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Echoes of Empire in Wires and Waves: The Long Shadow of Colonialism in India's Telecommunications Act 2023

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Abstract

The Indian Telecommunications Act 2023 has sparked significant discourse on whether the law perpetuates a colonial legacy, as its critics claim, or represents a decolonial turn, as asserted by the government. This Article argues that the Act does not constitute a genuine rupture but instead perpetuates existing power structures. Using a post-colonial lens, I trace the historical development of the telegraph network and its regulation during the colonial period, examining how the legal framework evolved post-independence, leading to the Telecommunications Act.

The Article analyzes how the telegraph, which was critical for British victory in the 1857 revolt, expanded significantly, fueled by colonial anxieties. It explains how the telegraph and its regulations became integral to the British emergency governance apparatus, essential for surveillance, control, and domination over the population. During this period, I identify three key aspects that constitute the colonial disposition underlying telegraph regulations: technology as control, state-subject dynamics, and relentless accumulation. I demonstrate how over a period of 150 years, despite changes in the legal framework and underlying technology, these key characteristics of colonial continuity have remained the same. The Article concludes that the Telecommunications Act fails to dismantle the colonial architecture, instead expanding its reach.

Keywords: Post-colonialism; decolonial studies; public law; Telecommunications Act; 2023; critical surveillance studies

A. Introduction

The Lower House of Parliament passed the Indian Telecommunications Act 2023 on December 20, 2023, followed by the Upper House the next day.¹ This legislation aims to reform the legal framework governing the telecommunication sector, which has long been based on two colonial-era laws: the Telegraph Act 1885 and the Wireless Telegraphy Act 1933.² The discourse surrounding the Telecommunications Act 2023 parallels that of recent criminal law reforms, both

*All views expressed in this Article are personal.

¹See *Proceedings: Lok Sabha Passes Telecom Bill 2023, to Replace 138-year-old Indian Telegraph Act*, THE HINDU (Dec. 21, 2023, 9:59 PM), <https://www.thehindu.com/news/national/lok-sabha-passes-telecom-bill-2023-to-replace-138-year-old-india-n-telegraph-act/article67659002.ece>. See also Editorial Team, *Rajya Sabha Passes Telecommunications Bill 2023*, THE ECONOMIC TIMES (Dec. 21, 2023, 5:32 PM), <https://economictimes.indiatimes.com/industry/telecom/telecom-policy/rajya-sabha-passes-telecommunications-bill-2023/articleshow/106178397.cms?from=mdr>.

²See Editorial Team, *supra* note 1.

seeking to “decolonize” existing legal systems.³ This aligns with the trend over the last decade, the increased emphasis of the ruling government in the past decade on the Hindutva linked indigenization of the legal, political system and the very political identity of the country.⁴

In his speech in the Lok Sabha introducing the Telecommunications Bill 2023, Communications Minister Ashwini Vaishnaw claimed that this legislation marked a significant break from the past.⁵ However, critics argue that, contrary to these assertions, the law reaffirms the colonial status quo.⁶ They contend that it retains its “colonial architecture” and is merely a repackaged version of archaic colonial laws.⁷ Claims of decoloniality have become increasingly frequent over the last few decades in various academic disciplines and broader political discussions, prompting alarm among certain academics who warn of its potential for co-option, tokenization, and dilution of the frame’s generative critical value.⁸ Even in digital governance contexts, such claims are becoming more frequent; for instance, terms like “data colonialism” have been employed by digital rights activists, the Indian government, and corporate actors.⁹ Thus, it is

³See Akshra Mehla, *New Criminal Laws: Postcolonial or Nationalist?* 59 *ECON. & POL. WKLY.* (2024). See also SLR Forum, *Decolonisation and the Law Series*, *SOCIO-LEGAL REV.* <https://www.sociolegalreview.com/blog/categories/decolonisation-and-the-law> (last visited Nov. 16, 2024); Moiz Tundawala & Salmoli Choudhuri, *Does Today’s India Need ‘Decolonisation’ Speak?*, *THE WIRE* (Aug. 25, 2023), <https://thewire.in/politics/does-todays-india-need-decolonisation-speak> (last visited Mar. 2, 2025).

⁴See Gazi Abbas Shahid, *9 Years of PM Modi: Major Places Renamed Under Narendra Modi Govt*, *INDIA.COM* (June 12, 2023), <https://www.india.com/news/india/9-years-of-pm-modi-major-places-renamed-under-narendra-modi-govt-61043732/>. See also Lauren Frayer, *India is Changing Some Cities’ Names, and Muslims Fear Their Heritage is Being Erased*, *NPR* (Apr. 23, 2019), <https://www.npr.org/2019/04/23/714108344/india-is-changing-some-cities-names-and-muslims-fear-their-heritage-is-being-erased> (last visited Nov. 16, 2024); Editorial Team, *NCERT Textbook Revisions and Controversies Under BJP*, *DECAN HERALD* (June 2, 2023), <https://www.deccanherald.com/india/ncert-textbook-revisions-and-controversies-under-bjp-1224276.html>; Sanjay Pandey, *BJP: Back to ‘Mandir’ for Mandate 2024?* *DECAN HERALD* (Aug. 12, 2023), <https://www.deccanherald.com/india/bjp-back-to-mandir-for-mandate-2024-2645096>.

⁵Express News Service, *Telecom Bill Passed by Rajya Sabha*, *INDIAN EXPRESS* (Dec. 21, 2023), <https://indianexpress.com/article/india/parliament-telecommunications-ashwini-vaishnaw-rajya-sabha-empty-opposition-benches-9077514/>; Rohitashwa Ranjan, *Doing Away With Colonial Hangover: 10 Most Important Bills Passed in 2023*, *TIMES OF INDIA* (Jan. 1, 2024), <https://timesofindia.indiatimes.com/india/doing-away-with-colonial-hangover-10-most-important-bill-passed-in-2023/articleshow/106458533.cms>; Kalpana Wilson, Giti Chandra & Lata Narayanaswamy, *Contested Development Imaginaries: Hindutva and the Co-optation of ‘Decolonisation*, *EADI BLOG* (Apr. 8, 2023), <https://www.developmentresearch.eu/?p=1596>.

⁶See Tejasi Panjiar, *New India Telecom Regulations Are A Relic Of The 19th Century*, *TECH POLICY PRESS* (Dec. 21, 2023), <https://www.techpolicy.press/new-india-telecom-regulations-are-a-relic-of-the-19th-century/>. See also Akshra Mehla & Lakshay Mehla, *The Telecommunications Act, 2023: Solidarity Between Democracy and Totalitarianism*, 45 *STAT. L. REV.* (2024); *India: Telecom Bill and the New Era of Digital Colonialism*, *ARTICLE 19* (May 15, 2024), <https://www.article19.org/resources/india-telecom-bill-and-the-new-era-of-digital-colonialism/>; Tejasi Panjiar, *The Telecom Act 2023 is Ready for (Partial) Take Off: Outdated, Colonial Provisions to Go Into Effect from June 26*, *IFF* (June 25, 2024), <https://internetfreedom.in/the-telecom-act-2023-partial-notification/#:~:text=The%20Act%2C%20after%20it%20comes,it%20purportedly%20aims%20to%20overhaul.>

⁷See generally sources cited *supra* note 6.

⁸See Eve Tuck & K. Wayne Yang, *Decolonization is Not a Metaphor*, 1 *DECOLONIZATION: INDIGENEITY, EDUC. & SOC’Y* 1, 28 (2012) (asserting that decolonization must have material outcomes, including the reparations of Indigenous land and life). See also Olúfẹ̀mi Táíwò, *Against Decolonisation: Taking African Agency Seriously* (Hurst Publishers 2022) (critiquing “Decolonization 2,” which refers to contemporary academic hostility toward ideas and practices solely based on their colonial origins); Neil Larsen, *The Reactionary Jargon of Decoloniality*, *JACOBIN MAG.* (Dec. 29, 2023), <https://jacobin.com/2023/12/walter-mignolo-politics-of-decolonial-investigations-review-decoloniality-postcolonialism-academic-jargon-universalism/>; see generally Leon Moosavi, *The Decolonial Bandwagon and the Dangers of Intellectual Decolonization*, 30 *INT’L REV. OF SOCIO.* 332 (2019); Alexandra Lewis & Marie Lall, *From Decolonisation to Authoritarianism: The Co-Option of the Decolonial Agenda in Higher Education by Right-Wing Nationalist Elites in Russia and India*, 87 *HIGH EDUC.* 1471 (2023), <https://discover.yu.ucl.ac.uk/id/eprint/10172882/1/s10734-023-01074-0.pdf>.

⁹Dhanashree Thorat, *Modalities of Data Colonialism and South Asian Hashtag Publics*, 21 *FEMINIST MEDIA STUD.* 151 (2020). See also PTI, *India’s Data Must be Controlled by Indians: Mukesh Ambani*, *MINT* (Jan. 20, 2019), <https://www.livemint.com/Companies/QMZDxbCuFK3O2dJE4xcy1/Indias-data-must-be-controlled-by-Indians-not-by-global-co.html>; Jacqueline Hicks, *Digital Colonialism: Why Countries Like India Want to Take Control of Data from Big Tech*, *THE PRINT* (Sept. 29, 2019), <https://theprint.in/tech/digital-colonialism-why-countries-like-india-want-to-take-control-of-data-from-bi>

essential to scrutinize each claim of decoloniality closely to ensure that it does not become merely a metaphor or rhetorical device.

To critically examine claims of decoloniality, we must engage in historical inquiry to unmask the colonial past. Evaluating continuities or ruptures with colonial paradigms requires a nuanced understanding of their fundamental characteristics. By delving into the political, economic, and cultural underpinnings of this history, we can envision alternative futures. Historical excavations provide an “enlarged sense of possibility” to reclaim these overlooked narratives.¹⁰ This inquiry serves as a vital tool for identifying the dangers of colonial reproduction within legal frameworks. The presence of colonial vestiges can manifest as new forms of structural inequality and dynamics of oppression that perpetuate existing injustices. By understanding these patterns and internal logics, we can challenge the normalization of colonial narratives.

To answer whether the Telecommunications Act 2023 constitutes a rupture from or has continuities with the colonial *status quo*, I examine the historical development of the telegraph and the legal framework that regulated the network. I posit that despite the rhetoric of decoloniality, the Indian Telecommunications Act 2023 fundamentally maintains continuity with colonial power structures. This continuity is anchored in three interrelated dynamics: technology as a tool of control, the state-subject relationship, and the relentless accumulation of state power.¹¹ These three characteristics, deeply embedded in the colonial dispositions that underpinned early telegraphy and its regulatory framework, continue to define the relationship between technology, governance, and the populace in post-colonial India. My analysis will demonstrate that even with advancements in communication technologies and legal reforms over the past century, the core elements of governance—particularly those pertaining to control and subjugation—have not only persisted but in many instances, but have been intensified. By tracing these enduring threads, we gain a critical understanding of how colonial power structures have adapted and survived in contemporary India.

To substantiate this argument, in the Second B, I first examine the historical development of the telegraph and its regulatory framework in India. I will deconstruct claims of British benevolence and empowerment, demonstrating that telegraph infrastructure and its regulatory framework were primarily utilized for surveillance, control, administration, and discipline over the population. The construction of this infrastructure and its regulation predominantly occurred after the 1857 revolt. I will explore how this revolt left a lasting influence on the fears and anxieties within the colonial administration’s psyche, informing both infrastructure development and regulatory measures. I conclude that both telegraphy and its regulatory framework were exceptional measures developed in response to an emergency aimed at preventing and quelling “native uprisings.”

In Section C, I provide a theoretical exploration of the concept of colonial continuity as it pertains to this Article, precisely detailing the triad of technology as control, state-subject dynamics, and relentless accumulation. My goal is to illustrate connections between colonial and post-colonial eras through a postcolonial perspective that recognizes true decolonization requires more than merely ending colonial rule; it necessitates rethinking our relationship with ongoing coloniality.¹² This involves acknowledging persistent colonial hierarchies and stratification of social relations as well as examining how law, institutions, and technology sustain subjugation and domination. These elements arise from the colonial dispositions underpinning telegraphy and its regulatory framework. My objective is to demonstrate that despite advancements in

[g-tech/298217](https://doi.org/10.1017/glj.2026.10207); Jyoti Panday, *India Stack: Public-Private Roads to Data Sovereignty*, INTERNET GOVERNANCE PROJECT (Aug. 31, 2023), <https://www.internetgovernance.org/research/india-stack-public-private-roads-to-data-sovereignty/>.

¹⁰See Janne E. Nijman, *An Enlarged Sense of Possibility for International Law: Seeking Change by Doing History*, in AN ENLARGED SENSE OF POSSIBILITY FOR INTERNATIONAL LAW IN: CONTINGENCY IN INTERNATIONAL LAW 92, 98–104 (Ingo Venzke & Kevin Jon Heller eds. 2021).

¹¹See *infra* Section 3.1.

¹²See *infra* Section 3.1.

communication technologies and legal reforms over the past century, elements of governance—particularly control and subjugation—continue to persist. By tracing these enduring threads, we can better understand how colonial power structures have adapted and survived in contemporary India.

In Section D, I will build upon an emergency frame by examining how the Telegraph Act 1885—originally an exceptional measure enacted in response to the 1857 revolt—was normalized post-independence. Instead of being repealed after independence, this Act became one of the primary laws enabling targeted and mass surveillance. It also served as a template influencing other communication interception provisions across various laws. The Telegraph Act has now become foundational for internet shutdowns, which have rapidly increased in frequency over the past decade. I posit that there are colonial continuities evident in how these laws conceptualize relationships between government and citizens as well as in how technology and communication infrastructure function within that dynamic. I argue that legal provisions explored in this section are premised on a notion of perpetual emergency where—the exception become rule.

In Section E, I show how dissecting the Telecommunications Act, 2023 reveals continuities with colonial ideology embedded within its provisions. I contend that this Act fails to dismantle the colonial architecture of surveillance and control; instead, it expands a framework prioritizing state power over individual rights. In particular, I will explore broad aspects of the law—including provisions related to interception, internet shutdowns, traffic data collection, and powers exercised by Central Government under national security concerns or during wartime—to demonstrate that while underlying technology has evolved over 150 years, its use—as well as legal regulations governing it—as an instrument for hegemony, control, and surveillance has not only remained unaltered but has worsened.

This analysis locates my work at an intersection involving postcolonial studies, critical security studies, and constitutional law. Postcolonial literature provides a lens through which we can unpack British notions of benevolence and rationalism underpinning telegraphy projects while tracing their implications for modern governance structures. The post-colonial lens helps map evolution from the Telegraph Act 1885 to Telecommunications Act 2023 by viewing technology as a tool for control while also examining state-subject dynamics alongside constant power accumulation trends. Critical security studies further provide frameworks tracing genealogies associated with surveillance technologies while highlighting their unequal impacts across historical contexts—past through present into future scenarios—illuminating layers associated with control governance legitimacy alongside enduring legacies shaping contemporary surveillance landscapes today.

B. Telegraph Infrastructure as a Tool of Imperial Control: Early Legal Codification

I. Historical Perspective on Telegraph Development

In colonial accounts, the telegraph is often portrayed as a symbol of British benevolence, providing affordable access to modern technology for an increasing number of people. Thorat explains how the telegraph is framed as the “pre-eminent project of Western modernity,” aligned with the British civilizing mission in India.¹³ However, these portrayals elide the fact that efficient administration and military control were the primary driving factors.¹⁴ In fact, the route of the first Indian telegraph line was completed in 1855, running from Saugor Island via Diamond

¹³Thorat, *supra* note 9, at 252. See also JOHN GOLDSMID, TELEGRAPH AND TRAVEL: A NARRATIVE OF THE FORMATION AND DEVELOPMENT OF TELEGRAPHIC COMMUNICATION BETWEEN ENGLAND AND INDIA, UNDER THE ORDERS OF HER MAJESTY’S GOVERNMENT, WITH INCIDENTAL NOTICES OF THE COUNTRIES TRAVERSED BY THE LINES 352 (Macmillan 1874); W.W. HUNTER, RULERS OF INDIA: THE MARQUESS OF DALHOUSIE 196, 199 (Clarendon Press 1890).

¹⁴Thorat, *supra* note 9, at 256–58; see also DEEP KANTA LAHIRI CHOUHDURY, TELEGRAPHIC IMPERIALISM: CRISIS AND PANIC IN THE INDIAN EMPIRE, c. 1830–1920, at 35–36. (2010).

Harbour to Calcutta and continuing through the key military cantonments in upper and central India until Peshawar.¹⁵ In the Indian context, the “[colonial] government, media, and European-capital-dominated international businesses were the biggest users of the telegraph.”¹⁶ This is further reflected in the statement by Sir William Wilson Hunter, biographer of Dalhousie, who noted that the telegraph had become “the basis not only of our military policy in India but also of the modern mercantile system.”¹⁷ The benevolent account is also undercut by the fact that scientific and working knowledge regarding it was closely guarded. Secrecy “dominated the moral economy of scientific enterprise in British India.”¹⁸ While not the primary focus of this piece, it is important to briefly mention that the establishment of the telegraph would not be possible without native laborers, who were subject to exploitative working conditions, and the work of local skilled workers who developed the specialized parts for the telegraph.¹⁹ These contributions are often absent in colonial histories and even in certain recent scholarship.²⁰

The use of the telegraph as a technology of colonial control became more evident in the context of the 1857 revolts. The telegraph network played a critical role in suppressing the revolts. Sir Robert Montgomery, a British administrator, famously claimed that “[t]he Electric Telegraph has saved India.”²¹ Hunter similarly notes that “the railway and the telegraph were worth thousands of men to us in the Mutiny of 1857, and it is by the railway and the telegraph that India is now strategically held.”²² However, while the telegraph network provided a strategic military advantage, the revolts also exposed the inadequacy of the network. Its reach was limited, and the absence of backup or duplicate lines made the system inherently vulnerable.²³ The rebels were successful in disabling important nodes.²⁴ However, the telegraph system proved its potential as a key tool for British domination despite its limitations. The experiences of 1857–58 greatly catalyzed the telegraphic development within India.²⁵ These lessons also informed the establishment of telegram lines in other colonies. In conclusion, as Thorat notes, the telegraph system in British India, “could not have been realised without colonial resources, native labour, and the impetus of native uprisings.”²⁶

II. Communication Infrastructure of Dominion

The Rebellion of 1857 struck a powerful blow to the supposed indomitability of British power in the country. Several scholars have documented how the rebellion led to the development of anxiety within the colonial state.²⁷ There was a recurrent pattern of colonial anxieties that

¹⁵See ROLAND WENZLHUEMER, *CONNECTING THE NINETEENTH-CENTURY WORLD: THE TELEGRAPH AND GLOBALIZATION* 211–14 (Cambridge Univ. Press 2012). See also CHOUDHURY, *supra* note 14, at 11.

¹⁶Deep Kanta Lahiri Choudhury, *India's First Virtual Community and the Telegraph General Strike of 1908*, 48 INT'L REV. OF SOC. HIST. 45, 54 (2003).

¹⁷W.W. HUNTER, *supra* note 13, at 199.

¹⁸Thorat, *supra* note 9, at 256. See also CHOUDHURY *supra* note 14, at 27–28; DANIEL R. HEADRICK, *THE INVISIBLE WEAPON: TELECOMMUNICATIONS AND INTERNATIONAL POLITICS, 1851–1945*, at 28 (Oxford Univ. Press 1991).

¹⁹See CHOUDHURY, *supra* note 14, at 11, 20–21. See also Thorat, *supra* note 9, at 256–67.

²⁰See generally Mel Gorman, *Sir William O'Shaughnessy and Lord Dalhousie, and the Establishment of the Telegraph System in India*, 12 TECH. & CULTURE 581 (1971).

²¹WENZLHUEMER, *supra* note 15, at 211. See also DEEP KANTA LAHIRI CHOUDHURY, *1857 AND THE COMMUNICATION CRISIS*, in *RETHINKING 1857*, at 262 (Sabyasachi Bhattacharya ed. 2007).

²²W.W. HUNTER, *supra* note 13, at 199.

²³See WENZLHUEMER, *supra* note 15, at 211. See also CHOUDHURY, *1857 supra* note 21, at 214–16; see also CHOUDHURY, *supra* note 14, at 32–37.

²⁴See generally sources cited *supra* note 23.

²⁵See generally sources cited *supra* note 23.

²⁶See Thorat, *supra* note 9, at 256.

²⁷See Ranajit Guha, *Not at Home in Empire*, 23 CRITICAL INQUIRY 482, 484–85 (1997). See also JON E. WILSON, *THE DOMINATION OF STRANGERS: MODERN GOVERNANCE IN EASTERN INDIA, 1780–1835*, at 1–2 (2008); see generally KIM A. WAGNER, *THUGGEE: BANDITRY AND THE BRITISH IN EARLY NINETEENTH-CENTURY INDIA* (Palgrave Macmillan 2007);

manifested in unfounded panics multiple times. Metcalf has noted that there was an “enduring legacy of fear” from the 1857 rebellion.²⁸ Bayly, in his work, has coined the term “information panic” to describe the “information anxieties” of the colonial administration that led to attempts to solidify both informal and formal control.²⁹ This anxiety manifested from actual or often perceived gaps in colonial knowledge and intelligence gathering networks. The 1857 rebellion was an information-gathering failure and perhaps the biggest one. However, the Indian Mutiny of 1857 revealed the existence of “autonomous networks of social communication within Indian society that were impervious to state surveillance. These affective communities of religion, belief, kinship, pilgrimage, literary or linguistic sensibility, and style of political debate resisted the state’s efforts to co-opt them.”³⁰

Therefore, post the rebellion, this informational anxiety catalyzed the rapid expansion of intelligence networks and apparatus for exercising greater oversight and control over communication and the population.³¹ This significant boost contributed to the development of the telegraph and railway infrastructure.³² The spectre of the 1857 rebellion also informed the development of laws governing the telegraph. The legislation aimed to turn the telegraph into an infrastructure of domination. The telegraph, and the railway, were not mere tools of governance, but weapons wielded against the perceived threat of the unknown, the uncolonized mind. They were monuments to the empire’s fear, a testament to the fragility of its dominion.

Technologies like the telegraph were seen as modern and objective, outside the realm of manipulation and separate from the “world of bazaar gossip and rumour” that seemed incomprehensible to the British.³³ These modern technologies were meant to address the information gaps, which existed due to, among other factors, the reliance on natives for information and the deep mistrust of them.³⁴ This mistrust stemmed more broadly from the evolving colonial imagination of “the other” and the limitations in truly understanding Indian society.³⁵ Such technologies allowed the state to generate knowledge, making the Indian population legible by mapping them into categories and using this information for biopolitical control and administration.

III. Evolution of Telegraph Regulations

The first law regulating telegraph was the Electric Telegraphs Act 1854, which was passed by the East India Company. After the transfer of power from the East India Company to the British Government, the Telegraph Act 1860 was introduced. This Act largely retained the provisions of the 1854 Act, but importantly, it gave the government the exclusive privilege of setting up telegraph lines and prohibited the setting up of a telegraph line without a license.³⁶ A prohibitive

David Arnold, *The Poison Panics in British India, in ANXIETIES, FEAR AND PANIC IN COLONIAL SETTINGS* 49 (Fischer-Tiné ed., Cambridge Imperial & Post-Colonial Studies 2017).

²⁸Thomas R. Metcalf, *Ideologies of the Raj, in THE NEW CAMBRIDGE HISTORY OF INDIA* 44, 160, 168 (Cambridge Univ. Press 1998).

²⁹CHRISTOPHER BAYLY, *EMPIRE AND INFORMATION INTELLIGENCE GATHERING AND SOCIAL COMMUNICATION IN INDIA, 1780–1870* at 143, 149, 171–73, 316 (Cambridge Univ. Press 2009). See also BENEDICT ANDERSON, *IMAGINED COMMUNITIES: AN INQUIRY INTO THE ORIGINS OF NATIONS* (Verso 1991).

³⁰Pradip Ninan Thomas, *The Expansion of Politics as Control: Surveillance in India, in THE POLITICS OF DIGITAL INDIA: BETWEEN LOCAL COMPULSIONS AND TRANSNATIONAL PRESSURES* 33, 44 (Vibodh Parthasarathi et al. eds., Oxford Univ. Press 2019).

³¹See WENZLHUEMER, *supra* note 15, at 211–17. See also CHOUDHURY, *supra* note 21, at 214–216; CHOUDHURY, *supra* note 14, at 32–49.

³²See generally sources cited *supra* note 31.

³³CHOUDHURY, *supra* note 14, at 45.

³⁴BAYLY, *supra* note 29, at 142; CHOUDHURY, *supra* note 14, at 137, 153–55.

³⁵*Id.*

³⁶Telegraph Act, 1860, § 2 (India).

monetary penalty was imposed as well for setting unlicensed lines, treating it as a continuing wrong.³⁷ The colonial state viewed the telegraph as a key apparatus for accessing indigenous communication to keep a check on simmering undercurrents.³⁸ Thus, the law provided the British Indian Government with a monopoly over the telegraph. In line with the need to exert greater control over the dissemination of content, the Telegraph Act 1860, Section V, permitted the colonial government to take temporary possession of any electric telegraph in the occurrence of a public emergency.³⁹

As the telegraph network expanded across the sub-continent, its potential for surveillance and suppression grew even more potent. In 1873, the government passed strictures on local governments, allowing them to intercept and examine telegraph messages under Section VII of the Telegraph Act 1860.⁴⁰ The Telegraph Act 1876 provided an explicit provision for the interception of telegraph messages.⁴¹ This was the first provision in the history of India, to the knowledge of this author, that allowed for the interception of communications. This trend then travelled to other contexts as well. Post the Telegraph Act 1876 interception provisions were then included under the Post Office Act, 1898,⁴² and the Sea Customs Act 1878.⁴³ In 1867, the Press and Registration of Books Act was enacted with the explicit intention of introducing procedural hurdles aimed at restraining free speech of the subjects and exercising heightened scrutiny over the published print media.⁴⁴ Each law, a tentacle of control reaching into the arteries of communication—telegraph wires, printed pages—mirrored the colonizer’s fear of the unmapped and ungovernable.

The Telegraph Act 1867, like its 1860 predecessor, empowered the colonial administration to temporarily take over telegraphs. Crucially, it expanded the government’s power by adding “public safety” as an additional, and notably vague, ground for intervention.⁴⁵ In contrast, under the Telegraph Act 1860 Act, and the 1863 British Telegraph Act,⁴⁶ governing the infrastructure in the metropole, such takeovers could only occur during a declared “public emergency.” Moreover, the British Telegraph 1863 Act offered two crucial safeguards *vis-a-vis* takeover: it specified who could authorize the takeover and placed a temporal limit on such authorization, requiring renewal beyond that period.⁴⁷ Yet, these were not present in the 1867 version of the Telegraph Act. The Telegraph Act 1867 was later superseded by the Telegraph Act 1885, but it retained provisions for interception, telecom takeover, and government monopoly.

Telegraph and postal communications played a crucial role in enabling colonial subjects and anti-colonialists overseas to connect and organize resistance during the first half of the 1900s.⁴⁸ These channels facilitated the coordination of protests and the dissemination of information about key developments, including arrests and the brutalities inflicted by British authorities. During this period, the correspondence of key leaders and groups, including their telegrams and postal articles, was placed under strict surveillance.⁴⁹ Those monitored included Mahatma Gandhi, Jawaharlal Nehru, M.N. Roy, P.B. Seal, Subhas Chandra Bose, S.D. Saklatvala, and Virendranath Chattopadhyaya. Several organizations, including the League Against Imperialism, the Hindustan

³⁷Telegraph Act, 1860, §§ 3, 4 (India).

³⁸See CHOUDHURY, *supra* note 14, at 137–38.

³⁹Telegraph Act, 1860, § 5 (India).

⁴⁰*Id.*

⁴¹Telegraph (Money) Act 1876, 39 & 40 Vict., c. 5, § 5 (Eng.).

⁴²The Post Office Act, 1898, § 26 (India).

⁴³Sea Customs Act, 1878, § 19 (India).

⁴⁴See Swapnil Tripathi, *What is the Press and Registration of Books Act, 1867?*, THE BASIC STRUCTURE (Sep. 29, 2020), <https://thebasicstructureonlaw.wordpress.com/2020/09/29/what-is-the-press-and-registration-of-books-act-1867/>.

⁴⁵Atlantic Telegraph Amendment Act, 1867, 30 & 31 Vict., c. 27, § 5 (Eng.).

⁴⁶British Telegraph Act, 1863, § 52.

⁴⁷*Id.*

⁴⁸See P. Arun, *Regressive And Authoritarian: Surveillance Powers in the Telecommunications Act 2023 and Post Office Act 2023*, 9 INDIAN L. REV. 80, 83–85 (2024).

⁴⁹See *id.*

Ghadar Party, Friends of Freedom of India, and the Communist International, were also closely watched. In his writings, Nehru reflected on the challenges posed by constant surveillance, describing the persistent sense of unease and frustration it created.⁵⁰

IV. Antecedents for a State of Emergency

The military and security measures that the United States and the West undertook post-9/11 have ignited a robust scholarly discourse surrounding the notion of emergency in the twenty-first century. Particularly concerning the unsettling notion of a permanent or perpetual state of emergency arising from the so-called “forever war.”⁵¹ Within this discourse, thinkers like Dyzenhaus, among others, tend to view emergency as existing within a “norm-exception” divide.⁵² Conversely, Agamben characterizes the state of exception as “a space devoid of law, a zone of anomie in which all legal determinations are deactivated.”⁵³ Of particular note is the work of Reynolds, which demonstrates an intrinsic link between emergency law and colonialism.⁵⁴ He argues that the origin of emergency law lies in martial law, primarily developed in colonies like Ireland and India.⁵⁵ These draconian measures were then imported into other colonies. The lessons from this colonial context informed the drafting of emergency derogation provisions in the International Covenant on Civil and Political Rights and the European Convention on Human Rights.⁵⁶

Reynolds cites examples of British emergency legislative codes in India, such as the Defence of India Act 1915 and the Anarchical and Revolutionary Crimes Act 1919.⁵⁷ While these represented a more comprehensive form of emergency laws, Roberts, building over Reynolds work, traces the origins of emergency governance powers to the 1857 rebellion. Following the rebellion, a series of laws were passed, including the State Offences Act 1857, the Military and State Offences Act 1857, the Heinous Offences Act 1857, and the State Prisoners Act 1858.⁵⁸ These introduced new crimes against the crown, allowed for detention without trial in security cases, and enabled trials by court-martial.⁵⁹ The consolidation of emergency powers further manifested through legislation aimed at censoring and controlling communication channels.⁶⁰ These laws included the Telegraph Acts, the Press and Registration of Books Act 1867, the Vernacular Press Act 1878, and the Post Office Act 1898.⁶¹ The control over these communication networks, notably the Telegraph, was indispensable for the colonial state’s military, security, and intelligence apparatus.

1. Governing by Exception: The Telegraph’s Place in Colonial Landscape

How the telegraph infrastructure was designed, and deployed, and its legal evolution both highlight its exceptional nature. Exceptional here refers to (1) its relationship with the rule of law,

⁵⁰See *supra* note 48. See also JAWAHARLAL NEHRU, TOWARDS FREEDOM: THE AUTOBIOGRAPHY OF JAWAHARLAL NEHRU 179 (1941); JAWAHARLAL NEHRU, DISCOVERY OF INDIA 416 (1946).

⁵¹JOHN REYNOLDS, EMPIRE, EMERGENCY AND INTERNATIONAL LAW 10–20 (2017).

⁵²*Id.* at 46–47. See also David Dyzenhaus, *The Puzzle of Martial Law*, 59 UNIV. TORONTO L. J. 1, 2 (2009).

⁵³GIORGIO AGAMBEN, STATE OF EXCEPTION 50 (Univ. Chicago Press 2005).

⁵⁴See REYNOLDS, *supra* note 51. See also John Reynolds, *The Long Shadow of Colonialism: The Origins of the Doctrine of Emergency in International Human Rights Law* (2010), COMPAR. RSCH L. & POL. ECON., Research Paper No. 19/2010, https://digitalcommons.osgoode.yorku.ca/clpe?utm_source=digitalcommons.osgoode.yorku.ca%2Fclpe%2F86&utm_medium=PDF&utm_campaign=PDFCoverPages (last visited Nov. 11, 2024).

⁵⁵See REYNOLDS, *supra* note 51, at 69–71. See also Reynolds, *The Long Shadow of Colonialism*, *supra* note 54, at 6–15.

⁵⁶See Reynolds, *The Long Shadow of Colonialism*, *supra* note 54, at 21–29.

⁵⁷See *id.* at 14–15.

⁵⁸See Christopher Roberts, *From the State of Emergency to the Rule of Law: The Evolution of Repressive Legality in the Nineteenth Century British Empire*, 20 CHI. J. INT’L L. 3, 35–36 (2019).

⁵⁹See *id.* at 85–86.

⁶⁰See Roberts, *supra* note 58, at 36–37, 40–41.

⁶¹See *id.*

(2) its role in reinforcing and legitimizing colonial control, and (3) its contrast with the standards in the metropole and relevant comparative practices. The primary objectives of the telegraph network in British India were security, control, and the administration of the state. These objectives influenced the evolution of Telegraph regulation as well. For instance, the Telegraph Act 1860, provided the government with a monopoly over the telecom infrastructure in India. This was a departure from the regulatory paradigms observed in Britain or the United States. This was to guard against the “circulation of false and inaccurate information” and for the “uniformity of management.”⁶² For the British Indian government, the telegraph was a state-owned communication system that would allow the transmission of messages in a rational and controllable manner.⁶³ This confidence in the telegraph marked a shift from their earlier resort to indigenous intelligence networks which could not be trusted as they were perceived to be “irrational, spontaneous, susceptible to rumour, and highly contagious and volatile networks of human communication.”⁶⁴ This necessity for control shaped the evolution of telegram regulation from 1860 to 1880.

The extraordinary nature of Indian telegraph regulation is further underscored by examining the communication interception provision outlined in the Telegraph Act 1876. Such a provision was unprecedented at the time. In fact, in Britain and the US, there was no law permitting the interception of telecommunications for decades after the 1870s. In the US, the Communications Act 1934 prohibited wiretapping and made wiretap evidence inadmissible in court.⁶⁵ It was only with the Omnibus Crime Control Act 1968, following US Supreme Court decisions in *Katz v. United States* (1967)⁶⁶ and *Berger v. New York* (1967),⁶⁷ that interception of telecommunications was permitted for investigative purposes. In Britain, the first explicit statutory power to intercept communications was under Section 4 of the Official Secrets Act 1920, but the scope of the interception power was limited.⁶⁸ The first comprehensive law permitting the interception of telecommunications was the Interception of Communications Act 1985.⁶⁹ Further, even jurists at the time believed that the surveillance provisions were exceptional in nature. Shri P. Ananda Charlu, highlighting the arbitrariness of these provisions, pointed out the lack of safeguards, such as notifying individuals if no charges were pressed after their communication was intercepted.⁷⁰ He concluded that the provisions heavily favored the government at the expense of the public. Similarly, Shri Bisambar Nath expressed his concerns about the vagueness of the provisions.⁷¹ Both were members of the Select Committee reviewing the Post Office Bill Section 26(1), which was modelled after Section 5 of the Telegraph Act 1885.⁷²

The colonial state’s deep anxieties about losing grip over information flows shaped the development of telegraph infrastructure and its legal framework. Far from neutral tools of modernization, the telegraph and associated regulations emerged as essential instruments for asserting control and disciplinary power over the population. This historical analysis was key to providing important context for understanding the long-standing entanglement between technology, knowledge, and colonial power structures.

⁶²WENZLHUEMER, *supra* note 15, at 213–14.

⁶³See CHARLES C. ADLEY, *THE STORY OF THE TELEGRAPH IN INDIA* 34–35 (E. & F. N. Spon 1866).

⁶⁴CHOUDHURY, *supra* note 14, at 137.

⁶⁵See Communications Act of 1934, 47 U.S.C. § 151. See also *Olmstead v. United States*, 277 U.S. 438 (1928).

⁶⁶See *Katz v. United States*, 389 U.S. 347 (1967).

⁶⁷See *Berger v. New York*, 388 U.S. 41 (1967).

⁶⁸See Paul F. Scott, *The First Interception Provision: Section 4 of the Official Secrets Act 1920*, 43 J. LEGAL HIST. 352 (2022).

⁶⁹Interception of Communications Act 1985, c. 56 (UK).

⁷⁰The Indian Post Office Act, 1898, § 6.

⁷¹See *id.*

⁷²See *id.*

C. Knowledge, Power and Colonial Continuities

Postcolonial theory was initially developed in the discourse among literary and cultural critics to analyze the diverse social, political, and cultural engagements of colonized people with imperial power, along with the broader effects of colonization.⁷³ Over time, it has expanded beyond these fields and is now widely applied in historical, political, sociological, legal, and economic disciplines to examine the enduring influence of European colonialism and its legacy.⁷⁴

Postcolonialism emphasizes that genuine decolonization extends beyond merely ending colonial rule; it requires a deep re-evaluation of the structures, hierarchies, and power dynamics that characterized colonial systems.⁷⁵ This endeavor calls for a critical assessment of the enduring influence of colonialism on the political, economic, and governance frameworks of formerly colonized nations. Similarly, Eve Darian-Smith has noted that “[r]ather, postcolonial legal scholarship underscores that even when colonialism has officially ceased to exist, the injustices of material practices endure over time and in many ways frame emergent legalities and legal consciousness.”⁷⁶ In this way, postcolonial theory serves as an intellectual bridge, linking historical colonial injustices to contemporary global inequalities in economic, political, and social power.

Postcolonial studies is an interdisciplinary field that encompasses a wide range of perspectives. This diversity stems in part from the fact that colonial and imperial histories were not uniform; significant regional variations exist in subject formation, systems of governance, mechanisms of control, and forms of resistance.⁷⁷ To avoid essentialism and mischaracterization, it is essential to maintain contextual specificity when employing a postcolonial framework.

I. Pillars of Colonial Echoes in Wires and Waves

The central claim of this article is that of colonial continuity, viewed through the lens of postcolonialism. To substantiate this claim, it is essential to establish a clear linkage between the colonial and post-colonial periods. This is evident from the fact that the provisions of the Telegraph Act, 1885 remain largely embedded in the Indian legal system (see Sections D and E). However, my argument for colonial continuity goes deeper than merely the retention of a pre-colonial law. I argue that the colonial dispositions and the features underlying the telegraph, and its regulations have persisted, despite the evolution of communicative technologies and relevant legal transformations over the century. Key characteristics of this colonial continuity are: (i) the use of technology as instruments for control, censorship, and discipline; (ii) the dynamic between the state and its people, where individuals are viewed as subjects; and (iii) a relentless drive to amass as much knowledge and intelligence about a subject as possible to categorize, target, and surveil them. These elements, though transformed by time and technological advancement, remain fundamentally rooted in colonial approaches to governance and control.

Under the first and third limbs, as demonstrated in Section B.II, the telegram infrastructure and its regulations were used primarily as tools for control, discipline, and governance of the population. As I shall showcase in Sections D and E, post-independence, Telegraph Act 1885 was not substantively reformed. Instead, its coercive elements were expanded through the Telecommunications Act and other regulations influenced by it. This evolution underscores how the government has consistently sought to enhance its legal authority to collect information and strengthen its mechanisms for controlling and censoring citizens.

⁷³See BILL ASHCROFT, GARETH GRIFFITHS, & HELEN TIFFIN, *POSTCOLONIAL STUDIES: THE KEY CONCEPTS* 204–05 (3rd ed. 2013).

⁷⁴See Robert J. C. Young, *What is the Postcolonial?*, 40 *ARIEL* 13, 13–14 (2009).

⁷⁵See *id.* at 13–17. See also ASHCROFT ET AL., *supra* note 73, at 204–06; PETER CHILDS & R. J. PATRICK WILLIAMS, *AN INTRODUCTION TO POST-COLONIAL THEORY* 1–9 (1997).

⁷⁶Eve Darian-Smith, *Postcolonial Theories of Law*, in *LAW AND SOCIAL THEORY* 247, 249 (Reza Banakar & Max Travers eds., 2d. ed. 2013).

⁷⁷See ASHCROFT ET AL., *supra* note 73, at 204–05.

2. State-Subject Relationship

Moving on to the second aspect concerning the individual as a subject, this Article examines how India's independence transformed the nation from a colony into a democracy, ostensibly shifting the "people" from subjects to citizens with rights. Yet, the regulations discussed in Sections D and E perpetuate a framework that views individuals primarily as subjects from whom data is extracted, monitored, and used as tools for control and governance. These laws, instead of fostering a two-way flow of information grounded in transparency, accountability, and respect for human rights, remain fundamentally unchanged in their approach. This reinforces a hierarchical relationship where citizens are reduced to sources of information to be monitored and subjugated, perpetuating colonial patterns of power and control. Ashcroft and others have discussed how surveillance and observation were among the most powerful strategies of imperial dominance. Connecting this to Lacan's work, the on gaze of the "grande-autre" (big other), they observe "within which the identification, objectification and subjection of the *subject* are simultaneously enacted: the imperial gaze defines the identity of the subject, objectifies it within the identifying system of power relations and confirms its subalterneity and powerlessness." Thomas's analysis is particularly illuminating here—he demonstrates how surveillance in India, both historically and in the present day, "is about maintaining order in society and curbing disorder brought about by a variety of badmaashe"—with the figure of the terrorist now replacing colonial-era threats.⁷⁸ The parallels between colonial and contemporary surveillance practices are striking just as the British colonial administration sought to decode India's vast unknowns through systematic information gathering, modern surveillance mechanisms aim to map and monitor online patterns of speech and communication among suspect populations.⁷⁹

There was a hierarchy between the colonial and the natives, and surveillance was essential to maintain the hierarchy. Similarly, current hierarchies—shaped by colonial legacies—continue to influence how state coercive power is exercised today. For instance, lists of "criminals" or "bad characters" created by colonial authorities still affect contemporary preventive policing strategies.⁸⁰ Through a broader lens of surveillance studies and biopolitical control, we can observe how both state and private sector governance operate within these entrenched hierarchical frameworks.⁸¹ The manifestation of surveillance-based exclusion occurs at both micro and macro levels.

Among these three factors, the second—linking control and relentless accumulation to the individual—is the most critical for an inquiry into colonial continuity, as it underscores the persistence of the hierarchical relationship between the state and its people. One more caveat is in order: the three characteristics I identified may also apply to other colonial contexts, such as the evolution of undersea cables⁸² and biometric data collection.⁸³ Similarly, Still notes, "colonial practices of counting, categorization, and surveillance have long been identified and analyzed by postcolonial and feminist scholars, who have untangled the layers of disciplining and control these

⁷⁸Metcalf, *supra* note 28, at 44–46.

⁷⁹Metcalf, *supra* note 28, at 44–46. See also Tommaso Grossi & Lucilla Lepratti, *Data Colonialism: The Census, The Map, and The Software*, 8 FROM THE EUR. SOUTH 47, 51–54 (2021); Enid Still, *Untangling Agricultural Ethics: Women's Collective Agriculture in India as Alterbiopolitics*, 160/161 ASIAN 17, 31–32 (2021).

⁸⁰Nikita Sonavane, *Casteist Carcerality: Everyday Policing of 'Habitual Offenders' in India* 14 (Lecture, Seventh Annual History for Peace Conference, *The Idea of Justice*, Tollygunge Club, Calcutta, 2023), <https://www.historyforpeace.pw/post/ca-steinist-carcerality-everyday-policing-of-habitual-offenders-in-india-nikita-sonavane>.

⁸¹See Thomas, *supra* note 30.

⁸²See generally KEITH BRECKENRIDGE, *BIOMETRIC STATE: THE GLOBAL POLITICS OF IDENTIFICATION AND SURVEILLANCE IN SOUTH AFRICA, 1850 TO THE PRESENT* (2014). See also Timothy Longman, *Identity Cards, Ethnic Self-Perception, and Genocide in Rwanda*, in DOCUMENTING INDIVIDUAL IDENTITY: THE DEVELOPMENT OF STATE PRACTICES IN THE MODERN WORLD 345 (Jane Caplan and John Torpey eds., Princeton Univ. Press 2001); SIMON A COLE, *SUSPECT IDENTITIES: A HISTORY OF FINGERPRINTING AND CRIMINAL IDENTIFICATION* (2001).

⁸³STEFANIE FELSBERGER, *COLONIAL CABLES—THE POLITICS OF SURVEILLANCE IN THE MIDDLE EAST AND NORTH AFRICA* 4–7 (2020) <https://www.aies.at/download/2020/AIES-Studies-Colonial-Cables.pdf>.

processes enabled.”⁸⁴ In fact, as Ogasawara explains, “nation building and colonialism are intertwined in the development of surveillance systems.”⁸⁵ Thus, the outlined factors may have broader applications, potentially extending to non-postcolonial authoritarian or repressive contexts. However, I do not develop that comprehensive account in this Article. My analysis here remains limited to the historical development of the telegraph network and its regulation during the colonial period, and of colonial continuity post-independence.

II. Anticipating Critiques of the Decolonial Frame

Considering this Article is grounded in a postcolonial lens, it is essential to address any objections regarding the use of colonial and decolonial framing to critique a law before proceeding to the next section. Here, I engage with Burra’s work on colonial framing as a basis for legal critical analysis, who, has developed his critique over more than a decade.⁸⁶ He argues that the label of colonial law carries no normative weight beyond the fact that it was enacted during the colonial period.⁸⁷ According to him, a colonial law could be just or unjust, progressive or regressive, based on its content rather than its historical context. Therefore, he claims that: “the language of decolonisation is unhelpful and misleading as a shorthand for the criticism of specific laws; and that such criticism should always be made in purely normative terms”⁸⁸

To address this concern, the claim in this Article is not solely based on colonial legal continuity but rather on the continuity of British practices regarding information and communication technologies for surveillance, censorship, control, and administration of the populace. Even Burra acknowledges that “there are many ways in which the terms ‘colonial’ and ‘decolonial’ may be applied and understood, and some of these are no doubt genuinely illuminating.”⁸⁹ Further, I partially agree with him that merely highlighting colonial framing is insufficient for critiquing a law; at times, the labels of decolonial, colonial, or anti-colonial could serve as shorthand for evaluating the merits of a law. Therefore, it is critical to define and clarify what is meant by colonial continuity in both theoretical frameworks and factual context, and to examine how this continuity is problematic in terms of the merits of the law. In this article, I rely on the post-colonial lens, tracing the Telegram Act 1885 evolution in both the colonial and post-colonial contexts, and then offer a critique of it based on the Indian legal system.

Where I disagree with Burra is his insistence on not discussing the historical origins of laws while focusing on their merits independently. However, historical excavation can help illuminate the telos of a regulation and how it was used during the colonial period, which can be particularly relevant when examining its legality and constitutionality. There should be serious questioning of laws in a post-colonial context, particularly those originally designed to sustain colonial rule and its underlying logic. This is crucial as India transitioned from a colony—established primarily for the political and economic benefit of the metropole—to an independent constitutional democracy. As Baxi notes “the Indian constitution marks a historic break with ‘modern’ constitutionalism.” He further remarks “[n]o previous constitutional model envisaged such an

⁸⁴Still, *supra* note 79, at 31–32.

⁸⁵Midori Ogasawara, *Mainstreaming Colonial Experiences in Surveillance Studies*, 17 SURVEILLANCE & SOC’Y 726, 726–27 (2019).

⁸⁶See Arudra Burra, ‘Decolonising’ the Law: The Wrong Answer to the Wrong Question, SOCIO-LEGAL REV. FORUM (Sep. 16, 2024), <https://forum.nls.ac.in/slr-forum-blog/decolonising-the-law-the-wrong-answer-to-the-wrong-question/>. See also Arudra Barra, *What is “Colonial” About Colonial Laws?*, 31 AM. U. INT’L L. REV. 137 (2016); ARUDRA BURRA, THE COBWEBS OF IMPERIAL RULE (Nov. 2010), <https://web.iitd.ac.in/~burra/research/burra10cobwebs-of-imperial-rule-seminar-final.pdf>.

⁸⁷See sources cited *supra* note 86.

⁸⁸Burra, ‘Decolonising’ the Law, *supra* note 86.

⁸⁹*Id.*

explicit and comprehensive transformation . . . and installed a description of a constitutionally desired social order and good life . . .”⁹⁰

In this regard, the debate surrounding the continuation of colonial laws during the First Amendment to the Constitution is particularly relevant, as even Burra examines.⁹¹ Critics of the amendment contended that it perpetuated colonial legacies; Acharya Kripalani noted, “[t]he whole of our satyagraha movement was to break the law, to break such provisions of the law that created offences. Today, if you pass this amendment, even satyagraha can come to be legislated against.”⁹² Conversely, proponents like Shyama Prasad Mookerjee argued, “[t]hese are a set of men selected by the Government. They are not foreigners coming from outside.”⁹³ Burra uses this debate to support his opposition to labelling laws as colonial, arguing that such labels can be malleable on both sides.⁹⁴ However, I believe that these arguments are not equally legitimate. I would critique Mookerjee’s assertion by noting that merely retaining colonial laws post-Independence—laws used by the colonial state for repressive purposes—raises serious concerns. The fact that the government is now independent does not resolve this issue. For instance, sedition laws were crafted to maintain colonial hegemony by criminalizing dissent against the colonial government. The Punjab High Court in *Tara Singh Gopi Chand v. State* 1950 noted that “India is now a sovereign democratic State. Governments may go and be caused to go without impairing the foundations of the State. A law of sedition thought necessary during a period of foreign rule has become *inappropriate* by the very nature of the change which has come about.”⁹⁵

Further, as Khaitan has demonstrated, a proper interpretation of *State of West Bengal v. Anwar Ali Sarkar* 1952 would lead to the conclusion that pre-constitutional laws do not deserve the presumption of constitutionality.⁹⁶ In his partially concurring opinion, Justice Bose emphasised the importance of considering the historical context of pre-constitutional laws as well as the ethos that shaped the values of the Constitution when adjudicating constitutional cases.⁹⁷ While I agree with Burra that not all colonial laws are inherently flawed, I maintain that certain laws’ colonial origins—especially those designed for control and repression—demand reevaluation. To clarify, a colonial antecedent is not, by itself, grounds for declaring a law unconstitutional, but its repressive legacy should inform a rights-based adjudication.

D. Enduring Legacy: How the Telegraph Act 1885 Shapes India’s Post-Colonial Surveillance and Censorship Framework

In Section B, I explored the evolution of both telegraph infrastructure and regulations. I explained how the 1857 rebellion and the subsequent colonial anxiety about an ever-present threat informed the development of the telecom network and its associated legislation. The series of legislations

⁹⁰Upendra Baxi, *The (Im)possibility of Constitutional Justice: Seismographic Notes on Indian Constitutionalism* 55, in *INDIA’S LIVING CONSTITUTION: IDEAS, PRACTICES, CONTROVERSIES* 31 n.61 (Zoya Hasan, Eswaran Sridharan & R. Sudarshan eds., Orient Blackswan 2004).

⁹¹See BURRA, *THE COBWEBS OF IMPERIAL RULE*, *supra* note 86, at 81–82.

⁹²*Parliamentary Debates*, pt. 2, vol. XII, May 30, 1951, col. 9722.

⁹³*Parliamentary Debates*, pt. 2, vol. XII, May 16, 1951, col. 8855.

⁹⁴See BURRA, *THE COBWEBS OF IMPERIAL RULE*, *supra* note 86, at 83.

⁹⁵*Tara Singh Gopi Chand v. State*, AIR 1951 Punjab 27 (1950) para. 13 (India).

⁹⁶See Tarunabh Khaitan, *On the Presumption of Constitutionality for Pre-Constitutional Laws*, CONST. L. & PHIL. (July 11, 2018), <https://indconlawphil.wordpress.com/2018/07/11/guest-post-on-the-presumption-of-constitutionality-for-pre-constitutional-laws/>. See also Tarunabh Khaitan, *Rewriting State of West Bengal v. Anwar Ali Sarkar: The Possibility of an Anti-Colonial Jurisprudence*, 56 L. & POL. AFR., ASIA, & LATIN AM. 17 (2023); Rohit De, *The Possibilities of Anti-Colonial Constitutionalism – Commentary on State of West Bengal v. Anwar Ali Sarkar and others*, AIR 1952 SC 75, 56 L. & POL. AFR., ASIA, & LATIN AM. 33 (2023).

⁹⁷See Tarunabh Khaitan, *On the Presumption of Constitutionality for Pre-Constitutional Laws*, CONST. L. & PHIL. (July 11, 2018), <https://indconlawphil.wordpress.com/2018/07/11/guest-post-on-the-presumption-of-constitutionality-for-pre-constitutional-laws/>.

that led to the Telegraph Act 1885 were part of an emergency governance apparatus, serving as quintessential tools for British control, and governance of the populace.

The objective of this section is to trace the journey of the Telegraph Act 1885 post-independence, before the introduction of the Telecommunications Act 2023. I seek to explore how the law has evolved and its broader legacy vis-à-vis the Indian regulatory landscape. I postulate that despite the reforms to the framework, post-independence, the Telegraph Act 1885 colonial legacy has not only been normalized but rather the zone for executive discretion has only grown more expansive with time. The claim of colonial continuity is based on the Act perpetuating an asymmetrical power relationship, and the discretionary power that enables a state hegemony, which is the norm rather than the exception.

The discourse regarding the Telegraph Act 1885 has sporadically occurred over the decades. Between 1947–1965, there was limited development in terms of media reporting, academic attention, legislative scrutiny, or judicial review, except for the Press Laws Enquiry Committee in 1947, which I shall return to shortly. However, it is important to examine at a high level the issue of continuity of colonial law. There was significant continuity between the colony and the post-colony, both in terms of constitutional provisions and the laws that helped sustain the repressive rule of the colonial power, such as Section 124-A of the Indian Penal Code of 1860 (sedition) and the Press (Emergency Powers) Act 1931.⁹⁸ The Constitution of India, Article 372(1), makes all colonial-era laws constitutional with the Constitution as part of the law of the land.⁹⁹ While, Article 13 voids laws in conflict with Part III of the Constitution the fundamental rights.¹⁰⁰ Further, a key debate arose regarding the continuation of colonial law in the context of the First Amendment. While I do not have the space to discuss it at length, the government's stance was based on the belief that independence and the establishment of a democratic government were sufficient to break from the colonial past. This perspective did not necessitate dismantling or meaningfully reforming the repressive colonial apparatus, which includes the Telegraph Act 1885 to ensure rupture for the colonial past.

I. Background

Now returning to the evolution of the Telegraph Act 1885. The Press Laws Enquiry Committee in 1947, examined Section 5(2) of the Act and Section 26 of the Post Office Act 1898, both of which have similar scopes and criteria for invocation. The Committee recommended that actions and orders of subordinate officers be reported to and reviewed by responsible ministers of the government.¹⁰¹

The Post Office Act 1898 underwent a comprehensive review by the Law Commission of India (LCI) in 1968.¹⁰² The LCI examined Section 26 of the Act and opined that the interception of communication constituted a restriction on the right to free speech and expression.¹⁰³ It noted that the term “public emergency” was vague and asserted that if the emergency did not threaten public order or state security, it would exceed acceptable limits on free speech.¹⁰⁴ The Commission recommended that the imposition provision should only be utilised when necessary for a public emergency and based on grounds outlined in Article 19(2).¹⁰⁵ Following the LCI's recommendations regarding

⁹⁸See Ogasawara, *supra* note 85.

⁹⁹India Const. art. 372, cl. 1.

¹⁰⁰India Const. art. 13.

¹⁰¹See VIRENDRA KUMAR, PRESS LAWS ENQUIRY COMMITTEE 1947, COMMITTEES AND COMMISSIONS IN INDIA VOLUME 1: 1947–54, at 12 (1976).

¹⁰²Ministry of Law, Law Commission of India (1968), Indian Post Office Act, 1898 (38th Report, Chairman Mr. K.V.K. Sundaram) at paras. 82–95, <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022080577-3.pdf>.

¹⁰³*Id.* at para. 83

¹⁰⁴*Id.* at para. 83

¹⁰⁵*Id.* at para. 93.

Section 26, Section 5(2) of the Telegraph Act was amended in 1972, as both provisions had similar a scope. The amendment to Section 5(2) incorporated the grounds of Article 19(2) and introduced additional criteria, requiring that actions be “necessary or expedient” for these grounds.¹⁰⁶ This change contradicted the LCI’s recommendation, which advised that the power should only be invoked when “necessary,” by introducing the ambiguous term “expedient.”¹⁰⁷

Despite amendments aimed at constitutional compliance, the provision remains inconsistent with the rule of law in a more robust sense and offers the state wide-ranging discretionary powers. This is also reflected in debates regarding the amendment in the parliament in 1972, and how the provision has been abused since.¹⁰⁸ Parliamentary discussion centred on how the provision was vague and could be considered “excessive” when a proclamation of emergency was not in effect.¹⁰⁹ Some members expressed concern that the central government, which controlled the Telecom Department, might use this power to target opposition governments at the state level.¹¹⁰ This centralization of authority could hinder the dissemination of information from states to other parts of the country. Lal Krishna Advani, a leader of the Bharatiya Jana Sangh, criticized the amendment for its colonial origins. He stated:

I see no reason why . . . after India became independent, an Act of this nature, which had been brought forward by the British Government in the year 1885 merely to strengthen and reinforce their own Government and to protect themselves against criticism . . . should not have been repealed altogether.¹¹¹

In response, H.N. Bahuguna, the Communications Minister, asserted that there had been no reported cases of misuse, making it unlikely that such misuse would occur in the future.¹¹² However, as Mohanty pointed out, “even if it were found to be true that no misuse of Section 5(2) had occurred until 1972, this fact would not preclude the possibility of future misuse in the absence of adequate safeguards.”¹¹³ Subsequent events would later contradict Bahuguna’s confident assertion.

Before segueing into the next subsection, it is worth mentioning former President Zail Singh’s pocket veto of the Indian Post Office (Amendment) Bill, 1986. The bill granted sweeping powers to intercept postal communications without meaningful safeguards. The pocket veto was exercised out of the belief that it “undermined the Constitution’s fundamental freedoms.”¹¹⁴

II. Surveillance

Subramanian has tracked how the powers under Section 5(2) were widely used during the Emergency of 1975–1980.¹¹⁵ Not only were opposition members and journalists targeted, but members of Indira Gandhi’s own party were also affected.¹¹⁶ In 1981, India Today reported how

¹⁰⁶*Id.*

¹⁰⁷*Id.*

¹⁰⁸See Bedavyasa Mohanty, *Inside the Machine: Constitutionality of India’s Surveillance Apparatus*, 12 INDIAN J. L. & TECH. 208, 217 (2016).

¹⁰⁹*Parliamentary Debates*, XV Lok Sabha 218, 219 (Aug. 9, 1972). See also *Parliamentary Debates*, XV Lok Sabha 268 (July 31, 1972).

¹¹⁰*Parliamentary Debates*, XV Lok Sabha 219 (Aug. 9, 1972).

¹¹¹The Indian Telegraph (Amendment) Bill 1970, 162 (Rajya Sabha Debates, Aug. 25, 1972).

¹¹²*Parliamentary Debates*, XV Lok Sabha 228 (Aug. 9, 1972). See *Parliamentary Debates*, XV Lok Sabha 266 (July 31, 1972).

¹¹³Mohanty, *supra* note 108, at 217–18.

¹¹⁴Swapnil Tripathi, *When a President Exercised ‘Pocket Veto’ over the Post Office Bill* (Dec. 23, 2023), <https://thebasicstructureonlaw.wordpress.com/2023/12/23/when-a-president-exercised-pocket-veto-over-the-post-office-bill/>.

¹¹⁵See Ramesh Subramanian, *ICTs for Surveillance and Suppression: The Case of the Indian Emergency 1975-1977*, 30 J. INT’L TECH. & INFO. MGMT. 60, 61 (2021).

¹¹⁶See *id.* at 74.

the Delhi Police used interception powers to target 264 individuals, including six journalists, 30 advocates, 16 trade union and student leaders, three retired bureaucrats, 40 businessmen, over 100 leaders of various political parties (particularly BJP members), and 55 alleged criminals detained under the infamous Maintenance of Internal Security Act during the Emergency.¹¹⁷ In 1988, the Karnataka Chief Minister Ramakrishna Hegde resigned after a phone tapping scandal.¹¹⁸ Similarly, in the 1990s, Chandra Shekhar—who would soon become the eighth Prime Minister of India—publicly accused the V.P. Singh-led government of illegally tapping the phones of 27 politicians, including his own.¹¹⁹ These controversies surrounding the surveillance of politicians led to failed legislative amendment efforts in 1988 and 1996 through private member bills.¹²⁰ The Chandra Shekhar controversy, in particular, resulted in a case filed in the Supreme Court of India by the People’s Union for Civil Liberties (PUCL).

In the case of *PUCL v. Union of India* (1997), the petitioners challenged the constitutionality of Section 5(2) and, alternatively, asked the Court to lay down safeguards.¹²¹ The Supreme Court held that the provision was constitutional, but it did incorporate safeguards regarding the authorization of interception. However, the Court failed to meaningfully explain the constitutionality of the provision and its safeguards, rather its approach can be categorized as procedural fetishism. The safeguards were “paper thin” even by the 1990s standards, and now even more so considering contemporary standards in the age of the internet.¹²² The primary problem with these safeguards is that they entail executive authorization and ex-ante executive review. This procedure does not envisage judicial or any independent oversight at any point. This model has faced criticism as early as 1985, A.G. Noorani pointed out the shortcomings of Section 5(2) for its lack of independent oversight at any level, especially when compared to practices in Europe, including the United Kingdom.¹²³ Austin notes that a surveillance framework can be lawful in a narrow sense but can conflict with a more robust interpretation of the rule of law

¹¹⁷See Prabhu Chawla, *Delhi Police Intercept, Read and Re-Post Mails of 264 Persons*, INDIA TODAY (Aug. 31, 1981), <https://www.indiatoday.in/magazine/investigation/story/19810831-delhi-police-intercept-read-and-re-post-mails-of-264-persons-773194-2013-11-14>.

¹¹⁸See Shekhar Gupta & Prabhu Chawla, *Trapped in Wire-Tapping Scandal, Karnataka CM Ramakrishna Hegde Resigns*, INDIA TODAY (Aug. 31, 1988), <https://www.indiatoday.in/magazine/indiascope/story/19880831-trapped-in-wire-tapping-scandal-karnataka-cm-ramakrishna-hegde-resigns-797630-1988-08-30>.

¹¹⁹See Prabhu Chawla, *Secret Report by CBI Contains Shocking Details of Phone Tapping Ordered by Congress*, INDIA TODAY (Feb. 28 1991), <https://www.indiatoday.in/magazine/special-report/story/19910228-secret-report-by-cbi-contains-shocking-details-of-phone-tapping-ordered-by-congressi-govts-814118-1991-02-27>.

¹²⁰See P. Arun, *A Mosaic of Dovetailing Laws: India’s Communications Surveillance Regime*, 7 INDIAN L. REV. 363, 366, n.17 (2023) (“The bills were introduced by Bhai Mahavir and V. Gopalsamy in 1981 and 1985 respectively.”).

¹²¹People Union of Civil Liberties v. Union of India, AIR 1997 SC 568 (India).

¹²²See Arun, *supra* note 120. See also Chinmayi Arun, *Thin Safeguards and Mass Surveillance in India* *Thin Safeguards and Mass Surveillance in India*, 26 NAT. L. SCH. INDIA REV. 105 (2014); Rishab Bailey, Vrinda Bhandari, Smriti Parsheera & Faiza Rahman, *Use of Personal Data by Intelligence and Law Enforcement Agencies*, NIPFP (Aug. 2018), <https://macrofinance.nipfp.org.in/releases/BBPR2018-Use-of-personal-data.html>; Addison Litton, *The State of Surveillance in India: The Central Monitoring System’s Chilling Effect on Self-Expression System’s Chilling Effect on Self-Expression*, 14 WASH. U. GLOB. STUD. L. REV. 799, 801–02 (2015); Maria Xynou, *Policy Recommendations for Surveillance Law in India and an Analysis of Legal Provisions on Surveillance in India and the Necessary & Proportionate Principles*, THE CTR. FOR INTERNET & SOC’Y, <https://cis-india.org/internet-governance/blog/policy-recommendations-for-surveillance-law-in-india-and-analysis-of-legal-provisions-on-surveillance-in-india-and-the-necessary-and-proportionate-principles.pdf/view> (last visited Oct. 29, 2023).

¹²³See A.G. Noorani, *Legislation on Phone-Tapping*, ECON. & POL. WKLY. (May 11, 1985), <https://www.epw.in/journal/1985/19/civil-liberties-columns/legislation-phone-tapping.html>. See also A.G. Noorani, *Judicial Safeguards against Snooping*, ECON. & POL. WKLY. (July 25, 1987), <https://www.epw.in/journal/1987/30/civil-liberties-columns/judicial-safeguards-against-snooping.html>; A.G. Noorani, *Telephone Tapping and Postal Interception*, ECON. & POL. WKLY. (July 30, 1988), <https://www.epw.in/journal/1988/31/civil-liberties-columns/telephone-tapping-and-postal-interception.html>; A.G. Noorani, *Telephone Tapping*, ECON. & POL. WKLY. (May 26, 1990), <https://www.epw.in/journal/1990/21/civil-liberties-columns/telephone-tapping.html>.

(“lawful illegality”).¹²⁴ This framing is well-suited to describe the characteristics of state surveillance under the Telegraph Act 1885.

The ex-ante executive review has become the standard for key interception provisions in the country.¹²⁵ This approach is codified in the interception provisions under the Prevention of Terrorism Act 2002, the Maharashtra Control of Organised Crime Act 1999, and the Information Technology Act 2000 (IT Act). Under the Unlawful Activities (Prevention) Act 1967 and the Gujarat Control of Terrorism and Organized Crime Act 2015, law enforcement relies on the Telegraph Act or the IT Act for authorization, thereby subjecting these actions to ex-ante executive review.¹²⁶ Evidence collected through the interception of communication under both laws is admissible, notwithstanding any provisions in the Indian Evidence Act 1872.¹²⁷ A provision originally designed to serve the colonial state’s national security interests now governs state surveillance in everyday law enforcement and public order contexts within the post-colonial state.

A variety of domestic acts of terrorism, including the storming of Parliament in 2001 and the Mumbai terrorist attacks in 2008 have had a significant affect on the surveillance architecture in the country.¹²⁸ The 2008 attacks were particularly characterized as an intelligence failure, reminiscent of the 1857 revolt, leading to a bolstering of both bureaucratic and technical capabilities of the surveillance apparatus. This led to the creation of various initiatives such as the National Intelligence Grid, the Centralized Monitoring System (CMS), the Crime and Criminal Tracking Network and Systems, and the most recent National Automated Facial Recognition System, all of which constitute part of India’s mass surveillance framework.¹²⁹ The government has sought to justify the legality of some of these initiatives based on provisions of the IT Act and the Telegraph Act 1885. For instance, regarding the CMS, there has been an attempt to normalize the state’s mass digital surveillance by suggesting that it is merely the “automation” of existing systems of interception and monitoring under Section 5(2) of the Telegraph Act 1885.¹³⁰

III. Internet Shutdown

Section 5(1) of the Telegram Act empowers the government to shut down the internet.¹³¹ Since January 2012, India has experienced over 836 government-imposed internet shutdowns, making it the highest in the world.¹³² Particularly since 2016, India has consistently imposed more internet shutdowns than any other country.¹³³ In the first six months of 2023 alone, there were more

¹²⁴Lisa M. Austin, *Lawful Illegality: What Snowden Has Taught Us About the Legal Infrastructure of the Surveillance State*, SSRN DATABASE, <https://ssrn.com/abstract=2524653>.

¹²⁵See Arun, *supra* note 120, at 363–70.

¹²⁶See *id.* at 365–70.

¹²⁷See Arun, *supra* note 120.

¹²⁸See Anushka Jain & Vrinda Bhandari, *The Development of Surveillance Technology in India Beyond judicial review or oversight*, VERFASSUNGSBLOG (Apr. 7, 2022), <https://verfassungsblog.de/os6-india/>. See Thomas, *supra* note 30, at 34, 46–49.

¹²⁹See sources cited *supra* note 128. SFLC.IN, *Legal Challenge By CPIL And SFLC.IN To Surveillance Projects CMS, NATGRID And NETRA* (Mar. 24, 2022), <https://sflc.in/legal-challenge-cpil-and-sflc-in-surveillance-projects-cms-natgrid-and-netra/>. See also Rudraksh Lakra & Abhijeet Shrivastava, *Confronting the Metadata Dilemma in India: A Turn to Context and Proportionality*, 32 INT’L J. OF L. & INFO. TECH. 1, 22–23 (2024).

¹³⁰Lakra & Shrivastava, *supra* note 129, at 29–31. See also Ministry of Communication & IT Department of Telecommunications Central Monitoring System Project Communications, https://sflc.in/wp-content/uploads/2014/09/RTIreply_DOT_CMS.pdf (last visited Oct. 27 2023) (India); Maria Xynou, *India’s Central Monitoring System (CMS): Something to Worry About?*, CTR. FOR INTERNET & SOC’Y (Jan. 30, 2014), <https://cis-india.org/internet-governance/blog/india-central-monitoring-system-something-to-worry-about>.

¹³¹Indian Telegraph Act 1885, § 5(1).

¹³²See SFLC.IN, *Internet Shutdown Tracker*, <https://internetshutdowns.in/> (last visited Nov. 11, 2024).

¹³³See Ananya Bhattacharya, *India Shuts Down the Internet Far More than Any Other Country*, REST OF WORLD (Sep. 17, 2024), <https://restofworld.org/2024/india-internet-shutdown-record/>.

shutdowns than in all of 2022.¹³⁴ The reasons for these shutdowns range from speculative national security concerns to administrative issues, such as preventing cheating during exams.¹³⁵ Various studies have underscored the significant impact of internet shutdowns on human rights, the digital divide, economic growth, and businesses in India.¹³⁶

Two notable cases illustrate this impact. Following the revocation of Kashmir's special constitutional status, the government imposed an 18-month ban on 4G internet access—an act described as digital apartheid and collective punishment. The Jammu Kashmir Coalition of Civil Society reported that:

[D]igital sieges are a technique of political repression in Kashmir and a severe impediment to the enjoyment of internationally and constitutionally guaranteed civil, political, and socio-economic rights. They curtail the circulation of news and information, restrict social and emergency communications, and silence and criminalise all forms of political interactions and mobilizations as “militancy-related,” “terrorist activity,” and threats to ‘national security.’¹³⁷

Similarly, in Manipur, following violence in 2023–24, internet shutdowns were implemented, marking one of the longest shutdowns that year.¹³⁸ The state government, led by the ruling Bharatiya Janata Party, claimed these measures were necessary to curb rumours and disinformation.¹³⁹ However, critics argue that the shutdown may have exacerbated violence and was intended to limit information about human rights abuses by state-supported majority Hindu Meitei groups from reaching the rest of India and the world.¹⁴⁰ The prescient warning of Shri Dinen Bhattacharyya, a Member of Parliament who remarked in 1972 during a parliamentary debate on the amendment to Section 5 of the Telegraph Act 1885 that it could be used to create hurdles in disseminating information from states to other parts of the country, seems to have come true.¹⁴¹

¹³⁴See Aroon Deep, *India Records Highest Number of Internet Shutdowns Globally in 2023*, THE HINDU (May 15, 2024), <https://thehindu.com/sci-tech/technology/india-records-highest-number-of-internet-shutdowns-globally-in-2023/article68178061.ece>.

¹³⁵See Ritu Srivastava & Bijo P. Abraham, *Anatomy of Virtual Curfews: Human Rights vs. National Security*, DIGIT. EMPOWERMENT FOUND. (Mar. 9, 2017), <https://www.apc.org/en/pubs/anatomy-virtual-curfews-human-rights-vs-national-security>; See also Nayantara Ranganathan, *India's Universal Periodic Review – Third Cycle: Stakeholder Report by the Internet Democracy Project*, INTERNET DEMOCRACY PROJECT (Oct. 10, 2016), <https://internetdemocracy.in/policy/india-upr-internet-democracy-project/>.

¹³⁶See Darrell M. West, *Internet Shutdowns Cost Countries \$2.4 Billion Last Year*, CTR. FOR TECH. INNOVATION AT BROOKINGS (Oct., 2016), <https://www.brookings.edu/wp-content/uploads/2016/10/intenet-shutdowns-v-3.pdf?ref=static.internetfreedom.in>. See also *The Economic Impact of Disruptions to Internet Connectivity A Report for Facebook*, DELOITTE (Oct., 2016), <https://globalnetworkinitiative.org/wp-content/uploads/GNI-The-Economic-Impact-of-Disruptions-to-Internet-Connectivity.pdf>; *FAQ on Internet Shutdowns*, INTERNET FREEDOM FOUND., <https://internetfreedom.in/shutdowns-faq/> (last visited Nov. 17, 2024).

¹³⁷*Kashmir's Internet Siege*, JAMMU KASHMIR COAL. OF CIV. SOC'Y (Aug., 2020), https://globalfreedomofexpression.colombia.edu/wp-content/uploads/2020/09/Kashmirs_Internet_Siege.pdf.

¹³⁸See Yaqut Ali, *Killings, Rumours, Internet Shutdown: Manipur Returns to Unres*, THE WIRE (Sep. 11, 2024), <https://thewire.in/rights/manipur-violence-killings-internet-education>. See also Basit Amin Makhdoomi, *Manipur High Court Orders State To Lift Internet Ban On Leased Line Connections; Fiber Internet To Be Restored On Case-To-Case Basis*, LIVELAW (July 9, 2023), <https://www.livewlaw.in/high-court/manipur-high-court/manipur-high-court-internet-ban-lift-restrictions-safeguards-ftth-connections-232273>; Parth M.N., *India's Internet Shutdown Means Manipur Is Burning in the Dark*, WIRED (Aug. 3, 2023), <https://www.wired.com/story/internet-shutdown-manipur-burning-in-the-dark/>.

¹³⁹See sources cited *supra* note 138.

¹⁴⁰*Id.*

¹⁴¹*Parliamentary Debates*, XV Lok Sabha 218 (Aug. 9, 1972).

The internet shutdown in Kashmir was challenged before the Supreme Court in *Anuradha Bhasin v. Union of India* in 2020.¹⁴² In *Bhasin*, the Court's approach mirrored that of the *PUCL* case, offering widespread deference to the state, focusing primarily on procedural issues rather than addressing the matter on its merits.¹⁴³ The Court held that internet shutdowns must be narrowly tailored in terms of time and geographic scope, acknowledging some flaws in the ban in Kashmir.¹⁴⁴ However, when it came to providing relief and striking down the ban, the Court merely directed a government-constituted body under the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 (the "Internet Shutdown Rules"), to review the order in light of its guidance.¹⁴⁵ The Court, did not critically assess whether these safeguards, modeled after those established in *PUCL*, were adequate. The Court only required that shutdown orders be published;¹⁴⁶ this requirement was not followed by the government in Kashmir and has become a norm since then.¹⁴⁷ Ultimately, the Court endorsed the Internet Shutdown Rules along with the model of executive authorization and ex-ante executive review.

This overreliance on internet shutdowns stands in stark contrast with the history of resistance against British India, which took the form of shutting down or disrupting the flow of telegram communication. During the 1857 rebellion, the tactic of destruction and disabling of telegram infrastructure was widely employed, and by January 1858, less than 2500 miles of functioning wire was left.¹⁴⁸ This forced the British to rely on traditional means of communication for months in many regions.¹⁴⁹ Similarly, during the Telegraph General Strike of 1908, the protesters' shutdown disabled different nodes of networks across the British Empire. As Choudhury noted the "[s]trikes travelled along the nerves of the telegraph, leaving states, regions, and networks helpless as the communication system betrayed it."¹⁵⁰ The network shutdowns, once a tool for subaltern resistance, are now consolidated in independent India as a coercive legal instrument for control over its "subjects."

IV. Control Through Infrastructure

Another key pillar of the Telegraph Act 1885 infrastructure of control is Section 4(1), which grants the government the exclusive licence for establishing and operating telegraphs, subject to certain conditions.¹⁵¹ These conditions are set out in the Unified License (UL), which any entity intending to offer telecom services in India needs to obtain. UL imposes a range of obligations, granting the government to exert enhanced control over the communication infrastructure and network.¹⁵² These obligations encompass security vetting of equipment, utilisation of "trusted source" equipment in networks, adherence to standards and certification requirements, regulations governing engagement with third-party vendors for quality of service, auditing, testing, and

¹⁴²*Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637 (India).

¹⁴³*Id.*

¹⁴⁴*Anuradha Bhasin v. Union of India*, (2020) Writ Petition (Civi) No. 1031 of 2019, 152(b)–(f) (India).

¹⁴⁵*Id.* 152(g)–(i). See also Billy Perrigo, *India's Supreme Court Orders a Review of Internet Shutdown in Kashmir. But For Now, it Continues*, TIME (Jan. 10, 2020), <https://time.com/5762751/internet-kashmir-supreme-court/>. See also *Safeguards for Shutdown, Limited Relief for Kashmir*, SFLC.IN (Jan. 11, 2020), <https://sflc.in/sc-judgment-safeguards-shutdown-limited-relief-kashmir/>.

¹⁴⁶See *Anuradha Bhasin v. Union of India*, (2020) Writ Petition (Civi) No. 1031 of 2019, 152(a) (India).

¹⁴⁷See Gayatri Malhotra, *Supreme Court Orders Publication of Review Committee Orders Relating to Internet Shutdowns*, INTERNET FREEDOM FOUND. (Feb. 26, 2024), <https://internetfreedom.in/supreme-court-orders-publication-of-review-committee-orders-relating-to-internet-shutdowns/>.

¹⁴⁸See CHOU DHURY, *supra* note 14, at 40–41.

¹⁴⁹*Id.*

¹⁵⁰*Id.* at 157–59.

¹⁵¹See Indian Telegraph Act, 1885, § 4(1) (India).

¹⁵²See UNIFIED LICENSE AGREEMENT, DEP'T OF TELECOMMUNICATIONS (Mar. 31, 2024), https://www.eservices.dot.gov.in/sites/default/files/2024-11/Unified_License_Agreement.pdf.

inspection.¹⁵³ In addition, the licensee needs to install equipment that would enable interception.¹⁵⁴ As part of the CMS, their infrastructure needs to be connected to regional monitoring systems, which are then connected to the central servers.¹⁵⁵ This infrastructure enables mass surveillance.¹⁵⁶ Further, they are required to limit encryption standards to a low threshold to ensure that surveillance, particularly mass surveillance, is not obstructed.¹⁵⁷ There is a data localization and retention requirement as well.¹⁵⁸

In conclusion, the Telegraph Act of 1885, initially designed as a colonial instrument of control as part of the emergency governance apparatus, has normalized and persisted as a framework for state hegemony in post-independence India. Despite constitutional amendments and judicial interventions, its provisions continue to offer wide executive discretion and enable asymmetrical power relationships and state hegemony through surveillance, infrastructure control, and internet shutdowns. This reflects a colonial continuity grounded in control, accumulation, and subjectification. The next section will explore how the Telecommunications Act 2023 perpetuates this legacy.

E. Indian Telecommunications Act 2023: Colonial Continuities

The purported object and purpose of the Telecommunications Act 2023 is to “decolonize” the telecom sector, yet a postcolonial lens reveals colonial anxieties etched beneath the surface. The Act, similar to the British Colonial Administration, uses telecommunications infrastructure and networks primarily as instruments for control. I posit this for two reasons. First, the central government has not only reinforced but rather significantly widened its power to monitor and quell the lawful exercise of speech, expression, and the populace. Second, the legislation espouses a colonial mindset; it does not envision the relationship between a post-colonial democratic government and its citizens but instead one between an authoritarian state and its subjects. The legislation categorizes every individual and each instance of expression as inherently suspect. In this section, I do not aim to delve into the legal and policy dimensions of each provision, as these have been widely discussed in mainstream literature. Instead, I focus on connecting key issues within the law to the central characteristics of colonial continuity—technology as control, and constant accumulation—outlined earlier. In parallel with colonial precedents, there is a perpetual compulsion to collect greater and greater intelligence and to confer escalating discretionary powers upon oneself, driven by apprehensions of speculative threats perennially looming on the horizon.

I. Technology as Control

The Telecommunications Act 2023 removes the explicit reference to the term “over the top” (OTT), which was included in the 2022 version of the bill.¹⁵⁹ However, the underlying definition remains broad enough to encompass OTT services. OTT refers to any service delivered over the public internet, such as digital media, online video or voice communication, e-gaming, e-commerce, social media, and cloud services.¹⁶⁰ This term effectively covers the entire digital ecosystem built on the physical infrastructure of the internet. Officials from the Department of

¹⁵³See *id.* at ch. IV–V.

¹⁵⁴See *id.* at cl. 23.2.

¹⁵⁵See Xynou, *supra* note 130.

¹⁵⁶See *id.*

¹⁵⁷See DEP’T OF TELECOMMUNICATIONS, *supra* note 152, at cl. 37.2.

¹⁵⁸See *id.* at cls. 39.9(iii), 39.18, 39.20, 39.23(viii), 39.23(xv).

¹⁵⁹Telecommunications Act 2023, § 2(p), (t); Telecommunications Bill 2022, § 2(22) (India).

¹⁶⁰*Id.* See also *Telecommunications Act, 2023*, IKIGAI LAW (Dec. 22 2023), <https://www.ikigai.com/article/582/telecommunications-act-2023#:~:text=The%20Act%20aims%20to%20modernize,Indian%20Wireless%20Telegraphy%20Act%2C%201933.>

Telecommunications (DoT) have issued conflicting statements regarding OTT inclusion, but these statements in the absence of a legislative undertaking are not binding.¹⁶¹ Likewise, the term “telecom network” is defined broadly to include telecom equipment and “software and intelligence integral to such telecommunication equipment.”¹⁶² This definition extends beyond traditional telecom services and encompasses a wide range of ancillary infrastructure, including servers, storage solutions, networking equipment, data centers, cloud computing services, leased circuits, and content delivery networks—all essential for delivering a diverse array of internet services.¹⁶³

While these broader terms do not inherently grant control, they significantly empower the central government to regulate modern digital communications and supply chains. These subtle shifts in terminology may have a more substantial influence than other provisions discussed later concerning state coercive power under the Telecommunications Act 2023. The government’s authority—in terms of both continuity and expansion—that will be analysed in the following sections should be viewed through this broader lens, considering who it could potentially control, monitor, or target.

The adjustments in the law’s scope must be contextualized within the evolution of communication technologies from telecom service-based communities to internet-centric communication. Under the Telegraph Act 1885, regulations primarily addressed internet service provision limited to the physical layer of the internet without covering applications built on top of it. As internet usage has surged—evidenced by growing user numbers and data consumption—and its influence on the economy, innovation, governance, and policy has expanded, there has been an increasing push from the DoT to regulate this frontier and its infrastructure.

F. Constant Accumulation

In this article, I refer to constant accumulation as the relentless pursuit of knowledge and intelligence about individuals for the purposes of categorization, targeting, and surveillance. In Section B(I), I examined how, after the 1857 rebellion, the British implemented regulations to monitor and control various communication methods, including telegraphy and print, driven by their anxiety about the “other.” By focusing on telegraph regulations, I highlighted the systematic expansion of state power over the decades. A similar trend is evident in the Telecommunications Act 2023, which retains powers from the Telegraph Act 1885 while adapting to newer communication modes and technological challenges that affect the State’s ability to continuously gather knowledge.

The Telecommunications Act, 2023, retains the interception provision from Section 5(2) of the Telegraph Act, 1885. However, under the former, authorized entities can compel the disclosure of intercepted messages in an “intelligible format,” while the subordinate interception rules dilute the safeguards provided under the latter.¹⁶⁴ This threatens the adoption of stronger encryption standards, as it indicates that the message should be presented in a readable manner, decrypted.

¹⁶¹See Pooja Yadav, *Telecom Bill 2023 Excludes OTT, Confirms Ashwini Vaishnaw*, INC42 (Dec. 23, 2023), <https://inc42.com/buzz/telecom-bill-2023-excludes-ott-confirms-ashwini-vaishnaw/>. See also Abhijeet Kumar, *TRAI pushes for OTT App Regulation: Why WhatsApp and Telegram are in Focus*, BUSINESSSTANDARD (Oct. 17, 2024), https://www.business-standard.com/industry/news/trai-pushes-for-ott-app-regulation-why-whatsapp-and-telegram-are-in-focus-124101700165_1.html; Jhansi, *OTT To Remain Unregulated?*, M9 NEWS (Jan. 11, 2024), <https://www.m9.news/what-to-watch-on-ott/ott-to-remain-unregulated/>; Nisha Anand, *Decoded: Why Telcos, OTTs are Clashing Over New Telecom Act Definitions*, BUSINESSSTANDARD (Aug. 21, 2024), https://www.business-standard.com/industry/news/decoded-why-telcos-otts-are-clashing-over-new-telecom-act-definitions-124082100313_1.html.

¹⁶²Telecommunications Act 2023, § 2(s) (India).

¹⁶³See IKIGAI LAW, *supra* note 160.

¹⁶⁴Telecommunications Act, 2023, § 20(2)(a). See also Tejasi Panjiar & Gayatri Malhotra, *A Draft to Surveil: IFF’s Analysis of the Draft Telecom Interception Rules, 2024*, INTERNET FREEDOM FOUND. (Sep. 12, 2024), <https://internetfreedom.in/telecom-interception-rules-2024-analysis/>.

The risk is further compounded by provisions granting the government power to prescribe encryption standards under Sections 19(1)(f) and 21(b)-(c).¹⁶⁵ Stronger encryption standards—like end-to-end encryption—are critical for individuals like journalists, witnesses, whistleblowers, and for the right to anonymously search the web.¹⁶⁶ In fact, these standards form the foundation for secure digital communication.

The Act's provisions for traffic data collection represent another avenue for constant accumulation.¹⁶⁷ Although ostensibly justified for cybersecurity purposes, the collection of such data opens significant possibilities for surveillance.¹⁶⁸ The relevant subsidiary rules do not contain a purpose or retention limitation, allowing data to be collected by the union government, or any authorized agency.¹⁶⁹ This can lead to analysis and processing for purposes or by agencies without any connection to protecting or ensuring telecom cybersecurity. Traffic data can at times reveal more about an individual's behaviour than the content of their communications.¹⁷⁰ Without adequate safeguards, the collection of such data risks becoming a backdoor for surveillance, and seriously undermining privacy.

Perhaps most concerning is Section 21 of the Act, which grants the government broad discretionary powers under the nebulous justification of “national security.”¹⁷¹ A primary concern is the broad discretion this provision affords the central government through its undefined use of “national security,” which diverges from constitutional terms like “public order.” This ambiguity echoes colonial practices where vague security justifications were employed to suppress dissent. Furthermore, Section 21(f) allows the government to take over or suspend any telecommunication services or networks, including essential infrastructure.¹⁷² Effectively lowering the threshold for internet shutdowns from previously established judicial criteria of public emergency or safety. Such expansive authority significantly enhances governmental control over the communication value chain. The real-world influence of these powers is already evident in India's use of internet shutdowns as political tools, particularly targeting marginalized communities. The prolonged 4G ban in Kashmir and shutdowns in Manipur illustrate how such measures obscure human rights violations while disrupting essential communications and services, deepening societal inequalities and suppressing dissent in affected regions.

Overall, the Telecommunications Act 2023 illustrates that while technology has evolved and network scales have expanded significantly over the past 150 years, the underlying logic of constant accumulation persists adapting colonial practices to the digital age while maintaining fundamental power dynamics.

G. State-subject Dynamic

One of the fundamental characteristics of colonialism was the state's role as a repository of power, employing various mechanisms or technologies of power—such as the apparatus of police or legislation—to create subjects rather than citizens. These mechanisms operated through a dual approach: Direct coercion and the more subtle cultivation of self-regulating behaviours, effectively moulding individuals into compliant subjects rather than empowered citizens.¹⁷³ Mehla, in the

¹⁶⁵Telecommunications Act 2023, §§ 19(1)(f), 21(b)-(c).

¹⁶⁶See Lakra & Shrivastava, *supra* note 129, at 1–5.

¹⁶⁷See Telecommunications Act, 2023, § 22(2). See also Tejasi Panjiar, Gayatri Malhotra & Medha Garg *A Draft for Cyber (In)Security: IFF's Analysis of the Draft Telecom Cyber Security Rules, 2024*, INTERNET FREEDOM FOUND. (Sep. 24, 2024), <https://internetfreedom.in/draft-cyber-security-rules-2024/>.

¹⁶⁸See Lakra & Shrivastava, *supra* note 129, at 6–13.

¹⁶⁹See Telecommunications Act 2023, § 22(2). See also Tejasi Panjiar et al., *supra* note 167.

¹⁷⁰See Lakra & Shrivastava, *supra* note 129.

¹⁷¹Telecommunications Act 2023, § 21.

¹⁷²See Telecommunications Act 2023, § 21(f).

¹⁷³See Mehla, *supra* note 3.

context of the new criminal laws, argues that the colonial tendency to “discipline and thereby create a hegemonic norm is present in the new legislation as well, just in a different manner, because the anti-colonial stance cannot be interpreted to mean that the institutions of governance are not functioning under a colonialist structure.”¹⁷⁴

What is colonial about the telegraph and its regulations lies in their use to create subjects through disciplinary power—a key function of colonial authority.¹⁷⁵ A post-colonial lens reveals that these dynamics of discipline and subjectification continue within the Telecommunications Act 2023, despite India’s independence and the end of colonial rule. This subjugation is intrinsically linked to concepts of technology as control and constant accumulation. Consequently, the avenues for control explored in Sections E(I) and E(II) are directly aligned with this colonial approach, ensuring continuity of domination in social relations. However, my focus here will primarily be on biometric governance and surveillance.

The Telecommunications Act 2023 mandates that telecommunication service providers verify customer identities through prescribed biometric methods. This measure aims to prevent the illegal acquisition of SIM cards, which are often used for creating fraudulent online profiles. Akshra and Lakshay have raised concerns about the constitutionality of these provisions, referencing the Indian Supreme Court’s ruling in *Puttaswamy v. Union of India* (2019).¹⁷⁶ In that decision, the Court invalidated the mandatory linking of Aadhaar with SIM cards, deeming it a disproportionate response to the issue of illegal applications.¹⁷⁷ They argue that the current provisions contradict this precedent, as the Court held that mandatory Aadhaar linkage with private services was not permitted.¹⁷⁸

Further, the law is not narrowly tailored. The Telecommunication Bill 2022 and the Indian Telegraph Act, 1885, allow multiple modes of verification instead of solely biometric verification. Under the latter, even when Aadhaar was used, core biometric data and Aadhaar numbers were not stored—a safeguard absent in the Telecommunications Act 2023. The new law lacks provisions ensuring fair and reasonable processing of biometric data and does not grant individuals the right to access or correct their information. Akshra and Lakshay argue that “in a governmentality of uncertainty in a surveillance era, exceptional situations have transformed into the normal by rationally guiding the conduct of citizens’ everyday, mundane practices through surveillance.”¹⁷⁹ They contend that biometric surveillance under the Telecommunications Act 2023 falls within this framework, risking the reduction of complex individual identities to mere identification numbers and encroaching on individuals’ freedom to control their personal information’s usage, storage, or dissemination.¹⁸⁰

¹⁷⁴*Id.*

¹⁷⁵See FELSBERGER, *supra* note 83. See also Vita Peacock, Mikkel Kenni Bruun, Claire Elisabeth Dungey & Matan Shapiro, *Surveillance*, OPEN ENCYCLOPEDIA OF ANTHROPOLOGY, <https://www.anthroencyclopedia.com/entry/surveillance> (last visited Nov. 17, 2024); TONI WELLER, THE HISTORICAL UBIQUITY OF SURVEILLANCE, HISTORIES OF SURVEILLANCE FROM ANTIQUITY TO THE DIGITAL ERA (Andreas Marklund & Laura Skouvig eds., 2021).

¹⁷⁶Justice K.S.Puttaswamy (Retd) v. Union of India, AIR 2018 SC 1841. See also Abhijeet Shrivastava, *Aadhaar judgment, Puttaswamy and ors v Union of India and ors, Judgment, Writ Petition (Civil) No 494 of 2012, (2019) 1 SCC 1, ILDC 2964 (IN 2018), 26th September 2018, India*, OXFORD PUB. INT’L L. (Sep. 26, 2018), <https://opil.ouplaw.com/display/10.1093/law-ildc/2964in18.case.1/law-ildc-2964in18?rskey=t8NwwS&result=3&prd=OPIL>; Gautam Bhatia, *The Aadhaar Judgment: A Round-Up*, CONST. L. & PHIL. (Oct. 5, 2018), <https://indconlawphil.wordpress.com/2018/10/05/the-aadhaar-judgment-a-round-up/>.

¹⁷⁷See sources cited *supra* note 176. See also Akshra & Lakshay, *supra* note 6, at 14–16.

¹⁷⁸Justice K.S.Puttaswamy (Retd) v. Union of India, AIR 2018 SC 1841 para. 429, 442.

¹⁷⁹*Id.* at 17.

¹⁸⁰*Id.*

The British, as colonial administrators over the “other,” sought knowledge about the populace and landscape to make them legible for administrative control.¹⁸¹ The vast amount of data extracted, collated, and analyzed for imperial purposes reveals how knowledge about colonies and colonized subjects was managed and “imagined” in the sense Anderson and Scott identified—as *produced*.¹⁸² Enumerative technologies—such as maps, censuses, and biometric methods—played a key role in transforming knowledge into power and producing “truths” about colonized lands.¹⁸³ Thomas examines the comprehensive nature of censuses from the 1880s, highlighting how they foreshadowed modern projects like UID (Aadhaar), which digitize knowledge for administrative purposes.¹⁸⁴ Sukumar explains how biometric surveillance targeted indigenous groups along racial lines, notably in the identification of “criminal tribes” by the Bengal police, and affected all residents of India. Indeed, the Indian Evidence Act 1899 was the world’s first legislation to endorse fingerprinting as a method of identifying criminals.¹⁸⁵ The biometric verification mandate in the Telecommunications Act 2023 echoes colonial-era practices in data collection and control, drawing on historical surveillance methods intended to categorize and govern populations. As a governance tool, biometric surveillance erodes the boundary between public and private spheres by reducing human identities to numerical identifiers, thus constructing a compliant and controllable form of subjectivity. In the “whole enchilada of digitalization and informatization of the human body,” the distinction between identity and identification becomes blurred, where “human bodies are no longer looked at as living bodies, but rather as information.”¹⁸⁶ This shift in power dynamics, rooted in colonial legacies, challenges human identity and dignity in the digital age.

H. Conclusion

A historical account of technology is required to fill in the blanks of its journey.¹⁸⁷ It is an acknowledgement that “[a]ll human-made tools are birthed within historical dynamics, not in a political vacuum.”¹⁸⁸ This historical perspective provides insights into the original purposes, conditions of creation, and the transformations these technologies undergo.

The telegraph infrastructure in India, contrary to any benevolent colonial claims, emerged not as a tool for progress but fundamentally as an instrument for the discipline, control, and surveillance of the native populace. I have elucidated how the pervasive colonial anxiety, deeply rooted in the enduring legacy of the 1857 revolt, served as the potent impetus for the rapid expansion of the telecom network and the systematic enactment of a series of repressive telecom regulations, ultimately culminating in the Telegraph Act 1885. This imperial panic, far from being a fleeting moment, birthed not merely new intelligence networks but an entire infrastructure of domination, laying the foundational doctrinal and practical groundwork for technology as a tool of control and cementing an asymmetrical state-subject dynamic.

This Article demonstrates how the Telegraph Act 1885 was not discarded post-independence but actively retained and repurposed within the Indian legal framework. Its legacy persists in its role as the model for interception, surveillance, and communications control provisions within numerous contemporary legislations. My examination of internet shutdown powers, the licensing

¹⁸¹See Grossi & Lepratti, *supra* note 79, at 51–54.

¹⁸²JAMES SCOTT, CITIES, PEOPLE, AND LANGUAGE, THE ANTHROPOLOGY OF THE STATE: A READER 247–69 (Aradhana Sharma & Akhil Gupta eds., OUP 2006). See also Anderson, *supra* note 29.

¹⁸³See Thomas, *supra* note 30, at 44–46. See also E.M Giuliani, Policing Knowledge: Surveillance in Colonial India, 1861–1913 (2012) (Ph.D. thesis, University of Queensland).

¹⁸⁴See sources cited *supra* note 183.

¹⁸⁵MOHAN SUKUMAR, MIDNIGHT’S MACHINES 122–23 (2019).

¹⁸⁶See Akshra & Lakshay, *supra* note 6, at 14.

¹⁸⁷See Ogasawara, *supra* note 85, at 727.

¹⁸⁸*Id.*

regime under the UL, and the Telecommunications Act 2023 illustrates how colonial-era legal techniques of exceptionalism and discretionary control have been seamlessly assimilated into post-colonial governance, facilitating mass surveillance and a growing consolidation of state authority over communication infrastructures. These doctrinal continuities are neither incidental nor residual but represent deliberate legislative choices that echo colonial impulses privileging state security over civil liberties.

Through the application of a post-colonial theoretical lens, this Article has demonstrated that there has been no genuine rupture or fundamental discontinuity between the colonial and post-colonial eras concerning these pivotal telecommunication laws. Instead, what we observe is a profound and persistent colonial continuity. Irrespective of the superficial legal transformations and the profound evolution of underlying communication technologies, the core nature of the colonial disposition—particularly its methods of governance and control have, I posit, remained remarkably consistent for over a century. The key features defining this colonial continuity remain starkly apparent: (1) The employment of technology as instruments for pervasive control, censorship, and social discipline; (2) the persistent depiction of the relationship between the state and its citizens as one of authoritarian oversight over subjects, rather than a reciprocal engagement with rights-bearing citizens; and (3) an unyielding and insatiable pursuit to gather extensive knowledge and intelligence about individuals for the purposes of precise categorization, targeted intervention, and pervasive monitoring. These deeply ingrained features of coloniality permeate both the historical Telegraph Act 1885 and, disturbingly, the contemporary Telecommunications Act 2023, extending their influence across the broader framework of surveillance laws briefly discussed in this Article.

The Telecommunications Act 2023 must be contextualized within the broader push for decolonization in recent years. This trend includes the introduction of three new criminal laws, the now-withdrawn Broadcasting Services (Regulation) Bill 2023, and the Criminal Procedure (Identification) Act 2022 all framed as efforts to replace colonial-era laws and signal a departure from the colonial past. However, critics argue that these laws revive colonial baggage and often exacerbate the status quo. Arun argues that laws hold “communications under siege” and links this to “authoritarian surveillance rooted in an inherited colonial legacy.”¹⁸⁹ These misguided efforts are not genuine attempts at decolonization; they represent efforts at “indigenization” that replicate colonial values and dispositions.¹⁹⁰ The issue with these laws is their failure to understand what is fundamentally colonial about the regulations they seek to “decolonize,” which I address in relation to the Telecommunications Act 2023 in this Article.¹⁹¹ The recent push for indigenization of “colonial” laws has theocratic undertones. For instance, the new criminal laws derive their names from Hindi and Sanskrit, and the Universal Service Obligation Fund has been renamed the Digital Bharat Nidhi Fund under the Telecommunications Act 2023. Similarly, there have been sustained efforts to rename cities using Hindu and Sanskrit nomenclature.¹⁹² The vocabulary of decolonization is being co-opted and deployed in the service of right-wing authoritarian populism. Prime Minister Narendra Modi and his party are portrayed as “genuinely freeing India from its colonial baggage, returning India to its ‘true’ Hindu-Vedic roots, and uniting a nation divided by colonizers.”¹⁹³ Meanwhile, the Indian National Congress is criticized for having been dominated by colonial elites and collaborators at the time of independence.¹⁹⁴ The right-wing narrative further argues that many of India’s present social issues stem from the continued dominance of an “outsider-imposed” historical narrative that has left the Indian mind “possessed,

¹⁸⁹See generally P. Arun, *Communications Under Siege: Colonial Legacy and Authoritarian Surveillance in India*, 23 SURVEILLANCE & SOC’Y 123 (2025).

¹⁹⁰See Mehla, *supra* note 3. See also Tundawala, *supra* note 3; Wilson, Chandra & Narayanaswamy, *supra* note 5.

¹⁹¹See sources cited *supra* note 190.

¹⁹²See Telecommunications Act 2023, ch. V.

¹⁹³Alpa Shah, *When Decolonization is Hijacked*, 126 AM. ANTHROPOLOGICAL 553, 560 (2024).

¹⁹⁴*Id.* at 560.

and handicapped.”¹⁹⁵ The right wing has for a long promoted a notion of Hindutva that is inherently exclusionary, based on the belief that there was a glorious Hindu civilizational state in the past before colonization by the Mughals and the British.¹⁹⁶ The Hindutva’s values and priorities are also to an extent reflected in the Indian Constitution.¹⁹⁷ Without delving further into the broader contestations within decolonial discourse, this Article offers preliminary insights for particularly postcolonial legal inquiry. First, decolonization claims must be carefully historicized. Second, material conditions—beyond cultural, psychological, and political dimensions—must be rigorously examined, as they are often overlooked. Third, the exclusionary tendencies within the decolonial lens must be acknowledged, as they risk undermining its generative and progressive potential. Finally, the decolonial turn should not be mistaken for a call for radical alterity.

In conclusion, the historical analysis reveals a deeply entrenched colonial continuity, from the Telegraph Act 1885 to the Telecommunications Act 2023. Despite the government’s assertive claims of decolonization, these laws persistently perpetuate a framework defined by coercive control, extensive surveillance, and an inherent power imbalance between the state and its citizens. The recent push for “indigenization” fails to address the core colonial aspects of these regulations, often exacerbating existing issues under the guise of modernization. A genuine attempt at decolonizing telecom regulation requires identifying and addressing the structural colonial dispositions in laws while prioritizing fundamental rights, democratic principles, and equitable access.

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¹⁹⁵See Shah, *supra* note 193, at 560. See also J. SAI DEEPAK, INDIA, THAT IS BHARAT: COLONIALITY, CIVILISATION, CONSTITUTION (2021).

¹⁹⁶See RONOJOY SEN, LEGALIZING RELIGION: THE INDIAN SUPREME COURT AND SECULARISM 30–32 (2007), <https://www.file.s.ethz.ch/isn/35334/PS030.pdf>. See also ASHIS NANDY, SHIKHA TRIVEDI, SHAIL MAYARAM & ACHYUT YAGNIK, CREATING A NATIONALITY: THE RAMJANAMBHUMI MOVEMENT AND FEAR OF THE SELF 111–13 (2002); Milan Vaishnav, *The BJP in Power: Indian Democracy and Religious Nationalism*, CARNEGIE ENDOWMENT FOR INT’L PEACE (Apr. 4, 2019), <https://carnegieendowment.org/2019/04/04/bjp-in-power-indian-democracy-and-religious-nationalism-pub-78677>; GARY JEFFREY JACOBSON, THE WHEEL OF LAW: INDIA’S SECULARISM IN COMPARATIVE CONSTITUTIONAL CONTEXT ch. 6–7 (2003).

¹⁹⁷See Anuj Bhuwania, *Spectres of Decoloniality: Comparing constitutional histories of India and South Africa*, 57 L. & POL. AFR., ASIA, & LATIN AM. 98, 105–10 (2024). See also SEN, *supra* note 196.

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