

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 emphasised an ideological notion of ‘the 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 that would deliver impartial justice, even though it took until 1893 for this promise to be truly realised, eventually leading to the removal of racial exemptions to the rule of law.¹ At the same time, the operation of colonial law always remained dependent on a basic premise of exclusion. It started with creating problem categories like the Thugs and other criminal tribes in the nineteenth century. However, it later extended – as the nationalist movement was gathering force – to include, at least potentially, an entire disloyal indigenous population. The initial marking of such problem categories for the colonial state depended on a moral distinction between criminality and non-criminality. The later extension of legal exceptionalism to potentially the entire population introduced a new language of governance predicated on notions of war and emergency and a categorical separation between friends and foes in Carl Schmitt’s sense. The central question that the chapter aims to investigate is the nature of the tactics that the colonial state would resort to to maintain what it termed public order. Also, can a state of exception be unleashed

without a necessity? The chapter will highlight that when the authority of the colonial state was challenged, it resorted to three different tactics. It could declare an emergency, granting special powers to civil authorities; call in the military to aid the civil administration; and declare a state of martial law. The underlying logic of order was often based not on any principle of ‘the rule of law’ at all, but on risk-management calculations that 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, hindering the conduct of regular legal procedures. 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 colonised population, now perceived as the ‘enemy’. One could argue that colonial governance was conducted through an ‘institutionalised exception’ in the nineteenth century, whereas the twentieth century saw the foundations of a ‘normalised exception’. The chapter will focus on three critical political moments in the early twentieth century to show such an evolution in colonial governance. First, the Ghadar movement and the passing of the Defence of India Act, 1915, during the First World War; second, the passing of the Revolutionary Crimes Act, 1919; and finally, the Jallianwala Bagh massacre, followed by the imposition of martial law in Punjab. These events are generally studied as distinct from each other. The chapter will show a continuity in the discourse on extraordinary laws and stress that all these events require attention as part of a larger colonial discourse on extraordinary provisions of law.

Ghadar (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 rebellion in colonial Punjab. Unrest in colonial Punjab, like in the rest of India, had mainly been limited to conflicts and contestations amongst various classes

or religious communities.² However, it gained a rather unusual momentum in the 1910s when the colonial government directly became the target of political and revolutionary activities during the Ghadar movement.³ Ghadar remains one of the most significant anti-colonial revolutionary movements against the British in India. The post-Ghadar account of General O'Dwyer, the then Lieutenant-Governor of Punjab, puts the story in perspective. He understood Ghadar as a significant and dangerous threat to the British Empire.⁴

Scholars have highlighted the scope of Ghadar in numerous studies. Some have considered it a prominent case study where anti-colonial mobilisation against the British rule in India and Burma took place abroad, mainly on the west coast of North America. However, early radicalism was predominantly a north Indian phenomenon. Southeast Asia served as a major route for Ghadar attempts to infiltrate propaganda and arms into India to spark revolts and subsequently an armed insurrection against British rule.⁵ Others have noted that the Ghadar movement was a convergence of many strains of thought and agitation. A movement operated by Lala Har Dayal – later on by many others, for example, Ram Chandra after 1914 – mobilised and organised Punjabi and Sikh migrant workers in North America to return to India and reproduce a rebellion along the lines of 1857.⁶ Various studies have outlined the range of organisational skills of the Ghadarites in Canada and the patterns of Sikh mobilisation against British rule in India.⁷ Others have elaborated on the ideological dimensions of the Ghadar 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 Ghadar movement.⁸

Studies have emphasised the mobilisation of the sepoys working for the British Raj as a critical element of Ghadar. Such studies of the soldiers of the British Empire – both Sikh and Muslim sepoys – highlight the utility of religious mobilisation to invoke rage amongst regiments of Indian soldiers in the British Army. In addition to the references made to Sikh and Muslim honour and pride at being the followers of great Gurus and Prophet Muhammad, the economic condition of the sepoy was equally relevant for his mobilisation for mutiny.⁹ All such studies demonstrate the significant role Ghadar had in the anti-colonial mobilisation in India and abroad. This section utilises existing scholarship on Ghadar and further enables it by focusing on the invocation of extraordinary laws at different

levels – unleashing a state of exception – activated to curtail the momentum of Ghadar. 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 anti-colonial Ghadar mobilisation coincided with the First World War. Out of fear of rebellion, the British administration instituted extraordinary measures that did not rely on the standard rule of law.

The influence of Ghadar 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 massive influx of Indian immigrants, the Canadian government decided to bring in a set of laws to check 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.¹⁰ Initially, they voiced grievances through a minor political organisation called the Hindustani Workers of the Pacific Coast. This organisation later became the Pacific Coast Hindustan Association and finally, in 1913, the Ghadar Party was formed under the leadership of Har Dayal and others. The Urdu word *ghadar* translates into revolt or rebellion, and the ultimate aim of this organisation was to overthrow British rule in India. A weekly paper, *Ghadar*, was started to disseminate the views of the Ghadar Party. The aggressive posture of the Ghadar Party was already spelt out with absolute clarity in its first issue from San Francisco on 1 November 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 could not have been more explicit 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 deployed overseas, many ordinary Indians were mobilised as labourers to build trenches, roads and bridges and serve as porters. When Indians, mostly Sikhs and Muslims from Punjab and Gurkhas, were sent to fight in France, they experienced different racial politics – once forbidden to confront Europeans, now deployed abroad to kill ‘White men’. The emergence of Ghadar and the possibility of a civil and military mutiny at the time of

war was an alarming prospect. The British colonial government in India reacted by immediately creating a new law called the Defence of India Act, which came into being on 18 March 1915.¹¹ 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 that extended to entire 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’.¹² Nevertheless, it would continue to operate beyond these temporal limits for all cases registered during its enforcement period. Also, ‘[I]egal 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’.¹³ Once invoked, the law had the power to make its own rules. Invoked during the First World War, it had the power to bring almost anything under its authority. The law empowered 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.¹⁴ Besides the powers to arrest and seize property, the Governor-General in Council now had the manufacture, preparation or extraction of any article or thing at his disposal. He could demand any goods of utility in the war, including the whole or any part of the output of any factory, workshop, mine or other industrial concern. The Indian industry was required by this law to ‘facilitate’ the war efforts of the British colonial authority in every possible way.

The Defence of India Ordinance III of 1915 was considered inadequate for the war situation and, therefore, was repealed, and the ordinance had to be modified.¹⁵ The colonial authorities considered it insufficient to deal with the foreign threats since the revolutionaries were also actively supported and engaged by other anti-British European powers. The modified rules made under section 2 of the Defence of India Act, 1915, stipulated that any contravention thereof or any other order issued under the authority of any such rule shall be punishable by imprisonment for a term that could extend to seven years, or a fine, or both. It further stated that 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 offence shall be punishable with death, transportation for life or imprisonment for a term that could extend to 10 years and the possible addition of a fine.¹⁶

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.¹⁷

Section 6 of this law stated that any officer could direct person(s) by the general or special order of the local government to get photographed, give fingerprints, furnish the designated officer with specimens of their handwriting and signature and mark presence at the directions of the designated officer for any of the preceding purposes. Failure to comply or attempts to evade would be punishable with imprisonment, which could extend to six months or with a fine of up to 1,000 rupees or both.¹⁸ As this was a wartime law, it enabled military authorities to make arrangements for securing public safety. However, there was an element of authoritarian compensation involved too. The law provided that the chief presidency magistrate in a presidency-town and the district magistrate elsewhere could award compensation that he thought to be reasonable to an affected person, and such awards were final.¹⁹ The military authority held the right to access lands or buildings and temporarily suspend the right of way through such property. Refusal to comply would amount to contravention of the law. Surveillance and control of the sea, channels and rivers, placing tighter border controls that allowed frisking of baggage, post, publication, and so on, was also part of it.²⁰ This law activated the dormant absolutist tendencies of the colonial state.

Justice under such a law was quick and avoided the regular process. For example, section 4 of this Act specified that local governments would appoint commissioners for trials. These commissioners could be appointed for a whole province or a part of it or just for the trial of the accused persons. As per the Act, three commissioners, of whom at least two had to be persons who had served as sessions judges or additional sessions judges for a minimum of three years, could hold such trials. Others who qualified under section 2 of the Indian High Courts Act, 1861, to serve as commissioners at the trials were advocates of a High Court, advocates of a Chief Court or pleaders of 10 years' standing.²¹ Suspicious of German-Hindu conspiracy and the migration of Indians to foreign countries, the

colonial government had a precursor to the Defence of India Act. During the outbreak of the First World War, the Ingress Ordinance was passed in September 1914. It enabled the colonial government to detain, screen or restrict people entering or returning to India.

Meanwhile, a stridently anti-colonial tone emerged amongst Indian radicals spearheaded by the Ghadar Party. Publications with self-explanatory titles like *Ghadar-di-Gunj* (Echo of Mutiny, referring to 1857), *Ilan-i-Jang* (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. *Ghadar-di-Gunj* consisted of poems or songs and was among the first books that the Yugantar Ashram undertook to publish. In 1914, it published the first edition of 10,000 copies in Gurmukhi, followed by a later edition in Urdu. This publication exacerbated colonial anxiety to a great extent. For example, the judgment of the Lahore Conspiracy case conducted as per the Defence of India Rules described the writings of the *Ghadar-di-Gunj* as one proclaiming:

... 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 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.²²

Such publications openly challenged overt and covert modes of colonial self-assurance about its racial superiority and efforts to civilise the Orient. Though in a directly pejorative tone, the reciprocal classification of the colonial order questioned its aims and inverted its meanings and efforts.

Similarly, the *Ilan-i-Jang* described India as a downtrodden land trampled on by foreigners who exported and drained 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.²³ The pamphlet explicitly urged Muslims to kill the 'pork-eaters'. It incited them against England fighting Turkey (the land of the Caliphate) while also stating the

imposition of a new Khedive in Egypt. It exhorted Hindus and Muslims to make common cause and to establish a republic in India.

Naya Zamana, a pamphlet allegedly written by Har Dayal, explained the role of Congress leaders in the cycle of British oppression and attacked famous Indian leaders such as Gopal Krishna Gokhale, Pherozeshah Mehta and Dadabhai Naoroji. The argument was that these men were members of the Imperial Legislative Council headed by the British. It noted the Congress as an official assembly and its members ‘flatterers’ and ‘timid men’. The pamphlet accused Congress members of parroting sentences they had learnt over the years and begging the British government for their rights. According to the pamphlet, such a politics could not prevent famines, reduce taxes, spread industry, administrate real justice, feed the population and control plagues. These publications were a concerted attack on Indian participation in the British colonial bureaucracy by exposing them as collaborators to the colonial project.

These pamphlets invoked a peculiar sense of history and religious pride, which often glossed over the hostility that historically existed between groups such as the Muslims and the Sikhs. The resentment against British rule was meant to unite these communities. Though Sikhs dominated the Ghadar movement, Muslims also participated in large numbers. Ghadar, as we understand it now, was a larger pan-Indian plot to inspire mutiny against British colonial rule in India during the First World War. The mutiny plot had many participants ranging from the Ghadar Party operating from San Francisco to 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.²⁴ It was why the colonial archive recorded the mutiny as the German–Hindu mutiny in some places. Hence, it was a transnational movement and involved various ‘enemies’ of the British Empire, both internal and external.

Ghadar attempted to appeal to and mobilise the masses and highlighted the oppressive administrative practices of the colonial government. At the dawn of the First World War, Ghadar incited soldiers to turn their guns on the British. It was a rather anxious situation for the British. The Central Investigation Department (CID), the successor to the Thuggee department, first founded in the 1830s, came in handy when it successfully infiltrated a spy named Kirpal Singh into the main group planning to launch a wider mutiny all over British India starting from Lahore on 21 February 1914.²⁵

The police foiled this plan by arresting some key members, but the most ‘notorious’ Bengali revolutionary, Rash Behari Bose, escaped.

A special tribunal under the Defence of India Act passed in March 1915 later heard the Punjab mutiny event that occurred in 1914 and is popularly known as the Lahore Conspiracy case.²⁶ With 63 of the persons accused in the dock and 18 still absconding, the trial began on 26 April 1915. One of the absconders, 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 absconders were arrested during the trial. The total number of approvers was 10. Only one of the accused, Umrao Singh, became an approver during the trial in the first case.²⁷

The men on trial were accused of conspiring and waging war against the Crown, inside and outside India. They were accused of seducing troops to mutiny and committing dacoities. Two of them were charged with murder, abetting murder or attempting murder. Some were further accused under the Explosives Act. In this case, the number of accused was high, and due to the fears of a possible armed attempt to rescue them, the trial took place in Central Jail Lahore with no access to the general public. English newspapers of the province strongly opposed the official reporting of the proceedings and the lack of direct access to the trials. The main trial lasted from 26 April 1915 to 13 September 1915. The magnitude of the trial was enormous, 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 the statements of 228 defence witnesses. Later, the same tribunal tried a supplementary case. This trial began on 29 October 1915 and ended on 30 March 1916. One hundred and two accused were named in the plaint, of which 11 were absconders. Two of them were arrested after the trial had begun and 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, there were 154 persons tried in total. Twenty-four were acquitted, 19 hanged, 55 transported for life and 56 awarded lesser sentences of rigorous imprisonment.²⁸ There were other cases related to Ghadar, but the Lahore Conspiracy case demonstrates the scope of such trials under the Defence of India Act.

A similar case, popularly known as the Delhi Conspiracy case, further sheds light on the nature and scope of the invocation of Defence

of India Rules.²⁹ While hearing the Delhi Conspiracy case, Sir Donald Campbell Johnstone on 10 February 1915 stated the amended³⁰ charges against the 11 accused persons:

That you between 27th day of March, 1913, and 31st 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 17th May, 1913, and that you thereby committed offences punishable under sections 302/102-B and 302/109 of the Indian Penal Code within my cognisance.³¹

The case to which the current case was an appeal lasted from 21 May 1914 to 1 September, and on 5 October, court orders acquitted five of the accused persons³² and convicted the other six³³ under section 302/102-B, IPC. The court sentenced three to death³⁴ and three to transportation for life.³⁵ Simultaneously, the court tried two of the accused on a charge under sections 4, 5 and 6 of Act VI of 1908 (Explosive Substances Act)³⁶ in connection with a bomb cap allegedly found in their possession on 16 February 1914 and found them guilty and sentenced them to transportation for 20 years under section 4 of the Act. Though the finding of the bomb cap came from a different case, it was sufficient to frame them under the extraordinary law.³⁷ The court created a convenient narrative by linking evidence. It concluded that 'reasonable ground' existed for believing that the accused had joined hands in a conspiracy to wage war against the British Crown and procured arms in Europe for the conspiracy. It added that the accused collected money in Calcutta (now known as Kolkata) for the objective and persuaded other persons to join their conspiracy in Bombay (now known as Mumbai). They published writings advocating their objective in Agra and transmitted from Delhi to Kabul the money collected at Calcutta. To prove the complicity of the accused, the investigating agencies used a letter containing the account of the conspiracy as evidence.³⁸

The details of the Lahore and Delhi Conspiracy cases demonstrate not only the scope of the use of the 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 such as murder or abetting murder – that could have been tried under ordinary criminal law – took a prominent place. The broader Ghadar movement, along with the

Lahore and Delhi Conspiracies, made the colonial government paranoid. As the preceding description proves, the geographical scope of the anti-colonial mobilisation traversed provinces and involved frontier territories. Sovereign anxiety armed with special provisions, it appears, exaggerated plots to the extent where they appeared as grand conspiracies. It allowed the colonial administration to exhibit its surveillance capacities, consistent attention to detail, and force to control all things within its limits.

The main trigger for the Ghadar panic came from overseas in the shape of the deportation of Indians from Canada and the United States. The iconic case of the ship *Komagata Maru* requires some contextualisation in the ongoing discussion. It was 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. All of them attempting to emigrate to Canada were denied entry. When the ship arrived at Vancouver on 24 May 1914, the emigrants were told that no one could alight except for former residents and some students. An appeal against this order was made in the case of one passenger, Mansa Singh, and taken up at Victoria as a test case to decide the fate of all the passengers.³⁹

Meanwhile, Indians in Canada held many mass meetings discussing the situation. On 17 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 acted defiantly, locked up the captain and his officers, and refused to allow the ship to leave. On 19 July, the immigration authorities attempted to board the ship to regain control but were prevented from boarding it by the people on board.⁴⁰ Later, the immigrants agreed to carry out the orders of the authorities to depart⁴¹ if they were provided with sufficient supplies for their voyage.⁴² Supplies were sent on board,⁴³ and the ship left with orders to proceed directly to Hong Kong.⁴⁴ This ship was later dealt with under the Ingress into India Ordinance.

The passengers on the ship were aggrieved after the contestation and confrontation with Canadian authorities in Vancouver. It was evident to the colonial authorities that such a distressed crowd of 300 failed emigrants (with Ghadar 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. Therefore, it was decided to make use of the Ingress into India Ordinance and organise the immediate return of the passengers to Punjab under strict government control, with a special

train arranged at government expense. In the wake of the First World War, owing to fears that war conditions might provoke 'enemies within' to plot armed insurrection against the British government with support from outside, the government promulgated the Ingress into India Ordinance, 1914, and the Defence of India (Criminal Law Amendment) Act IV of 1915. The Ingress Ordinance authorised the government to seclude 'foreigners' from the local population and restrict Indians arriving from foreign countries to certain areas. Furthermore, it directed restraining the influx of Indian revolutionaries, mostly Ghadarites, from abroad. Under this measure, thousands of Sikhs returning to Punjab from abroad were now under surveillance and scrutiny.⁴⁵

The then Lieutenant-Governor of Punjab, Sir Michael O'Dwyer, noted that such extraordinary laws were the primary 'safeguards' available to the colonial administration against the 'returning Ghadar conspirators'.⁴⁶ He referred to the scenario for British officials in India as 'living over a mine full of explosives'.⁴⁷ Ghadarites had appealed to Punjabis and Sikhs living in North America to return to India to participate in an organised mass revolt against British rule. The prospect of the arrival of thousands of Ghadarites back into India was a major concern for the British officials. The circulation of Indian migrants and the revolutionary anti-colonial political mobilisation across the Pacific, even before the First World War, served as a pretext for the British colonial state to strengthen its exceptional character and expand it in the name of 'national security'.⁴⁸ By 1917, the United States and the British Indian states had enacted laws aimed precisely at the mobility and activism of Indians. Gurdit Singh and some 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 deal with the passengers of the ship. A district magistrate was sent to Calcutta to represent the Punjab government with full powers under Ordinance V of 1914 to deal with these passengers. The ship arrived at the mouth of the Hugli on the evening of 26 September with 321 passengers on board and was detained at Kalpi, almost 6 miles below Diamond Harbour. On 27 and 28 September, the ship and its passengers were searched for arms. On 29 September, the ship was brought up the river to Budge Budge, where a 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 special train. What is important here is that the

passengers of the *Komagata Maru* were neither under arrest nor convicts or accused, or even foreigners. Therefore, the grounds of their transportation on a special train to Punjab were flimsy. However, the Ingress Ordinance made them available – as potentially dangerous immigrants – for scrutiny and surveillance to the colonial state. Altercations between the police and some of the passengers led to a violent confrontation and later firing.⁴⁹ A riot followed, leading to the death of a European officer of the Calcutta Police, a head constable and a constable of the 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 capture the passengers who escaped from the ship following the riot. By 11 October, 201 of the rioters were captured. Of the 321 passengers on the *Komagata Maru*, 62 had left quietly for Punjab, and 18 had been killed or had died of wounds; 1 drowned, 9 were in the hospital and 202 interned in jail under the Ingress Ordinance.⁵⁰ The colonial government's response to the arrival of the passengers of the *Komagata Maru* at Calcutta highlights the flimsy reasons guided by paranoia that the government invoked to deal with the already disgruntled emigrants. As a result, the passengers of the *Komagata Maru* would now fit the colonial classification of Indian immigrants (all potentially Ghadarites) returning from North America 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 laws to deal with what it called 'revolutionary crime'. Initially, the focus of restrictions was on potential Ghadrites, who were planning a mutiny and had recently returned from North America. Soon, it extended to the rest of the population too who began to be perceived as potentially conspiring against the colonial government in India by possibly providing support to the Ghadrites. A civilian version of the Defence of India Act was enacted in the form of the Rowlatt Bills.

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 and the swift use of extraordinary laws like the Defence of India Act and the Ingress

into India Ordinance, the colonial government successfully dealt with the Ghadarites. However, an explosive movement like Ghadar was bound to influence the broader nationalist movement in India, which was gathering pace against British colonialism. The spillover effect of Ghadar required containment in every possible way. The emergency triggered by Ghadar would exceed the time frame of emergency legislation limited to 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 for a longer term. 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, replaced the Defence of India Rules, 1915. The following section analyses the politics around the promulgation of the Revolutionary Crimes Act, 1919, and will show that it enabled the normalisation of a state of exception and extraordinary laws in late colonial India.

Following the events of Ghadar, in the name of dealing with 'anarchical and revolutionary crime', the colonial government in India started the process of passing the Anarchical and Revolutionary Crimes Act, popularly known as the Rowlatt Acts. It owed its name to Justice Sidney Arthur Taylor Rowlatt. He 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. The committee consisted of five members. Justice Rowlatt, who was a prominent judge of the King's Bench Division, was its president. It had two British and two Indian members. The British members were the Chief Justice of Bombay and a member of the Board of Revenue in the United Provinces. The two Indian members were a judge of the Madras High Court and an additional member of the Bengal Legislative Council. The committee presented their recommendations, later approved by the Governor-General in Council and finally assented to by the Secretary of State for India.⁵¹

The committee's findings gave birth to the infamous Rowlatt Acts, which replaced the Defence of India Act. The report identified dangerous conspiracies in Bengal, which also engendered murders and robberies sustained by persistent propaganda conducted by young men belonging to the educated middle classes in India. Chitpavan Brahmins stirring

Maratha nationalism was another source of disturbance in the Bombay Presidency. Insurgency in Punjab by emigrants who returned from America was mentioned as an additional source of disturbance against colonial rule.⁵² While the Defence of India Act, 1915, was a wartime law and therefore ‘emergency’ in nature, the Rowlatt Acts were proposed to be permanent and meant as a reincarnation of the Defence of India Act for ‘normal’ times. The colonial administration exhibited the desire to deal with everyday crime under emergency laws. The Rowlatt Bills were met with great opposition during the debates in the Imperial Council and other official forums. To aid deliberations and dispel public suspicion, Oxford University Press brought out a booklet explaining the details of the Act. The contents of this booklet are vital because they neatly laid out the administrative position of the colonial government.

By explaining the context of the situation in question, the booklet foregrounded that ‘India is swept by a storm of political feeling ... which is difficult to account for’.⁵³ The Ghadar movement created minor conspiracy cases and resulted in entire regiments revolting randomly against the British in numerous places. Protests all over India erupted, with activists and nationalist leaders voicing their fears that the Act would be used to silence political dissent against the colonial government. Humphrey Milford, who published the booklet, asserted that most people opposing the Rowlatt Acts 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?⁵⁴

Milford warned readers that they would encounter words like ‘anarchical and revolutionary crime’ later in the booklet. He proceeded to define what the Act was directed against precisely. Most of such ‘crimes’ were directly connected to the aim of overthrowing the government. While challenging the prevalent claims against the Rowlatt Acts, Milford elaborated that neither (*a*) orderly rational criticism of the 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’. The booklet contended that the rise in revolutionary terrorism in Bengal a decade earlier could not impact

the colonial government in any substantial way. However, it did render unsafe the life and property of innocent and peace-loving citizens.

Activities that fell under the purview of the Rowlatt Acts were divided into two classes: (a) murders – by members of revolutionary gangs – of officials and police officers who in some way or the other had made themselves obnoxious to them and (b) 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 to murder. The Rowlatt Acts were a law devised for all of India and would give vast powers to the local government to deal with almost any oppositional situation.

Milford's analysis, quite similar to the colonial government's statements, was not shy of pointing out that the ordinary laws could not deal with such a situation due to the difficulty of procuring evidence, the intimidation of witnesses, and delays in standard legal procedure. The effect of these obstacles, according to Milford, was that anarchical crime made swift headway against the authorities because a greater proportion of the 'criminals' were difficult to book and prosecute. Many of those tried had to be released, though guilty, because of the lack of proper legal evidence. Furthermore, it emphasised that the assumption that the government failed in its duty of protecting law and order and safeguarding the life and possessions of its people was not owing to any lack of zeal on its part, but simply due to the 'defective state of law' when it came to 'anarchical and revolutionary crime'.

It claimed that the Ghadar movement and the Lahore and Delhi Conspiracy cases had provided British authorities with alarming facts and evidence that 'seditious' societies in India were in league with German agents to overthrow British power. It reminded the readers that the colonial government had promptly adopted strong measures and claimed certain special powers, incorporated in the Defence of India Act of March 1915. The rules under this Act, even though more stringent than the new Rowlatt Acts, Milford's booklet asserted, 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 speedy trials by special tribunals. As a result, the government used the Defence of India Act to deal with revolutionary activities in Punjab and Bengal. Milford's booklet argued:

[T]he 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.⁵⁵

Such laws were based on a Schmittian ‘friend’ and ‘foe’ 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 in mind and a love for peace, would come under the ‘friend’ category and had nothing to worry about.

As discussed earlier, the Defence of India Act was a war measure and was to remain in force for only six months after the termination of the war. The colonial government felt that on its removal, the government might have to face a 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 Code of Criminal Procedure (CrPC) could deal with such acts, persons or groups. Various pro-government sections increasingly perceived ordinary laws as utterly inadequate to deal with the danger faced by the British colonial government in India. The powers granted to the authorities under the Rowlatt Acts, as discussed earlier, highlight its exceptional character. The Rowlatt Acts gave vast powers to the government 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, conspiring to overthrow the government, and so on, but also more common offences against persons and property, such as rioting with deadly weapons, murder, robbery, dacoity, damaging roads and bridges, house-breaking, criminal intimidation and various offences connected with the use of explosives and arms, provided that such offences now connected with ‘anarchical and revolutionary movements’.⁵⁶ Given the context of a raging anti-colonial mobilisation, all acts of resistance could potentially come under the Act.

Once the Act came into existence, it was to remain in force for three years from the date of the termination of the war and extended to the whole of British India. The pamphlet warned people from rushing to hasty

conclusions and urged them to read the first section of each of the three main parts of the Act, where it was ‘clearly and expressly’ stipulated that the special powers offered by the Act to local governments should 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’ were being promoted in that part. The situation was severe enough to warrant the application of 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 common offences could get interpreted as offences in the ‘special schedule’ remained a significant source of ambiguity.

One cannot overlook Milford’s observation and approach 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.⁵⁷

Such an assurance comes with a warning – a notice to correct oneself and fall in line with the current order. Otherwise, anybody could fall into the category of a seditious criminal. Milford’s booklet took great pains to explain ‘[w]hat the Act is not’. In the nationalist discourse, the Act was 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, Milford took pains to explain and assure that the government would not arrest people without reason, and only a speech, publication or newspaper article that incited the people to outrage and rebellion would most probably come under the schedule. He also added that there was nothing new in the prohibition of such speeches or writings. They had been criminal offences for the last four years already. Many sections of this law were already available to the authorities as part of the CrPC. However, as an emergency measure, the Act had acquired the power to strike terror in the minds of nationalist and revolutionary persons and groups in colonial India. At the same time, there

were high expectations that the war would bring reforms to the colonial state, which it did in the form of the Montagu–Chelmsford reforms later. The Rowlatt Acts were an extraordinary law conferring special powers on the government in ‘exceptional cases’. Milford was confident of the safeguards the Rowlatt Acts contained and therefore argued that the Acts could ‘harm neither the purse, nor the liberty, nor the dignity, of any good citizen of India’.⁵⁸ The image of a good, obedient, disciplined, non-revolutionary citizen was clearly stated in these laws. Whoever would decide otherwise had to be ready for the ‘consequences’.

The Rowlatt Acts, 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 but, in contrast to the Defence of India Act, now available to the civilian government. The nature of the laws suitable for operating exclusively to deal with the challenges of war was modified to suit the purposes of civilian administration. Even though the Rowlatt Acts were repealed three years later, in 1922, they paved the way for the rise of a forceful surveillance state. They succeeded in further enabling the dark side of extraordinary colonial laws to be used thereafter. Such laws normalised the capacity of the colonial state to use the ‘maxim’ of exception permanently. The message was that the late colonial state in India could not only do everything but anything to protect its authority. The following section takes the discussion forward 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 the administration from the civilian administrative machinery. Such laws, again, were exceptional and enlighten us about the various layers in which exception was invoked in colonial India.

Legality and Moral Legitimacy: Satyagraha, Martial Law and the Massacre at Jallianwala Bagh

The Rowlatt Acts finally got passed despite the unanimous opposition of all non-official members of the Imperial Council.⁵⁹ Vast sections of the Indian population and their political leadership became agitated about the government’s indifference to their opposition to the Rowlatt Acts. As part of the collective response, Mohan Das Karamchand Gandhi

started a *satyagraha* (literally, insistence on truth) on 23 March 1919 to oppose the Rowlatt Acts. An all-India *hartal* (strike) day on 6 April 1919 was declared to be observed with 24 hours of fasting and suspension of business. On 1 March 1919, Gandhi, in a statement to the press, opposed the Rowlatt Acts. His statement is of great relevance to the broader argument of the chapter in particular and the book in general. The report of the Rowlatt Committee, while taking stock of revolutionary crimes in India, had opined that secret violence was confined to ‘isolated and very small parts of India’ and ‘to a microscopic body of the people’.

Gandhi responded that although the existence of such men was indeed a danger to society, the Rowlatt Bills would affect the whole of India and its people. For Gandhi, the design of the Bills 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 – is pointing out the capabilities of such extraordinary laws. He was aware of the sweeping powers this law would grant the government. It would make the distinction between ordinary and extraordinary disappear or make it so porous that ordinary crimes could get interpreted as a part of the revolutionary conspiracy. For Gandhi, the Rowlatt Bills were a greater danger than revolutionary crime itself. He argued that millions of Indians were by nature the ‘gentlest people on the earth’. He further considered the Bills to be ‘the unmistakable symptom of the deep-seated disease in the governing body’.⁶⁰ While pleading with the government to use ‘ordinary laws’ to deal with revolutionary crime, he exhorted that a potent ‘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 to signify the body politic is noteworthy here. Without contesting the colonial concerns of revolutionary crime, Gandhi seemed concerned at the possibility of terming any opposition to the colonial state as ‘revolutionary’ and inviting action under the Rowlatt Bills. It could endanger his advocacy of non-violent protests and peaceful demonstrations. British administrators indeed were not likely to listen to his spiritual and moral advice; instead, they were the makers of an empire that had violence at its heart and legality in its head. The anti-Rowlatt Acts political mobilisation resorted to *satyagraha*. The *satyagraha* vow against the Rowlatt Acts 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.⁶¹

Despite nationwide opposition, the Rowlatt Bills were passed into law on 18 March 1919. It was carried by the 35 government votes and opposed by 20 out of 25 non-official Indians. In total, 187 amendments were proposed by the Indian members, and the official bloc defeated every one of them.⁶² Leaders such as Jinnah, Aiyangar, Mazharul Haque, Khaparde, Sunder Singh and Zulfiqar Ali, who all along strongly opposed the Bill, were absent as a mark of protest on the last day of voting.⁶³ Meanwhile, Gandhi was welcomed in Madras on 18 March and 20 March 1919 by a huge mass meeting following his call for *satyagraha*. Gandhi opposed the Rowlatt Bills but described the character of the western form of government peculiarly in his speech of 20 March, which one Mr Desai read 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.⁶⁴

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 revolutionise politics and restore moral force to its original importance. After all, 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 state had the monopoly over the use of physical force. Gandhi emphasised that the ultimate principle of western modes of governance represented by the colonial government of India was 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.⁶⁵

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 announced *satyagraha*, the first real confrontation occurred on 23 March 1919 when Gandhi gave a call for an 'All India *Hartal*' to be observed on 6 April 1919 against the Rowlatt Acts.⁶⁶ Gandhi issued four significant instructions for the observance of this *hartal*, which included *satyagraha*, 24-hour fasting, suspension of all work other than those necessary in the public interest and, finally, public meetings all over India would pass resolutions for the withdrawal of these Bills. All instructions aimed at a moral, non-violent mobilisation of the anti-colonial sentiment.

Another message from Gandhi read to a mass meeting in Madras on 30 March 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.⁶⁷

Gandhi's statement and positive expectation of justice from the law are interesting from a critical legal perspective. In his famous essay 'Force of Law', Jacques Derrida has worked out a logic of operations of the law.⁶⁸ Derrida argued that since modern law is neither foundational nor anti-foundational, it is a law not because it is just but because it has force. It has the quality of enforcing itself. Initially, Gandhi's calls for *satyagraha* were opposed by some prominent sections like the left-wing of the Congress and the leaders of the Home Rule movement. It was a time when Gandhi had not yet become a national leader. It was only after the events of 1919 that Gandhi began to dominate the national scene completely. Some of it is attributable to how events unfolded. Gandhi's political approach distinguished him from many others. The element of obedience and discipline in Gandhi's exhortations is noticeable. It appears that Gandhi was quite aware of the scope of exceptional laws yet moralised conduct

by referring to the conscience. He appealed to the masses to accept the consequences of the law rather than avoiding them.

Satyagraha committees were formed in every part of India. The *satyagrahis* of Delhi made arrangements to observe Sunday, 30 March 1919, as a day of self-humiliation and prayer among the citizens of Delhi under the guidance of Swami Shraddhananda, popularly known as Mahatma Munshi Ram of the Haridwar Gurukul School. It was also a protest meeting against the government's passing of the Rowlatt Bills.⁶⁹ On 30 March, as proposed by the Delhi *satyagrahis*, no shops were opened, and the few that did speedily closed at the organisers' requests. After accomplishing a shutdown of bazaars and transport, some workers proceeded to the railway station to persuade the shopkeepers to comply with the call for *hartal*. The shopkeepers refused to close their shops and argued that their contracts bound them to keep them open. It resulted in a minor altercation, 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 police to release the arrested. The police rejected their request and caned the crowd. As a result, a clash ensued.

When the police were unable to control the growing size of the protestors, intimation was sent to the administration seeking its support to handle the situation. An additional district magistrate arrived at the spot with a small military force and two machine guns by noon. He ordered the crowd to disperse, which the protestors defied. 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 the Chandni Chowk area. It then tried to enter the garden of the municipality to form a procession but the military guarding the building fired on them, killing a few protestors and wounding many more. It was an extreme response from the authorities. The number 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 number of protestors had reached 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 that the gathering would only observe peaceful protest and took responsibility for peace and order if any untoward incident happened after that. 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. Despite experiencing military firing and deaths, this meeting concluded with a peaceful passing of a resolution protesting the Rowlatt Bills. The meeting terminated and later the crowd dispersed by 6 p.m.⁷⁰

Though 30 March 1919 had passed off without further protests after the military firing, the following day there was tension when people demanded the dead bodies of those killed in the firing from the police and refused to open their shops in protest. After much pleading and soliciting, the Chief Commissioner, Mr Barron, ordered the release of the dead bodies. Delhi mourned on 31 March, and both Hindus and Muslims performed the last rites for their dead, with thousands participating in the funerals.⁷¹ Later in the evening, on 31 March, a citizens' conference was held where a private and independent enquiry commission was appointed to record evidence and report on the incident. It consisted of Rai Saheb Piyare Lal, Hazi-ul-Mulk, Hakim Ajmal Khan, Rai Bahadur Sultan Singh and others. A committee of 16 members was also appointed to help them secure evidence for the preparation of this report. In a press statement, Gandhi, who was visiting Madras, condemned the firing on Delhi protestors.⁷² He said that 'local authorities in Delhi have made use of a blacksmith hammer to crush a fly'.⁷³ The Delhi Satyagraha Sabha decided that the city had already suffered in the *hartal* of 30 March and should be spared participation in the *hartal* planned for 6 April 1919. However, on 6 April, Delhi observed a total shutdown like the rest of India. People defied government orders by organising mass gatherings and distributing prohibited *satyagraha* newspapers. Following the success of the 6 April *hartal*, Gandhi issued a message that 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.⁷⁴

A more significant part of this message directed people not to offer any defence or engage any pleaders if they got arrested. If they were fined as an alternative to imprisonment, people should opt for imprisonment.⁷⁵ On a characteristic note, Gandhi also wanted the *satyagrahis* to follow prison rules if arrested because he stated that the current campaign did not aim to reform prisons. His emphasis is an attempt to demonstrate that the

truth of the illegitimacy of colonial law could be highlighted by following the law. His advice was to first violate the ‘untruthful’ law in the service of upholding truth – *satyagraha* – through a peaceful protest in the first place and yet follow the rules once a prisoner in jail. Gandhi appears to be quite aware that anti-colonial protests could succeed by challenging colonial law through simple, straightforward and precise issues. The political move to hold an all-India *hartal* based on *satyagraha* protests against colonial repression exposed the myth of the forceful colonial laws. It enabled the emergence of a unique counter-tactic in the form of *satyagraha* to challenge the nature of colonial legality.

The most prominent of these all-India *hartals* was the one at Lahore in Punjab. On 2 April, the superintendent of police issued a notice requiring the convenors of processions and meetings to apply for a licence not later than 10 a.m. the previous day. The government passed orders against two famous leaders, Dr Satyapal, a medical practitioner, and Dr Saif-ud-Din Kitchlew, bar-at-law, prohibiting them from addressing any public meetings.⁷⁶ On the *satyagraha* day, that is, 6 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 2 April, after deliberations at a meeting, two options were proposed. Ratan Chand moved for the cancellation of the Bradlaugh Hall meeting. At the same time, Dev Raj Sawhney urged that the meeting should go ahead as planned, given that the protest against the Rowlatt Acts was far more important than any other consideration. Proposals were put to the vote, and the latter proposal to go ahead with the meeting was adopted 18 to 2. As per the plan, on 6 April, all businesses were suspended in Lahore and shops were closed without exception. The leaders of the *hartal* in Lahore managed to keep the situation largely peaceful despite the intensity of the agitation and slogans against the Rowlatt Acts.

The participation of Hindus, Muslims and Sikhs in large numbers was a salient feature of the protest. The Bradlaugh Hall meeting was supposed to take place at 5 p.m. but 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 entreating the King-Emperor to disallow the Rowlatt Bills was passed. It recorded the Bills as constituting a direct insult to millions of his law-abiding and loyal subjects in India. Three more resolutions were passed. They voiced 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 the president of the meeting to forward the resolutions passed to the Secretary of State for India, the Viceroy and the Lieutenant-Governor of Punjab.

Mahatma Gandhi was travelling from Bombay to reach Delhi on 9 April but was arrested at an earlier station, Palwal, and sent back to Bombay. He was ordered not to enter Punjab or Delhi but restrict himself to Bombay. News of Gandhi's arrest spread like wildfire and caused great resentment amongst the people in Lahore, Amritsar and Delhi.⁷⁷ Allegedly, Gandhi was arrested on instructions from the Punjab government. A peculiar autocratic character of the colonial administration started to emerge barely a month after the Rowlatt Acts were passed, which confirmed the concerns voiced during the Rowlatt agitations in March 1919 and raised questions about whether a non-violent approach to colonial repression was a feasible one.

The government in Punjab intended to break the momentum of *satyagraha* in the province. The Deputy Commissioner, Amritsar, called two popular leaders of Punjab, Dr Satyapal and Dr Kitchlew, to his house and arrested them. News of their arrest spread quickly, and all the shops shut down by noon. By 12.30 in the afternoon, a large procession marched towards the residence of the Deputy Commissioner, intending to make a representation for the release of their leaders. The crowd was fired upon and forced back.

Meanwhile, another massive 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 Bank.⁷⁸ The telegraph office was also attacked and was rescued by soldiers from a Pathan regiment sent to the spot. Dr Easdon, a lady doctor working at the Municipal Zenana Hospital, was also attacked. She had to hide in a closet for hours after being rescued by her Indian friends. Sergeant Rowland, a cantonment electrician, was killed near Rego Bridge while walking towards the fort. Robinson, an ex-Northumbrian Fusilier serving as a railway guard, 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, in the newspaper reports, the Europeans attacked or killed had their names mentioned. In contrast, Indians who were killed by the police or the military remained nameless and found mention simply as the 'riotous mob' in subsequent government reports.

When the riot occurred, the garrison in Amritsar consisted of one company of Somerset Light Infantry under the charge of Captain Massey, half a company of Garrison Artillery and the 12th Ammunition Column. Since extraordinary laws like the Rowlatt Bills were now at the disposal of the colonial administration and revolutionary crime a stated enemy, additional forces were mustered to control the situation. On its way to Peshawar, a company of the 9th Gurkhas 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 were deployed, in addition to additional troops from Jullundur, including the 25th Londons.⁷⁹ On 11 April, the next day, the entire city was surrounded by British and Indian troops. Finally, late in the evening, Brigadier-General Dyer reached Amritsar. By 13 April 1919, Amritsar was already under an undeclared martial law.⁸⁰ On 15 April 1919 – as similar protests spread to other parts of Punjab – the Punjab government declared martial law 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 15 and 16 April 1919. This ordinance provided for the takeover of local 'law and order' administration by military authorities. The promulgation of such a law proves that the civil administration in Punjab had failed. The anti-colonial protestors ruled the streets, even though for only a short period.

The fear of Ghadar was still haunting the colonial administration. Offences were to be tried by commissions appointed by the local government comprised of persons who had served as session judges and additional sessions judges for not less than three years or as judges of the High Courts. 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 were not to be subject to confirmation by any authority. In short, it was an imposition of military authority over the region of Punjab in response to the riots of 10 April 1919.

As stated earlier, martial law was declared in the entire Punjab province on 15 April 1919, but Amritsar had already come under total military control since 13 April.⁸¹ The military was requested to support the efforts of the local administration in Amritsar in maintaining law and order from 11 April onwards. Furthermore, 13 April coincided with the religious festival of Baisakhi. The civil administration did not feel confident about remaining in charge of law and order in Amritsar in the wake of growing crowds that had come to observe the Baisakhi festival. The administration, already fearful and suspicious of its local population, ultimately handed over the charge to military officials. The arrival of the military in Amritsar signalled the imminent possibility of formal invocation of martial law. The panic-stricken officials, both civil and military, were ready to deal with anti-colonial protestors.

There is a distinction between calling the military in aid of civil administration and the complete takeover of civilian administration by the military under martial law. Since 11 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 he arrived in Amritsar, he had already sent 100 British and 200 Indian soldiers to Amritsar at the request of the local administration. On 12 April, he made a round of the city with a posse of 120 British soldiers, 320 Indian soldiers and 2 armoured cars.⁸² A plane was also hovering in the air. It was a tactic of intimidating the people of Amritsar and sending a clear message to the leaders that the administration was now in the hands of the military and that no one should dare to think of it as a civil administration. The colonial display of military might became a war-like situation – a war to be fought in the streets and roads of a city where the civil administration had failed. It was a moment of uncertainty for the British colonial government, which feared the outcome of the political momentum. The arrival of the military unmasked the facade of colonial peace and order. It was a moment where the naked claws of sovereign power were on display. Its ability to withdraw civil administration appeared in full sight and exhibited its capacity to unleash physical force. The magnitude of

confrontation had escalated to a level higher than in typical situations of crowd control involving the police. It was now an absolute Schmittian distinction between friend and foe, and the defiant population in Amritsar was now as if declared the enemy.

While staging his military takeover of Amritsar on 12 April 1919, General Dyer experienced some confrontation with the crowds in the streets. He made a proclamation warning people against damaging any property and against acts of violence and collecting in groups numbering more than four in the streets and other public areas. The proclamatory warning of Dyer was somewhat similar to section 144 of the CrPC – available to the civilian administration – which could ban public space for public gatherings. The following day, 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, 13 April, General Dyer got the news that a huge crowd had collected at Jallianwala Bagh to hold a meeting. He immediately marched towards the spot with 25 British rifles, 40 Gurkhas, 25 Indian rifles and 2 armoured cars with machine guns. He arrived at the spot at 5 p.m.

The Bagh was also a spot for a Baisakhi *mela*, and for this reason, many people had come there unaware of proclamations and orders. The proclamation of law and its interpretation by subjects could be two quite different matters. The crowd in the Bagh had come to celebrate Baisakhi. However, it could equally be interpreted as a ‘mob’ that had assembled for seditious purposes challenging the 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. According to some estimates, the number of people in the Bagh ranged between sixteen thousand and twenty thousand. After reaching the spot, General Dyer, so enraged by what he perceived as the people’s defiance, ordered firing immediately. It continued for 10 to 15 minutes. People ran in all directions and mainly towards the few narrow exits. Dyer kept directing fire towards the areas where the crowd was the thickest. Firing continued until the ammunition ran out. Altogether 1,650 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 379,⁸³ while the number of dead claimed by the Congress was over a thousand.⁸⁴

Whatever the number of dead might be, it was enough to consider it 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. It would have resulted in making a fool of himself. Therefore, 'his duty was to fire and fire well'. Most shockingly, General Dyer left the wounded on the spot without any medical assistance. It was nothing short of not caring for the injured and dead of the enemy on the battlefield. Amritsar remained under the protection of the 'dutiful' General Dyer for almost a month. A significant characteristic of the application of state machinery is that a civilian administration aims to 'maintain law and order'. In contrast, the military administration aimed at crushing even the slight hint of opposition to the colonial government.

Even though martial law was proclaimed on 15 April 1919, Dyer understood – as his statements at the Hunter Commission point out – that martial law came into being *ipso facto* from the moment he took command on 11 April 1919, that is, the moment the civilian administration failed to maintain peace and sought military assistance to establish order. As a military general, Dyer had no doubts about his authority and control over Amritsar. Civilian subjects were now military subjects, and any disobedience or disturbance would face only a martial response. Dyer held a *durbar* on 14 April and forced people to open shops even when the city was still disturbed, and people were searching for the dead bodies of their family and relatives. The 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', or salute, every European they came across were some of the initial steps General Dyer took after the massacre at Jallianwala Bagh.⁸⁵ The day following the massacre, a meeting of residents, municipal commissioners, magistrates and merchants was held at the *kotwali* (police station) at around 2 p.m. The commissioner, Mr Kitchin, while making a threatening speech, only exposed his helplessness. He stated:

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. The General will give orders today. The city is in his possession. I can do nothing. You will have to obey orders.⁸⁶

Dyer and other British officials – all extremely angry – reached the Kotwali around 5 p.m. Dyer's speech, or rather threat, to the meeting is noteworthy here. He asserted:

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 or 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.⁸⁷

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.⁸⁸

Mr Miles Irving, the Deputy Commissioner, took Dyer's speech as a cue and followed it by making a straightforward statement:

You have committed a bad act in killing the English. The revenge will be taken upon you and your children.⁸⁹

These threatening speeches created a difficult binary between an abstract 'law-abiding citizen' and a 'wicked' *badmash* that needed punishment.

As soon as the news of Amritsar spread, the mood in Lahore turned tense too. The city was already observing protests since 10 April 1919, 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 11 April and posted pickets all over the city. On 12 April, the military under Colonel Frank Johnson was ordered to go into Lahore city with 800 men. He entered the city through the Delhi Gate, supported by four planes overhead.⁹⁰ 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 200 men. The scale of military presence was grand. Amritsar and Lahore became a spectacle of sovereign violence, and the costs of rebelling against the colonial state were made clear.

On 13 and 14 April, the *hartal* continued in Lahore and paralysed the life of the city. On 15 April at 11 a.m., Colonel Frank Johnson issued his first proclamation informing the people of Lahore that marital law

was now officially declared. Lahore remained under martial law until the end of May.⁹¹ Under martial law, orders were passed to lift the *hartal* and resume business immediately. The military authorities began this campaign in Anarkali Bazaar. The Badshahi mosque was closed to the public for six weeks. Minor arrests and flogging of people followed in Amritsar. As these disturbances were underway in India, the Secretary of State for India presented a draft for a new constitution for India – which came to be known as the Government of India Act, 1919 – to the British Parliament in London. There were expectations in India that there would be colonial reforms in India at the end of the First World War. It was expected because of India's support to the colonial government during the war. The opposition to the Rowlatt Acts and the extreme colonial repression in response to that put some pressure on the British Parliament.

Owing to the pressure of the anti-colonial 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 the Hunter Committee,⁹² was appointed on 14 October 1919 to enquire into the incident at Jallianwala Bagh. It began on 29 October and sat for 46 days, 8 in Delhi, 29 in Lahore, 6 in Ahmedabad and 3 in Bombay. The Congress was outraged and boycotted it and instead set up a parallel non-official committee of enquiry.⁹³ The Hunter Committee prepared a report of its findings. The three Indian members, called the 'minority', dissented from the European majority on some broader issues and produced a separate report, but published in the same volume as the combined report. The difference between them lay in the approach as well as the conclusions. The European members held that elements of rebellion were persistent throughout the disturbances. The Indian members conceded that certain acts might amount to waging war in a legal sense but could not be described as an open rebellion. 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 unfavourably to Dyer's handling of the Jallianwala meeting, and the difference between their reports is one of degree rather than substance. However, the iron-fist response by the colonial administration to civilian protestors through a military takeover confirms the extent of mobilisation by Ghadarites and the fear of a potential mutiny it had generated in the colonial administration.

The committee criticised General Dyer in two respects: First, he started firing without giving the assembly a chance to disperse. Second, he continued firing for a substantial time after the gathering 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.⁹⁴ Following the murder of Europeans in Amritsar during the *hartal* of 10 April, the European community was supportive of the general policy and martial law imposed by the then Lieutenant-Governor of Punjab, Michael O'Dwyer.⁹⁵ The element of racism surfaced again.⁹⁶ The *hartal* of 6 April 1919 was the highest point of the anti-Rowlatt mobilisation. However, the events unfolded in manners unexpected involving colonial violence of unimagined proportions.⁹⁷ What is significant here is that General Dyer was greatly criticised 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 his pension by the British government. The newspaper succeeded in generating a grant of 26,000 pounds. It hailed him as the 'saviour of Punjab' who had served the British Empire and had guarded and avenged the honour of English women in Punjab during the disturbances.⁹⁸ Despite the criticism, sections within the colonial administration supported Dyer and saw him as a dutiful military general who had crushed the opponents of the British Empire.⁹⁹ A quick reference to Hannah Arendt's 'banality of evil' could be helpful here. Dyer, like Adolf Eichmann, one of Hitler's generals, who played a major role in conducting the genocide of Jews in Germany during Nazi rule, was just following and giving orders. He was a loyal soldier of the British Empire. Dyer is another example of bureaucratic rationality combined with military rationality that could justify sovereign commands and following orders to one's best capability, pure and simple.

Jallianwala Bagh has indeed become a central focus of scholars studying the violence of imperial Britain. While some have called Dyer 'the Butcher of Amritsar', others have also joined the chorus in condemning his actions in Amritsar. Taylor Sherman has noted that General Dyer justified his actions in Jallianwala Bagh on the grounds of 'necessity' and fired to produce a 'sufficient moral effect' on entire Punjab.¹⁰⁰ The then Lieutenant-Governor of Punjab Michael O'Dwyer and the Hunter Committee condemned Dyer for his actions, criticised his strategy and questioned his judgement. Sherman notes that the then Secretary of State

reiterated his commitment to the ‘minimum use of force necessary’ and held Dyer responsible for complete violation of the principle of the use of minimum force.¹⁰¹ However, most works pay less attention to military atrocities in Lahore and other towns of Punjab province.¹⁰² Most of the criticism of Dyer emphasised his lapse in following 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. Despite highlighting the criticism of Dyer, scholars tend to focus more on the violation of rules prescribed for crowd control rather than offering us an analysis of the ‘necessity’ for his action – that Dyer stated in the first place – as a symptom of sovereign violence. As if the procedure-following colonial administration was utterly humane in other instances and this was an aberration from the usual pattern of upholding the rule of law by all officials always. Such an analysis misses the point by putting the onus on Dyer alone and understands it as a ‘single officer’ using his ‘discretion’. By singling out the sole deviation from procedure by Dyer, most scholars unintentionally humanise colonial ‘rule of law’. Before the chapter attempts to discuss the concept of martial law, 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 counterproductive. He argues that ‘colonial violence ultimately undermined colonial rule by alienating the native population and turning its victims into martyrs of nationalist movements’.¹⁰³ Sites of colonial violence became central to anti-colonial narratives and remained so until its last moments, in both India and elsewhere. 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 the empire’.¹⁰⁴ He sees a continuity in such spectacles of colonial violence, for example, in earlier cases of repression during the 1857 mutiny, soon followed by the Kukka rebellion in the 1870s. In the aftermath of Ghadar, the events of the 1919 mobilisation are yet another episode in a colonial cycle of violence where colonial anxiety was expressed in the form of sovereign rage.

The much-evaded question in this entire episode, of the martial law, requires further investigation. Nasser Hussain facilitated our understanding in this regard and noted that the central point of the entire exercise of

the Hunter Commission was highlighting Dyer's 'bad judgement' and his flawed logic for justifying his actions rather than finding fault with the invocation of martial law – replacing the 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 acceptable, but continuous firing was wrong.¹⁰⁵ Hussain extended his discussion of the event by dissecting the nature of 'martial law'. He extrapolated the deeper relationship between law and violence that martial law demonstrates by reading the Amritsar massacre through a reading of Walter Benjamin. According to him, emergency covers the general jurisprudential doubt that exists on a continuum from military aid to the civil power to the more intensified manifestation of martial law.¹⁰⁶ Hussain further pointed out that martial law occupies a profoundly ambiguous place in jurisprudential writing because it is considered 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 the state are to survive. On the other hand, an insistence on rules that determine the moment of emergency is noteworthy – an insistence that the law shall appear at its vanishing point to determine the rules of its failure. He notes:

Martial law, like other responses to emergency, simply rested not on an authorisation of ordinary law but on the legal maxim *Salus populi suprema est lex* (safety of the people is the supreme law).... [Here it becomes] the manifestation of both the highest law and no law at all. But while martial law is based on necessity, there are rules that can govern the perception of what constitutes necessity, and these rules are historically variable. It becomes possible, thus, to approach martial law as a changing cognitive question.¹⁰⁷

Taking a cue from Albert Venn Dicey, a British jurist and constitutionalist, Hussain points out that understanding the ideological and jurisprudential significance of martial law requires it to be read within the general prerogative of the Crown or the sovereign 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.¹⁰⁸ In short, martial law emerges as a sovereign decree for swift and efficient control of a situation bypassing lengthy civil law and administration procedures that 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 primary function of the myth of disturbance to law and order was the conferring of identity to the population involved, such as 'unruly' crowd, rebellious mob, mutinous subjects and insurgents. Martial law was an exception in contrast to the CrPC that applied in the everyday. In this light, the CrPC is the interiority of law, its usual, whereas martial law, an exception, is its exterior. However, for Dyer, this was routine. In the Amritsar massacre, martial law became the interiority of General Dyer's consciousness as a military general, reflected in the materiality of external circumstances. Therefore, martial law was not a standard law to be understood as per the usual 'rule of law' maxim. It served as an outside to the civilian administration but, once invoked, controlled the inside in the process. Even though it enveloped the everyday conduct of the population, it remained dissociated from all interiorities. In other words, it is a darkness that has no limits. It was an expression of the sovereign's dissatisfaction with the conduct of its subjects.

After the Punjab disturbances, Gandhi had to temporarily withdraw his *satyagraha* as he concluded that the masses did not understand the discipline and patience required in such political situations. The anti-Rowlatt *satyagraha* could not achieve its declared end, that is, the repeal of the Rowlatt Acts. It could not enforce non-violent political mobilisation on the masses, especially in Punjab. Nevertheless, it turned Gandhi into a national leader and *satyagraha* as a more acceptable, creative and moral political weapon known and available to millions of colonised Indians. With the arrival of the Government of India Act, 1919, both the Congress and the Muslim League were unhappy with the new constitution, as it did not meet their demands. As per the new constitution, some seats were set aside for the nominated members of the legislative bodies for the first time. Each body was about to have a majority of elected members. 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. The Governor-General or the Viceroy and his executive council reserved all powers of the government. Assembly votes did not bind the government, nor could the government be dismissed by a vote. In the provinces, it was a half-step toward establishing a 'responsible' government. It proposed a set-up in which the cabinets would include ministers who were elected and therefore were responsible to the councils and executive

councillors who would, as before, be appointed by the Governor and therefore were accountable only to him. Under this arrangement, some portfolios would be transferred to ministers while others would be 'reserved' and be under the executive councillors. The system at the provincial level was termed 'diarchy'.

Conclusion

In the first two decades of the twentieth century, management of public order in India was marked by the invocation and promulgation of three different kinds of extraordinary laws – a combination of the Ingress into India Ordinance and the Defence of India Rules, the Rowlatt Bills and the use of martial law. While the Defence of India Rules – a proper wartime measure – might seem a logical legislative course of action 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 the Defence of India Rules in the name of the Rowlatt Bills for the next three years – before being 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 administrative ideology. It invoked the Defence of India Act to mobilise resources for military purposes and maintain order and prevent the outbreak of an armed mass rebellion. The self-declaration of the Ghadar Party as 'angrezi raj ka dushman' and the charge of sedition used in subsequent trials of the Lahore and Delhi Conspiracy cases highlight a political environment in which Carl Schmitt's distinction between friend and foe had become generalised and upended the normal operations of legality. The call to arms against the sovereignty of the King legally necessitated treating the revolutionaries as the 'enemy' of the colonial state. However, the enemy was not 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 Ghadar Movement and the promulgation of the Defence of India Rules during the First World War to the infamous Rowlatt Acts and the subsequent events associated with the anti-colonial mass mobilisation that invited the use of martial law, the discussion across various sections in this chapter shows the administration of public order in colonial India through the use of law by way of a twin strategy.

On the one hand, it emphasised an ideological notion of ‘the 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 could be applied. It was best demonstrated in the Ingress into India Ordinance and in the Defence of India Act and its subsequent extension as the Rowlatt Acts. Also, the reference to ‘anarchical violence’ alluded to the 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 the Defence of India Rules and the further extension of pre-emptive legislation in the name of the Rowlatt Bills prove 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 was not very difficult to decipher. One of the significant impacts of the passing of the Rowlatt Bills was that it explicitly exposed the violent character of the colonial government in India. Furthermore, Jallianwala Bagh served as a symptom of the possibility or the potential of repeating such a cycle of colonial violence. It established 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. The Defence of India Rules and the subsequent Rowlatt Bills, as well as the invocation of martial law in Punjab, highlight the fact that the colonial government was quite aware of the ‘exceptional’ tactics 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 emerges 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 the one hand, the demand for *swaraj* from colonial rule emerged at a mass level. On the other hand, the attempts to preserve the colonial order from insurgency intensified. The utilisation of extraordinary laws by the colonial state highlights its strategy to rule by fear rather than law and exposes its fragility and fear of uprisings. Sovereign anxiety guided by motives of self-preservation overpowered colonial legal rationality.

Thus, in different forms, the state of exception became the frequent resort of the colonial state.

By undertaking an extensive codification exercise in the latter half of the nineteenth century, the colonial state in India had created a myth of its commitment to the rule of law in India. Close attention to its administrative practices reveals that it operated as a dissimulate state in its own right. It posed as the flagbearer of modernity and the rule of law in India but unleashed exceptional violence in volatile situations that challenged its authority. The colonial state posed as the one upholding justice, fairness, impartiality and the rule of law and yet often repressed its subject population by invoking exceptional laws such as the Defence of India Rules and the Rowlatt Bills. With time, it kept on expanding the domain of exception. The frequent use of exception exposed a monolithic character of colonial sovereignty in times of crisis. As demonstrated through various events in this chapter, the colonial government declared war on its subjects and immediately transitioned its activities from the maintenance of law and order to a repressive machine utterly external to the usual everyday government. Undoubtedly, opposing the government was not waging a 'war'. It was an everyday protest against a colonial regime. The colonial administration used its sovereign power to draw its limits on 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.

Notes

1. See Elizabeth Kolsky, *Colonial Justice in British India: White Violence and the Rule of Law* (Cambridge: Cambridge University Press, 2009).
2. For a broader discussion see, N.G. Barrier, 'The Punjab Government and the Communal Politics', *Journal of Asian Studies* 27, no. 3 (1968): 523–539; N.G. Barrier, *The Punjab Alienation Land Bill of 1900* (Durham, NC: Duke University Program in Comparative Studies of Southern Asia, 1966); also see R.G. Fox, 'Urban Class and Communal Consciousness in Colonial Punjab: The Genesis of India's Intermediate Regime', *Modern Asian Studies* 18, no. 3 (1984): 459–489.
3. For complete proceedings of the case and information about incidents regarding the Lahore Conspiracy case and others, please see Malwinder Singh Waraich and Harinder Singh, ed., *Ghadri Movement Original*

- Documents Vol.-I, Lahore Conspiracy Cases I and II* (Chandigarh: Unistar Books Pvt. Ltd, 2008), p. 514.
4. Michael O'Dwyer, *India as I Knew It: 1885–1925* (New Delhi: Mittal Publications, 2004), p. 197.
 5. Nicholas Tarling, *The Cambridge History of South East Asia*, vol. 2, *The Nineteenth and Twentieth Centuries* (Cambridge: Cambridge University Press, 1992), p. 315.
 6. Kama Mclean and J. Daniel Elam, eds., *Revolutionary Lives in South Asia: Acts and Afterlives of Colonial Political Action* (Oxon: Routledge, 2015), pp. 3–4.
 7. Hugh J.M. Johnston, *The Voyage of the Komagata Maru: The Sikh Challenge to Canada's Colour Bar* (Vancouver: University of British Columbia Press, 2014), pp. 15–24.
 8. Seema Sohi, *Echoes of Mutiny: Race, Surveillance and Anti-colonialism in North America* (Oxford: Oxford University Press, 2014), p. 259.
 9. Gajendra Singh, 'The Anatomy of Dissent in the Military of Colonial India During the First and Second World Wars', *Edinburgh Papers in South Asian Studies*, no. 20 (2006), p. 45.
 10. For more discussion, see Hew Strachan, *The First World War*, vol. 1, *To Arms* (Oxford: Oxford University Press, 2001).
 11. *The Defence of India, Act V of 1915 (As Amended by Act II of 1916) With Rules and Notification Thereon* by Pt. Bhagat Ram, B.A. L.L.B., Pleader, Amritsar (Printed at the Union Steam Press, Lahore, 1917). p. 35.
 12. See *ibid.*, p. 1.
 13. *Ibid.*
 14. *Ibid.*, pp. 2–3.
 15. *Ibid.*, p. 4.
 16. *Ibid.*, pp. 4–5.
 17. *Ibid.*, pp. 4–5.
 18. *Ibid.*, pp. 6–7.
 19. *Ibid.*, p. 8.
 20. *Ibid.*, pp. 9–25.
 21. *Ibid.*, p. 26.
 22. See the judgment for Lahore Conspiracy case in 'Special Tribunal', quoted in F.C. Isemonger and J. Slattery, *Account of the Ghadr Conspiracy: 1913–1915* (Lahore, Punjab: Printed by the Superintendent, Government Printing, 1919), p. 25 (File IOR/V/27/262/9, British Library: Asian and African Studies, London).
 23. For a broader discussion, see Gajendra Singh, *Testimonies of Indian Soldiers and the Two World Wars: Between Self and Sepoy* (London: Bloomsbury Publications, 2014), p. 224.

24. For a broader discussion on the scope of the Ghadar mutiny, see O'Dwyer, *India as I Knew It*, pp. 190–210; Tarling, *The Cambridge History*, vol. 2, p. 315; Mclean and Elam, *Revolutionary Lives*, pp. 3–4; Johnston, *The Voyage of the Komagata Maru*; Sohi, *Echoes of Mutiny*, p. 259; Singh, 'The Anatomy of Dissent', p. 45.
25. See Part II, specifically 'Kirpal Singh Spy's Evidence', in *Ghadar Movement Original Documents*, vol. I, *Lahore Conspiracy Cases I and II*, ed. Malwinder Singh Waraich and Harinder Singh (Chandigarh: Unistar Star Publications Pvt. Ltd., 2008), p. 38.
26. The commissioners were Major Irvine and Mr. Ellis, sessions judges, and Rai Bahadur Pandit Sheo Narain, a leading lawyer of the Chief Court.
27. See Appendix C, 'Summary of the Criminal Cases Arising out of the Ghadr Movement', in *An Account of the Ghadr Conspiracy 1913–1915*, compiled by F.C. Isemonger and J. Slattery, Indian Police, Punjab, Lahore: Printed by the Superintendent, Government Printing, Punjab, 1919, p. xii.
28. See Appendix T, *ibid.*, p. xlviii.
29. 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 October 1914.
30. The original case was heard by sessions judge on 11 July 1914, in Trial No. 6, and further the charges against the accused were added or amended during the course of the trial.
31. 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 October 1914 by H.M. Harrison, Additional Sessions Judge, Delhi.
32. Namely Chota Lal (called Ram Lal in the rest of this judgment) alias Ram Lal, Charan Das, Mannu Lal, Raghabar Sharma and Khushi Ram.
33. Namely Basant Kumar Biswas, Abad Bihari, Amir Chand, Balmokand, Balraj and Hanwant Sahai.
34. Namely Abad Bihari, Amir Chand and Balmokand.
35. Namely Basant Kumar Biswas, Balraj and Hanwant Sahai.
36. Namely Abad Bihari and Amir Chand.
37. See 'Complete Judgement of the Punjab Chief Court, Lahore in the Delhi Conspiracy Case', dated 10 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, p. 3.
38. *Ibid.*, p. 5.
39. 'Komagata Appeal, Thrown out by Canadian Court, Court's Ground of Rejection', *Amrita Bazar Patrika*, Thursday, 9 July 1914, p. 5.

40. "Komagata Maru" Hindus and Police', *Amrita Bazar Patrika*, Tuesday, 21 July 1914, p. 5.
41. "Kamagata" Hindus, Cost of This Venture, the Komagata Passengers, Will Return to Hong Kong', *Amrita Bazar Patrika*, Friday, 10 July 1914, p. 5. This news item puts the venture costs of the *Komagata Maru* at £14,000.
42. "Komagata" Hindus, Government Refuses to Defray Expenses, the Government Proposes to Make an Example of the Present Case', *Amrita Bazar Patrika*, Monday, 13 July 1914, p. 5.
43. *An Account of the Ghadr Conspiracy 1913–1915*, pp. 37–39.
44. "Komagata" Case, Deportation Difficulty Settled', *Amrita Bazar Patrika*, Friday, 24 July 1914, p. 5.
45. Kalpana Kannabiran 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 (New Delhi: Sage Publication, 2008), p. 235
46. O'Dwyer, *India as I Knew It*, p. 197.
47. Ibid.
48. For an elaboration of colonial concerns regarding immigrants in North America, see Sohi, *Echoes of Mutiny*, p. 259.
49. 'Komagata's Return, Fatal Array at Budge Budge, Sudden Attack on Police Officers, Deplorable Loss of Life', *Amrita Bazar Patrika*, Friday, 2 October 1914, p. 5.
50. *An Account of the Ghadr Conspiracy 1913–1915*, pp. 55–56.
51. Humphrey Milford, *The 'Rowlatt Act', Its Origin, Scope and Object* (Elphinstone Circle, Bombay; Esplanade, Madras: Oxford University Press, 1919), pp. 7–8.
52. *Report of Committee Appointed to Investigate Revolutionary Conspiracies in India* (London, 1918), Cd. 9190, p. 75. Other members of this committee were Sir Bail Scott, Chief Justice of Bombay, C.V. Kumaraswami Shastri, Madras High Court judge, Sir Verney Lovett, member of the UP Board of Revenue, and P.C. Mitter, additional member of the Bengal Legislative Council.
53. Milford, *The 'Rowlatt Act'*, p. 32.
54. Humphrey Milford made such an assertion on the first page of this booklet.
55. Milford, *The 'Rowlatt Act'*, p. 8.
56. Ibid., p. 8.
57. See the Rowlatt Bills and also Milford, *The 'Rowlatt Act'*, p. 9.
58. See Milford, *The 'Rowlatt Act'*, pp. 13–14.
59. 'The Imperial Council, Rowlatt Bill Passed, Madras Member Resigns', *The Madras Mail*, Wednesday Evening, 19 March 1919, p. 5.
60. See D.G. Tendulkar, *Mahatma: Life of Karamchand Gandhi*, vol. 1 (Bombay: The Times of India Press, 1951), p. 251.

61. See the message sent by Gandhi to the Madras meeting in *The Bombay Chronicle*, 22 March 1919 and 4 April 1919.
62. Details of some of the amendments can be seen in ‘The Imperial Council, The Rowlatt Bill, Plethora of Amendments’, *The Madras Mail*, Monday Evening, 17 March 17, 1919, p. 6.
63. For a discussion regarding the character of the Rowlatt Bills and the positions on Indian members, see ‘The Rowlatt Bill, A Foregone Conclusion, Position of Indian Members’, *The Tribune*, Saturday, 22 March 1919, p. 2.
64. See the message sent by Gandhi to the Madras meeting in *The Bombay Chronicle*, 22 March 1919 and 4 April 1919.
65. Broader context for Woodrow Wilson’s quote can be seen in W. Wilson, A. Shaw, and United States President (1913–1921: Wilson), *The Messages and Papers of Woodrow Wilson: With Editorial Notes*, vol. 2 (New York: Review of Reviews Corporation, 1924), p. 634.
66. Harendra Nath Mitra, ed., *Punjab Unrest, Before and After* (Calcutta: N.N. Mitter, Annual Register Office, Sibpur, April 1920), pp. 433 approx.
67. See the message sent by Gandhi to the Madras meeting, *The Bombay Chronicle*, 4 April 1919.
68. Jacques Derrida and G. Anidjar, *Acts of Religion*, particularly Chapter 5 titled ‘Force of Law: “The Mystical Foundation of Authority”’, 189–228 (London and New York: Routledge: 2002).
69. ‘The Black Act Day, Day of Humiliation and Prayer, A Twenty-four Hours Fast, Mr. Gandhi’s Recommendations, Effective Public Demonstration’, *The Independent*, Wednesday, 26 March 1919, p. 1.
70. For a complete reporting on the Delhi firing see, ‘Satyagraha Day, Exciting Times in Delhi, Soldiers Fire on Protestors’, *The Madras Mail*, Tuesday Evening, 1 April 1919, p. 5; ‘Satyagraha Day, Delhi Riots, Further Details’, *The Madras Mail*, Wednesday Evening, 2 April 1919, p. 5; ‘Sequel to Satyagraha, Rioting at Delhi’, *Times of India*, Tuesday, 1 April 1919, p. 7; ‘Rioting at Delhi’, *Times of India*, 2 April 1919, p. 9, also on the same page ‘The Delhi Tragedy, Facts and Comments’; ‘Situation in Delhi’, *Times of India*, Friday, 4 April 1919; ‘Situation in Delhi, Official Report’, *Times of India*, Saturday, 5 April 1919; ‘Satyagraha Demonstration, A Day of National Mourning, Observance All Over Country’, *Amrita Bazar Patrika*, Wednesday, 2 April 1919, p. 4; ‘The Delhi Tragedy, Official Report’, *Amrita Bazar Patrika*, Sunday, 6 April 1919, p. 4; ‘The Delhi Tragedy’, *The Independent*, Wednesday, 2 April 1919, p. 7.
71. See ‘The Delhi Tragedy, Impressive Funeral Processions, Alleged Use of Ball Cartridges’, *The Independent*, Thursday, 3 April 1919, p. 1.
72. See ‘The Delhi Tragedy, Mr. Gandhi’s Congratulations, Hindu Muslim Union’, *The Independent*, Saturday, 6 April 1919, p. 7.

73. See 'Delhi Tragedy, Mahatma Gandhi's Message, Blacksmith's Hammer to Crush a Fly, Appeal for Self Restraint', *Amrita Bazar Patrika*, Sunday, 6 April 1919, p. 4.
74. 'Opening of Satyagraha Campaign, Laws Regarding Prohibited Literature and Newspapers, Registration to be Civilly Disobeyed', *The Independent*, Wednesday, 9 April 1919, p. 6.
75. 'The Anarchic Measures, to be Fought with Satyagraha, Campaign Enunciated in Bombay, "Refuse Civilly to Obey"', *The Independent*, Saturday, 1 March 1919, p. 1.
76. These leaders were already actively organising public meetings and protests, against the Rowlatt Bills in Punjab. One of the earlier grand mobilisations by them can be noticed in 'Rowlatt Bills, Punjab's Protest', *The Tribune*, Tuesday, 11 March 1919, p. 2.
77. 'Mahatma Gandhi's Arrest, Scenes on the Train and on the Station, By an Eye Witness', *The Independent*, Saturday, 12 April 1919, p. 7.
78. 'Amritsar Disturbances, 3 Europeans Reported Killed, "C&M Gazette's Version", "Excitement Caused by Local Leaders Arrest"', *The Independent*, Sunday, 13 April 1919, p. 7.
79. Most of the official details can be seen in April 1919 issues of *Civil and Military Gazette (C&M Gazette)*. Only *C&M Gazette* was allowed to cover the disturbances in Punjab. The rest of the press could only use official information from the *C&M Gazette*.
80. 'Prussianism in Punjab, Publication of Accounts of Disturbances Prohibited', *The Independent*, Tuesday, 15 April 1919, p. 1.
81. 'Martial Law in Lahore and Amritsar', *The Independent*, Thursday, 17 April 1919, p. 7.
82. Details of military campaign in Punjab were published as an official version of events in the *C&M Gazette*, whereas other publications were prohibited to publish details of the events unless sourced and produced from the *C&M Gazette* itself.
83. Nigel Collett, *The Butcher of Amritsar, General Reginald Dyer* (London: Hambledon Continuum, 2006), pp. 266, 337.
84. Brian Lapping, *End of Empire* (London: Palladin, 1985), p. 38.
85. Taylor Sherman, *State Violence and Punishment in India* (London: Routledge, 2010), p. 246.
86. The Congress Inquiry Committee to investigate Punjab disturbances and Jallianwala Bagh excesses. Chapter V, 'The Martial Law', in *Report of the Commissioners Appointed by the Punjab Sub-Committee of the Indian National Congres*, vol. 1 (Lahore: K. Satnam, 1920), p. 59.
87. Ibid.

88. Ibid.
89. Ibid.
90. The colonial military campaign against the Punjab disturbances of April 1919 also saw the bombing of civilians by planes. For example, see 'Fresh Shooting at Amritsar, Crowds Bombed at Gujranwala', *The Independent*, Friday, 17 April 1919, p. 1.
91. For more details, see P.S. Sivaswami Iyer, *Martial Law Administration in the Panjab: As Described by the Official Witness* (Madras: The Madras Liberal League, 1919).
92. See 'Report of the Disorders Inquiry Committee 1919–20, Government of India, 1920', published in *Punjab Disturbances 1919–20*, vol. 2 (New Delhi: Seep Publications, 1976), p. 275.
93. An Urdu compilation of the Congress Committee report is by Lala Pandi Das, *Panjab Mein Pehla Marshal Law, Congress Committee ki Report* (Urdu) (Lahore: Fiction House, 1996), p. 452.
94. V.N. Datta, *Jallianwala Bagh* (Published by V.K. Arora, Kurukshetra University Books and Stationery shop, Kurukshetra, for Lyall Book Depot, Ludhiana, 1969), pp. 118–119.
95. Michael O'Dwyer, *The Punjab Disturbances of April 1919: Criticism of the Hunter Committee Report* (London: Indo-British Association, 1919).
96. An interesting take on such issues can be noticed in Alfred Nundy, *Political Problems and Hunter Committee Disclosures* (Calcutta: S.K. Roy, 1920).
97. For Gandhi and Rowlatt satyagraha see Chapter 5, 'The Rowlatt Satyagraha', in Judith Brown, *Gandhi's Rise to Power, Indian Politics 1915–1922* (London and New York: Cambridge University Press, 1972), pp. 160–189.
98. See Collett, *The Butcher of Amritsar*.
99. Alfred Draper, *Amritsar, Massacre that Ended the Raj* (London: Cassell, 1981); Hari Singh, *Gandhi Rowlatt Satyagrah and British Imperialism: Emergence of Mass Movement in Punjab and Delhi* (Delhi: Indian Bibliographies Bureau, 1990); R. Kumar, ed., *Essays on Gandhian Politics: The Rowlatt Satyagraha of 1919* (London: Oxford University Press, 1971); Kamlesh Mohan, 'The Jallianwala Bagh Tragedy: A Catalyst of Indian Consciousness', in *Jallian Wala Bagh Massacre*, ed. V.N. Datta and S. Settar, pp. 52–79 (Delhi: Pragati Publications, Indian Council of Historical Research, Delhi, 2000).
100. Sherman, *State Violence and Punishment in India*, p. 33.
101. Ibid., p. 34.
102. For details see Chapter V, 'The Martial Law', in *Report of the Commissioners Appointed by the Punjab Sub-Committee of the Indian National Congress*, vol. 1 (Lahore: K. Satnam, 1920).

103. Kim Wagner, “Calculated to Strike Terror”: The Amritsar Massacre and the Spectacle of Colonial Violence’, *Past and Present* 233, no. 1 (November 2016): 223–225.
104. Ibid.
105. Nasser Hussain, *Jurisprudence of Emergency: Colonialism and the Rule of Law* (Ann Arbor, MI: University of Michigan Press, 2003), p. 101
106. Ibid.
107. Ibid., p. 103.
108. Ibid., p. 104.