

Reloading Civil Disobedience In India - A Gandhian Legacy

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Abstract

There are many factors which shape people's compliance with laws. Through various studies it was established that the major factors shaping compliance with laws are morality, social pressure, deterrence and legitimacy. In different societies the factor shaping compliance with laws may vary. Early societies largely depend on morality and social pressure for compliance, whereas state centric societies depend on deterrence and modern Democratic Republican societies depend on legitimacy. In India, however, deterrence remains the dominant factor shaping compliance with laws despite India's long-standing democratic republican system. The people in India are often hesitant to follow their own government's laws. The Gandhian legacy of freedom struggle, particularly the civil disobedience and non-cooperation movement might have legitimized civil disobedience. The civil disobedience movement later suppressed voluntary compliance with laws. This reflects a culture of lack of voluntary compliance with laws among the Indian people. This may be the reason why the state has to rely more on deterrence than legitimacy. If legitimacy shapes compliance with laws then people would have practiced voluntary compliance with laws.

Keywords: Voluntary compliance with laws - deterrence based compliance with laws - legitimacy to civil disobedience - Gandhian legacy of freedom struggle - Apathy towards political system.

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I. Introduction

Imagine the life of animals in the forest, all the time they are alert against an impending danger. Even when they are sleeping, they are so vigilant; half open eyes, ever attentive ears, ever ready sprinting legs, nose tracking unusual smells. A slightest deep sleep will be the end of their very existence and they would become a sumptuous meal for another carnivorous predator. The survival instincts force them to lead a life like this. On the other hand, human beings are sleeping deadlike. Not at all alert, a lot of snoring, all his sensory organs are as passive as non functional. How can a human being sleep like that? Is it because of the confidence that he had in his body strength? Or is it because of the security provided by the house in which he is sleeping? Or is it because there is no predator out there! The answer is ofcourse a big 'NO!'. He could sleep so peacefully, forgetting everything, just because of the power of the laws. The invincible power of laws created and enforced by the state in which he is a member secured his existence. The laws of the state assured him the necessary guarantee for life and all the valuable possessions that he had. Even if he is attacked and looted, law will be there to punish the encroacher is the certain guarantee. It's an assurance of the state, its laws. On that assurance he is sleeping deadlike. On the other side there are no laws and no state for the wild animals to approach to protect its life and babies. So eternal vigilance is the only help. It has got no police station to file a complaint, no judges to take up the case and no executive agency to enforce the decision of the court. Before the creation of laws, before the establishment of state and governance, human beings were also another savage in the wild having no future(Schochet, 1967). During that period eternal vigilance was the only guarantee for his life and all his possessions. Early those days anyone outside his family was considered a threat to his existence. Then with the observance of customs, conventions and ethical factors, more and more accommodations happened like same tribe, ethnicity, religion, language, culture, nationality and finally it grew beyond national territories. Today people belonging to different nationalities live peacefully with a cosmopolitan outlook. All these changes and accommodations happened because of the power of laws and regulations.

Laws are certain values that human beings created to live peacefully and orderly(Bingham, 1912). Laws and the state had an evolutionary growth. Customs, practices and conventions, moral codes are earlier versions

of laws. It took thousands of years of evolution to get established as state made laws. Today worldwide, human beings celebrate rule of law as the fundamental basis of human civilization. The bedrock on which the entire human civilization is created and sustained is the rule of law. Everyone living in a society has a fundamental obligation to obey laws. All the progress and development of human civilization largely depends on the observance of laws(Hui-Chang, 2003). Why do human beings obey laws? Through various studies on the area, it was identified because of four factors that human beings obey laws. Morality, social pressure, deterrence and legitimacy or authority(Tyler, 2006). In various societies, the factor shaping compliance with laws varies. Earlier societies largely depended upon morality and social pressure, state centric societies depended more on deterrence and modern democratic, republican forms relied more on legitimacy. Earlier societies depended upon developing moral consciousness among human beings to lead an orderly life. There, religions dominate to instill moral character in human behavior. Apart from moral factors, social pressure on individuals is also tremendous there. Each member of the community is expected to behave in accordance with the moral codes of the community. People normally stayed away from what is considered socially taboo. As the civilization is growing the effect of moral and social pressure is gradually decreased and it is substituted by state power in the form of deterrence. Do's and don'ts in a society are defined by the state in the form of laws and those who violate those norms are punished. There are rulers who make laws and subjects who should follow those laws. The rulers had a great obligation to get the laws followed by the subjects. For that they used various deterrence mechanisms. People obeyed laws because of fear of punishments. But deterrence based obedience to law is very expensive and it creates smart criminals who are looking for opportunities and smart chances. Moreover deterrence based obedience is very expensive and it's a police-thief game. Rulers make laws and make sure that subjects follow them diligently. Those who violate it will be severely punished. Deterrence is a mechanism to prevent future crimes. It's a warning for the culprit as well as the potential future offenders. With the development of democracy and republicanism the binding power of law became legitimacy. In such a form of government people are an integral part of the government. Subject-ruler difference vanishes when the commonwealth is created and when the laws are legitimate, people will obey it voluntarily and unconditionally. Each member of the society becomes a ruler and the subject at the same time is the essence of republicanism(Hodgson, 2016).

The American Dream

In November 1620, the Pilgrim fathers executed the Mayflower compact, which became the cornerstone of justice, democracy, freedom and happiness in American land. Even before disembarking the ship, the pilgrim fathers signed the contract to establish rule of law in the newfoundland. Early settlers in America regarded rule of law as the fundamental basis of their freedom. Written laws and regulations became the foundation of a happy and carefree life(Ernst, 2020). Later, after the American revolution, the declaration of independence in America clearly stated the power of laws to establish and maintain rights and freedoms. Thomas Jefferson, one of the founding fathers of America, was right when he said all human beings are created with certain inalienable rights; right to life, liberty and pursuit of happiness. Further he said, a government is created to protect the rights and freedoms. The government would make laws to protect freedom and happiness. If the government failed to achieve the goal, then the people have every right to replace the then government with an alternative government. All the founding fathers of the American constitution agreed that laws are the foundation stone of all freedom and happiness(Jefferson, 2019). About two hundred and forty years have passed since the declaration and still the American people believe that the fundamental principle of happiness and freedom is rule of law.

Indian dream of civil disobedience

In the twentieth century the Indian freedom struggle was designed and executed mainly by Gandhiji. Mahatma Gandhi aimed to challenge British imperialism in India through a non-violent civil disobedience and non-cooperation movement(Gandhi, 2012). His followers used non-violent methods like peaceful marches, satyagraha, boycotts, breaking laws peacefully, and withdrawing from British institutions and goods. British authorities never experienced such a large-scale protest in India earlier. This protest created a kind of embarrassment among British authorities. For the first time the world realized that peaceful protest could challenge and defy the firepower of an imperial power. The movement cemented Gandhi's legacy as a national hero and an international icon. The movement attracted widespread participation from Indians across the region. People belonging to all sections of the society actively involved in the movement. The British government used force to repress the movement which further deteriorated the situation. Eventually India emerged as a fully sovereign state on August fifteen 1947. In this article an attempt is made to understand the long-term impact of non-cooperation and civil disobedience movement in Indian society. How these movements influenced the people's attitude towards compliance with laws of the state.

Unlike in America, in India the birth of the democratic republic of India was through civil disobedience and non cooperation movement. Gandhiji was the exponent of both these movements. Actually the elite character and nature of Indian freedom struggle has been changed by the Gandhian entry into Indian politics. Gandhiji

realized that Indians were not in a position to win a war against the British imperial government by using force and power. So Gandhiji developed his own non-violent struggle based on truth. Civil disobedience and non-cooperation were popularized under the leadership of Gandhiji. The essence of both these movements were negative and anarchic in nature. Because of the colonial impact, a negative concept of freedom was dominated in India at that time. The freedom movement is manifested as anti-state and against laws. People identified the state and its laws as something which curtailed their freedom. That was true at that time. People regarded the colonial state as something which is exploitative and its laws as unjust and oppressive. Gandhiji tried to spread a political culture of civil disobedience and non cooperation against the imperial government. Ordinary people felt that freedom is something which can be achieved by disobeying the laws of the state and not cooperating with the government. People became apathetic and anti government oriented. Freedom is manifested as something that we could enjoy if there is no government. This is totally in contrast with the attitude of American people towards law and state that we had discussed earlier. Unlike the Indian freedom movement, the American revolution is against the British government's domination in American affairs. They were seeking representation in the British parliament while framing laws for American people. They never questioned the integrity of the state and its laws. They never regard the state and its laws as something which denies freedom to the people. They regarded the state and its laws as a condition for life and liberty. But on the other hand, the Indian freedom movement became more and more anti-state and anti-law oriented. Gandhian instruments of civil disobedience and non-cooperation established a political culture of apathy towards laws and state(Desai, 2014).

Gandhian philosophy is holistic one which recognises the interconnectedness of political, social and economic issues(Naidu, 1995). He believes that individual transformation is the base of collective social change. Integration of means and ends, emphasis on truth, non-violence and compassion, satyagraha, importance of morals and ethical values are essential principles of Gandhism. Gandhi had a different view regarding laws and the state. He was looking for a self-sufficient, limited, and minimal state. Gandhi believed in self-regulation of the individual. A self regulated, self sufficient and self disciplined individual doesn't need laws is the spirit of Gandhian philosophy. A self regulated individual assumes responsibility over himself and his actions. His life would be designed in such a way that he will not be a problem for the surrounding society. He will be in a position to control and monitor all his actions. Gandhi was trying to change the very nature of man. A complete transformation of human personality. In such a society, the state becomes inactive and minimal. Laws to regulate actions of the individual never arise as he is such a responsible and sensible citizen. Decentralization would reach up to the base, that is to the individual. Individuals are the base of Gandhian decentralization. A holistic transformation of individuals would solve all social, economic and political problems in the society(Mahakul, 2008). To Gandhi, laws are more moral in nature rather than legal. This view of Gandhi towards law and state could only be achieved by wholesome transformation of human personality. On the basis of these ideal conditions Gandhi developed his own instruments to fight against British colonial rule in India.

He believed that the British rulers could rule India because of the cooperation extended by Indians. He developed non cooperation and civil disobedience as powerful instruments to fight against imperialism. All activities of the government should be non-cooperated whatever may be the intention. Schools, colleges, and courts were boycotted. Just and unjust laws were disobeyed. Defying the orders of the British government and the people started to accept the punishments for disobeying laws as rewards. For the first time in India's long history, people are most willingly disobeying laws of the state peacefully(Low, 1966). Peaceful violation of laws and voluntarily accepting punishments created embarrassment among the British authorities. In a way, Gandhi was legitimizing the civil disobedience movement in India. Gandhiji triggered a nuclear weapon and its radiation reflected everywhere. Civil disobedience movement spread like a wild forest fire throughout India. It was Gandhi who converted an elite oriented freedom movement to a mass struggle for independence. Gandhi claimed that he opposed unjust laws. Gradually a kind of political culture developed in India which is based on civil disobedience. The common people got a kind of legitimate right to oppose laws of the state. The people wholeheartedly boycotted schools, colleges, courts, other government institutions, laws, foreign goods and other services. Without any hesitation but with pride, they broke laws and got arrested. Imprisonment and other punishments were regarded as rewards and worthy of admiration. There were protests everywhere organized with the intention to fill all jails in full capacity(Liljeblad, 2015).

But the Gandhian method of struggle was not welcomed by all. There were many criticisms against civil disobedience and the non cooperation movement even at the time of freedom movement. During the freedom movement, Annie Basant was too much against civil disobedience and non cooperation(Pasricha & Bharathi, 1998). She believed that the civil disobedience movement ultimately spoils the constitutional practice in India. People will gradually legitimize civil disobedience and non cooperation as a practice and culture(Anderson, 2002). As a result of the freedom struggle, Indians finally won their cherished dream of freedom in 1947. India became a fully sovereign, democratic republic. Later Indian people through a constituent assembly framed a constitution for India with high ideals and aspirations. More than seventy-five years have passed since independence but still the factor shaping compliance with law among Indian people is deterrence. Too much

dependence on deterrence is questioning the integrity of the constitution and its ideals. Democracy and Republicanism demands voluntary compliance with laws. Legitimacy should have replaced deterrence based compliance to law. Even though in the constitution it is claimed that India will be a Democratic Republic, the ideal Republican practice of commonwealth has never been practiced in India. Subject-ruler difference is still a predominant pattern in the Indian political spectrum. Even parliamentarians who create laws hesitate to follow them in letter and spirit. Equality before law seems to exist in theory but in practice some are made more equal than the rest. There exists a wide gap between theory and practice in India. If Annie Basant's opinion was taken into account then all these anachronisms may be due to the past practice of civil disobedience and non cooperation movement practiced under the leadership of Gandhiji. Legitimacy was granted to civil disobedience and non cooperation which became a dominant cultural pattern among the people of India. So even today the state has to rely on deterrence mechanisms to implement the laws(Krishna, 1917).

The concept of freedom largely manifested in India as defying the orders of the British government in the form of civil disobedience and non cooperation. A negative message regarding laws and state was conveyed to the people. Absence of government, laws, regulations will grant freedom is the negative concept of freedom. Indian people under the influence of Gandhism identified freedom as something disobeying laws of the state and state is something to be hated. The Gandhian struggle for independence spread such a message to the people of India. All laws and regulations of the British government are illegitimate and so it should be disobeyed. The movement legitimized civil disobedience and people most willingly disobeyed laws. Imprisonment or any other punishments for breaking laws are considered as the most welcome thing in the society. The consequences of the movement seem quite negative. The long term impact of this culture of civil disobedience was dangerous(Cohen, 1966). Even after the departure of the British government people hesitate to come out of the political culture that was established during the freedom movement. In a modern democratic constitutional set up who is going to decide what is just and unjust laws. In any society, everyone has a tendency to justify their deeds. There are a large number of interests in a society. And everyone is equally entitled to justify their deeds and could justify the violation of laws. So in the long run, as a state, the society would deviate towards anarchism. Even today, people commit crime and used to justify that by commenting that even Gandhi, father of the nation, met with a prison sentence. So a political culture was gradually emerging out of civil disobedience and non cooperation movement. People hesitate to follow most of the laws most of the time. Thousands of examples of civil disobedience and non cooperation can be witnessed in everyday Indian social life. Even simple laws like wearing a helmet while riding a bike needs to be implemented by the state with the force of deterrence. Actually wearing a helmet is for one's own safety, but in India, the state had to enforce such a simple law. People usually hang their helmet on the handle and would wear it only if there is police checking to enforce such a law. In other developed countries, people used to obey most of the laws most of the time voluntarily. Because they are more familiar with positive freedom. They know that their freedom lies in obeying the laws of the state. Laws and regulations are created to safeguard and enhance freedom. Deterrence based obedience can make smart criminals, and it does not make good citizens who obey laws voluntarily and unconditionally (Sherman, 1993).

Greek Legacy

In order to understand the power of laws let us examine the Greek legacy regarding law and justice. Socrates, the great Athenian philosopher, was talking about positive freedom while obeying the laws of the state. If people by themselves believe that their freedom lies in the observance of laws and regulations, then voluntary compliance is the result. Socrates lived in the early classical Greek period. Socrates was arrested on the allegation that he engaged in corrupting the youths in his country through his philosophical teachings. Even when facing a certain death sentence, Socrates had great conviction that you can't violate the laws. By disobeying you would be destroying or attacking the city, attacking a civilization. We can see a great constitutionalist in Socrates. Even though Socrates was falsely accused of corrupting the morals of Athenian youth, he was reluctant to defy the orders of the rulers. Moreover, during the trial, even the jurors acted wrongly. Even when his disciples were trying to persuade him to escape the clutches of law. Socrates was firm that the conviction must be respected. Sentences must be respected. "I must obey the laws and make my defense", was the stand taken by Socrates. Because Socrates valued laws more than his own life. He regarded that laws were essential for a peaceful living in a society. You owe your existence to the glory of laws. He believed that laws are the foundation stone of all growth and development. So Socrates can be considered as a great constitutionalist of all time(D'Amato, 1975).

But the above argument is never to degrade or underrate the value of Gandhian philosophy. What Gandhi said was right, provided people altered their behavior altogether. Gandhi was experimenting with his instruments of non cooperation and civil disobedience to win independence. Gandhi was trying to alter the real nature of mankind by the practice of satyagraha and non-violence. But Gandhiji failed to assess human nature realistically(Kolge). The Chauri chaura incident was the first warning that people could not assimilate such a transformation as expected by Gandhi. Gandhi revoked the decision and stopped the movement, but enough damage was done in the form of a political culture of civil disobedience. Gandhi's ideal position is, if each

individual could transform himself into a satyagrahi, a self regulated and self disciplined individual, then the practice of civil disobedience and non cooperation would have been a success. Individuals and communities manage themselves is the ideal of Gandhian self-rule. Each individual is enjoying maximum freedom as he is free from external control and interference. But Gandhi failed to assess human behavior which is more complicated than he had expected. What theoretically seems possible found hard to be worked out. Freedom in India seems more and more associated with the liberation from state power. Gandhi himself was portraying a minimal state power. In such a state, the number of laws to regulate human behavior is minimal. Instead, individuals are in a position to self regulate their actions. Limited state power is compensated with greater responsibility to the individual. Gandhi failed to assess human behavior there. Indian people failed to accept responsibility. After the Chauri Chaura incident he could revoke the movement for a while but a culture had been set by then. Weeds are growing instead of crops. No country would survive if the culture of civil disobedience spread. Anarchism would be the net result of such a political culture. Everyone could judge what is just and unjust. Even today, why do Indians hesitate to obey most of the laws? Answer seems to be lying in the civil disobedience campaign during the freedom movement. In the western countries, people usually consider the state as a symbol of freedom. If the state is more powerful, then, people living there could enjoy more freedom. They consider a strong state could protect their freedom. People believe that laws are essential for freedom and happiness. So, people most willingly and voluntarily comply with laws. With the growth of democracy and republicanism further strengthened that conviction. Earlier we have observed the stand taken by the first Greek political philosopher, Socrates on the issue of state power and laws. He hesitated to disobey even unjust laws, because he feared that that could send a wrong message to the people of his country towards the state. He remarked that he owed his very existence to the state which he belonged to.

Even after seventy-five years of constitutional experience of democracy and republicanism, Indian people still hesitate to obey laws voluntarily. A culture of civil disobedience and non cooperation is still a predominant pattern. People hesitate to obey their own democratic government's laws. Deterrence based obedience is still dominating the Indian political spectrum. Laws are claims that citizens have an unconditional obligation to obey them. The binding power of law should be based on legitimized authority of the state. In India democracy and republicanism never grew skin deep to replace civil disobedience and non cooperation. In a Republic the power belongs to the people and who make laws to govern themselves, but in India the people never have the spirit to follow those laws (Baxi, 1982). In this context the Gandhian principles of means and ends can be questioned. Was Gandhi using the right means to achieve the right goal? The means Gandhi used was civil disobedience and non-cooperation to reach the goal of swarajya or complete independence. From the point of view of a statesman, civil disobedience and non-cooperation campaigns are the worst weapons to reach the goal. It is like using an atomic weapon to win a war and governing the same piece of land. Radiations of civil disobedience and non-cooperation are everywhere in Indian society.

In 1947, the British government was replaced with a democratic government of Indian people but by that time the political culture of civil disobedience was all well set. That political culture is based on a negative concept of freedom. This may be one of the reasons why voluntary compliance with laws are missing in the Indian subcontinent. People are very much critical of every action of the government. Even the Indian press is addressing the governmental actions as if they were during the pre-independence period. Media generally believe that their fundamental task is to find out the wrongdoings of the government. More than opposition parties, the press is always against the government. Press seldom appreciates even the good policies of the government. A media culture was established during the freedom movement. Gandhi was too idealistic in his assumptions regarding human nature. Theoretical transformation of human nature never happened in reality. People inherently used to believe that their freedom lies in disobeying laws of the state.

Gandhi's civil disobedience movement may have dangerous consequences in the future of Indian people. Unlike violence and terror, legitimacy had been given to civil disobedience. Since the civil disobedience is clad with the clothing of peace, wide reach and appeal was there for civil disobedience campaigns. On the other hand extremist versions of the freedom movement never gained such an acceptance. But slowly through that campaign civil disobedience emerged as a general culture among the people. Day by day the movement spread across the society and it questioned the legitimacy of the British authorities, undermining the rule of law and social order. People's deliberate violation of law and regulations challenged the principles of rule of law. It led to widespread unrest and challenged the authority of the state. At that time from the Indian perspective, it was a welcome thing, challenging and shaking the pillars of British imperialism. But the long term impact of civil disobedience was the creation of a political culture of disobedience and apathy towards authority (Saikumar, 2013). Even after seven decades of independence, democracy, rule of law and republicanism are limping in the country due to the long term impact of the civil disobedience movement.

II. Conclusion

There may be so many factors for the domination of deterrence in shaping compliance with laws in Indian society. Gandhian civil disobedience and non cooperation movement were also contributed to the political culture of Indian people. Both these movements created an anti-state, anarchic mindset among the people. A negative concept of freedom also developed in the mindset of the common people. Common people began to have an idea that state and state made laws are curtailing individual freedom. On the other hand American people have a positive mindset to state and state made laws. They regarded laws and regulations as the base of their freedom. So voluntary compliance with laws is the dominant culture in America. Even after seven decades of independence and democratic republican experiments, deterrence dominated compliance with laws have been in practice in India. People generally hesitate to follow even simple laws as if it is spoiling their freedom. Three hundred years of colonial domination and the instrumental mechanisms adopted by Gandhiji might have created the negative concept of freedom. Legitimization of civil disobedience and non-cooperation may be the reason for the dominance of deterrence as a factor shaping compliance with laws.

References

- [1] Anderson, N. F. (2002). 'Mother Besant' and Indian National Politics. *The Journal Of Imperial And Commonwealth History*, 30(3), 27-54
- [2] Baxi, U. (1982). *The Crisis Of The Indian Legal System. Alternatives In Development: Law. Stranger Journalism.*
- [3] Bingham, J. W. (1912). What Is The Law. *Mich. L. Rev.*, 11, 1
- [4] Cohen, C. (1966). Civil Disobedience And The Law. *Rutgers L. Rev.*, 21, 1.
- [5] D'amato, A. (1975). Obligation To Obey The Law: A Study Of The Death Of Socrates. *S. Cal. L. Rev.*, 49, 1079.
- [6] Ernst, J. L. (2020). The Mayflower Compact: Celebrating Four Hundred Years Of Influence On Us Democracy. *Ndl Rev.*, 95, 1.
- [7] Hodgson, L. (2016). *Res Publica And The Roman Republic: 'Without Body Or Form'.* Oxford University Press.
- [8] Hui-Chang, S. O. N. G. (2003). The Historical Development Of Modern Political Civilization: From Rule By Men To Rule By Law. *Journal Of Jishou University (Social Sciences Edition)*, 24(1), 87.
- [9] Kolge, N. Gandhi: An Imperfect Philosopher.
- [10] Krishna, P. (1917). Mrs. Annie Besant: The Revolutionary. *The Indian*, 352.
- [11] Pasricha, A., & Bharathi, K. S. (1998). *The Political Thought Of Annie Besant (Vol. 25).* Concept Publishing Company.
- [12] Saikumar, R. (2013). *Ethics Of Disobedience.*
- [13] Schochet, G. J. (1967). Thomas Hobbes On The Family And The State Of Nature. *Political Science Quarterly*, 82(3), 427-445
- [14] Sherman, L. W. (1993). Defiance, Deterrence, And Irrelevance: A Theory Of The Criminal Sanction. *Journal Of Research In Crime And Delinquency*, 30(4), 445-473.
- [15] Tyler, T. R. (2006). *Why People Obey The Law.* Princeton University Press.