CHAPTER II

LEGAL ENFORCEMENT OF MORALITY

In this chapter, we shall study Gandhi's views on the role of law in the enforcement of moral behaviour, such as abstaining from drink or gambling or prostitution. This will help us understand Gandhi's views on the nature of law, and the nature of morality, as also their interrelationship.

The chapter is divided into three parts: the first part deals with the consideration of Gandhi's views on prohibition, the second, with gambling, and third, with prostitution.

PART ONE : PROHIBITION

Introduction

First, we give an account of the various grounds on which Gandhi supports prohibition. He gives reasons, psycho-physical, socio-psychological, economic, religious and moral, in support of prohibition. To these reasons objections are raised; but according to Gandhi, these objections can be met, or at any rate, the case for prohibition is stronger than the case against it.
We have gone into this account of prohibition because it helps us understand Gandhi's ideas on morality, and this in turn, is helpful in understanding Gandhi's justification of prohibition. We find that the reasons he gives for prohibition are not independent but interdependent. And it is this interdependence that brings out the nature of morality as understood by him. One could understand it in terms of the idea that the four purusārthas do not so much form a hierarchy but as a matrix of interdependence. With this understanding of morality he does not make a distinction between actions which affect the individual only and actions which are of social significance; he does not make a distinction between self-regarding actions and other-regarding actions. And therefore, he does not think that drinking is a matter of concern to the individual only; it is also socially important. And therefore, he thinks it perfectly right to advocate prohibition.

This account raises a number of questions: (i) What becomes of the autonomy of morals if Gandhi's account of morality is true? (ii) Can a distinction be made between self-regarding and other-regarding actions? (iii) What happens to individual liberty? (iv) Can morality be enforced by law? These questions are raised. They are
discussed only insofar as some issues arising out of these questions are mentioned. But they are not fully discussed.

I. REASONS FOR PROHIBITION

Prohibition was a very important plank in the constructive programme of Gandhi. He carried on an extensive and an intensive debate over it for almost three decades. An indication of the impact of Gandhi's movement for prohibition is its inclusion in the Directive Principles of the Constitution of India.

Gandhi's arguments for prohibition both for individual and social reasons have a moral basis. But, the other reasons -- psycho-physical, socio-psychological, economic and religious -- which he put forth in considerable detail, show that these reasons cannot be brushed aside. But, people have objected to the moral support to prohibition on the ground that it curtails individual liberty to drink; also on the ground that prohibition may promote illicit distillations and drinking, thus encouraging disrespect for law.
The psycho-physical aspects of drinking

Gandhi considered the effect of drinking on the individual with sharp reference to the poor people of India and not with reference to the comparatively few (and at that time much fewer than now) educated people who drank. (Hardly he refers to the deceptions these educated people carry on.)

We shall assume here that psycho-physical reasons for prohibition are bound up with the psycho-somatic effect of drinking on the body. The term psycho-somatic is used advisedly, inasmuch as alcoholism is both a physical as well as psychological problem (Hoff 1963:181). What Gandhi says with reference to drinking is of great relevance in the light of medicine and psychology. The following observations centre round three significant points he makes, as to the effect of drinking on the body: (i) it lowers alertness and concentration, a result of depression induced by alcohol; (ii) it leads to proneness to sex excesses; and (iii) it is pathological, once an organic need for alcohol is formed.

(i) Let us consider the first point. These effects follow from alcoholic depression induced by drinking. The
harm to the body through drink affects our physical ability to work; this affects our alertness and concentration which in turn affect our intelligence in the performance of its work.

To appraise the psycho-somatic effects of alcohol one may have to consider what medical science has to say as to how drink induces depression: "The immediate effects of alcohol are produced mainly through alcohol's action upon the central nervous system. Alcohol depresses important nerve systems in the brain that normally act to excite, inhibit and control the ordinary function of the cerebral cortex. Therefore, the early effects of alcohol are feelings of relaxation, calming of worry and anxiety, release of tension and dulling of fear for the future" (Hoff 1963:183).

"The long term pathological effects of overuse of alcohol are principally upon the brain and the liver and are due probably to interference with nutrition and metabolism" (Hoff 1963:183).

(ii) Gandhi says that drinking leads to sex excesses, and that, under the spell of drink, people commit sexual
crimes which they would never commit when they are sober. He says, "The drunkard forgets the distinction between wife, mother and sister and indulges in crimes of which in his sober moments he will be ashamed. Any one who has anything to do with labour knows to what state the labourers are reduced when they are under the satanic influence of drink" (YI, 4-2-1926).

On this view, let us see what the authorities have to say.

(a) The Tek Chand report has this to say:

"Alcohol dissolves the checks to sexual impulses and dulls the inner warnings... Even in the current culture alcohol has a close connection with sexual orgies, illegitimate births, veneral diseases and sexual crimes" (Tek Chand 1972:49). "In order to fracture the moral code in relation to sex behaviour alcohol is resorted to... Drink is a universal accessory to different forms of vice and seduction. Its secondary use is to dull the sense of guilt and to stifle the inner voice of conscience" (Tek Chand 1972:49).
(b) The medical experts say: "In some people, certain amount of alcohol may relieve anxieties and inhibitions in such a way as to increase sexual drive. Some people do use alcohol for this purpose. In general, however, alcohol acts as a sedative; but although it may increase sexual interest, it tends to reduce sexual performance" (Hoff 1963:184).

(iii) Once the drink habit becomes an organic need (somatic) it becomes pathological. In Gandhi's idiom, drink becomes more a disease than a vice. He says, "Drink is more a disease than a vice. I know crores of men who would gladly leave off drink if they could. I know some who have asked that the temptation might be put away from them. In spite of the temptation having been put away at their instance, I have known them to steal drink. I do not, therefore, think that it was wrong to have removed the temptation. Diseased persons have got to be helped against themselves" (YI, 6-7-1921). Gandhi's contention that drink is a disease applies to alcoholics and is in accord with the view of medical science which holds that once a person becomes an addict, he cannot cure himself. He needs a prolonged treatment and help from others. Gandhi is surely
right in saying that alcoholics have got to be helped against themselves.

The socio-psychological aspects of drinking

Gandhi declares that indiscriminate drinking is a dire threat to the very existence of any society. After emphasizing that drink is a growing social evil (H, 14-8-1937), he gives the examples of (a) Shri Krishna's community and (b) the Empire of Rome. He says, "History records that empires have been destroyed through that habit. We have it in India that the great community to which Shri Krishna belonged was ruined by that habit. This monstrous evil was undoubtedly one of the contributory factors in the fall of Rome" (YI, 11-4-1929).

The point of Gandhi's examples is that he sees a co-relation between widespread drinking and condition of anomie. Though we cannot go here into the sociological literature on this theme, we must mention a study by Richard Jessore and others -- an unpublished work -- establishing connection between extreme drinking and peaks of anomie. Following Merton, the term anomie was used in this study in the sense of dissociation of cultural goals and means and in terms of simple break-down in normative consensus (Synder and Pittman 1968:271).
The economic aspect of drinking

Those who drink not only weaken their body and soul, but take the road to greater and greater impoverishment. It is not empirically known whether the majority of the poor -- and in any case the non-poor are insubstantial in number in India -- drink. But those who drink surely increase their economic misery. "The majority of the people are controlled by their environment", says Gandhi (YI, 8-9-1927). And insofar as the poor abound in this country, the proneness to drink also is greater. "It is the factory labourers and others that drink. They are forlorn, uncared for, and they take to drink. ...They are no more vicious by nature than teetotallers are saints by nature"(YI, 8-9-1927).

As for the non-poor, they should not drink, because they set a bad example to the poor and thus they indirectly contribute towards their impoverishment.

(1) The drink revenue is mostly from labourers and peasants. For exploiting the drink revenue, the Government acts as if it wants people to drink more and thus indirectly encourage them to drink. To make the case stronger, he says, "The total excise revenue of the State (of Travancore) was in 1922,
Rs. 46,94,300 against Land Revenue Rs. 38,18,652 and out of a total revenue of Rs. 1,96,70,130" (YI, 26-3-1925). "Thus the liquor revenue is a terrific item. I was told that drink was most prevalent among the Christians and that it was decimating hundreds of homes and bringing poverty and disgrace upon thousands of men otherwise able and intelligent" (YI, 26-3-1925).

(ii) Because of drink, people lose health of the body and mind, thereby weakening their capacity to work. The introduction of prohibition may generate conditions for better health leading to greater efficiency and productivity (YI, 26-3-1925). Gandhi's view that prohibition leading to abstinence from drinking on the part of the people, will increase their capacity for work with greater efficiency, needs to be qualified. Thus, whether drinking adversely affects ability to work will be seen from the following: "This (whether drink harms our ability to work effectively) depends upon the pattern of drinking. Used in moderation, (not to getting high or tight) alcohol has no effect upon most people's day-to-day work performance. Heavy drinking and alcoholism, do sooner or later, adversely affect the ability to work effectively. Many people do use alcohol to try to keep themselves going at their jobs" (Hoff 1963:184).
Again, does alcohol interfere with the performance of routine mental and manual work? "This depends on the amount taken and the rate at which the alcohol level of the blood is built up, as well as on the personality of the individual. Some of the earliest effects of the alcohol are on judgement, insight, motivation and attention" (Hoff 1963:184-85).

Objections to economic aspects

What are the actual and possible objections raised against Gandhi's reasons for prohibition based on the economic grounds?

(A) One economic argument persistently brought forward was that the introduction of prohibition would cause a loss of very large revenue. This revenue was to a considerable extent used for the educational expenditure of the State. Such an objection, Gandhi rejected vigorously on many grounds and suggested the following measures to meet the loss of revenue. (i) Though prohibition may mean loss of revenue, it may lead to other economic benefits such as increased productivity. (ii) It is possible to cut down expenditure in certain directions. (iii) Also, it is possible to tap other sources of revenue. To elaborate: "(i) Because of drink, people lose health of
both the body and mind, thereby weakening their capacity to work. Introduction of prohibition may generate conditions for better health, leading to greater efficiency and productivity (YI, 26-3-1925). (ii) (a) Gandhi thinks that it is possible to cut down military expenditure (YI, 26-12-1924). He seems to think that we are unnecessarily spending more on military force. This would save money to the Central Government and not to the State Governments. So he suggests that the Central Government can give grants to the State Governments to make up for the loss of revenue on account of prohibition. (b) He also suggests to the Government to cut down educational budget. This follows from his programme of self-supporting education. (iii) It is possible to tap other sources of revenue: (a) Through death duties the Government can acquire more assets and revenue. (b) Another additional source of revenue is to enhance taxes on items of consumption such as tobacco and beedies which are injurious to health. (c) The loss of revenue on the part of the State Governments can be made good, at least partially, through additional Central loans to the States.

Suppose the measures to meet the loss of revenue do not succeed. Gandhi's reply is: (a) Even if we do not
succeed, the collection of money in this way is wrong. Because, the revenue comes from the poor who can least afford to drink. Gandhi quotes Rev. W.L. Ferguson who says that three-fourths of drink and drug bill of India is paid by the poor and labouring classes (YI, 4-2-1926). The excise revenue is estimated to be around 80,00,00,000 (80 crores). "If you assume that three-fourths of the drink and drug bill in India is paid by the poor and the labouring classes, some Rs. 60,00,00,000 (60 crores) is the burden they are bearing" (YI, 4-2-1926). (b) It is not a matter of pride that our children are being educated by the Government out of this revenue. This revenue from drink is wholly unjustifiable (YI, 11-2-1926). (c) He also thinks that drink revenue is a degrading taxation insofar as it makes people pay for their own corruption -- moral, mental or physical (H, 31-7-1937). (d) Whatever the financial loss, Gandhi firmly believes, the moral loss the drink causes is greater (YI, 4-2-1926). Finally, he says that health of the soul and body is more important than the revenue.

(B) Another important economic reason that needs to be mentioned is with reference to the number of people who would lose employment on account of prohibition. It was
said for example, that many people were employed in manufacture and trade of liquor. But these will all be thrown out of employment if prohibition is introduced. However, Gandhi is of the opinion that if there has to be a choice between two evils -- say evil effects of drink and loss of employment -- we have to choose the lesser evil. In the case of the Excise Staff, the Government should employ them to check the violations of prohibition rules -- illicit distillations, drinking, etc. In the case of other people, especially the Parsis, who are involved in manufacture and trade of liquors, they should be helped by the concerned associations and their community (YI, 1-5-1930).

The administrative aspects

One of the objections raised against prohibition is that it cannot be enforced. Because, (a) it would give rise to illicit distillations and would enhance the scope of bribery and corruption of the police force, and (b) it would cause disrespect for law.

Those who oppose prohibition argue that (a) if there is prohibition, there will be illicit distillations on a large scale. (b) On account of prohibition the Government has to spend a lot to check illicit distillations and
prevent the consequent corruption. To this Gandhi replies that illicit distillation is like any other criminal act such as thieving. What we can do is to warn people against such kinds of activities, and if they continue to indulge in such activities even after repeated warnings we have to punish them heavily — either with fine or with imprisonment or both (H, 31-7-1937). (a) There is no question of Government spending more to check illicit distillations. A remedy which he suggests is to employ Excise staff to check illicit distillations. (b) As to the consequent disrespect for law, the critics say that even if the Government starts prohibition, people who want to drink will drink. Gandhi's reply is: however much the Government tries to prevent thieving, it cannot stop thieving completely. From this, does it follow that as it cannot prevent thieving outright, it should licence thieving? (H, 25-9-1937). It would be foolish to say that because there are deviations there should not be prohibition. He also says that drinking is worse than thieving (YI, 8-6-1921).

The religious aspects of drinking

Gandhi says, "Every religion has denounced it (drinking) with more or less vehemence" (YI, 27-4-1921). The emphasis is no doubt on denouncement, though particular religions may differ as to the degree of permissiveness. The place
of drink may vary from one society to another society.  
As to the attitude of particular religions, Gandhi says 
"drinking intoxicants is contrary to Islam and Hinduism" 
(YI, 8-4-1926). "Trade in them is demonstrably sinful".

Again, Christians are not against prohibition 
(H, 11-9-1937). Prohibition has been preached from time 
immemorial by the Roman Catholic priests(H, 16-6-1937).

The use of wine in Judaism, however, is not a law 
but a tradition. Orthodox Jews may use only specially 
prepared wine (kosher) for the sanctification of the 
sabbath and on the two Eves of the Passover Festival 
(H, 16-9-1937).

Further though some Parsis said that prohibition is 
against their religion, Gandhi does not agree with this. 
(H, 8-7-1939).

But even in religions which denounce drink vehemently, 
there is some limited place for drink. While performing 
some religious rites, people do use spirituous liquors to 
propitiate their gods. Gandhi knows the necessity of 
this and says, for bona fide religious rites people can 
use spirituous liquors(H, 8-4-1939).
The moral aspects of drinking

Drink causes a feeling of helplessness, and thus brings about weakening of the will. It stupefies a man's soul and once his soul is stupefied he loses the distinction between himself and an animal. Gandhi says, "...he who runs may see that opium and such other intoxicants and narcotics stupefy a man's soul and reduce him to a level lower than that of beasts" (YI, 8-1-1925). He also says that "trade in them is demonstrably sinful" (YI, 8-1-1925). And when on account of drink a man is reduced to the level of beasts he will be without any moral sense at all. Then he commits all kinds of crimes—moral or otherwise. Gandhi argues, "The moral loss is even greater than the financial. Drinks and drugs degrade those who are addicted to them and those who traffic in them. The drunkard forgets the distinction between wife, mother and sister and indulges in crimes of which in his sober moments he would be ashamed" (YI, 4-2-1926).

Objections to moral aspects

But of the many objections that are raised against prohibition, the most important, perhaps, is the objection raised against Gandhi's reasons for prohibition on moral
grounds. It is the most important because, here prohibition was being challenged on the kind of grounds which Gandhi regarded most important. The implication of these objections is that the balance of moral good is not in favour of prohibition.

In the imposition of prohibition many saw a direct threat to individual freedom and liberty. Because prohibition would vest vast amount of authority in the hands of the police and the related administration. Also it would encourage illicit distillations, bootlegging and all the evils that go with them. If prohibition is introduced, unless people have licence to drink they are not supposed to drink. This restriction deprives people of their liberty to drink -- not merely heavy or habitual, but even social drinking. So there is a reason for people to think that their freedom is cut down.

To this objection that prohibition may lead to increase in the power of the bureaucracy and resulting curtailment of individual liberty, what would be Gandhi's reply? As to increase in power of bureaucracy, Gandhi says that it is for us to create an enlightened public opinion which will keep the bureaucracy in its place.
The power of the people (lokashakti) should take care of this evil.

As to the objection that prohibition may lead to curtailment of individual liberty, the Gandhian position raises several complex issues concerning the following: the implication of the conception of morality of those who hold this view; the presupposition here is based on the distinction between individual and public morality; the implication of the Gandhian position, viz., the distinction between individual and public morality is not tenable in the ultimate analysis; and finally, in terms of these implications the problem of liberty in the context of the enforcement of morality by law. These issues are considered in greater detail later (p.53) and hence a precise reply is not formulated here.

II. INTERRELATIONSHIP

Thus Gandhi argues the case for prohibition on various grounds and tries to meet a variety of objections. If we consider the discussion we realize that for Gandhi the case for prohibition is fundamentally a moral one. That for Gandhi, the moral considerations outweigh
political, religious and economic can be seen from the following: "...political motives should not have deterred temperance organizations from helping a movement that was essentially moral" (YI, 18-4-1929). "Subhas Babu has played a most dangerous game by mixing up the communal question with such a purely moral reform as prohibition" (H, 22-7-1939). "It is the system that is bad, for in that system revenue is primary consideration, not the health of the soul or the body" (YI, 22-4-1924). "The moral loss is greater than the financial. Drinks and drugs degrade those who are addicted to them and those who traffic in them" (YI, 4-2-1926).

But, if for Gandhi, the case for prohibition is essentially a moral one, then it might be felt and is felt that the economic and the other aspects of the case is unimportant; and yet Gandhi does consider these aspects extensively. Why? One explanation may be that he wants to support the case for prohibition in every way possible; and the consideration of these other issues is to persuade people in one way or another to accept prohibition. (This may very well be the case. However, it is not necessary to point to a contrast between the other considerations and the moral considerations. In fact the economic,
psychological and religious factors support and are supported by the moral factor. This relationship is not a contingent relationship but a necessary relationship.) This will detract from Gandhi's claim that for him it is a moral issue unless the other aspects are intrinsically and integrally related to the moral issue. This is not at all an impossible understanding of Gandhi's ideas. In fact, it is important for Gandhi to see that the economic, psychological and religious aspects of the issue do not rule out prohibition. This is in accordance with our understanding of the relationship of purushārthas according to which the purushārthas do not so much form a hierarchy, but form a matrix of interacting elements. However, this will make Gandhi's understanding of the nature of morality different from the one which holds that morality is autonomous.

But is not this approach different from, if not in conflict with, the view that morality is independent of anything else? That the moral act must be done for its own sake just because it is moral and not because of anything else? This view of morality is in one way or another associated with, among others, Kant and Moore. For example, the Kantian view is that the moral principle
is a categorical imperative and not a hypothetical one or Moore's view that good is an indefinable principle and should not be understood in terms of pleasure or in terms of human conduct, etc. It will be worthwhile, therefore, to consider the question whether Gandhi's case can be held to be a moral one in the light of these theories. This is the issue we shall consider with reference to the views of Kant and Moore. It is important for us to consider these views if we are to understand and evaluate Gandhi's views on the nature of morality and the relationship between law and morality. Section III is devoted to this discussion.

But this is not the only issue raised by Gandhi's discussion on prohibition. Because even if it is argued that Gandhi's claim is a moral one, it might be suggested that there is a moral case in terms of individual liberty and social liberty against prohibition. This is what people like Mill, Hart and others have claimed or thought. Hart agrees with Mill insofar as he accepts (with qualification) Mill's criterion for distinguishing individual morality from social morality. In the context of these considerations it may be desirable to make an appraisal of the Gandhian position.
Therefore this will be the second issue which we shall consider in Section IV.

However, our discussion of these issues is meant to help us to consider the further issue which is the direct issue in the philosophy of law, viz., whether it is proper to use force in order to promote moral behaviour on the part of moral individuals in a community. This will be the concern of the concluding Section V.

III. AUTONOMY OF MORALS

According to Gandhi, as we have seen, the rightness of an act is related to the economic, psychological and religious aspects of the act; it must be conducive to the needs of both the individual and the society. As against this, very often it has been held that the rightness of an act is not a matter of any of its consequences. Such a view holds that morality is autonomous. Here, we do not want to enter into a full discussion of the autonomy of morals, inasmuch as our main concern is only to understand Gandhi's views on morality better, through its comparison with the doctrine of the autonomy of morals. However, a brief discussion will serve two purposes: One, it will bring out that the kind of understanding that Gandhi has, is not less
plausible theoretically than those of the other thinkers. Two, it will also enable us to see the points of contact that our discussion has with certain Western issues. This will give us a better understanding of our own thought as also of Western thought. We shall consider autonomy of morals with reference to the views of two thinkers, Kant and Moore.

Let us consider Kant first.

Immanuel Kant

Kant is known for his insistence that a moral act — the right act, must be done from a sense of duty alone. For example, one must look after the education of one's children, because it is one's duty to do so, and not out of love, or one must help a sick man not out of sympathy, but because it is one's duty. If one were to look after the education of children out of love, then it is not duty but love.

But what is Kant's concept of duty? His concept of duty is given in the various formulations of the categorical imperative. Let us begin with the first formulation.
"The morality of an action does not lie in the desires and purposes of the doer or in its consequences. The morality of an action is nothing but its conformity to law in general" (Gr. 402, A 13 18). But what is this moral law? If we give the answer in terms of particular laws, it would not do. For example, if one were to state the moral law to be "Do not tell a lie", then telling a lie will be unconditionally bad or telling the truth will be unconditionally good. However, one can imagine circumstances when telling a lie may not be bad, or telling the truth may not be good. Hence the moral law must be stated in the most general terms.

"Act is if the maxim of your action were to become through your will a universal law of nature (Paton 1958:128). Thus it is the formal property of moral judgements that they hold for any individual without distinction. In short, the moral principle is universalisable. To illustrate the principle of universalisability, one may consider the following examples. "We do most certainly condemn as immoral a person who at one and the same time wills that a certain rule be universally adopted and omits to follow it himself -- the person who defends general conscription, for example, and himself tries to escape it, the person
who preaches water and himself drinks wine, the black-marketeer who makes profit from the violation of the law whose observance by other people is the condition of his gains" (Korner 1955:134-35).

If what you act holds for any individual, then, you must regard others as you would regard yourself. The other related consideration is that you treat other human beings not merely as things or means but in relation to their ends, their development or in terms of their goal. One treats a child not as a source of pleasure or as one who can take care in old age, but in terms of the growth and development of the child. Kant says, "So act as to use humanity, both in your own person and in the person of every other, always at the same time as an end, never simply as a means" (Paton 1958:128).

Now, what does "treating the other (a rational being) as an end and never simply as a means", mean? Korner explains that in some sense, it means that "man stands outside all causal chains and consequently outside every hierarchy". He goes on to explain: "In treating man as a means only, we ignore part of his nature -- his being a rational being, a person, an end in itself. We think of
ourselves as persons, i.e. as at least beings who claim to be able to function otherwise than merely as means in the policy of another person. The recognition of our own personality thus implies the recognition of other persons, that is to say beings who are policy makers and who claim not to be used as mere tools. We all make this claim; and we could not make it if we regarded ourselves as being wholly immersed in causal chains. For to be a tool is to function in certain ways in a causally necessary state of affairs which someone as a matter of fact, happens to desire" (Korner 1955:146-47).

Let us now consider the third formulation of the categorical imperative. We have seen that for Kant the morality of an action is independent of desires and purposes of the doer; also the moral principle has its source outside all causal chains. The source is man himself in so far as he is a rational being. "Rational beings are thus not only subject to the categorical imperative but are also the creators of it. In other words, every rational being is not only subject with respect to the moral law; he is also legislator. We thus arrive at the "...Idea of the will of any rational being as a universally legislative will" (Korner 1955:149 ).
In Kant's own words: "So act that your will can regard itself at the same time as making universal law through its maxim" (Paton 1958:128). The rule here implies autonomy of the will which is determination of the will by itself, without reference to consequences. That it is not determined ultimately by others. To put it in other words, any action done on a principle has no moral worth unless the doer willingly accepts the principle for which it is done. C.D. Broad interprets Kant's position in this regard to say: "The kind of case which Kant's third formula is meant to cut out is where the principle is acted merely on tradition or merely from the fear that God will punish me if I do not act in accordance with it" (Broad 1956:133).

The autonomy of the will presupposes the conception of rational will, a rational agent, outside the sphere of causal action. It presupposes a kind of community of which man is a rational agent. Such a community has ends or goals; the ends referred to here are not only the ends of an individual, which should be in harmony but the ends of all rational beings. Thus, ends of all the rational human beings constitute the kingdom of ends. Such a view implies the concept of a kingdom of a self-governing society
and a connected system of rational agents under common, self-imposed and yet objective laws.

In Kant's words: "So act as if you were always through your maxims a law-making member in an universal kingdom of ends" (Paton 1958:128). It is within the framework of a kingdom of ends—governed by self-imposed, objective laws— that the private ends of ourselves and others ought to be realised.

Kant's account, it has been said, does not tell us what particular action to adopt in certain circumstances, nor does it tell us what kind of conduct is right. The criteria are formal rather than substantive.

If the criteria are formal and they do not give us any positive guidelines, then the view is different from that of Gandhi; and it would appear that according to it morality will be autonomous. But even if they are formal, and give the characteristics of the ends, the characteristic of how the agent is related to the categorical imperative and so on is not clear; any moral deliberation according to these imperatives will have to be with reference to a concrete situation; and then it will have
take account of actual consequences. For example, if one is considering prohibition one will have to consider if it is a necessary element in securing a harmony of ends. If this is so, then the sharpness of the distinction between these two views is not as great as it would appear.

One may yet consider Kant's criticism in this manner. How is one to apply the criteria to decide what is right conduct? Let us take the formulation about the kingdom of ends. Have we not to consider the actual consequences and see or even vaguely imply that that will lead to kingdom of ends? And what about treating other human beings not merely as a means but also ends? Does this also not mean considering the consequences?

From this it appears that what Kant wants to say that we cannot speak of the ends -- but only of the character that the ends would have. But in actual practice it implies taking account of consequences also.

In the light of these considerations let us consider Gandhi's views on morality. The difference between Gandhi and Kant can be brought out in the following manner: For
Kant, the categorical imperative is a formal principle. Gandhi does not consider morality in the abstract. Being a formal principle the worth of a moral action is independent of motives and consequences of that action. For Gandhi, the relationship between the moral action or a principle to other factors -- psycho-physical, social, economic and religious is not contingent but necessary. Thus, for Gandhi though prohibition is essentially a moral issue, other considerations are necessarily related to each other. For him, the health of the soul is as important as the health of the body and in so far as drink affects the health of the soul, it is to be avoided. Also, societies addicted to wide-spread drinking, decline through the weakening of the collective will leading to conditions of social anomie and the consequent enfeeblement of the social order. The examples Gandhi gives are, Shri Krishna's community and the Roman civilization. As to the economic factors, though Gandhi clearly says that the "moral loss is greater than the financial loss", the relationship between the two is a necessary one. Prohibition for the affluent is more a moral issue than an economic one in so far as drinking on their part sets a bad example to the rest, and hence for the good of the society it should be better if they abstain from drinking.
For the poor, the relationship between the moral and the economic reasons for prohibition are much more intimate. Drinking weakens their will, impairs their moral fibre, leading to further impoverishment. Drinking may provide an easy escape from the harshness of their poverty.

Gandhi's views on morality can be understood yet in another way. Morality for Gandhi is dharma. Prohibition for Gandhi then becomes part of dharma. It would be a misunderstanding of Gandhi if we think that prohibition is dharma per se; i.e. what is important for Gandhi is not to win on moral grounds but to show that the acceptance of prohibition as dharma will help in the case of artha, kāma and mokṣa. This view brings out the fact that morality or a moral rule of conduct for him is not a categorical rule to be followed without reference to other kinds of considerations. It must take into account the economic consequences (artha). It must also take into account the kind of satisfaction it brings to the family, and also the satisfaction to oneself (psycho-physical entity, deha) and its consequences to society (kāma) also the bearing it will have on one's own duties (dharma); and finally, its relation to the religious goal (mokṣa).
Gandhi himself may not have consciously, explicitly or implicitly, had in mind this kind of understanding that we have formulated. However, there is nothing to go against such a formulation. In fact, we can find support for it in the Indian tradition, which even if it is not consciously present to us, must be unconsciously present in our modes of thought and behaviour. One may here refer to the account of Manu where he states: "(Some declare that) the chief good consists in (the acquisition of) spiritual merit and wealth, (others place it) in (the gratification of) desire and (the acquisition of) wealth, (others) in (the acquisition of) spiritual merit alone, and (others say that the acquisition of) wealth alone is the chief good here (below); but the (correct) decision is that it consists of the aggregation of (those) three" (Manu Smriti, II:224).

If one is to accept Kant's view of morality as autonomous, then one is led to the view that Gandhi's is not a moral case. But it is not at all clear why the Gandhian view of morality is not a plausible one. In fact there are reasonable grounds to consider the Gandhian view of morality as more plausible than the view which holds morality as autonomous.
Now let us pass on to Moore.

G.E. Moore

In "Principia Ethica", Moore adopts Bishop Butler's saying: "Every thing is what it is, and not another thing". This is to indicate his understanding of "good" and that it is not definable. And his position regarding right is also similar. It is true that in his small book "Ethics" he says that good and right are not definable but they are only interdefinable. (This means one can define good only in terms of such ethical terms, e.g., right.)

What is good according to Moore? We may define good in terms of a synonym. Suppose we define good in this way: "is good", means "it is fitting for every rational being to desire it". Will it be all right for us? No, because our objection to such a definition would be that here we have a definition of "good" in ethical terms, and the question goes deeper than that. What we want to find out first is, as it were, the meaning of an ethical term. And this we cannot do by defining an ethical term in terms of other ethical terms, just as we cannot say what number five is by answering two plus three.
Then, can we define good in terms of pleasure or happiness? You say that pleasure is good or good is pleasure; you are not saying what is the common characteristic of good things; like the common wave-length of "red"s; and you are not defining the "good", i.e. you are not saying the meaning of good.

Moore says, to say that good means pleasure is to make the same kind of mistake as one makes when one says that pleasure means the sensation of red. In the latter case, two natural objects are confused. In the former case, good, which is not in some sense a natural object, is confused with a natural object. And to do this is to commit the naturalistic fallacy. "When a man confuses two natural objects with one another, defining the one by the other, if for instance, he confuses himself, who is one natural object, with "pleased" or with "pleasure" which are others, then there is no reason to call the fallacy naturalistic. But if he confuses "good" which is not in the same sense a natural object, with any natural object whatever, then there is a reason to calling that a naturalistic fallacy; its being made with regard to "good" marks it as something quite specific, and this specific mistake deserves a name because it is so common" (Moore 1959: 13).
Moore comes to the conclusion that good cannot be defined; i.e. the propositions about good are all synthetic and never analytic. Good is a simple notion just as yellow is a simple notion. Good, unlike horse, is not composed of parts which you can substitute for it in our minds when we are thinking of it. He says, "..."good" is a simple notion, just as "yellow" is a simple notion; that, just as you cannot, by any manner of means, explain to any one who does not already know it, what yellow is, so you cannot explain what good is" (Moore 1959:7).

If Moore is right, it would appear that Gandhi's understanding of the nature of right is not satisfactory. But Moore's account of good as a nonnatural property, which is as simple as yellow and is indefinable, has come in for considerable discussion and criticism. Without going into it (that is not our purpose), we shall briefly point out that if we are to use the word good it must at least be explainable. And in order to explain it, we must refer to its characteristics such as mentioned or referred to in the formulations of Kant's categorical imperative. If so, again the difference between Gandhi and Moore is not so great as it appears. *

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*For Gandhi relationship to artha, kāma and mokṣa is part of the meaning of dharma and not only the criteria of rightness.
The reasons for considering representative Western views on morality is to bring into relief by contrast the other Indian view represented by Gandhi. The concept of morality in the dharma/purusartha tradition does not admit of independence of morality in any of the senses described in case of Western thinkers. In harmony with the dharma/purusartha tradition, Gandhi says that morality and spirituality are essentially, integrally related to the economic, political and social aspects of man. His view that "morals, ethics and religion are convertible terms", implies that for him morality and spirituality are identical (H, 3-10-1936). The following statement from Gandhi must be considered in this context. He says, "I do not believe that the spiritual law works on a field of its own. On the contrary, it expresses itself only through the ordinary activities of life. It thus affects the economic, the social and the political fields" (YI, 3-9-1925). "I claim that human mind or human society is not divided into watertight compartments called social, political and religious. All act and react upon one another" (YI, 2-3-1922).
The Western tradition which considers morality independent of economics, politics, etc., has led to unsatisfactory consequences. Gandhi has this to say in this regard: "People in the West generally hold that the whole duty of man is to promote the happiness of the majority of mankind, and happiness is supposed to mean only physical happiness and economic prosperity. If the laws of morality are broken in the conquest of this happiness, it does not matter very much. The consequences of this line of thinking are writ large on the face of Europe" (Gandhi 1954:7).

"This exclusive search for physical and economic well-being prosecuted in disregard of morality is contrary to divine law, as some wise men in the West have shown. One of these was John Ruskin who contends in "Unto This Last" that men can be happy only if they obey the moral law" (Gandhi 1954:7).

If the greatest good of the greatest number in the Western tradition means the greatest happiness of the greatest number, then this cannot be achieved without men observing "the moral law". Gandhi says, "Morality is an essential ingredient of all faiths of the world but
apart from religion, our commonsense indicates the necessity of observing the law. Only by observing it can we hope to be happy" (Gandhi 1954:7).

An indication of one element of the new moral outlook consists in the following: "Under the new outlook we shall cease to think of getting what we can, but we shall decline to receive what all cannot get" (Gandhi 1954:29). This discussion of morality — Western and Indian — also helps us understand the difference in attitude to law in case of the two traditions. It is to this consideration to which we now return.

IV. LEGAL ENFORCEMENT OF MORALITY: SELF-REGARDING AND OTHER-REGARDING ACTIONS

To do this, a fruitful question to raise is to ask: What should be the role of law in the enforcement of moral behaviour? The views of Gandhi in this respect are different from those of many others. In order to bring out this difference we consider two thinkers from the West — J.S. Mill and H.L.A. Hart, and two Indian Jurists, M.C. Chagla and P.B. Gajendragadkar.
(A) What according to Mill are the actions of individuals with which law can certainly interfere? The criterion is that these are the actions which harm or are injurious to others. "That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others" (Mill 1951:95-6). "...that for such actions as are prejudicial to the interest of others, the individual is accountable, and may be subjected either to social or to legal punishment, if society is of the opinion that one or the other is requisite for its protection" (Mill 1951:201). These are the other-regarding actions which concern the interest and well-being of society. "The only part of the conduct of anyone, for which he is amenable to society is that which concerns others" (Mill, 1951:96). The paradigm case of actions falling under this category are deliberate and wilfull murder and stealing.

(B) The actions of individuals with which law has no business to interfere, in contrast are, the so-called self-regarding ones. "In the part which merely concerns himself, his independence is, of right, absolute. Over himself over his own body and mind, the individual is
Mill describes in some detail the aspects of the domain over which the individual is sovereign. "What is the appropriate region of human liberty?" he asks. "It comprises, first, the inward domain of consciousness; demanding liberty of thought and feeling; absolute freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral or theological. ...Secondly, the principle requires liberty of tastes and pursuits; of framing the plan of our life to suit our own character; of doing as we like, subject to such consequences as may follow: without impediment from our fellow-creatures, so long as what we do does not harm them, even though they should think our conduct foolish, perverse or wrong" (Mill 1951:99). He identifies many different things which he intended to exclude from the domain of law. "His own good, either physical or moral, is not a sufficient warrant. He cannot be rightfully compelled to do or forbear because it will be better for him to do so, because it will make him happier, because in the opinions of others, to do so would be wise or even right" (Mill 1951:96).

Mill illustrates the application of these criteria. Thus, certain restrictions on trade such as "...the prohibition of the importation of opium into China; the restriction
on the sale of poisons; all cases, in short, where the object of the interference is to make it impossible to obtain a particular commodity. These interferences are objectionable, not as infringements on the liberty of the producer or seller, but on that of the buyer" (Mill 1951:203). Also law has no business to interfere in cases where an act is explicitly considered as immoral but not harmful to others (i.e. self-regarding). An example of this kind is extramarital sexual relations or private gambling. "...fornication, for example, must be tolerated, and so must gambling..." (Mill 1951:208).

The case of drinking falls in this category. "Drunkenness, for example, in ordinary cases, is not a fit subject for legislative interference..." (Mill 1951:206).

(C) Mill is aware that the criteria for identifying self-regarding actions are not absolute. Thus, though he says that drunkenness, fornication, and private gambling are activities where law should not interfere, he emphatically considers important qualifications in the context of each, to show that under these, the law must restrain liberty in each case. Thus, though going to a prostitute is a private affair, law must punish any one who lives on the earnings of prostitution; nor should one be allowed
to run a gambling house. He asks: "...should a person be free to be a pimp, or to keep a gambling house? The case is one of those which lie on the boundary line between two principles, and it is not at once apparent to which of the two it properly belongs" (Mill 1951:208). The other criterion where it is law's business to interfere is when one commits an offense against decency or violates good manners. "...There are many acts which, being directly injurious only to the agents themselves, ought not to be legally interdicted, but which, if done publicly are a violation of good manners, and coming thus within the category of offences against others, may rightly be prohibited" (Mill 1951:206). Finally, in case of prohibition, Mill argues: "...I should deem it perfectly legitimate that a person, who had once been convicted of any act of violence to others under the influence of drink, should be placed under a special legal restriction, personal to himself" (Mill 1951:206). "...The making himself drunk, in a person whom drunkenness excites to do harm to others, is a crime against others" (Mill 1951:206). "No person ought to be punished simply for being drunk; but a soldier or a policeman should be punished for being drunk on duty. Whenever, in short, there is a definite damage or a definite risk of damage
either to an individual or to the public, the case is
taken out of the province of liberty and placed in that
of morality or law" (Mill 1951:186).

The kind of criticism made by some about Mill's
criteria to sort out rules/actions where law should or
should not interfere, has been lucidly considered by
Hart. For instance, the criticism amounts to saying
that "the line which Mill attempts to draw between actions
with which law may interfere and those with which it may
not, is illusory... "No man is an island", and in an
organized society it is impossible to identify classes
of actions which harm no one or no one but the indivi­
dual who does them. Other critics have admitted that
such a division of actions may be made, but insist that
it is merely dogmatic on Mill's part to limit legal
coercion to the class of actions which harm others.
There are good reasons, so these critics claim, for
compelling conformity to social morality and for punishing
deviations from it even when these do not harm others"
(Hart 1963:5).

H.L.A. Hart

Hart accepts Mill's criteria for distinguishing
individual actions which are harmful to others as requiring
legal restraint, while actions -- immoral or otherwise -- which are private (self-regarding) and which do not come under enforcement. "...On the narrower issue relevant to the enforcement of morality Mill seems to me to be right" (Hart 1963:5).

(A) Thus, treason, killing and stealing are clearly acts which are harmful to others and hence these are surely to be prevented by law.

(B) But the case is not clear in regard to sexual morality, prostitution and homosexuality. Hart's contention would be that in so far as these are not publicly offensive or a nuisance, law should not interfere. The immorality of a practice in itself cannot be held to be a necessary condition for the enforcement of morality by law. We need to distinguish "between the immorality of a practice and its aspect as a public offensive act or nuisance" (Hart 1963:43). Going to a prostitute is immoral; but insofar as it does not violate public decency and is not a nuisance law should not interfere. And so will be the case with homosexuality. Elaborating on this distinction where law should not, and should, interfere, Hart says: "The distinction is in fact both clear and important. Sexual
intercourses between husband and wife is not immoral, but if it takes place in public it is an affront to public decency. Homosexual intercourses between consenting adults in private is immoral according to conventional morality, but not an affront to public decency, though it would be both if it took place in public. But the fact that the same act, if done in public, could be regarded both as immoral and as an affront to public decency must not blind us to the difference between these two aspects of conduct and to the different principles on which the justification of their punishment must rest. The recent English law relating to prostitution attends to this difference. It has not made prostitution a crime but punishes its public manifestation in order to protect the ordinary citizen, who is an unwilling witness of it in the streets, from something offensive" (Hart 1963:45).

Hart argues that, despite the defenders of the thesis who say "law should enforce morality as such", law should not interfere in areas of human action which do not violate some of the norms mentioned above calling for legal intervention. The reasons for exercise of individual liberty in this context are lucidly set forth by him as follows:
"The unimpeded exercise by individuals of free choice may be held a value in itself with which it is prima facie wrong to interfere; or it may be thought valuable because it enables individuals to experiment -- even with living -- and to discover things valuable both to themselves and to others. But interference with individual liberty may be thought an evil requiring justification for simpler, utilitarian reasons; for it is itself the infliction of a special form of suffering -- often very acute -- on those whose desires are frustrated by the fear of punishment. This is of particular importance in the case of laws enforcing sexual morality. They may create misery of a unique special degree. For both the difficulties involved in the repression of sexual impulses and the consequences of repression are quite different from those involved in the abstention from "ordinary" crime. Unlike sexual impulses, the impulse to steal or to wound or even kill is not, except in a minority of mentally abnormal cases, a recurrent and insistent part of daily life. Resistance to the temptation to commit these crimes is not often, as the supression of sexual impulses generally is, something which affects the development or balance of the individual's emotional life, happiness and personality"(Hart 1963:21-2).
Though Hart agrees in the main with Mill's criterion, he does not defend Mill in all respects. "I do not propose to defend all that Mill said; for I myself think there may be grounds justifying the legal coercion of individuals other than the prevention of harm to others". The grounds for such a justification arises from the fact that there is, "a general decline with belief that individuals know their own interests best, and to an increased awareness of a great range of factors which diminish the significance to be attached to an apparently free choice or consent. Choices may be made or consent given without adequate reflection or appreciation of the consequences; or in pursuit of merely transitory desires; or in various predicaments which the judgement is likely to be clouded; or under inner psychological compulsion; or under pressure by others of a kind too subtle to be susceptible of proof in a law court" (Hart 1963:32-33). Mill's concept of a normal individual presupposed by his doctrine does not "correspond to facts". "Mill, in fact, endows him with too much of the psychology of a middle aged man whose desires are relatively fixed, not liable to be artificially stimulated by external influences; who knows what he wants and gives him satisfaction or happiness; and who pursues these things when he can" (Hart 1963:33).
Thus, the above considerations bring out in what respect Hart agrees with Mill, and in what respects there is a point of departure on the issue of the criteria for legal enforcement of morality. As we shall see later on, still, Hart is far from Gandhi's denial of the distinction between self-regarding and other-regarding actions.

M.C. Chagla

Now, we go on to consider the views of Justice M.C. Chagla, and Justice P.B. Gajendragadkar. Their views by and large seem to be pale reflections of the views of Mill, and of the Indian middle-class intelligentsia.

It appears that Chagla is influenced by Mill. He says, "what Mill said long ago in his "Liberty", is equally true today if not more so" (Chagla 1956:16). Approvingly he quotes Mill who said, "To extend the bounds of what may be called moral police until it encroaches on the most unquestionably legitimate liberty of the individual is one of the most universal of human propensities" (Chagla 1958:16).

The idiom Chagla uses to distinguish actions which call for legal restraint is what he calls actions which
could be characterized as social and antisocial, while those which should not be controlled by law are what he calls moral and sinful.

(A) According to Chagla acts should be classified into social and antisocial. If an act is antisocial than law can curtail individual liberty. By antisocial he may mean, perhaps, what Mill calls "other-regarding" acts. He says: "The State is concerned with the good of society. It is interested in the difference between what is social and what is antisocial. Liberty must be controlled in the interest of society, but the social interest must be over-powering which would justify the impairment of individual liberty" (Chagla 1950:16-7). "Liberty must only be controlled to the extent that its exercise becomes antisocial or undermines the security of the State" (Chagla 1950:18).

In this connection consider the example of drinking. "...he may be drunk and disorderly in a public place. He may waste money on drink, which he should use to support and maintain his family. He would then be acting in an antisocial manner which would justify the State in controlling his conduct. Therefore the restraint upon
individual freedom must be justified not as condemning an act as being wrong or immoral but as being against the interest of society" (Chagla 1950:7).

(B) He also suggests where law should not interfere with individual liberty. According to him law should not try to come in the way of "individual morals or sin". He says, "The basic principle I would suggest is that the State is not concerned with individual morals or sin. (For the time being we shall not be concerned with sin.) These are matters of individual conscience and they must be settled and determined between the individual and his Creator. Every man must make his own peace with his God in his own way" (Chagla 1950:16).

Regarding the value of freedom of choice he says, "The quality that there is in individual choice and personal experience is completely absent in a decision superimposed from above. The welfare of society as a whole that the State must aim at must not be brought about by a denial of individual liberty" (Chagla 1950:18). To support his case further he says, "The State should recognize that every law which prevents the individual from experimenting with his own life and giving effect to
his own ideals and aspirations not only undermines the freedom of the individual but in the long run goes to make the State less powerful" (Chagla 1958:5).

To elaborate his concept of individual liberty, as against the interference of law, with reference to drinking Chagla says: "A man may get drunk and in doing so he is only harming himself. He must be allowed to benefit by his own experience and to form his own moral judgement" (Chagla 1958:7).

The views of Chagla on the question of legal enforcement of morality presented above appears to us, loose both in terminology and thought. Let us elaborate.

(1) But this way of putting the matter is confusing, because many of the acts which are regulated by law, and aptly perhaps even according to Chagla moral acts, may be of two kinds -- one which could be controlled by law and the other not to be so controlled. Presumably, the latter is that kind of moral act which is personal. Thus it would appear that the difference in terminology between Chagla is no difference in substance.
(ii) He is not clear whether it is a matter of distinction between personal and social interest or between not-so-overpowering and overpowering social interest. If he means moral, an activity the legal restriction on which will affect individual liberty, all laws irrespective of their content affect individual liberty.

So his meaning must be actions which restrict individual liberty, and the absence of restriction on which will not affect social interests. So once again according to Chagla the distinction between the two correspond to other-regarding and self-regarding actions.

(iii) It appears that Chagla totally misconceives the relationship between individual freedom and the power or goodness of the State. To elaborate this point one can quote his statement with reference to drinking. He says, "A man may get drunk and in doing so he is only harming himself. He must be allowed to benefit by his own experience and to form his own moral judgement" (Chagla 1958:7).

The entire question is: Whether there are any limitations on experimentation with one's own life. One limitation which is fully universally recognized is that
the individual should not commit suicide. The limitation on thieving is also universally recognized. In the case of drinking, though not as clear as suicide and thieving, to say that there should be no limitation on an individual's experiment with his own life in this case without qualification cannot be acceptable at all.

**P.B. Gajendragadkar**

Now we go on to consider the views of Justice P.B. Gajendragadkar. The criterion by which he would like to distinguish areas of activities which should be controlled by law and those which should not, is expressed in terms of the distinction between socio-economic and secular activities on the one hand and the moral or religious activities on the other.

(A) Legal enforcement is relevant in socio-economic and secular matters only. "Law is justified and ...(it) is bound to attack socio-economic problems and find a rational and reasonable solution of socio-economic evils. ...A policy can be enforced by law on the ground that it is socially good or it is conducive to social peace, harmony and improvement" (Gajendragadkar 1965:116). Such a requirement is a necessary condition for a democratic
system based on secularism. "...in a democratic state which is governed by the rule of law public policies must be based on rational and secular considerations" (Gajendragadkar 1965:116).

(B) Law cannot encroach upon individual liberty in matters moral and religious. Gajendragadkar asks: "Can law validly encroach upon the liberty of the individual citizen and compel him to adopt in particular course of conduct on the ground that it is consistent with conventional or traditional notions of religion or morality"? (Gajendragadkar 1965:115). His answer is negative. In a democratic state, law has no business to interfere in matters moral or religious. "...the role of law in respect of problem which are purely moral must strictly be limited". "It seems to me that however dynamic the role of law in the achievement of socio-economic justice in democratic state, democracy should not make citizens moral or religious by the process of law. In fact such an attempt would be inconsistent with the essentially secular character of democracy" (Gajendragadkar 1965:116). He continues "it would be idle, fruitless and even dangerous to seek to enforce any notions of customary morality not justified by rational or secular grounds by
the process of law" (Gajendragadkar 1965:117). "...in discussing socio-economic problems questions of religious significance or moral importance from a conventional or traditional point of view should be eliminated" (Gajendragadkar 1965:116). In applying these criteria to prohibition, Gajendragadkar contends that prohibition needs to be defended on socio-economic considerations. Moral or religious considerations are "immaterial or irrelevant in a secular state".

The views of Justice Gajendragadkar raise many issues.

He is against the use of legal provisions to bring about a moral change. However, his reasons for such a view are not clear. He seems (a) to equate moral considerations and religious considerations, and (b) questions of religious significance and questions of moral significance from a conventional or traditional point of view, and (c) democratic State and secular State. It is not clear whether (a) and (b) are to be taken as equivalent, or they are different but related. If the latter, does he want to say that (b) is the ground of (a), or that (a) is the ground of (b). It is not clear that a democratic
State has to be secular or that only a secular State can be democratic. It is also not clear whether his view is based on or is independent of the presupposition that the State is democratic. Altogether, Justice Gajendragadkar does not succeed in making out a case of his view.

How far do the views of these Western and Indian thinkers affect the Gandhian approach to the question which is based on very different considerations? Gandhi denies the distinction between individual morality and social morality or public morality -- a distinction that presupposes the distinction between self-regarding and other-regarding actions. "There is not a single virtue which aims at, or is content with, the welfare of the individual only. Conversely, there is not a single moral offence which does not, directly or indirectly, affects many others besides the actual offender. Hence whether an individual is good or bad is not merely his own concern, but really the concern of the whole community, nay, of the whole world"(Bose 1948:26). Further, Gandhi holds that the use of law to bring about certain conduct must depend on: (a) the extent to which the social opinion is in favour of the particular conduct and disapproves of contrary conduct, and (b) whether or
not the legal provision is likely to prove worse than the disease.

An examination of the moral rules and the laws, brings out that they could be related in this respect in any one of three ways: (i) there are moral rules which are also provisions of the law. For example, "do not kill", "do not steal", are moral rules and also there are legal provisions against them. (ii) There are moral rules which are not provisions of the law. For example, one ought not to go to prostitutes. This is morally disapproved, but there is no legal provision against it. (iii) There are moral rules against which, there is a doubt whether there should be provisions of law. For example, "do not drink" is a rule which is morally disapproved though, there is a doubt as to whether there should be a legal ban on drinking.

What is the basis of these differences? Is it the basis that certain actions are only self-regarding and certain other actions are other-regarding? (i) The case of stealing is one which is not only self-regarding, but also other-regarding. But it is also one which has social opinion in its favour and one whose legal enforce-
-ment is likely to be effective. The same holds for the rule, "do not kill".

(ii) But what about going to a prostitute? Is going to a prostitute a self-regarding action? It is not self-regarding insofar as at least the prostitute is involved; nor is it an action which does not bring about social disapproval. Then what is the reason why it is not on the statute book? Gandhi's answer is that the legal ban is likely to prove a remedy worse than the disease (See p. 27).

(iii) Take the case of drinking. Is it self-regarding? The answer is negative insofar as the consequences of drinking are not only confined to the individual but to the others -- family, the community, etc. Why there is a doubt as to whether there should be a legal ban on drinking? The reason is that though there is by and large social support, the social support has become wavering, which has created a doubt about the feasibility of the legal ban on drinking.

Thus, the grounds put forward by Mill and Hart seem to be neither theoretically sound nor such as are used in practice. The kind of consideration that Gandhi put forward
are at least theoretically not unsound but surely they provide a practical useful guide to conduct and policy.

V. CONCLUSION

(A) The interest in Gandhi's views on prohibition arises from the fact that he held that prohibition should be enforced by law. He emphatically said that one should not hesitate to use force to keep people sober: "You will not be deceived by specious argument that India must not be made sober by compulsion..."(YI, 8-6-1921). There are people who hold the view that education is enough to fight the evil (drinking). But Gandhi says that education alone without legislation will not be able to cope with the evil. "...it would be wrong ...to say that education should precede legislation. Education will never be able to cope with the evil"(YI, 18-4-1929). "...legislation has really to go hand in hand with educative propaganda, if not to precede it"(YI, 18-4-1929). So they really supplement each other.

(B) For Gandhi, insofar as prohibition is essentially a moral issue the question of enforcement of prohibition by law is also a question of enforcing morality by law. But
what are the reasons Gandhi gives for enforcing morality by law? His answer is: "If what a man does -- good or bad is of concern to the society (according to him it is of concern to society) then society has a right to enforce its will on the individual. That is, man's freedom according to him, creates corresponding rights for the society. "Man's freedom to sin or err carries with it the freedom on the part of society to stop the sinner from his sin and even to legislate against it" (YI, 23-4-1931). Also, when a person wants to harm himself knowingly or unknowingly, society has a right to prevent the harm: "I do not hesitate forcibly to prevent my children from rushing into fire or deep waters. Rushing to red water is far more dangerous than rushing to a raging furnace or flooded stream. The latter destroys only the body, the former destroys both body and soul" (YI, 8-8-1929).

The more important justification for enforcing morality by law follows from Gandhi's view of morality itself. Moral issues are necessarily bound up with other issues -- psycho-physical, socio-psychological, economic and religious. Therefore, whatever the justification there is for enforcement of prohibition on other grounds is also
constitutive of the justification for enforcement of prohibition on moral grounds.

(C) Those who consider morality as autonomous have to seek justification of the enforcement of morality by law on essentially moral grounds. This raises the conceptual question: What is moral? For Kant, morality is categorical imperative. For Moore, the key moral concept "good" is indefinable. On this view of morality prohibition ceases to be a clear case of morality. The question of legal enforcement of morality becomes still more an enigmatic question or it does not arise at all on this view, or is not germane to their enquiry.

(D) What are the circumstances under which morality can be enforced by law? The different answers to this question between Mill and Hart on the one hand and Gandhi on the other may be stated because of their fundamentally different understanding of the relationship of law and morality. It is clear that the difference between them on this issue arises because of the recognition of the distinction between self-regarding and other-regarding actions by Mill and Hart on the one hand and the refusal on the part of Gandhi to accept this distinction on the other. As
mentioned earlier Gandhi refuses to distinguish between individual and social (self-regarding and other-regarding) morality.

Yet in another way Gandhi speaks of the essential unity of man and that a man's gain or loss is essentially the gain or loss for the whole world: "I believe in the essential unity of man and for that matter of all that lives. Therefore I believe if one man gains spiritually the whole world gains with him and, if one man falls, the whole world falls to that extent"(YI, 4-12-1924). Why does he refuse to recognise the distinction? Because for him morality is not autonomous. It is necessarily related to other factors.

As to the circumstances under which morality is to be enforced by law a pertinent question to be asked is: Why is it that certain moral rules are to be enforced by law, (e.g. "do not kill", "do not steal", "do not drink") and why certain other moral rules (e.g. regarding private gambling, going to a prostitutes, etc.) are not to be enforced by law? For Gandhi prohibition is a clear case for legal enforcement. In case of gambling and prostitution, on the other hand, legal enforcement alone is not
adequate; it cannot check or control these immoral practices to the extent to which drinking can be controlled. Hence enlightened public opinion is one of the necessary conditions to ensure conformity to morality in these matters; legislation can further reinforce conformity. Legal enforcement is limited inasmuch as in the absence of public opinion it is not likely to ensure the expected results. For Gandhi, the function of law is to encourage the individual to conform to the moral code.

PART TWO : GAMBLING

In this part Gandhi's views on gambling are discussed. First, we point out his reasons why gambling is an evil to be removed. Then we discuss whether this evil can be prevented by a legal ban. While discussing this, we also discuss the question of permitting certain forms of gambling by law, so that the evil, even if it is not eradicated, is contained or controlled.

1. Reasons against gambling

One of the earliest references to gambling in Gandhi's writing arose with reference to the tales he had heard of
the spread of gambling in the villages of Gujarat and the havoc that it wrought on the lives of the villagers (H, 15-6-1935). He argued against gambling on various grounds, especially economic and moral.

(i) **The economic aspect**: The economic reasons against gambling are surely that both for the individual and society it leads to economic ruin. And when there is such economic distress all round should people have a right to gambling? "At this time of growing distress in the country it (gambling) is criminal" (H, 7-4-1946).

(ii) **The moral aspect of the problem**: Gandhi describes that gambling is a moral evil which is worse than the plague or quake. So, he says: "For it destroys the soul within. A person without the soul is a burden upon the earth. No doubt war against gambling is not so simple as war against plague or earthquake distress. In the latter, there is more or less cooperation from the sufferers. In the former the sufferers invite and hug their sufferings" (H, 15-6-1935).

2. **Difficulties in removing gambling**

As a journalist and reformer Gandhi felt that it was his duty to bring the havoc of this vice to the notice of
the public. Gandhi says that as a journalist and a reformer his function was "... to call public attention to those vices about which there is likelihood of public opinion being created" (YI, 27-4-1921). But he also said that he had no courage to write about gambling because "...as I had no hope of following up my writing by some organized constructive effort to combat the evil..." (H, 15-6-1935).

Further, on seeing that high dignitaries and men in high places patronized gambling, he could not gather the courage to write about it. "Having seen an Aga Khan, prelates, viceroy贫穷, and those that are considered the best in the land, openly patronizing it and spending thousands upon it, I have felt it to be useless to write about it" (YI, 27-4-1921).

3. **Some issues**

I might be said that Gandhi has not taken account of some facts in putting forth his views on gambling and its prevention. But the foregoing remarks will show that he also took into account certain related issues. They are as follows:

(1) **Horse-breeding:** Some people said that horse-racing
is good for breeding good horses. To this Gandhi said that breeding of horses should not be defended through gambling. He asked, "...is it not possible to have horse-racing without gambling?...")(H, 4-9-1937).

(ii) The legalization of gambling: For Gandhi legalization of gambling meant legal sanction for certain forms of gambling such as those involving horse-racing or the floating of lotteries etc. During the Congress ministries in office in some provinces, there was some talk of legalization of gambling. Commenting on this, Gandhi said: "the people who indulged in gambling, which unfortunately is even on the increase in the Bombay Province, think that gambling will be legalized and superstitious dens that cover Bombay will be no longer required. I am not quite sure that, even if gambling is legalized on a universal scale, as it is already in a restricted manner, there will be no illegal dens. Thus it has been suggested that the Turf Club, which has the monopoly of gambling on the race course, should be allowed to open an additional entrance to make it easier for poor people to gamble. The bait offered is a large revenue"(H, 4-9-1937).
4. What the government can do to eradicate gambling

(i) (a) Withdraw the protection of law: What is the duty of the Government in dealing with gambling? Gandhi's answer is clear: "...if I had my way I would withdraw the protection of the law that gambling on the race-course enjoys even to the extent it does" (H, 4-9-1937). He further argues that gambling should be stopped by the Government because if people in high quarters do it, ordinary people tend to follow the vices of the rich (H, 4-9-1937).

(i) (b) Traditional support: It appears as if to support his contention that the State should prohibit gambling, he quotes Manusmrti on the sin of betting: "The king should diligently keep gambling (dyuta) and betting (Samahvaya) away from the State; for these two vices destroy the State and sovereign themselves". "Gambling and betting are indeed as day light robbery, and the ruler should endeavour diligently to eradicate them" (YI, 25-5-1921).

(ii) Educate public opinion: Addressing the Congress Ministers in 1937 Gandhi said, "The Ministers, will, therefore, use the authority that they have obtained for
educating public opinion in the right direction and for stopping gambling in high quarters. It is useless to hope that unwary public will not copy the bad manners of the so-called high class people" (H, 15-6-1935).

(iii) Not to use revenue: Referring to gambling on the race-course Gandhi tells the Congress Government in 1939 that the Congress should have nothing to do with income derived from a vice such as gambling. "The Congress programme being one of self-purification, as is stated in so many words in the resolution at 1920, the Congress can have nothing to do with the income derived from any vice" (H, 4-9-1937).

5. Limitations of law

Gandhi realizes the limitation of law in enforcing ban on gambling. Though he insists that there should be law against gambling, he qualifies it by saying it is of no avail if public opinion is not behind the law. Society should support what the law does even when the law fails. In these matters, we should create public opinion. That is the job of reformers(YI, 27-4-1921). Public opinion will be there only when there is public education. Hence this is the first step. As it is in the case of law, it is
also in the case of the Government. The peoples' Government will never be able to go far in advance of popular opinion (H, 7-4-1946). Therefore, he says that if it is within the competence of a popular Government to put an end to this evil, it should certainly do so (H, 18-8-1946). It is not merely a question for the Government to abolish the vices but it is the duty of the society also to try it. He advises that the best way to overcome this evil is to non-cooperate with it. Then it will die a natural death (YI, 24-4-1921). But when people themselves are not doing their duty, then it is the business of the law to do the necessary thing.

6. (i) Here, we find Gandhi insisting that in order that a legal ban may be worthwhile, it is necessary that there should be a social opinion against the evil. Insofar as he did not bring in this question in the case of prohibition, Gandhi must have thought one of two things or both of them. That there was social support for prohibition and/or that it is a greater evil than gambling. If it were the former that was important, then it would appear that then the case for prohibition is weaker now than it was then. There can be no doubt that drinking today is quite prestigious and is not looked down upon
as it used to be. However, if the latter was the reason, or the more important reason, then the case for prohibition will continue to be strong. This question is no longer unimportant in view of the attempts to revive the policy of prohibition (according to the Directive Principles laid down by the Constitution of India) which had already been almost given up.

(ii) Though it is not a point in legal philosophy, it is a point of importance in Gandhi's approach to problems that he did not want to indulge in moralising where he could not back it up by a programme which could be carried out with some reasonable degree of effectiveness.

(iii) And yet, he did not want to use a lesser evil as a temptation to prevent a greater evil. In the case of gambling it is not clear whether it is a matter of such a step not succeeding; or it is a matter of a step which is intrinsically bad. In view of Gandhi's general approach, one can say that he thought the step of having legalized gambling as intrinsically bad because, it is an attempt to use a bad means to achieve a good end -- something which Gandhi thought it simply impossible to do.
PART THREE : PROSTITUTION

In this part the problem of prostitution is discussed. After pointing out how the problem became live to Gandhi, we bring out his views that it is an unmitigated evil. And finally we bring out his views as to what is to be done to deal with the evil.

1. The existence of prostitution

Gandhi became alive to the immensity of the problem of prostitution in the early 20s. This happened at Coconada in Andhra Pradesh, when he met some professional women and girls. This shattering experience which led to his awakening to the problem of prostitution, he describes as a "soul killing discovery" (YI, 13-4-1921).

He was also soon awakened to the horrors of the devadasi system. He declared: "By calling them devadasis, we insult God Himself in the name of religion and we commit a double crime in that we use the sisters of ours to serve our lust and take in the same breath the name of God" (YI, 22-9-1927).

2. Prostitution - an unmitigated moral evil

For Gandhi, the essential character of prostitution is
brought out by his description of it as moral leprosy. This implies that no other consideration except that it is essentially the moral failure that gives rise to it can explain its character. An important cause of this "leprosy" is man's lust. "It is a matter of bitter shame and sorrow, of deep humiliation, that a number of women have to sell their chastity to man's lust" (YI, 16-4-1925).

3. What is to be done?

(1) **Law**: As Gandhi held that prostitution is essentially a moral evil, it could not be prevented by law. "Man cannot be made good by law. If I had the power of persuasion I would certainly stop women of ill-fame from acting as actresses...but alas I have not the persuasive power I would gladly possess. But to regulate these things by law whether of the State or the Congress would be a remedy probably worse than the disease" (YI, 9-7-1925).

(2) **Legalization of prostitution**: He is surely opposed to legalization of prostitution. It is not legalization but education of the prostitutes and their clients that he thinks is the proper method of dealings with the evil. "...a suggestion has been made for the regulation and licensing of brothels. The argument advanced,
as in all such cases, is that the vice will continue whether it is legalized or not and, therefore, it is better to legalize and make it safe for those who visit the brothels... The proper method of dealing with brothels is for the women to carry on a double propaganda, (a) amongst women who sell their honour for a livelihood, and (b) amongst men whom they must shame into behaving better towards their sisters whom they ignorantly or insolently call the weaker sex" (H, 4-9-1937).

(iii) Men and women's voluntary effort: The problem of the social worker in India is to arouse the public conscience against the evil of prostitution. "It would have died long ago but for the supineness of the public. Public conscience in this country somehow or other lies dormant. It often feels the awfulness of many a wrong, but is too indifferent or too lazy to move" (YI, 29-8-1929).

Gandhi recommends the sort of work done by the Salvation army in the red light area of Bombay to fight prostitution: "I remember years and years ago in the early nineties when the brave Salvation army people, at the risk of their own lives, used to carry on picketing at the corners of the notorious streets of Bombay which were
filled with houses of ill-fame. There is no reason why some such thing should not be organized on a large scale" (H, 4-9-1937).

Though man is primarily responsible for the degradation of women and hence a greater moral responsibility devolves on them, the responsibility on the part of the fallen women is, nonetheless, very great. To tackle the problem of prostitution Gandhi asks the fair sex to rise to the occasion. "Not until a woman of exceptional purity and strength of character rises and devotes herself to the task of redeeming this portion of fallen humanity will the problem of prostitution be tackled"(YI, 28-5-1925).

4. Gandhi's discussion of prostitution brings out some other elements in his understanding of law, morality and society.

(i) First, in the case of prostitution Gandhi does not consider a larger number of factors that bring into existence the phenomenon of prostitution. This is so because he thinks that other factors, economic, psychological etc., do not play a main role; but that their role is only contributory or accentuatory. The crucial role here is
of peoples' attitude, whether they consider sexual relationships in terms of money or whether they think them to be wrong; and in the matter of these attitudes Gandhi considered the attitude of men as the more important. This understanding of Gandhi has a fairly high degree of plausibility in that the general rise in prosperity may not bring about reduction in prostitution; in fact, it might increase it. It is important to note this because his views on the role of law and the way to reduce the evil are a part of his view as to what is crucial in the phenomenon of prostitution.

(ii) What is the way of dealing with the situation?
In the case of prostitution Gandhi held that law can be of no use. In fact legal remedies to prevent the evil may be more harmful. Gandhi's approach, here, followed from his view of the nature of prostitution as essentially a moral issue and had to be tackled as such. One may compare this approach to his views on the legal ban on gambling. In the case of gambling, he argues in favour of the legal ban, though he is not sure that it may be effective, because there is not much social support for it. But unlike gambling, though apparently the public opinion is against prostitution, Gandhi is not in favour
of the legal ban, because he thinks that the roots of the evil are different in this case. He argues that the legal ban on prostitution may be worse than the disease. Surely he did not think so in the case of drinking. He argued in favour of a legal ban on drinking. Besides, there being public support for prohibition, the more important reason perhaps is this. Though drinking also is a moral issue for Gandhi the other reasons in favour of prohibition that he considers are no less important. The evil of prostitution differs significantly from the evil of drinking on the points of its being essentially in moral in nature. Hence Gandhi thought that though legal ban may work in the case of drinking, it would be of little value in the case of prostitution.

CONCLUSION

While considering the case for prohibition we learnt:
(i) There was public support in favour of prohibition.
(ii) Though drinking was a moral issue the other reasons are no less important. (iii) Hence, a legal ban on drinking was likely to succeed.

The case of gambling was different. (i) The public opinion against it was weak inasmuch as gambling was
considered as more a sport than an evil and that the rich also patronized it. (ii) Still, Gandhi argued in favour of a ban or gambling; but he categorically rejected the legalized form of the evil. The presupposition behind his opposition to legalization of gambling was that one should not encourage less immorality to prevent greater immorality.

The consideration of the case of prostitution further supplements the above considerations. (i) In the case of prostitution what is significant is Gandhi's stress on the moral aspect of the evil, and his understanding that the existence of this evil is more owing to the attitudes of men and women especially men, towards sex. (ii) Of course in the case of prostitution, the public opinion is apparently against it. (iii) But, given the nature of prostitution, Gandhi held that the possibility of a legal ban against it may be worse than a disease, i.e., it would not reduce prostitution, but would increase it. (iv) Hence Gandhi stressed that prostitution has to be fought by bringing about the change in the attitude of men and women towards sex. Hence, he emphasized the role of voluntary effort in eradicating the evil.
Gandhi's approach to what the law can do in the case of drinking, gambling and prostitution, does not arise from any differences in principle; the difference is owing to the nature of the evil and difference in the social attitudes of people towards each of them.
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YI stands for "Young India".

H stands for "Harijan".