

**LAWS AFFECTING THE
RIGHTS AND LIBERTIES OF
THE INDIAN PEOPLE: (FROM
EARLY BRITISH RULE)**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649182312

Laws affecting the rights and liberties of the Indian people: (from early British rule) by Akshaya K. Ghose

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Cover @ 2017

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Laws
Affecting the Rights and Liberties
of the Indian People.

(FROM EARLY BRITISH RULE)

WITH AN INTRODUCTION

BY

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a Critical Survey of his Viceroyalty," &c.

MOHUN BROTHERS.

PUBLISHERS,

31/2, College Street Market, 1st Floor,
CALCUTTA.

1921.

Price Rs. 7/8/-.

BY THE SAME AUTHOR.

1. Progressive India, 3rd Edn. ... Price, Re. 1-0.
2. Lord Chelmsford—A Critical Survey of
his Administration
3. History of India under the Crown—In the Press.

Civil Government for Indian Students by His Excellency Sir
William Marris, K.C.S.I., Governor of Assam and Dr.
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University of Illinois, U. S. A. Rs. 4/-.

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INTRODUCTION.

This publication appears at an opportune moment. The constitution of India is in the crucible. A new legislature, the first born of the Reform Scheme of which Mr. Montagu and Lord Chelmsford are the joint sponsors, has held its initial meeting at Delhi and the two branches of the legislature, the Council of State and the Legislative Assembly, have been blooded in their first taste of Parliamentary education and Parliamentary procedure. The experiment augurs well for the future. Two committees have been appointed to scrutinise and report upon laws which for some years have imposed severe and to some minds unwarrantable restrictions upon the liberty of the subject. The repressive laws which have aroused bitter resentment, it is hoped, will now disappear, while the revision of the fetters imposed upon the Press of this country will either be sensibly modified or removed. A new spirit of freedom as of nationality is awake throughout the land. The first step is a call for more breathing space and the Government, it may be inferred from their approval of the nomination of the two committees, are not indisposed to answer to that call. If the investigation is to be thorough, those responsible for it will find plenty of food for thought in the leaves of this compilation. Here are gathered together much of the legislation which had evoked the major portion of the mistrust convulsing the peoples of India. I do not suppose that its Author pretends that this offering of his industry and brain is exhaustive. He has none the less collected into a handy space information from sources worthy of respect which will shed light upon the legitimate use and function of Martial law and the lamentable misuse of both in the Punjab during 1919. It fell to my lot to appear in the year 1915 in Colombo where ordinary rioters, free of all political taint, were tried summarily by drum head Courts Martial while the ordinary Municipal Courts of law were open and sitting. In every case conviction followed as a matter of course and, in every case, as I learnt afterwards, tardy reparation was made

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by the cancellation of all the sentences and the remission of all the fines. I expressed at the time in a public print, I remember, my thanks to God that I lived in India where such action was, I boasted, impossible. My thanks were, it now appears, premature. Within four years I have lived to witness the Jallianwalla tragedy. Those who asserted that the General Officer, who was responsible for the massacre at Amritsar acted well within his legal rights will find cold comfort in the quotations further on culled from the declared law of England. It is time that a limit should be placed in this country on the freedom with which authority deprives unarmed citizens of their lives. Had the Hon. Mr. Srinivasa Sastri moved last month in the Legislative Assembly at Delhi instead of in the Council of State his resolution for some barrier on the indiscriminate slaughter of British subjects, he would have carried his motion in lieu of having lost it.

There is no reason to doubt but that the Committees appointed will propose drastic overhauling of much of the repressive legislation still on the statute book. They will be among the early builders of the Indian Constitution of the future. Chief among this legislation are the Press Act and the Defence of India Act. The student of Indian psychology will confess that the procedure of the Defence of India Act is responsible for much of the present distrust and discontent in this country. No government can displace ancient and well grounded landmarks of British justice without planting the seeds of revolutionary hatred. It was less the substantial provisions of the Rowlatt Act which provoked the resentment of every educated Indian than the decision to place alleged offenders under the discretion of a government empowered to remove all aids to legitimate defence in a Court of Law. It will take time to restore the lost credit of the higher officials in India. That time will never arrive if the Viceroy does not retrace his predecessor's legislative steps. There must be no further trifling with the right of all accused persons to a fair, open and impartial trial. A trial where the prisoner is not permitted to know what the witnesses have previously deposed

to in the Magistrate's Court, nor what they propose thereafter to say, is not fair. A trial in the precincts of a jail is not open. A trial before Judges specially nominated is not impartial. Each defect is a trespass on the principles of English law : each is a mockery of morality. We have suffered for five years from a Viceroy, who was honest but weak. A new Viceroy looms upon us, who administered justice in the seat occupied by Lord Chief Justices whose memory is a part of the proud inheritance not of professional lawyers but of Great Britain herself. He will certainly be honest. Will he be strong?

It is refreshing to read and rise from the perusal of the judicial canons in which this book is so rich. They inspire one with pride in British citizenship. They detail the route-march to liberty and freedom. They stimulate the acknowledgment of responsibility as well as the assertion of independence. Their continued repudiation may cost us the country. If the day is at sometime to dawn when a United India free, educated and armed shall ask that she shall have her unfettered freedom, no Englishman who is versed in the history of England's long connection with her will resent, if he regret, the claim. But when that day comes, all Englishmen will insist that the parting shall be accompanied with mutual respect, accompanied on his side with the feeling that he and his have never stooped to stain the traditions of justice which England through long centuries has made her dearest watchword. The parting will be in that event, but the renewal of love. Else, disaster awaits all.

The constitutional history of a country with its incidents which are the milestones on the long road to self-rule and self-respect should be as much the property of the layman unversed in the law as that of trained lawyers. No citizen can know what are his rights unless he studies what the law has defined them to be. No citizen can safeguard those rights until he knows what they are. That study is fascinating and this book offers us plenty of pabulum wherewith to grasp and enforce our rights as well as to accept and discharge our responsibilities. The emancipation of man from intolerable

executive ambition was won in England only step by step and only with laborious self-sacrifice. There is no reason why India should not be spared the protracted torture which accompanied and signalled victory in England. The peoples here are capable in a signal degree to take up the task where England left it. They are hungry for that "Justice", fallen of late from her once high estate, on which Lord Reading has assured them he intends to be insistent. That will prove the panacea for most of the present political ills and establish itself as the true antidote to the destructive aspect of Non-co-operation. Relaxation from the legislative pains and penalties under which the peoples have suffered for some years must be the first instalment of the only cure which can bring us peace. No lover of India will claim for her today the capacity immediately to assume the reins of complete self-government. But every true lover will assert his sturdy belief in her capacity to work out her own salvation till she feel her feet rest on the sure foundation of equality with all the other free countries of the world.

To all who wish her well, I commend this book of reference which diagnoses the complaint under which she sickens and suggests the palliatives which shall revive her suspended respiration and restore her sane, happy and cured, to her proper position as an aspirant to a situation of independence and self control coequal with her sister nations within the ambit of Great Britain's League of Nations.

TEMPLE CHAMBERS,
Calcutta, 15th April, 1921.

EARDLEY NORTON.

PREFACE.

Quite recently on the motion of the Hon'ble Mr. V. S. Srinivasa Sastri the Government of India agreed to appoint a joint committee of members of the Council of State and of the Legislative Assembly to enquire into the existing state of the laws on the statute book conferring summary powers on the executive government in India, and report upon the advisability of their repeal, modification or retention. Instead of a joint committee two separate committees have been appointed. Before long they propose to commence their labours and their reports are expected to be of a most important character, historically and politically. A survey of India's past and present political activity may be looked for, but the Indian people should have the materials before them, with the help of which they will be enabled to follow the proceedings and appreciate the recommendations of these committees and finally to pronounce their judgement. The present publication pretends to place these materials in their hands while drawing pointed attention to the departure the Indian Government has consistently and systematically made from the spirit of the Royal messages and proclamations and from the principles upon which the rights of a British citizen are based. These latter are said to be the groundwork on which the Laws affecting the Rights and Liberties of the Indian People are modelled.

Having regard to the massacres in the Punjab under cover of Martial Law in 1919 a complete symposium of all the leading opinions on Martial Law administration has been collected here. They will at once convince the lay public how futile and indefensible was the position taken up by the Government of India under Lord Chelmsford and of the Punjab under Sir Michael O'Dwyer.