CHAPTER I
INTRODUCTION

One important reason why it was decided to work on Gandhi's thought on law was that there did not seem to be much written on it. This was the impression one gathered as one went through many of the articles, papers and books on Gandhi. But this feeling was turned into one of great surprise, when it was found not possible to trace more than one article on Gandhi's philosophy of law. This article appeared in Gandhi Mārg (Gupteswar 1971:131). This situation was both an advantage and a disadvantage. It was a disadvantage, because one normal practice of writing the doctoral dissertation was not easily available: to discuss critically the literature on the topic and arrive at one's own estimate of it. One might think that this disadvantage is no disadvantage when one gets a new field. But this presents difficulties of its own, besides the difficulties present in the consideration of Gandhi's thought.

Therefore, to pursue an inquiry into an area of Gandhi's thought where hardly any work has been done, could both be an advantage and a disadvantage. It is an
advantage in that, one is left free to understand in one's own way and develop a method of approaching the writings of Gandhi. It is a disadvantage in that, there was not initially something substantial to go upon; and that too, in an area concerned with issues in philosophy of law in the context of the India of Gandhi's time.

In the initial stages of this inquiry, it was not easy to develop a method of understanding Gandhi's thought -- an understanding which would be both comprehensive and incisive, and further to identify the main issues in relation to which Gandhi's views on law could be considered; gradually the approach was worked out and the issues were identified, so that the possibility of a fruitful inquiry, emerged. In the next two sections of this introduction an attempt is made to describe the method of study followed in the present work and the kinds of issues raised in the context of which Gandhi's views on law are discussed.

I. Method of study

Before considering the details of the approach followed in the present work, some background general observations to this approach might be helpful. Since this approach
owes substantially to the recent work of Professor K.J. Shah on Gandhi's thought, it is relevant here to cite the following extended quotation from him on the methodological problem of studying Gandhian thought. "...one must take Gandhi seriously as a thinker. To take him seriously means that his writings must be studied thoroughly and in detail in order to discover the structure of his thought -- the interrelations between the elements of his thought."

"This is important because various factors come in the way of our taking Gandhi seriously. (a) The first factor that comes in the way of taking him seriously is that his writing is scattered and is sometimes really and sometimes apparently repetitious. This leads one to emphasize the slogans or epigrams, and ignore the structure of interrelations between the elements of his thought. (b) Gandhi's own statements come in the way of taking him seriously -- e.g., his saying that consistency is the hobgoblin of little minds. Very easily, this has led to giving up the search for consistency, and accepting that Gandhi is essentially a practical man. (c) Gandhi's idiom and his appeal to the masses have led Western thinkers and their Indian followers to think that Gandhi was a charismatic leader, whose leadership depended on something
other than reason. This has led to a neglect of the underlying element of reason which is an important factor in the appeal of Gandhi. (d) All these elements have been further accentuated by the fact that the Indian intellectuals have taken Gandhi as a tool for their own purposes rather than as one who understood the social reality, and but for which Gandhi would have found it difficult to continue his hold over the masses for such a long time" (Shah 1975:7). However, the author of this thesis has had to apply the general method suggested in this quotation to the problems and issues discussed in this thesis.

An important methodological point for developing the approach followed is that one must consider Gandhi's thought on a particular topic in its many aspects, rather than in bits and pieces, however impressive, popular and frequently repeated by Gandhi or quoted by others. If one does this, then, one finds that his thought, despite its apparently fragmentary form, is systematic.

The following procedural points influenced our attempt to formulate the exposition and interpretation of Gandhi's views on law:
(1) Except Gandhi's well known works, the Autobiography, "Satyagraha in South Africa" and "Hind Swaraj", all the rest of his truly extensive writings are spread over in journalistic articles, letters,
and the speeches. His writings are now being systematically brought out in several anthologies published by say, Navajeevan, and the Publication Division Project "The Collated Works of Mahatma Gandhi". The temptation to quote Gandhi out of context from these as a basis of study leads to a likely distorted and superficial understanding of him. It would be desirable not to ignore the context of the quotations. That means, one will have to take into account to whom Gandhi is speaking, or addressing, the situation of the context and the manner of his speaking. For instance, Gandhi's answer as to why one should not drink may differ, from whether he gives it to a labourer or a religious person.

(2) Also, Gandhi's views on some occasions might appear contradictory if taken out of context. The problem is one of understanding Gandhi comprehensively and in depth in terms of his thought and activity in their several contexts. If we consider his ideas on the basis of general impressions and not on the basis of a comprehensive account of his thought, one might leave out the more important formulations and consider only the less important.

(3) Gandhi gives several reasons in support of a particular
position, e.g., on prohibition, gambling or prostitution.
The question sometimes raised is: which of these reasons is more important? The question is misleading because each of the reasons is intrinsically, necessarily related to the other reasons. For example, in the case of prohibition, the moral reason is necessarily related to the physical, economic social, political and religious reasons. To say that the moral reason is the most important is not only to undermine the other reasons but to distort the integrity of the other reasons also.

(4) In our study of Gandhi's thought, we have not begun with definitions of terms such as law, morality and so on; rather we have allowed Gandhi's understanding of these to emerge from his own writings.

(5) What Gandhi says more often, may not be his central or important point. He might have said the same point repeatedly, simply because people might have asked the same question many times or people might have ignored that aspect which Gandhi thinks it important to emphasize. For example, in the case of prohibition when an attempt is made to give reasons for prohibition, often the reasons stressed are physical ill-effects, economic ruin that
drinking causes, or the social degeneration of the community as a whole. There would be a tendency to ignore the moral loss to the individual and the community as a result of drinking. Gandhi might perhaps, hence, emphasize the moral reasons.

Finally, we may mention that the approach developed in the course of the present work, gives one a feeling that the similar approach may be fruitful in other aspects of Gandhian studies. And hence it has considerable possibilities for a fuller and adequate appraisal of Gandhi.

II. Plan of the thesis

We found that a fruitful way to discuss Gandhi's views on law, was to consider his views on prohibition, gambling, prostitution, his views on legal profession and civil disobedience. In each of these, Gandhi formulated fairly elaborate reasons in support of his position; the question of legal enforcement and its limits and the relationship between law and morality either were presupposed or were implied by the views he held in each case. In short, the issues in Gandhi's views of law emerged only in the context of a concrete, detailed consideration of his views on each of the themes mentioned above.
Hence the plan of the thesis consists in dealing with each of the themes, viz., his views on prohibition, gambling and prostitution, the profession of law and civil disobedience in the succeeding chapters.

In the chapter that follows, we study Gandhi's views on the role of law in bringing about conformity to moral behaviour such as abstaining from drink or gambling or prostitution. In the first part, we discuss the ground on which Gandhi supported prohibition, the interconnection of these grounds and the problem of the relationship between law and morality. The structure of the discussion presented in this part is as follows: Here, first, an attempt is made to sort out the reasons for and against prohibition as they appear in Gandhi's numerous writings on different occasions. Objections to his views are also taken into account. The interrelationships between the various reasons for prohibition are explored. The philosophical issues that this discussion raises are then formulated. For example, ought morality to be enforced by law? Whether law should interfere with individual liberty? etc. An important philosophical issue that the above discussion raises is Gandhi's views on the relationship between law and morality. We argue that for Gandhi law is a come-down from morality.
In the second and the third parts, we supplement the discussion of the first part with reference to gambling and prostitution. One of the issues considered is the difference that morality makes in case of gambling, prostitution and prohibition, and the effectiveness of law in preventing each, in the light of this consideration. Also discussed is how Gandhi drew the limits as to where law can or cannot be used.

In the third chapter, we discuss Gandhi's understanding of the legal profession, and relate it to his understanding of the relationship between law and morality. In order to bring out his views about law, lawyers, clients, the practice of law, we briefly consider Gandhi's experience as a lawyer. This account raises the issue of practice of truth in legal profession. This also raises the problem of the lawyer-client relationship. This is considered under two main issues, viz., the issue of litigation and the issue of lawyer's fees. And finally, we discuss Gandhi's views on the law-courts and lawyers in a dependent nation.

In the fourth chapter, we discuss the limits of obedience to law according to Gandhi. This we do mainly
with reference to his trials and not his general theory of civil disobedience which, in any case, has had a wider discussion. What are Gandhi's grounds for breaking the law (civil disobedience)? What are his reasons for accepting punishment? These questions are discussed. The reasons for accepting punishment are related to Gandhi's basic presupposition concerning the possibility of living together, his continuous effort both in theory and practice to think out forms of action in relation to its distance from violence and his continuous striving for dealing with expediency only in the context of long-range goals and objectives.

In the last chapter, we try to work out the main points of Gandhi's philosophy of law on the basis of the discussion in the earlier chapters.

III. Some limitations

1. What is attempted here is to consider Gandhi's views on law with reference to some issues without considering them in the context of contemporary Western legal thought, though occasionally the views of some Western thinkers are considered on some of the issues and relate them to Gandhi's views.
2. Though one may intend to study Gandhi comprehensively, and in depth, there is necessarily a limitation to this, in terms of sheer limitation of space; one has to select some problems, consider some aspects; an exhaustive account is not possible. To illustrate, we should have considered problems of legal enforcement and the relationship between law and morality in the context of Gandhi's intense concern with untouchability. Also, even in the case of discussion of views on the legal philosophical issues in the context of prohibition etc., not all issues are considered. The attempt is to develop an approach and indicate the direction and the perspective in terms of which Gandhi could be understood better; no claim is made to exhaustiveness.

3. The whole idea is not to make an exhaustive study, but a limited study, to articulate Gandhi's thought, to formulate the theory embodied in his writings. To initiate a discussion about this we do it sometimes with reference to the past; sometimes with reference to some theories of the Western thinkers. However, this kind of study raises several problems:

(a) Would not a limited study give an incomplete or a distorted view of Gandhi's ideas? It is not at all
unlikely that this might happen. But what is the alternative? The alternative of exhaustive study is too time-consuming and too difficult. And it might happen that one might miss the whole point, but picking upon some well known generalities. Whereas restricting oneself to a part of the work makes it possible to consider the details of Gandhi's thought and the interconnections of its various elements.

(b) Further, a limited study is not as distorting as one might think, for two reasons: (i) It is not like studying only a part of a systematic thinker's work. In the case of the systematic thinker of the usual type, the part of his thought has to be understood in the context of the whole of his thought. Gandhi however is different. In his thought on any topic, his total approach is present. (ii) The anthologies we have considered take account of the various aspects or represent a fairly comprehensive picture of Gandhi's thought on that particular topic, and so the possibilities of distortion are reduced.

(c) Even if it gives a limited or distorted picture, it does constitute the first step. As far as one can see, no such detailed examination has been undertaken. For
example, what we have done is to formulate the issues arising out of Gandhi's thought and then consider what some other writers -- Indian and Western -- do.

4. From the foregoing, it is clear that this work does not claim to be anything more than an attempt to seriously study an aspect of Gandhi's thought. It is possible to do this more thoroughly; however, this work is at least a beginning.
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