These lists had to specify, first, the “[R]easons why the ordinary law does not prove effective and why the use of this Act has become necessary”. Second, “[B]rief comments on the general crime situation in the district and the nature of the problems faced. The lists had to mention the total number of persons against whom the action under the new law was proposed, divided into the categories for the offences for which they were to be booked.

The Inspector General of Police U.P., B.N. Lahiri, was rather keen for this legislation to swing into action. He was anxious to wait until the government made a formal notification enforcing the provisions of this law. He wrote to the Home Secretary U.P. government, Govind Narain:

My view is that as lawlessness is on the increase all over the province, there is need to make the Act applicable to the entire province. Will you please let me know if any action is being taken in this connection?

Meanwhile newspapers were already publishing news regarding the new Act. The media did not criticise the government regarding the new legislation in any way and actively reported on the administrative progress made in the matter. The media reiterated the provincial government’s position that only “habitual offenders” need to fear the new law. For instance,

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535 See, Letter No. 2566-B/VIII, dated 21/5/1949, from Secretary UP, by order of Home Secretary UP, to all District Magistrates of United Provinces. File No. 464/1948 Department (Police) B.
The *National Herald* reported that “while disclosing to press correspondents” Lal Bahadur Shastri, the Police Minister of U.P., “that Government were taking every precaution to guard against any possible misuse of the act.” The *National Herald*, Lucknow, further reported that “Reports received from nearly 36 district magistrates at the provincial headquarters” indicated “a general desire for a speedy enforcement of the act in their areas.” The life of this act was reported to be for two years and was to be enforced in major cities of the province among other towns and districts. The Press did not question the necessity that required such an extraordinary legislation to deal with ordinary crimes.

Soon, most of the District Magistrates provided statistics to the provincial government alongside their own opinion on the scope of this law. In their response letter to the UP government, most of the District Magistrates vociferously justified the urgent necessity of such a strict and extraordinary law to be extended to their respective districts. Only a few remained hesitant. However, they too in a couple of months would begin to see the administrative benefits of extraordinary legislation and would request the government to extend the new law to their districts too. The following figures provide an estimate of the scale at which the new law was planned to be used in some of the districts. The number of persons proposed to be booked under the new law were 52 in Bara Banki, 217 in Aligarh, 80 in Mathura, 10 in Etah, 348 in Bijnor, 237 in Unnao, 12 in Nainital, 10 in Pilibhit, none in Garhwal and Jaunpur, 123 in Ballia, 49 in Sultanpur, 10 in Fatehpur, 43 in Gonda, 36 in Meerut, 73 in Deoria, 79 in Shahjahanpur and 358 in Kanpur.

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538 Ibid.
The District Magistrate of Bara Banki, M.G. Kaul, for example, responded\(^{539}\) by stating that it was “very necessary” for the act to be made applicable to Bara Banki district. According to him, Bara Banki was an “extremely dangerous district” and crimes like dacoity and murder were very common. Admitting the “considerable lawlessness” in most of Bara Banki district, the District Magistrate wrote that the “hardened criminals and bullies” were in the habit of terrorising people. Therefore, “ordinary law” did not “prove effective in dealing with these desperate criminals.” The main reason given by him was that it was very difficult for the police to get local people to come to court to give evidence against such criminals. The reason for this was partly the fear of reprisals and partly because he believed witnesses in Bara Banki District were “extremely unreliable and easily bought over.” Witnesses often turned hostile in court and went contrary to the statement made before investigating officers.

For M.G. Kaul, socialists were another element who had been “infusing spirit of lawlessness among the general masses.” He highlighted as common knowledge that zamindars and taluqdars, who were locally influential, kept bad characters as their servants to maintain their hold and influence over their tenants. Hence, such bad characters got protection from zamindars and taluqdars and the police found it “very difficult to get at them through the normal process of law.” The Magistrate was concerned that “notorious badmashes” had become bolder because “changed conditions” had “decreased the fear which was once inspired by the police.” The most important point that Magistrate Kaul’s report brings to our attention is that evidence collection was a cumbersome process and prosecution of these “badmashes” needed proof according to the ordinary law. Also, in addition to the lack of public cooperation in such cases, standard of investigation had deteriorated, according to the Magistrate of Bara Banki, mainly because experienced officers had either been promoted or

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\(^{539}\) See, Secret letter no.175/ST, dated 14/6/1949, from M.G. Kaul, District Magistrate, Bara Banki, to the Secretary to Government, Home Department (Police-C). Part of File No. 464/1948 Department (Police) B.
retired. Lack of experienced police officers added to the woes of the administration. Therefore, M.G. Kaul recommended that it was “absolutely essential” to extend the provision of this act to Bara Banki district.

The Superintendent of Police in Bahraich, felt that “[W]ith the advent of freedom the public at large had developed a peculiar psychology confusing liberty with license.”⁵⁴⁰ He believed that a public, which did not “consider police as their friends”, would not render the necessary cooperation. Therefore, the new Act would ensure that the “bad characters” were nabbed despite the lack of public cooperation and despite cumbersome rules of evidence gathering. A colonial approach to maintaining law and order through pre-emptive emergency legislation was by no means dead – neither institutionally nor in terms of administrative doctrine. The apriori profiling of “bad characters” in UP reminds us directly of the anti-Thuggee campaign in early 19th century colonial India. Orders were issued that as per the Rule 31 (b) of the UP Prevention of Crime Act 1948, “The Magistrate shall have fingerprints of the person proceeded against taken by a Police proficient and shall further have his photograph taken under the supervision of a responsible police officer.”⁵⁴¹ The creation of a new classificatory information including signatures, thumb impressions and photographs as a file on the ‘criminal’ was to be kept at administrations’ disposal. Notably, fingerprinting was first developed by the Central Investigation Department (CID), the successor of the Thuggee Department.

⁵⁴¹ See letter No. 3914-PC/VIII-464-1948, dated 09/08/1949 from Govind Narain, Secretary to Government, United Provinces to All District Magistrates, incharge of District, United Provinces. Part of File No. 464/1948 Department (Police) B.
In a similar tone, the District Magistrate of Aligarh lamented as to how the earlier provision of sec 110 CrPC was insufficient to book “habitual offenders” and was “very lengthy, cumbersome and under the existing conditions very difficult for successful prosecution.” The District Magistrate of Mathura also argued that the “capability and efficiency” of ordinary laws was insufficient and admitted that the influence of the police had declined and burglaries, robberies and dacoities in the district had increased. Notably, the District Magistrate Mathura blamed the situation on the administrative and political challenges that had emerged due to independence, and was of the opinion that although the open support for the police during the colonial regime had strengthened it, it had also alienated the public. This sense of alienation between police and the public, according to the DM of Mathura, persisted in the years after independence. The unwillingness of the public to share the opinion of the administration and to refuse participation in government policies highlight one great hindrance faced by the provincial government in the maintenance of public order in UP. The strength of public defiance is further indicated in a statement by the DM of Etah arguing that “[O]nce a criminal is let off, he feels emboldened to carry on his nefarious activities … the public does not extend cooperation in the detection and investigation of crimes in sufficient measure.” He added that “[T]he police does not inspire fear. Ignorant and illiterate people have got erroneous and perverted conceptions of freedom. They have no respect for authority.” The DM also admitted the existence of dacoits like Girand Singh, Birey and Bashira in the Etah district. The main problem for District administration Etah was that some criminals committed crimes “in the expectation that their crimes would be attributed to the gangs of Birey and Bashira.” The DM of Bijnor also acknowledged that

542 See, Secret letter no. 254/ST, dated 3/6/1949, from J.M. Raina, District Magistrate Aligarh, to the Secretary to Government, UP, Home Department (Police-C), Lucknow. Part of File No. 464/1948 Department (Police) B.
543 See, Secret letter no. 205/ST, dated 10/6/1949, from District Magistrate Etah, Ram Kinker Singh, to The Secretary to Government (Police-C), Lucknow. Part of File No. 464/1948 Department (Police) B.
544 Ibid.
“[M]any of the real dacoits” escaped punishment as the “public activity helped them and spoilt prosecution evidence.” The abhorrence of public behaviour by DM of Etah and DM of Bijnor noted above highlights the confusion in governance that emerged in the aftermath of independence. On the one hand, the governing - both elected and administrative - did not feel that the population was now worthy of becoming individual citizens and believed had misplaced conceptions of freedom. On the other hand, the governed, the population, did not completely perceive the government as its own and maintained a distance from its apparatuses. Therefore, it can be deduced that the potential of the new extraordinary law could enable the administration to create a perceived threat for the larger disobeying public through the problem category of a “habitual offender.” The “habitual offender” was proposed to be outside of civilized citizenry; he was clearly defined as not only the enemy of the state but of society, too. Therefore, the new extraordinary law aimed to provide special powers to the state’s law and order machinery by short-circuiting existing process of the rule of law. It also created a threat perception amongst the general masses to deter it from supporting such offenders.

In many other districts too, for example Lucknow, Ballia, Gonda, Meerut, Deoria, Shahjahanpur, Nainital, Unnao, Pilibhit, etc., district magistrates either lamented the inefficiency of the ordinary law or the reluctance of the witnesses to come forward or, expressed helplessness due to the rise of crimes like dacoities, robberies and bullying in their respective districts. Hence, a majority of the DMs requested the extension of the new extraordinary law to be extended to their districts.

\[545\] See, Secret letter no. 2855/XVIII, dated 10/6/1949, from District Magistrate Bijnor, Raghubanshi, to The Secretary to Government (Police-C), Lucknow. Part of File No. 464/1948 Department (Police) B.
In certain districts, the DMs reported that crime existed in conjunction with local politics. For example, the District Magistrate of Sultanpur reported that during the nascent stage of India’s independence leaders of various groups “try to influence the illiterate people with confusing ideologies and promises, the administration is being denied the requisite cooperation of the public, without whose support and evidence cases cannot be successful.”

In the city of Sultanpur, there was a curious circumstance of two factions of Congress leaders, who not only opposed each other in every matter but also made complaints against each as well as each other’s supporters. This led to the formation of two different Seva Dals, each comprising of several “very undesirable persons” as members. The DM of Sultanpur, also reported two cases which had to be discharged under the ordinary law because socialists and certain members of the Prantiya Rakshak Dal (PRD), about which detailed discussion will take place in the following sections, combined to defend the accused. As a result, “bad characters enrolled in rival Seva Dals” and “fanned the spirit of defiance.” Such a situation put the district administration Sultanpur in a difficult position.

In the district, about two-thirds of the total 362 cases sent to court in 1948 under the ordinary law had failed. Such instances highlight that despite provincial governments drive to create problem categories of habitual offenders as outside the standard understanding of citizenship, local members of the Congress party often complicated it. It also shows executive frustration at the underbelly of postcolonial Congress politics at the local level where stakes had shifted from anticolonial mobilization to a new phase of grabbing power. The DM implored the state government to extend the new act to Sultanpur where the new

546 See, Letter no. 161/ST, dated 3/6/1949, from H.K. Mathur, District Magistrate Sultanpur, to The Secretary to Government, Home (police-C) Department, UP, Lucknow. Part of File No. 464/1948 Department (Police) B.
547 Seva Dals were local community organizations of the Congress Party.
548 See, Letter no. 161/ST, dated 3/6/1949, from H.K. Mathur, District Magistrate Sultanpur, to The Secretary to Government, Home (police-C) Department, UP, Lucknow. Part of File No. 464/1948 Department (Police) B.
extraordinary Act would not only resolve the issue of the decline in administrative and public confidence in ordinary process of law, but also ensure swift action against the activities of other non-Congress organisations like the Communists, Forward Blockists and various communal organizations.\textsuperscript{549} The new law, according to the DM Sultanpur, would enable the district administration to get rid of such “dangers.”\textsuperscript{550}

Such ‘dangers’, in Fatehpur district were reported to have an “immense terrifying influence over the general public.” According to the Superintendent of Police Fatehpur, it was the “the GURU”\textsuperscript{551} i.e., the leader of criminals who had the “expert knowledge” and capability of engineering crimes. These Gurus were believed to be the actual masterminds of crimes. The ordinary law, therefore, was stated to be unhelpful by the Superintendent of Police Fatehpur, in the face of non-cooperative attitude of the public and growing party factions in villages which supported the activities of the criminals by harbouring them against the opposing party. The collector of Kanpur echoed similar observations when he wrote that “the criminal” worked “under the cloak of a political label” to “gain the backing of a political party making his arrest difficult.”\textsuperscript{552} The deployment of the term ‘dangers’ to refer to these ‘offenders’ or problem categories is notable here. It created a sense of urgency and increased threat perception of the state towards its enemies. As discussed in sections above, the gap between the governing and the govern was so obdurate that neither fully trusted each other. The UP Prevention of Crime (Special Powers) (temporary) Bill, 1948, proved to be the wish of the District administrations in UP that was granted under the guise of ridding the society

\textsuperscript{549} See, Letter no. 161/ST, dated 3/6/1949, from H.K. Mathur, District Magistrate Sultanpur, to The Secretary to Government, Home (police-C) Department, UP, Lucknow. Part of File No. 464/1948 Department (Police) B.
\textsuperscript{550} Ibid.
\textsuperscript{551} See, copy of the letter dated 1/6/1949, from Superintendent of Police, Fatehpur, B.N. Bhalla, to District Magistrate Fatehpur. Part of File No. 464/1948 Department (Police) B.
\textsuperscript{552} See, Secret letter no. 703-B/49, dated 18/6/1949, from Collector Kanpur, Krishan Chand, to Home Secretary to UP Government, Govind Narain. Part of File No. 464/1948 Department (Police) B.
of its dangerous elements by declaring them and their supporters among the public as ‘enemies’ and excluding them from the ordinary process of the rule of law.

Furthermore, there emerged a difference of opinion between the Police and the Judiciary on the matter of law and punishment. Where the person responsible for invoking action against “bad characters” was a district magistrate, a judge was to give a verdict on it. Some of the official communication highlights that judges gave simple imprisonment (SI) rather than rigorous imprisonment (RI) to persons booked under this Act. The Magistrates (for example DM Ballia and H.A. Siddiqui), were not happy about this. According to some magistrates the general practice under ordinary law (section 109, and 110 Cr.P.C., both used to book habitual offenders) was that a person was awarded rigorous imprisonment. They appealed to the government expressing their discontent. However, the judges also had a reasonable argument. They argued that if a person was booked under the new Act, he was arrested not as normal accused but under preventive measures. Therefore, simple imprisonment did the job by putting the criminal away. Since the proposed person was arrested more on recommendation rather than trial, rigorous imprisonment was not necessary or feasible. The Home Department United Provinces, replied that if a judge “directs simple imprisonment for failure to keep the peace, he is perfectly justified.” Also, if a judge “directs simple imprisonment even in cases of failure to give security for good behaviour, his order cannot be characterised as illegal.” Even the new Act under section 12(2) said that the judge’s order was final and conclusive and could not be called into question in any civil or criminal

553 See D.O. No. 71/VIII from Collector Ballia, H.A. Siddiqi to Session Judge Ballia, Ghulam Sabir. Part of File No. 464/1948 Home Department (Police) B.
proceedings. This meant that neither a revision nor an appeal could be filed against any such judicial order. Section 18(2) of the new Act also stated that the proceedings in such cases before the judge were judicial proceedings. Therefore, neither Government nor the District Magistrate could issue any instruction to the judge, and if they attempted to do so, would be guilty of contempt of court.

Initially, only a few District Magistrates expressed confidence that ordinary law was sufficient to deal with the crime situation in their respective districts. For instance, the DMs of Dehradun, Garhwal and Jaunpur declined the provision of the new extraordinary law to their districts. However, later, some of the District Magistrates, for example in Jaunpur, realised that the extraordinary legislation had the capability of swift action against criminals with minimum administrative responsibility and maximum administrative control and requested the state government to extend the extraordinary legislation to their districts too.

By the end of 1949, a total of 44 out of 49 districts had recommended and received the extension of the new Act. A majority of the response letters from the DMs of various district of UP points out the remarkable seductive pull of extraordinary legislation. It highlights a peculiar tendency of the provincial administration in India and particularly in UP to resort to absolutist legislation like the one discussed in this section. Even though ordinary laws in the Criminal Procedure Code such as section 110 CrPC were available to the administration to deal with local criminals but following standard procedures of the rule of law such as

555 See, Letter no. 4871 dated 31/5/1949, from District Magistrate Dehradun, A.D. Pandit, to The Secretary to Government, Home Department (Police-C), UP, Lucknow. Part of File No. 464/1948 Department (Police) B
556 See, Letter no. 249/St, dated 7/6/1949, from District Magistrate Garhwal, M.A. Quraishi, to The Secretary to Government, Home Department (Police-C), UP, Lucknow. Part of File No. 464/1948 Department (Police) B.
557 See, Letter no. 44/S.T., dated October 31, 1949, from District Magistrate Jaunpur, to The Home Secretary, United Provinces. Part of File No. 464/1948 Department (Police) B.
collecting evidence, having witnesses and subsequent arrests and trials, were repeatedly described by the DMs as inefficient and cumbersome. Therefore, almost all of them argued for the extension of the new Act to their districts with the promise of taking swift action against the ‘criminals’ and their ‘well-wishers’. It cannot be ignored that some of the DMs reported Congress factionalism at local level and related it to criminals. However, it appears that the UP Congress led government wished to aim the new law towards its opposition such as the communists, Forward Blockists and other communal organisations. The new law appears to serve the purpose of a hammer to smash unruly and disobeying population as well as non-Congress mobilisation. Such administrative vulnerabilities were further exposed through certain other polices adopted by the UP administration that included the militarization of society. The following section discusses one such policy where the UP government decided to experiment with issuing a gun to one reliable person in every village. The primary purpose of such reliable villagers was to assume the role of protecting village or nearby villages from the attacks of dacoits.

Finding “reliable villagers”: Dacoity and the Proposal of Issuing a Gun to Every Village in UP 1948

The United Provinces government created a Police Reorganisation Committee in 1948. The UP administration was struggling at various fronts, be it refugee flows or dealing with communal disturbances that followed, or other issues like creating a sense of ‘citizenship’ among the population of UP in the post-independence scenario. The gap between the state

and the population has become evident in the previous sections. Scholars have studied, for instance, anti-corruption drives in post-independence UP which often rested on vague notions of duty and belonging. 559 Along with the strained relations between the landed and the landless labour class, dacoits constituted a major threat to everyday law and order in certain regions of UP, as also discussed in the previous section. The landholding classes in UP had participated both in the Congress and the Muslim League during the anti-colonial struggle. The colonial model of governance as well as the anti-colonial movement had a fair share of upper class support at various levels. As a result, such people, especially the zamindars who often acted as community leaders in their respective villages continued to hold extraordinary influence. On many occasions, such landholders or wealthy persons in villages were the targets of dacoities. The previous section did sketch the problem of dacoity in U.P. with more instances in the district of Etah and the bordering districts. We know from the official communication of District Magistrates in the earlier section that Girand(ar) Singh, Birey and Bashira were some of the notorious dacoits operating across various districts in U.P.

The proposal to issue guns to some villagers points out a peculiar sovereign move. In order to deal with unrest at various fronts within the province, the UP government and local district administrations were willing to arm civilian allies in the face of an increasing disobedient population. The duty of the sovereign to protect lives and property was outsourced to private ‘reliable’ individuals who could function as an extended arm of local administration. Such moves often exposed administrative vulnerabilities of the UP government when it came to the maintenance of law and order in the province.

In January 1948, the District Collector of Bareilly, L.C. Jain, in a top-secret letter to the Divisional Commissioner of Rohilkhand, N.B. Bonarjee, requested permission to try out an experiment in his district. As a measure against dacoities, he proposed to provide every village with a gun each. Conscious of the matter that selection of the “right type of men” to be issued these guns was necessary, the District Collector proposed the experiment to be carried out in Aonla tehsil of Bareilly. According to the collector, this tehsil was chosen because it was close to Budaun and Rampur, and because of its proximity to the Moradabad border. Geographically it was located in the western part of U.P., where dacoity was a recurring problem. At the same time this area was deficient in road accessibility from Bareilly due to the absence of a bridge on the Ramganga river which made centrally organised police operations more difficult. The idea of the District Collector was to select “one man of approved character and standing” in every village under his personal guidance. The District Collector believed that if the men were chosen with sufficient care, it might give villages considerable self-confidence against bad characters. Also, it was proposed that under this scheme, it would be the duty and responsibility of the gun licensee to come to the rescue of neighbouring village on “information of trouble.” It was further proposed by the District collector that if the Scheme was not successful after fair trial for six months, such gun licenses could be recalled.

On receiving the proposal, the Home Secretary to the UP Government, R. Dayal, forwarded it to Inspector General of Police (U.P.), B.N.Lahiri, for comments. The latter agreed that


“it is certainly worth a trial.” However, he added that it might be advantageous to constitute Village Defence Society/committees also in particular villages with the gun licensees as their leaders. He also reiterated DM Bareilly’s point that such selection had to be made with “due care.” The government agreed with the proposal of issuing at least one gun license to every village as a measure to prevent dacoities, initially as a temporary measure lasting for a period of six months. The UP government also wanted to experiment with the idea of lending suitable muzzle-loading and breech-loading guns from the Malkhana. Muzzle-loading guns had a rifled barrel and involved a complicated process where the bullet and gunpowder were inserted from the front while breech-loading guns were modern and used readymade cartridges and could be easily loaded and fired. It was proposed that once the dacoity situation was under control, the government wanted those guns withdrawn but the temporary license of such villagers, who would do “exceptionally good work,” might be made permanent. A recommendation was made for the trial of this scheme in Etah and Mainpuri districts of the Agra Division because of the activities of a notorious dacoit, Girend(ar) Singh.

The United Provinces government also allowed the Divisional Commissioner, Rohilkhand, to follow the example of Bareilly and to provide selected villagers with at least one gun license in every village as a “preventive measure against dacoity.” The Government directed DM Bareilly to try out the experiment in the areas of his district which he deemed necessary to implement this scheme.

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Thakur Phool Singh, a member of the UP legislative assembly from Meerut constituency, also expressed his concern about dacoities. He wrote to the Premier, Govind Ballabh Pant, that “dacoities are becoming common because people have smuggled arms during last disturbances.” He added that the government was left with only two alternatives. Either to comb the districts for these arms which according to him, was very difficult owing to the large population, or, to arm the people. He suggested that there should be at least one firearm in each village and there should be no restriction on the possession of sharp-edged weapons, which would necessitate the repeal of the Arms Act. This suggestion was clearly contradictory and reflected the conflicted nature of state-society relations at the time. On one hand, he suggested combing villages of arms and on the other he suggested arming ordinary citizens in UP – the population alternatively seen as a potential problem category that the state had to control, and as an extension of the state apparatus itself.

Data was sought from Districts administrations across the United Provinces regarding the prevalence of dacoity and the villages most vulnerable to dacoits. Meanwhile, the Collector of Bareilly, L.C. Jain apprised the Divisional Commissioner of Rohilkhand, about the status of the “Anti-Dacoity Scheme.” According to him, by August 1948, after scrutiny of applications, 60 licenses had been sanctioned in his district. Out of these, only 43 were actually taken out, the remaining 17 awardees had failed to deposit the necessary fee to take out the license. Out of the 43 licenses only 11 had been able to secure weapons, while guns did not cover the remaining 32 licenses yet. Out of the 11 licensees who secured guns, 5 licenses were issued to those persons who held licenses earlier but their licenses were cancelled. Hence, actually only 6 new guns were purchased in villages with no guns. The

main reason for such poor results was attributed to the cost of guns and the difficulty to find ‘one reliable man’ in each village to invest in a gun. He added, that the number of confiscated arms was small and it was difficult to provide arms to the villagers under this scheme. As for the idea to issue arms from the Malkhana, the DM of Bareilly added, it held only unserviceable or damaged arms. However, the DM also stated that after consultation with his Superintendent of Police, he observed that no dacoity was committed in a village where a licensed gun was available. Therefore, he contended that it could be used as a strong argument in favour of the continuation of the experiment.

The District Collector of Etah, Ram Kinker Singh, reported\(^{566}\) that the dacoity-combating scheme was introduced in 13 out of 15 Thanas of the district. The scheme was put in operation in 1322 inhabited villages of the police circles. Out of these 1322 villages, Village Defence Societies were organized in 846 villages. Meanwhile the Superintendent of Police, was only able to recommend 30 applicants, which were subsequently granted licenses. Considerable difficulty was experienced by the S.P. in recommending applications because most of the people who could afford firearms did not want to work under the Village Defence Scheme. Those willing to work under the Village Defence Scheme could not afford to buy firearms. Also, people did not want to buy muzzle-loading guns and preferred breech-loading guns for defence against dacoits. Such guns were not available in the Malkhanas. Also, the few muzzle-loading guns available in the Malkhanas were unserviceable and needed repairs for which there were no funds. Moreover, according to the DM, in some of the Police Circles, there were special circumstances, most notably in Aliganj, Patiali, Jaithra, Ganjdundwara, and Sahawar, where the gang of a notorious dacoit Girand Singh operated.

\(^{566}\) See, Express D.O. no. 460/Arms, dated August 25, 1948, from District Collector Etah, Ram Kinker Singh, to S.S. Khera, Commissioner Agra-Meerut Division. Part of File No. 513 (10)/48, Home Department Police-B.
Many people in these Police Circles, it was reported, were the sympathisers and supporters of Girand Singh. Therefore, the administration was anxious to recommend firearms in such villages as they might fall into the hands of dacoits. In police circle Sirhpura, 18 licenses were granted for breach-loading guns and 2 for muzzle-loading guns. No dacoity was committed in this police circle since the gun licenses were granted. The DM expressed the view that it might take some months for the scheme to be fully implemented and licenses granted in the 846 villages where VDCs were organised.

The District collector of Mainpuri also expressed his opinion on the operation of this scheme. He stated\(^567\) that the scheme had been a success to some extent. According to him, there were 27 dacoities in Mainpuri district between October 1947 to February 1948. But since the scheme was implemented there had been only 10 dacoities. There were a few cases where armed villages resisted the dacoits. Hence, the increasing number of arms licenses in villages had a salutary effect in keeping the dacoits away. However, the District collector Mainpuri stated, that the success of the scheme was somewhat limited because of the inadequate number of breech-loading guns available.

The Superintendent Police, on behalf of the Deputy Inspector General of Police Headquarters United Provinces, sent a list of districts where no firearms were available.\(^568\) These villages, according to the letter containing the list, also recorded higher cases of dacoity and were recommended for the provision of one firearm to “reliable residents” in

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\(^{567}\) See, Express letter D.O. no. 190/ST, dated 1/9/1948, from Bisheshwar Nath, District Collector Mainpuri, to S.S. Khera, Commissioner Meerut-Agra Division. Part of File No. 513 (10)/48, Home Department Police-B.

each of these villages. The list included villages from the Districts of Agra, Ballia, Budaun, Deoria, Sitapur, Etawah, Bareilly, Jhansi, Farrukhabad, Etah, Saharanpur, Hardoi, Meerut, Bulandshahr, Mainpuri, Moradabad, Muzaffarnagar, Jalaun, and Aligarh. These districts, according to the list of Police Headquarters, were notorious for the prevalence of dacoity. Some districts had more villages nominated in the list than the others, for example Etawah, Jhansi, Aligarh and a few others. These lists alarmed the government resulting in making the case urgent. A letter to the District Magistrates of the above-mentioned districts was sent by the UP government directing them to go ahead with the scheme at a faster pace. The letter instructed that since guns were not easily available in the market, and prices were too high, the DMs should sell guns in serviceable condition out of the quota of 10% forfeited and confiscated firearms in Malkhanas to selected villagers in dacoity prevalent areas. It was also explained that a case might arise where the number of villagers selected in a district would exceed the number of guns available, in that case, Government were willing to consider proposals from District Magistrates for the sale of guns out of the district reserve of forfeited arms. Again, the government emphasized that careful selection should be made of “reliable and public-spirited” villagers who actually resided in villages. More than one gun could be issued to a single village in compelling cases. The government was willing to sell weapons to villagers at a special concession on the promise that they will assist the administration in the prevention of dacoity. If it appeared that they were not providing any assistance to the state, their licenses would be cancelled. Also, District Magistrates could fix the price of the guns as per their discretion.

By the end of 1950, in the 18 districts with high prevalence of dacoity, approximately 1,118 guns had been issued to various “reliable and public spirited villagers” who were willing to help administration in the fight against dacoits.\(^{570}\) By the end of February 1951, the Uttar Pradesh government issued orders to all District Magistrates, to “issue freely licenses for firearms to reliable members of Village Defence Societies” qualified for the purpose. It was hopeful that they would prove of real help to the State Government in “combating dacoity menace and lawlessness” prevalent in the villages. Notably, a government scheme that was supposed to be experimental in the first place, quickly turned into a full-fledged policy. At a certain level, this policy aimed to reduce the gap between the state and the society by granting almost a form of commissioned sovereignty to such ‘reliable villagers’ who could act as protectors of villagers against dacoities and possessed the authority to kill the dacoits.

We note that while the UP government was hesitant to issue guns earlier, it issued them freely later. Even though in some cases, villagers were reported to be sympathetic to dacoits. Two contradictory moves made by the UP administrations can be noted here. On the one hand, it proposed to issue guns to ‘reliable’ villagers and on the other hand some of its legislators argued for permitting civilians to possess sharp edged weapons. In the times of intense communal conflict due to the unfolding process of partition and the migration waves that followed, arming civilians with guns and sharp-edged weapons seems contradictory to administrations stated philosophy of ‘maintaining peace and tranquillity.’ On one hand, the UP administration wanted to maintain public order and communal harmony by banning unlawful assemblies, and on the other hand, it officially issued weapons to ‘reliable’ villagers and formed village defence societies to fight dacoits. When such organisations had

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\(^{570}\) See the draft Annexure to G.O. No. 5201-Z/VIII-513 (10)-48, November 1950. Part of File No. 513 (10)/48, Home Department Police-B.
a greater chance of being utilised by its leaders for communal violence, their creation and existence became questionable.

**Rakshak Dal Act and the Logic of Defence and Policing in UP**

As promulgating extraordinary laws and issuing guns was not yet sufficient, the U.P. government went on to form a civilian defence force, the Prantiya Rakshak Dal. Such an organisation, as the following section would demonstrate, expanded the State’s vision of a disciplined and militarised society prepared to challenge all kinds of enemies. The irony of this move should not be missed here. It is uncanny of a provincial government to first lament the uncooperative behaviour of its citizens and then enrol a numerous paramilitary organisation from amongst the same population. Such a move once again highlights administrative moves of the provincial government in UP to increase its legitimacy among the people by incorporating them into quasi-policing structures.

Scholars like Markus Daechsel and William Gould have pointed out that physical culture comprised a major part of various nationalist organisations. Fitness and body control were subjects of interest and concern for a range of nationalist ideologues. In the United Provinces, Congress leaders like P.D. Tandon who generally would take sides with Gandhian ideas of non-violence took initiatives to militarise society by making a case for Hindu defence. Such initiatives not only popularised such organisations but legitimised them too, as argued by William Gould. Tandon’s participation in Hindu defence projects centred around his involvement in the organisation of the Hind Rakshak Dal. His speeches of

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endorsement for this organisation often embarrassed Congress but demonstrated the widespread support for semi-militaristic organisations.\footnote{Gould, William. “Congress Radicals and Hindu Militancy”, Modern Asian Studies,} This section will demonstrate that the post 1947 Congress government in UP continued with such projects, and officially recognised Tandon’s Hind Rakshak Dal by legislating the Rakshak Dal Act of 1948. What such organisations did, as will be explained in this section, was to inculcate a militaristic notion of citizenship by involving larger sways of society in policing activities.

While the village defence societies were created to train villagers to defend themselves against dacoits, the police administration of UP was further interested in creating other organisations to help with local policing in case of urgent emergency situations. In the section above, we noticed that while issuing of gun to every village was being considered, the Inspector General of Police B. N. Lahiri also suggested the formation of village defence societies (VDS). The stated aim of these VDS was to instil confidence in villagers in case of attack by dacoits. While the main purpose of the earlier Hind Rakshak Dal was to protect village communities from possible invasion attacks during the second world war and also to guard the Hindu community in UP in case of any violence by supporters of the Muslim League. The now official Prantiya Rakshak Dal would have policing duties sanctioned by the district authorities.\footnote{Shah, Giriraj. Indian Police: A Retrospect, New Delhi, Cosmo Publications, 1989, pages, 189, but see especially chapter 8, pp 173-187.} In addition to the certain changes made to the structure and functioning of the police in UP, the \textit{Prantiya Rakshak Dal} was officially created by passing the United Provinces Rakshak Dal Act, 1948. It received assent of the Governor of UP on December 4, 1948 and was published in the UP Government Gazette on December 11, 1948. The organization was voluntary in nature and was set up across the entire province but operated at the district level. Its scope was guided by the philosophy of Rural
The main idea behind setting up of the Prantiya Rakshak Dal in April 1948 was to mobilise a voluntary force in the village which, in co-operation with police and other organisations, could bring about a sense of security and discipline among the villagers and channel their efforts into development schemes for the betterment of their living conditions. It also rendered social service to the local administration to maintain order during fairs and other public events.

The United Provinces Rakshak Dal Act, 1948, was an intervention designed to provide for “the preservation of public peace, training of men in the use of arms to inculcate self-help and discipline and the protection of the life of the community and property within the United Provinces.” However, the act stated that a volunteer had to “declare and affirm” that he understood the “responsibilities and duties” which the membership of this organization imposed upon him. He would sign a declaration that he would “honestly and faithfully serve” for any period or place prescribed by the authorities and would always be ready to protect even at the cost of his life “the honour, integrity, the constitution” and “flag” of India. We notice in the membership statement that the scope of Rakshak Dal was more than an ordinary civilian voluntary organisation. It imposed a military commitment on the persons taking up its membership. The urgency takes into account the potential of war-like situations. The recent formation of Pakistan created emergency situation for the government of United Provinces. A mass exodus of Muslims was taking place from India including and especially from the UP. Also, this force could now be used to deal with policing mass gatherings, fairs, religious fairs, pilgrimages to important sites in UP, and as local committees to deal with

dacoits and robbers. Above all, it provided the Government with an ever-ready pool of vigilantes trained in weapon handling and fighting to be put to any use. This was a calculated governmental move, productively incorporating civilians into policing activity at a mass level while being economically efficient by avoiding the need to employ a permanent police force.

Broadly, there were four conditions that would make a person ineligible for the membership of the Rakshak Dal. A person was ineligible if he had not attained the age of 18 years or was over 45 years in age. Also, a person not passed by the medical authority as fit to perform duties required, or has been convicted of an offence involving “moral ineptitude,” was ineligible. Ineligibility clauses also extended to any person who was under police surveillance or under restraint under any provision of law for the time being in the force. The structure of Rakshak Dal was very similar to that of a police force. The headquarters of the UP Rakshak Dal were situated in Lucknow with five regional headquarters. In each district the organisation consisted of one or more battalion and each battalion could not exceed four companies on the basis of one company per tehsil. If a district had more than four tehsils, the number of companies for those districts could be raised. Also, each company comprised of four platoons. The chain of command was very similar to that of a police force but at the higher level, it had commandants, thus making it more military in nature. The degree of discipline expected from a rakshak, at least on paper, was no less than was expected from a soldier. At the head of the PRD organisation was the Administrative Commandant, who was usually an officer of the Indian Police Service. Three Assistant Commandants assisted him, one each for training, physical culture and youth welfare.577

Though here we are concerned with the PRD immediately after independence but it is worth mentioning that an important development in the history of PRD was the creation of a police wing in the districts of Lucknow, Agra and Varanasi in September 1957. The necessity for such a police wing was the result of the enormous increase in the work of police given both the Central and the UP government had passed several legislative enactments against social disorders. It was therefore, decided to call up certain PRD personnel under the PRD Act 1948, and post them under the administrative control of the Senior Superintendent of Police of the districts mentioned above. They were further utilised for the maintenance of order at fairs and social functions, to assist in traffic controls and to conduct night vigils, among other tasks.

We notice that organisations like village defence societies and the Prantiya Rakshak Dal demonstrate the broader militarisation of UP society after independence. While VDS were created to defend villages against dacoits, the Prantiya Rakshak Dal was created to help police in its operations and also to train VDS. What remained the most significant element of such organisations was their ability to instil a sense of security and responsibility in the minds of citizens to maintain law and order. It surreptitiously aimed to legitimise a certain acceptance of violence on behalf of the state through the creation of vigilante organisations.

**Expanding administrative control and the sanitisation of public spaces:** The extension of Section 34, Police Act, to towns and districts in UP 1948

The Congress government of the United Provinces did not want to leave any stone unturned to emphasise the fact that the government was to operate on Indian terms in the changed political conditions and that old British colonial policies would have to change. At the same
time, bureaucratic communication suggests that the UP administration did not trust its people. On the one hand, it wanted to de-colonise institutions and attitudes, on the other hand it wanted to strengthen its grip and control over the masses at every level. The colonial Indian Police Act 1861, gave wide powers to the police at various levels. The irony is, that most of it remains unchanged to the present day. Another important move made by the UP administration in the immediate aftermath of independence was the extension of section 34 of the Indian Police Act to various districts of UP. Section 34 of the Indian Police Act authorised a policeman to arrest any person without a warrant who within his view was “obstructing passengers; throwing dirt … etc. on the street; slaughtering cattle and being found drunk or riotous, indecent exposure of person or nuisance by easing himself or by bathing or washing in any tank or reservoir not meant for the purpose.” The ambit of such powers of the policeman extended to “any road or in street or thoroughfare within the limits of any town to which this section shall be specifically extended by the State Government.” For such offences, conviction before a Magistrate was liable to a fine not exceeding fifty rupees or imprisonment not exceeding eight days.

Though the section actually dealt with offences on the road, the police administration and the government wanted to also use it to regulate various fairs in Uttar Pradesh. The government sought opinions from District Magistrates and Superintendents of Police regarding the necessity of extension of section 34 of the Police Act to various districts of UP. We notice that this energised the local district administration in a rather unusual way and most of them wrote back to the Ministry arguing how each of their districts would qualify for the extension of this law. The eight activities mentioned under section 34 Indian

578 See, Indian Police Act 1861, Section 34.
579 Ibid..
Police Act were rather ambiguous. The first was “Any person who slaughters any cattle or cleans any carcass; any person who rides or drives any cattle recklessly or furiously, or trains or breaks any horse or other cattle.”\textsuperscript{580} We know that India did not have proper slaughterhouses in those times and slaughtering was often done in the open. It is difficult to gauge whether this was either only aimed at maintaining hygiene in open public places or was rather aimed at slaughtering of cows and pigs etc., which could lead to communal tensions. A second activity that came under this section was “Cruelty to Animals.” It targeted “any person who wantonly or cruelly beats, abuses or tortures any animal.”\textsuperscript{581} Did it mean that a person who was ploughing his field and was using a beating stick to steer his bull or oxen in the field would also come under its purview? The third activity was “obstructing passengers.” It specified “any person who keeps a cattle or conveyance of any kind standing longer than is required for loading or unloading or for taking up or setting down passengers, or who leaves any conveyance in such a manner as to cause inconvenience or danger to the public.” In 1948, India was not a very motorised nation yet. Most of the travel and transportation was done through bullock carts and tongas. Also, a policeman deciding the precise moment as to when a cart driver has exceeded his stop time on a street is rather vague. The fourth activity was “Exposing goods for sale.” The policemen could have easily used this section in order to extract bribes from street vendors who would have no license or permit to sell their farm or craft produce on the streets in any town. The fifth activity was “throwing dirt into the street.” It specified “any person who throws or lays down any dirt, filth, rubbish or any stones or building materials, or who constructs any cowshed, stable or the like, or who causes any offensive matter to run from any house, factory, dung heap or the like.”\textsuperscript{582} This section could only operate in a highly developed industrial country.

\textsuperscript{580} See, Indian Police Act 1861, Section 34.
\textsuperscript{581} Ibid.
\textsuperscript{582} Ibid.
Expecting such activities to cease from a primarily agricultural economy in a newly independent country appears to be over ambitious and cruel. A politics of elitism and exclusion was reflected in such ordinary-looking moves. Above all, it expressed a sense of disgust towards the “common people.”

The sixth activity this law would deal with was “being found drunk or riotous.”\(^{583}\) It said, “any person who is found drunk or riotous or who is incapable of taking care of himself.” The seventh activity prohibited was “indecent exposure” applying to “any person who wilfully exposes his person, or any offensive deformity or disease, or commits nuisance by easing himself, or by bathing or washing in any tank or reservoir not being a place set apart for that purpose.”\(^{584}\) This law appears to be dealing with beggars who would sometimes expose their cut off limbs or diseased body parts to beg.\(^{585}\) The final activity that came under section 34 of the Indian Police Act was “Neglect to protect dangerous places.” It speaks of “Any person who neglects to fence in or duly to protect any well, tank or other dangerous place of structure.”\(^{586}\) The activities that come under the purview of town, municipality, district or village planning were extended to every person. In a nutshell, this law appears to make everybody responsible for everything. It led to the creation of a new kind of citizen which had parallels to the model subjects envisioned by the colonial civilising mission.

\(^{583}\) Ibid.
\(^{584}\) Ibid.
\(^{585}\) Ironically, the old sanitary dream still exists in India. Urinating or defecating in public still remains a huge problem because of lack of public toilets in India. One cannot help but wonder as to how the government aimed to deal with such diseased and disabled people by invoking section 34 of the Police Act. In a country where building toilets still remains an important goal, arresting people for easing themselves sounds ungrounded. The reason to arrest somebody for the use of water bodies for the purpose of washing and bathing also appears completely baseless.
\(^{586}\) See, Indian Police Act 1861, Section 34.
A note (8/7/1952) for the Council of Ministers UP points out that an amendment was proposed to section 34 of the Police Act, 1861 (Act V of 1861). It aimed at enabling Government to extend this section to fairs and melas which were held in areas other than towns because until this time section 34 could only be extended by notification of the State Gazette, and even then only to towns. The note to the council of ministers stressed that there were several important fairs that were held in villages every year and attracted thousands of visitors. The note argued that in “the interest of law and order” it was “imperative” that section 34 should be extended to villages.\footnote{See UP State Archives, Note for the Council of Ministers, register no. 2732-Z/VIII Home Department (Police B) dated 11/7/1952.}

We come to know through this note that in actual practice the provisions of this section of the Police Act were applied to villages earlier too. For instance, in the year 1951, when the section was extended to a village in Kashipur Tehsil in Nainital District during the Chaiti fair, the manager of the fair objected and the order extending the section to that fair had to be cancelled. This highlights the fact that the objection raised by the fair manager resulted in an administrative embarrassment exposing the illegal nature of some police orders.\footnote{See UP State Archives, Note for the Council of Ministers, register no. 2732-Z/VIII Home Department (Police B) dated 11/7/1952.}

Following this incident, all the notifications issued earlier to extend the reach of section 34 to fairs held in rural areas had to be cancelled too. Opinions were invited from District Magistrates as to whether the non-application of section 34 to such fairs held in other villages would create difficulties in maintaining law and order and enforcing sanitation. To this the “District Magistrates unanimously pressed that section 34 be extended to such fairs as it is very useful in exercising control and enforcing sanitation.” Therefore, an amendment to the Police Act section 34 was drafted to deal with this problem. The approval of the Council of
Ministers was solicited to the proposed amendment and was introduced in the forthcoming session of the UP Legislature. The ‘Statement of Objects and Reasons’ for this amendment read:

Section 34 of the Police act 1861 can be extended at present to towns only. But necessity for its extension to melas which very often are held outside the limits of towns has been experienced. The present Bill is intended to enable its provisions to be so extended to melas in villages and outside towns.\textsuperscript{589}

The policing and control of fairs and melas was in the past an important symbolic occasion when the state met the people. The organisation of such local events were tied to the role of elites in village society and bonds of kinship.\textsuperscript{590} It is highly significant that the UP government wanted to assume this role and also use it to propagate a new kind of citizen at the same time.

The new amendment enabled the government to issue a notification in the official Gazette to extend this section to any rural area bridging the gap in public order laws between the town and the village. The powers of the police were made ever more intrusive. A law, which was initially supposed to extend to villages during melas, could now be, if the administration wished, extended for unspecified period. The potential permanent nature of the new amendment draws to our attention the mind-set of the Police administration harbouring a generalised suspicion of population. It is pertinent to mention that another of the preceding

\textsuperscript{589} UP State Archives, Home (Police-B) 2732-Z/VIII, see Appendix attached to the ‘Note for the Council of Ministers’ dated 11/7/1952. Police Amendment Bill 1952.
sections, section 31 of the Indian Police Act 1861, already dealt with the issue of Police keeping order on public roads. It said:

It shall be the duty of the police to keep order on the public roads, and in the public streets, thoroughfares, ghats and landing places, and at all other places of public resort, and to prevent obstructions on the occasions of assemblies and processions on the public roads and in the public streets, or in the neighbourhood of places of worship, and in any case when any road, street, thoroughfare, ghat or landing-place may be thronged or may be liable to be obstructed.\textsuperscript{591}

The purpose of the extended Section 34 of the Police Act was not driven by necessity but by the desire to safeguard an option for the police to expand its ambit of control to the maximum possible location. At another level, the access to all aspects of social life by the police also aims at generating an effect of fear of the police. It entailed that a person did not necessarily know for what offence he might be charged. The UP government having utilised its power to create VDS and Prantiya Rakshak Dal, issuing guns to ‘reliable persons’, expanding its power regulate use of public space by invoking section 34 of the Police Act, would also go after ‘bad characters’. The following section will explain how the UP government issued special powers to the police by legislating an extraordinary law to deal with ‘criminals’.

\textbf{Modernising the Police and Fighting Corruption: the Police Reorganisation Committee 1948 and the Institution of the chowkidar in the United Provinces}

\textsuperscript{591} See, Indian Police Act 1861, Section 31.
After India gained independence from British rule, some local institutions began to be questioned by the new political establishment. Prominent among them were the institutions of Chowkidars and Mukhiyas. This section will discuss the significance of the institution of Chowkidars for local policing and its subsequent abolition and replacement by village constables. The Police Reorganisation Committee 1948 paid a lot of attention to this particular institution and proposed its abolishing and replacement on “modern” lines.\textsuperscript{592}

The formal institution of Village Chowkidars had been created by the colonial state under the Village Chowkidar Act 1870. It was considered as one of the oldest indigenous institutions in India. Chowkidars were originally called ‘Goraits’ in some regions and worked as village servants.\textsuperscript{593} During early colonial times Chowkidars were appointed by the zamindars and landholders to protect and supervise the persons and properties of tenants. They were also used by the zamindars for their private business and were paid for by grants of land. They mostly served as watchmen and were the only information-gathering agency to inform police work in rural areas. In 1863, when the recent formation of Police organisation in the then North-Western Provinces was re-examined, the “Rural Beat System” replaced the “Rural Walk System”.\textsuperscript{594} This implied a growing recognition of the village Chowidar’s utility as a reporting and patrolling agency. When the colonial state took a more active role in policing the country, the idea of village Chowkidars underwent some changes. With the formal institutionalising of Chowkidari with the Village Chowkidar Act in 1870, village policing was overhauled. Preserving law and order and the prevention of crime in the

\textsuperscript{594} Earlier the responsible policeman for a particular village was sent on patrol or walks around a village or villages to assess law and order situation. But after the Rural Beat system came into existence, policeman in-charge of a village (which was his beat) was held officially responsible for any matter of public order in the respective village.
countryside was no more the prerogative of landholders and zamindars. Instead, it now lay with the colonial state. Chowkidars were regularised in the the area of the former province of Agra as a state force with the passing of Local Rates Act (XVIII of 1871), and in Avadh under Avadh Laws Act (Act XVIII of 1876). The most important feature of these two Acts was that Chowkidars had to be be paid in cash, not by grants of land. However, a system of paying by grants of land continued until the end of the nineteenth century and was mentioned negatively in the the U.P. Police Committee of 1890, which further recommended the introduction of a good conduct allowance. Despite such regulation, the old customs of ‘Goraits’ continued in UP as late as 1936, for example in the district of Mirzapur, where they were paid by grants of land rather than in cash.

The modernising of the institution of Chowkidari by the colonial state had much to do with installing informants at the lowest local level. Apart from regular village Chowkidars, there used to be road Chowkidars who patrolled the roads and were part of the apparatus to prevent robberies and Thuggee. In 1916, the road Chowkidars were disbanded in UP and numbered only 3128 at that time. In 1871, colonial government had suggested that there should be one Chowkidar for every 100 houses (which is one Chowkidar for 500-600 persons). Later, the Indian Police Commission 1902-03 recommended that the ratio of village Chowkidars should be one to every 600 persons of the rural population. Though the proposal was accepted by the government, even in 1911 the ratio was actually one Chowkidar to 482 persons. The Civil Police Committee of 1919 recommended that the strength of Chowkidars should be divided into five groups based on the ‘criminality and density of the population.’ These ratios started from one Chowkidars for 600 people to one

595 For a broader background discussion see, Bayly, C.A. Empire and Information: Intelligence gathering and social communication in India 1780-1870, Cambridge University Press, 1996.
Chowkidar for every thousand people. It aimed to govern population by managing crime rates and sustaining the local surveillance apparatus. The less ‘criminal’ an area was, the more people a Chowkidar could have under his responsibility and vice versa. In the year 1890, the strength of Chowkidars in UP was 1,13,979. It was reduced to 80,000- 88,000 between the years 1900-1921. In 1924-25, the strength of Chowkidars was 51,929 and reduced to 43,797 by 1931. In the year 1947, when India gained independence, the number of permanent Chowkidars in UP was 43,876 plus 5127 temporary Chowkidars. In total, in the year 1947-48, the United Provinces had 49,003 Chowkidars at its disposal, incurring an expenditure of Rs. 21,21,000/. A Chowkidar usually received Rs. 3/- per mensem from the government. The village Chowkidari force was considered separate from the police force as the Chowkidars were not enlisted in the Police Act as they were not subject to police discipline.

In the year 1948, the duties of the Chowkidars broadly dealt with the surveillance of bad characters in the village, the reporting of crime and other occurrences to the nearest Police Station. Chowkidars also helped in the investigation of a crime, with arresting criminals and in tracing absconders. Furthermore, they served as watch and ward in the village during fairs and festivals, and also, had to report every birth and death in the village to the local Police Station. Finally, their duty included informing the local authorities of the outbreak of any infectious diseases.

The UP Police Reorganisation Committee 1948 doubted the utility of Village Chowkidars, as it moved forward to modernise the police system to make it compatible with the new political reality of independence.\textsuperscript{596} The Committee was of the opinion that given the

\textsuperscript{596} UP State Archives, File 85/1948, see Police Reorganisation Committee Report 1948.
multifarious duties and responsibilities a *Chowkidar* had to carry out, the efficiency of a village *Chowkidar* was doubtful. The committee argued that the beat of a *Chowkidar* was vast and it was impractical for him to carry out his duties simultaneously with his own private work in the fields or elsewhere. Such an overworked figure, it was argued, was not likely to be of great use in investigations. Also, there were concerns over whether a *Chowkidar* actually reported all crime or rather concealed information at times. The majority of village *Chowkidars* were completely illiterate and their reporting of diseases was questionable, as they did not know one disease from another. Such scepticism was not entirely unprecedented. The Police Decentralisation Committee of 1923 – still under colonial control - had already floated the idea of the abolishing *Chowkidars* and suggested field trial in selected areas. However, the colonial government did not accept this recommendation then.

It was held by the Police Reorganisation Committee of 1948 that spending Rs. 20,000,00/- per annum on an institution whose intelligence was inaccurate was questionable. Also, it was suggested that an “intelligent officer” could do the same information-gathering work by closely questioning the villagers. The committee was conscious that there was a gap between the police and the public owing to the recent colonial experience. In other words, the police were aware that the public distrusted them. The most important function that the *Chowkidars* performed during the colonial era was providing a link between the police station and the village for reporting subversive activities in a village. The Committee of 1948 held that now that the consciousness of the public was developing, therefore a purpose useful in colonial times might not be useful anymore. Also, the police needed not maintain an “imperialistic
hold” over the people in an independent India. *Chowkidars* were to be abolished and a “better class of men who will be better paid” was thought to replace them.

Now that the argument for the abolition of *Chowkidars* was made, recommendations for what was to replace them came flooding in. To deal with the abolition of the *Chowkidari* system, the Police Reorganisation Committee 1948 recommended two alternatives. The first alternative proposed that the strength of the regular police force could be increased to provide a few extra constables in every police station to which *Chowkidars* had previously been sanctioned. The number of such police stations at that time was about 700 and would require an estimated recruitment of 6000-7000 new policemen. Also, this new force could be maintained, it was argued in the proposal, within the same amount of money that the *Chowkidari* system had utilised. The second alternative proposed the creation of another new class of police constables who would be required to live within their village beats and would be paid Rs. 15/- per month. The PRC was more inclined towards the second alternative as it wanted to have an agent of police directly based in a village to report incidents of crime and movements of bad characters. Policemen stationed in the police station could not adequately fulfil the task of such surveillance. The new force was to be called “village constables.” They were supposed to be fully literate with a view that they would be able to send in written reports to the Police Stations they would be attached to. After calculations it was proposed that the strength of these new village constables should be one-fourth of the total available strength of the former village *Chowkidars*. The village constables would come under the Police Act and would be liable to the same disciplinary rules applicable to other

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598 UP State Archives, File 85/1948, see Police Reorganisation Committee Report 1948.
regular policemen. As the village constables were supposed to live in their villages, it was proposed that they should be given cultivation rights by the government. The village constable would also undertake “detective duties”\(^{600}\) at the village level. Finally, the PRC strongly recommended that the institution of *Chowkidars* though should not be abolished all at once but gradually phased out over the next 5 years.

The Police Reorganisation Committee UP 1948 consisted of ten men.\(^ {601}\) In the final report three members of the committee had issues with the recommendations of the committee. Two of them were the Indian National Congress (INC) Party MLAs V.N.Tivary and Nafisul Hasan and one Inspector of Police, M.S. Mathur. They expressed grave doubts over the replacement of *Chowkidars* by the new force of village constables on grounds of efficiency. They conceded that complaints about harassment by *Chowkidars* were not infrequent, but argued further that when “half-trained and unseasoned but uniformed policemen”\(^ {602}\) would be placed in rural areas far away from police stations, the likelihood of harassment would be even greater. Also, they emphasised that the intelligence-gathering system at the village level would be greatly hampered as a reduction in the number of village police. Their comments further emphasised that the matter of pay was not as important as the majority opinion made it out to be as it was for “prestige” not monetary gain, that villagers used to volunteer themselves for the post of village *Chowkidar*. According to an example given in the notes:

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\(^{601}\) The Police Reorganisation Committee (UP) 1948 when appointed consisted of Dr. Sita Ram (chairman), Venkatesh Narayan Tivary (MLA), Nafisul Hasan (MLA), Ziauddin Ahmad (Retired District and Sessions Judge), Vinayanand Pathak (IP), B.N.Jha (ICS), Rajeshwar Dayal (ICS), H.C. Mitchell (IP), and D.P. Kohli (IP and also acted as the secretary of the committee). Subsequently A.D.Pandit (ICS) was included in the committee on the retirement of Vinayanand Pathak and M.S. Mathur (IP) replaced H.C. Mitchell who was proceeding on long leave.

it is the experience of one of us that in one district when the village Chowkidars of a particular circle agitated for an increment of their pay, they were asked to put in their resignations and make room for others who were prepared to come in for the same pay but not one of the agitators tendered their resignation. 603

The abolition and replacement of Chowkidars by fewer village police constables, the three dissenting members argued, would create difficulties for Station Officers to find men to guard vulnerable points during emergencies, or manage their fairs and festivals, or make arrangements for journeys of high profile personages passing through these villages. Also, if the number of village constables replacing Chowkidars were reduced to one-fourth, the number of villages in question could expect an increase in crime. The dissenters were of the opinion that the services of village Chowkidars were of the “greatest value” to the administration in detecting and reporting of crimes and surveillance over bad characters. According to them, it was precisely because of such indispensable services that such a “hoary institution” 604 had survived for so long.

In December 1948, that the abolition of the old institution of Chowkidar was announced and a phased timetable for the next five years set. It is pertinent to mention here, that the deadline for the complete abolition of village Chowkidari system coincides almost exactly with the abolition of the village Mukhiyagiri system (institution of village headmen, about which more to follow). The U.P press gave substantial coverage to the recommendation of the Police Reorganization Committee 1948. The abolition of Chowkidari among other modifications in the UP police received wide press coverage. For example, Dainik

603 UP State Archives, File 85/1948, See Note by Messrs. M.S. Mathur, V.N.Tivary and Nafisul Hasan regarding village Chaukidars, Page 100.
Vishwamitra\textsuperscript{605}, a Hindi daily, wrote that the institution of Chowkidars did not have any value as they usually served the Mukhiya or the Zamindar only. Therefore, the recent move by UP congress government to replace them with village policemen provided a properly official and neutral – rather than tied to landed interest - presence in case of theft, robbery, murder and other crimes. Another Hindi daily Jawala\textsuperscript{606}, wrote that it would be better if the government tried to revive the ancient police traditions of India rather than replacing them with western models. For this paper, the actual Chowkidari system before the British modified it, was one of such institutions and involved community spirit as well as policing. Another paper, the Sanmarg\textsuperscript{607} warned that abolishing Chowkidars would only render thousands of men unemployed. It argued further that chowkidari was an important aspect of ancient village practices of India. Since the Chowkidar knows a village in and out, he was better suited to detect crime rather than the newly recommended village constables.

The press note from the Information Directorate which had announced the abolition of chowkidari is noteworthy for its language and line of argumentation. It said, the “ill-paid village Chowkidars have no place in a modern police system and this age-old institution must now be replaced by a better class of men, who will be better paid.” This statement did not raise issues or problems with the Chowkidari system as such but portrayed its abolition simply as the necessity of modern times and of the changed scenario of administrative expectations in UP in a new and independent India.

\textsuperscript{605} See Dainik Vishwamitra issue of 22/12/1948.
\textsuperscript{606} See Jawala issue of 24/12/1948.
\textsuperscript{607} See Sanmarg issue of 31/12/1948.
Catching the mice is more important than the colour of the cat: Mukhiyas and the politics of everyday public order in United Provinces 1948-1955

Another left-over of colonial policing in UP were the Mukhiyas and the institution of Mukhiyagiri. While Chowkidars were abolished and replaced by village policemen after the recommendations of the UP Police Reorganisation report 1948, the institution of Mukhiyas attracted considerable discussion within the UP administration.\textsuperscript{608} This section aims to understand how local administration dealt with issues of public order and how it saw its subjects, who were now citizens of an independent India, when it came to entrusting them with the responsibility of local governance.

The institution of Mukhiya or Mukhiyagiri was one of the most important local institutions in the apparatus of colonial governance in India. The Mukhiya was a village headman, often a higher caste person and always male, the main point of contact with the colonial administration. The head of the traditional caste panchayats was also called Mukhiya. However, there was an official and very specific institution of Mukhiya, with important duties assigned, mentioned in the Criminal Procedure Code itself.

A year after India’s independence the Congress government in United Provinces was preoccupied with issues of local governance. Files from the UP administration show that the government was concerned with issues of democracy at the local level. A driving concern was not so much the opportunity for creative political thinking amongst the UP Congress leadership but rather the increasing number of complaints against Mukhiyas that Minister

\textsuperscript{608} UP State Archives, Home (Criminal) File no. 749/49. Particularly see a letter dated 5/49 from Lal Bahadur Shahstri, Minister Police to Home Secretary.
(Police) Lal Bahadur Shastri received from various districts. In May 1949, in a letter to the Home secretary of U.P., Shastri wrote that he was not aware of the responsibilities and duties of Mukhiyas and did not know how they were recruited. However, he still advised that the complaints he received against them might be due to the fact that these Mukhiyas were very old and should be substituted with younger and better men. Shastri contended that it should be left to the District Magistrate to appoint anyone he considered fit. He was not sure whether to retain these Mukhiyas once the new panchayat system started functioning. Moreover, he also advised that it was not necessary to dispense with all of them by making fresh appointments. Instead, the District Magistrates should look into individual cases whenever complaints were received. Not surprisingly, the post-independent Congress government in UP perceived this institution as a significant tool of popularity.

The institution of Mukhiya was significant in the operations of local level village surveillance. As per the Code of Criminal Procedure 1898, Part III, Chapter IV, section 45, a District Magistrate or in some cases a Sub-Divisional Magistrate was empowered to appoint a village headman. When required there could be several Mukhiyas. A response note (dated 16/5/1949) from Home Secretary to Minister (Police) Shastri brings to our attention that the powers that Mukhiya held were not ordinary and simple. Broadly, the institution of Mukhiya was a primary point of reference for not only the Magistrate but also the officer in-charge of the nearest Police station. He was expected to communicate not only the permanent or temporary residence of any notorious person(s) in his village but also the presence or passage of such notorious person(s) whom the headmen knew of or reasonably suspected to be a thugg(s), robber(s), habitual offender(s) or even an escaped convict. Most

609 Uttar Pradesh State Archives, Lucknow, Home (Criminal), File no. 749/49, Complaint against Mukhias and subsequent abolition of Mukhiagiri.
importantly, he was also responsible to report a violation or a possible violation of orders under section 144 IPC. Section 144, which as we have discussed in earlier chapters, dealt with the management of disorderly or riotous crowds. A Mukhiya was also responsible to report all matters that were likely to affect issues of the maintenance of order, prevention of crime or anything that hampers the safety of a person or property as per the general or special order made by the District Magistrate. Special orders of the District or Sub-District Magistrates derived their authority through the Government authorisation of the Magistrates to direct such a communication of information.

The response of the Home Secretary informing the Minister of Police about the institution of Mukhiya stated that the rules regarding the appointment of headmen were in Chapter II, Volume I of the Manual of Government Orders (MGOs). The appointing authority for Village headmen or Mukhiyas was the District Magistrate or the sub-Divisional Magistrate. In appointing a Mukhiya, a district Magistrate had to take into account the character, position and influence of the person to be appointed. However, the police appear to have no connection whatsoever with the appointment of Mukhiyas and had no direct authority over them. The District Magistrate(DM) and the Sub-Divisional Magistrate(SDM) could remove them at any time and it was not necessary to record any reasons for such removal. Also, it was at the discretion of the DM or SDM to add or reduce the number of village headmen appointed to a village. But we know that according to the rules in the Criminal Procedure Code, the first point of intelligence input for such Mukhiyas was in most cases, the local police station.

610 UP state Archives, Home (Criminal) File No. 749/49. Specifically see a Note from Home Secretary dated 16/5/1949.
Discussion regarding the retention or abolition of the institution of Mukhiya started circulating at different levels of the administration in the United Provinces when the Congress government began to think about the creation of a new system of local self-governments based on gram panchayats.\footnote{611} One of the major concerns was whether it was necessary or administratively feasible to retain Mukhiyas after the new elected panchayat system was implemented. The main issue here was the fact that panchayats would be overtly ‘political’ bodies, based on elections and involving party membership of its delegates. Mukhiyas, in contrast, had both political and ostensibly non-political functions – chiefly amongst them their role in local intelligence gathering and crime prevention work. This conflation of roles had not mattered to the colonial state when all administration was essentially deemed to be ‘non-political’. But under the new reality of independence such a pretence was no longer defensible. The Home secretary’s response to Shastri captured the dilemma well:

\begin{quote}
party politics is the essential feature of any democratic system but we cannot apply that to the functions which should appropriately be performed by public servants. Mukhia is not a paid public servant but he performs those duties, which really come within the province of public servants. He gives valuable information to the officers of the state which he will not be able to do without bias and partiality if he takes active part in politics.\footnote{612}
\end{quote}


\footnote{612} UP state Archives, Home (Criminal) File No. 749/49. Specifically see a Note from Home Secretary dated 16/5/1949.
The Home Secretary’s main point was that the Mukhiya must essentially be a person free from political bias. He further stated that Mukhiyas faced prejudice from some sections of local society precisely because of their association with the police. The opposition arose from their role as ‘information providers’ to local administration especially the police, and therefore they were likely to make many enemies while performing duties that were required from them by law. Therefore, a similar function could not be expected from an elected member or members of panchayat because under party political pressure they would find it difficult to execute such judicial and administrative functions.

Most importantly, it was necessary to maintain the popularity of panchayats by keeping them away from the duties which a Mukhiya performed. As stated by the Home Secretary, it was bound to lead members of panchayat into controversies and party factions. However, the Home Secretary emphasised that “times have changed considerably” and it was now necessary to drop those who were unable to change their attitudes with the times. Here the Home Secretary’s was suggesting that in a newly independent India Mukhiyas would become untenable if they continued to hold a colonial attitude towards administration. Also, older people should be replaced with younger, more vigorous Mukhiyas. The need for the institution of Mukhiya to evolve in postcolonial times was duly emphasised. This reflects the moral pressure that UP government faced while dealing with institutions which were remnants of colonial administrative structure. Most interestingly, the Home Secretary gave a wartime (emergency/exceptional) example to make his point. He wrote,

613 UP state Archives, Home (Criminal) File No. 749/49. Specifically see a Note from Home Secretary dated 16/5/1949.
I remember that when an invasion from Japan was imminent in 1942 it was found necessary to replace the older Mukhias to obtain persons who could be more active in sending information about the serial bombing etc. and the DM’s were asked to examine the list of their Mukhias and eliminate persons found old and decrepit and therefore unsuitable. Similar instructions may issue now. The District Magistrates may go through the lists with a view to find out who of these should be replaced. They can do so under the powers in paragraph 1106 of the MGO Volume 1.\textsuperscript{614}

But there was also another problem at play. India’s new political institutions were still fragile while expectations of the new independence government were sky-high. For a transitional period at least, it appeared inevitable that ideologically questionable but effective colonial institutions had to be retained. Shastri wrote:

The Panchayats will take some time before they begin to function. It would be better to ginger up the mukhias, at least during the interval. The activities of the various parties who are trying to encourage lawlessness is on the increase. The chaukidars and mukhias are not keeping the police informed of such activities. Mukhias might be instructed to be vigilant, and those who do not care to perform their duties satisfactorily should be replaced by others.\textsuperscript{615}

Just how high expectations for change had become is shown in a popular discourse against ‘corruption’ which also included the institution of mukhiyagiri. In December 1949\textsuperscript{616}, the...

\textsuperscript{614} UP state Archives, Home (Criminal) File No. 749/49. Specifically see a Note from Home Secretary dated 16/5/1949.
\textsuperscript{615} UP state Archives, Home (Criminal) File No. 749/49. Specifically see a Note from Lal Bahadur Shastri dated 7/6/1949.
\textsuperscript{616} Letter to UP government from Socialist Party, Moradabad dated December 9/1949.
Socialist Party of Moradabad District sent a letter to the UP government, submitting a resolution passed at the meeting of the party, which held that the institution of Mukhiyas should be abolished, as they are no more than the agents of police, and their removal would help in ending the corruption.

A year later, in August 1950, the Home Minister UP held a meeting with the Inspector General Police and all other Director Inspector Generals of Police to discuss the law and order situation in United Provinces. Among other issues the necessity of Mukhiyas and the formation of panchayats was again discussed. The general opinion was that although Mukhiyas were not as effective as before, they were still helpful to the police and their continuation was necessary. Without Mukhiyas there would be considerable dislocation in police work in the villages. The suggestion that the Presidents of the Gaon Sabhas/panchayats may be appointed as Mukhiyas was also considered at this meeting. The meeting held that while in some villages it might work well, in other it might lead to further difficulties and may lead to some sort of estrangement between the panchayat and the police. In the end the meeting concluded that where the District Magistrate and the Superintendent of Police would consider it fit, the presidents or members of the Gaon Sabhas could be appointed as Mukhiyas. But they would be liable to removal if they failed in their duties and will not get relaxations in rules applicable to everybody else. This highlights the tension between the law and order establishment of United Provinces and the newly found democracy of a newly independent India.

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617 An extract note in the file from Home Police, File NO. 260/50 regarding DIGs conference held by Home Minister Police, date 24/8/1950. The meeting took place on 22/8/1950.
By 1951, discussions of the “future of Mukhiyagiri system”\(^{618}\) were still gathering pace in government circles. The state Home Secretary issued a letter to all Divisional Commissioners and certain selected District Magistrates seeking their opinions. Their replies were almost unanimous. The majority of them held that it would be premature to abolish the Mukhiyagiri system or to change the existing system substantially. The main contention was that since the introduction of new Panchayats was only recent, it was desirable to watch their development before making any attempt to do away with the “old and well-tried institution” of Mukhiyas. The Commissioners and Magistrates held that despite individual weaknesses, this institution had “stood the test of time” and was still of “considerable use” to the local authorities in carrying out their day-to-day administration. There were only two dissenters - the District Magistrate of Basti and the District Magistrate of Lucknow. The former was in fact not really dissenting at all. He was merely of the opinion that as the available source of Mukhiyas had dried up, it was not possible to secure suitable persons for appointments as Mukhiyas under the existing system. He recommended that in future Sabhapatis (chairman or head) of Gaon Panchayats (and not members) should be appointed as Mukhiyas if found suitable. However, the District Magistrate Lucknow, Harpal Singh, was strongly opposed to the institution of the Mukhiya itself and called for its abolition. He favoured assigning the duties of Mukhiyas to village panchayats. He argued that the abolition of Mukhiyas would undoubtedly remove a notorious source of corruption from the village. As the Panchayati Raj Act provided for the formation of sub-committees to deal with various subjects and a sub-committee may easily be formed to take up the duties of a Mukhiya. He suggested that a provision could be made in the rules that allowed the chairman of such a sub-committee to be appointed by the District Magistrate from among the most suitable Panch or Sarpanch.

\(^{618}\) UP state Archives, Home (Criminal) File No. 749/49. Specifically see a Note by Home Secretary dated 2/3/51 titled “Future of the Mukhiagiri System.”
As the institution of Mukhiya was a subject of the Criminal Procedure Code, the District Magistrate Lucknow further suggested that consequential amendments in the CrPC and the MGOs would not be difficult. These rules were suggested to be amended in such a way as to enable duties regarded essential from the point of view of quick intelligence gathering about serious crimes and other incidents and should be assigned to the proposed sub-committee under the available Panchayati Raj Act.

The Home Secretary contended that the majority opinion was sound and that it was better to keep the “pillars” of local administration until a sufficiently solid and healthy alternative was built up. Therefore, the existing system according to the Home Secretary could not be considered superfluous until a new system had replaced it.

The local District Congress Committees were also not very comfortable with the institution of Mukhiyas. In a letter written in the month of April 1951, the District Congress Committee of Muzafarnagar forwarded a resolution to the United Provinces government. which had been passed at a meeting of the Jansath Tehsil Congress Committee and recommended the abolition of the Mukhiyagiri system and suggested that the duties of Mukhiya be entrusted to the President of the Panchayat. Such ideas did not find favour with the sitting administration, however. The District Magistrate of Muzaffarnagar reacted to the resolution in a largely negative way. He gave several reasons for his opposition to the idea of entrusting the duties of Mukhiya to the president or member of the Gaon Panchayats. According to him, the Mukhiyagiri was an old and tried system while the Gaon Panchayat

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619 See main file 749/9, serial number 43, extract from letter from District Congress Committee Muzaffarnagar no. 603 dated 25/4/1951.
620 See main file 749/9, serial number 44, reply of D.M. Muzaffarnagar to the Demi official letter dated April 12, 1951 at slip Z.
was a very new institution and hence, entrusting the duties of Mukhiya to the Gaon Panchayats in any form was likely to dislocate the village intelligence system. Also, the Gaon Sabhas strictly fell within the purview of judicial administration and Mukhiyas appointed from the members of the Gaon Sabhas were likely to be less responsible to the executive administration. Moreover, the residents of the Sabhas were elected on party lines and consequently in some cases were found to command no influence at all, a feature essential for being a Mukhiya. This highlights the muddled institutional logic that an intelligence gatherer did not need influence. These remarks by the DM of Muzaffarnagar reflected how the local administration viewed the Mukhiya as ‘one of their own’ and as sharply distinct from ‘party politics’ in a newly democratised system.

The District Magistrate Muzaffarnagar further argued that given some Gaon Sabhas comprised of more than one village, pradhan/president of such a sabha when appointed as Mukhiya would not be able to perform their duties as a resident Mukhiya in all the villages simultaneously. The only way to involve popular opinion in the appointment of Mukhiyas was to amend the rules so as to make consultation with Gaon Sabhas compulsory. There was a provision in section 22 of the Panchayati Raj Act, a Gaon Panchayat may make a recommendation for the appointment or dismissal of a Mukhiya, so the DM was merely emphasising a possible administrative tactic already available in the PR Act to deal with the issue at hand.

Faced with the necessity to please both the administration and the local Congress or other parties the institution of Mukhiyagiri was bound to become a confused institution that could not last much longer. In February 1953, the Senior Superintendent of Police and the District Magistrate Allahabad in raised some fresh concerns. They informed the Home Secretary that
the office of Mukhiya had become redundant in the existing set up since new Panchayats started functioning. In the new circumstances, the Mukhiya had started to work as a “tout,” a peddler of information loyal to none. Moreover, with an elected Sabhapati of the Gram Sabha in practically every village, the raison d’etre of the office of Mukhiya had disappeared altogether. They further recommended that the government should take steps to give more prestige to the Sabhapati rather than nourishing a functionary who had now become a “misfit.” They added that this was the reason that the collection of revenues was not entrusted to lambardars anymore in the new system. The Home secretary and others were urged to invite fresh views on this subject.

In his response, the Home Secretary only reminded government officials that when this matter was taken up a few years ago, the Minister for Local Self Governance (LSG) had observed, “I don’t think that Gaon President or any other member should be appointed as Mukhiya. The experiment if any, may be tried with any public man of good repute, one who is neither the president nor a member of the panchayat.” A year later, the Home Secretary was still weary of the idea of tampering with the institution of Mukhiyas. Given the discussion that this issue had generated, he felt some pressure and conceded that if “an experiment has to be made, perhaps the Inspector General of Police must be advised to select a few districts of villages for trying other methods in place of the old ones.” He also floated the idea that it might also be worthwhile to ask the Village Defence Society to select five or ten persons to serve as potential replacements for the Mukhiyas. As an alternative option the District Magistrate, after informally consulting the leading members of the Village Defence Society, may be asked to select one person for the period of one year to start with. The

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621 A note from Home Secretary U.P. dated 28/7/1953.
622 A note from Home Secretary U.P. dated 27/7/1954.
decision was left with the Home Minister U.P., while the Home Secretary U.P., was of the view that he had no problem with either of these recommendations. A month later, the additional Secretary followed up on the issue. He stated that the Inspector General of Police had suggested that the experiment regarding the appointment of Mukhiyas from among a panel selected by the Village Defence Societies, a remnant of war years, should be first tried in the districts of Meerut, Muzaffarnagar (as there were complaints from the Socialist party from these districts), Barieilly, Bijnor, Allahabad, Jalaun, Banras, Deoria, Sitapur and Faizabad. He added that District of Partapgarh could also be included in the list of villages selected for this experiment as “desired” by the Home Minister. The Additional Secretary noted that it was presumed that the experiment would run for a period of one year.

We do not come across any communication on the running of this trial in the file. However, finally in May 1955, the United Provinces Government abolished the institution of Mukhiyas. After a lot of administrative deliberation for some years, the idea of retaining the institution of Mukhiya did not yield any results and added to further complications and confusions, so the UP Congress government had to abolish it. The institution of Mukhiyas in United Provinces was originally established for North Western Provinces and Oudh by the then Lt. Governor and Chief Commissioner vide a notification on 19th January 1895. The institution Mukhiyagiri in the state of United Provinces came to an end after a career of 61 years.

The bureaucratic discussions around the local institution of Mukhiyas make a few issues clearer. First of all, we notice that Mukhiyagiri, for all the time it existed was a very

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623 A note from Additional Secretary U.P. dated 24/8/1954
624 The institution of Mukhiyas/Mukhiyagiri was abolished vide a Government order no. 1114/VI-749/1949 dated 2/5/1955.
significant aspect of the Indian Leviathan until 1955. We also notice that attitudes of suspicion were not only inherent in the colonial administration but also the post-independence Congress government as well as the bureaucracy of the United Provinces. Bureaucratic discussions around the institution of the *Mukhiya* demonstrate that the provincial government was afraid or rather uncomfortable with too much democratisation. Also, though the institution of the *Mukhiya* was supposed to be for the purposes of local governance, we notice that it was primarily a central aspect of local surveillance and security. The administrative communication discussed above point out the exceptional and indispensable character of the institution of the *Mukhiya* for the UP administration. The state of Uttar Pradesh had to deal with an interesting conundrum. On the one hand, post-independence communal and sectarian violence, RSS activities, dacoits and robbers, etc. compelled the state to maintain this institution. On the other hand, the legacy of Gandhi’s gram Sabhas/panchayat, ideology of social welfare of the Congress and a new political scenario which demanded inclusion of Indians in decision making process urged the party-political Congress government to do away with it.

The institution of the *Mukhiya*, therefore was supposed to be the eyes and ears of administration in every village. Emphasises on local modes on government since the days of the colonial company-state is brought to our attention by recent works of scholars like James Jaffe. Jaffe’s study allows us to appreciate the trajectory of local governance institutions in India like panchayats as judiciary forums to panchayats imagined as an institution of village and municipal governance. As we know that these ‘local governance’ panchayats in the second half of the nineteenth century were not representative because they mostly comprised of “respectable” Indians. These “respectable” Indians were appointed by local British officers in order to be educated into the art of Western-style government. We
know that by the time of 1908 Royal Commission of Decentralisation, the institution of panchayat was lauded both by the British as well as Indians as the potential site for the growth of a civil society in India. We must not overlook the fact that application of imported British ideas of liberalism in India was quite often confused with a suspicion towards the local population. The British administration did not trust the uneducated Indian masses and mostly relied on either western educated men of distinction or the propertied caste/class. It appears that during late colonial period, a time of high nationalism, the colonial state used such a civil society with the aim of nation building. In other words, to neutralise anti-colonial state attitudes by making the local population understand the virtues of the British administration and concern through such men of ‘distinction’ and ‘repute’. James Jaffe urges us to understand the nature of such a civil society as opposed to the understandings we might already have. Such a civil society neither fell into the very recent theoretical understandings of civil society nor the one proposed by scholars like Partha Chaterjee who further suggests the notion of a political society as distinct to the western ideas of civil society, rather it should be understood in its historical context as indicating a specific set of conservative institutions based not only upon an idea of progress but more specifically upon the rule of law, the right to private property, and the importance of elite participation in governance.625

Different leaders had different opinions on the potential of these local bodies. For example, both Gandhi and Ambedkar had strong views on the institution of panchayat. Whilst Gandhi saw it as a unique way of democracy operating through these micro republics called panchayats, Ambedkar saw it as a tool of caste oppression and therefore, undemocratic and anti-liberal.

Conclusion

Even after independence, the government of United Provinces remained keen on utilising extraordinary laws to deal with everyday law and order. This chapter demonstrated how everyday law and order problems in UP were often termed as ‘public order’ issues in the early years after independence. Unclear about the objectives of independence, the Congress government in UP utilised the opportunity to invoke public order laws freely. Specific extraordinary laws, all dealing with public order and peace were justified with the help of a wider narrative of chaos. This narrative of chaos is reflected in the administrative communication expressing suspicion and unreliability of villagers, in particular. There was often a contradiction in the broader moral politics of democracy that Congress preached and the seduction of extraordinary measures not very different from the attitude and rationality of their colonial predecessor. Many would frequently refer to ‘changed times’ or ‘independent India’. But it was not only the masses who did not know what independence would entail, but it was the administration too who did not know what to expect of it. There was a difference of opinion between the executive and the judiciary. Extraordinary laws displayed a general disregard towards normal procedures to deal with crime bypassing the foundations of modern law i.e., production of evidence and witnesses, particularity of a crime, conducting a trial, preparing accusations and then finally imprisonment or fine. Finally, the police and the judiciary did not always agree with the functioning of such laws.

Preventive laws like the ones discussed in the first set of case studies had a warlike element to them. These measures played an important role in the establishment of a violent postcolonial state which otherwise would claim to be democratic in character. It is when we
analyse the legislative moments of extraordinary laws that we begin to see the absolutist potentials of a postcolonial state like India. Michel Foucault, when discussing Clausewitz in the early chapters of *Society Must Be Defended* argued that Clausewitz’s maxim “war is politics by other means” is actually an inverted one and should be “politics is war by other means.” In case of ‘emergency’ and ‘disorder’ we notice that the UP government did follow the latter maxim to some extent. Everything that was seen outside the accepted bounds of the postcolonial state-nation, be it bad characters, dacoits, or the littering masses, were treated as enemies of the state and therefore society. Meanwhile, the boundary between state and society became blurred. The differentiation of state sovereignty was blurred when people as members of society were burdened with the moral responsibility to assist the state in purging undesired elements, or as they were referred to in the ‘objects and statements’ of the Prevention of Crime law by Lal Bahadur Shastri, as “social pests.”

Furthermore, it can be deduced from the various administrative moves discussed across various sections of this chapter that the Congress government treated any outside opposition as its enemy now that the country was independent and development was thought of as a collective effort of both the state and the society. Most importantly, Congress also aimed to activate such laws, as we saw above, to deal with other political organisations like the communists or socialists in UP. The socialist framework that congress sustained with great difficulties during the anticolonial movement was now too ordinary and any demand in that spirit from outside Congress was seen as unworthy of positive attention and considered unnecessary.

We notice that the Congress government in UP first created a moral necessity to legislate extraordinary laws apparently as a move towards nation building. However, such laws
always needed to be grounded on the inevitability to justify the existence of a criminal and dangerous other. In its operation, it remained essentially similar to colonial precedent. Bandits, uncivilised masses and bad characters and habitual offenders provided an excellent ground for such laws. However, the functioning of extraordinary laws was not always smooth. Congress’s involvement with criminals or rather criminals involved in Congress politics would often derail the force of the spirit of such laws and create administrative dilemmas.

Above all, this chapter has also demonstrated the broader attitude of early post-colonial UP administration towards its citizens. The bureaucracy did not see the larger population of UP as trustworthy. They may have considered the issuing of guns to every village in the time immediately after Partition, but they also deemed it necessary to extend Section 34 of the Police Act to various districts and towns because they did not believe that the normal rule of law was sufficient to ensure order. Most importantly, many other states in India followed UP’s lead and enacted similar public order laws thus, demonstrating that the conditions for the legislation of ‘extraordinary laws’ was always there, what mattered was the tactical invocation at the right moment. Also, the inclusion of these sweeping powers in the Constitution of independent India was remarkable, considering the bitter opposition Congress posed to similar provisions in the Government of India Act 1935. However, partition and the broader chaos of decolonization provided a context to the Constituent Assembly as well as the leaders of the country to realise the necessity, rather the inevitability of such emergency powers in a country like India, which was often prone to fissiparous and centrifugal tendencies.
It is the inevitable aspiration of constitutional sovereignty that the idea of sweeping powers made its mark on its way through the Constituent Assembly and its various committees, and was finally incorporated into Part XVIII of the Constitution as Emergency Provisions, including Articles 352 to 360, supplemented by Article 365. Such provisions had a serious effect on the basic nature of the constitution and the conception of ‘extraordinary’ circumstances, anything that had the potential to challenge the authority of the state. While the emergency measures in the Constitution of India were the provisions for national emergencies such as war or external aggression or internal disturbance(s), which made the constitution for all practical purposes a unitary one during the pendency of such emergency, the public order laws legislated by states had an authoritative effect to create terror in the mind of its people. Above all, while the emergency measures in the constitution aimed for an indestructible Union, the public order legislation in the states were aimed at demonstrating the ability of the state to threaten and to deter.

Information gathering about various aspects of life was a significant exercise in the maintenance of quotidian public order in the United Provinces. The case of Peter Budge in the previous chapter highlighted how ordinary and low-level officials like Hawaldars and Moharrirs and Ahalmads, who were liminal to power held an altogether different agency when it came to maintaining the other order of the public, namely the government of paper and files. When the administration decided to impose a curfew or to invoke laws like section 144 or Indian Arms Act etc., misinformation often questioned the basis of such actions. The routine of quotidian violence both on the streets and within the government institutions made the entire exercise of justice and order redundant.
The basic structure of government in the post-independent UP government was not starkly different from the colonial set-up that had preceded it. Given that the bureaucratic structure was carried over, it too followed the path of an administrative ambition based on a distinction between knowers and the known. Information gathering at local levels through Mukhiyas and Chowkidars was an important case in this regard. It required everyday surveillance at the village level. While Mukhiyas did not fit into the political calculations of the new government, Chowkidars were seen as an unnecessary, uneconomic and inefficient burden on the government. Such institutions, which were prominently perceived as the remnants of the colonial order, were invaluable for the administration, and needed to be repackaged and indigenised to meet the demands of the new emerging postcolonial public order. In other words, these changes could be seen as the necessary labour pains for the birth of a postcolonial order which could utilise the same set of laws efficiently but with an invigorated legitimacy.

The new panchayats that saw the abolition of the Mukhiya were calculated to serve the Congress government in normalising its governmental discourse and decisions among the masses. The new village constables, on the other hand replaced the apparently underpaid, illiterate, overburdened and unreliable Chowkidars. In both the cases we notice that in a way the arrival of the postcolonial state was declared by making certain administrative facelifts. These initial administrative decisions by the UP government were important. It would facilitate a hidden complicity between the colonial and the postcolonial order.

From the material presented in this chapter, I would like to argue that the prism of ‘independent’ India is insufficient to understand the postcolonial order because the moment of ‘transfer of power’ in India exposès the pseudo-dialectics of the constituent and the
constituted power. The foundational moment when people give law to themselves, never happened in a real sense. On the one hand, Congress as a mass social praxis was now a government in UP and therefore, became a dominant protagonist of determining political and administrative possibilities, and the course of action. A line drawn by colonial ‘oppressive’ laws, as we know, often structured how the purpose of the colonial administration and the scope of the anticolonial movement were understood in India. Also, the potentiality of such public order laws and bureaucracy was already profaned by the negative and oppressive mediation it offered to the anti-colonial movement in UP as in the rest of India. What the Congress government in UP did after independence was to retain the same set of laws and same structure of administration with minor changes but holding a transcendental righteousness to do so. The continuity of colonial law and order attitude safeguarded the self-sufficiency of a potential repression in the postcolonial state in India. Additionally, it adopted a classic sovereign move that rested on the currency of precariousness and thrived on the creation of problem categories or outsiders. Such outsiders were proposed to be both outside normal social life and the ambit of ordinary rule of law.
Conclusion

This thesis has set out to investigate how law was used as a tool of governance in late colonial and early postcolonial India, with special reference to the invocation of states of exception or simply, extraordinary laws. The question was closely related to another issue, the creation of certain ‘problem categories’ to whom the normal process of law did not apply and which represented a legalised and permanent state of exception. With regards to both questions this thesis has found a consistency in perspective across the colonial – post-colonial divide. Bureaucrats in independent India were just as obsessed with maintaining peace and tranquillity as the colonial law and order administration. The case studies discussed in this thesis were diverse both in terms of their focus on different regions and the analytic angle of each instance involved. However, a certain overall pattern emerged from these case studies. There was an important but subtle difference between the kind of situations leading to the invocation of extraordinary legislations and, the nature of those ‘exceptional categories’ of people- or problem categories, in late colonial and early postcolonial India. The question arose to what extent the former (exceptional laws) could sustain itself without the existence of the latter (problem categories).

With the advent of the First World War and the Ghadr mutiny plot, the necessity for the invocation and promulgation of extraordinary laws like the Defence of India Rules and the Rowatt Bills became acute. The introduction of wartime measures like the Defence of India Rules ushered an era of legal exceptionalism in a colonial situation. It set a precedent for making the Rowlatt Bills possible. While the war was an international affair, the colonial government took the opportunity to lump two enemy categories together to expand the scope of those problem categories to which the normal operations of the law could no longer be
applied. The enemies of the Raj outside, like the Germans, and the enemies of the Raj at home, like the Bengali revolutionaries and the Ghadr party were in collusion with each other and together posed an existential threat to internal peace. They were no longer simply a criminal or even law and order problem but ‘enemies’ of the sovereign government in Carl Schmitt’s totalising sense. The Ghadr party’s boast to be the ‘enemy of the British Raj in India’ added weight to such totalising claims of the colonial administration. The Rowlatt Act highlighted the awareness of the colonial administration that revolutionary organisations and the growing anticolonial nationalist movement in India could only be suppressed by ignoring usual protocols of the due process of justice. The colonial administration made a clear distinction of its enemies and friends. However, in reality this distinction was not so clear. The Rowlatt Bills had the potential to book anti-colonial agitators whether they were part of a revolutionary organisation or not. This was a moment when the specificity of an enemy category was given up and the general population declared as at least potentially a hotbed of revolutionaries. Such a moment legitimized the colonial strategy of emphasizing legal distinctions between its friends from its enemies. Eventually, the Raj ended up with a declaration that the much trumpeted rule of law – which was so central to its own self-justification - applied only to friends, while when dealing with enemies, the administration did not have to follow the rule of law at all. In consequence, during the First World War and its immediate aftermath, the colonial administration normalised legal exceptionalism by way of making extraordinary laws permanent. Maintaining order, peace and tranquillity, preventing civil war and dealing with revolutionary violence were some of the justifications cited by the colonial administration for such decisions. The Jallianwala Bagh massacre demonstrated that even peaceful gatherings of otherwise unspecified groups of people could be declared to stand outside the law.
The colonial administration had always operated by identifying certain problem categories, and then pushed such groups of people beyond the purview of ordinary law(s). Thuggee serves as an excellent early example and offers a paradigmatic case for the workings of colonial legality in this regard. Later we notice that ‘revolutionaries’, ‘satyagrahis’, ‘badmaashes’, ‘goondas’, ‘mawalis’, ‘habitual offenders’, ‘the illiterate masses’ and the trade unionists populated an ever-increasing list of problem categories. Such administrative moves were always aimed at maintaining dominance over the population. The late colonial state in India, by use of extraordinary legislation, managed to distance itself from an active responsibility towards its subjects. It managed to set a clear boundary as to what was allowed in terms of political protest and what was not.

Every law and order situation was not only an administrative question for colonialism but also a crisis management challenge. Leaving aside the ability to use a declaration of a state of exception as reaffirmation of sovereign power, a whole range of tactical moves could be observed. The interwar period witnessed an excessive and frequent use of preemptive laws like section 144 CrPC. Preventive detentions and curfews became routine. The broader strategy adopted by the colonial law and order machinery and its repetitive resort to extraordinary legislation had more to do with instituting a rule of fear than the proper application of the law. Such a governmentality highlights the vulnerability and fragility of the colonial order. Although it was not necessarily intended as such at the time, the passing of the Government of India Act 1919, marked the beginning of the long process of decolonisation with the introduction of ‘diarchy’. The process continued with the passing of Government of India Act 1935, devolving more powers to provinces and invigorating the Indian political scene with elections and the possibility of representation. It offered an opportunity to its subjects to share limited sovereignty by encouraging and strengthening
provincial politics, but also promised an extension of liberal constitutional legality. Ground realities were often different, however. In the late 1930s we notice that extraordinary legislation was frequently used as a tool to depoliticize dissent. Indigenous political parties including the Congress by no means always rejected such colonial manoeuvres. They sometimes contested political dissent as in the Punjab case study, and sometimes affirmed it, as in the case of Bombay. The language of legality was often involved in such choices, as highlighted by the assertion of Akalis activists in Punjab as well as the Home Minister (Minister of Police) K.M. Munshi in Bombay. Both emphasized human rights and notions of legal citizenship that were in fact sustained through other special categories when the law was used pre-emptively. Extraordinary legislation got normalised whilst also being reintegrated into the rule of law myth by opening it up to the courts and making courts the new temples of impartial justice. Draconian preventive measures like banning people from public places or police firing often remained embedded in a nominally ‘normal’ legal framework, typically tied to ‘ordinary’ laws like section 144 CrPC. The discursive link between legality and legal exceptionalism legality enabled colonial administration not only to maximise its might but derive a certain moral legitimacy for itself too.

Confrontational situations often provided the colonial government with a justification to invoke public order laws and impose curfews or resort to police firing in order to enhance its own administrative calculations. Yet, it defeated its own principle of maintaining state impartiality over competing political groups at numerous occasions and facilitated administrative intervention in community lives. This is born out in different ways in the case study of Punjab, UP and Bombay. For Example, the issue of Mazdoor Sabha and Mill Strikes of Kanpur in the 1930s and the Madhe Sabha issue in Lucknow had to face invocation of section 144, curfew and police firing. Notably, the justification of the police violence in
these cases progressed from the fact that a situation of disorder necessitated state violence in achieving the ideal of justice as law’s end, i.e. violence begets violence. The command of the colonial government and the behaviour of the Congress ministry in UP responded by imposing a violent legal culture upon all the indirect stakeholders in the conflicts in Cawnpore and Lucknow. The Congress ministry also rejected a certain social consensus that criticised police violence and the imposition of extraordinary laws like section 144 and curfews. The logic of ‘maintaining public peace and tranquillity’ for the Congress government in UP- and supported by prominent nationalist leaders like Jawaharlal Nehru and Mohandas Gandhi, although from different perspectives- during acute situations of anti-government mass mobilisations further safeguarded the self-sufficiency of these laws.

Furthermore, the case studies also highlighted that the Congress ministries in the provinces where anti-colonial mobilisation was spearheaded by ‘nationalists’ of the ruling party itself also often justified the use of pre-emptive public order legislation. Right from the moment they were involved in provincial self-governance, the nationalist elite in waiting normalised a ‘correct’ way for populations to behave once extraordinary legislations was invoked. The invocation of such states of exception unified legal norms and political facts. The late colonial state working in tandem with Congress nationalists fine-tuned the argument over the use of extraordinary legislation, frequently arguing that ‘facts on the ground’ made it impossible to maintain order through the use of ordinary laws. Though the colonial administration always emphasised its impartial role in the justice system, it along with Congress ministries in the 1930s criminalised mass politics in the name of a certain apolitical rationality where ‘public order’ came to be thought of as a priori to any political discussion.
Several case studies in this thesis highlighted the use of laws like 144 in cases of intense political confrontation. However, the story of Peter Budge in chapter four, not only highlighted the careless attitude of the late colonial and early postcolonial government towards civil liberties of ordinary individuals but it also posed questions as to the fictitious nature of colonial bureaucracy which relied heavily on paperwork. Individuals like Peter Budge and possibly many others could figuratively be brushed under the carpet if they did not have any political value. Furthermore, the case study of Peter Budge raised some questions regarding the nature of paperwork that sustained colonial bureaucracy. Low level officials not entirely at home with switching between English, Hindi and Urdu, often made mistakes that lead to blunders and miscarriage of justice. Right until the end of colonialism in India administrative practice defended it itself with reference to a depoliticised bureaucracy, impartial judiciary, rule bound norms and very dutiful police. Ironically, all these claims were shown to be hollow by the manner in which Budge was arrested and then suffered a lengthy ordeal of incarceration. Significantly, Budge’s case was entirely run and managed by Indians, right from the invocation of extraordinary legislation, to arresting the accused, to the transfer of his case between various offices, to his detention in Jail and his subsequent presentation (or non-presentation) before a court. The judges appointed to hear the case were all Indians. In addition to the police, as Budge’s case study demonstrated, even judges were guilty of carelessness when it came to following the rules. It is at such moments that we understand that the usual separation between the coloniser and the colonised does not offer much analysis or a nuanced understanding of the native participation in the structures of governance in general and legal governmentality in particular, even when the process of decolonisation was well under way.
The most striking conclusions about the decolonisation of public order in India come to the fore with the postcolonial initiatives that were activated right after independence. Expectations of independence, freedom from colonialism and imperialism, put great pressure on the successors of colonial administrators. However, despite best intentions, these initiatives to bring administrative practice in line with the new reality of independence did not achieve much - as demonstrated throughout chapter 5. The basic formula of managing populations and the art of colonial legal governmentality was difficult to do away with. Postcolonial law-and-order management retained the framework as well as the catalogue of colonial policies of control. When reconsidering old colonial institutions like Chowkidari and Mukhiyagiri the administration and the political elite became entangled between the rhetoric of independence based on the promise of better times to come, and the usefulness of a colonial apparatus for continuing the dominance of the state in the lives of its citizens. At places, the law and order administrators had to acknowledge the effectiveness of the colonial way of managing disorder.

The best example were discussions around new laws to deal with ‘habitual offenders’ who could not be dealt with under the ordinary sections of the Criminal Procedure Code. State suspicion towards the citizens of a new India was highlighted when the issuing of guns to every village to enable it to protect itself against dacoits was under consideration. Ordinary villagers were deemed unreliable to be issued a gun. The focus on ‘dacoits’ meanwhile served as a reminder how much the new administrative thinking was still preoccupied by identifying certain legal problem categories in advance to subject them to extra-legal measures. The Dacoits of 1950 were the direct descendants of the Thuggs in the 1830s in this regard. Meanwhile, society was militarised with the creation of quasi-military
organisation like the Prantiya Rakshak Dal. It blurred the boundaries between the state and society.

After deliberations the post-colonial state realised that it had to move away from maintaining public order to managing chaos. Congress which was at helm in various provinces/states was entangled with local politics which often involved criminal elements. A significant shift back to normality occurred when the new (and old) problem categories listed by the post-colonial state in India - ‘social pests’ like bandits, goondas, badmashes, habitual offenders and even littering masses - were once again made the subjects of ordinary law and no longer regarded as rather than enemies of the state. The attitude was not altogether dissimilar to that of the colonial state but the tone was reformative. Hence the bureaucratic apparatus in postcolonial India, as demonstrated in this thesis with reference to UP, continued colonial instructions and preserved the potential for state repression for the times to come.

The study of the process of the decolonisation of public order in India has a bearing on contemporary debates about the continuing habit of the Indian state to declare states of exception and to use extraordinary colonial-era laws to deny citizens their rights in the 21st century. Such a repressive vision of legal governmentality in India is reflected in various laws devised to deal with the issues of terrorism, sedition and tribal and secessionist insurgency. Recent debates around the question of repressive police action and the administrative response that followed the cases of land acquisition by the state governments for corporates, urban protests that took place regarding the issue of women safety and rape in India, nationwide protests in India in the wake of everyday atrocities against Dalits, has once again brought to our attention the colonial character of the Law in India. Furthermore, the narrative that normalises state violence in the mind of most Indian citizens when it comes
to maintaining public order, peace and tranquillity in ‘disturbed areas’ of the ‘Red Corridor’, the North-Eastern States of India and in the state of Jammu and Kashmir demands careful attention. The idea of citizenship that has emerged in contemporary India appears to be more in agreement with the colonial repressive tactics of dealing firmly with ‘problem categories’ of all classes, especially when it comes to maintaining the sovereignty of the Indian state, rather than citizens in a democratic self-determined nation. There is a continued significance of understanding colonial legal governmentality to make sense of politics in contemporary postcolonial societies like India.
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