

## **The Mahatama, The Laws and Citizenship Values**

*[Text of the talk delivered by R.C. Lahoti, Former Chief Justice of India  
on 10<sup>th</sup> August, 2019 at 3.00 pm, as a part of  
'Bhavan's Lecture Series on Mahatama Gandhi - a tribute']*

Bharatiya Vidya Bhavan deserves to be complimented for organizing this lecture series on Mahatama Gandhi by way of Bhavan's tribute to Mohandas Karamchand Gandhi on the occasion of his 150<sup>th</sup> Birth Anniversary celebration. This lecture series aims at highlighting different aspects of the Mahatama Gandhi. Mahatama Gandhi was not just a person; he was a philosophy, he was not just an individual, he was an institution. The more one reads and learns about Gandhi, the more one feels convinced that the Gandhi was **complete** order which the nation, and not only the nation but the whole world should follow and live in.

I was 7 years old when Gandhi left us. Even as a child I could feel the pulse of Gandhian philosophy. Such a charisma he was.

Gandhi Ji had once said that for an all-India free interaction and unity we need a language which the largest number of people already know and understand and which the others can easily pickup. This language is indisputably Hindi. ....it is called Urdu when it is written in the Urdu characters. The Congress in Kanpur session in 1925 called this language spoken in all India as 'Hindustani'. I wonder, would it not be better if thoughts on Gandhi are discussed and exchanged in Hindi or Hindustani?

Several great men have been born on this earth. There have been thinkers, philosophers, authors. Their speeches, words of wisdom and their writings have the potential to enlighten us today from the long past. So has been Gandhi. His sayings have become quotes. Yet, there is a difference between him and other great men. Gandhi is one who preached what he practiced and practiced what he preached. The outcome is that we need not experiment with his philosophy. We have to just follow him; because before handing down any thought or wisdom to us he had himself tested and tried it.

No wonder that in 1944 on Gandhi's 75<sup>th</sup> Birthday, Einstein wrote a few words which are now universally quoted. He said about Gandhi – 'Generations to come, it may be, will scarce believe that such a one as this ever in flesh and

blood walked upon this earth'. In a memorial service in Washington on 11<sup>th</sup> February, 1948 after Gandhi Ji's assassination, Einstein had said – '*veneration in which Gandhi has been held throughout the world rests on the recognition....that in our age of moral decay he was the only statesman who represented that higher conception of human relations in the political sphere, to which we must aspire with all our powers*'.

The observation of Einstein, the great man of science, is as relevant today as it was on the day on which it was made.

72 years of his eternal departure, India as a nation and we as the people of India belonging to that land where Gandhi was born have regretfully failed him. We remember Gandhi but not his philosophy which needs to be understood and to be told and retold.

Dr. J.D. Sethi, the then member of Planning Commission delivering Sardar Patel Memorial Lecture, 1979 on 'Gandhian Values' had said – '*a prophet in his own country always runs the risk of his ideas being distorted at the hands of his immediate followers. That is what has happened to Gandhi*'. For too long we have defied Gandhi. To be a richer, strong and an ideal nation, we need to have a relook at Gandhi. Gandhi needs to be demystified. He liberated us. We need to analyse his ideas dispassionately. Dr. Sethi went on to say – 'Gandhi needs no praise; he needs to be demythologized'. This task is not an easy one. It has been rendered more difficult because he has now been dragged into the electoral arena. The sectarianism of the politicians, the frisky impertinence of the journalists and other dogmatic intellectuals are adding new misrepresentations to the old ones.

Gandhi Ji was a lawyer. He was a Barrister. Yet, he records in his autobiography that he fumbled and became speechless when he stood up to argue his first case in the court. This happened to the person who was later destined to be a Mahatama, the Father of the Nation, the Liberator of India. One who could not muster courage to address a judge in the court, turned into a leader of a movement in which thousands of lawyers participated answering the call of Gandhi Ji. Gandhi Ji did not create the law in the sense that there is hardly any direct contribution of Gandhi Ji to the legal literature and yet his role in shaping the law of the land cannot be belittled. I propose to discuss very briefly how Gandhi Ji and his philosophy has contributed significantly to the shaping of Indian law and the development of legal thought of the Nation.

The greatest of the legal documents is the Constitution of India. I would try to demonstrate the contribution which Gandhi Ji has made in shaping the constitution which is the law of the laws so far as India is concerned. It is a well-known fact that the constitution of India was drafted by the constituent assembly headed by Dr. Rajendra Prasad, the First President of India. The constituent Assembly which drafted the Constitution was formed in 1946 and held sittings from 09.12.1946 to about 3 years. At that time Indian legal atmosphere was surcharged with Gandhian Ideology and most of the members of the CA subscribed to the view of Gandhiji and believed in them. The record of constituent assembly debates goes to show that they were substantially inspired by Gandhian dictates without naming Gandhi. Illustratively, the fundamental rights, the creation of various democratic bodies with the principle of self-governance at heart from Parliament to Panchayats, from legislatures to local self-government, all are founded on Gandhian principles. The citizens are given fundamental rights enforceable against the government. There are directive principles of state policy which are fundamental in the governance of the country and the state is bound to apply these principles in making the laws. The Constitution begins with a Preamble placed as a crown on its head.

Two limbs of the constitution are dearest to me and they are Preamble and Fundamental Duties. I would take assistance from these two parts to demonstrate how Gandhian wisdom has inspired the fundamentals of Indian laws.

The Preamble seeks to establish through the constitution a sovereign democratic republic which is obliged to secure to all its citizens JUSTICE, social, economic, political, LIBERTY of thought, expression, belief, faith and worship. EQUALITY of status and of opportunity and to promote among the citizens, FRATERNITY assuring the dignity of the individual and the unity and integrity of the nation. Our constitution is a unique document in which the dignity of the individual is as significant as the unity and integrity of the nation. In Kesavananda Bharti's Case (popularly known as Fundamental Rights' Case), the Supreme Court has held that the objectives specified in the Preamble contain the basic structure of our Constitution which cannot be amended in exercise of the power to amend Constitution (Article 368).

These 4 pillars of Preamble draw their strength from Gandhian Principles. They need to be read and assigned meaning with the Gandhian vision. Gandhi's

dream was of establishing an ideal non-violent Sarvodaya socio– political and economic order where people would have right to participate at every level of governance. He wished rebuilding the society along the democratic ideals of liberty, equality and fraternity. He believed that on a denial of individual freedom, a society cannot be built or developed. For him denial of liberty was virtual death of a man. A society is of no use if it does not permit an individual to fully develop himself. In 20's he wrote several articles in Young India propagating that we are all humans claiming our descents from the same God and, therefore, all living persons in whatever form they appear to be are essentially one. In 1946, by an article written in Harijan, he propagated a potent principle. He said life is not a triangle with the apex sustained by the bottom; it is an oceanic circle of which all humans are integral units. The centre and the circumference do not wield power to crush each other but rather provide strength to each other. The other principle propounded by Gandhi Ji clearly indicates that he was not in favour of centralization of power in the state. It was his greatest fear that the powerful state may result in exploitation of the individuals with greatest harm to mankind by destroying individuality which lies at the root of all progress.

Secularism has been held by the Supreme Court of India to be one of the basic structures of the constitution. The Parliament cannot amend the constitution so as to take away the secular character of the state. The greatest violence to secularism is done (unfortunately) in the name of the God and religion. Gandhiji could foresee this and he gave a unique definition of God and religion. He said, truth is God and God is truth. Without truth it is impossible to observe any principles or rules in life. There should be truth in thought, truth in speech and truth in action. In his autobiography he has said – *“I worship God as truth only. I have not yet found Him though I am seeking after him”*. So long as I have not realized the Absolute Truth, till then I hold by the relative truth as I have conceived it. He went on to say that the seeker after truth should be humbler than the dust’.

Gandhi was a man of culture. He was a religious man as he believed in his own religion and practiced in his daily life what he has learnt from Ramayan and Gita. He said – *“it is my firm opinion that no culture has treasures so rich as ours has. We have not known it, we have been made even to deprecate its study and depreciate its value. We have almost ceased to live it. An academic grasp without practice behind it is like an embalmed corpse, perhaps lovely to look at*

*but nothing to inspire or ennoble. My religion forbids me to belittle or disregard other cultures, as it insists under pain of civil suicide upon imbibing and living my own”.*

On women empowerment, Gandhi’s approach was very innocent, simple, basic and logical. He said – *‘If by strength is meant moral power, than woman is immeasurably man’s superior’*. I am reminded of an incident. Once, Gandhiji fell sick in Sabarmati Ashram. He was running temperature. His followers, especially the ashram residents decided to look after Gandhiji round the clock. They made a timetable and allotted hourly duties also nature of service to be rendered by each. Gandhiji was surrounded by well-wishers. When Kasturba got an opportunity of speaking to Gandhiji, with tears in her eyes, she asked - ‘Mahatmaji, do I not deaserve to do any service to you? Where is the time for me?’. Gandhiji smiled and wittingly observed – *‘Baa, kya tere liye bhi main Mahatama hoon?’* (Baa – ‘Am I a Mahatama unto you too?’) Suffice it to say, the anecdote speaks volumes about the love, affection and respect which Gandhiji had for his wife and for women generally.

In a democracy, the power of the politics is bound to play its role. Gandhiji gave two messages to be ‘real politics’ suited in a democracy in particularly a country like India. He drew a distinction between a mere ‘politics’ and ‘real politics’. First, the object of politics is to serve the polity and so it cannot be divorced from ethics and morality. Second, Gandhiji subscribed to the thesis that power corrupts and the powerlessness corrupts even more. The solution lies in evolving an ‘ethical religion’ and then translating it into politics. Gandhian principle echo in the Preamble when it speaks of Justice-social, economic and political. He dogmatically insisted on the doctrine of *Advaita* under which the idea of superiority of one over the other, at any stage whatsoever is totally excluded. He believed in administration of justice beginning from the grassroot level where the people will dispense justice to themselves. He suggested Gram Swaraj i.e. Panchayat System. While propagating his belief in the separation of power between the Legislature, Executive and the Judiciary, his insistence has been of applying principles of ethics in each branch of the governance. The Legislature should enact such Laws as are the ‘codified ethics’ and not just because something appeals to the majority.

The Executive should be just. The test is that the Executive should never be unreasonable or unfair while implementing the Laws and maintaining Order in the society. The Executive should not have a free-hand to indulge in violence. He went on the extent of saying that if the Laws are unjust they need not be obeyed. So also people should not give up to unjust and unfair executive mandates. His words are ‘*An unjust law is itself a species of violence and arrest for its breach is more so*’. This was his definition of Civil Disobedience.

1947, a year before he was assassinated, Mahatama Gandhi gave his grandson Arun a piece of paper. On it, Gandhiji wrote what he called the seven blunders of the world. These seven sins, he said, were forms of passive violence we are prone to participate in if we are not careful in our lives. These are:

- i. Wealth without Work
- ii. Pleasure without Conscience
- iii. Commerce without Morality
- iv. Politics without Principles
- v. Knowledge without Character
- vi. Science without Humanity
- vii. Worship without Sacrifice<sup>1</sup>.

References can be found to Gandhiji in legal documents and also judgments of the Courts, sometimes explicit and mostly implicit. I borrow a couplet to describe how Gandhiji is to be found in Indian jurisprudential thought:

*Tera pata nahin hai, yeh meri khata nahin hai  
Kan kan mein too chhipa hai tera pata nahi hai*

[I know not where you are, its not my fault;  
Hidden you are in every particle,(and) we know not where you are]

Julian Huxly, the then Director General of UNESCO asked Gandhiji for his opinion concerning the subject of Universal Declaration of Human Rights as Gandhiji was globally known as a promoter and defendant of Human Rights. The first Article of the Universal Declaration reflects exactly what Gandhiji stood and worked for : “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in the spirit of brotherhood.”

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<sup>1</sup> Dr. Shantanu Dutta, *India waiting for Dawn*, p.19.

In the Constituent Assembly, when the subject of Gambling and Betting was being discussed as an item of Legislation, one Hon'ble Member opposed the resolution by saying that we are guided by the lofty ideals of Mahatma Gandhi and that the lessons learned from the Mahabharata were not be forgotten. He was of the view that the Constitution must prohibit betting and gambling and even the state earning by taxation on such items was not proper.

Law Commission in its Report No. 230 titled as "Reforms in Judiciary – Some Suggestions" quoted Gandhiji as having said, "If you want to change anything, you be the change".

*Kesavananda Bharti's Case* acknowledges Gandhiji's contribution to the development of Constitutional jurisprudence. Therein the Court has acknowledged that the Constitution bears the imprint of the philosophy of our national movement for Swaraj. The essential elements of *Ahimsa* as propounded by Gandhiji are: (i) Equality (Samta) and, (ii) Absence of desire of self-acquisition (*aparigraha*). The Court quoted Gandhiji's declaration that, "to live above the means befitting a poor country is to live on a stolen food".

In the case of *Minerva Mills v. Union of India* (AIR 1980 SC 1789), the Supreme Court has emphasized on the necessity of bringing about socio-economic re-generation and ensuring social and economic justice. Mahatma Gandhi has been quoted as having said, "Economic equality is the master-key to non-violent independence". A non-violent system of government is an impossibility so long as the wide gulf between the rich and the hungry millions persists." Gandhiji has gone on to say that unless there is voluntary abdication of riches and the power for common good, a violent and bloody revolution is certainty one-day.

In *S.R. Bommai v. Union of India* [(1994) 3 SCC], the Supreme Court has observed that Articles 15, 16, 25 to 30 of Constitution clearly bring out the dual concept of Secularism and Democracy, the principle of accommodation and tolerance as advocated by Gandhiji. In the same judgment, while dealing with the role of the Governor, a letter written by Gandhiji has been quoted – "*The Governor had been given a very useful and necessary place in the scheme of the team. He would be an arbiter when there was a constitutional deadlock in the State and he would be able to play an impartial role. There would be administrative mechanism through which the constitutional crises would be resolved in the State.*"

Krishna Iyer , one of the most knowledgeable and most-read about Judge of the Supreme Court of India propounded and maintained a principle of Interpretation of Statutes – If you are in doubt as to meaning to be assigned to a word or provision in a statute, which is capable of two meanings, keep in your eyes the poor of the poorest of the person and assign a meaning that will benefit him. This ‘*test of poor of the poorest*’ he had borrowed from Gandhi, he has said.

In the case of *M.P. State Legal Services Authority*, decided by Supreme Court on 10.09.2014, the Supreme Court has noticed the concept of Lok Adalats and alternate dispute resolution systems are all based on Gandhian Principles.

In the case *Mohd. Giasuddin v. State of U.P.* [(1997) 3 SCC 287], the Supreme Court noted that the progressive criminologist across the world will agree on the Gandhian diagnosis of offenders as ‘patients’ founded on the principle that *every saint has a past and every sinner has a future*.

The High Court of Himachal Pradesh in its judgment prohibiting animal sacrifice as a part of rituals, quoted the words of Mahatma Gandhi, “The moral progress and strength of the nation can be judged by the care and compassion towards its animals.”

Before I close, I would like to quote what Rabindranath Tagore had observed about the great Mahatma – “Mahatama Gandhi came and stood at the door of India’s destitute millions, clad as one of themselves”. More emphatic are the words of Khan Abdul Gaffar Khan who said about Gandhi – “The only ray of light-he was the only ray of light to help us through these darkest days’.

Persons like us can only wish if the God would have been kind to bless us and enabled Gandhi to lead us, also as a democratic nation just as he had led the Independence Movement; there would have been Ram Rajya in India as Gandhi ji had always wished.

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