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## **GANDHIAN THOUGHTS OF LAW & JUSTICE**



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### **ABSTRACT**

*Gandhi was the only leader who fought simultaneously on moral, religious, political, social and economic fronts. He believed in administration of justice from grassroots level. He favored ADR system & use of regional languages courts. He was against doctrine of precedent. Government shall run opinion of people. Anything cannot be done in the name of majority. The charter of duties is more important than the charter of rights. He upheld the right to freedom of speech and expression. Unjust laws shall not be followed. Lawyer's job is to unite the parties and assist the court. Gandhian thoughts shall be included in education system right from primary to post graduate level. In legal education Gandhiji must be studied as jurist.*

### **KEYWORDS**

*Democracy, lawyer, law, Justice, right, duty*

## RESEARCH PAPER

### Introduction :

Generally a person becomes leader due to his contribution in a particular field. Mohandas Karamchand Gandhi, “father of Nation” was the only leader who fought simultaneously on moral, religious, political, social and economic fronts. Great philosopher Karl Marx used fifty lakhs words to express his philosophy while Gandhiji used 150 lakhs words to express his thoughts through his writings. Gandhiji’s philosophy is studied in all the universities of the globe. Today’s tensions, violence, unemployment, inflation, political unrest, difference of opinion raise the question of relevance of Gandhiji’s philosophy in present era. His philosophy on law and justice is still relevant today.

### Administration of Justice:

Gandhiji believed in administration of justice from grassroot level. Hence he suggested gram swaraj “panchayat system”. He was of the opinion that if gram swaraj system will not be adopted then the higher judiciary will be overburden. Judicial system in India, presently facing the same problem as predicted by Mahatma Gandhi, hence our parliament passed the Gram Nyayalay Act 2009.

Mahatma Gandhi was in favour of alternative dispute resolution system. He was of the opinion that, the civil matters should be resolved through compromise between the parties. He suggested free and fair compromise procedure; based on this philosophy we have adopted the concept Lok Adalat. When the Lok Adalat a fast system of dispute resolution becomes fruitful, our system has introduced the concept of Maha-Lok Adalat. Panchayat decision shall be made final, on this line only we have made a provision of no appeal against the award of Lok Adalat. Bapuji was follower of preventive theory philosophy. Prevention is better than cure. If any dispute arises in village it shall be resolved through compromise and there shall not be any chance of increase of disputes. Adopting this theory only we have introduced the concept of the litigation free village in 2007.

Justice should not be done it should be seen to be done, based on this doctrine Gandhiji suggested use of regional languages in the administration of justice. Now a day we find a continuous demand of use of regional language not only in lower judiciary but also in High Courts. Though use of regional language is not suitable for judges and Advocates but still it is useful for those who are in need of justice. He also favored reformatory theory of justice. Hence he was against the concept of capital punishment. He said that the capital punishment

shall be abolished. He suggested that the jail shall be operated as hospitals to cure the offenders.

As per the principles of jurisprudence our judiciary follows the doctrine of precedent i.e the decision of higher court is binding on lower court. Gandhiji was not in favour of the doctrine of precedent as he said that court must consider the present situation instead of following the static principles.

### **Democracy:**

Mahatma Gandhi said that, the democratic government shall run as per the will and wish of the people. It must give importance to the public opinion and shall try not to go beyond the public opinion. For smooth functioning and healthy democracy people must be aware of their rights and duties. They must understand the meaning of the freedoms provided in the democratic state. If people don't know what rights and freedoms they possess, democracy will be meaningless. In democracy the illiterate people will be easily exploited. Only education can help in smooth functioning of the democracy. Hence people must be educated first to preserve the democracy. Present day situation shows that due to illiteracy people are exploited at all the levels of life.

### **Legislature and Executive:**

Law making job is of legislature only. Other wings shall not overstep. Executive shall not interfere in the functioning of the judicial system. He strongly believed in the separation of power. At the same time his principles favored the concept of judicial review. Ministerial act shall have checks and balances. He was also against the concept of dwell government for avoiding the un-necessary expenditure. Legislature has to make law as per majority, but anything cannot be made in the name of majority. Minority rights have equal importance in the democracy. Higher legal principles and values do not require the test of majority. As per Gandhiji, laws are nothing but the codified ethics.

### **Rights/Duty:**

Rights and duty are correspondence to each other. One has importance due to other. Generally people ask about their rights only but no one is ready to talk about his duty. Babu said that the charter of duties is more important than the charter of rights. By citing his own example he said that, if one follows his duty, the right of other will follow automatically. Policy makers have to create duty; rights will be come into existence correspondingly. We have made fundamental rights enforceable while fundamental duties are not enforceable.

### **Social Justice:**

Until anyone hurts other, he has full freedom. Welfare doctrine. Gandhiji said let the people live as per their wish and will until and unless they violates the rights of other. He upheld the right to freedom of speech and expression. Until people have right to think, they can't develop as per their thinking. At the same time he also suggested that whenever there will be conflict between private interest and public interest, public or social interest shall prevail over the private right. Untouchability, violence, crimes etc can't control by making the laws only. Some efforts must be made to change the inner conscience of human. He emphasized on respecting the dignity of human being. Labour under bad conditions are sub human conditions. He was against industrialization as it creates inequality and gives profit to few people only. Secularism was his basic principle. He strongly believed non violence. Due to a great success of his principle of non violence, United Nations Organizations declared 2 October i.e. birth day of Gandhiji as a world non violence day.

### **Law Abidance:**

Gandhiji was of the opinion that, one has to respect the law. Law must be reasonable, fair and just. But if the law is unjust, unreasonable or unfair then people shall not follow such law. Generally a law shall not be broken but it can be done to follow the higher law. Unjust law has to be breached, but then law violator shall submit himself and fight for justice. He favored civil disobedience and opposed the criminal disobedience. He was also of the view that, non co-operation with the bad law is as much importance as co-operation with the good laws.

### **Legal Profession:**

Gandhiji's view about the lawyers was very much social than professional. He said lawyer is mediator than the conductor of legal proceedings. Lawyer shall not ignite the fight between the parties, either their job is to unite the conflicting parties. Lawyers has to assist the court to come out with the truth and upheld true justice and not to deceive the court and whole legal system. Lawyers has to behave like a public servant and he should not subservient to purse. Lawyers are not only helping to provide the legal justice but social-economic and political justice also. He himself as a lawyer never fought for false case which can be understood through his case of Rustamaji and Ahmadabad labor textile labor case.

### **Conclusion and suggestion:**

Gandhian thoughts shall be included in education system right from primary to post graduate level. In legal education Gandhiji must be studied as jurist. Gandhian thoughts must be made

available for reading and study at village level and particularly for students. Even law makers must compulsorily study the Gandhian thoughts for making better laws.

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