Indian Philosophical Quarterly Vol X No. 3 April (1983).

RELATIONSHIP BETWEEN LAW AND MORALITY : A PHILOSOPHICAL APPRAISAL OF GANDHI'S VIEWS*

In this paper an attempt is made to put together Gandhi's views under the following heads : (1) the role of law in settling disputes between individuals; (2) the role of law in bringing about conformity to moral behaviour; and (3) civil disobedience.

The Role of Law in Settling Disputes Between Individuals :

Gandhi prefers that any dispute between individuals should be settled on grounds of fairness and justice, rather than by resort to law. This he does, not because of the inconvenience of resort to law, but because to settle it bilaterally is manly or human, whereas taking recourse to law is unmanly or non-human (Gandhi 1938 : 56-7). In this, Gandhi differs from others who do not find anything unmanly in resorting to law: it is accepted as a legitimate and fair way of settling disputes. To Gandhi, it is a moral failure, in any case, a moral come-down. However fair a law may be, in its functioning it distorts the moral aspect of the situation in a variety of ways.

The same attitude is reflected in his view that a lawyer should not resort to untruth even to prove the rightness of the client who is right; much less should he do so for the sake of defending a client who is in wrong. (Gandhi 1927:273-4) In this, once, again, he differs from the Advocates' Act in that according to the Advocates ' Act, the client has to be defended according to law, while for Gandhi, the client must be defended according to truth, whatever the difficulties of arriving at it. This means that for him not law as law but morality should decide the case.

His attitude to litigation differs from those of others in as much as resort to law for him is cowardice and hence implies weakness of morality (Gandhi 1927:99; 1938 : 55-57). For others, reasons against litigation are based on inconveniences such as wastage of time and money and uncertainties inherent in the legal process.

* I express my deep sense of gratitude to Prof. K. J. Shah under whose guidence and inspiration I worte this paper.

Also, his insistence that lawyers should not charge high fees shows that here also the moral considerations predominate (YI, 4-10-1920). His view that lawyers should get the same wages as those of carpenters (H-16-3-1947) presupposes a social order in which there will be trusteeship of talent and a social division of powers—a society in which there would be no place for hierachy in professions and where one should not utilise for personal gains any special ability or advantage that one has whether that be capital, intelligence, or physical strength. (H. 29-6-1935}

The Role of Law in Bringing About Conformity to Moral Behaviour :

(i) Gandhi's estimate of the relative importance of law and morality did not mean that law had no role to play in the life of an individual or society. This role is brought out in considering the role of law in preventing drinking, gambling and prostitution. According to Gandhi the role of law was different in each case. (a) In the case of drinking Gandhi held that a legal ban was likely to succeed; there was considerable public support in its favour. Besides, the advantages of the legal ban were likely to outweigh its possible misuse. (b) The case of gambling was different. Gandhi was not sure that the ban on gambling was likely to be effective because the social support for gambling was considerable in that people in high places patronized it. (YI, 27-4-1921) (c) The role of law in preventing prostitution was still on a different footing. Gandhi held that a legal ban on prostitution would be a remedy worse than a disease (YI,9-7-1925). This was so in spite of the fact that public opinion was not in favour of prostitution. But given the nature of the evil, the hazards that accompanied legal ban were likely to outweigh the advantages; nay it might even increase the evil practice.

The discussion of Gandhi's views on the issue of legal ban on drinking, gambling and prostitution shows that his approach to each case in principle is the same; but the difference in application in each case arises from his understanding of the nature of the evil and the degree of social support for or against the case.

Gandhi's views as to the role of law in preventing each of the evils, and the relationship between law and morality are

based on such considerations. *We are led to the conclusion that for Gandhi law has only a contributory or sometimes a marginal role to play. Though Gandhi assigns a central role to morality other factors are never lost sight of.*

(ii) Considerations of Gandhi's reasons in favour of the legal ban on all the three—drinking, gambling and prostitution and the interrelationships among the various reasons show Gandhi's view on the nature of morality and its relationship to other aspects—economic, socio-psychological, religious, etc.

Three kinds of issues emerge from these considerations: (a) The first one is in relation to the past (tradition), viz., Gandhi's understanding of morality in the context of the tradition of the *puruṣārthas*. (b) The other issue is related to some contemporary views, his understanding of morality which implies the denial of the doctrine of the autonomy of morals (e.g., as illustrated by the views of Kant and Moore). (c) The third issue also is related to some contemporary views, viz., his view of morality which denies the distinction between self-regarding and other-regarding actions, and a kind of understanding of legal enforcement of morality which differs from the one based on this distinction (e.g., as illustrated by the views of Mill, Hart, Chagla and Gajendragadkar).

(a) Take the first issue. Though for Gandhi, the moral reasons in favour of, say, prohibition are important, the other reasons, viz., economic, socio-psychological, religious —— cannot be brushed aside; they are necessarily related to the moral reasons. This understanding of the relationship between morality and other aspects is in accordance with the understanding of the relationship of the *puruṣārthas* according to which the *puruṣārthas* do not so much form a hierarchy, but from a matrix of interacting elements. This implies that morality is not autonomous (independent) but is related to other factors—— *artha*, *kāma*, and *mokṣa*. (Manu Smṛti II. 224).

(b) If this is so, then Gandhi's view of morality differs from the view which holds that morality is autonomous. (Korner 1955 : 134-5, 146-49) (Paton 1958 : 128). The understanding of the difference between these two views would help to clarify the Gandhian position on this issue. With this end in view, we may

consider the views of two Western thinkers —— Kant and Moore —— who held that morality is autonomous : viz., the view of Kant that a moral act is a categorical imperative and view of Moore that the key moral concept, is a simple, unanalysable property (Moore 1959 : 7). The consideration of their views and their comparison with that of Gandhi on this issue would show that Gandhi's view of morality is more plausible than those of Kant and Moore.

(c) Given Gandhi's view of morality as distinct from the Western view as represented by Kant and Moore, the further question is : How does Gandhi's understanding on the issue of legal enforcement of morality differ from an influential Western view —— a view which bases itself on the distinction between self-regarding and other-regarding actions ? Such a point of view is represented, for instance, by the Western thinkers ——Mill and Hart——and two Indian thinkers——Chagla and Gajendragadkar. The basis for the criterion in the case of these thinkers was Mill's distinction between self-regarding and other-regarding actions and limiting legal enforcement to other-regarding actions which are harmful to others. (Mill 1951 : 95-6) The comparison of Gandhi's views on the above issue with those of the thinkers mentioned above, shows that the presuppositions of Gandhi are different from those of the others. In case of Gandhi as we have seen earlier, his views on the relationship between morality and other aspects of life showed an understanding implicit in the theory of purusarthas. If we are right, then, Gandhi's understanding has roots in the classical Indian tradition. But from this, it does not follow that Gandhi's views were intended to support the Indian tradition or to reject the Western tradition.

Civil Disobedience :

The superior authority of morality over law is clearly seen in the case of the right to disobey the law. Gandhi sought the justification for the disobedience of law, if it was found that the State was lawless or corrupt (YI, 5-1-1092). It became a sacred duty to disobey the State when this was the case. This implies that for Gandhi disobedience as justified when the system of law as a whole, bad. He makes a distinction between disobedience when a particular law is found to be bad and when the whole system is found to be bad. Though certain bad laws and practices

prevailed in South Africa he cooperated with the Government because he thought that these were excrescences upon the system; but the system was intrinsically and mainly good. Much later he said that he would be deeply distressed if on every conceivable occasion everyone were to be "a law unto oneself". The disobedience is justified when the State as a whole functions so as to deprive the people of their manhood so that man ceases to be man (Prabhu 1962 : 68).

What is the role of lawyers when the system is on the whole bad——a necessary condition justifying civil disobedience ? When the Government is on the whole just, the institutions of the law courts are healthy and the role of the lawyers in such a situation is to support the system. The question arises only when the Government is on the whole unjust, immoral and corrupt. For Gandhi, in such a situation it is a moral duty of the lawyers to non-cooperate with the system. In the conflict between professional duty and the moral duty Gandhi would say that the moral duty——non-cooperation with evil——should ultimately prevail.

Would not disobedience weaken the foundations of the State? Because disobedience would spread the habit of disobeying the law generating conditions for anarchy and chaos. Gandhi wants to prevent this by the manner of disobedience (YI 22-2-1920). Though Gandhi describes this manner as both civil and non-violent, the actual working out of the steps in conducting the movements he led, show a highly intricate pattern. The understanding of Gandhi's manner of disobedience shows how Gandhi was acutely aware of the dangers of disobedience spreading ill-will and hatred and the movement turning violent. Also, intrinsic to this manner, is his insistence that the right means alone would bring about the desired right ends.

The justification for acceptance of punishments is civil disobedience itself. His concept of civil disobedience implied that, breach of an unjust law necessarily entailed the duty of accepting the sanctions for the breach of law (YI, 15-12-1921). Thus, there was a moral obligation to court arrest. Gandhi considers the consequences of accepting punishment for all the parties concerned——Government, people and participants.

Gandhi's views on the grounds justifying civil disobedience

—— his views on Satyagraha in genereal —— serve two purposes: one, this helps creating moral awareness and strength and second, it also creates conditions for maintaining good-will and possibilities of living together of different groups of people. These ideas form the basis for the development of Gandhi's vision and his doctrine of Sarvodaya.

Conclusion :

Thus, we find that Gandhi has a systematic view of the relation between law, morality, individual and society. The attempt to see his views as an inter-connected whole, spread as his views are in his numerous scattered writings, shows that his views are much more systematic than it has been generally imagined. Further, consideration of his views raises, as we have seen, which can be fruitfully pursued to enhance our understanding both of ourselves, of our past, and of the West.

It has been suggested by others that Gandhi's thought has to be considered as a whole. This point is well made by Professor Niharranjan Ray. " One should not forget," says Professor Ray " that Gandhi was all the time thinking and acting in terms of a total social order of a vision in which the moral, social, economic, political, creative and intellectual orders were all but parts of one integrated whole " (Ray 1969 : 5-6). However, this is an intuitive understanding of Gandhi's thought. It has not been worked out in detail. It seems to me that though this has been said, this has not been systematically attempted. The paper shows that a detailed study of Gandhi's thought can show the integratedness of Gandhi's thought. In this study, I have confined myself to Gandhi's views on law. These views are integrally related to political, economic, social, moral and religious factors. The merit of this approach is evident from the way we have been able to raise issues and relate them fruitfully both to the past and the present.

Deptt. of Philosophy
Karnatak University,
Pawte Nagar,
Dharwar-3.

V. S. HEGDE

REFERENCES

1. **BOOKS :**

Gandhi, M. K. 1927 : *An Autobiography or the Story of my Experiments with Truth* translated by Desai, Mahadev Ahmedabad : Navajivan.

1938 : *Hind Swaraj or Indian Home Rule, Ahmedabad : Navajivan*

Korner, S. 1955 : *Kant* Bristol : Penguin Books, Ltd.

Mill, J. S. 1951 : *Utilitarianism. Liberty and Representative Government*, New York : Dulton, E. P. & Col.

Moore, G. E. 1959 : *Principia Ethica*, Cambridge : University Press.

Paton, J. H. 1958 : *The Categorical Imperative*, A Study in Kant's Moral Philosophy, London: Hutchinson's

Prabhu, R. K. Ed. 1969 : *Two Memorable Trials of Mahatma Gandhi* Ahmedabad : Navajivan.

Ray, Niharanjan, 1969 : *Introductory Address* "Gandhi : Theory and Practice, Social Impact and Contemporary Relevance Edited by Biswas C. S., Simla : Indian Institute Advanced Study.

2. **Journal :**

Gandhi M. K. Ed. : "Young India and Harijan"