CHAPTER- II

GANDHI’S APPROACH TO JUSTICE

Jurists are studied properly without undue reference to their personalities. Biographies of Austin, Salmond, Kant, Roscoe Pound and others may all provide some help to understand their theories but those do not affect one’s appraisal of them. It is true that sometimes it is useful to analyse the declared purposes or practical intentions behind the abstract theories. But while studying Gandhi’s approach to Justice, it is absolutely impossible to ignore his personality and activities.

For proper appreciation of Gandhi’s approach on any subject relating to justice, one has to keep two things in mind; first, although Gandhi was a barrister and an insider to the profession of law, he was not a man of academics. He did not pen down his ideas in any consistent form and at one place. For this, we have to go through innumerable passages contained in articles, statements, speeches and correspondence to answer the raised questions. J. B. Kripalani rightly remarked about him as, “If ever there was a planner without elaborate blue print, Gandhi was one.” It is also true that circumstances did not allow him to be rigid in his approach or to spin his theories in the cloistered atmosphere of his study. Rather the responsibility put on his shoulders by his fellow countrymen in an alien land gave him an opportunity to grow and evolve in the crucible of experience. The solutions he offered for the alleviation

1 Kripalani, J. B., Gandhi: His Life and Thought (Calcutta: Orient Longmans), 1961, p. 252.
of the pathetic conditions of his brethren in their fight for justice were not derived out of any set principles. His solutions were premised on the necessity and to the situation warranted by the circumstances. If at one time, to show his solidarity with the British Empire, he raised an Ambulance Corps during Zulu Rebellion, on the other occasion, after Rowlatt Bills, he dumped the Empire for its being satanic.

Second, his genius was more spiritual and moral than intellectual. His life was cast in the spiritual mould, of which truth and non-violence were the fundamental tenets. In his approach to justice one has to understand the language used by him being an insider to the profession and a votary of truth and non-violence.

To understand Gandhi’s approach to justice, one has to step along with Gandhi in his practice of law and the struggle he went through in South Africa.

Gandhi, a trained barrister in England (1888-91), did not choose the profession willingly rather it was his attitude of escapism when he could not cope up with studies at Samaldas College. He sailed for England on September 4th, 1888 to study law, kept his terms at the Inner Temple and took all his subjects in one examination after nine months intensive study. He was called to the bar on 10th June 1891, enrolled in to the H.C. on the 11th and sailed for India on 12th June 1891.

At an early stage Gandhi found that being called to the bar was one thing and practicing law was another. The legal maxims that he had read with great interest were difficult to be applied in practical

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3 Ibid., p. 50.
problems. Moreover, he lacked knowledge of Hindu and Mohammedan laws.

“It was easy to be called, but it was difficult to practice law.... I had read with interest legal maxims but did not know how to apply them in my profession.... Besides, I had not the slightest idea of Hindu and Mohammedan law.”

Initially, this frustrated him but what inspired inspite of a lack of understanding, training for legal practice and a lack of self-confidence were the two qualities - honesty and industry. One of his conservative English friends, namely Fredrick Pincutt, advised Gandhi that Pherozshah Mehta’s acumen, memory and ability were not essential to the making of a successful lawyer; honesty and industry were sufficient.

But destiny had its own account in store for him. Gandhi’s stay of two years in India could not fetch him even living out of the profession what to talk of his being successful barrister. He was neither having sufficient knowledge of the Indian legal system nor was he ready to adopt the prevalent system of tout etc.

It was at this time of predicament that an offer from a Muslim Indian firm namely Dada Abdullah and Co., which was having a claim case for about 40,000 pounds in South African Courts, came up to turn the course of his life. Gandhi jumped at it as it was the humiliating atmosphere of working in the petty Indian Courts.

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In regard to the background of the South African situation, it is relevant to mention here that the Dutch preferred their colonies to be exclusively white, with the Africans confined to a specified area allotted to them. They also wanted all Asiatic labour to be brought for a stipulated period and repatriated immediately after the contract came to an end. The local Britishers were also not different and taking Indians as formidable rivals in agriculture as well as trade, feared that they might be swamped by the Indians if their entrance was not checked.

As a result thereof, a number of restrictions in the form of new rules and regulations were coming in the way of the Indians entering into the colonies under the indenture contract. The earliest was Law 3 of 1885 in Transvaal in a flagrant contradiction of Art. 14 of London convention of 1884 restraining the rights of the Asiatics from acquiring Dutch citizenship. It required that, for sanitary purposes. Indians should reside in locations specially set apart for them, that they should not own fixed property except in such locations and that such of them as entered for purpose of trade should be registered for a fee and should obtain a license.6

The Indian community in South Africa was comprised of indentured and free labourers besides a few merchants, their clerks and assistants. Condition of indentured labourers was more or less similar to semi-slaves. The rest suffered from various legal as well as social disabilities with regard to rights of citizenship, trade, owning of land and residence. In trains and trams, they had to travel in separate

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compartments, entry in European hotels was prohibited and they were looked down upon as belonging to an inferior race.

In these circumstances, right from his first step in South Africa, Gandhi bore the colour discrimination but somehow or the other, he completed his job. As the case was concluded, he had no other purpose. But Abdulla Seth was not the man who let him sail without a send off. A farewell party was arranged in his honour at Sydenham. Here, turning over the pages of some of the newspapers, Gandhi chanced to see a paragraph in a corner of them under the caption ‘Indian Franchise’ which sought to deprive Indians of their right to elect members of the Natal Legislative Assembly. Soon, the farewell party turned into a political meeting, Gandhi was requested to stay and it was decided that a petition be moved at the earliest to Legislative Assembly against passing of the bill. In this way, God laid down foundation of his life in South Africa.7

**Disenfranchise Bill**

The growing number and prosperity of Indian settlers in South Africa created a sense of insecurity in the minds of the whites. The whites wanted to deport Indians from South Africa. Though the number of Indians registered as voters was only a little over two hundred but Gandhi rightly summarized the disenfranchisement bill as part of a calculated move to ensure white supremacy in Natal.8

This was the bill in which racial discrimination was made legal against Indians. The Bill aimed at:

a. removing the Indians from the voters list;

b. to deprive them of any political power.

A meeting of the Indians was held the very next day and decision was taken to oppose the bill, which was already in the third stage, by submitting a petition to the Assembly.

Drafting of the petition was not an easy task and it quietly tested the legal skills of Gandhi. But the petition was submitted well in time and was followed by letters to the editors, memorial to the Natal Premier and a petition to the governor as well. In the petition, first of all Gandhi tried to justify the claims of the Indians. He made full use of the research of European Indologists and Western admirers, like Mill, Burke, Bright, Henry, Maine, Hunter, Maxmuller etc., of democracy and liberty to support the cause.

Here, Gandhi mainly stressed upon:

a. treatment meted out to the Indians in South Africa earlier and in pursuance to the bills;

b. the concept was against the British sense of justice and the bills were to be engine of oppression;

c. contribution of Indians to the economy and welfare of the colony (Natal);

d. ability of Indians to exercise their right to vote judiciously; and

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e. postponement of the bills until the Indians were heard and no unwarranted interference with the rights of one section be allowed.11

As the Bill was already at the third stage, memorial submitted to the Natal Legislative Assembly startled the Assembly but the Bill was passed as it is. Then, a memorial bearing signatures of 10,000 Indians was submitted to Lord Ripon, Secretary of State for the colonies and he disallowed the Bill declaring that the British Empire could not agree to colour bar in legislation.

The Natal Government then brought another bill removing racial distinction but indirectly disqualifying Indians. The substance of the one of new bills was, “No person can be placed on voters roll in Natal who is a native of countries, which have not hitherto possessed elective representative institutions based on parliamentary franchise.”12 This Bill was also protested but without any success.13 Two more bills imposed severe restrictions on Indian trade and the other on Indian Immigration in Natal.14

Although the best efforts could not prevent the Bill from getting into statute book yet the mission taken was not to stop there. A regular organisation in the form of Natal Indian Congress was founded in August, 1894 with Abdullah Hajji Adam as its elected chairman whereas

13 Ibid., p. 29.
14 Ibid., p. 30.
Gandhi was at the place of honorary secretary\textsuperscript{15} to continue the fight for justice, which only God knew then about its time period to conclude.

The organisation was not a political party with an aim to capture political power. Rather it was an organisation with a distinct working structure and objectives. It was working continuously throughout the year\textsuperscript{16} in order to raise the social, political and economic status of the Indians over there. The association was more analogous to the Irish Association of Natal, it being an immigrant organisation struggling for minority rights. During this struggle for rights, the organisation was sometimes helped, sometime opposed by other immigrant groups such as the Irish and the Jews.\textsuperscript{17}

For this, Gandhi was to stay in South Africa for considerably long time. He applied for admission as an advocate of Supreme Court of Natal where his application was to be with a certificate of good character from two European merchants. Here also fight for justice was in store for Gandhi and his application was challenged by the Law Society of Natal on the sole ground that the Law did not contemplate that coloured barristers should be placed on the roll.\textsuperscript{18}

Gandhi succeeded in obtaining admission because of the Chief Justice’s ruling that the Law did not make any distinction between the Whites and the Coloured people. This was in fact his first victory but at the same time, his pragmatic approach to justice is magnificent,

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\textsuperscript{16} Gandhi, M. K., Satyagraha in South Africa, op. cit., p. 46.
\textsuperscript{17} Chanderan, D. S., Devanson, op. cit., p. 277.
\textsuperscript{18} Gandhi, M. K., Satyagraha in South Africa, op. cit., p. 45.
significantly when he being an advocate of the Natal Court submitted to its prevalent practice and agreed to remove his turban.

As a first step in the fight for justice, Gandhi tried to find out the basic problem and came to the conclusion that the Indians were demoralized and were devoid of self-respect, human dignity, awareness of their cultural heritage, self-reliance and courage. Secondly, there was lack of unity being hailing from different parts of India, of different religions, of different status and profession. Moreover, the European traders were scared of the competition with Indian traders because of their enterprising spirit. But most of them lacked sense of hygiene and personal cleanliness.

Gandhi’s approach to justice here involved to be responsible enough and deserving the rights he intended to seek. In this process, the question of internal improvement was taken up and Gandhi took following steps to ameliorate the conditions of the Indians:

1. made efforts to awaken a sense of their duties and rights as well;
2. to bring about unity in programmes concerning issues of common interest;
3. founded Natal Educational Association to educate them.

For claiming equal status for Indians in South Africa (British Colony), it was imperative and rational for Gandhi to demonstrate that Indians in Natal were no less loyal to the British Empire than the Whites. For this, he left no opportunity to sing the song of the blessings

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19 Ibid., p. 38.
20 Ibid., pp. 26-27.
of munificent British Rule.\textsuperscript{23} Gandhi took it as a matter of pride that Britishers viewed India as the brightest jewel in their Empire. As a matter of concern on the eighty-first birthday of the Queen, he sent a message of congratulations\textsuperscript{24} to her on behalf of Indians and similarly on her death, Indians were advised to close their business premises as a mark of personal grief. Gandhi looked forward to the development of the sentiments of Imperial Brotherhood in South Africa and planned to distribute a souvenir with a photograph of Queen Victoria with proclamation of 1858 to the people of India at the top and six dates in her life regarding India in 1901, among all the Indian children in schools in Natal.\textsuperscript{25} In 1899, at the time of Boer War between the British and the Boers, he organised the Indian Ambulance Corps\textsuperscript{26} to remove the impression of the Britishers that Indians lacked courage.\textsuperscript{27} Infact, Gandhi had asked Indians to enlist as soldiers but that could not be possible in the absence of any formal training in holding arms. The British General appreciated these activities\textsuperscript{28} and Gandhi, along with thirty-seven other Indian volunteers, was awarded war-medals.

These moves were planned by a shrewd lawyer who had realised that at first instance, he can get justice only as British subject as his own country was a part of the British Empire. At that time, there was no international body like the League of Nations or the U.N to whom appeal could be made for the violation of human rights in a foreign

\textsuperscript{24} Ibid., p. 74.
\textsuperscript{25} Ibid., p. 178.
\textsuperscript{26} Ibid., p. 137.
\textsuperscript{28} The Collected Works of Mahatma Gandhi, Vol. III, p. 129.
country. The British Empire was the one and only substitute of a world organisation.  

When, after a short break in India, Gandhi was called again to South Africa to represent the Indian case to Chamberlain, secretary of state, who was on visit, situation over there shocked him. The real face of imperialism was slowly and gradually unveiling itself as after the Boer War, condition of Indians in South Africa became more pathetic. The old laws of the License Act, the Immigration Act, Restrictions on Indians in getting admissions to Government Schools etc. (refer Appendix 1 to 4) were being enforced with greater rigour. The British Indians:

a. could not own landed property except in Locations;
b. were bound to get their names entered in separate register within 8 days of their arrival and pay the sum of 3 stg;
c. could trade and reside only in locations;
d. could not be out after 9 P. M. except on special occasions;
e. could not travel on the railways except third class;
f. could not walk on footpaths in Johannesburg and Pretoria;
g. could not drive a hired vehicle in Johannesburg and Pretoria;
h. could not own native gold or take out digger’s license.

Gandhi led the deputation to Chamberlain at Durban but he was not in a mood to listen to the problems of the Indians as he was on a mission to get a gift of thirty-five million pounds from South Africa to repay to the British Treasury for the cost of war.

29 Ibid., p. 136.
30 Ibid., p. 271.
The young Gandhi followed the secretary of state to Pretoria after procuring a permit to enter Transvaal. But the Chief of Asiatic Department refused to accept the permit as valid on frivolous grounds, it being the only way to exclude the young lawyer to represent the Indian case. As a net result, the deputation ended in failure. But this situation also could not discourage Gandhi who was determined to fight for the rights of his countrymen.

He decided to settle in Transvaal, applied for admission as an attorney in the Supreme Court, which was easily granted this time. Gandhi founded the British Indian Association to fight for the rights of the Indians in Transvaal. Here, in the thick of the fight, the struggle against anti-Indian legislation had become more intense than what he had expected.

Indian traders were denied licenses as a result of which they had to close their stores despite large stocks. The Asiatic Office was inventing new methods for harassing Indians every second day. Indians were ordered to get out of footpath and were compelled to trade in demarcated locations called ‘Bazaars’.

As usual, Gandhi first tried to win the confidence of authorities by offer of co-operation and his willingness to compromise, and confined himself;

a. in case of bazaars, to co-operate for the success of the system provided it was made applicable to new entrants and these business centers were allowed in the central business sections of any town and the Indians were allowed to purchase property subject to building and sanitation regulations;

32 Ibid., p. 114.
b. protection of the rights of those already settled there.

He aimed at the above to remove apprehensions of the Whites that the Indians were aiming at swamping the colony with Indian immigrants. But unfortunately all these efforts failed and Gandhi had to resort to his earlier strategy of writing letters to the press about the problem in order to exert pressure on the Indian Government to intervene through its leaders. Gandhi found support in Lord Curzon who acted on the sides of the Indians and Supreme Court Natal, which declared in its judgement that His Majesty’s Government was a trustee of imperial interests including those of Indian subjects of the crown. This decision put restrictions on the administration in Transvaal as it now could not freely put restrictions on the Indians.

But even such decisions could not raise the status of the Indians in Transvaal because of two reasons; first, although after the war, Transvaal administration came under the control of the British yet they were not keen to restrain the erstwhile Boer administration with regard to their policy towards Indians, especially when in their own crown colony, a similar policy was pursued by the Whites; secondly, there were hardly 1200 Indians as against one lac Europeans in Johannesburg, and in them also most of them (Indians) were illiterate.

In such circumstances, Gandhi wanted to educate the Indians first and also wanted to create an understanding with those of Europeans. For this, he started a weekly, ‘Indian Opinion’ in June 1903 (in his Autobiography Gandhi says in 1904)\(^3\) to educate Indians as well as Europeans, to create a support for the cause and to serve as an

interpreter between the Indians and the Europeans to bridge the gulf between them.\textsuperscript{34}

In the very first issue, Gandhi set forth the vexatious laws and disabilities under which Indians were suffering in different colonies of South Africa.\textsuperscript{35} At this moment, he realised that his presence would be required in South Africa for a considerably long period as the government was contemplating modification of the laws to the disadvantages of the Indians.

Accordingly, his life was taking course with a new vision, purpose with priorities and values. The ideals of ‘aparigraha’ (non-possession) and samabhav (equality) fascinated him. In Gandhi’s life, thought and action go together, so problem before him was how to act according to these ideals? The young lawyer found all his answers in Snell’s equity and found religion in jurisprudence. He observed that if all these were treated as a trust, then and only then one could lose all attachments to these worldly things.

In 1906, at the time of Zulu Rebellion, Gandhi again tried to prove his solidarity with the British Empire as a reliable citizen. At his suggestions, Natal Indian Congress made an offer to raise Indian Ambulance Corps. Gandhi himself encouraged the Indians to enlist themselves in the Army if any such offer was made to them. His ambulance corps with 24 volunteers consisting of 19 ex-indentured, one Pathan and four Gujaratis attended to the wounded Zulus who had been mercilessly beaten by the White soldiers.

\textsuperscript{34} Gandhi, M. K., Satyagraha in South Africa, op. cit., pp. 141-144.

Faith in the British Empire prevented him from examining the rationality of the act of the Natal Government against the Zulus in a right perspective. He found that Zulu rebellion in fact was merely a no-tax campaign and not more than that. As no White nurse was ready to attend to the wounds of the Zulus attacked by the White soldiers, he developed sympathies with the Zulus. He observed, “I could see that but for us the Zulus would have been uncared for.”

The harsh laws and regulations of the Dutch Government in Transvaal were being extended to all Asiatics including the British Indians in Transvaal. On August 22, 1906, the Transvaal Gazette Extraordinary published a new ordinance applicable to Indian settlers. This required every Indian ‘coolie’, Arab and Turk eight years or above to reside in Transvaal to register his/her name with the Registrar of Asiatic with mark of identification upon applicant’s person, fingerprints and thumb impression to get a certificate of Registration, failing which hard punishment was prescribed (refer Appendix 5 & 6). Gandhi studied the ordinance clause by clause and came to the conclusion that it showed nothing but abhorrence of the Indians. If the ordinance was passed and Indians meekly accepted it, absolute ruin was in store for the Indians in South Africa.

Gandhi translated the draft ordinance in Gujarati to make Indians aware of the gravity of situation and published it in ‘Indian Opinion’. On behalf of the British Indian Association, he also led a deputation to the colonial secretary who, in reply assured that its suggestions would be
considered by the government. But nothing constructive was taken into account in the Assembly on 4th September 1906.

In response to this, a meeting of Indians presided over by Abdul Gani, chairman of the Transvaal British Indian Association, was called to oppose in Jewish Theatre in Johannesburg. It was attended by approximately 3000 delegates from different parts of Transvaal. The most important resolution passed was the fourth resolution by which Indians present there solemnly decided not to submit to the ordinance, if it became law, and to suffer all the penalties to such non-submission which meant that, in times to come, the movement was going to take a peculiar form by means of self-sufferings.

But before taking any step beyond the modalities of the Law of the land, Gandhi’s approach was that all existing constitutional remedies be exhausted. Transvaal, being a crown colony, and the Imperial Government being responsible for its legislation and administration, it was the right course to send a delegation to England to persuade the British Government to withhold its assent to any discriminatory legislation passed by the Transvaal Legislative Assembly. Gandhi and H.O. Ali formed the delegation.

The delegation received support and sympathy in various quarters. A meeting of the Liberal, Labour and Nationalist members of the House of the Commons under the chairmanship of Henary Cotton passed resolution supporting the objects of the delegation.40

His strategy was to seek the support of all parties in England, whether in opposition or in power, to approach the Editors of all the important newspapers, both Conservatives and Liberals, to the cause of

the Indians in South Africa. The propaganda of the delegation caught the
British Government in an embarrassing position by invoking the
principles with which the Britishers had tried for decades to give a
pleasing face to their imperialism. While attacking the discriminatory
laws being passed by the Transvaal Government, the famous organ of
public opinion in England, The Times, in one of its eloquent moments
remarked, “As a nation, we have little reason to be proud of the
treatment being meted out to our fellow subjects in the Transvaal.”41

Gandhi, a lawyer, tactfully presented the case of the Indians. His
approach was not negative. Besides the interest of the Indians, he
appreciated the fear of the Whites in Transvaal and suggested measures
to mitigate them. Gandhi proposed the appointment of a Commission to
investigate whether a fresh legislation was in fact required to safeguard
the interest of both the Whites and the Indians.

On return of the Delegation to Johannesburg, the hopes of redress
of their grievances were dashed to the ground when Gandhi discovered
that the colonial secretary in fact, assured the Transvaal Government that
the Black Act would not be disallowed when it was passed by the
Transvaal Legislative Assembly after 1st January, 1907 i.e. after grant of
responsible government.42 Thus the original ordinance was rushed
through all its stages at a single sitting on March 21st, 1907 in the new
legislature. The Act was proclaimed to take effect from July 1st, 1907

41 The Times, January 7, 1908, quoted in Huttenback, Robert A.,
Gandhi in South Africa (London: Cornell University Press), 1971,
pp. 182-183.
and the Indians were called upon to apply for registration under it by July 31, 1907.43

The number of Indians in Transvaal was not very large. At that time, when Gandhi started his movement, the population of Indians in Transvaal was not more than 13,00044 against the Whites’ population of 2,80,000. Most of the Indians were living in Johannesburg and Pretoria as traders and hawkers. Majority of them had the working knowledge of several Indian languages and could communicate with Indians speaking different languages. Gandhi, in such a situation, was to meet the challenge of a powerful White Government. In these circumstances, truth and non-violence became the main stay of his struggle and approach. The success of his struggle was to depend upon the dedicated and committed volunteers, the pressure of public opinion and sympathies of the liberal Whites.

Thus when it was decided that Indians must refuse to register themselves according to the new law, volunteers were posted near Registrar’s office to dissuade them from going in for registration by apprising them to be conscious of the harm done to the community by the new Act. Force was not at all to be used to prevent registration. Volunteers were also instructed not to be rude to any person taking out a permit rather announcements were made that if any one desirous of taking out a permit was afraid of the pickets, he could ask the workers to detail a volunteer to escort him to the permit office and back as well.45

43 Ibid., p. 126.
44 Ibid., p. 130.
The Government was left with no choice but to start arresting the leaders of the movement to suppress it. Gandhi was sentenced to two months simple imprisonment though he had asked for three months with hard labour as given to other compatriots in the movement. This was his first experience of jail life. But Gandhi, like a law-abiding citizen, advised all the volunteers to observe all the jail regulations strictly so long as they were not inconsistent with their self-respect or religious convictions.46

But destiny did not want all of them in jail for long time as a settlement was arrived at between Gandhi and General Smuts through the good offices of Albert Cartwright, editor of Transvaal Leader who was known to Gandhi as well. Result thereof was that all the Satyagrahis were released as Gandhi was assured that the Black Act would be repealed if Indians agreed to register themselves voluntarily.47 Earlier also, before implementation of the New Act, Indians had offered voluntary registration on 29 March 1907 and this was not anything unusual on the part of Gandhi to agree to it.

Inspite of the small numbers of the Indians in Transvaal, their leader’s character, spirit of self-sacrifice and intelligent move put the colonial government on defensive and the struggle attracted the attention of the entire British Empire. Practically almost all the Indians got themselves registered in terms of the agreement. General Smut admitted that out of the persons who applied for registration and that only 70 had refused to allow their finger prints to be recorded. Gandhi claimed that

46 Ibid., p. 150.
47 Ibid., p. 156.
even the rest would have got registered themselves if the government had not halted the procedure on May 9, 1908.\textsuperscript{48}

The compromise was considered as a gain for the Indian Community. Daily Mail commented on February, 1, 1908, "it is certain that the compromise now agreed upon differ in no material respect from that suggested by the Indians themselves in May last and is just as certain for this reason that every Indian regards the compromise as complete victory over the government inspite of the very generous and exemplary attitude adopted."\textsuperscript{49}

But the present dream did not last long. The Transvaal Government was in no mood to repeal the settlement as interpreted by Gandhi. The Government was busy in passing discriminatory and oppressive laws against the Indians though Gandhi and his associates were busy in honouring the agreement. Further Acts in 1908 prohibited Indians:

- from dealing in precious metals;
- from holding or subletting property on proclaimed ground;
- from residing on proclaimed ground.

Another Shop Hours Act of 1908 was a disguised form of attack on Indian merchants. General Smuts started laying down new conditions for the repeal of the Act. General wanted the consent of the Indians in Transvaal who had been residing there before the Boer War as well as those Indians who cleared the education test.

\textsuperscript{48} Huttenback, op. cit., p. 191.
\textsuperscript{49} Nayyar, Sushila, Satyagraha at Work (Ahmedabad: Navajivan Publishing House), 1989, p. 270.
Gandhi regarded this as clear violation of the principle of equality of all subjects of the British Empire. In the struggle for the immigration rights of the educated Indians, traders in Transvaal were advised to carry on trade without license. Prominent Indians like Sorabji, Essop Mia, and Chairman of British Indian Association of Transvaal, Gandhi’s eldest son, Hiralal, Abdul Cadir Bawazeer, Chairman of Hamida Islamic Society and Naidoo offered themselves for arrest in these moves.50

The struggle reached its climax when it was decided that registration certificate taken out voluntarily be burnt as neither the government was ready to repeal the Act nor the withdrawal of their applications for voluntary registration done. Prior notice of this programme was given to General Smuts.51 A large three-legged pot was filled with registration certificates, about 1000 in all, and about 500 trading licenses outside the Hamida Mosque in Johannesburg. Paraffin was poured in and it was set on fire. Gandhi considered it as a ‘yajana’ and hence “we invoked the blessings of the Almighty and appealed to all to trust God in their fight for their rights”.52

General Botha and General Smuts were ready for some concessions but the Indian leadership was not prepared anything less than the repeal of the Asiatic Amendment Act and Immigration Act. What Gandhi in fact was contemplating, was, right of the Indians to immigrate on the basis of equality with Europeans and nothing more nothing less than that.

51 Ibid., p. 451.
52 Ibid., p. 459.
On September 29, 1908, Gandhi was arrested for non-production of his certificate, which had been consigned to flames. He was sentenced to pay a fine of 25 pounds or to go to jail for two months with hard labour. Gandhi, like his other compatriots, preferred jail.

On his return to Transvaal, Gandhi was re-arrested twice for not producing the registration certificate. Gandhi considered arrest and imprisonment as the height of good fortune in the interest and good name of his country. In jail, he utilized his time in reading works of Mazzini, Ruskin, Tolstoy, Emerson, Thoreau, Carlyle besides Hindu religious works Manusmriti, Patanjalis Yoga Darshan, the Upanishads and the Gita.

Prospective Union of the colonies, on the insistence of the Europeans in South Africa, provided Gandhi an opportunity to send deputation to England to press on the British Government to settle Indian question in South Africa before conceding to the demand of the Europeans for the Union of all the colonies. But the delegation ended in failure as the British administration was in no mood to press South Africa to consider sympathetically the fundamental demand of the Indians, this was made clear to the delegation by Lord Ampthill. Only gain of the delegation was that the struggle got attention of the nationalist India.

The struggle became more vexatious and prolonged on coming into existence of the Union of South Africa after merging of all the colonies into one political union in 1910. After this, Gokhle visited South Africa in October 1912 on an invitation of Gandhi to examine the

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54 Ibid., pp. 228-29.
situations there. At the end of the tour, Gokhle had a conference with the ministers of the Union Government and Gandhi was told that their demands would be mostly conceded. But Gandhi had his own apprehensions, as he knew the types of politicians and statesmen in South Africa. His fear turned out to be true. The repeal of three-pound tax was not honoured. Nor was any vacation taken to lighten the disabilities of the Indians under any other laws.

Moreover, a decision of the Supreme Court (by Mr. Justice Searle of Cape Supreme Court on 14.3.1913) about the legal validity of Indian Marriages made the whole situation grim. As per the facts, a Muslim resident of Port Elizabeth namely, Hassan Esop, had married in India to Bai Mariam in 1908. He returned in 1909 without her. He again came to India in 1912 and returned with his wife. But the immigration officer refused her immigration and ordered that she be sent back to India. The application of the husband restraining the government from deporting his wife was refused by the Supreme Court on March, 14, 1913.

The judgement was interpreted as that every Hindu and Mohammedan wife, who is in South Africa, illegally married and hence at the mercy of the government whose grace alone could enable her to remain in the country. So, all marriages which were not celebrated according to Christian rites were invalid marriages.

55 Ibid., pp. 259-61.
56 Ibid., pp. 267-68.
57 Ibid., pp. 271-73.
58 Ibid., p. 276.
59 Ibid., pp. 276-81.
60 Ibid., p. 276.
Mass meeting was held and Gandhi referring to Justice Searle’s judgement declared that it will become the bounden duty of the Indian community for protection of its womanhood and its honour to adopt passive resistance.61

With a view to broaden the base of his struggle, Gandhi concentrated mainly on the following:

a. Abolition of Three Pound Tax,

b. Acceptance of the legal validity of all monogamous marriages performed according to Indian rites,

c. Retention of the right of South Africa born Indians to enter the Cape by the reason of birth,

d. A declaration that existing laws such as the Transvaal Land Township Act, the Licencing Laws of the Cape and Natal and Immigration Act shall be administered in liberal spirit and with due regards to vested rights.

Struggle was intensified, a number of workers were imprisoned, leaders were arrested, strikes were held but throughout all this, option for compromise was kept open. The blood and iron policy of government attracted the attention of the outer world. In India, Gokhale broadcast the news of these outrages from his sick bed. Even the Viceroy felt indignant and identified himself with the sentiments of the Indians. Gokhale sent C. F. Andrews and Pearson to South Africa on learning that all the persons guiding the movement had been arrested. The British press and the Secretary of State showed sympathy with the

struggle of the Indians in South Africa. As a result, the Union Government of South Africa was caught in the net of its own.

A commission was appointed by the government with Justice Sir W. Solomon as its chairman to inquire into the causes of the Natal Indian strikes. The result of the negotiations was the provisional settlements which covered some of the major demands of Indians. In the meantime, the Commission of Inquiry also made certain recommendations for the removal of some of the grievances of the Indians. The Indian Relief Act was passed by the South African Parliament in pursuance of the recommendations of the Commission and provisional settlements. The Three Pound Tax on the ex-indentured labourers was abolished; marriages performed according to Indian rites were legalized. And a domicile certificate with bearer’s thumb impression was sufficient evidence of his right to enter the Union of South Africa. Although a few issues like those of separate locations, the Gold Law, Trade Licensing Laws, the bar on the purchase of landed property, continued yet Gandhi did not insist on the abolition of all the restrictions as satyagraha had been started with limited objectives and in that limited content, the movement was a success.

During this struggle, Gandhi’s approach to legal justice involved the following stages:

1. Identifying the discrimination problem areas;
2. Educating the masses about discrimination;
3. Formulating public opinion and justifying the claim;
4. Advocating justice in equity;
5. Removing all the apprehensions of the opposite party;
6. Winning the confidence of the authorities, offering co-operation and willingness to compromise;
7. Resorting to constitutional remedies before taking any step beyond the modalities of law;
8. In case of final step resorting to satyagraha.

As the fight for justice ended in South Africa, Gandhi sailed for India and landed here in 1915. In India also, Gandhi applied the same methodology whether it was Champaran Movement, Kheda Satyagraha or Campaign against Rowlatt Act in 1919. But in India Gandhi’s activities were more of political nature. Although he had left practice in 1912 but after the first civil imprisonment in 1922, he was debarred by his Inn and would not apply for re-instatement, as he regarded himself a farmer and handicraft man.62

The principal idea in Gandhi’s approach is, thus, that law shall be socially just or suffer civil disobedience. A number of pragmatic political theorists and imperative school jurisprudents have advocated that ‘might is right’ and indeed, ought to be but a little man in colonial country bared his bosom to the leonine violence of an Empire and declared that right has might. The moral order of cosmos is more patent than the muscular mandate of the sovereign.

Society, a ‘dharmakshetra’ where the duel between good and evil is dramatized, Gandhi focused and directed his militant resistance of the deprived and depressed and inspired an insurgency of novel type for human justice.

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In Gandhi’s moral jurisprudence, rule of law shall not, without peril to its own life, rob its consumer, the common man, of his right of inalienable liberties and conditions of survival which make man manly.

To break the satanic law, to make a humane law is one of the satyagraha innovation. Gandhi, who can be safely accorded status as the founder of jurisconscience, said, “I have found that it is our first duty to render voluntary obedience to law, but whilst doing that duty, I have also seen that when law fosters untruth it becomes a duty to disobey it.

The final court of appeal is not the Court, nor the executive, nor the legislature, but the electorate as a whole. The civilly disobedient appeal is the special way to this body…”63

Gandhi who, in his approach, drew inspiration from Tolstoy, Thoreau and Ruskin, also dug deep into the oceanic reservoir of Indian culture and world heritage. Daniel’s disregard of law of the Medes and Persian and his meek submission to penalty, Socrates preached truth as conceived by him and for that he preferred suffering punishment of death, Prahalad disregard the orders of his father being against his conscience, Mirabai’s conduct towards the circumstances in the family of her husband and then separation from her husband were all the purest form of satyagraha in their approach. Gandhi wrote, “In the application of satyagraha, I discovered in the earliest stages that pursuit of Truth did not admit of violence being inflicted on one’s opponent, but that he must wean from error by patience and sympathy. For, what appears to be truth to the one may appear to be error to the other. And patience means self

suffering. So, the doctrine came to mean vindication of Truth, not by infliction of sufferings on the opponent, but on one’s own self.”

In his approach, to justice Gandhi raised the ambit of the law of the family to national and international level. The doctrine of Satyagraha which Gandhi adopted to oppose the satanic law was nothing but the law of love used in the civilized world to settle disputes and differences in family. He observed, “this doctrine of Satyagraha is not new; it is merely an extension of the rule of domestic life to the political family disputes, and differences are generally settled according to the law of love. The injured member has so much regard for the others that he suffers injury for the sake of his principles without retaliation and without being angry with those who differ from him...Thus his action, whether he resists or resigns, is always calculated to promote the common welfare of the family. It is thus law of love which, silently but surely, governs the family for the most part throughout the civilized world.”

He further opined that the nations can be called civilized, only to the extent that they obey this law.

Gandhi’s approach here was to make the framers of law realise the injustice as a consequence of the law drafted by them. He first showed the evil result of the law by self-suffering till the framers accepted their mistake. He said, “we must refuse to wait for the wrong to be righted till the wrongdoer has been roused to a sense of his inequity. We must not, for fear for ourselves or others, having to suffer, remain

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64 Chander, Jag Parvesh (ed.), Teachings of Mahatma Gandhi (Lahore: The Indian Printing Works), 1945, p. 494.
65 Harijan, 21-07-1940, Vol. VIII, p. 212
66 Ibid.

74
participants in it. But we must combat the wrong by ceasing to assist the wrongdoer directly or indirectly.”

In Gandhi’s moral jurisprudence, law and conscience, law and humanism, law and religion did not belong to watertight compartments of human life rather these vibrate on the same wavelength. He did not accuse the King for their Kingly weapons as it is bred in them. They want to command but those who have to obey commands donot want guns. His simple answer to the rulers was to non-cooperate with them when they displease, through the weapon of satyagraha. He said, “The real meaning of the statement that we are a law abiding nation is that we are passive resisters. When we do not like certain laws, we don’t break the heads of law gives but we suffer and donot submit to the laws, that we should obey laws whether good or bad is a newfangled notion. There was no such thing in former days. The people disregarded those laws they did not like and suffered the penalties for their breach. It is contrary to our manhood if we obey laws repugnant to our conscience….If I were a passive resister, I would say to them that I would have nothing to do with their law.”

Gandhi’s approach was developed from Thoreau’s advocacy of the essentially revolutionary principle of action based on one’s conscience. In his way, approach to justice could not be effected only by petitions to government or by other indirect democratic means but only if each right minded individual takes direct action in his own capacity. In Thoreau’s scale, if the law by its nature, rendered one to be an agent

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of injustice to another then it deserved disobedience and non-cooperation. Gandhi raised the status of this doctrine on a cosmic scale and added multidimensional application.

Gandhi said, “He does not mean by this that those who suffer must seek no redress. He believes rather that we invite suffering on ourselves through our own fault. An oppressor’s efforts will be in vain if we refuse to submit to his tyranny. Generally, no one will kick me for the mere fun of it. There must be some deeper reason for his doing so. He will kick me to bend me to his will if I have been opposing him. If, inspite of the kicks, I refuse to carry out his orders, he will stop kicking me. It would make no difference to him whether we did so or not. What matters to me is the fact that his order is unjust. Slavery consists in submitting to an unjust order, not in suffering ourselves to be kicked.”

Gandhi’s approach to justice supported the use of soul force and sacrifice of self as a method of securing rights. He wrote in Hind Swaraj, “Passive Resistance is a method of securing rights by personal sufferings; it is the reverse of the resistance by arms. When I refuse to do a thing that is repugnant to my conscience I use soul force. For instance, the government of the day has passed the law which is applicable to me. I don’t like it. If by using violence, I force the government to repeal the law, I am employing what may be termed body force. If I don’t obey the law and accept the penalty for its breach, I use soul force. It involves sacrifice of self.”

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70 Ibid., p. 71.
No doubt Gandhi advocated disobedience to law opposed to conscience and non-cooperation to the framers of law but he also stressed that non-cooperation must be ordered, disciplined and with a cooperation among non-cooperators. He said, “but the greatest thing in the campaign of non-cooperation is to evolve order, discipline, cooperation among the people, coordination among the workers. Effective non-cooperation depends upon complete organisation.”

This is one aspect of Gandhi’s approach to legal justice i.e., where government is on one side passing discriminatory laws and individuals or group of individuals on the opposing end. The second aspect of legal justice is legal justice between two individuals or individuals or group/groups or between two or more groups.

Here also, Gandhi stuck to his basic philosophy of truth and non-violence besides other fundamentals. Insistence on truth was considered as indispensable for the practice of law and in his approach to justice. Right from the beginning of his career, he was utterly uncompromising in his attitude of rejecting all unfair practices to earn a living in the profession of law. As such, he had a problem about functioning within the existing norms, one such being tout system.

As a student, Gandhi had learned that lawyer’s profession was a liar’s profession but when in profession, for him the central issue was whether a lawyer could remain truthful and honest and yet earn a living through the practice of law.

Whatever might be the problem, Gandhi had one focus and that was not to make it a business to lie on behalf of his client. He even went out of the way to tell the truth even though it was going to cause

71 Ibid.
considerable damage to the cause of his client. Two famous instances of this are in:

i. the case of cost award and

ii. the case of Parsi Rustomji.

The case of cost award involved highly complicated accounts. The case had been heard in parts before several courts. Ultimately, the book-keeping portion of it was entrusted by the court to the arbitration of one qualified accountant. The court award went entirely in favour of Gandhi’s client. But the arbitrator had inadvertently committed an error in calculation which, however small, was serious in-as-much as an entry which ought to have been on debit side was made on the credit side. The opposite party, however, had opposed the award on the other grounds. Gandhi insisted that the error in calculations should be admitted. The senior counsel disagreed with Gandhi and held that no counsel was bound to admit anything that went against his client’s interest. But Gandhi would not agree and tell the client “I shall have nothing to do with the case if the error is not admitted.” The client accepted Gandhi’s advice and said, ‘admit the error’. Let us lose if that is to be our lot. The case went in favour of Gandhi’s client. This experience confirmed to Gandhi that it was not impossible to practice law without compromising truth.72

In Parsi Rustomji’s case, the Parsi was an importer of goods from Bombay and Calcutta. He, though not frequently, resorted to smuggling and once he was caught. He came to Gandhi and confessed his guilt. Gandhi’s answer was clear that he could try to save him only by means of confession. The confession was made before the Customs Officer as

well as before the Attorney General. Gandhi pleaded Parsi’s case, the Parsi was scared from the ordeal of going to jail and was ordered to pay a penalty equal to twice the amount he had confessed for having smuggled.\textsuperscript{73}

The issue after the above two cases, before us is two fold:

a. how far can a lawyer insist on truth on the part of the client and on his own part in the practice of law to achieve justice?

b. how far a lawyer can insist his client to tell the truth to himself and to the court?

Gandhi’s answer to these is that when the client is guilty, the lawyer should not take the advantage of legal lacunas to save him and when the client is right, he ought not to be proved so by false representation or in other such ways.

Two inferences can be drawn from this, first, that for Gandhi truth was not merely a personal demand. For him, truth was essential if law and the lawyers are to perform their function in society in regard to the court, the client and to themselves in order to attain legal justice. In his opinion, one should not resort to telling deliberate lies, tutoring witnesses, evidence and so on in order to get a particular decision.

Secondly, the means used must be in consonance with the end. Right goal should not be achieved through evil means. When a person is right, he ought not to resort to unfair means to defend himself rather he should stick to his righteousness.

There is no doubt that there is bound to be a conflict between a lawyer’s duty to the court and duty to his conscience or their might be

\textsuperscript{73} Ibid., pp. 270-72.
conflict between his duty to his client and his duty to his conscience, according to Gandhi duty to conscience overrides both.

Gandhi not only said that the lawyer should not tell lies for the sake of either his client or for himself. He also stresses that lawyers should not take help of the legal lacunas and technicalities to secure their clients due, when he is morally certain or when he knows that clients are guilty. Gandhi wanted the law to be used to secure justice and to prevent the perpetuation or occurrence of injustice, by two means: that is truth and fair means.

Now, one can say that as doctor’s duty, once he accepts someone as a patient, is to serve his patient’s interest, similarly a lawyer’s duty is to serve the interest of the person who engages him. The analogy is based upon the view that no matter whether the person is guilty or not, a lawyer must defend him so as to serve the ends of justice just as it is doctor’s duty to cure his patient in order to restore him to health.

But this analogical reasoning will not do with Gandhi, as there is a difference between a doctor-patient and a lawyer-client relationship. The ends of the patient coincide with the ends of the doctor. But this is not so in lawyer-client relationship. The lawyer being an officer of the court functions to help the cause of justice, and within this framework, he is to help the cause of his client and not to help him at the cost of the framework of justice.

So, Gandhi’s insistence on truth is not a matter of personal conviction. It is a matter, which is inherent in the proper functioning of law and society and, above all, in the proper dispensation of legal justice. In Gandhi’s definition, justice is an inquiry into truth by using fair means as to what is due to whom and who is entitled to what within
the established framework, when the framework itself is not faulty or discriminatory.

For Gandhi, justice is not only confined to what is within the ambit of a legal framework rather it also covers even the dealings between a lawyer and his client relating to fees etc. If he is not prepared to make any concession to the client at the cost of truth, he is more than ready and willing to see that the lawyer does not exploit the client any way which may lead to further litigation or if the litigation is indispensable then by charging unreasonable fee etc.

Litigation means approaching the court of law to settle a dispute. Here, the dispute is between ordinary citizens and not between the citizens on one side and the state on the other or between the two states or between two corporate entities. Though in the best of the legal systems, litigation is unavoidable but it should be avoided as far as possible because of its economic, social, and moral consequences.

Gandhi, though, is against litigation but, in his opinion, the best of advocacy requires to advise clients either not to proceed or to come to an agreement rather than to keep it open with legal proceedings.

For Gandhi, another reason for not resorting to litigation is to see it as ‘not moral’. People become unmanly when they resort to settle their dispute through courts. But when it is inevitable then what is to be done? Gandhi’s answer is simple: “one must suffer injustice and be happy about it.”

This brings about a secondary and dependent position Gandhi gives to law. Resort to law is nothing but helplessness and law is to

function primarily for justice and not for law itself. Here, this understanding of justice by Gandhi is quite different from what is generally conceptualised. Generally, justice is supposed to replace violence of personal conflicts or revenge and is a civilizing agent in the community, but, according to Gandhi, justice is to serve the purpose of morality, which, in turn, is in line with Gandhi’s insistence on truth in legal framework.

Although it is a burden on the state to perform judicial functions in the modern kind of polity yet Gandhi was not very much in favour of this. He himself, being a trained lawyer, was aware of its basic problems. He felt that it was an expensive procedure, led to unnecessary delays and was bureaucratic. It also failed to treat human beings with dignity and considered them only as litigants or as objects in the system and there was little realisation of the human sufferings that delays led to. In other words, it was basically not sympathetic to the people, especially the poor, who fell ill at ease in the legal chambers and could ill afford hiring of expensive lawyers.

Gandhi felt that the process should be decentralised and as much of judicial work as possible should be transferred to Panchayats i.e. a kind of ad hoc arbitration tribunals, members of which are to be determined by the parties themselves. He advocated basically a new system in which the people affected would resolve their disputes themselves quickly and without being intimidated by the formal structure of the courts and the legal process. This will also help create a conducive climate, which would avoid bitterness and ill will. Only when the conflicts were of more serious nature and could not be resolved in this informal way should local courts be set-up. These would consist of
men and women of integrity and enjoying people’s trust and confidence and would be asked to settle these disputes. This way not only would the dispute be settled expeditiously, possibly in one or two sittings but would also lead to permanent resolution of the basic cause of the conflict.

The aim here would be not to apportion blame and punish the guilty but to restore the ruptured fabric of society, foster the spirit of goodwill and fairplay and increase the affected party’s capacity to live together harmoniously. Such a system of legal justice would have the advantage of being swift, inexpensive, easily intelligible and dispensed without an elaborate judicial and legal establishment.

Gandhi severely criticised lawyers and judges and called them ‘first cousins’ as Bentham calls them ‘Judges and Co’. Gandhi says, “the legal system teaches immorality, the lawyers as a rule advance quarrels instead of repressing them….their interests exist in multiplying disputes.”

Infact Gandhi held lawyers responsible to tighten the grip of foreign government on India. He said, “those who know anything of the Hindu-Mohammedan quarrels know that they have been often due to intervention of lawyers.” “Without lawyers, courts could not have been established or conducted, without the latter the English could not rule.”

The object of the court is the performance of the authority of the government, which they represent. And in so far as they support the

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77 Ibid., p. 5.
78 Ibid.
authority of an unrighteous government the courts are not the palladium of a nation’s liberty, “but crushing houses to crush a nation’s spirit.”

Gandhi’s complaint was that justice administered is much expensive. He said, administration of justice should be cheapened. Parties to the civil suit must be compelled in the majority of cases to refer their disputes to arbitration, the decision of Panchayats to be final except in cases of corruption or obvious misapplication of law, multiplicity of intermediate courts should be avoided. Case law should be abolished and the general procedure should be simplified. To the question that the decisions of private Panchayats are not binding in law and hence ineffective. Gandhi replied that only those will seek the protection of the Panchayats who wish voluntarily to abide by their decisions and therefore no process of enforcement of Panchayat decrees. The only penalty that is at our disposal is the force of public opinion.

Gandhi was not of the view that lawyers should be totally out. In his opinion wherever they are required they act as social servants. Lawyers may remain but not claim any superiority for their profession. The true function of lawyers is to unite parties given asunder.

Ideally, Gandhi’s doctrine of ‘Bread Labour’ demands that judges and lawyers should perform their judicial functions without any payment. They must depend for their living on some form of bread labour and serve people free. However, as a second best ideal ‘Bhangis, doctors, lawyers, teachers, merchants and others would get the same wages for an honest day’s labour.

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80 Ibid., p. 3.
Now, the question arises as to what is the end of Gandhi’s approach to justice? Certainly not a process of the above mentioned change of circumstances for all times to come. He wanted to create a society where a stable political structure is built up to enable the individuals to live the highest life of which one is capable of.

His approach of right action and conscious resistance to injustice in any form can be said to advocate form of government shaped according to past traditions and present circumstances. He wanted to judge the state not by some standard of values peculiar to and distinct of the state, but by the standard of the quality of the lives of its citizens.

In Greek literature, the state was the supreme fact of life and the efforts and actions of individuals had to flow into it just as a river flows into sea. To Aristotle, state was a community of equals aiming at the best life possible. Locke considered the end of the government as preservation of life, liberties and estates. Rousseau considered it as a social contract to fulfill the general will. Hegel viewed it as the movement of God in the world. Benthem held it responsible to secure the greatest good of the greatest number, whereas for Herbert Spencer, the state was the joint stock protection company for mutual assurance. Bernard Shaw described the aim of a state as the greatest available welfare for the whole population and not for a class.

From these concepts, there appears to be two streams of thought. One, state is more important and individuals’ freedom is subordinate to the power of the state. The other, freedom and development of the individual is of supreme importance and the state is means to safeguard that. Hence either the man lived for the state or the state existed for man.

\[83\] Aristotle, Politics, op. cit., p. 27.
But in Indian traditions, both the values played equal role and neither existed for itself. The Ramayana describes the duties of a king, as protection of the citizens so that they may lead a happy, righteous and harmonious life, following their respective Dharma or duties. Arthashastra emphasises that the happiness and welfare of the people are the primary duties of the King or the State; in the happiness of his subjects lies his happiness; in their welfare his welfare.84

Gandhi wanted to create a kind of functional society where the state as collective efforts should facilitate, promote and strengthen mutual accommodation of individual and group welfare and the individual should perform his duty towards the state. In other words, a society in which rights are contingent on functions or social service. Here absolute liberty of individual was not to interfere with the liberty of others. But that isolated individual liberty was also to be for the welfare of the collectivism.

His idea was to establish an organisation of the people, by the people and for the people. The basis of it was to be moral and religious, to create a sense of brotherhood and deep regard for one another so that our own success to be real, must contribute to the success of others.

Gandhi rejected the modern concept of democracy of each head count as one. He said, “Western democracy as it function today is diluted Nazism or Fascism. At best it is merely a clock to hide the Nazi or Fascist tendencies of imperialism.”85

84 Shamasstry, R., Kautilya’s Arthashastra (Mysore: Mysore Printing and Publishing House), 1960, p. 38.
Gandhi took violence as the essence of all kinds of exploitation and injustice. Therefore, in order to root out exploitation, there is need of a non-violent society or a state premised on economic freedom and equality. Without economic equity, no real political democracy is possible.

Then, the question is how this economic equality in terms of equity and freedom can be brought about. Gandhi’s answer was decentralisation. Violence logically leads to centralization, whereas the essence of non-violence is decentralisation. He strived for such decentralisation of economic and political power in the form of, more or less, self-sufficient and self-governing village communities. His idea certainly was not to revive ancient Indian village Republic in those absolute terms rather he stood for necessary changes in view of the needs of the hour.

In these terms, the Constitution of free India ought to have been based on the organisation of well-knit and co-ordinated village communities with their direct participation in positive and direct democracy, non-violent cottage economy and human values. Gandhi said, “That state will be the best which is governed the least.”

Professor Joad seems to have adopted Gandhi’s line when he writes, “the state must be cut up and its functions distributed. It must be made possible for the individual to belong to a variety of small bodies possessing executive powers dealing both with production and with local administration, as a member of which he can once again feel that he counts politically, that will matter, and that his work is really done for society...It would seem, then, that the machinery of government must be

86 Ibid., 25-8-1940, p. 258.
reduced in scale; it must be made manageable by being made local, so that, in seeing the concrete results of their political labours before them, men can be brought to realise that where self government is a fact, society is malleable to their wills because society is themselves. 87

Under the Gandhian Constitution, the scheme of Government was to be as follows 88:

1. First, the primary political unit was to be the village panchayat, whose members would be elected by the adults of the village. The panchayat would control Chowkidars (watchman), Patwaris (the men who kept the land and tax assessment register), Police and Schools. It would also assess and collect land revenue, supervise, cooperative farming, irrigation and interest rates as well as khadi and other village industries.

2. Secondly, above the village panchayat came a hierarchy of indirectly elected bodies. First came Taluka and District Panchayats, each comprising of the Sarpanches of the next lower Panchayats and having only advisory powers over them. Members from district and Municipal Panchayats would make up the provincial panchayat, which would elect president to serve as head of the provincial government. President of Provincial Panchayats would comprise All India Panchayat, whose President would be the head of State and of the Government which would be ministerial in character. Among the responsibilities of


88 Agarwal, Shriman Narayan, Gandhian Constitution for Free India (Allahabad: Kitabistan), 1946, p. 79.
provincial panchayat would be transport, irrigation, natural resources and a cooperative bank.

As a result, the whole system is to be based on voluntary cooperation, people's initiative and indirectly elected bodies. This kind of panchayat system acquired great significance during non-cooperation movement when it provided an alternative to the English judicial system, settled the disputes through arbitration in order to dispense speedy justice to the parties.89

Therefore, Gandhi's conception of the revival of ancient village panchayat system with up-to-date changes was to end exploitation and to carry out functions and responsibilities with the cooperation of the villagers.

Gandhi's another way to end the concentration of wealth and riches, disparities among the constituents was the concept of Swadeshi i.e. the concept of village self-sufficiency and self-reliance. Metclafe once said, "The village communities are little republics having nearly everything that they want within themselves and almost independent of any foreign relations. They seem to last within themselves where nothing else lasts. Dynasty after dynasty tumbles down; revolution succeeds revolution; Hindu, Pathan, Mogul, Maratha, Sikh, English are all masters in turn but the village communities remains the same."90

Under this approach of Swadeshi, the whole scenario of life was inter-related and intermixed. Besides engaging himself in agriculture, the farmer family also took part in other activities like domestic spinning

and the artisan also carried on agriculture for some time of the year. As a
result, the basic needs were fulfilled within the village, for example, the
village artisans secured locally the raw material required for their crafts,
wood was available from nearby forest area, carcasses of animals
provided to the need of cobblers.

By Swadeshi, Gandhi meant to create such conditions within its
own jurisdiction as are essential for creating a world order based on
justice and love of mankind. His spirit lays emphasis on the production
and consumption of unutilized resources available in the country. He did
not want that a nation should be dependent on foreign countries for her
basic needs. But at the same time, he did not discard every foreign thing.
He wrote, “I have never considered the exclusion of everything that is
foreign under every conceivable circumstances as a part of Swadeshi.
The broad definition of Swadeshi is the use of all homemade things to
the exclusion of foreign things, in so far as such use is necessary for the
protection of home-industry, more especially those industries without
which India will become pauperised...”91

This kind of interpretation has multifacet aspects. If on the one
hand it catered the basic needs and services to immediate neighbours,
simultaneously, on the other hand, acting on the concept of global
outlook with local perspective, it started with personal relationship to
international interdependence. For Gandhi, the exclusion of foreign
goods was not intended as a punishment rather it was a necessity for
natural existence. He said, “...I shall buy from every part of the world
what is needed for my growth, but by the same token, I refuse to buy

91 Young India, 17-6-1926, Vol. 8, p. 218.
from anybody anything, however nice or beautiful, if it interferes with my growth or injures those whom nature has made my first case.”

It is true that we have duties to all humankind, but the duties we owe to all the segments of it are not of equal importance. There is an hierarchy of duties based on the degree of proximity. Proximity is the decisive element in forming ties in terms of both closeness of feelings and knowledge of circumstances. Accordingly, we must start with service to neighbours. An individual’s service to his country and humanity consist in serving his neighbours. One cannot serve one’s neighbours and claim to serve one’s distant cousin in Antarctica, for one must not serve one’s distant neighbour at the expense of the nearest.

Asked if a man can serve his immediate neighbour and yet serve the whole of humanity, Gandhi replied that he can not provide the services if neighbour was not itself exploitative of others. The neighbour would, in return, serve his neighbours and in this way the chain of services would be expanded to include the world, rather than shut it out.

Gandhi’s Swadeshi was mainly based upon the three principles:

- human capacity is limited;
- law of humility and love; and
- spiritual unity of human beings.

He regarded it as law of laws which required no enactment. He said, “In its ultimate and spiritual sense, Swadeshi stands for the final emancipation of the soul from her earthly bondage…”

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Hence Gandhi’s approach to justice included creation of a society which could provide human beings an opportunity for the fullest development, a non-violent society free from all kinds of exploitation and a functional society where justice emanated from the collectivism and helped the weak equal to the strongest in terms of all efforts for well being of the society itself.

Gandhi, being a practical man, knew that this is an ideal, almost impossible to be achieved but he did not stop his efforts on the way.