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*Gandhi, Lawyers, and the Courts' Boycott during the Non-Cooperation Movement**

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Abstract

This article analyses the role of the legal profession and the evolution of aspects of Indian nationalist ideology during the Non-Cooperation Movement of 1920–22. Very few legal professionals responded to Gandhi's call to boycott the British courts despite significant efforts to establish alternative institutions dedicated to resolving disputes. First identified by leading legal professionals in the movement as courts of arbitration, these alternative sites of justice quickly assumed the name 'panchayats'. Ultimately, this panchayat experiment failed due to a combination of apathy, repression, and internal opposition. However, the introduction of the panchayat into the discourse of Indian nationalism ultimately had profound effects, including the much later adoption of constitutional *panchayati raj*. Yet this discourse was then and remains today a contested one. This is largely a legacy of Gandhi himself, who, during the Non-Cooperation Movement, imagined the panchayat as a judicial institution based upon arbitration and mediation. Yet, after the movement's failure, he came to believe the panchayat was best suited to functioning as a unit of village governance and administration.

Introduction

The leading role of lawyers in the independence movement is a standard trope of modern Indian history. Some early work of the so-called Cambridge School certainly questioned the motives of many legally trained members of the early Indian National Congress; however, few histories of the nationalist movement can be written

* Many thanks to Marc Galanter, Mitra Sharafi, and the members of the South Asia Legal Studies Working Group at the UW-Madison Law School for comments on an earlier draft of this article. Any errors, of course, are the author's own.

without noting this phenomenon.[1] As many others have noted, the overwhelming majority of men who formed the core of the early Congress had some form of legal education. Moreover, the dominance of legal professionals in the movement continued up to and after independence—a fact to which the names of Gandhi, Nehru, Rajendra Prasad, Ambedkar, and many others amply attest.[2] Indeed, the current website of the Bar Council of India still proudly announces that it was only 'with the selfless guidance and statesmanship of the legal profession' that the goal of independence was finally achieved.[3]

Mithi Mukherjee's remarkable work illustrates the varied ways in which the discourse of justice, especially among legal professionals, was fundamental to the early nationalist movement. Yet the purchase of such a discourse was available to nationalists such as Gandhi only so long as it appeared that pleas and petitions for liberal justice might offer a path toward freedom and independence. However, the 1919 Jallianwala Bagh massacre made it clear that claims for justice within the structures of empire were untenable. 'The core of his [Gandhi's] revolutionary innovations in the field of political strategy', Professor Mukherjee has written, was the adoption of the idea of 'renunciative freedom'—that is, the adoption of practices that simultaneously renounced participation in and non-violently confronted British colonial governance.[4] 'Insofar as any association with the British judicial system reflected a residual faith in the discourse of imperial justice,' Mukherjee concluded, 'it had to be thoroughly rejected.'[5]

Gandhi's renunciation of the British judicial system was first attempted during the Non-Cooperation Movement of 1920–22 when, to the surprise of his supporters and opponents alike, he called for lawyers to boycott the British courts. At the same time, he asked legal professionals to continue to work to resolve disputes through the creation of an alternative system of boards of arbitration, tribunals,

[1] On the Cambridge School critique of the role of legal professionals, see M. Mukherjee, *India in the Shadows of Empire: A Legal and Political History, 1774–1950*, Oxford University Press, New Delhi, 2010, pp. 110–12.

[2] Ibid., p. 110.

[3] http://www.barcouncilofindia.org/about/about-the-legal-profession/lawyers-in-the-indian-freedom-movement, [accessed on 18 May 2017].

[4] M. Mukherjee, 'Transcending identity: Gandhi, nonviolence, and the pursuit of a "different" freedom in modern India', *American Historical Review*, vol. 15, no. 2, April 2010, pp. 466–72.

[5] Ibid., p. 467.

and boards that eventually came to be called by the ancient name of panchayat. However, despite their later claims to a leadership role in drive for independence, the Indian Bar failed to respond. Only a very small number of lawyers gave up their practices and several were overtly hostile to Gandhi's call to renounce their profession. Congress's own post-mortem of the effort deemed the courts' boycott a failure.

Yet the boycott was equally notable for the way in which it brought to the fore the competing definitions of the role and functions of the panchayat in modern Indian society. Drawing upon the legacy of colonial administration, the panchayat could be understood either as an indigenous forum of arbitration or as a unit of village government and administration.[6] Gandhi's career epitomized this dualistic perception of the panchayat and his experience during the courts' boycott led him eventually to reject the arbitral functions of the panchayat and to elaborate on its central role in the local administration of an independent India.

Pleaders, protests, and panchayats

During the late nineteenth and early twentieth centuries, the Indian Bar was a highly fragmented and highly decentralized institution. The Legal Practitioners Act of 1879 sought to bring some order to the variety of systems that had developed in the three presidencies and other provinces over the course of the early nineteenth century. By that act, six grades of legal practitioners were recognized: advocates, attorneys, *vakils*, pleaders, *mukhtars*, and revenue agents. In fact, we know relatively little about the lower ranks of the legal profession except for their respective qualifications to practise before the courts. Unfortunately, the 1923–24 *Report of the Indian Bar Committee*, which sheds some measure of light on the profession during the early twentieth century, saw fit only to analyse the practice of advocates, attorneys, and *vakils*, claiming that 'local conditions ... vary so widely that we are satisfied that any attempt to legislate for these subordinate grades of practitioners ... must be doomed to failure'.[7]

The 1921 census of India provides an indication of the total size of the bar at the time of the Non-Cooperation Movement. According to

[6] J. Jaffe, *Ironies of Colonial Governance: Law, Custom and Justice in Colonial India*, Cambridge University Press, Cambridge, 2015, Chapters 8–10.

[7] *Report of the Indian Bar Committee, 1923–24*, Delhi, 1924, p. 9.

the census, which published only the total number of all practitioners, there were 69,007 legal practitioners in all of India: 56,828 in the British-held provinces and 12,179 in the Indian states and agencies.[8] Not surprisingly, in British India, the largest number was in Bengal, where 17,017 were enumerated, followed by the United Provinces (10,229), the Madras Presidency (7,603), and the Bombay Presidency (5,426). Comparatively, significant numbers also could be found in some of the princely states, especially Hyderabad, which contained almost 4,000 legal practitioners.

Unfortunately, the census enumerators did not break down these figures any further in order to distinguish between the different grades of the profession, and we do not get a clear view of these distinctions until the publication of the *Report of the All-India Bar Committee* in 1953.[9] By that time, however, the qualifications for the practitioners of the different grades of the legal profession had changed considerably. Nevertheless, although the data are remarkably scant on this account, some idea of such a differentiation during the early twentieth century can be culled from other sources. A list of advocates admitted to practise before the Bombay High Court in 1917 totals 159, which would amount to approximately 16.4 per cent of the legal professionals enrolled before that court and residing in the city four years later.[10] In the Madras High Court, a similar list of the enrolment of legal practitioners between 1879 and 1908 records 103 advocates and 773 *vakils* and attorneys.[11] Advocates thus comprised approximately 11.7 per cent of the enrolling legal practitioners there. In Calcutta in 1921, the general category 'Law' in the census recorded 6,303 persons in

[8] *Census of India, 1921*, vol. I: Part II—Tables, Calcutta, 1923, Table X, pp. 370–1.

[9] *Report of the All-India Bar Committee*, New Delhi, 1953, Annexure F. Many thanks to Marc Galanter for providing a copy of this *Report*.

[10] A. J. C. Mistry, *Forty Years Reminiscences of the High Court of Judicature at Bombay*, A. J. C. Mistry, Bombay, 1925, Appendix List No. 2, pp. 60–2. Many thanks to Mitra Sharafi for providing a copy of this rare book. A total of 970 lawyers living in Bombay City were enumerated by the 1921 census. See *Census of India, 1921*, vol. IX: Cities of the Bombay Presidency, Part II—Tables, Bombay, 1922, p. l.

[11] J. J. Paul, 'Vakils of Madras, 1802–1928: the rise of the modern legal profession in South India', 2 vols, Ph.D. dissertation, University of Wisconsin-Madison, 1986, vol. 1, Table 2, p. 192; J. J. Paul, *The Legal Profession in Colonial South India*, Oxford University Press, Bombay, 1991, pp. 98–9. Confusingly, Paul designates advocates before the Madras High Court as 'barristers'. After the Legal Practitioners Act of 1879, this term had been replaced by the official designation of 'advocate', although 'barrister' continued to be used in everyday parlance. See, for example, *Report on the Administration of Civil Justice in the Madras Presidency for the Year 1907*, Madras, 1908, p. 12.

legal employment, although, ten years later, in 1931, a more detailed enumeration recorded only 5,093 legal practitioners in Calcutta.[12] If we accept B. B. Misra's analysis of the Bengal directory, which listed 646 advocates before the Calcutta High Court in 1921, then perhaps between 10.2 and 12.7 per cent of all Calcutta legal practitioners were advocates.[13] Yet these figures are not comprehensive. They do not account for those practising before the courts in Allahabad, Mysore, Lahore, and Patna, the only other High Courts in India *circa* 1920.[14] However, for our purposes, it is probably fair to say that the highest ranks of the advocates very likely comprised between 10 and 15 per cent of India's legal professionals.

Nevertheless, it is this elite that inevitably receives the greatest amount of attention from historians, and perhaps rightly so, for from this elite were drawn many of the leading figures of the nationalist movement. Yet, even if we take this number as indicative of the cadre of legal leaders of the nationalist movement, which is a very large assumption, there may still have been as many as 50,000 *vakils*, pleaders, *mukhtars*, and other ranks of the legal profession that still play little or no role in the grand narrative of Indian independence.

Gandhi first appealed to the general body of legal practitioners of India to renounce their practices and take an active part in the independence movement during the Non-Cooperation Movement of 1920–22. However, some rumblings already were apparent during Gandhi's Rowlatt *Satyagraha* of 1919. In March of that year, Gandhi sought to organize a passive resistance movement against the implementation of the Rowlatt Bills—a pair of bills that were soon passed into law by the Legislative Council of India and came into effect as the Anarchical and Revolutionary Crimes Act of 1919.[15] Prior to the act's passage, Gandhi drew up a '*satyagraha* pledge' to be signed by anyone who would promise to civilly disobey the law.[16]

[12] *Census of India, 1921*, vol. VI: City of Calcutta, Part I: Report (Calcutta, 1923), p. 106; *Census of India, 1931*, vol. V: Bengal and Sikkim, Part II: Tables, Calcutta, 1932, Imperial Tables X, p. 140.

[13] B. B. Misra, *The Indian Middle Classes: Their Growth in Modern Times*, Oxford University Press, London, 1961, p. 330.

[14] The High Courts of Madras, Bombay, and Calcutta were established in 1862. The court at Allahabad was established in 1866, Mysore in 1884, and Patna in 1916.

[15] The Rowlatt Bills provided for imprisonment without trial, warrantless arrests, and *in camera* trials, among other things. They were passed into law on 18 March 1919.

[16] The pledge was published in the *Bombay Chronicle* on 2 March 1919. See P. C. Bamford, *Histories of the Non-Co-operation and Khilafat Movements*, 1925, reprinted by Deep Publications, Delhi, 1974, pp. 3–4.

Judith Brown has shown that there was little support for the pledge movement outside of Bombay and Gujarat where between 600 and 800 people may have signed.[17] A well-publicized case in Ahmedabad saw two barristers and three pleaders who had signed the pledge referred to the Bombay High Court for disciplinary actions.[18]

Lawyers also were particularly active in the Punjab. Here, however, their activism had much less to do with Gandhi's satyagraha pledge and much more to do with the so-called Punjab Disturbances of 1919, which also had been sparked by agitation surrounding the Rowlatt Bills. In the Punjab, when the prominent Amritsar barrister Saifuddin Kitchlew and the medical doctor Satya Pal were arrested and deported, the protests quickly evolved into mass demonstrations, attacks upon government offices, and assaults upon Europeans. One barrister, Badrul Islam Ali Khan, presided at a meeting of an estimated 50,000 people demanding the deportation orders be rescinded.[19]

The activity in Amritsar quickly escalated. Immediately following news of the deportation, crowds took to the streets in protest, and several members of the Amritsar Bar, including the *vakil* Maqbool Mahmood and the barrister Gurdial Singh Salaria, intervened to try to quell the disturbances, but only after first seeking the approval of the local Deputy Commissioner.[20] What followed, of course, was the infamous Jallianwala Bagh massacre. Despite the ambivalent role played by legal professionals in the days preceding the massacre, afterwards, the British authorities were intent upon humiliating all of them for their alleged role in the disturbances. In the days following the massacre, lawyers were harassed and several arrested, including Badrul Islam Ali Khan and Gurdial Singh Salaria. Most notably, however, in the period of martial law that was instituted after 14 April, the British authorities specially targeted the legal profession for its role in the disturbances. Lawyers from outside of the Punjab who sought to defend those brought up on charges before the summary military courts were prohibited from entering

[17] J. M. Brown, *Gandhi's Rise to Power: Indian Politics, 1915–1922*, Cambridge University Press, Cambridge, 1972, pp. 166–7.

[18] *The Leader* (Allahabad), 26 September 1919; *Collected Works of Mahatma Gandhi* (hereafter *CWMG*), electronic edition, vol. 18, fn. 3, pp. 261–2.

[19] *Report of the Commissioners Appointed by the Punjab Sub-Committee of the Indian National Congress*, Lahore, 1920 (hereafter *Punjab Sub-Committee Report*), I, pp. 45–6.

[20] Ibid., pp. 48, 50; *Report of the Disorders Inquiry Committee, 1919–1920*, Calcutta, 1920 (hereafter *Hunter Committee Report*), p. 34.

the area.[21] More significantly, General Reginald Dyer, 'the butcher of Amritsar', forcibly enrolled all 93 members of the Amritsar Bar as Special Constables, forcing them to witness floggings, patrol the city, to *salaam*, and to perform work as coolies.[22] Pandit Chet Ram, a 35-year-old pleader, testified later that 'the appointment [as Special Constables] was absolutely unnecessary for the maintenance of peace and order .... I cannot but believe that the order was meant to punish and humiliate the local bar'.[23]

At the same time as the Punjab Disturbances, opposition to the possible dismemberment of the Ottoman empire at the end of the First World War sparked the Muslim Khilafat Movement in India to preserve the Ottoman sultan as the *caliph* of Islam.[24] The Khilafat Movement provided Gandhi with 'a remarkable opportunity' to promote both his goals of reform through *satyagraha* and Hindu–Muslim unity.[25] The prospect of a joint Non-Cooperation Movement was first put forth at the Delhi Khilafat conference in November 1919, later confirmed by the All-India Khilafat Committee in Calcutta on 23–24 February 1920, and then supported by Gandhi in his 'Letter to the Press' published in *Young India* two weeks later.[26]

None of these announcements, however, specifically called upon lawyers to join the Non-Cooperation Movement, although they did include calls for the resignation of government employees, the renunciation of titles, and the refusal to pay land taxes.[27] It was not until three weeks before the planned start of non-cooperation on 1 August 1920 that Gandhi publically included the courts' boycott as one of the movement's fundamental policies. In an article published

[21] *Hunter Committee Report*, I, p. 228.

[22] *Punjab Sub-Committee Report*, pp. 64–5; T. Sherman, *State Violence and Punishment in India*, Routledge, London, 2010, p. 29.

[23] *Punjab Sub-Committee Report*, II, p. 97.

[24] G. Minault, *The Khilafat Movement: Religious Symbolism and Political Mobilization in India*, Columbia University Press, New York, 1982, p. 1.

[25] Brown, *Gandhi's Rise to Power*, pp. 190–4.

[26] Minault, *Khilafat Movement*, pp. 77–9, 92–6; *CWMG*, vol. 19, pp. 447–50. In November 1920, the Central Khilafat Committee also organized the *Jam'iyyatu'l-'Ulama-i-Hind*, a committee of 120 Muslim scholars that drafted a *fatwa* against cooperation with the British. This became known as *Muttafiqa Fatwa* and contained the earliest expression of the desire to include lawyers in the movement. The *fatwa* declared that Muslim lawyers practising before the British courts was *haram* (forbidden), but the document was not published until August 1921. See Bamford, *Histories*, pp. 162–3, Appendix G; and M. N. Qureshi, *Pan-Islam in British Indian Politics: A Study of the Khilafat Movement, 1918–1924*, Brill, Leiden, 1999, p. 249, Appendix C.

[27] Bamford, *Histories*, p. 151.

in *Navajivan* on 4 July, he admitted that this plan likely would be controversial, but nevertheless declared:

> The lawyers should, for the time being, give up practice and intending litigants or those who find themselves dragged into litigation should boycott the courts and get their disputes settled through arbitration boards. It is my confirmed belief that every Government masks its brute force and maintains its control over the people through civil and criminal courts, for it is cheaper, simpler and more honourable, for a ruler that instead of his controlling the people through naked force, they themselves, lured into slavery through courts, etc., submit to him of their own accord. If people settle their civil disputes among themselves and the lawyers, unmindful of self-interest, boycott the courts in the interest of the people, the latter can advance in no time. I have believed for many years that every State tries to perpetuate its power through lawyers.[28]

Notably, Gandhi linked the courts' boycott to the creation of boards of arbitration. Like many reformers, lawyers, trade unionists, and socialists in the West at this time, Gandhi was immensely interested in the possibility that boards of arbitration might replace both the adversarial legal system and the egoistic competitive system of industrial capitalism.[29] As a lawyer in South Africa, he had participated in several arbitrations of commercial disputes, but it appears to have been his participation in the Ahmedabad and Bombay textile strikes of 1918–20 that rekindled his interest in this form of dispute resolution. Perhaps of greater importance was the fact that Gandhi began to conflate his enthusiasm for arbitration with the resurrection of India's ancient panchayat. This marked a significant departure from Gandhi's earlier imagining of the panchayat—an imagining that later would have enormous influence on post-Independent India. Before 1920, Gandhi rarely had spoken of the panchayat but, when he had done so, he frequently imagined it as a unit of local self-governance, especially for the purposes of improved sanitation.[30] Several times in 1918, he had spoken of the importance of resurrecting the panchayat as a unit of village administration and as an essential building block of *swaraj*.[31]

[28] *CWMG*, vol. 21, p. 7.

[29] See, for just one example, Sidney and Beatrice Webb's admiration of the New Zealand Court of Arbitration in their Introduction to the 1902 edition of *Industrial Democracy*, new edn, Longmans, Green, London, 1902, pp. xlii–xlviii, and their assessment of its potential for the arena of British industrial relations in ibid., Part II, Chapter III.

[30] *CWMG*, vol. 15, pp. 160–1; vol. 16, p. 490.

[31] Ibid., vol. 16, pp. 420, 447–9, 490.

Yet there also was a long history of imagining the panchayat as an arbitral body that dated back to the early Bombay Presidency under Mountstuart Elphinstone—a history that was not lost upon the first generation of nationalists.[32] Between 1918 and 1920, Gandhi hesitantly began to employ the terms 'panchayat' and 'panches' in place of the British legal term 'arbitration'. Perhaps it was not accidental that Gandhi's initial response to the Ahmedabad mill strikes in 1918 was to call for the creation of a five-member arbitration panel to resolve the dispute—five, parenthetically, being the traditional number of members on a panchayat.[33] By 1920, however, when mill strikes continued to roil Ahmedabad and similar strikes had broken out in the mills of Bombay, he repeatedly called for the intervention of arbitrators but, by this time, he was referring to them as panches and panchayats.[34]

An identical discursive and conceptual shift from the British legal term 'arbitration' to the more emotive term 'panchayat' continued during the Non-Cooperation Movement. By this time, however, the resurrection of the panchayat was to become inextricably connected to the courts' boycott. The initial announcements of the plans for non-cooperation by both Gandhi and the Khilafat Committee in the spring of 1920 did not mention a courts' boycott.[35] As we have seen, it was not until July 1920 that Gandhi revealed this aspect of the Non-Cooperation Movement in *Navajivan* and *Young India*, the latter of which contained the formal statement of the plans formulated by Congress's Non-Cooperation Committee.[36] The formal Committee statement, published on 7 July, specifically called for the 'suspension by lawyers of practice and settlement of civil disputes by private arbitration'.[37] Yet, by the following month, Gandhi already had begun to envisage lawyers as a vanguard of *panches* helping to lead India to *swaraj*. In the Gujarati-language *Navajivan*, he wrote:

> When I call upon the lawyers to give up practice, my intention is not that they should sit idle at home; it is rather that they should start working whole time for the cause of the khilafat or the Punjab, and also that they influence their clients and prevail upon them not to go to the courts. These lawyers

[32] See Jaffe, *Ironies of Colonial Governance*, Chapter 10.
[33] In February 1918, Gandhi actually served on a board of arbitration in Ahmedabad. See *CWMG*, vol. 16, pp. 285–6.
[34] *CWMG*, vol. 19, p. 388; vol. 20, pp. 261, 324–5, 353–6.
[35] Ibid., vol. 19, pp. 447–50; Qureshi, *Pan-Islam in British India*, p. 115.
[36] *CWMG*, vol. 21, pp. 5–7, 13.
[37] Ibid., p. 13.

should set up *panchas* and help their clients to settle their disputes among themselves. In this way, the courts will be left without work and the people will learn to become independent of the State.[38]

In August, he also told a crowd in Madras that the Non-Cooperation Movement would 'evolve law and order through the instrumentality of these lawyers by dispensing pure justice and by instituting Panchayat courts'.[39] However, even for the Gandhi, the discursive shift was not fully completed at this early stage of the movement. At the same time as he was speaking about panchayats to his supporters in Madras, Gandhi was arguing in the English-language *Young India* that 'if the lawyers as a whole suspended practice, they would devise arbitration courts and the nation will have expeditious and cheaper method of settling private disputes and awarding punishment to the wrongdoer'.[40]

There was a similar hesitancy among the other members of Congress to adopt the term 'panchayat' to indicate arbitration tribunals staffed by lawyers. By the time Congress met in special session in Calcutta in late September, a month after the beginning of non-cooperation, the public call for a courts' boycott still employed more legalistic terminology by encouraging lawyers to establish 'private arbitration courts' to settle 'private disputes'.[41] The Nagpur Congress of December 1920 similarly encouraged 'lawyers to make greater efforts to suspend their practice and to devote their attention to national service including boycott of law courts by litigants and fellow lawyers and the settlement of disputes by private arbitration'.[42]

By the end of the Non-Cooperation Movement, however, the discursive transition among members of the Indian National Congress had been completed and the term 'panchayat' came to fully replace the terms 'private arbitration courts' and 'boards of arbitration'. In this regard, the first official recognition of the term 'panchayat' was published in the resolutions passed by the All-India Congress Committee meeting in Bezwada in March 1921. Then, the Committee congratulated 'the country on the rapid progress made in the

[38] Ibid., p. 162.

[39] *Amrita Bazar Patrika*, 14 August 1920; National Archives, Cabinet Papers (hereafter NA CAB)/24/111, 'Telegram from Viceroy, Home Department, to Secretary of State for India', 21 August 1920.

[40] *CWMG*, vol. 21, p. 178.

[41] *Report of the Civil Disobedience Enquiry Committee, appointed by the All India Congress Committee*, Allahabad, 1922, Appendix IXA.

[42] Ibid., Appendix IXB.

organisation of the Panchayats and trusts that the people will make still greater efforts to boycott Government Law Courts'.[43] Congress's later *Report of the Civil Disobedience Enquiry Committee* of 1922 seemed to suggest that this new panchayat movement was the result of the popular response to the call for the courts' boycott and popular participation in the movement. According to the *Report*, 'The establishment of punchayats was the necessary concomitant of the boycott of courts and was taken up in right earnest. From October 1920 to January 1921 a very large number of these sprang up all over the country'.[44]

Despite Congress's official embrace, popular usage of the term 'panchayat' was much less forthcoming and remained contested throughout the period. In most instances, the press reported the creation of 'boards of arbitration' or 'arbitration courts' rather than panchayats. Thus, in the earliest examples from mid-October 1920, it was reported that, in Ajmer, 'the city is divided into wards for establishing arbitration courts for each mohalla and a ministry of justice was fixed as an appellate court'.[45] At the same time, in Bombay, the Bombay National Union, a *swadeshi* association comprising small traders and shopkeepers, announced their intent to form an arbitration court

> consisting of some of the eminent senior and junior lawyers ... to do the duties of an arbitrator and do invite the public who desire to get their civil disputes settled by arbitration to communicate with the secretaries of the Union who would take necessary steps to get the disputes settled by the arbitration court.[46]

In many areas of the country, the term 'panchayat' appears to have had only a muted appeal. In Bengal, for example, the courts' boycott was not adopted by the Provincial Congress Committee until after the Nagpur Congress met in December 1920.[47] Thereafter, the term 'panchayat' was rarely used in the province. In January 1921, an 'arbitration chamber' was established in Calcutta that, the

[43] B. G. Kunte (ed.), *Non-Co-Operation Movement in Bombay City, 1920–1925*, Government of Maharashtra, Bombay, 1978, p. 54.

[44] *Report of the Civil Disobedience Enquiry Committee*, p. 50.

[45] *The Leader*, 21 October 1920; *Amrita Bazar Patrika*, 27 October 1920; *Bombay Chronicle*, 20 October 1920.

[46] *The Leader*, 21 October 1920. On the Bombay National Union, see P. Kidambi, *The Making of an Indian Metropolis: Colonial Governance and Public Culture in Bombay, 1890–1920*, Ashgate, Aldershot, 2007, pp. 196–7.

[47] *Amrita Bazar Patrika*, 21 January 1921.

announcement clearly noted, was wholly within the legal scope of the Indian Arbitration Act of 1899 and whose awards were legally enforceable by a decree of the High Court.[48] In the Chittagong Division, similar efforts were made at a meeting at the local Bar Association hall to draft rules for an 'arbitration board'.[49] The local Congress leader, Haradayal Nag, wrote:

> The policy of national arbitration Courts will be to infuse a compromising spirit into the mind of the people. Harassment and ruin of one's adversary by abuse of the processes of the British Courts must cease and the awe and demoralising influence of the processes must go. It is said that we are 'unself-reliant.' That wrong impression must be disproved by facts and figures. If we can displace the British Courts by national arbitration courts, it will be a complete answer to the accusation of our being 'unself-reliant'.[50]

'Arbitration courts' were reportedly established as well in Ghoromara, Nagarpur, Narayanganj, Purulia, Pachamba, Midnapore, Tamluk, Comillah, Sirajganj, Rampurhat, and Kantalia (Bengal) and Tinsukia (Assam).[51] In Noakhali (Bengal), they adopted the name Swaraj Arbitration Courts.[52] An appellate 'court of arbitration' was even established in Madaripur (Bengal) in May 1921.[53] In Sindh, then part of the Bombay Presidency, the Criminal Investigation Department reported a successful 'arbitration court' operating in Sukkur that, by mid-November 1921, had heard over 300 cases.[54] Several years after the movement had ended, the Home Department of the Government of India reported that no fewer than 866 'arbitration courts' had been created in Bengal by April 1922, although many functioned only irregularly and some not at all.[55]

The most frequent use of the term 'panchayat' appeared across other areas of the North, especially the Punjab, United Provinces, and

[48] Ibid., 13 January 1921.
[49] Ibid., 30 January 1921.
[50] Ibid., 3 February 1921.
[51] Ibid., 10 March 1921, 15 March 1921, 1 May 1921, 5 May 1921, 13 May 1921, 27 May 1921, 13 July 1921; *Times of India*, 2 May 1921.
[52] *The Tribune*, 9 August 1921.
[53] *Amrita Bazar Patrika*, 10 May 1921.
[54] M. Hasa and M. Pernau (eds), *Regionalizing Pan-Islamism: Documents of the Khilafat Movement*, Manohar, New Delhi, 2005, p. 311.
[55] Government of India, Home Department, Letter No. 1266P, dated 31 January 1925, reprinted in ibid., p. 180.

Bihar, although even in these places the term was not universal.[56] The President of the Bengal Landholder's Association, the Maharaja of Darbhanga (Bihar), explained:

> I am glad to see that the movement in favour of the Panchayat system is being taken up in earnest in different parts of the country .... For it has long been impressed upon my mind—and I am not alone in thinking this—that something must be done to check the enormous growth of litigation that is eating into the vitals of our rural population .... I have for the last twenty years raised my voice—advocating the establishment of Panchayats or Village Conciliatory Boards and the settlement of disputes by arbitration; and I take this opportunity to commend it to your serious consideration.[57]

In the village of Sanjat (Bihar), a panchayat had been established and was meeting under a mango tree in April 1921.[58] In the Punjab, by May 1921, it was reported that about 80 panchayats had been established.[59] In Faizabad (United Provinces), Motilal Nehru was able to successfully link the *Kisan Sabhas* (Peasants' Associations) to the Non-Cooperation Movement to such an extent that, according to the Viceroy's telegram to the Secretary of State for India in February 1921, 'no reports of crime are being made in pursuance of present policy of the Kisan Sabhas to decide all disputes by Panchayats. Few cases instituted in civil courts'.[60]

Yet, even where the term 'panchayat' was adopted, the discursive transition was undertaken hesitantly and often paired with the term 'arbitration' as if to provide an explanation of the panchayat's new purpose and function. Thus, the Lahore City Congress Committee planned to establish 'Panchayats or Arbitration Courts' in June 1921.[61] In Bengal, a report on the progress of non-cooperation in August 1921 listed the existence of 260 'Arbitration Boards and

[56] In Mullickpur (Bihar), for example, 'arbitration courts' had been established in 1921; see *Times of India*, 4 May 1921. In Dinarpur (Haryana), an 'arbitration court' was functioning in April 1921; see *Amrita Bazar Patrika*, 8 May 1921.

[57] *The Tribune*, 10 May 1921.

[58] *The Leader*, 21 April 1921. The supernatural qualities sometimes attributed to Gandhi were in evidence here as well. When an anti-non-cooperator approached the arbitrator, he joked that he would follow the Mahatma if a mango fell on his head. A mango dutifully fell on his head and the fruit was later displayed in the local temple (*thakurbari*).

[59] Ibid., 27 May 1921.

[60] NA CAB/24/120, 24 February 1921. Nehru was elected president of the United Provinces' *Kisan Sabha* in February 1921. The *Kisan Sabhas* had long sought to institute panchayats, according to W. F. Crawley, 'Kisan Sabhas and Agrarian revolt in the united provinces 1920 to 1921', *Modern Asian Studies*, vol. 5, no. 2, 1971, pp. 96–7.

[61] *The Tribune*, 3 June 1921.

Panchayats'.[62] In the Dera Ismail Khan District of the Punjab, *The Tribune* reported there were rumours that the local Congress Committee had 'succeeded in establishing a Panchayat of its own for arbitration purposes'.[63] In Bihar, Rajendra Prasad recalled in his *Autobiography* that Ram Raksha Brahmachari had established 'panchayats to settle disputes', but a contemporary newspaper account reported that 'he had established Arbitration Courts with [a] great amount of success'.[64] In Purnia District (Bihar), 'arbitration courts have been established in almost all the important villages and decisions of cases, civil and criminal take place through Panchayets'.[65] Directives from the centre did not necessarily provide any clear direction, either. In March 1921, the Punjab Provincial Congress Committee notified the local Congress Committees that the All-India Central Office required fortnightly reports on the progress of the 'establishment of Panchaits, the giving up of practice by lawyers, [and] settlement of cases by arbitration courts'.[66]

Moreover, there appears to have been some measure of confusion over whether or not the Non-Cooperation Movement's 'panchayats' were intended to refer to the traditional councils for caste governance. In Kharar (Punjab), for example, it was reported that 'communal Panchayats have been formed and it is expected that pleaders will take the initiative in organising a Court of Arbitration'.[67] In Bihar, Rajendra Prasad reported caste panchayats wholly supplanting Congress's call for the creation of boards of arbitration—a report supported by the recent work of Lata Singh.[68] Rajendra Prasad wrote:

> Arbitration Courts have not been adopted in any place as the scheme adopted by us does not contemplate courts on the line of the existing courts and all litigation is dealt with by the village Panchayat or by Panchayat comprising representatives from several villages. Panchayats have been established in a very large number of villages ... and are being established every day. We have not been able to get any accurate information as to the number of such Panchayats yet but we are expecting reports from the District Congress Committees on receipt of which we shall be able to supply exact figures of

[62] Ibid., 5 August 1921.
[63] Ibid., 2 June 1921.
[64] R. Prasad, *Autobiography, 1946*, Penguin, New Delhi, 2010, p. 116; *Amrita Bazar Patrika*, 2 December 1920.
[65] *Amrita Bazar Patrika*, 22 April 1921.
[66] *The Tribune*, 28 March 1921.
[67] Ibid., 13 May 1921.
[68] L. Singh, *Popular Translations of Nationalism: Bihar, 1920–1922*, Primus Books, Delhi, 2012, pp. 123–5.

such Panchayats in each District. Even at the lowest calculation the number would be several thousand.[69]

Similarly, in the Punjab, K. Santanam, the Congress leader and lawyer, explained to the Punjab Provincial Conference in April 1922 that 'the Panchayats that exist now-a-days are mostly on a communal basis, or more properly speaking, on a caste basis'. He admitted that the movement in the Punjab had not done enough to establish panchayats along the lines envisioned by Gandhi and encouraged his listeners to 'devote a large part of his time' to establishing these new-style panchayats as an 'effective means of checking and minimising inter-communal disputes'.[70] In Bengal, the government reported, 'the popularity of arbitration courts reached its zenith about the month of August [1921]', but it also noted that, 'in most districts, however, the movement gradually spread from the courts constituted and recognised by the local Congress and Khilafat Committees to the ordinary village "Salish" or "Baithak"'.[71]

Outside of the north of the country, there was an even more pronounced preference for the terms 'board of arbitration' and 'arbitration court' in the South and West. In November 1920, a very formal scheme for the establishment of 'arbitration boards' was adopted in Gujarat.[72] In Kalyan (Maharashtra), an 'arbitration court' was established on 1 December 1920.[73] In the Bombay and Madras Presidencies, this preference may be explained in part by the fact that both provincial Legislative Councils were considering village panchayats bills at this time—bills that were part of the Montagu-Chelmsford reforms to introduce 'responsible government' to India.[74] In addition, in the Bombay Presidency, the term 'arbitration court' was a somewhat familiar one and already had been in use for quite some time. In the 1870s, an arbitration court had been established

[69] *Amrita Bazar Patrika*, 17 March 1921; *The Tribune*, 16 March 1921.

[70] 'Presidential Address read by Pandit K. Santanam at the sixth session of the Punjab Provincial Conference held at Batala on 28th, 29th, and 30th April 1922', Lahore, n.d., p. 24.

[71] Government of India, Home Department, Letter No. 1266P, dated 31 January 1925, reprinted in Hasa and Pernau, *Regionalizing Pan-Islamism*, p. 192.

[72] *Amrita Bazar Patrika*, 13 November 1920.

[73] *Bombay Chronicle*, 6 December 1920.

[74] H. Tinker, *The Foundations of Local Self-Government in India, Pakistan and Burma*, Pall Mall Press, London, 1954, pp. 116–19. Interestingly, when a motion was made in the Madras Legislative Council to substitute the word 'council' for 'panchayat', a member pointed out that 'the word "Panchayat" had been in vogue from time immemorial and should not now be dropped'. The motion failed to pass. *The Leader*, 6 October 1920.

in Pune and the surrounding cities as a result of the Deccan riots—a point that was made by Narayan Chandavarkar, a Bombay High Court judge and former president of the Indian National Congress, in September 1920.[75] In Bombay City, even caste panchayats adopted the term 'arbitration court' as the Mahars did in April 1921.[76]

The South and West also witnessed some of the most sustained resistance to the courts' boycott as an element of the Non-Cooperation Movement. The 'pukka sahib' *Madras Mail*, for example, editorialized that

> the use and value of the panchayat has been destroyed, and, as a result, it is now not worth sitting on. The ambitious men of the village aim at something far higher, and, as a result, the management of the panchayat devolves upon the faction-leader, the swindler or the utter incompetent. The day of the panchayat is past. Efforts to resuscitate the system may have their intrinsic value, but we fear they are applied to a corpse.[77]

S. Satyamurti, a leading Congress member and High Court *vakil* in Madras, considered the courts' boycott 'undesirable, impractical and ineffective'. He, for one, would not give up his practice to 'live on public charity'; nor would he deny his services to anyone who needed a lawyer.[78] Other Congress leaders in the Madras Presidency similarly opposed Gandhi's boycott, including Kasturi Ranga Iyengar, High Court *vakil* and owner of *The Hindu*, and S. Srinivasa Iyengar, another High Court *vakil* and former Attorney-General.[79]

In Bombay, Narayan Chandavarkar was one of the leaders of the Anti-Non-Cooperation Committee, which was presided over by Dinshaw Wacha.[80] Chandavarkar specifically complained that the courts' boycott might undo all of the advances that had been made by the Indian legal profession over the previous 20 years. He warned Gandhi not to

[75] *Times of India*, 29 September 1920. On the Pune Arbitration Courts, see Jaffe, *Ironies of Colonial Governance*, pp. 261–2.

[76] *Times of India*, 19 April 1921; *The Tribune*, 21 April 1921.

[77] Reprinted in *The Leader*, 24 March 1920. However non-academic, I owe the very suitable description of the *Madras Mail* to a blog posted by Sriram V. entitled 'The journalistic history of Madras', https://natarajank.com/2012/07/26/journalistic-history-of-madras/, [accessed 26 May 2017].

[78] *Amrita Bazar Patrika*, 4 November 1920.

[79] Ibid., 19 December 1920; E. F. Irschick, *Politics and Social Conflict in South India: The Non-Brahman Movement and Tamil Separatism, 1916–1929*, University of California Press, Berkeley and Los Angeles, 1969, pp. 194–7; D. Arnold, *The Congress in Tamilnad: Nationalist Politics in South India, 1919–1937*, Curzon Press, London, 1977, p. 42.

[80] *Bombay Chronicle*, 22 October 1920.

forget that while till about 15 or 20 years ago European barristers had the cream of practice in our High Courts, Indian lawyers have since then practically ousted them, so much so, whether at Calcutta, Madras, Bombay or Allahabad, a European barrister is becoming more or less a rare bird.

Indian lawyers, he suggested, had prevented many British injustices and, if the courts' boycott was successful, 'the [British] bureaucracy will be glad and thank Mr. Gandhi for the achievement of their long-cherished objects'.[81] One list contains the names of only three lawyers who suspended practice in Bombay.[82] In Pune, Balwant Bhopatkar, who had served three years in prison for publishing the 'seditious' journal *Shala*, presciently argued that the boycott was 'unpractical' so long as the arbitration courts lacked any authority to enforce their decrees.[83]

Of course, not all of the opponents of the courts' boycott came from the South and West. Chittaranjan Das, for example, was reluctant to support the courts' boycott. In November 1920, 'Deshbandhu', or Friend of the Nation, as he later became known, admitted that the British legal administration of India had caused 'great moral and economic injury', but initially refused to support the withdrawal of lawyers from their practice.[84] Madan Mohan Malaviya's *Leader* (Allahabad) attacked the courts' boycott as well as Gandhi with characteristic fervour:

Mr. Gandhi would perhaps like India to go back to the primeval stage to settle private disputes. To refer the matter to a disinterested third party is savagery! Is it safe for people to follow unquestioningly a leader who holds such strange views which appeal neither to reason nor to one's conception of civilized government. Self-respecting lawyers at any rate would surely refuse to follow one who abhors their profession and charges them with enslaving India when, as a matter of fact, the lawyers have taken such a proud part in the national struggle and continue to give of their time and energy to the national cause.[85]

The lead column in the same article of 19 May 1921 condemned the panchayat movement as a 'parody of justice' and recounted several instances in which panchayat decisions were 'hideous and inhuman'.[86]

[81] *The Leader*, 15 September 1920. The same complaint was raised by the Indian Merchant Chamber meeting in Bombay. See *The Bombay Chronicle*, 5 October 1920.
[82] Kunte, *Non-Co-Operation Movement*, p. 9.
[83] *Amrita Bazar Patrika*, 3 February 1921.
[84] Ibid., 30 November 1920.
[85] *The Leader*, 11 July 1920.
[86] Ibid., 19 May 1921.

In further support of its position, *The Leader* also republished a column from the *Indian Mirror* (Calcutta) that attacked the arbitration courts as 'the new tyranny'.[87] Referring to the fact that arbitration courts often employed social ostracism to enforce their awards, the *Mirror* condemned the 'cruelty' and 'horrors' of this 'living death'. It attacked 'the tyrannical tribunals of the mob' that might invade the sanctity of the home, violate the honour of women, and restore the cruel and inhumane punishments of India's barbaric past. 'In the name of civilisation and humanity,' the columnist concluded, 'every enlightened and true-hearted Indian, therefore, should strive to the utmost of his power to set back the movement of lawless, tyrannical justice which political schemers present to the masses in the shape of the arbitration court.'

Naturally, it is unclear as to how many lawyers shared these extreme opinions. However, it is quite obvious that the vast majority of lawyers in India failed to answer the call to join the courts' boycott and establish panchayats. In February 1921, the government reported that only 99 pleaders across the country had suspended practice.[88] By the end of the movement, perhaps 800 or 900 lawyers had done so. Table 1 collates data from the 1921 census and Congress's 1922 *Report of the Civil Disobedience Enquiry Committee*. It suggests that approximately 1.5 per cent of all legal professionals suspended practice and thus participated in the Non-Cooperation Movement.

However, these data need to be understood as only suggestive and therefore need to be treated with a great deal of circumspection. First, the Nagpur Congress of December 1920 adopted a different set of provincial boundaries from those employed by the British census-takers. The goal of the Congress Working Committee was to attempt to ensure that each contiguous state shared a common 'prevailing language'.[89] Thus, Table 1 aggregates the data from several separate 'Congress provinces' and correlates them to the British boundaries used in the census. Second, even if one were to

[87] Ibid., 20 May 1921.

[88] *Legislative Assembly Debates (Official Report)*, vol. 1: First Session, Delhi, 1921, p. 795; see also Qureshi, *Pan-Islam in British Indian Politics*, pp. 250–1.

[89] 'Resolutions passed by the Working Committee of the All-India Congress Committee at Nagpur on January 1st, 2nd and 3rd 1921', in *The Indian National Congress, 1920–1923: Being a Collection of the Resolutions of the Congress and of the All India Congress Committee and of the Working Committee of the Congress from September 1920 to December 1923* (hereafter *Indian Congress Resolutions*), Allahabad Law Journal Press, Allahabad, 1924, p. 81.

TABLE 1
Lawyers during the Non-Cooperation Movement

British provinces and states	Number who suspended practice	Number of lawyers, mukhtars, et al. per British province	Percentage who suspended practice
Ajmer-Merwara	3	92	3.26
Assam	51	1,006	5.07
Bengal	300	17,149	1.75
Central provinces	61	2,758	2.21
Delhi	12	269	4.46
Bombay	34	6,115	0.56
Madras	208	9,589	2.17
Punjab	50	4,735	1.06
United provinces	116	10,306	1.13
Bihar and Orissa	2	5,213	0.04
Total	837	57,232	1.46

Sources: All-India Congress Committee, *Report of the Civil Disobedience Enquiry Committee* (1922), App. V; *Census of India, 1921*, vol. I: Pt. II—Tables, Calcutta, 1923, Table XVII, pp. 236–7. NB. I have examined two separate versions of the *Report*. In one particular instance, whether due to typographical or printing errors, the numbers recorded in this table differ. This difference appears only in the case of Bengal, where one copy of the *Report* lists 'about 300' lawyers who suspended practice while another copy lists 'about 900'. I have chosen to accept the number 300 because this is in accordance with other contemporary newspaper accounts. Outlying territories, such as Aden and Burma, have been excluded.

accept fully the accuracy of the reports from most provinces, the Civil Disobedience Enquiry Committee reported only the approximate number of lawyers—300—who suspended practice in Bengal. Other sources suggest that the number was 330.[90] Third, there are no data from Bihar, where the movement was quite popular. Thus, it is quite likely that non-cooperating lawyers in Bihar, including those as prominent as Rajendra Prasad and A. N. Sinha, were not counted.[91] Congress ultimately estimated that between 1,200 and 1,500 lawyers suspended practice. Even if these estimates were accepted, then the percentage of non-cooperating lawyers would amount to between 3.26 and 5.07 per cent. Nevertheless, whether the percentage of lawyers suspending practice was as low as 1.46 or as high as 5 per cent, Congress's 1922 Civil Disobedience Enquiry Committee certainly was correct to conclude that 'this item of the programme has failed'. The

[90] *The Tribune*, 5 August 1921.
[91] *Report of the Civil Disobedience Enquiry Committee*, p. 48.

number of lawyers who suspended practice was 'insignificant compared to their full strength and it has now [1922] been further reduced by some of them having gone back to practice for private and other reasons'.[92]

Yet, other than those who refused to suspend their legal practice based upon profound ideological differences, such as Madan Mohan Malaviya, it is extremely difficult to find evidence that explains the motivations and rationales of the vast majority of legal professionals who continued to cooperate with the British regime. Some obviously were concerned about their professional careers. K. P. Kesava Menon, recently returned from study in England and a member of Annie Besant's Home Rule League, recalled that 'some well-meaning senior members of the bar advised me that a young barrister like me should concentrate on professional work'.[93] Others were more concerned about money. As early as September 1920, Congress had resolved 'those lawyers who suspend practice and who require to be supported, should be supported by the nation'.[94] The next month, Gandhi and Shaukat Ali, one of the principal leaders of the Khilafat Movement, toured Western India, where they met with a group of *vakils* in Dharwar (now Dharwad). The pleaders asked Gandhi how they were to support themselves. He replied that, if they suspended practice and worked for the movement, they would be paid Rs 100 per month—an amount that later was formally adopted by Congress in February 1921.[95] This obviously did not satisfy them. Some offered to contribute half of their earnings if they could continue their practice, but Gandhi was not pleased and told them that this 'was a plea of weakness'. Nevertheless, he was forced to relent and told them 'so long as [a] vakil honestly said that he was too weak to suspend his practice altogether, all he could contribute would be welcome'.[96]

In Bengal, the Provincial Congress Committee certainly did not take a leading role in promoting the courts' boycott. Bipin Chandra Pal, the president of the Barisal session of 1921, did not even seek a

[92] Ibid.

[93] K. P. Kesava Menon, 'Crusading for a cause', in *1921 Movement: Reminiscences*, Ministry of Information and Broadcasting, Calcutta, 1971, p. 153.

[94] 'All-India Congress Committee', 9 September 1920, *Indian Congress Resolutions*, p. 18.

[95] 'Resolutions passed by the Working Committee of the All-India Congress Committee which met at Calcutta on January 31st and February 1st, 2nd and 3rd 1921', *Indian Congress Resolutions*, p. 84; *CWMG*, vol. 22, pp. 168–9.

[96] *Bombay Chronicle*, 15 November 1920.

resolution to adopt it. He admitted he did not 'understand why so much stress should be laid upon it' and argued that, while arbitration was an admirable remedy to the 'evil spirit of litigiousness in the people', it could not supplant law courts in every case. 'Non-compoundable criminal cases and some classes of civil case cannot be taken up by private arbitration,' he told the Provincial Congress Committee:

> These must go before existing law courts. And this being the case, there must be capable and practising lawyers to meet the requirements of these cases. Those lawyers who can suspend their practice and are qualified otherwise to engage in national service for the attainment of Swaraj and feel called that way, will naturally have an honoured place in the leadership of the movement. But care must be taken to prevent the growth of any prejudice against those lawyers who may not feel this call or consider it their duty.[97]

By August 1921, *The Tribune* reported that only 330 of the more than 17,000 lawyers in Bengal had suspended practice.[98] A majority of the 45 members attending a local bar meeting in Chittagong agreed that 'the suspension of practice by all members of the bar was not considered economically sound and absolutely necessary'.[99] Indeed, many members of the bar were equally or more involved in the contemporaneous developments in their own profession, especially the agitation for the creation of an All-India Bar. The drive to create a unified bar had begun as early as 1919.[100] After several postponements, in December 1920, the High Court Vakil Association met in Allahabad and drafted a resolution to that effect.[101] In January and February 1921, several provincial bars held similar meetings, most notably in Patna, Cawnpore, Mainpuri, Lahore, Madras, and Calcutta, the latter of which gave birth to the short-lived League of the Pleaders and Vakils of Bengal and Assam.[102] Finally, in late February 1921, Munshi Iswar Saran, a prominent lawyer from Allahabad, moved the resolution in the Legislative Assembly to create an All-India bar that

[97] *Bengal Provincial Congress, Session, Barisal—1921, Presidential Address by Bipin Chandra Pal*, Calcutta, 1921, pp. 94–8.

[98] *The Tribune*, 5 August 1921.

[99] *Amrita Bazar Patrika*, 5 May 1921.

[100] *Report of the All-India Vakils' Conference held at Allahabad on 26th and 27th March 1921*, Allahabad, 1921, pp. 2–3. Many thanks to Marc Galanter for providing me with a copy of this very rare report.

[101] *The Leader*, 23 February 1921.

[102] *Amrita Bazar Patrika*, 24 February 1921; *The Leader*, 23 February 1921; *Report of the All-India Vakils' Conference*, Appendix I, p. 3. On the Madras Lawyers' Conference, see Paul, *Legal Profession in South India*, pp. 157–8.

would remove the distinction between *vakils* and barristers.[103] Any consideration of imminent legislation, however, was postponed until after the assembly solicited the opinions and reports from the courts, the various ranks of lawyers, and the public. Yet this only generated further agitation among *vakils*. In March 1921, an All-India Vakils' Conference was held in Allahabad.[104] There, the *vakils* focused on the injustice of the 'dual agency' system that distinguished them from barristers and their concomitant 'disabilities'.[105] Advocates, apparently, did not possess the same sense of urgency. They appear to have been content to wait until the formation of an Indian Bar Committee under government auspices in November 1923.

None of these meetings adopted a public position in regard to either the courts' boycott or the Non-Cooperation Movement. One *vakil* who wrote into the *Amrita Bazar Patrika* complained that the 'establishment of arbitration courts and the providing of useful work to the majority of briefless lawyers who idle away their time for want of it, should have been some of the most important objects of the League'.[106] Even a year later, when the issue was raised before the League of Pleaders and Vakils of Bengal and Assam, the meeting ended in uproar and no decision was reached.[107]

One should not discount the fact that some lawyers undoubtedly feared persecution by the British authorities. Official British policy regarding the establishment of arbitration courts, as stated before the House of Commons in June 1921, was

> arbitration is not in itself unconstitutional, and arbitrators' decisions in civil cases may be enforced in civil Courts if the parties accepted the arbitration, even if they resorted to arbitration on their own initiative and not at the instance of any Court. But if any person acting or professing to act as an arbitrator causes bodily harm to another, he is liable to prosecution in the ordinary course for a breach of the criminal law.[108]

[103] *Legislative Assembly Debates*, vol. 1, First Session, 1921 (Delhi, 1921), pp. 371–92.

[104] *Report of the All-India Vakils' Conference*; *The Tribune*, 29 March 1921.

[105] 'Dual agency' was the term adopted by the Indian Bar Commission of 1923–24 to describe the different roles and functions of barristers and *vakils*. See V. M. Coutts Trotter's memorandum in *Indian Bar Committee Report, 1923–24*, Delhi, 1924, pp. 41–8.

[106] *Amrita Bazar Patrika*, 24 February 1921.

[107] Ibid., 10 January 1922. After this meeting ended in confusion, the local Bar Association of Jessore (Bengal) agreed to suspend practice until political prisoners were released and repressive measures repealed. See ibid., 18 January 1922.

[108] House of Commons Debates, 20 June 1921, vol. 143, cc. 895–6. This was later reasserted by Sir William Vincent in Legislative Assembly Debates (Official Report),

Thus, there were several instances in which arbitrators were prosecuted when arbitration courts or panchayats imposed 'customary' penalties involving 'bodily harm'. In Noakhali (Bengal), the five members of the Swaraj Arbitration Court were arrested for confining a man who refused to pay a fine.[109] A similar case in Mahua (Bihar) resulted in the members of the arbitration board being charged with wrongful confinement under section 347 of the Indian Penal Code.[110] In Jamalpur (Bihar), a complaint was lodged against the members of the local arbitration board when a villager was forced to come before the board and subsequently threatened with a beating.[111] Finally, in Mullikpur (Bihar), three members of the local arbitration court were sentenced to six months' rigorous imprisonment for extortion and wrongful confinement of the father of a boy alleged to have destroyed a neighbour's plants.[112] Some government authorities, moreover, went beyond the limits of the law. Motilal Nehru came across eight members of the local panchayat in Salon (United Provinces) who had been arrested, they were told by the police, 'because they were Panches and the Panchayat movement was against the Government'.[113] Elsewhere in the United Provinces, Motilal Nehru also reported further incidences of 'the police taking advantage of this law ... and merely for the offence of being a *Panch*, *Sarpanch*, President, Secretary or member, surety bonds and cognizances have been demanded and punishments have been awarded in courts of law'.[114] Throughout the Punjab, the Congress Civil Disobedience Enquiry Committee reported, members of panchayats were arrested 'wholesale' and convicted 'on frivolous evidence on charges of dacoities, thefts, extortion, and other serious offences'.[115] In the Jullundur (Jalandhar) District of the Punjab, the Deputy Commissioner reinstated the

vol. II, Delhi, 1922, p. 2748; see also Amrita Bazar Patrika, 23 June 1921; and L. F. Rushbrook Williams, *India in 1921–22: A Report Prepared for Presentation to Parliament in Accordance with the Requirements of the 26th Section of the Government of India Act (5 & 6 Geo. V, Chap. 61), reprinted in India in 1921–22*, Anmol Publishers, Delhi, 1985, p. 64. On the application of criminal law during the Non-Cooperation Movement, see Sherman, *State Violence and Punishment in India*, pp. 40–1.

[109] *Times of India*, 26 July 1921.

[110] *Amrita Bazar Patrika*, 11 March 1921.

[111] Ibid., 28 June 1921.

[112] *The Tribune*, 4 May 1921.

[113] *Amrita Bazar Patrika*, 11 January 1921.

[114] 'Advice to Kisans', *The Independent*, 3 May 1921, reprinted in S. R. Bakshi (ed.), *Documents of Non-Cooperation Movement*, Akashdeep Publishing House, Delhi, 1989, p. 191.

[115] *Report of the Civil Disobedience Enquiry Committee*, Appendix VIIIH, p. 48.

Seditious Meetings Act of 1911 to prohibit the meeting of panchayats without prior permission because they were 'likely to cause public excitement'.[116] In the Barisal District of Bengal, 50 pleaders were arrested for taking part in a *hartal* in 1921.[117] In Nagpur (Bombay Presidency), Gandhi reported in *Young India* that the Sessions Judge 'required non-cooperating pleaders to show the consistency between their suspension [of practice] and their oath as lawyers'.[118] Less serious forms of persecution also were in evidence. In Tenali (Andhra), a magistrate refused to allow a *vakil* to conduct the defence of a litigant solely because the *vakil* was wearing *khadi*. 'I may be in the wrong,' the magistrate told him, but 'I am doing what my conscience directs me to do.'[119] Gandhi certainly never hesitated to criticize the lawyers who failed to join the movement. 'The lawyers, by and large, have kept away from this activity,' he wrote in *Navajivan* in March 1921. 'Where the people still cling to ideas of position and status, look to lawyers and other old workers and do not have the courage to break away from them and go ahead with the work, the movement makes no progress.'[120] At a speech in Bombay during the same month, he noted that

> during his tours in Bengal, the Punjab and the United Provinces, he met hundreds of lawyers and students who seemed to feel ashamed, of course not ashamed of him but of themselves, because they could not shake off their bondage to those institutions which they knew to be mere shams.[121]

Despite government persecution and Gandhi's opprobrium, the viability of the movement's courts' boycott ultimately rested upon the ability of the panchayats and arbitration boards to enforce their decisions and deliver justice. Here, non-cooperators were faced with an irresolvable dilemma. Traditional and customary forms of the enforcement of caste panchayat decisions relied upon either the application of forms of 'bodily harm' or the imposition of a 'social boycott'—that is, some form of social ostracism. Neither of these forms of enforcement, however, was acceptable to Gandhi.[122] For him, social boycotts were a form of violence and thus anathema to the movement.

[116] *The Tribune*, 19 March 1921.
[117] *Report of the Civil Disobedience Enquiry Committee*, Appendix VIIIG, p. 37.
[118] *CWMG*, vol. 24, p. 155.
[119] *Amrita Bazar Patrika*, 28 April 1922.
[120] *CWMG*, vol. 22, p. 463.
[121] Ibid., p. 425.
[122] In 1922, the Congress Working Committee specifically prohibited social boycotts. Instead, only the 'force of public opinion and the truthfulness of Panchayat

Referring to a case in which a panchayat denied a litigant's access to the village well in order to enforce its decision, he wrote in *Young India*:

> It would be totally opposed to the doctrine of non-violence to stop the supply of water and food. This battle of non-co-operation is a programme of propaganda by reducing profession to practice, not one of compelling others to yield obedience by violence, direct or indirect. We must try patiently to convert our opponents. If we wish to evolve the spirit of democracy out of slavery, we must be scrupulously exact in our dealings with opponents. We may not replace the slavery of the Government by that of the non-co-operationists. We must concede to our opponents the freedom we claim for ourselves and for which we are fighting .... Ostracism of a violent character, such as the denial of the use of public wells is a species of barbarism, which I hope will never be practised by any body of men having any desire for national self-respect and national uplift. We will free neither Islam nor India by processes of coercion, whether among ourselves or against Englishmen.[123]

The dilemma faced by the courts' boycott movement was no more clearly evident than in the violence that erupted in Giridih (Bengal).[124] In April 1921, representatives of the Non-Cooperation Movement visited the Giridih sub-division of the Hazaribagh District and helped to establish panchayats in several villages.[125] One of the first actions of the panchayat in the village of Dishunpur was to impose a social boycott upon a family that refused to obey its decision. When the family's daughter was pushed away from the village well, one of the villagers was charged with 'unlawful obstruction and violating the modesty of the girl'. The accused was detained by the police in Panchamba and then transferred to a jail in Giridih. In Giridih, crowds assembled proclaiming they would boycott the police, attempted to break into the jail, and finally stoned the local sub-inspector who had tried to disperse them.

Congress's 1922 *Report of the Civil Disobedience Enquiry Committee* ultimately laid a significant portion of the blame for the failure of the courts' boycott upon the inability of panchayats and arbitration boards to find a suitable means of enforcement—a conclusion that also was reached by P. C. Bamford, Deputy Director of the Intelligence Bureau

decisions' should 'ensure obedience to them'. See 'Proceedings of the Meeting of the Working Committee held at Mahatma Gandhi's Residence at Bardoli on the 11th and 12th February 1922', *Report of the Civil Disobedience Enquiry Committee*, Appendix XIH, p. 4.

[123] *CWMG*, vol. 66, pp. 65–6.

[124] Rushbrook Williams, *India in 1921–22*, pp. 69–70.

[125] *Amrita Bazar Patrika*, 24 April 1921.

TABLE 2
Panchayats during the Non-Cooperation Movement, 1922

Congress province	Number of panchayats
Punjab	'Several hundred'
Delhi	11
United Provinces	137, 'Now almost none'
Bihar	'In almost all villages'
Bengal and Surma Valley	'Many'
Assam	NA
Central Provinces Hindustani	2 or 3
Central Provinces Maharatti	20, 'But many have closed'
Ajmer	3
Berar	6
Gujarat	2
City of Bombay	0
Maharashtra	16
Sindh	(1) 'Model Court in Sukkur' (2) 'Moulvis and Zamindars carry on arbitration work also'
Andhra	130
Utkal	600
Karnataka	7
Tamil Nadu	10
Kerala	6, 'Now none'

Source: All-India Congress Committee, *Report of the Civil Disobedience Enquiry Committee* (1922), App. V.

in India.[126] Congress's Civil Disobedience Committee concluded 'lacking the necessary sanctions behind them these National courts could at best work under serious disadvantages'.[127] The Committee also blamed the 'hand of repression', especially in the United Provinces, for the movement's lack of success.[128] The data published in the *Report*, however, reveal a much broader failure to capture either the interest of lawyers or the attendance of litigants. Table 2 summarizes the results collected by the Congress Committee. Recall that, by 1922, Congress had adopted the term 'panchayat' to denominate both caste panchayats and arbitration boards. Table 2 indicates the relative success of panchayats and arbitration boards in Bengal, the Punjab,

[126] See Bamford's confidential report on the history of the Non-Cooperation Movement reprinted in P. N. Chopra (ed.), *India's Major Non-Violent Movements, 1919–1934: British Secret Reports on Indian People's Peaceful Struggle for Political Liberation*, Vision Books, New Delhi, 1979, p. 99.
[127] *Report of the Civil Disobedience Enquiry Committee*, p. 50.
[128] Ibid.

Orissa, and Bihar. Elsewhere, however, the attempt to create an alternative system of adjudicating disputes gained very little support. The Bombay Presidency was perhaps most notable in this regard, one historian noting that, in Bombay City, only half a dozen pleaders suspended practice, although other documentation suggests there may have been even fewer in the city.[129] By 1922, the Congress *Report* claimed there were none. The Central Provinces and Delhi also were notably apathetic. In Madras Presidency, support for non-cooperation was very weak in Tamil Nadu, Karnataka, and Kerala, although it was a bit stronger in Andhra.[130]

In each case, 'opinions and suggestions' were solicited from the Congress Provincial Committees and several of the most relevant comments are included in Table 2 as well. In only a few instances were the panchayats evaluated as 'popular' and these provinces included the Punjab, Utkal (Orissa), Bihar, Ajmer, and Assam. However, there were no supporting data reported from Assam and only three panchayats reported for Ajmer. Elsewhere, they were deemed 'not popular' or it was indicated that sufficient effort had not been made to establish them. This was the evaluation of the United Provinces, Delhi, Gujarat, and Sindh. Finally, 'no power of enforcement behind their decrees' was specifically cited as a reason for the decline or failure of the panchayat movements in the Central Provinces, Berar, and Andhra, but this reason also was employed to explain the post-non-cooperation decline of panchayats in Bihar and the United Provinces.

Gandhi's panchayat visions

For Gandhi and Congress, the failure of the courts' boycott ultimately had a profound effect on the future of the Independence Movement and the future Indian state. Afterwards, Gandhi sought to idealize the courts' boycott as having lifted the ideological veil of British law to reveal its naked power. The 'halo' and 'artificial prestige' surrounding the British law courts, he wrote in 1924, had disappeared and, after the Non-Cooperation Movement, 'people believe, much more than they

[129] Brown, *Gandhi's Rise to Power*, p. 280; Kunte, *Non-Co-Operation Movement*, p. 9.

[130] On Tamil Nadu, see Irschick, *Politics and Social Conflict*, pp. 196–8; on Andhra, see D. Washbrook, 'Country politics: Madras 1880 to 1930', *Modern Asian Studies*, vol. 7, no. 3, 1973, pp. 528–9.

did before' in the 'settlement of disputes by panchayats'.[131] As early as December 1921, shortly before the suspension of the movement, Gandhi had already come to the conclusion that, although the boycott of the British courts had not been a success, 'we have demolished their prestige' and they 'neither worry nor dazzle us'.[132]

However, he never again would promote the panchayat principally as an alternative system of dispute resolution based upon the principles of arbitration. Over the succeeding years, he would return to his earlier imaginings of them principally as institutions of village administration. In 1931, he outlined a set of proposed rules for the establishment of elected village panchayats that were among the most detailed explications of his imagining of the panchayat.[133] The limits placed upon the judicial functions of panchayats were notable: they were to have no criminal jurisdiction, they might try civil suits but only upon the voluntary consent of both parties, no party could be compelled to go before a panchayat, and panchayats had no authority to impose fines, with 'the only sanction behind its civil decrees being its moral authority'. Thus, they would conform to standard Western legal forms of voluntary arbitration.

Of much greater importance for the future of the panchayat was what Gandhi listed as Clause 9 of his proposed set of rules, including his declaration of what 'every Panchayat will be expected to attend to'. Gandhi enumerated the following responsibilities: 'The education of boys and girls in its village, its sanitation, its medical needs, the upkeep and cleanliness of village wells or ponds, and, the uplift of and the daily wants of the so-called untouchables.'[134] Only attention to this 'constructive work', Gandhi argued, could make the panchayat 'really popular' and greatly enhance its 'moral prestige'.[135]

The final Gandhian vision of the panchayat as the principal institution of village administration was ultimately enshrined in the 73rd Amendment to the Constitution adopted in 1992. It is certainly true as well that the older imagining of the panchayat as a forum for alternative dispute resolution never entirely lost its hold over later generations of Indian politicians and legal professionals after

[131] *CWMG*, vol. 27, 17 March 1924, p. 259.
[132] *Young India*, 8 December 1921, quoted in *Report of the Civil Disobedience Committee*, p. 50.
[133] *CWMG*, vol. 52, 28 May 1931, pp. 191–3.
[134] Ibid., p. 193.
[135] Ibid.

independence. The government, for example, has attempted several times to resuscitate *nyaya panchayats* (justice panchayats) in order to relieve the pressure on the courts.[136] For Gandhi, however, his first steps toward the construction of an alternative legal system based upon the panchayat were hesitant and tentative. When he ultimately renounced the British legal system, he was faced with a very significant measure of professional resistance, popular violence, apathy, and political repression. Confronted by these obstacles, he yielded and adopted a much less controversial as well as a much less radical role for the Indian panchayat. Nevertheless, it was an imagining of the panchayat that ultimately would shape India's future.

[136] See U. Baxi and M. Galanter, 'Panchayat justice: an Indian experiment in legal access' in *Access to Justice: Vol. III: Emerging Issues and Perspectives*, M. Cappelletti and B. Garth (eds), Guiffre, Milan; Sijthoff and Noordhoff, Alphen aan den Rijn, 1979, pp. 341–86; C. S. Meschievitz and M. Galanter, 'In search of Nyaya panchayats: the politics of a moribund institution' in *The Politics of Informal Justice, Volume 2: Comparative Studies*, Richard L. Abel (ed.), Wiley, New York, 1982, pp. 47–77; Government of India, Ministry of Panchayati Raj, The Nyaya Panchayats Bill, 2009; and 'Law ministry raises constitutional validity of Nyaya panchayat bill', *The Economic Times*, 23 April 2015.