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## EMPIRE WITHOUT ACCOUNTABILITY: WHY COLONIAL ATROCITIES STILL GO UNPUNISHED

~ *Samreen Imtiaz*

Despite the global spread of human rights discourse, colonial-era atrocities remain largely unpunished. From the Jallianwala Bagh massacre in India to the brutal repression of the Mau Mau uprising in Kenya, former colonial powers have managed to evade legal responsibility for the crimes committed under imperial rule. These events are remembered, mourned, and studied but rarely prosecuted. This article argues that the impunity surrounding colonial atrocities is not an accident of history but a legal and political choice, made possible by laws written by and for empires.

### India's Colonial Inheritance of Injustice

British colonial rule in India offers a stark example of how violence was legalised and institutionalised. The 1919 **Jallianwala Bagh massacre**, where hundreds of unarmed civilians were killed under the command of General Dyer, remains one of the most notorious acts of state violence. Yet, despite widespread condemnation, Dyer faced no criminal charges. Instead, he was quietly retired, and the British Parliament even received a fund in his honour.<sup>1</sup>

Legal tools such as the **Sedition Law (Section 124A of the Indian Penal Code)** were crafted specifically to silence political dissent. Used against Bal Gangadhar Tilak and Mahatma Gandhi, it criminalised any speech that brought the government into “hatred or contempt.”<sup>2</sup> Although the UK repealed its own sedition laws in 2009, independent India continues to use this colonial provision, a powerful reminder of how repressive legal mechanisms outlived the empire that created them.

The **Criminal Tribes Act of 1871** further exemplifies how law was used to control marginalised groups. It categorised several communities as “habitually criminal,” subjecting

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<sup>1</sup> Nigel Collett, *The Butcher of Amritsar: General Reginald Dyer* (Bloomsbury 2006).

<sup>2</sup> Mahatma Gandhi, *Collected Works of Mahatma Gandhi*, Vol. 26 (Publications Division 1958).

them to constant surveillance, forced relocation, and routine police harassment.<sup>3</sup> Though repealed after independence, its legacy lives on. Many Denotified Tribes in India continue to face stigma, discrimination, and suspicion testament to how colonial classification can become generational trauma.

### A Pattern Beyond Borders

India is not alone. Across the colonial world, impunity was built into the fabric of empire. In **Kenya**, during the 1950s **Mau Mau rebellion**, thousands of Kikuyu people were detained in camps and subjected to systematic torture. For decades, the UK government denied wrongdoing until, in 2013, it agreed to pay £19.9 million in compensation to survivors.<sup>4</sup> Yet no individual was prosecuted. The British government issued a statement of “regret,” carefully avoiding the word “liability.”<sup>5</sup>

In **Namibia**, Germany only recently acknowledged the **Herero and Nama genocide** (1904–1908), where up to 80% of the Herero population was killed. In 2021, Germany agreed to fund development projects worth €1.1 billion, yet refused to frame the payment as legal reparations.<sup>6</sup> Survivors’ groups criticised the agreement as symbolic and inadequate, especially as no individual accountability was pursued.

### Why Colonial Atrocities Go Unpunished

Several factors have allowed this impunity to persist:

1. **Law as a Colonial Tool:** During empire, law was not a check on power it was a tool of domination. Repressive policies were legalised through ordinances and acts that gave colonial administrators immunity. When violence was state policy, courts were rarely avenues for redress.
2. **International Law’s Blind Spot:** Post-WWII justice frameworks like the **Nuremberg Trials** focused on crimes committed during armed conflict, largely ignoring peacetime atrocities in colonies. The **war-nexus requirement** in early definitions of crimes against humanity excluded most colonial violence.<sup>7</sup> This exclusion was not

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<sup>3</sup> Radha Kumar, “The Criminal Tribe Act: India's Legacy of Discrimination,” (2005) *Economic and Political Weekly*.

<sup>4</sup> Caroline Elkins, *Imperial Reckoning: The Untold Story of Britain's Gulag in Kenya* (Henry Holt 2005).

<sup>5</sup> Statement by UK Foreign Secretary William Hague, Hansard, HC Deb 6 June 2013, vol 563, cc1696–1699.

<sup>6</sup> Philip Oltermann, “Germany agrees to pay Namibia €1.1bn over historical Herero-Nama genocide,” *The Guardian*, 28 May 2021.

<sup>7</sup> Carsten Stahn, “Colonial Crimes as Crimes Against Humanity?” (2023) 23 *Journal of International Criminal Justice* 329.

coincidental it reflected the priorities of the victorious powers, many of whom were colonial rulers themselves.

3. **Legal Hurdles Today:** Statutes of limitation, lack of retroactive jurisdiction, and doctrines like state immunity continue to block cases from proceeding. Even symbolic reparations are often framed as moral gestures rather than legal obligations, preserving the idea that colonial crimes were unfortunate but not unlawful.

## The Way Forward

Recognition is a start but it is not enough. Former colonial powers must move beyond ambiguous regrets and toward legal accountability. This can take multiple forms:

- **Repeal and Reform:** Former colonies must critically examine and repeal outdated colonial laws that continue to harm citizens. India's recent suspension of sedition law enforcement is a step in the right direction.
- **Truth and Reconciliation Mechanisms:** National and international bodies should document and acknowledge colonial violence, similar to South Africa's post-apartheid model.
- **Legal Avenues:** Courts should be empowered to hear historical justice claims. Doctrines like non-retroactivity must be revisited when dealing with mass atrocities.
- **Reparative Justice:** Compensation, where appropriate, should be pursued not only for symbolic value but for restoring dignity to affected communities.

## Conclusion

Colonialism did not only extract wealth and labour it embedded systems of violence that were made legal and left unpunished. The absence of accountability is not a legal inevitability but a political and moral failure. To preserve the integrity of international justice, we must end the era where **empire means exemption**. Only by facing this history can we build a more just legal future.

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