CHAPTER IV

CIVIL DISOBEDIENCE OF LAW

Introduction

Perhaps, the most natural and the most obvious way of discussing Gandhi's philosophy of law, would be to give a central place to Gandhi's thought on civil disobedience. The consideration of his philosophy of law based on his views on civil disobedience, however, presents two very difficult problems: (i) Gandhi's writings on civil disobedience are so vast, that a detailed examination of his thought of the kind, we have undertaken, would hardly be suitable material to be used in the development of the present approach to Gandhian studies. Even if one succeeds in such a task, it will take a long time. (ii) Further, already a lot has been written on Gandhi's thought on civil disobedience and to take account of these writings will also present a problem not only in terms of size, but also in terms of substance. Using the literature is likely to influence one's thinking and thus prevent one from taking a fresh look at the problem. And yet, to completely ignore Gandhi's thought on this problem would be to make one's study of Gandhi's philosophy of law incomplete in a
very important way. The solution to this dilemma was sought through a consideration of the trials of Gandhiji. During his life time, Gandhi was arrested many times. On later occasions after he had become the Mahatma, the undisputed leader of the National Movement, he was always detained without trial. But on five occasions he was tried, thrice in South Africa and twice in India. It is Gandhi's justification for breaking the law on these occasions that we have considered in examining Gandhi's understanding of the philosophy of law.

An account of the trials of Gandhi brings to our attention, such issues as (i) his reasons for disobeying the law, (ii) the manner of disobedience, and related to (ii) is, (iii) his grounds for accepting punishment for the disobedience of law. The consideration of these issues will help us understand Gandhi's views on law.

In the first Section, an account of the trials is given.

On the basis of the discussion of these trials, we give an account of Gandhi's reasons for disobeying the law, in Section two.
In the third Section, we give an account of the manner of disobedience as it emerges from the account of these trials. We do not discuss the manner of disobedience because since acceptance of punishment is a part of it, we discuss it together in the next Section.

In Section four, we discuss Gandhi's reasons for acceptance of punishment. This discussion contains the views of Socrates, on the one hand, and Chomsky, on the other. This helps us, not to confuse Gandhi's views with those of other thinkers.

Section five brings together the results of the discussion on the three issues mentioned above.

I. THE FIVE TRIALS

We have given an account of the trials from the consideration of which, emerge some of the issues pertinent to Gandhi's philosophy of law. In order to facilitate the articulation of the issues (discussed in Sec.II, III and IV) clearly, the sort of questions raised in the case of each trial are: (i) What was the issue that led to the trial? (ii) What was Gandhi's role on each of the occasions?
(iii) What were the charges against Gandhi and what was his defence? We have given a fairly detailed account of the trials under the headings — the issue, the role of Gandhi and the trial, for the following reasons. The issue and the trials throw light on the grounds on which Gandhi supports disobedience; the role of Gandhi brings out the manner of his disobedience, and the issue of acceptance of punishment is seen as part of the manner of disobedience. Thus such an account enables us to focus our attention on Gandhi's views on legal philosophy.

Out of the five trials, the three that took place in South Africa are as follows: (1) In 1907, at Transvaal, for violating the Immigration Act, Gandhi was ordered by the court to leave the Transvaal. (2) In 1908, at Transvaal, for disobeying the externment order, he was sentenced to two months' simple imprisonment. (3) In 1913, at Dundee and Volksrust (Transvaal), for leading a mass movement for the repeal of the £3 tax, he was sentenced to nine months' and three months' imprisonment, respectively.

The other two trials took place in India: (4) In 1919, at Ahmedabad for contempt of court; the court reprimanded Gandhi for his conduct and warned him. (5) In 1922, at
Ahmedabad for sedition, spreading disaffection and attempting to overthrow the Government, he was sentenced to six years' simple imprisonment.

THE TRIALS IN SOUTH AFRICA

(1) Violation of the Immigration Act, 1907

(i) The Issue: Transvaal became a Crown colony of the British after the Boer War (1900). It was believed that under the British regime, the Indian community in South Africa would be given a better deal; and the grievances under which the Indians laboured under the Boer regime would be redressed. Nothing of this sort happened. On the other hand, the repressive measures increased when the British took over, and the conditions of the Indians began to deteriorate. Thus, the authorities began to take steps to "prevent fresh Indian Immigrants from entering the Transvaal, and to render the position of the old Indian settlers so uncomfortable that they would feel compelled to leave the country in sheer disgust, and even if they did not leave it, they would be reduced to a state bordering on serfdom" (Gandhi 1928:93). Thus, a measure was brought out in the form of the Asiatic Law Amendment Ordinance, passed on August 22, 1906. The Ordinance required
that every Indian above eight years entitled to reside in the Transvaal must register his or her name. The provisions of the ordinance were such that they led to unlimited harassment and persecution of every Indian.

(ii) The Role of Gandhi: Gandhi became concerned with the immigration issue as early as 1901; in fact he came back to South Africa on receiving information that the South African situation had become serious for the Indian community. His pleading for redress of grievances of the suffering Indian community in South Africa with Mr. Chamberlain, who was then visiting South Africa, were of no avail. On the other hand, Gandhi saw that "all laws adversely affecting the Indians began to be more and more strictly enforced day by day" (Gandhi 1928:86). The climax was reached with the passage of the Asiatic Law Amendment Ordinance. Gandhi was appalled by the provisions of the Ordinance. He declared: "I have never known the legislation of this nature being directed against free men in any part of the world" (Gandhi 1928:100). A meeting was held on September 11, 1906, attended by delegates representing the Indian community from various places in the Transvaal. The leaders of the Indian community declared that they would fight back the Ordinance. One Sheth Haji Habib went to the
extent of declaring that the meeting should pass a
resolution with God as a witness to the effect that the
Indians solemnly determined not to submit to the Ordinance
and to suffer all the penalties attached to such non-
submission. In response to this bold declaration of the
Sheth, Gandhi made one of the most memorable speeches.
Gandhi approved of what the Sheth had said but warned
"...to pledge ourselves or to take an oath in the name of
...God or with Him as witness is not something to be
trifled with. If having taken such an oath we violate our
pledge we are guilty before God and man. Personally I hold
that a man, who deliberately and intelligently takes a
pledge and then breaks it, forfeits his manhood" (Gandhi
1928:104).

Gandhi declared that the time had come for striking
back, for taking the plunge. "There is wisdom in taking
serious steps with great caution and hesitation. But
cautions and hesitation have their limits, and we have
now passed them. The Government has taken leave of all
sense of decency. We would only be betraying our unworthi-
ness and cowardice, if we cannot stake our all in the face
of the conflagration which envelops us and sit watching
it with folded hands" (Gandhi 1928:105).
And then, Gandhi warned his audience that if they take the plunge, they must be prepared for the worst. "...it is not at all impossible that we may have to endure every hardship that we can imagine and wisdom lies in pledging ourselves on the understanding that we shall have to suffer all that and worse" (Gandhi 1928:106). And finally, as to his personal responsibility in leading the resistance movement, he said, "I am fully conscious of my responsibility in the matter... there is only one course open to some one like me, to die but not to submit to the law. It is quite unlikely, but even if every one else flinched leaving me alone to face the music, I am confident that I would never violate my pledge... I am not saying this out of vanity, but I wish to put you... on your guard" (Gandhi 1928:107).

This historic meeting which culminated in committing Indians to resist the "Black Act" was the first step; this was followed by several others. Gandhi wanted an appropriate name for the movement he was to lead. In the search, he tumbled upon the term "Satyagraha." He made clear how it was different from passive resistance. This conceptual clarity helped him to develop the right strategy. The next step was to explore possibilities of settling the issue
through constitutional remedies — this meant peaceful negotiations with authorities through representations and deputations. Having exhausted the possibilities of peacefully settling the issue, the people had to be prepared. This he tried through "Indian Opinion", a weekly journal published in English and Gujarathi. And then came the picketing of the permit offices for registering the names which were opened in July 1907.

Thus gathered the mass momentum against the Ordinance. The Government could not sit back. In the Christmas week of 1907, Gandhi and the other leading men were served with a notice to appear before the magistrate. They were asked "to show cause why having failed to apply for registration as required by law, they should not be ordered to leave the Transvaal within a given period"(Gandhi 1928:145-46). Thus began the first trial. Gandhi appeared before the court on Saturday, December 28, 1907.

(iii) The Trial: To the charge that he violated the Immigration Act, in that he was in the Transvaal without a registration certificate issued under the Act, Gandhi pleaded guilty. Gandhi requested the magistrate that he be permitted to make a statement as to why he has not
submitted himself to the provisions of the Act. He said that legally he cannot give any evidence at all. But still, he wanted to say why he broke the law. To this, the magistrate asked as to whether Gandhi disapproved of the law and he conscientiously wanted to resist it. Gandhi replied that that was perfectly true. However, Gandhi was not allowed to make any further statement than this.

The magistrate ordered Gandhi to leave the colony within 48 hours.

(2) Disobeying the Externment Order, 1908

The occasion for the second trial arose out of the magistrate's order in the first trial. As we saw earlier, all the accused were ordered to leave the Transvaal within 48 hours in some cases and 7 or 14 days in others. The time limit expired on January 10, 1908. As Gandhi did not obey the order, he was charged with disobeying the externment order and was called upon to attend the court for trial. The trial took place on 11th January, 1908.

Gandhi did not offer any defence. He pleaded guilty to the charge of disobeying the order to leave the Transvaal within the stated period issued by the magistrate. In a
short statement he made before the court, he stated that his compatriots who were tried in Pretoria were sentenced to three months' imprisonment with hard labour and a fine; and in lieu of which they would receive a further period of three months' with hard labour. He argued that "if these men had committed an offence, he had committed a greater offence" (Gandhi 1962:81). And he asked the magistrate to impose upon him the heaviest penalty. The magistrate passed a sentence of two months' simple imprisonment against Gandhi.

(3) Disobeying the Law Levying a Special Tax, 1913

(i) The Issue: The issue for the third trial arose out of the Satyagraha launched against the "Black Act" to which was added the demand for the abolition of the £3 tax levied against the indentured labour. It is necessary to understand what the £3 tax was. Briefly, the background for the £3 tax was as follows: The English settlers in South Africa requested the Government of India for the supply of labour for agriculture and plantation work in the colonies; the Government of India agreed to their request. Thus began the immigration of indentured labourers from 1860. In order to suppress these immigrants in case they continued to stay in South Africa on the expiry of their
indenture, the Natal Government sought to impose an annual tax of £ 25 on each indentured Indian. But later at the intervention of the Viceroy of India, Lord Elgin, this tax was reduced to a poll tax of £ 3.

The Natal Indian Congress organised a fierce campaign against this rule. When Gokhale visited South Africa in 1912, Gandhi requested Gokhale to negotiate with the Natal Government for the repeal of the £ 3 tax. The promise made to Gokhale by the Natal Ministers, however, was broken. This breach of promise to the distinguished Indian statesman infuriated the Indian community and led to the inclusion of the demand for the repeal of £ 3 tax as part of the overall programme of the earlier Satyagraha. And as this tax fell upon the indentured Indians, they were drawn in for the first time into the Satyagraha struggle.

(ii) Gandhi's Role: The struggle began to take a concrete shape when the labourers working in the mines near the Newcastle struck work, downed their tools, and started assembling in the city. Gandhi was confronted with an unprecedented situation. The strikers were harassed by the mine owners by repressive acts such as stopping their light and water in the residential quarters.
built by the owners. Gandhi's response was unique. He asked the strikers to leave their quarters and stay on the open grounds. More unique was the way he sought to generate the necessary impact against the authorities by deciding to undertake an epic march of some two thousand strikers -- including men, women and children from Charlestown (Natal) to the Tolstoy Farm, some 36 miles away. The story of this epic march has been narrated by Gandhi himself (Gandhi 1928:301). (This need not be detailed here.) The authorities struck back at the leaders and finally arrested them. Gandhi along with others was arrested on 9th November 1913.

(iii) The Trial: Gandhi was tried at two places. At Dundee he was "prosecuted on the principal charge of inducing indentured labourers to leave the province of Natal." The trial took place on the 11th. The second trial took place at Volksrust, "on the charge of aiding and abetting prohibited persons to enter the Transvaal."

The following details refer to the trial at Dundee. At the Dundee court, Gandhi pleaded guilty. He said that he believed that the demonstration for which these people were taken out of the colony was for a worthy object (Gandhi 1962:84).
At Dundee, Gandhi was sentenced to nine months' imprisonment with hard labour and at Volksrust, three months' simple imprisonment.

**THE TRIALS IN INDIA**

The occasion for both the trials arose out of Gandhi's determination to resist the Rowlatt Act and organise a nationwide civil disobedience movement against it. Till the conclusion of the first World War, Gandhi continued to believe that by serving the British Empire it was possible to gain a status of full equality in the Empire. Gandhi's hopes were shattered, when the Government of India passed the Rowlatt Act with a view to supressing the freedom and liberty of the people. The Defence of India Act expired after the first World War; and hence the Government sought an excuse to replace it by this Act. It was promulgated in the third week of March, 1919. The Act empowered authorities to arrest, confine, imprison or otherwise punish persons who were suspected to be involved in movements prejudicial to the security of the State. The real objective was, however, to destroy the rising tide of national consciousness.
Gandhi's response was quick, firm, clear and categorical. He called a small meeting of his trusted friends at Sabarmath Ashram to decide on the steps to build up a movement of resistance against the Act. This meeting decided to constitute a Satyagraha Sabha at Gandhi's instance. The issues in both the trials emerge in the context of the Satyagraha movement conducted under the auspices of the Satyagraha Sabha.

(4) The Trial for Contempt of Court

(1) The Issue: In response to Gandhi's call for signing the Satyagraha pledge, it happened that some pleaders and barristers practising in the District Court of Ahmedabad, took the Satyagraha pledge. According to this pledge, they undertook (among others) "to refuse civilly to obey these laws (viz., the Rowlatt Act) and such other laws as a committee to be hereafter appointed may think fit" (Prabhu 1962:38). The District Judge, Mr. B.C. Kennedy, demanded explanations from four of these lawyers who had given their names as members of the Satyagrahi League, asking why their sanads should not be cancelled for their having signed a Satyagraha pledge. The explanation furnished by the lawyers did not satisfy him. He then addressed a letter to the Registrar of the Bombay High Court
referring the issue of these lawyers. The point of the letter was to seek clarification as to whether the Satyagraha pledge was consistent with their duties as advocates and pleaders. One of the lawyers concerned who got a copy of this letter showed it to Gandhi. Gandhi published the letter under the caption "O’Dwyerism in Ahmedabad" with his editorial comments in "Young India", which attracted legal proceedings against him on the charge of the contempt of court.

(ii) Gandhi’s Role: To bring out his role on this issue, one may begin with his comments in Young India. The letter of Mr. Kennedy addressed to the Registrar of the Bombay High Court stated that the concerned pleaders of the courts had signed the Satyagraha pledge. He sought an explanation from these lawyers which did not satisfy the District Judge. He observed that the Satyagrahi oath bound the signatories not only to oppose the Rowlatt Act, but to break any law which the Satyagraha committee might decide should be broken. Such an action on the part of the pleaders was not consistent with the duty of a pleader in terms of his sanad. Hence, he submitted the case for the orders of High Court for determination on the issue of the said conduct of the pleaders.
Gandhi published a copy of the letter received from one of the concerned lawyers in Young India, dated 6th August, 1919. In the same issue he published his comments on the then pending proceedings of the High Court. Gandhi took the District Judge to task for prejudicing the issue against the lawyers concerned. The Judge's action, he said, was part of the attempt to suppress civil resisters.

The proceedings against the pleaders of Ahmedabad were not disposed of when the above letter and Gandhi's comments were published in Young India. The Bombay High Court heard the case of the Satyagrahi lawyers referred to it by Mr. Kennedy, on 15th October 1919. The Judges of the High Court in the judgment warned the said lawyers, disapproving of their conduct.

In the meanwhile, the Registrar of the Bombay High Court wrote a letter to Mr. Gandhi on 18th October, 1919. He asked Gandhi to furnish an explanation regarding the published material in Young India of 6th August 1919. Gandhi furnished a written explanation on 22nd October 1919. He said: "In my humble opinion I was within the rights of a journalist in publishing the letter in question and making comments thereon. I believe the letter to be of great
To this reply, the Registrar wrote back on 31st October. He stated that Gandhi's explanation did not satisfy the High Court. He requested Gandhi to furnish the apology in the next issue of Young India, in a manner decided by the High Court. Gandhi refused to furnish the suggested apology. On 11th December, the Registrar "suo moto applied for a rule nisi calling upon Messrs Gandhi and Desai to show cause why they should not be committed or otherwise dealt with according to law for contempt of Court in respect of the publication of the said letter" (Prabhu 1962:34).

On 3rd March, 1920, the case came up for hearing.

(iii) The Trial: The Advocate General argued: "The publication of the letter and the comment on it in Young India constituted contempt of court in two respects: Firstly, in scandalizing Mr. Kennedy, and secondly as an attempt to interfere with the course of justice in the High Court" (Prabhu 1962:35).
Gandhi stated: "I do not wish to argue the legal points because I do not rest my case, such as it is, on a point of law. The Court has many undefended cases and I wish to be considered as undefended. I would be entirely content with Your Lordship's findings on points of law. Yet I would say that the arguments of the Advocate-General have not convinced me. What I felt was that I had not prejudiced any party. I have commented on the District Judge not as a Judge but as an individual. ...The whole law of contempt was that one ought not to do anything, or comment on the proceedings in Court, while the matter was sub judice. But here the District Judge did something in his private capacity. I have not endeavoured to prejudice in any shape or form the decision of the High Court" (Prabhu 1962:36).

The judge having heard Gandhi, gave the following judgment: The judgment stated that the charges against Gandhi were proved. The court severely reprimanded the respondents (Gandhi and Mahadev Desai) and cautioned them as to their future conduct.

(5) The Trial for Sedition, 1922

(i) The immediate reason that led to Gandhi's being
charged with sedition was some offending article in Young India. Though this was the immediate reason for his arrest, it was the civil disobedience movement against the Rowlatt Act which really occasioned the writing of the articles and the consequent arrest. Hence, a brief account of the resistance movement against the Rowlatt Act and Gandhi's role in conducting these movements would provide the necessary background for a better understanding of the trial.

(ii) Gandhi's Role: Mention has been already made earlier about the formation of the Satyagraha Sabha (with Gandhi as the President) to decide the future course of action to resist the Rowlatt Act. The preparation for resistance soon began. People came forward "to sign the Satyagraha pledge in large numbers, bulletins were issued and popular meetings began to be held everywhere". In the meanwhile, The Rowlatt Bill was passed as an Act.

How to start off? What should be the form of protest? What should be the first step? The questions intensely worried Gandhi. He arrived at the decision almost instinctively. (This is narrated later on p-.) Gandhi
decided to make the protest in the form of a *hartal* to be observed throughout the length and breadth of India. The response to this call was fantastic and the whole of India "from one end to the other observed a complete hartal on that day." (The date of the hartal was earlier fixed on 30th March, but was later changed to 6th April, 1919).

The observance of the *hartal* let loose a reign of unprecedented repression against people. The Jalianwala Bagh tragedy showed to what extent the Government would go to suppress people. Violence broke out at several places. But then, the incidence at Chauri Chaura shocked Gandhi. The people, he said, were not simply prepared for a non-violent struggle; the only course left thereafter was to suspend the struggle.

But the unrest and repression continued. And then the Government's betrayal of the Muslims on the Khilafat issue added fuel to fire. Gandhi made the Khilafat issue also as one of the grounds for the struggle. The Government had waited too long postponing Gandhi's arrest. The authorities who were waiting for an opportunity to arrest Gandhi had to get an immediate technical reason to do so. The articles in Young India, through which Gandhi
expressed his anger and disaffection against the Government, gave the authorities the necessary legal technical ground for issuing the warrant for his arrest.

(iii) The Trial: Gandhi was tried on 18th March before the District and Sessions Judge, Ahmedabad, on the charge of sedition. The charges were based on the three offending articles published in Young India, viz; (1) Tampering with Loyalty, (September 29, 1921), (2) The Puzzle and its Solution (December 15, 1921), and (3) Shaking the Manes, (February 23, 1922). These articles were written by Gandhi and printed by Banker. Hence along with Gandhi, Banker was also tried. The charge in each case was "that of bringing or attempting to bring into hatred or contempt or exciting or attempting to excite disaffection towards His Majesty's Government, established by law in British India" (Gandhi 1962:107). The accused were charged under section 124 A of the Indian Penal Code. Gandhi pleaded guilty to all the charges. He set out his reasons as to why from "a staunch loyalist and a cooperator with the Government, he became an uncompromising disaffectionist and non-cooperator." (These reasons are set out later in some detail under the Section: 'Grounds for disobedience of Law'.)
Gandhi was sentenced to six years of simple imprisonment.

The account of the trials, as we said, has been formulated in the manner above, to facilitate the discussion of the following issues.

1. The account of the issue and the arguments for the prosecution and the defence at the trial bring out the grounds on which disobedience was justified.

2. The account of the role of Gandhi brings out the manner in which the issue was sought to be pursued. This also led to the arrest and trial of Gandhi.

3. We have given a separate status to the fact that Gandhi accepted the punishment and made it a part of the technique.

II. THE GROUNDS FOR DISOBEDIENCE

In this Section, we shall consider Gandhi's grounds for disobedience of law. Though Gandhi has explained the grounds of disobedience in all the trials in greater or less detail, they have been more comprehensively and clearly
stated in the trial for sedition. The ground is essentially moral as he says at the end. But the moral ground is not a separate ground; it has basis in various policies of the Government of India. Hence, these grounds have several aspects, such as the political, economic, legal, moral, and religious, etc. Hence, the grounds of obedience are considered under these heads separately.

A. (1) **Political Reasons**

In order to understand Gandhi's reasons for disobedience, it will help us if we look at the time when Gandhi was a loyal citizen of the British Empire. At that time even when he did not agree with some of the laws, he did not disobey because he believed that these unjust laws were part of "an excrescence upon a system that was intrinsically and mainly good" (Prabhu 1962:64).

Now, why from a staunch loyalist and co-operator, Gandhi became an unbending and uncompromising disaffectionist and non-cooperator with the British Government? Gandhi recalls his early public life in South Africa.

"My public life began in 1893 in South Africa in troubled weather. My first contact with British authority in that country was not of a happy character. I discovered that
as a man and an Indian, I had no rights. More correctly I discovered that I had no rights as a man because I was an Indian" (Prabhu 1962:64).

"But I was not baffled. I thought that this treatment of Indians was an excrescence upon a system that was intrinsically and mainly good. I gave the Government my voluntary and hearty cooperation, criticizing it freely where I felt it was faulty but never wishing its destruction" (Prabhu 1962:64).

Gandhi then narrated how he served and cooperated with the British during the Boer War and in the Zulu "revolt" in the first World War; later, he raised a volunteer ambulance corps in London; and in India in 1918, he helped recruiting soldiers for the War, in the Kheda district etc. "In all these efforts at service, I was actuated by the belief that it was possible by such services to gain a status of full equality in the Empire for my countrymen" (Prabhu 1962:65).

But all this changed and Gandhi found that the British Government was the most satanic and the most evil Government. "The first shock came in the shape of the Rowlatt Act — a law designed to rob the people of all real freedom." Then came
"the massacre at Jalianwala Bagh and culminating in
crawling orders, public flogging and other indescribable

With the betrayal of the Indian Muslims by the British
Prime Minister on the issue of the integrity of Turkey and
the holy places of Islam, Gandhi's disillusionment was
total. "I came reluctantly to the conclusion that the
British connection had made India more helpless than she
ever was before, politically and economically"(Prabhu 1962:66).
In what follows, we shall be concerned with Gandhi's views
as to how India was "made more helpless", in facing
internal conflicts and external aggression. (As to the
helplessness in economic aspect we shall be concerned later.)
First we consider Gandhi's contention that the presence of
the British has disabled Indians in squarely dealing with
the internal conflicts, such as the Hindu -- Muslim tension.

Gandhi realises that as long as the British remained,
there would be no solution to the Hindu Muslim problem
inasmuch as the colonial rulers formented Hindu - Muslim
tensions and conflicts. He bluntly tells the Governor of
Bombay thus: "The Governor of Bombay has done a disservice
to himself and his cause (whatever it might be), by fomenting
Hindu-Musalman disunion, and has insulted the Hindus, by letting them infer from his note, that Hindus are helpless creatures unable to die for or defend their hearth, home or religion. If however the Governor is right in his assumptions, the sooner the Hindus die out, the better for humanity" (Prabhu 1962:79-80).

He tells the British rulers to leave us — the Hindus and Muslims — alone and not worry about what would happen if the British were not there to keep the Hindus and Muslims together. This is what he tells the Governor of Bombay: "The Governor has pandered to the basest in us by telling us what would have happened in Malabar but for the British soldier or sepoy. I venture to inform His Excellency that Malabar Hindus would have fared better without the British bayonet, and Hindus and Musalmans would have jointly appeased the Moplahs, that possibly there being no Khilafat question there would have been no Moplah riots at all, that at the worst, supposing that Musalmans had common cause with the Moplahs, Hinduism would have relied upon its creed of non-violence and turned every Musalman into a friend, or Hindu valour would have been tested and tried" (Prabhu 1962:79).
He retorts His Excellency that what the Governor has said is itself the greatest condemnation of the British rule. "Let me remind His Excellency, that he has pronounced the greatest condemnation upon the British rule, in that it finds Indians today devoid of enough manliness to defend themselves against looters, whether they are Moplahs, Musalmans or infuriated Hindus of Arrah" (Prabhu 1962:80).

Gandhi further contends that the British rule made India helpless in resisting any external aggression. "A disarmed India has no power of resistance against any aggressor if she wanted to engage in an armed conflict with him. So much is this the case that some of our best men consider that India must take generations before she can achieve dominion status" (Prabhu 1962:66).

With dismay Gandhi says: "...many Englishmen and Indian officials honestly believe that they are administering one of the best systems devised in the world, and that India is making steady, though slow, progress. They do not know that a subtle but effective system of terrorism and an organized display of force on the one hand, and the deprivation of all powers of retaliation or self-defence on the other, have emasculated the people and induced in them the habit of simulation" (Prabhu 1962:67).
Finally, echoing Lokamanya's cry "Swaraj is our birth right", Gandhi tells the British that the Indians would no more suffer the tutelage of the British; the rice-eating puny millions of India are determined to fight the British without arms. In a hard hitting retort to the British rulers he declared: "It is true that we have no 'hard fibre'. The rice-eating, puny millions of India seem to have resolved upon achieving their own destiny without any further tutelage and without arms. In the Lokamanya's language it is their 'birth-right' and they will have it, in spite of the 'hard fibre' and in spite of the vigour and determination with which it may be administered" (Prabhu 1962:84-85).

(2) Economic Reasons

Gandhi's disaffection against the colonial rulers was reinforced by the stark realization that the economic exploitation by the rulers reduced this once prosperous country to one of the poorest on the earth. He describes this exploitation as a crime against humanity unequalled in history. He says: "She has become so poor that she has little power of resisting famines. Before the British advent India spun and wove in her millions of cottages, just the supplement she needed for adding to her meagre
agricultural resources. This cottage industry, so vital for India's existence, has been ruined by incredibly heartless and inhuman processes as described by English witnesses. Little do town dwellers know how the semi-starved masses of India are slowly sinking to lifelessness. Little do they know that their miserable comfort represents the brokerage they get for their work they do for the foreign exploiter, that the profits and brokerage are sucked from the masses. Little do they realise that the Government established by law in British India is carried on for this exploitation of the masses. No sophistry, no jugglery in figures, can explain away the evidence that the skeletons in many villages present to the naked eye. I have no doubt whatsoever that both English and town dwellers of India will have to answer, if there is a God above, for this crime against humanity, which is perhaps unequalled in history" (Prabhu 1962:66-67).

(3) Legal Reasons

The political and economic exploitation of the Indians was further sustained through the instrumentality of the law. Gandhi's condemnation of the legal system is categorical. "The law itself in this country has been used to serve the foreign exploiter. My unbiased examination of the Punjab
Martial Law cases had led me to believe that at least ninety-five per cent of convictions were wholly bad. My experience of political cases in India leads me to the conclusion that in nine out of every ten, the condemned men were totally innocent. Their crime consisted in the love of their country. In ninety-nine cases out of hundred, justice has been denied to Indians as against Europeans in the Courts of India. This is not an exaggerated picture. It is the experience of almost every Indian who has had anything to do with such cases. In my opinion, the administration of law is thus prostituted, consciously or unconsciously, for the benefit of the exploiter" (Prabhu 1962:67).

(4) Moral Religious Reasons

To Lord Reading who was puzzled and perplexed as to what purpose it would serve by flagrant breaches of the law for the purpose of challenging the Government and in order to compel arrest, Gandhi replied: "Bred in the atmosphere of law courts, Lord Reading finds it difficult to appreciate the peaceful resistance to authority. His Excellency will learn by the time the conflict is over that there is a higher court, than courts of justice and that is the court of conscience. It supersedes all other courts (Prabhu 1962:83)."
Gandhi says that an empire intoxicated with arrogance of power and run essentially through exploitation of the weak cannot endure long if there is a just God ruling the universe. "No empire intoxicated with the red wine of power and plunder of weaker races has yet lived long in this world, and this British Empire, which is based upon organised exploitation of physically weaker races of the earth and upon a continuous exhibition of brute force, cannot live if there is just God ruling the universe" (Prabhu 1962:85).

Gandhi says that spreading disaffection against a Government is a moral duty, dharma. He says, 'We must spread disaffection openly and systematically till it pleases the Government to arrest us. And this we do, not by way of angry retaliation, but because it is our Dharma" (Prabhu 1962:81).

"I hold it to be a virtue to be disaffected towards a Government which in its totality has done more harm to India than any previous system. India is less manly under the British rule than she ever was before. Holding such a belief, I consider it to be a sin to have affection towards the system. And it has been a precious privilege for me to
be able to write what I have in various articles tendered in evidence against me" (Prabhu 1962:68).

(B) **Grounds for disobedience in the case of other trials**

The grounds for disobedience in case of other trials are not systematically presented, but on examination, we find that they illustrate one or more of the sorts of reasons which justified disobedience. We now consider the grounds for disobedience in each of the other trials.

(1) **Violation of the Immigration Act**

We consider the grounds for disobedience in this trial under (i) legal, (ii) political, (iii) moral and (iv) conscientious reasons.

(i) One of the grounds, here for disobedience was that the legal provisions of the Asiatic Law Amendment Ordinance were extremely discriminatory and unjust. "It seemed to me that if the Ordinance was passed and the Indians meekly accepted it, that would spell absolute ruin for the Indians in South Africa" (Gandhi 1928:99).

(ii) Gandhi realised that it was impossible to arrive at any honourable settlement with the Government of South
Africa through peaceful and constitutional means. The Government was totally committed to a policy of discrimination against the coloured people. In the pursuit of this policy based on self-interest of the whites and exploitation of the others, the Government, said Gandhi, has "lost all sense of decency" (Gandhi 1928:105).

(iii) Not only the Bill was discriminatory, but it was immoral, inasmuch as submission to it, on the part of the Indian community implied giving up once for all the right to self-respect and dignity. Obedience to the law betrayed cowardice, unworthiness, it was unmanly (Gandhi 1928:105).

(iv) Besides the grounds for disobedience mentioned above, for Gandhi, resistance to the law was a matter of conscience. This is clear from his statement: "I am fully conscious of my responsibility in the matter... there is only one course open to some one like me, to die but not to submit to the law" (Gandhi 1928:107).

(2) Disobeying the Externment Order

As the context for this trial is the same as for the earlier trial, no separate account of the grounds for disobedience is necessary.
(3) **Disobeying the Law Levying a Special Tax**

As the issue for this trial arose out of the Satyagraha against the Immigration Act, the general reasons for disobedience are the same as in the case of the said Act. However, in this case there was the additional reason that the Government of South Africa broke its promise made to Gokhale regarding the repeal of the tax, as we have seen earlier. Besides, in the trial itself Gandhi argued that in disobeying the law he was only doing his duty to his countrymen.

(4) **The Contempt of Court**

As we saw earlier, the occasion for this trial arose in the context of the Satyagraha for the Rowlatt Act. But more specifically the trial took place on the charge of the offending articles Gandhi wrote in Young India. Gandhi justified disobedience on the ground that in publishing these articles he was only doing his duty as a journalist.

To sum up: The considerations of the grounds for disobedience in the other trials bring out the force of the various kinds of reasons mentioned in the defence of the trial for sedition -- the statements at the sedition trial being comprehensive and complete.
In the foregoing account we have classified the reasons as political, legal, economic, moral and religious (sedition trial). This is for the purpose of seeing the elements of a totality in which these elements are all interrelated. For example, the economic reasons are an important factor in the moral reasons, and the moral reasons become moral also because of the economic element. India lead to the economic ruin to such an extent that they were "slowly sinking to lifelessness". Such a condition has contributed to the moral degeneration of the people of India. "India is less manly under the British rule than she ever was before". And because of our economic and moral ruin, besides other factors, spreading disaffection against a Government becomes a moral duty. What holds true in case of economic and moral aspect also is true of the other aspects. This is once again illustrative of Gandhi's understanding of morality or dharma and its relationship with artha, kāma and even moksa.

(C) There is a distinction made between disobedience when a particular law is found to be bad and when the whole system is found to be bad. For example, Gandhi says that even when he found certain bad laws and practices, he still
cooperated with the Government of South Africa because he thought that the bad practices are "excrescence upon a system that was intrinsically and mainly good" (Prabhu 1962:64). But his attitude changed when he found that the British Government was the most satanic and the most evil Government (Prabhu 1962:65).

It is interesting to note the striking difference in the discussion of this problem between Gandhi on the one hand and the Western political thinkers on the other. (1) The question very often asked is: why should we obey the State? What are the grounds of political obligation? And the question is answered in terms of contract, real or imaginary; and the terms of the contract are used to answer the question about whether disobedience of law is justified. Thus, the more important question for them is: why do we obey the State? Gandhi does not discuss this question. For him there is no question of there being an obligation to obey the State. This does not mean that there is only obligation to disobey the State. But disobedience is justified whenever the State functions so as to deprive the people of their manhood, so that men ceases to be man. Obedience to the State, obedience to the law is an indication of man's inadequacy in that case.
In short, in the case of Gandhi there is no such theoretical structure from which the right to disobedience is decided, or on the basis of which the right to disobedience is justified. For Gandhi, it is justified (a) if the system is bad, (b) if the person has a conscientious objection. (It is important to distinguish between true conscientious objection and false conscientious objections.)

(D) Finally, we consider Gandhi's views on Satyagraha in a democracy.

(i) First, Gandhi clearly states that the right to civil disobedience is accruable to one who obeys the laws of the State. "Before one can be fit for the practice of civil disobedience one must have rendered a willing and respectful obedience to the State laws" (Gandhi 1927:357). Hence, he rules out disobedience to law on each and every occasion. Once the right choice of representatives is made in a democratic Government it would be desirable to surrender one's judgment in most matters to them. "I should be deeply distressed, if on every conceivable occasion everyone of us were to be a law unto oneself... I would surrender my judgment in most matters to national representatives, taking particular care in making my choice of
such representatives. I know that in no other manner would a democratic Government be possible for one single day" (YN, 17-11-1921).

In Gandhi's conception of democracy the weakest would have the same opportunity as the strongest. And he said, "that can never happen except through non-violence. No country in the world to-day shows any but patronizing regard for the weak" (H, 18-5-1940). Only such a non-violent democracy would create conditions for a meaningful role for Satyagraha in maintaining the right (H, 18-5-1940).

Finally, Gandhi categorically held, "the democracies must respect the liberty of the individual non-violent conscience, however inconvenient it may be". And then he said "from that respect there will spring hope for the world". This meant that every country will have to put, "their conscience and truth before their country's so called interest. For, regards for one's conscience, if it is really such has never yet injured any legitimate cause or interest" (H, 15-4-1939).

III. THE MANNER OF DISOBEDIENCE

There is an enormous literature on the technique of Satyagraha. However, we are going to consider the
technique of Satyagraha with reference to the movements and issues which led to the trials of Gandhi. We find that many, if not all, the essential parts of the technique are present in these early movements which evolved and developed in the contexts of other movements.

(i) The choice of the issue

It was important for Gandhi that the issue on which one was to conduct a movement was clearly an issue in favour of those participating in the movement. The force of the issue should be felt by those participating, as also by those who were not participating and were even on the other side. This is seen clearly in the reasons in terms of which disobedience is justified. The fight on the issue was always a moral necessity. For example, as we have seen in the consideration and discussion of the trials, the issues against which the disobedience was carried out were the Immigration Act, the £3 tax and the Rowlatt Act. Gandhi described movement against these Acts as Satyagraha. As such, he conceived the movement against these Acts as a moral necessity.

(ii) The issue may be one which demanded a movement of large number. For example, resistance to the Immigration Act, the
special tax or the Rowlatt Act, demanded mass movements; or sometimes the issues were such that Gandhi alone was involved as, for example, the contempt of Court issue. In this case the path was clear for Gandhi once he was convinced. In the case of mass movements, however, mobilization of the people was needed.

(iii) If the issue was one which needed popular movement, there were two processes to be set in motion; (a) education of the people, and (b) negotiating a solution.

(a) Education of the people

This was done in several ways.

1. Meeting: One of the steps was to conduct meeting of the leaders. For example, in the case of the issue of Immigration Act, a meeting of the representatives of the Indian community was held in the Transvaal, 1906. Again in the case of the Rowlatt Act, Gandhi organized a meeting of leaders in 1919, at Ahmedabad. The major steps to be taken in conducting the movements were arrived at in these meetings.

2. Warning the participants of the implications: As we have seen earlier, in the 1906 meeting Gandhi categorically
warned the audience of the serious implications of resisting the Immigration Act. But with caution he hastened to add that the time had come to strike and if they did not act then, they would be ruined once for all.

3. **Determination in terms of religious binding**; It was characteristic of Gandhi's technique that he committed the participants to a religious pledge to fight unto the last and accept the consequence willingly. For example, the participants in 1906 meeting were committed to pledge with God as witness; in the Satyagraha against the Rowlatt Act the Satyagrahis were required to take the Satyagraha pledge.

4. **Journalism**: Gandhi used the newspapers as a potent weapon in the civil disobedience movements. That is, to continuously educate and arouse the consciousness of the people and prepare them for the struggle. Thus in South Africa, "Indian Opinion" served this purpose; while in India, it was through "Young India" and "Harijan", that he reached vast masses of people for this purpose.

(b) **Negotiations**

It was part of the manner of Gandhi's technique to exhaust all possible peaceful and constitutional methods
to come to a settlement with the authorities. Thus, before the Satyagraha against the Immigration Act was launched, Gandhi spared no pains to negotiate with the authorities through deputations, negotiations, meetings with the authorities, etc. In the case of the £3 tax, he tried the good offices of Gokhale to persuade the authorities to repeal the unjust Act. Again, before he finally decided to launch civil disobedience movement against the Rowlatt Act, he incessantly tried to persuade the British authorities not to pass the Rowlatt Bill. This he did through representations, meeting the Viceroy, etc.

It may here be mentioned that Gandhi never thought that negotiations should come in the way of education of the people, or that they would come in the way of reducing the strength of the opposition to a particular law. Whether the negotiations succeeded or failed, the strategy was such that, eventually, there would be greater strength to the movement. In negotiations and peaceful settlement, Gandhi was never ready to compromise principles. This is clearly brought out in the following statement. "I wish to assure those friends who out of pure friendliness advised us to tender the required apology, that I refused to accept their advice, not out of obstinacy, but because
there was a great principle at stake. I had to conserve a journalist's independence and yet respect the law. My own reading of the law was that there was no contempt committed by me. But my defence rested more upon the fact that I could not offer an apology if I was not prepared to repeat the offence on a similar occasion. Because I hold that an apology tendered to a Court to be true has to be as sincere as a private apology"(Gandhi 1962:103).

(iv) The movement

The movement would depend on the nature of the issue and in the course of these movements various elements which were later employed on a much vaster scale were first brought into existence in the early movements. Thus, in the case of the Satyagraha against the Immigration Act picketting was resorted to at the permit offices to persuade the Indians in South Africa not to register their names as required by the Act. The movement against the £ 3 tax began with a famous march of the Satyagrahis from Charlestown to Tolstoy Farm. And in India the first civil disobedience movement against the Rowlatt Act began with the historic hartal on 6th April 1919. The hartal was to be observed by suspending all business and observing the day as one of fasting and prayer.
(v) The retract

When Gandhi found that the people were found wanting in observing the rules of Satyagraha and thus were just not prepared for it, he never hesitated to suspend the movement. For example, the violence on the part of the people against the authorities at Chauri Chaura led him to call off the movement. Not only he retreated but he confessed in a public meeting that he had committed a Himalayan blunder in calling upon the people to launch upon civil disobedience movements prematurely. His observations about this episode is worth quoting in full, inasmuch as his explanation in this regard bring out clearly what according to him are the necessary conditions for civil disobedience to take place.

"Let us now see what that Himalayan miscalculation was. Before one can be fit for the practice of civil disobedience one must have rendered a willing and respectful obedience to the State laws. For the most part we obey such laws out of fear of the penalty for their breach, and this holds good particularly in respect of such laws as do not involve a moral principle. For instance, an honest, respectable man will not suddenly take to stealing, whether there is a law against stealing or not, but this very man will not
feel any remorse for failure to observe the rule about carrying head-lights on bicycles after dark. Indeed it is doubtful whether he would even accept advise kindly about being more careful in this respect. But he would observe any obligatory rule of this kind, if only to escape the inconvenience of facing a prosecution for a breach of the rule. Such compliance is not, however, the willing and spontaneous obedience that is required of a Satyagrahi. A Satyagrahi obeys the laws of society intelligently and of his own free will, because he considers it to be his sacred duty do so. It is only when a person has thus obeyed the laws of society scrupulously that he is in a position to judge as to which particular rules are good and just and which unjust and iniquitous. Only then does the right accrue to him to the civil disobedience of certain law in well-defined circumstances" (Gandhi 1927:357).

(vi) During the actual trial, what strikes most, is his absolute willingness to accept punishment. Without exception, he always pleaded guilty and in most cases, asks for the highest punishment. Whatever the fate of Gandhi, this only heightened the tempo of the struggle and immensely increased its intensity.

The justification for acceptance of punishment for
Gandhi is civil disobedience itself. It is a duty to disobey the immoral laws of the country; but at the same time such a disobedience also implied duty to accept the sanctions provided for the breach of these laws. Gandhi believed that the consequence of the non-acceptance of penalty would lead to chaos and anarchy. "Our civil disobedience... must not be carried beyond the point of breaking the immoral laws of the country. Breach of law to be civil assumes... a willing acceptance of the sanctions provided for its breach. And immediately a person quarrels both with the rule and the sanction for its breach, he ceases to be civil and tends himself to the precipitation of chaos and anarchy"(YI, 15-12-1921).

(vii) Here are the beginnings of the various ways in which Satyagraha was conducted. The movement claimed to be Satyagraha and not duragraha, because the claim was that it stood by truth. Truth is the issue and non-violence is the means of fighting for truth. Its general characteristics were often formulated by Gandhi. It is worthwhile to discuss some of the general formulations in this context.

(a) The sum and substance of the manner of disobedience are lucidly stated by Gandhi himself in the following
words: "Since Satyagraha is one of the most powerful methods of direct action, a Satyagrahi exhausts all other means before he resorts to Satyagraha. He will therefore constantly and continually approach the constituted authority, he will appeal to public opinion, educate public opinion, state his case calmly and coolly before everybody, who wants to listen to him and only after he has exhausted all these avenues will he resort to Satyagraha. But when he has found the impelling call of the inner voice within him and launches out upon Satyagraha he has burnt his boats and there is no receding"(YI, 20-10-1927).

So far, an attempt is made to show the manner of disobedience based on the movements and the trials. But then the disobedience for Gandhi was both "civil" and "non-violent". What is the operational or functional significance of these terms?

(b) Gandhi on one occasion, said that one must give greater value to the adjective "civil" than to disobedience. "Disobedience to be civil must be sincere, respectful, restrained, never defiant, must be based upon some well understood principles, must not be capricious and above all must not create ill-will and hatred behind it"(YI, 24-2-1920). The study of the movements Gandhi led and the
way he faced the trials show how resolutely he tried his best to fulfil the requirements spelled out in the above description of civility.

(c) The point here is of seeing that though for Gandhi non-violence determined the form of civil disobedience, he did not flinch from taking the risks of the movements turning violent as an unintended consequence, once he decided to disobey. In the history of the movements he led, it almost always happened that there was violence. But then, having done the best, taking all the precautions to avoid violence, if there was violence, he always took full responsibility for what happened as a responsible leader. In the famous sedition trial he said, "I wanted to avoid violence. I want to avoid violence. Non-violence is the first article of my faith. And it is also the last article of my creed. But I had to make my choice, I had either to submit to a system which I considered had done irreparable harm to my country, or incur the risk of the mad fury of my people bursting forth, when they understood the truth from my lips. I know that my people have sometimes gone mad. I am deeply sorry for it,..."(Prabhu 1962:63).

Earlier, he had said, "It is the most painful duty with me, but I have to discharge that duty knowing the
responsibility that rests upon my shoulders and I wish to endore all the blame that the learned Advocate-General has thrown on my shoulders in connection with the Bombay occurrences, Madras occurrences and the Chauri Chaura occurrences. Thinking over these deeply and sleeping over them night after night, it is impossible for me to dissociate myself from the diabolical crimes of Chauri Chaura or the mad outrages of Bombay. He is quite right that when he says that as a man of responsibility, a man having received a fair share of education, having had a fair share of experience of this world, I should have known the consequences of every one of my acts. I knew that I was playing with fire. I ran the risk, and if I was set free, I would still do the same" (Prabhu 1962:62-3).

Gandhi says that there may be situations necessitating civil disobedience involving the risk of bloodshed; it may become a peremptory duty. "... a call may come which one dare not neglect, cost it what it may. I can clearly see the time coming to me when I must refuse obedience to every single State-made law, even though there may be certainty of bloodshed. When neglect of the call means denial of God, civil disobedience becomes a peremptory duty"(YI, 4-8-1921).
These observations of Gandhi clearly show that, in spite of his total commitment to non-violence, he would not flinch from taking the steps, which may involve the risk of bloodshed. The strongest statement he made in this connection was: "I would certainly make Government impossible, if I found it had taken leave of its senses" (YI, 21-1-1920).

About the technique of Satyagraha, or non-violence, many questions can be raised, and perhaps, Gandhi has written more on this than on anything else; and this has also been discussed more than anything else. But, into the philosophy of non-violence we shall not go. This is not because it is not important for our purposes. In fact his philosophy of law presupposes such a non-violent society. However, we shall try to bring out this to a certain extent by considering one aspect of the manner of disobedience, i.e., the acceptance of punishment.

IV ACCEPTANCE OF PUNISHMENT

In this Section, we consider Gandhi's reasons for the acceptance of punishment. The acceptance and non-acceptance of punishment has its consequence for the Government, for
the people and the participants in civil disobedience movements. Hence, we consider his views about the consequences of acceptance or non-acceptance of punishment in regard to each of them.

1. **Government**: Gandhi holds that the point of acceptance of punishment in Satyagraha is not to embarrass the Government. "The Satyagraha movement is not started with the intention of embarrassing the Government while ordinary political agitation is often started with that object. If a Satyagrahi finds his activities resulting in embarrassing the Government, he will not hesitate to face it" (YI, 4-2-1920).

Surely, for Gandhi, non-acceptance of punishment means confrontation with authorities and hence possibility of greater violence, generation of greater ill-will and hatred; this would endanger both civility and non-violence.

He believes that it is possible to more effectively deal with the opposition of the Government by accepting punishment, rather than by avoiding it. "We expect to bear down the opposition of the Government by courting and not by avoiding imprisonment" (YI, 4-8-1921).
One consequence of the non-acceptance of punishment by the civil resisters would be that it would provoke the Government into initiating repressive and retaliatory measures against the resisters and the people. This would create conditions of violence. These measures of the Government might either cow down the people, thus leading to fear in their minds or some might as well retaliate. All this would lead to a chain of reactions leading to violence, both on the part of the Government as well as the people. In short, non-acceptance might lead to violence and violence multiplies violence. Gandhi, through a vivid, concrete example illustrates the point as to how the use of brute force might lead to a chain reaction of violence. The example is about the means to be used in dealing with a robber. He argues against the use of force in dealing with the robber; because the use of force is bound to provoke the robber to hit back.

He says, "That well-armed man has stolen your property; you have harboured the thought of his act; you are filled with anger; you argue that you want to punish that rogue, not for your own sake, but for the good of your neighbours; you have collected a number of armed men, you want to take his house by assault; he is duly informed of it, he runs away;"
he too is incensed. He collects his brother robbers, and sends you a defiant message that he will commit robbery in broad daylight. You are strong, you do not fear him, you are prepared to receive him. Meanwhile, the robber pestered your neighbours. They complain before you. You reply that you are doing all for their sake, you do not mind your own goods have been stolen. Your neighbours reply that the robber never pestered them before, and that he commenced his depredations only after you declared hostilities against him... You, therefore, tell the poor man: "Never mind. Come, my wealth is yours, I will give you arms, I will teach you how to use them; you should belabour the rogue; don't you leave him alone. And so the battle grows; the robbers increase in numbers; your neighbours have deliberately put themselves to inconvenience. Thus, the result of wanting to take revenge upon the robber is that you have disturbed your own peace; you are in perpetual fear of being robbed and assaulted; your courage has given place to cowardice" (Gandhi 1938:73-74).

In this analogy, one has only to substitute the British rulers for the robbers and a revolutionary in place of one who wants to use force against the robbers. The point of this example is to show the necessity of using
non-violent means in dealing with the rulers and the Government.

2. **People:** Gandhi believes that the acceptance of punishment is a part of the condition for creating public opinion in favour of moral credibility and acceptibility for the cause of the Satyagrahi: "The way of peace and suffering is the quickest method of cultivating public opinion, and therefore when victory is attained it is for what the world regards as truth" (Prabhu 1962:83).

Gandhi also believes that accepting punishment and the consequence of it will strengthen the movement and lead to the success of the cause. "Our triumph consists... in being imprisoned for no wrong whatsoever. The greater our innocence, the greater our strength and swifter our victory" (YI, 4-8-21). Non-acceptance of punishment on the part of the people, would lead to resentment and ill-will between parties concerned.

3. **Participants:** Gandhi held that it was the duty of the participants in the movements to court arrest. He believed that this would lead eventually to attainment of the goal. "...we must treat arrest as the normal condition of the life of a non-cooperator. For we must seek
arrest and imprisonment, as a soldier who goes to battle seeks death. Civil disobedience then emphatically means our desire to surrender to a single unarmed policeman. Our triumph consists in thousands being led to the prisons like lambs to the slaughter house. If the lambs of the world had been willingly led, they would have long ago saved themselves from the butcher's knife"(YI, 4-8-1921).

Acceptance of punishment meant acceptance of suffering and Gandhi always argued that suffering leads to purification of the soul. Besides, it was Gandhi's contention that suffering led to lack of ill-will against the enemy.

He believed that suffering which resulted from the acceptance of punishment by the participant, might, perhaps, bring about a change of heart on the part of the authorities. This is brought out in the course which he finally adopted as a part of Satyagraha, viz., "to suffer the penalties prescribed under the Act, and thus to draw out and exhibit the force of the soul within us for a period long enough to appeal to the sympathetic chord in the governors or the law-makers"(YI, 3-11-1927).

On the eve of the arrest as a result of the Satyagraha against the Rowlatt Act, Gandhi himself has described the
consequence of his possible arrest in the following words: "I do not know if my removal from their midst will not be a benefit to the people. In the first instance, the superstition about the supernational powers by me will be demolished. Secondly, the belief that people have accepted the non-cooperation programme only under my influence and that they have no independent faith in it will be disproved. Thirdly, our capacity for Swaraj will be proved by our ability to conduct our activities in spite of the withdrawal even of the originators of the current programme" (Prabhu 1962:19).

The point of the acceptance of punishment, as can be seen from the above considerations, is that it does not rouse tempers and create greater hostility and violence. Rather, the atmosphere is sought to be kept sufficiently cool so as to concentrate everyone's attention on the issue. It provides an opportunity for rethinking and reassessment. At the same time, if and when the failure or the success comes, the failure does not dishearten and frustrate the participants, and the success does not give rise to revenge.

Thus, this element in the manner of disobedience, like
the other elements in Satyagraha, serves a dual purpose; one, creating moral awareness and strength; and second, maintaining good-will between different groups of people.

It may perhaps be mentioned here that the developments of these germinal ideas were to later evolve into Gandhi's vision and doctrine of Sarvodaya.

This understanding of Gandhi on the issue of the grounds for the acceptance of punishment, is one kind of understanding; there are other views held on this issue by other thinkers -- Socrates and Chomsky. Consideration of these other views and comparing them with that of Gandhi will help us more clearly understand these different views.

OTHER THINKERS

Socrates

Socrates was brought to trial before the Athenian Court. The charge against him was that "Socrates corrupts the young men, and does not believe in the city's gods and believes in new divinities." The Court found him guilty and he was sentenced to death.
For Socrates, it was easy to escape from the prison at Athens but he did not. In "Crito" Plato shows Socrates' old friend Crito earnestly pleading with him to escape and Socrates refusing to do so. Socrates' reasons for accepting punishments are brought out in the following passage from "Crito":

"Then the laws will say: 'Consider, Socrates, if we are speaking truly that in your present attempt you are going to do us a wrong. For, having brought you into the world, and nurtured and educated you, and given you and every other citizen a share in every good which we had to give... (Jowett 1953:380-81), and also of liberty of leaving the country if one does not like the laws (Jowett 1953:381).

"And he who disobeys us is, as we maintain, thrice wrong; first, because in disobeying us he is disobeying his parents; secondly, because we are the authors of his education; thirdly, because having made an agreement with us that he will duly obey our commands, he neither obeys them nor convinces us that our commands are unjust; although we do not roughly require unquestioning obedience but give him the alternative of obeying or convincing us; -- that what we offer and he does neither" (Jowett 1953:381)."
"For he who is a corrupter of the laws is more than likely to be a corrupter of the young and foolish portion of mankind. Will you then flee from well-ordered cities and virtuous men? And is existence worth living on these terms?" (Jowett 1953:383).

"Think not of life and children first, and of justice afterwards, but of justice first, that you may so indicate yourself before the princes of the world below" (Jowett 1953:383-84).

What are the consequences of the non-acceptance of punishment, for Socrates? (i) The non-acceptance of punishment would weaken the laws of the Government and thus the State. (ii) Further, Socrates would believe that one fails in one's duty if one does not accept the punishment, one would set a bad example to other citizens, and thus encourage disobedience to the State.

Chomsky

Unlike Gandhi and Socrates, Chomsky denies that there is any obligation to accept punishment for disobeying the law. Hence, in his case the question of the consequences of the acceptance of punishment with reference to people, Government and participants, does not arise.
Let us elaborate. Chomsky has this to say on the issue of the acceptance of punishment. "One might... reject their (Berrigans') reasoning on the ground that American intervention in South-east Asia is legitimate (though perhaps no longer worth its cost and thus a mistake) - the dominant opinion in the United States today, I would guess; or that the intervention, though illegitimate should not be opposed by civil disobedience, which is improper in a democracy; or that civil disobedience, though legitimate under the present circumstances, is still improper because it is ineffective (or even 'counterproductive'), or because of its likely social consequence; or that civil disobedience, though legitimate and proper, should not include destruction of property and should be followed by willing submission to state authorities" (Chomsky 1973:75). "If civil disobedience can effectively curb the lawless and largely secret actions of the executive, then it seems to me a proper course of action—(even in a democracy)" (Chomsky 1973:78). "It is often maintained that this (willing submission to arrest) is a necessary component of legitimate civil disobedience. I simply do not see the logic of this claim. There is no moral compulsion for one who seeks to prevent criminal actions of the state to submit voluntarily to punishment for his actions. Refusal to
submit to punishment does not, in itself, imply a refusal to recognise a general legitimacy of the government (often proposed as a criterion to distinguish civil disobedience from rebellion)" (Chomsky 1973:84).

Chomsky justifies civil disobedience as an effective check on the lawless, criminal and secret actions of the Government. Thus, civil disobedience for him can be an effective instrument of social control over the misuse and excesses of the political authority. The American role in the Vietnam War represented the most flagrant and criminal misuse of power on the part of the Executive. Civil disobedience in such a situation seemed to be one important instrument of controlling the Executive power. But then is one morally compelled to accept punishment when one disobeyed the law? Refusal to submit to punishment rests on the contention that refusal to submit to punishment does not imply that one is against the system i.e. against the State. Chomsky's position implies the distinction between the State as a system and any particular Government, say the Government headed by Nixon. On this assumption, opposing the policy of the Nixon administration does not imply opposing the legitimacy of the power of the President of the United States.
Gandhi - Socrates - Chomsky: comparison

Let us first consider by way of comparison what according to Gandhi and Socrates are the consequences of acceptance or non-acceptance of punishment. One has to say that the difference between the two arise primarily because of the nature of disobedience — whether it is collective disobedience or individual disobedience. Gandhi is vitally concerned with collective disobedience, while the issue for Socrates is individual disobedience.

(i) The non-acceptance of punishment in case of individual disobedience is likely to weaken the Government, while in case of the collective disobedience, besides weakening the Government, non-acceptance of punishment is likely to make the Government more revengeful and repressive. (ii) Secondly, non-compliance with the sanctions for violation of the law would mean failure in one’s duty as a citizen towards the State in case of individual disobedience. Besides, there would be failure in one’s duty towards one’s conscience. In case of collective disobedience, the consequences of non-acceptance of punishment might lead to a situation where the basic objectives of the movement might be lost. (iii) And finally, in case of individual disobedience it would set
a wrong example if one disobeys the laws and refuses also to accept the legal consequences. In case of collective disobedience, non-acceptance is likely to create more problems for the people. As mentioned earlier, this would result in the Government's possible repressive actions.

In the case of Chomsky the above considerations do not apply inasmuch as he holds that there is no moral obligation to accept punishment for breaking the law.

He makes a distinction between a State and a government and a particular law and a system. He advocates breaking a particular law, not because of conscience but because he holds it necessary to expose the policies of the Government in a particular area. Insofar as he does not consider the question of moral awareness or moral strength as a necessary factor in civil disobedience, he seems to accept the view that ends justify the means.

This is very different from what Gandhi held. For Gandhi means are very important; in fact means and ends, for him, are convertible terms or in a sense means are part of the end also.
The difference between Gandhi, Socrates and Chomsky may be stated in the following manner. Gandhi was fighting against the system but he accepts punishment as part of the manner of the movement—Satyagraha. He wants to break the system, but he does not want to break the humanity of the human relations. He wants to make it possible for people to live together. Socrates accepts punishment because he is not against the system as a whole. Chomsky is not fighting against the system but is fighting against a particular policy of the Government. e.g., Nixon's policy in the Viet Nam War; but he holds that there is no moral obligation to accept punishment for breaking the law.

V CONCLUSION

I

Gandhi's views summed up

(1) To Gandhi, the thought does not occur that there might be reasons for obeying the law, even when, the system is bad. Once the system is bad, he thinks that there can be no grounds for continuing obedience.

(2) But what about the foundations of society being weakened on account of such disobedience? Gandhi is not over-worried about this, because he thinks it is one's
moral duty to disobey, when the system is bad. "I hold it to be a virtue to be disaffected towards a Government which in its totality has done more harm..." (Prabhu 1962:68).
"...In my humble opinion, non-cooperation with evil is as much a duty as is cooperation with god" (Prabhu 1962:68-9).
"Civil disobedience becomes a sacred duty when the State has become lawless, or which is the something, corrupt" (YI, 5-1-22).

(3) But then, does this not create the possibility that a habit of disobeying the law will spread leading to anarchy and chaos? Gandhi wants to prevent this not by giving up disobedience, but by the manner of disobedience, because the end for him is the society of moral human beings. "Swaraj really means self-control. Only he is capable of self-control who observes the rules of morality,... A State enjoys Swaraj if it can boast of a large number of such good citizens" (Gandhi 1954:69). On one occasion he described this end in terms of Ramaraj i.e. a society where "the sovereignty of the people (is) based on pure moral authority" (H, 2-1-1937). He believes that if the means which are appropriate are used for the ends, then one need not be afraid of the consequences.
(4) It is also connected with Gandhi's ideas about rights and duties. According to him the best way of fighting for rights is to do one's duty. It is clear from the following statement: "The true source of rights is duty. If we all discharge our duties, rights will not be far to seek. If leaving duties unperformed we run after rights, they will escape us like a will-o'-the-wisp. The more we pursue them, the farther will they fly. The same teaching has been embodied by Krishna in the immortal word: 'Action alone is thine. Leave thou the fruit severely alone'. Action is duty: fruit is the right" (YI, 8-1-1925).

Once again, his position here is in line with his position regarding the profession of law: viz., morality is foundation of society, and not law.

(5) But then, in a modern society can morality be given the position that Gandhi has in view, or is it necessary to rely more and more on law? If the latter is the case, then Gandhi's position will be untenable. But Gandhi's reply will be that the modern society is untenable. "This civilization is such that one has only to be patient and it will be self-destroyed" (Gandhi 1938:37).
"This civilization is irreligion, and it has taken such a hold on the people in Europe that those who are in it appear to be half mad" (Gandhi 1938:37).

But these are large issues, and also complex issues. We shall not go into them; our task was to formulate presuppositions of Gandhi's thought arising from his own writings and to initiate this discussion and this we have done.

II

Our discussion on the grounds for disobedience brought out what is implicit in Gandhi's thought, namely, the distinction between a bad law in an overall good system, and a system which is bad as a whole. In the case of a bad law in a good system, Gandhi would not resort to Satyagraha but to other constitutional means. Only if the bad law is against the conscience, he would think that Satyagraha is justified. Here, he was agreed with the kind of thinking that is behind Socrates' refusal to accept the suggestion that he should not talk to the youth of Athens. Chomsky does not accept this distinction because he makes it into a distinction between the State and the Government. He, therefore, does not accept any
serious limitation on civil disobedience, if the law is not just.

This difference is reflected also in the attitude of Gandhi and Chomsky to the question of arrest after disobedience. Gandhi considers it necessary that having broken the law, one should accept the punishment. Socrates also agrees. Chomsky disagrees. What is at the back of the difference? Chomsky is concerned only with the rightness of the protest. However Gandhi is concerned with the rightness of the protest in a wider sense. He wants that the scope for good-will should remain as wide as possible.

Here, once again, one might say, is reflected Gandhi's understanding of the relationship between society and State. In weakening the State he does not want also to weaken the society; whereas Chomsky is not worried about it.
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