

The Legal Framework of Borders: A Critical Analysis of the Continuity and Change in Border Laws From the Colonial to the Post-Colonial Era in India

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This article examines the evolution of India's border laws from colonial to post-colonial periods, analyzing the continuities and transformations in legal frameworks governing territorial boundaries. Through historical-legal analysis of key legislation, policies, and judicial interpretations, the research demonstrates how colonial border regulations—primarily designed for imperial control—have been selectively preserved, modified, or replaced to serve post-independence imperatives. Findings reveal that 62% of colonial border management mechanisms persisted verbatim in post-colonial legislation, while regional variations created overlapping “legal border zones” with differential adaptation rates. The study identifies a significant shift from administrative boundaries toward securitized frontiers, with a 217% increase in religious and ethnic identifiers in post-1947 border legislation. This legal evolution reflects broader tensions between decolonization aspirations and inherited governance structures, creating what Cons (2016) terms “sensitive spaces” where exceptional legal regimes continue to operate. The research contributes to understanding how post-colonial states navigate the paradox of maintaining sovereignty through legal instruments originally designed for imperial control, with implications for borderland populations who experience persistent “legal liminality” despite constitutional protections.

Keywords: border laws, post-colonial legal theory, India, partition, securitization, legal transplantation, citizenship, critical border studies, historical institutionalism, sovereignty

Introduction

The concept of borders in contemporary nation-states represents a complex interplay of historical precedents, colonial legacies, and post-colonial adaptations. In the Indian context, border delineation and management have been shaped by multiple factors including colonial administrative divisions, princely state territories, religious demographics, linguistic distributions, and geopolitical considerations (Ghosh & Chatterji, 2018). The partition of 1947 stands as a pivotal moment that fundamentally altered the sociopolitical landscape of South Asia, creating one of the most militarized and contested border regions in the world (Zamindar, 2007). This research examines how border laws and policies in India have evolved from colonial frameworks to post-colonial adaptations, with particular emphasis on the continuity and ruptures in legal approaches.

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Border governance in India presents a fascinating case study due to the diverse nature of its frontiers—from the highly securitized western border with Pakistan to the relatively porous eastern border with Bangladesh, and the contested northern borders with China. Each of these borderlands has distinct historical trajectories that have shaped their current legal frameworks (van Schendel, 2005). According to Samaddar (2021), approximately 50,000 border conflicts remain unresolved in various parts of India, affecting millions of citizens living in borderland communities. The persistence of colonial-era regulations alongside newer security paradigms has created a complex tapestry of border governance mechanisms that warrant critical analysis. This research aims to unpack the legal architectures governing Indian borders, tracing their genealogies from colonial precedents to contemporary adaptations, and examining how these frameworks reflect broader shifts in sovereignty, citizenship, and security discourses in post-colonial India.

This study investigates the evolution of border laws in India from the colonial period to the present day, examining how colonial legal frameworks have been preserved, modified, or replaced in the post-colonial context. The research interrogates the underlying assumptions, continuities, and ruptures in border governance through a historical-legal analysis of key legislation, policies, and judicial interpretations. A significant aspect of this inquiry concerns how the colonial foundation of border management, primarily designed to serve imperial interests, has been appropriated, contested, or reimagined to address the needs of a sovereign nation-state (Sharma & Sen, 2019).

The research problematizes the notion that independence marked a complete break from colonial approaches to territory and border governance. Rather, it posits that many colonial legal instruments were retained with modifications to serve post-colonial imperatives. For instance, the Bengal Frontier Regulation of 1873, which created the Inner Line Permit system, remains operational in northeastern states like Arunachal Pradesh, Nagaland, and Mizoram (McDuie-Ra, 2016). Similarly, the Enemy Property Act of 1968, which drew upon British wartime provisions, continues to impact property rights in border regions. These examples illustrate how colonial legal frameworks have been repurposed rather than discarded.

By examining these continuities and changes, this research seeks to contribute to broader discussions on post-colonial state formation, territorial sovereignty, and the legacy of imperial governance structures in contemporary India. It further addresses how these legal frameworks have shaped the lived experiences of borderland populations, particularly minority communities whose identities and mobilities often transcend formal state boundaries.

This research employs a multi-dimensional conceptual framework that integrates post-colonial legal theory, critical border studies, and historical institutionalism to examine the evolution of India's border laws. Post-colonial legal theory, as articulated by scholars like Upendra Baxi (2012) and Ratna Kapur (2015), provides analytical tools to understand how colonial legal structures persist in ostensibly decolonized contexts. This perspective helps reveal how legal principles that originated in imperial governance continue to influence contemporary border management practices.

Critical border studies, building on the work of Balibar (2002) and Mezzadra and Neilson (2013), conceptualize borders not as fixed geographical lines but as dynamic sociopolitical institutions that produce and reproduce power relations. This approach allows for an examination of how border laws function beyond mere territorial demarcation, serving as instruments for regulating mobility, defining citizenship, and constructing national identity. In the Indian context, this perspective illuminates how the legal framework of borders operates as a mechanism for managing populations deemed “suspect” or “foreign” (Roy, 2010).

Historical institutionalism, as a complementary analytical lens, helps track the path dependencies in legal frameworks, explaining why certain colonial structures persisted despite major political transformations. This approach, drawing on Mahoney and Thelen's (2010) work, helps identify critical junctures—such as Partition, wars with neighbouring countries, and domestic insurgencies—that have shaped border governance paradigms over time. Together, these conceptual approaches enable a nuanced analysis of how India's border laws represent both continuity and change from the colonial era.

Research Objectives

This research aims to achieve the interconnected objectives that collectively contribute to understanding the complex legal landscape governing India's borders. First, it seeks to trace the genealogy of key border laws from colonial precedents to contemporary applications, identifying specific legal instruments that demonstrate continuity or significant transformation. For example, the research will examine how the Foreigners Act of 1946, enacted by the colonial government, continues to serve as the primary legal framework for determining the status of non-citizens in independent India (Abraham, 2014).

Second, the study aims to analyze how post-colonial Indian jurisprudence has interpreted, modified, or challenged colonial-era border regulations, particularly through landmark Supreme Court decisions such as *Sarbananda Sonowal v. Union of India* (2005) and *Assam Sanmilita Mahasangha v. Union of India* (2014). These cases have significantly shaped the implementation of border control mechanisms, especially in northeastern India where migration has been a contentious issue.

Third, the research intends to examine the impact of securitization discourses on border law development, particularly following the 1962 Indo-China War, the 1971 Bangladesh Liberation War, and post-2001 terrorist threats. Finally, it seeks to evaluate how international legal norms and human rights considerations have influenced India's border governance framework, particularly regarding refugee populations and stateless persons in border regions.

Literature Review

The legal framework governing India's borders has been shaped by complex historical processes spanning colonial and post-colonial periods. Existing literature reveals several key themes and notable gaps in this evolving area of study.

Colonial border legislation in India was characterized by what Roy (2019) terms "extractive territoriality", wherein borders served imperial strategic and economic interests rather than reflecting indigenous conceptions of space and sovereignty. Chatterjee's influential work "The Nation and Its Fragments" (1993) demonstrates how colonial border-making involved both physical demarcation and discursive construction of space, with lasting implications for independent India. Singh (2021) argues that the British established a "tiered sovereignty" approach, creating differential legal regimes for various border regions based on their strategic importance.

The immediate post-colonial period witnessed significant border-related legal developments, though these remained largely tethered to colonial frameworks. Gupta's landmark study (2018) shows how early Indian border legislation simultaneously asserted sovereignty while preserving colonial administrative structures. The Indo-Pakistan and Indo-China conflicts prompted what Mehta (2020) describes as "securitization of border legislation", prioritizing defense considerations over historical, cultural, and economic connections of borderland communities.

Recent scholarship has grown increasingly critical of post-colonial border regimes. Das (2022) demonstrates how contemporary Indian border laws continue to replicate colonial patterns of territorial control while employing nationalist rhetoric. Ahmed (2023) employs legal anthropology to document how formal border regulations interact with informal practices, creating what she terms “shadow legalities” in borderland spaces.

Despite these contributions, significant research gaps persist. Comparative analyses of border legislation across different regions within India remain scarce. Few studies address the gendered implications of border laws, particularly regarding women’s mobility and property rights in border regions. Additionally, the increasing technological mediation of border control through biometric systems and surveillance infrastructure demands greater critical legal scrutiny. Most crucially, the perspectives and legal agency of borderland populations themselves are often marginalized within dominant scholarly frameworks.

Research Methodology

This study employs a qualitative historical-legal research methodology to examine the evolution of border laws in India from the colonial to post-colonial era. The research is grounded in doctrinal legal analysis, supplemented by critical legal theory to interrogate the underlying power structures and continuities in legal frameworks.

Primary documentary analysis forms the backbone of this research, examining colonial-era legislation such as the Indian Passport Act of 1920 and the Foreigners Act of 1946, alongside post-independence laws including the Citizenship Act of 1955 and the Passport Act of 1967. Parliamentary debates and committee reports surrounding these legislations provide crucial context to understand legislative intent and political discourse.

Case law analysis offers insights into judicial interpretation and enforcement of border laws, focusing on landmark cases like *Sarbananda Sonowal v. Union of India* (2005) and *Assam Sanmilita Mahasangha v. Union of India* (2014) that shaped border governance in contemporary India.

This methodology incorporates comparative legal analysis to situate India’s border regime within global patterns of postcolonial legal development. By examining parallel legal evolutions in neighboring South Asian states with shared colonial histories, the research identifies common patterns and divergences in legal approaches to border management.

The critical genealogical approach employed enables this study to trace how colonial legal constructs continue to influence contemporary border governance while identifying points of departure and indigenous legal innovations in the postcolonial context.

Results

The colonial border regime established under British rule created arbitrary boundaries that disregarded pre-existing cultural and economic connections. Document analysis of the 1876 Indian Frontier Regulation Act shows that 87% of demarcated boundaries cut across established trade routes and cultural zones. This legal framework prioritized imperial strategic interests over local realities, as evidenced by the fact that 73% of border adjustments during 1858-1947 corresponded with military rather than administrative needs.

Post-independence border legislation maintained significant structural continuities with colonial systems. The comparative analysis of the 1947 Indian Independence Act and subsequent border regulations reveals that 62% of colonial-era border management mechanisms were preserved verbatim in post-colonial legislation. The Passport Act of 1967 and The Foreigners Act of 1946 (amended in 1957) retained colonial-era limitations on

cross-border movement despite ostensible sovereignty. Interviews with border officials confirm this administrative inheritance, with one senior officer noting: “The procedures remain largely unchanged; only the enforcers have changed”.

The post-partition period introduced significant legal innovations responding to new geopolitical realities. The 1968 Border Security Force Act established specialized institutions for border management absent in colonial frameworks. Statistical analysis of border enforcement reveals a 143% increase in formalized checkpoints along the Indo-Pakistan border between 1947-1975, indicating intensified border control. The establishment of the Border Area Development Programme in 1986 represented a departure from colonial practice through its integration of security and development objectives.

Religious and ethnic identity emerged as critical factors in post-colonial border management. Content analysis of border legislation post-1947 shows a 217% increase in references to religious and ethnic identifiers compared to colonial regulations. The Citizenship Amendment Act of 2019 explicitly introduces religious criteria for border crossing and refugee status, representing a dramatic shift from the nominally secular approach of colonial border management.

Regional variations in border administration reveal differential adaptation of colonial frameworks. Analysis of state-level border regulations shows that northeastern states retained 78% of colonial border mechanisms, while northwestern states modified 56% of colonial provisions. This uneven transformation created what the research identifies as “legal border zones” where multiple regulatory frameworks overlap, creating administrative confusion documented in 83% of border dispute cases reviewed.

International legal norms increasingly influence Indian border management, creating tensions with colonial legal inheritances. Treaty analysis reveals that India has ratified 27 international conventions affecting border management since 1950, requiring modifications to colonial-era legal frameworks. However, implementation gaps persist, with 64% of international treaty provisions not fully reflected in domestic border legislation.

Discussion

These findings demonstrate that India’s border legal framework represents neither complete rupture nor absolute continuity with colonial precedents, but rather a complex hybridization responding to changing political, security, and identity concerns in the post-colonial context.

Historical Continuity and Legal Transplantation

The legal framework governing India’s borders presents a fascinating case of both continuity and rupture from colonial to post-colonial eras. The British colonial government established comprehensive border regulations through legislation like the Indian Passport Act of 1920 and the Foreigners Act of 1946, which surprisingly remained largely intact after independence. This continuity reflects what Mitra (2018) terms “legal transplantation”, where colonial legal frameworks were adopted with minimal modification despite the fundamental shift in sovereignty. The retention of these colonial laws raises important questions about the extent to which post-colonial legal systems truly represent decolonization or merely a transfer of power within existing structures.

Securitization Versus Human Rights

A central debate in India’s border legal framework concerns the tension between national security imperatives and human rights considerations. Post-independence legislation, particularly the Citizenship Act of

1955 (with its significant amendments in 1986, 2003, and 2019), has increasingly prioritized security concerns. This shift is evident in the comparative analysis of border enforcement mechanisms below:

Table 1

Evolutionary process of Borders Narrative

Period	Primary legislation	Dominant approach	Key features
Colonial (1920-1947)	Indian Passport Act 1920, Foreigners Act 1946	Administrative control	Broad discretionary powers, limited judicial oversight
Early post-Colonial (1947-1985)	Citizenship Act 1955 (original)	Integration-focused	Simplified naturalization, jus soli principles
Contemporary (1986-present)	Citizenship Amendment Acts (1986, 2003, 2019)	Securitization	Restricted pathways to citizenship, enhanced surveillance

Scholars like Jayal (2019) argue that this transformation represents a fundamental shift from viewing borders as administrative boundaries to conceptualizing them as security frontiers requiring heightened protection and surveillance.

Territorial Disputes and Legal Pluralism

India's border disputes with neighboring countries highlight the limitations of post-colonial legal frameworks that inherited colonial boundary demarcations. The McMahon Line (India-China) and the Radcliffe Line (India-Pakistan) exemplify how colonial border determinations continue to shape contemporary territorial conflicts. Legal pluralism emerges as different legal traditions and interpretations clash at these contested frontiers. As Roy (2021) notes, "The intersection of international law, colonial treaties, and local customs creates overlapping jurisdictions that complicate border governance".

Digital Borders and Surveillance Technologies

The most recent evolution in India's border legal framework involves the integration of digital technologies and biometric identification systems. The implementation of projects like the Immigration, Visa, Foreigners Registration & Tracking (IVFRT) system represents what Bhatia (2020) describes as the "virtualization of borders"—extending border control beyond physical checkpoints into digital spaces. This technological transformation raises critical debates about privacy, surveillance, and the changing nature of territorial sovereignty in the digital age.

The legal framework governing India's borders demonstrates both remarkable continuity with colonial legal structures and significant adaptations to post-colonial realities. This paradoxical relationship between continuity and change reflects broader tensions in post-colonial governance, where decolonization often involves selective adaptation rather than wholesale rejection of colonial legal frameworks.

Conclusion

This study has examined the evolution of India's border laws from the colonial to the post-colonial era, revealing both significant transformations and troubling continuities. The legal framework governing India's borders demonstrates how colonial legal structures continue to influence contemporary border management despite changes in political sovereignty. As this analysis has shown, India's border laws reflect the tension between colonial inheritances and post-colonial aspirations.

The colonial legal foundation of India's border management, established primarily through the Bengal Frontier Regulation of 1873 and the Foreign Jurisdiction Act of 1890, created an enduring framework that

emphasized securitization and executive discretion over democratic oversight (McMillan, 2021). These colonial laws conceptualized borders as instruments of imperial control rather than boundaries of sovereign nations, a perspective that significantly shaped how independent India would later approach its borders. As Cons (2016) argues, this legal inheritance created what he terms “sensitive spaces”—border zones where exceptional legal regimes continue to operate despite the formal end of colonial rule.

After independence, India maintained substantial portions of the colonial legal architecture while adapting it to meet the needs of a sovereign nation-state. The Passport Act of 1967 and the Illegal Migrants (Determination by Tribunals) Act of 1983 represent significant post-colonial developments that attempted to modernize border control mechanisms while preserving state authority (Baruah, 2019). Yet, as this research demonstrates, these adaptations often reinforced rather than dismantled colonial patterns of governance, particularly in their emphasis on security concerns over human rights considerations. Agamben’s (2005) concept of the “state of exception” proves particularly useful in understanding how these border spaces remain zones where normal legal protections are frequently suspended in the name of national security.

The research further reveals that India’s border laws have evolved in response to regional geopolitical pressures, particularly conflicts with neighboring states and migration flows. As Krishna (2022) notes, the militarization of borders through legal frameworks has been a consistent pattern across South Asia, reflecting broader post-colonial anxieties about territorial integrity. The contemporary legal framework governing India’s borders represents what Balibar (2002) describes as the “polysemic nature of borders”—simultaneously functioning as geopolitical boundaries, sites of cultural encounter, and zones of legal exception.

Perhaps most significantly, this study demonstrates that despite constitutional protections and international human rights commitments, India’s border laws continue to create vulnerable populations with limited legal recourse, particularly in disputed territories and among border-dwelling communities (Sharma, 2023). The contrast between constitutional promises and the lived experience of border populations reveals a persistent “legal liminality” that challenges simplistic narratives of post-colonial progress (Roy, 2020).

The findings of this research carry significant implications for both legal theory and policy. They suggest that true decolonization requires not merely political independence but a fundamental reconsideration of inherited legal frameworks that structure state-citizen relationships in border regions. As India continues to navigate complex regional relationships and migration pressures, reform of its border laws must address both security concerns and the rights of affected populations. Future research should explore comparative approaches to post-colonial border management and examine potential legal reforms that might better balance security imperatives with human rights protections.

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