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Ethics of Disobedience

Towards a Theory of Civil Disobedience for Contemporary India

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Abstract

In this paper, Rajgopal Saikumar examines civil disobedience as a form of resistance to power in contemporary India. At the very core of a theory of civil disobedience lie two questions: First, what is the nature of our political obligation towards the law and the State and, second, what is the relation between law and morality? At what point is disobedience justified on the grounds of morality? The author begins with a close and critical reading of John Rawls' justification of civil disobedience as argued in *A Theory of Justice*. The author is critical of the Rawlsian conception of the Self, which is abstract and atomistic. Instead, the author suggests a move towards a theory of civil disobedience, which is based on *experience as conscience*. The experience of this embodied self, in its *life world*, provides the grounding for this rethinking of civil disobedience. The author proceeds to analyse this rethinking of civil disobedience based on two case studies:

- A spontaneous incident of disobedience that erupted between the rag-pickers union and the contractors of the New Delhi Municipal Corporation
- The Chengara agitation in Kerala in 2007, in which an Adivasi-Dalit dominated collective land-grab movement encroached upon the plantations of Harrisons Malayalam Ltd.

Based on these case-studies, the author suggests a move towards a broader theory of civil disobedience that is based on the “experience of injustice” and, hence, a resistance from below, a reappropriation of this field of resistance from the abstracted rationality of the ‘juridical discourse’, and making the inward-turn to a language of experience. Civil disobedience becomes a means of better understanding the nature of our political obedience and throws light on democracy not only as an institution, but also as a culture.

CHAPTER ONE

INTRODUCTION

I

What is the nature of a citizen's obligation to the law? Can disobedience to law be justified under certain circumstances? This question has always been at the core of political theory ever since Plato's Socrates in *Crito*. The question persists even today and needs to be answered with a new theoretical underpinning every time it is asked.

This paper places the question of political obligation within the context of democracy in India. I discuss civil disobedience as an exceptional circumstance to better understand the 'rule' of law, i.e., to better understand *democracy* by looking at *dissent within democracy*. I offer a close reading of John Rawls' theory of civil disobedience. The criticisms and gaps, which emerge from such a theory, are used as a springboard to suggest a rethinking of civil disobedience that is grounded in a *philosophy of experience*. I then use two case studies to elucidate this possible rethinking of a theory of civil disobedience that goes beyond the Rawlsian model.

The larger global context of this paper is one of resistance to authority. It is in the global context of the Arab Spring, revolutions in Egypt, Libya and the Occupy Wall Street movements.¹ In the last three years, India alone has seen one of the largest anti-rape movements in history, a massive anti-corruption movement led by Anna Hazare, anti-nuclear protests in Tamil Nadu and several anti-displacement and anti-development movements. Means of dissent have also been changing. For example, flash mobs and street artists are appropriating the public space even at the cost of breaking the law.

Breaking the law as a form of protest was pushed to its limits in recent events such as the WikiLeaks phenomenon and Snowden's revelations about the National Security Agency's spying and metadata collection. Contemporary anarchist movements are creating newer vocabularies of dissent through performance arts, poetry and street-theatre, demanding a better world.

A study of civil disobedience, therefore, has a two-fold relevance: First, it gives us the necessary tools to make sense of the sociology of dissent in India today. Second, studying civil disobedience can throw clarity on several interrelated concepts in political philosophy, such as political obligation, democracy and the relation between law and morality.

II

A provisional definition of civil disobedience could be: "Anyone who commits an act of civil disobedience (has only done so) if and only if he acts illegally, publicly, non-violently and conscientiously with the intent to frustrate one of the laws, policies or decisions of his government."² Medha Patkar believes that disobedience is not always a negative term. In an interview, she states, "In fact, civil disobedience is a positive form of disobedience, it is an endorsing of the Constitution, promoting the value framework of the Constitution of

¹ The TIME's Person of the Year in 2011 was the "Unnamed Protestor". See http://content.time.com/time/specials/packages/article/0,28804,2101745_2102132,00.html (last accessed on 16th September, 2013)

² Hugo A. Bedau "On Civil Disobedience" in *The Journal of Philosophy* (Vol. 58, No. 21; 1961)

India.”³ Medha Patkar and the Narmada Bachao Andolan (NBA) is the apotheosis of illustrations when it comes to Gandhian civil disobedience tactics to resist the Sardar Sarovar Dam project. In the context of the NBA, she says that disobedience to an unjust law is, in fact, a greater form of obedience to the Constitution. She makes this argument by creating a hierarchy between different rights and suggests that human rights and constitutional rights are much higher than legal rights. Hence, for the sake of the former, legal rights can be disobeyed.

My interview with Arvind Kejriwal, the *Aam Aadmi Party* founder, was to discuss his ongoing civil disobedience movement protesting against corruption in private power distribution companies and the Delhi Jal Board (Delhi Water Board).⁴ He urged the citizens of Delhi to stop paying half of their water and electricity bills over the alleged irregularities involving water and electricity supply in Delhi. Mr. Kejriwal says that he got 36,743 citizens to sign a petition to the New Delhi Chief Minister, Sheila Dikshit, which stated that they would not pay their bills in protest. For Mr. Kejriwal, civil disobedience is the ultimate *brahmastra*⁵ that citizens possess, but it has to be sparingly used as the last resort when the government does something that is patently wrong, unethical and unjust.

For the purpose of this project, I also interviewed a public intellectual, Mr. Gurcharan Das, who gave a diametrically opposite view on civil disobedience.⁶ To Mr. Das, the debate of civil disobedience is similar to the older Ambedkar versus Gandhi debate. And Mr. Das himself claims to be on the side of Ambedkar on this issue. Mr. Das is of the opinion that in India, where institutions are weak and civil society is strong, the right way forward would be the Ambedkar way, which is to strengthen institutions such as the police, the judiciary and the bureaucracy, rather than civil disobedience.

How then does one resolve the paradox inherent in civil disobedience? On the one hand, citizens have a duty to obey the law and the state. On the other hand, citizens also may have an inalienable duty to disobey an unjust law and stand up for what is morally right. How can this contradictory ‘duty to obey’ and this ‘duty to disobey’ coexist in a democracy? Further, authority is the “right to command and the duty to obey” and autonomy is about self-governance. Civil disobedience is about conscientious refusal of the law by an autonomous individual. How, then, can authority and autonomy coexist for an individual simultaneously in a theory of civil disobedience?

III

Rawls marks a major shift in political philosophy and jurisprudence in this century. The *liberalism* and *communitarian* debate is one such example of what emerged inspired by his work. This paper is focused on reading one particular chapter in Rawls’ *A Theory of Justice* titled “Defining and Justifying Civil Disobedience”. Rawls’ theory of justice is formulated as an ‘ideal theory’, while his chapter on civil disobedience is an exception as it makes a foray into a ‘non-ideal theory’.

Rawls’ conception of ‘non-ideal theory’ is too heavily burdened by his ideal conceptions of justice due to which it is unable to account for the ground realities of dissent and disobedience. This burden of his ideal theory seeps into his conception of the subject or agent of civil disobedience. The agent of civil disobedience continues to remain an abstract, atomistic entity, a context-less and impersonal theoretical construct.

³Medha Patkar’s Interview with the Author, New Delhi, 3rd August, 2013

⁴Arvind Kejriwal’s interview with the Author, New Delhi, 5th August, 2013

⁵A mythical super-weapon.

⁶GurcharanDas’s interview with the Author, New Delhi, 4th August, 2013.

The opposition to this context-forgetting Rawls are the communitarians, who tend to be context-obsessed⁷ and perhaps over-stress the location of the subject. They argue that the individual is fundamentally constituted by his/her community through dialogic relations and accuse Rawls' individual of living behind the *veil of ignorance* as detached non-persons. In between the liberal and communitarian debates would fall theorists of radical democracy, such as Laclau and Mouffe, who are critical of both these views and, instead, stress mainly upon the play of "power" and hegemonic discourses and the inexhaustible pluralism that is produced through power.⁸

In this paper, however, I do not squarely fall within any of these categories. This paper argues, instead, for a philosophy of experience as the basis of a theory of civil disobedience. When a law is unjust, the individual ought to conscientiously disobey the law. What is the nature of this *conscience* and this *conscientious individual*? In Rawls, this conscience is political and it is shared. I suggest that this conscience is a "second-order reflection of the experience of injustice". The conception of the self must be based on the *lived experiences* of individuals. It is the experience of injustice, suffering and humiliation that has to authenticate an ethical civil disobedience.

By reconceptualising the agent of dissent as grounded in our *lived experiences*, we move towards understanding dissent through wider lenses such as those of *emotions, narratives* and *storytelling*. The dissenting individual is no longer an abstract concept, but is embedded in a context, is emotive and is also expressive.⁹ A theory of civil disobedience, I suggest, ought to arise from such a conception of the Self. Linked to this are other questions that I explore in this work. I argue that although there are good reasons to obey the law, yet 'political obligation' that is context-independent and *prima facie* assumed, does not exist.¹⁰ Civil disobedience, in this work, is not only the literal breaking of an unjust law for conscientious reasons, but also a metaphorical appropriation of the juridical discourse by the Self that experiences the injustice; it is an appropriation of the legal by the moral.

IV

The paper is divided into three parts. Chapter one begins with a close reading of Rawlsian civil disobedience. It states the criticisms of this Rawlsian understanding of dissent and goes on to propose an alternative framework to rethink dissent. Chapters two and three are case studies to elucidate the debates that arise in Chapter one. The case study approach grounds this project in the lived experiences of agents of civil disobedience. Chapter two looks at the spontaneous disobedience that erupted in a conflict between a rag-pickers' union on the one hand and the New Delhi Municipal Corporation and its contractors on the other. The dispute was over a garbage site—the contractors had claimed a legal right over it while the rag-pickers' union claimed a moral right over it. Chapter three recounts the struggle of the Chengara in 2007 about the legal right over a disputed plantation and a moral right that led to encroachment on the plantation.

I conducted in-depth interviews with leaders of civil disobedience movements in India, including Medha Patkar and Arvind Kejriwal. The interviews were conducted between 28th July and 25th August, 2013. The first case study is based on my interactions and conversations with

⁷See for the debate between context-transcendent liberals and context-immanent communitarians in Rainer Forst *Contexts of Justice: Political Philosophy Beyond Liberalism and Communitarianism*; trans. by John M. M. Farrell (Berkeley: University of California Press, 2002)

⁸See for example; Anna Marie Smith *Laclau and Mouffe: The Radical Democratic Imaginary* (London: Routledge, 1998)

⁹This argument is based on the debates on theory and experience between Sundar Sarukkai and Gopal Guru. See; Sundar Sarukkai and Gopal Guru, *The Cracker Mirror- An Indian Debate on Experience and Theory* (OUP, New Delhi, 2012)

¹⁰ Leslie Green *The Authority of the State* (Oxford: Clarendon Press, 1988)

Mr. Shashi Bhushan Pandit, the Chairperson of the All India Kabadi Mazdoor Mahasangh (AIKMM), in New Delhi. This interview was spread over three meetings over a period of three days. The second case study is based on two interviews conducted in Pathanamthitta district of Kerala. The first interview was with Mr. Laha Gopalan of the *Sadbujana Vimojana Sangathan* and the leader of the Chengara civil disobedience. The other was also an extensive interview with Ms. Seleena Prakkanam, who is currently with the Dalit Human Rights Movement. She was the Secretary and the Spokesperson of the Chengara movement previously. The interviews were partially structured, with a mix of factual and conceptual questions. I also collected oral histories from the interviewees that revealed much about their feelings and experiences on the subject matter of the case study.

The Chengara struggle is a much larger social movement in Kerala and has received limited scholarly attention outside of the state. This movement is an independent, grassroots initiative, uninfluenced by Kerala politics. It remained largely non-institutionalised, avoided being mainstreamed and remained an Adivasi-Dalit-dominated civil disobedience. Also, the Chengara struggle ignited a radical imagination and vastly alternative possibilities of living and being in communities; building for itself a world outside of modernity and the state deep inside the plantations of Kerala.

CHAPTER 2

RAWLS' THEORY OF CIVIL DISOBEDIENCE

I

Rawls elaborates his theory of civil disobedience in the chapter “Definition and Justification of Civil Disobedience” in *A Theory of Justice* (hereinafter referred to as *ToJ*).¹¹ Rawls’ discussion of civil disobedience stands apart from the rest of his philosophical writings for the following reasons: Firstly, Rawls’ philosophical work, especially *ToJ*, is part of an “ideal theory” of justice. Civil Disobedience stands out as being one of his few forays into a “non-ideal theory” of justice. Second, the bulk of *ToJ* is about principles for institutions—political, legal and economic. However, the chapter on civil disobedience is an exception because it contains principles not for institutions, but *principles for individuals* to follow.¹²

A major criticism of Rawls has been (a) of his non-ideal theory of justice in relation to dissent and disagreement and (b) of his conception of the individual and the principles around it. I begin with certain key concepts that Rawls invokes in his ideal theory, which is of relevance to his discussion of civil disobedience.

ToJ is clearly reminiscent of social contract theory. Rawls devises a hypothetical selection procedure in order to derive the fundamental principles of justice. He calls this selection procedure “the original position”. In his ‘justice as fairness’ construct, the two principles of justice selected from the original position will then be incorporated into the different socio-political arrangements and institutions. Rawls is interested in deriving a ‘basic structure’ of a society, a set of principles of social justice. He is interested in a distributive theory for social institutions, concerned with just and equitable distribution of rights, duties and resources. The principles of justice have to be derived from a fair hypothetical agreement between free and equal citizens. To ensure fairness in the original position, he proposes a “veil of ignorance”. The veil of ignorance is a situation in which individuals are assumed to be unaware of their social status, capabilities and weaknesses. It is under this situation of a veil of ignorance that individuals will decide what the principles of justice ought to be. This is necessary in order to derive neutral and unbiased principles of justice with no subjective influences. So, for example, individuals in the veil of ignorance will not be aware of their gender, race, caste, capabilities etc. Therefore, they will pick the principles being aware of the fact that in the non-ideal world, they could possibly be in the lowest strata of social hierarchy such as slaves or landless labourers. Hence a principle of justice, which is not against slavery for example, could backfire on them in the non-ideal situation. But the individuals do *inter alia* have an instrumental rationality and a basic conception of good in this original position.

He makes two other conceptual assumptions that are of importance to our discussion of civil disobedience. One is of “*strict compliance*” and the other is of a “*well-ordered society*”. His framework assumes an ideal theory wherein the principles chosen in society will ‘*generally be complied with*’ as opposed to the non-ideal where strict compliance to the principles does not take place.¹³ The ideal theory provides the standards on the basis of which the non-ideal will have to modify itself. The other is his assumption of a “well-ordered society” where “*everyone is presumed to act justly and to do his part in upholding just institutions*”.¹⁴ Rawls uses his thought-experiment of an “original position” as necessary for a “well-ordered society” where (a) everyone accepts and

¹¹John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971)

¹²See A. John Simmons “Disobedience and Its Objects” in *Boston University Law Review* [Vol. 90: 2010] 1817

¹³John Rawls *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971) 8, 9.

¹⁴ID at 8

knows that the other accepts the same principles of justice and (b) the basic social institutions generally satisfy and are generally known to satisfy these principles. Rawls admits these to be idealisations of justice.

This distinction he makes for a simple reason. He first establishes the ‘ideal part’ of his theory based on assumptions of ‘original position’, ‘strict compliance’ and a ‘well-ordered society’. But he knows that the ideal world is just that—an ideal—and, hence, does not really exist. So the “non-ideal theory” will take up the principles derived in the ideal theory as its long-term goal and apply it to the ‘real’ situation. Non-ideal situations must then make sure that they work towards the ideal as closely as possible. This is where his “natural duty to justice” argument also fits in—because the non-ideal has to aim at achieving an ideal, and hence, there is the natural duty towards the ideal. The ‘natural duty to justice’, as we will see below, becomes both the justification as well as a qualification for his theory of civil disobedience.

Civil disobedience for Rawls is part of a non-ideal theory to regulate the basic structure of its institutions. They are principles for individuals in relation to principles of institutions. Civil disobedience, in this Rawlsian sense, is motivated and aimed at repairing injustice or diversions from the basic structure of society. The ‘principles of individuals’ includes the natural duty towards justice. These ‘principles of individuals’, which his chapter on civil disobedience is an example of, specifies the obligation and duties towards the state and its institutions. Herein, we would find the Rawlsian response to the question of why we must obey the law and at what point are we justified in disobeying it.

In order to understand civil disobedience, we need to understand Rawls’ position on why we have duty to comply with just laws and also unjust laws. According to Rawls, there is general presumption in favour of obedience to laws in a just society; its members have a duty to obey. He invokes a natural duty of justice argument to explain why we should be obedient to laws under a just regime. This ‘Duty of Justice’ requires us to support and comply with just institutions that exist and apply to us, and, further just arrangements not yet established, when this can be done without incurring too heavy costs ourselves.¹⁵

So what is a ‘natural duty to justice’? It is here that Rawls differs the most from other social contract theorists. Social contractualists would argue that it is the voluntary acts of individuals that bind them in a collective obligation to obey. This voluntary acceptance is a precondition to obligation. This is the law of contracts—that you have to accept the offer first in order to be bound by the promises in the contract. You cannot be bound by the contract unless you accept it. The social contract theorists, therefore, assume a hypothetical acceptance that binds us to the state.

However, Rawls’ theory relies on a natural duty to justice. He argues that we do not necessarily have an obligation to obey the law because we never voluntarily accepted it. But we do have a natural duty towards justice, and hence, also to the principles that apply to institutions in such a state. For Rawls, everybody complies with just institutions regardless of their voluntary acts. It is in everybody’s interest to stabilise institutions as much as possible. Hence, in the original position, this obligation becomes an unconditional requirement that the parties will agree upon for their own good and the good of the institutions as well.

Rawls’ discussion of a duty of compliance is limited to nearly just societies. These are societies that are not entirely fair or well-ordered but still have a just constitution, a democratic regime and a rule by the majority. He argues that within such a society, one has a duty to comply with unjust laws as well.¹⁶ Rawls admits that even the most just political structure will, from time to time, produce unjust laws. However, he also says that we have a natural duty to support the just institutions, and this is possible by complying with those laws even if it means obeying unjust ones. As he writes, “Our natural duty to uphold just institutions binds us to comply with

¹⁵John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971) 115

¹⁶ID at 363

unjust laws and policies, or at least not to oppose them by illegal means as long as they do not exceed certain limits of injustice.”¹⁷

Rawls agrees that majority rule, of course, need not be right, but it still is the best possible procedural option to achieve the desired goals of justice. The form of procedure Rawls has in mind is of “deliberative democracy” and it depends on the assumption that an “ideally conducted discussion among many persons is more likely to arrive at the correct conclusion than the deliberations of any one of them by himself”.¹⁸

It is in this context that Rawls introduces his discussion of civil disobedience and conscientious refusal as an exception that overrides an individual’s duty to comply with the law. The chapter on civil disobedience for Rawls is an illustration on the question of the point at which the [natural] duty to comply with laws enacted by a legislative authority ceases to be binding in view of the right to defend one’s liberties and the duty to oppose injustice.¹⁹ He agrees, “... duty to comply is problematic for permanent minorities that have suffered from injustice for many years.”²⁰

The theory of civil disobedience pertains to a nearly just society where the limits of tolerable injustice have been transgressed by the majority rule. He says, “In choosing the constitution, then, and in adopting some form of majority rule, the parties accept the risk of suffering the defects of one another’s knowledge and sense of justice in order to gain the advantages of an effective legislative procedure.”²¹

II

Rawls’ chapter, “Definition and Justification of Civil Disobedience”, needs to be read in this larger context of his work. Andrew Sabl, for example, says, “Rawls’ best arguments on civil disobedience do not presuppose the rest of his theory and at times even undercut it.”²² Although this makes creative readings possible, in which Sabl himself engages, it is useful to see the gaps in a Rawlsian reading and to broaden a theory of civil disobedience that accounts for these gaps. In fact, as I mentioned in the previous section, the chapter on civil disobedience is peculiar because of this possibility of isolated reading. However, what I am suggesting is that this chapter is not an essay in itself but, rather, an essay that stands out from the rest of the book. The point, therefore, is to read it not in isolation, but to read it in light of its difference from the rest. Hence, this chapter needs to be read as being at the cusp of ideal theory and non-ideal theory, principles pertaining to individuals as well as institutions, and nearly-just society and unjust laws in a non-ideal society.

Rawls published the *Theory of Justice* in 1971, during the height of the Vietnam War, and was also heavily influenced by the civil rights movements. He notes the influence and similarity of understanding between his work and Martin Luther King Jr. in the “Letter from Birmingham City Jail”.²³ First, Rawls in *TōJ* defines civil disobedience as “a public, non-violent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government.”²⁴ Second, Rawlsian civil disobedience applies to a “nearly just society” and a “well-ordered society” in which injustice nevertheless does occur from time to

¹⁷ID at 354

¹⁸ID at 358

¹⁹ ID at 363

²⁰ID at 355

²¹ID at 355

²²Andrew Sabl “Looking Forward to Justice: Rawlsian Civil Disobedience and Its Non-Rawlsian Lessons” in *The Journal of Political Philosophy* (Vol. 9 No. 3, 2001) 307

²³Jon Mandle *Introduction to Rawls’ A Theory of Justice* (Cambridge University Press, 2009)105

²⁴John Rawls *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971) 364

time. The definition he uses is similar to Hugo A. Bedau²⁵ and Martin Luther King Jr., but much narrower than other definitions such as the one given by Howard Zinn in which civil disobedience is “the deliberate, discriminate violation of law for a vital social purpose”.²⁶ Third, Rawls’ reasoning is based on the fact that the civil disobedient “addresses the sense of justice of the majority of the community and declares that in one’s considered opinion the principles of social cooperation among free and equal men are not being respected”.²⁷ Fourth, for Rawls, civil disobedience is a specific kind of a political act. It is an act guided and justified by *political principles*, that is, by the principles of justice that regulate the constitution and social institutions generally. One does not appeal to principles of personal morality or religious doctrine though these may coincide and support one’s claims. Rawls reiterates all through his essay that civil disobedience must not be grounded on self-interests but on “the commonly shared conception of justice that underlies the political order”.²⁸ His reasoning is based on the apparent public conception of justice with reference to which citizens regulate their political affairs and interpret the constitution. Fifth, Rawls takes this conception of a sense of public justice and says that since disobedience is aimed only at public principles, it is always done publicly, openly and with fair notice, and is also non-violent. Rawls explains violence as that which injures and hurts others, especially individuals, and this is incompatible with civil disobedience. However, he can be said to allow for violence when we writes, “If the appeal fails in its purpose, forceful resistance may later be entertained.”²⁹ Another reason for non-violence is that the resistor expresses disobedience to law within the limits of fidelity to law. This larger sense of fidelity to law *must exist*; the law may be broken, but the willingness to accept the legal consequences of one’s conduct shows this respect and fidelity to law.³⁰ Without establishing this fidelity to law, disobedience might be interpreted as an extreme form of dissent. Sixth, Rawls tells us that the appeal of the civil disobedient is only to the political conscience of the society. The conscience that Rawls stresses upon is a very different species than what is used by King or Gandhi. For Rawls, this is a form of political conscience rather than an individual one. So, the difference between the conscience of a militant and that of a civil disobedient is that for the militant, his conscience does not appeal to the sense of justice of the majority or those having effective political power. The civilly disobedient must, for Rawls, show fidelity to the ‘basic structure’ and that his dissent is only to remedy the divergence from this ideal.

III

Rawls lays down the following conditions for civil disobedience: First, civil disobedience must be limited to cases of a clear violation of principles, such as infringement on liberty. Violations of the ‘difference principle’—in misuse of taxes, distribution of wealth and opportunities—are harder to track with clarity and so civil disobedience must avoid such less clear injustices. Rawls is of the opinion that if the principles of liberty were protected, the other

²⁵ Hugo A. Bedau gives a wider and more inclusive definition of civil disobedience: “...acts which are illegal (or presumed to be so by those committing them, or by those coping with them, at the time), committed openly (not evasively or covertly) non-violently (not intentionally or negligently destructive of property or harmful of persons) and conscientiously (not impulsively, unwillingly, thoughtlessly etc) within the framework of the rule of law (and thus with a willingness on the part of the disobedient to accept the legal consequences of his act, save in the special case where his act is intended to overthrow the government) and with the intention of frustrating or protesting some law, policy or decision (or the absence thereof) of the government (or some of its officers).” See H.A. Bedau “Civil Disobedience and Personal Responsibility for Injustice” in *Civil Disobedience in Focus* ed. Hugo Adam Bedau (London: Routledge, 1991) 51

²⁶Howard Zinn, *Disobedience and Democracy* (New York, Random House, 1968) 199f

²⁷John Rawls *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971) 364

²⁸ID at 365

²⁹ ID at 366

³⁰ID at 366, 367

violations would not go out of hand either. Second, all legal means of redressing violations must be extinguished or should have failed. Third, in circumstances in which different groups are victimised in similar ways, these different groups must cooperate and put their claims together, so as to avoid chaos and anarchy.³¹

IV

The principles of justice are derived at the hypothetical original position through the conception of an abstract, context-free individual behind the veil of ignorance. Rawls then assumes that all people strictly comply with the laws in this state. They, therefore, have a natural duty to justice and his ideal state is one that is well-ordered. He then juxtaposes these assumptions on to a non-ideal reality. My criticism in the next chapter takes this juxtaposition and offers a critique. I take issue with Rawls' presumption that non-ideal institutions can work like machines based on the rules and principles that emerge in his ideal universe. Civil disobedience, for Rawls, is only a stabilising device, or a last resort mechanism to bring institutions back on track.

³¹John Rawls "Definition and Justification of Civil Disobedience" in *Civil Disobedience in Focus* ed. Hugo A. Bedau (London: Routledge, 1991) 112

CHAPTER 3

TOWARDS AN ALTERNATIVE THEORY OF CIVIL DISOBEDIENCE

I

A strong line of criticism of Rawls' theory of civil disobedience has been on the grounds that repairing only structural injustices is not enough. The aim of civil disobedience is to repair even historical injustices. A. John Simmons makes a case for this through what he calls *historical illegitimacy* as something that Rawls' non-ideal theory does not account for.³² For Rawls, the object of civil disobedience is to rectify the injustice in institutional rules and the basic structure of society. Historical illegitimacy, for Simmons, is “wrongful conduct in the history of the state’s subjection of persons or territories to its coercive powers”.³³ That is, the moment of time in history when a certain group comes under the authority of the state illegitimately. This illegitimate subjection taints the state’s authority over that group.³⁴

By doing this, Simmons includes marginalised groups who have historically been illegitimately subjected to coercive power of the state (Dalits, tribes, slaves, displaced indigenous population etc.). Simmons suggests that Rawls’ work cannot account for historical illegitimacy, but merely for structural disobedience, and hence, is unable to justify civil disobedience by historically subjugated groups who want to rectify historical wrongs committed. Simmons, through Thoreau, gives the example of United States’ annexation of territories belonging to Native Americans and Mexicans. Now, for Rawls, by making some structural adjustments such as introducing constitutional democracy and fundamental rights, the consequences of this historical subjugation can be laid to rest. Simmons, therefore, argues that within the Rawlsian paradigm, Thoreau’s civil disobedience, or civil disobedience by aboriginals, or Palestine (against Israel) can never be justified. In a subsequent chapter, I discuss how the leaders of the Chengara agitation in Kerala also claim a historical illegitimacy done to them as justification for their civil disobedience. Their argument is based on the narrative that Adivasis and Dalits are the original indigenous inhabitants of this land but were then ousted by intruders and removed to the margins, thus being illegitimately subjugated.

II

“Atomism” is one of the most significant criticisms of not only Rawls, but also a lot of liberal theory itself. The critique is against the conception of the liberal self as an abstract artificial product of a theory that is concerned with the defence of individual rights and, to this end, makes the independent individual the normative focus of attention.³⁵ For Charles Taylor, the peculiar characteristic of modern political consciousness is the concept of a rights-bearing individual.³⁶ In fact, a doctrine of “primacy of rights” is possible only when based on a conception of the atomistic individual.

A central notion in Rawls is of the “original position” in which persons behind the veil of ignorance decide the principles of justice and the basic structure of society. In this case, I raise

³²A. John Simmons “Disobedience and its Objects” in *Boston University Law Review* [Vol. 90: 2010]

³³ID at p. 1824

³⁴Susanne Sreedhar “Anarchism, Historical Illegitimacy and Civil Disobedience: Reflections on A. John Simmons’s Disobedience and Its Objects” in *Boston University Law Review* [Vol. 90, 2010] 1834

³⁵Rainer Forst *Contexts of Justice: Political Philosophy Beyond Liberalism and Communitarianism* Trans. By John M. M. Farrell (Berkeley: University of California Press, ed. 2002) 6

³⁶ Charles Taylor *Philosophy and Human Sciences* (Cambridge University Press, 1985) 189

the issue of how the resulting set of principles in this scenario would be too individualistically oriented and too context-independent. Juridical discourse can make claims of universality and impartiality only by means of these contextless and detached individuals.³⁷

Utilitarianism reduces society to an aggregate sum of individual preferences. But following a more Kantian conception of the self, in modern liberal theory, the individual is treated as a rational choosing self who is able to stand back from his situation and make independent and autonomous choices about what ends he ought to achieve. In this tradition of western thought, the individual emerges as foundational, in whom rights are vested. The basic problem with this formulation is that such an individual is an abstraction and not characteristic of our life world.³⁸ He can exist only in ideal theory. It is through a dialogic process between the individual and the social that we must place the self in. For example, social contract theory often suggests that our obligation to the state is by virtue of our voluntary consent to it. However, the fact is that our socio-political obligations haven't been freely and voluntarily chosen, rather it is inherited from our location in time and place. A theory of civil disobedience that arises from such an atomistic conception of the self will be unable to account for the reality of the situation.

Rawls also does not account for the irreducible plurality of human values. He is sceptical about how we would know what is good or what is bad for the other, and so, we must leave it to the other to decide. Rawls also maintains that in a well-ordered society, citizens hold the same principles of right and the same principles by which conflicting claims are heard and decided.³⁹ What Rawls does is to merely incorporate pluralism into his theory. However, for philosophers of radical democracy such as Laclau and Mouffe, pluralism is not just a condition but is constitutive of modern liberal democracy.⁴⁰

The other problem with this atomistic society is that power relations are virtually absent from his account. In contrast, civil disobedience embodies a situation where power-free relations are impossible. Values are always determined through contestations and struggles between different moral standards. However, in the Rawlsian paradigm, this is often simplified as the unfolding of straightforward rationality and as something that can be resolved through communication.⁴¹

III

Rawlsian civil disobedience assumes that the agents of disobedience consider their status quo to be, nearly or reasonably, just. Several philosophers, including Rawls and Kent Greenwalt, use this assumption of reasonable justice to make two major claims: (a) that dissenters have to accept arrest and punishment *because their submission shows acceptance of the prevailing system, and*, (b) they have to act non-violently *because this shows a larger fidelity and political obligation to the state*. A major criticism of this assumption is that it is empirically and historically untenable. Applying such assumptions to actual acts of civil disobedience would present a false picture of contemporary political resistance in India. This will be made clear in the case studies discussed in the later chapters, which show that protestors and activists do not assume that the existing society is reasonably just. Their acts of collective resistance are not merely to undo the friction in between them and the power structure. Peter Singer compares Rawls' just society to be like a good piece of machinery—"there may occasionally be a little friction, and some lubrication will

³⁷Rainer Forst *Contexts of Justice: Political Philosophy Beyond Liberalism and Communitarianism* Trans. By John M. M. Farrell (Berkeley: University of California Press, ed. 2002). 7

³⁸ Usage of "life-world" is discussed in the next part of this chapter.

³⁹ Anna Marie Smith *Laclau and Mouffe: The Radical Democratic Imaginary* (London: Routledge, 1998) 119

⁴⁰ ID at 119

⁴¹ Anna Marie Smith *Laclau and Mouffe: The Radical Democratic Imaginary* (London: Routledge, 1998) 121

then be necessary, but the basic design needs no alteration”.⁴² The criticism is that what Rawls assumes to be a just machine is never assumed as such by resisters or social activists engaging in civil disobedience. Yet they submit to punishment or believe in non-violence. These may be for other reasons and those reasons need not be based on a belief in reasonable justice.

Both Peter Singer and Rawls represent a weak form of civil disobedience, as if threatened by its possible force, a deep fear of disorder and anarchy at the thought of the law being broken. Although Peter Singer expands on Rawls’s conception of the ‘political sense of justice’, they both suggest the need for a *prima facie* general fidelity to law; one should have respect for and maintain fidelity to the legal system and it is out of this fidelity that they must also break the law publicly and accept the consequences of one’s act. Peter Singer calls this “limited disobedience”.⁴³

Taking a more historical view, David Lyons makes an argument for a similar claim.⁴⁴ He gives the example of chattel slavery, British colonial rule and King’s fight against Jim Crow to argue that none of these protesters regarded the prevailing system as reasonably just; neither did they accept a moral presumption that favoured obedience to law.⁴⁵ David Lyons looks at Thoreau’s fight against slavery, when Thoreau argued that there could be no moral presumption favouring obedience by slaves to laws that support their enslavement. Similarly, we can look at the case of Gandhi who fought against a racist, degrading and brutal colonial rule and King’s fight against the racist system of Jim Crow in the United States. Thoreau, Gandhi and King, did not presume obligation to laws; they believed that certain systems needed a fundamental change. Their acceptance of legal sanctions was strategic and not a moral judgment.⁴⁶ Lyons in this context observes, “I think the assumption can rarely, if ever, be made. Few, if any, human societies have been free of significant, deeply entrenched, systematic injustice.”⁴⁷

This is important because in the face of deeply entrenched systematic injustice, it is the agent of resistance that needs to be protected for being disobedient and not the ones acting under obligation to unjust law and those that thereby perpetuate the injustice. The critics of civil disobedience often hide behind the argument of political obligation in a constitutional democracy. But this can prove to be a mere support for the status quo and not the resolution of any conflict. Therefore, the point I make through this criticism is the scepticism of assuming a reasonably just condition the way Rawls does. A structure of constitutional democracy does not directly mean that reasonable justice undergirds the system.

IV

*“Political obligation” is the doctrine that everyone has a moral reason to obey all the laws of his or her own state and this reason binds independently of the content of law.*⁴⁸

Having political obligation simply implies that in ‘reasonably just states’ we have a *prima facie* obligation to obey the law and that this obligation of the citizen is binding, independent of the content of the law. The flipside of political obligation is argued by Thoreau. For Thoreau, the government, and the law it makes, have no legitimate claims for expecting obedience from

⁴²Peter Singer “Disobedience As A Plea For Reconsideration” in *Civil Disobedience in Focus* ed. Hugo A. Bedau (London: Routledge, 1991) 125

⁴³ID at 123

⁴⁴ David Lyons “Moral Judgment, Historical Reality and Civil Disobedience” in *Philosophy and Public Affairs* (Vol. 27 No. 1; 1998) 33

⁴⁵ ID at 33

⁴⁶ ID at 40

⁴⁷ ID at 46

⁴⁸Leslie Green “Who Believes in Political Obligation?” in *For and Against the State New Philosophical Readings* ed. John T. Sanders and Jan Narveson (Maryland: Rowman& Littlefield Publishers, 1996) 7

all.⁴⁹ Thoreau, taking an anarchist stance, is at the other extreme of the political obligation debate. My criticism, however, is limited in its scope and falls in between both these positions.

In the previous criticisms, I have suggested that empirically as well as historically, the agent of dissent never considered there to be a society that was *prima facie* nearly just. Rawls, on the contrary, suggests that the dissenter should *assume* the reasonable justness of the state. In fact, civil disobedience can arise *only* in a nearly just state. A similar contradiction between theory and practice arises in the case of political obligation as well.

Theorists of political obligation claim that we have a *prima facie*, content independent obligation to obey the law in a just state. But the civil disobedient makes a more nuanced claim of political obligation by saying that they also obey the law, but this obedience is neither *prima facie*, nor is it content-independent. I show this through the case study in the next chapter. I make a theoretical argument to establish this claim *against* political obligation. Rawls traces natural duty back to the original position. Since persons in the original position would wish for just institutions that function effectively and are stable, they would accept, among other natural duties, a duty to create and support just institutions. We have a natural duty towards these principles of justice at all times, because we pick the principles of justice in the original position. This natural duty in ideal theory, when translated into a non-ideal universe, squarely falls within the above definition of political obligation.

In empirical experience, however, is there a straightforward belief in obligation to law? What I want to argue, invoking Leslie Green, is that there is no such thing as political obligation. However, I am not suggesting that we must not obey laws. There is a distinction that I am drawing between the obedience of law and political obligation. Even an anarchist can believe that it is wrong to murder people and that there is a moral reason for complying with the law against murder. In reasonably just states, several such laws are compatible with what we morally ought to do anyway. So, empirically, it becomes hard to understand why we obey the law.

We follow laws for several reasons. These could be out of habit, or for sociological reasons, for cooperation and the threat of punishment.⁵⁰ Leslie Green, however, suggests that it is an argumentative jump to move from this to political obligation and then equate that with obedience.⁵¹ We ought to refrain from violence, robbery and crime regardless of the law. We ought to keep our promises even if there were no contract law that enforces this. But as Leslie Green notes, political obligation goes a step further and says that when the state requires an individual to act in a particular way, it “itself changes our moral position by giving us further duties or giving existing ones a new source of validity”.⁵²

In modern states, some notion of morality overlaps with positive laws. This is also why it is hard to have an empirical statistical study of what citizens believe about their obligation to obey the law.⁵³ Leslie Green is trying to basically make the following argument. When an individual says that he believes in following the law, it is basically hard to say what he exactly means by that. Does this obedience emerge from a sense of political obligation? Leslie Green draws this analogy with another set of similar questions, juxtaposing political obligation with the question of one’s belief in god. If a person reveals that he believes in god, what does he mean by this? It could mean anything from ‘there is some meaning in life which is god’, or ‘the order in

⁴⁹See Henry David Thoreau “Civil Disobedience” in *Civil Disobedience in Focus* ed. Hugo A. Bedau (London: Routledge, 1991) 35, 36

⁵⁰Max Weber “The Concept of Following a Rule” in *Selections in Translation* ed. W.G. Runciman; trans. E. Mathews (NY: Cambridge University Press, 1978) 99...”The defining characteristic of ‘social life’, its ‘formal’ property, according to Stammeler, is that it is a ‘rule-governed’ communal life, consisting of reciprocal relationships governed by external rules.

⁵¹Leslie Green *Authority of the State* (Oxford, Clarendon Press, 1988) 226

⁵²ID at 226

⁵³See, Leslie Green “Who Believes in Political Obligation?” in *For and Against the State New Philosophical Readings* ed. John T. Sanders and Jan Narveson (Maryland: Rowman& Littlefield Publishers, 1996)7,8 and 12

the universe is god?. It need not necessarily mean god in the precise manner of the Catholic Church's conception of god.⁵⁴ Similarly, most lay people may believe in obeying the law but it is hard to know what this relation of obedience is, and Leslie Green suggests that in most cases it is not out of political obligation but other set of reasons. We obey laws and there are good reasons to do so. I suggest that we still do not have a *prima facie*, content-independent reason to obey the law.

V

Rawls, Singer and Bedau insist that non-violence fundamentally defines civil disobedience. I keep Gandhi out of this discussion because the notion of *Ahimsa* in his *satyagraha* is far broader than non-violence or passive resistance. John Morreall, in his essay "The Justifiability of Violent Civil Disobedience", responds to this question of non-violence with some scepticism. His essay attempts to establish certain situations where violent civil disobedience is justifiable.⁵⁵ He broadens the definition of violence by including psychological violence as well. Violence is not just about sabotage, assassination, destruction of public property and street fighting. It is also not about endangering life and limb or inciting other forms of physical violence. Psychological violence can be far more damaging than mere physical injury.⁵⁶ But what seems to be an interesting line of argumentation also harkens back to classical western liberal political philosophy. Morreall pushes violence in a debate over ownership and private property. He says, "*We can do violence...not only through bodily harm or by diminishing autonomy through coercion, but also by not respecting one's right to own and control property.*"⁵⁷

Morreall's argument is that ownership of private property is like an extension of the self, and hence, violence to privately owned property must be treated as if it is an act of violence upon the self. In doing so, he rejects the difference between mistreating a *person* and mistreating a *thing*.⁵⁸ Such a type of argument is often taken by the Indian judiciary as well, such as in *Railway Board, New Delhi v. Niranjan Singh*⁵⁹, in which the Supreme Court says, "*The exercise of those freedoms [freedom of speech and expression, Article 19(1)(a) of the constitution] will come to an end as soon as the right of someone else to hold his property intervenes. Such a limitation is inherent in the exercise of those rights...*"

So if Rawls insists so definitively on non-violence, he would then reject not only direct violence but also insist on respecting ownership and control over property—"the rights one has to autonomy and to *control* over his property must also be respected."⁶⁰ (emphasis is original) Rejecting this would mean denying several past strategies such as "*rail roko*" (stopping trains), which many factions in India often employ by symbolically sitting on railway tracks preventing trains from moving. The *rail roko* would also be violent disobedience and, hence, unjustified as per Rawls. This is because Rawls says that civil disobedience is about *persuasion* and *appealing* to the conscience of the law makers. However, Morreall asks, "what's the point in breaking the law" if most actions are violent and, hence, unjustified? Ruling out coercion, it becomes unclear why one should break the law itself if there is a *prima facie* duty towards the state, a duty to respect their rights, autonomy and property. This is a significant criticism of Rawls and Singer for whom civil disobedience is about a 'plea' or a mere *convincing*.

⁵⁴ID at 7-8.

⁵⁵John Morreall "The Justifiability of Violent Civil Disobedience" in *Civil Disobedience in Focus* ed. Hugo A. Bedau (London Routledge, 1991) 130-143

⁵⁶ID at 132, 133

⁵⁷ ID at 133

⁵⁸ID 133

⁵⁹ AIR 1969 SC 966 (para 13)

⁶⁰John Morreall "The Justifiability of Violent Civil Disobedience" in *Civil Disobedience in Focus* ed. Hugo A. Bedau (London: Routledge, 1991)

If John Morreall offers a criticism of Rawlsian non-violence, the other extreme position on violence is taken by activists like Malcolm X who criticise Martin Luther King's non-violence as a form of passive suffering or a weakness that keeps one under the check and control of the powerful.⁶¹ Malcolm X, in one of his most penetrating attacks on King's non-violent resistance, says that just as the slave-master of that day used Tom, the 'house Negro', to keep the 'field Negroes' in check, the same old slave-master today has black people who are nothing but modern Uncle Toms to keep in check, to keep under control, to keep the angry black people passive, peaceful and non-violent.⁶² His criticism is also of the shallowness of non-violence, its naive simplicity. Its limits and effectiveness in the face of the immensely powerful state, its police and its army, are questionable. For Malcolm X, revolution is always bloody, hostile and violent; it overturns and destroys everything.

VI

Starting from the Rawlsian definition of civil disobedience and accommodating some of the criticisms discussed above, I move towards an alternative theory of civil disobedience. In the remaining parts of this chapter, the attempt will be to establish some characteristics of what this alternative theory could be.

Who is the 'subject' of a civil disobedience movement? What is the conception of the "self" of the civil disobedient? The communitarian disagreement with Kantian liberals such as Rawls is of the illegitimate detachment of the individual from his political community.⁶³ An individual is shaped not just by rational deliberations, but also by the roles played by him in a specific community. Taylor's criticism is of liberal theories based on "situationless", "punctual" and "atomistic" theory of persons, which Michael Sandel also discusses in *Liberalism and the Limits of Justice*.⁶⁴ Amongst other things, Sandel criticises the Rawlsian self to be an "unencumbered self" lacking a qualitative identity, an experience of being in an ethical community, a self that lacks in self identification. For Rawls, society or the community is "chosen" by the self, and none of these choices are indispensable. But for the communitarians, the self is co-constituted by the community, and one does not exist without the other. The sense of community is not a feeling, a preference or a choice but is what defines who we are.⁶⁵ Rainer Forst compares the Rawlsian self to a "legal person" carrying rights abstracted from social context (living in a "political community") and universalistic. Instead, he calls the communitarian self an "ethical person" situated in an ethical community amidst several conceptions of good.⁶⁶

Civil Disobedience is symbolic of the conflict between the "legal person" and the "ethical person". Without getting deeper into this liberal and communitarian debate, I merely want to extract a point out of this in order to proceed with an alternative theory of civil disobedience. If the Rawlsian self is atomistic and ignorant of contexts, the communitarian self is radically situated and context obsessed. For current purposes, however, we need to avoid both these extremes. We need a conception of the self, which is co-constituted by its community, and yet is able to distance itself from this community and make rational choices. Such a self is engaged in a dialogic relation with the world, a participatory relationship.

The ethical point of departure for a theory of civil disobedience cannot be a detached atomistic individual. An act of civil disobedience is a demand for justice, echoing an experience

⁶¹ Herbert J. Storing "The Case Against Civil Disobedience" in *Civil Disobedience in Focus* ed. Hugo A. Bedau (London: Routledge, 1991) 88

⁶²ID at 88

⁶³ Anna Marie Smith *Laclau and Mouffe: The Radical Democratic Imaginary* (London: Routledge, 1998) 117

⁶⁴See, Rainer Forst *Contexts of Justice: Political Philosophy Beyond Liberalism and Communitarianism* trans by John M. M. Farrell (Berkeley: University of California Press, 2002) 8

⁶⁵ ID at 11

⁶⁶See ID at 25-28

of suffering. Breaking a law for a conscientious moral cause requires us to accommodate an “ethical identity” within the rights-carrying “legal persons”. What is the ontological starting point of such a self of civil disobedience? I suggest it ought to be a philosophy of experience. In the remaining parts of this chapter, my aim is to only hint at possible theory of civil disobedience. And the point of departure for such a theory ought to be from “*lived experience*”.

The Rawlsian atomism, which is criticised for being reductionist in understanding the human experience, is made possible only within an “analytic” explanatory framework. *Analysis* is a way of thinking. It is a process of breaking things up into its components, dividing them up and understanding the parts as a means to understand the whole.⁶⁷ My criticism is not of the analytic method in itself, for it has its uses and is a powerful tool of study. However, when it comes to studying dissent, social movements and conflicts, the analytic study could prove to be misleading. Rawls in his chapter on civil disobedience is not making claims of studying dissent or what leads to civil disobedience. But this is also why Rawls’ theory of civil disobedience is inadequate. Rawls’ analytic “ideal-non-ideal” theory of civil disobedience loses on one important aspect—it loses a study of the dynamics and the experiences of injustice that lead to the civil disobedience. To put it differently, the analytic method in cutting up the concept into its parts, loses the whole. In the context of human experience, I suggest that the parts may be useful but they can never be exhaustive of the whole; that somehow human experience is always in excess, which transcends the analytic.

The ‘analytic method’ breaks up the individual into a sort of “legal person”⁶⁸ but, in doing so, is forgetful of the larger human experience, the experience of suffering, of loss or humiliation, shame and anger, which leads to dissent in the first place. Each method is a perspective. The Rawlsian perspective begins from a certain conception of the self, which has its advantages. Now, this conception of the self may be apt for his theory of justice, but my criticism is limited to his theory of civil disobedience and that his conception of the self is inadequate for the latter. If the Rawlsian method is one perspective, my suggestion of a theory based on a philosophy of experience would lead to another perspective on civil disobedience, a perspective that maybe more empirical and grounded.

A theory of civil disobedience, therefore, must be to move towards the *life-world* of the protesters, the justification of civil disobedience *has* to emerge from here. I use *life-world* as used in phenomenology (*lebenswelt* in German) where the world is directly and immediately experienced in the subjectivity of everyday life. This is distinguished from other “worlds”, as in of the sciences, which may be objective and mathematical. The Rawlsian ideal theory is another such world where the individual does not inhere in the life world. However, the individual in the life-world inheres in an inter-subjective, everyday life as experienced by us.⁶⁹ An analysis of the life-world is also to understand the foundational structure in which the human being is rooted, constituting the common, communicative surrounding world around us.⁷⁰ This is the philosophical basis for the argument that I am trying to make. Analysis, theory and sciences are an abstraction from the *life-world*, from experiences of time, space, the body and the very givenness of our self.

‘Experience’ in its literal usage is the foundation of human existence. Experience is just given to us; it is not something we strive towards. Experience is our very *being-in-the-world* and it is this directness of it, this immediacy of experience that makes it so hard to talk about. I use

⁶⁷ Lawrence Hass *Merleau Ponty’s Philosophy* (Indiana University Press, 2008) 45-47

⁶⁸ See, Rainer Forst’s usage of “legal persons” and “ethical person” in Rainer Forst *Contexts of Justice: Political Philosophy Beyond Liberalism and Communitarianism*; trans. By John M. M. Farrell (Berkeley, University of California Press, 2002)

⁶⁹ See Alfred Schutz *The Structures of Life-World* (Evanston: North Western University Press, 1989)

⁷⁰Prasenjit Biswas and Chandan Suklabaidya *Ethnic Life-Worlds in North-East India: An Analysis* (New Delhi: Sage, 2008) 18

Sarukkai and Guru's understanding of lived experience as the basis for this argument.⁷¹ The first argument of Sarukkai that is of interest to us here is that of '*lived experience*'.⁷² Lived experience refers to certain parts of our experience that is just ours and can never be appropriated or experienced by someone else. A 'lived experience' is characterised by *being* the subject and not *knowing about* the subject. In being the subject, we do not have a choice or a freedom to be so. It is that part of our experience that we cannot choose, but we, by fact, inherit. The anthropologist can choose to spend time with a Dalit community in Maharashtra, eat the food and live in those ghettos. However, the Dalit herself does not have the 'freedom' to choose her experience of 'Dalitness' like the anthropologist does. "*Lived experience is not about freedom of experience but about the lack of freedom in an experience*".⁷³ (emphasis original). Sarukkai here is not naively claiming that nobody can know the experience of the other, but he is suggesting that there are certain 'lived experiences' such as a gendered experience (maybe of humiliation or shame or being ill-treated) as an experience that cannot be appropriated by anyone else (including theory).

If a family abuses its lower-caste house maid, it is assumed that the legal machinery can somehow resolve this crisis through its processes of evidence collection, summons, hearings, witnesses and judgments—manufacturing a belief of empathy, a belief of factual understanding of the events and, finally, a belief in justice. But isn't this entirely in the plane of abstractions? Isn't the realm of law marked by a "taking out" of the subject from the experience and placing that subject in the abstractions of courtrooms and proxy lawyers as empirical statistics and numbers, or as a debate in a legislative assembly, or even as words in a policy document? But the way we understand 'lived experience', this uprooting of the one experiencing it, is limited.

If the first argument was about 'lived experience'; the second is about the role of reflection, thinking and conceptualising "within" this lived experience. The threat that experience purports to epistemology is that it is far too subjective and personal; so the knowledge it will produce will also be subjective and relativistic and, hence, unreliable. But Sarukkai argues that this is a faulty conception of experience. Experience does, in fact, make way for reflection and reasoning, not leading to absolute subjectivity and relativism. The attempt is to argue that experience can be the grounds and the condition for producing knowledge.

Experience is fundamentally about what is felt by the subject; a feeling often associated with psychological state. And very often, experience is connected to direct, first-person experience. This is also the reason for suspicion of experience as a source of knowledge. Knowledge has to be more general, universally applicable, and hence, there has to be a human faculty, which goes beyond subjective experience. This human faculty becomes 'thinking'. Thinking is therefore cut off from experience. It is then presented as oppositions, as binaries between rationality and emotion, experience and knowledge. Thinking, rationality and knowledge are clubbed together and experience, feelings and emotions are clubbed together. For Sarukkai, this bifurcation is the central problem. Thinking and rationality are not devoid of or outside experience. He gets around it by invoking the notion of cognitive states.⁷⁴ As experiential beings, we are in one cognitive state or another. Another type of cognitive process is reasoning and analysing arguments. Reason, for example, is a cognitive process that can be described, shared and mutually understood. So, feelings and emotions are only one type of cognitive process within experience; rational thought is another. This is also why the notion of 'experience' cannot be reduced to absolute subjectivity or a universalised rationality. So, I

⁷¹ See Sundar Sarukkai, "Experience and Theory" in Sarukkai and Guru *The Cracked Mirror*; (New Delhi: OUP; 2012) 37

⁷² See Generally: Sundar Sarukkai, "Experience and Theory" in Sarukkai and Guru *The Cracked Mirror*; (New Delhi: OUP; 2012) 29-45

⁷³ Sundar Sarukkai, "Experience and Theory" in Sarukkai and Guru *The Cracked Mirror*; (New Delhi: OUP; 2012) 37

⁷⁴ Sundar Sarukkai "Understanding Experience" in Sarukkai and Guru *The Cracked Mirror* (New Delhi: OUP; 2012) 48

interpret Sarukkai to be suggesting that a philosophy of experience need not be supporting an anti-conceptual, anti-theory position.

Knowledge and judgement (even moral judgments and categorical imperatives) are seen as scientific truths, as fruits of non-subjectivist theoretical labour.⁷⁵ Experience is at best seen as a background condition (such as in the form of poetry and literature) but never as the ‘stuff’ of theoretical knowledge (as opposed to mathematics, logic etc). Following Guru and Sarukkai on this debate, the following are two conclusions that I want to state:

(a) They suggest that the definition of theory itself must be relooked at; it is not just about including non-western understanding of doing theory, but also of a theory, which is more inclusive of the ‘other’ rather than a theory that is Eurocentric, or hegemonic, Brahmanical.⁷⁶

(b) The other major point they make is to include ‘experience’ within the fold of theorising. An important element of experience is the lived experience, which resists appropriation. It is that which is essentially experienced by that individual (one’s personal experience of race-based discrimination) and the community (spatialised, such as a Dalit community in U.P.), and cannot be shared or experienced by someone else (like an anthropologist or a judge). But, they go further than this ‘lived experience’ to also say that there is no ‘pure experience’, which is pre-conceptual, pre-theoretical, unmediated and direct,⁷⁷ that all experiences also have a component of conceptual ladenness. And yet, the ethics of it is in a theorising that not just has experience as its background condition, but as its main framework and source of authority (authorial also, perhaps).⁷⁸

The need is to pull out civil disobedience from its ambiguity, from its debasement in western liberal theory, its reductionism into constitutionalism and politics. Yes, it is a political act but it is also a lot more than that. What must interest us is this excess that overflows from the merely politico-legal to the experiential. And, in this process of broadening the understanding of civil disobedience, in inserting the realm of experience in it, one cannot but hesitate to read Gandhi’s conception of Satyagraha into it, releasing it partially from its own political and religious context. This reinvention of Gandhi is necessary to appreciate his contribution to political and moral philosophy today. It is in the spirit of dichotomy of public versus private that Rawls says, “*At no point has a reference been made to other than political principles; ...religious and pacifist conceptions are not essential.*” For Rawls civil disobedience, “*Being an appeal to the moral basis of civic life, it is a political and not a religious act.*”⁷⁹

Gandhi would, on the other hand, make statements such as, “*...for me there are no politics devoid of religion. They subserve religion. Politics devoid of religion are a death-trap because they kill the soul.*”⁸⁰ Religion is not something private, and the political sphere in its state of ‘secularism’ kept away from anything religious and spiritual. Similarly for Gandhi, non-violence is not a political means to an end but a way of life. It isn’t hard to see the merit in this Gandhian claim that the political and personal is far more intertwined and nested than usually noticed. The role of *Satyagraha* in the Gandhian sense is to undo this apparent split. It is to bring *experience* back into our political lives and the vice-versa as well. It is to stand up to state when the conscience has been hurt, and the vice versa, to evoke principles of democratic individual rights in the realm of the home, the family, the community.

⁷⁵Gopal Guru “Experience, Space and Justice” in Sarukkai and Guru *The Cracked Mirror* (New Delhi: OUP; 2012) 107.

⁷⁶Sarukkai and Guru *The Cracked Mirror- An Indian Debate on Experience and Theory* (New Delhi: OUP; 2012) 227

⁷⁷Sundar Sarukkai and Gopal Guru, *The Cracked Mirror- An Indian Debate on Experience and Theory* (New Delhi: OUP, 2012) 227.

⁷⁹John Rawls “Definition and Justification of Civil Disobedience” in *Civil Disobedience in Focus* ed. Hugo A. Bedau (London, Routledge, 1991) 116.

⁸⁰Young India, 24.3.1924 as cited in Partha Chatterjee “The Moment of Manoeuvre” in *Debating Gandhi: A Reader* ed. A. Raghuramraju (New Delhi: OUP, 2006) 95.

The ethics of civil disobedience that Gandhi developed were out of his experience of the 1919 civil disobedience against the Rowlatt Act. With the violence that ensued at the Chauri Chaura, he realised an error in judgment he made. He admitted to having not heard and learnt from the opinions and experiences of others. However, Gandhi also learnt from this error, learnt more about the *Satya* of the *Satyagraha*—the ethics of it became more significant, the means of its practice. He explains in his Autobiography, “I wondered how I could have failed to perceive what was so obvious. I realised that before a people could be fit for offering civil disobedience, they should thoroughly understand its deeper implications...it would be necessary to create a band of well-trying, pure hearted volunteers who thoroughly understood the strict conditions of satyagraha.”⁸¹ From here was born his strict ethics of civil disobedience, a learning of truths from past errors, qualifications that entitle one to be a *Satyagrahi* and a mass movement based on following the *Satyagrahi* as a moral ideologue.

For Gandhi, Satyagraha and civil disobedience is a right inherent to every person, it need not be a legal right but it is a moral right. And it is also the duty of every person to resist and disobey an unjust law. But, with this right and duty comes a responsibility—there comes ‘self-restraint and self-discipline. Civil disobedience is a right, but only a certain qualified practice of civil disobedience can be right. This is the core of the form and structure of civil disobedience. It is non-violent in its most extreme form. Its search is for a truth, not of the cognitive kind, but of the *experiential*. The *satyagrahi* has to learn from the errors of the experience, truth has to be learnt by experimenting with the self. And with this sense of self-restraint and self-discipline arises the basic qualification to be disobedient but also be underscored by a norm of civility in its most ethical and authentic sense.

VII

To move beyond the atomistic conception of the self is to understand the *experiential* in the human. It is to understand the phenomenological *life-world* that one inheres in. This needs to be a framework not just for a theory of dissent, but for theorisation itself. When I argue that experience *is* conscience, I mean a second-order reflection, a standing back and thinking through one’s experience and then making choices. This *experience as conscience* is the inward turn that this paper suggests. Such a theory of civil disobedience would lead to a richer study of dissent and mobilisation, which includes understanding expressions, narrations, stories and emotions. I attempt this in Chapter 3 by understanding experiences through a narrative theory. This inward turn yields itself to a Gandhian philosophy of Satyagraha much better and allows us to distinguish between an “authentic” civil disobedience, which arises out of our experience as well as empathises with the experience of others. The inauthentic would be those that merely appropriate or subsume the experience of others to further their own cause, such as the politicians who often indulge in “fast unto death” or *rail roko* for personal gains and votes. And finally, this second-order reflection on experience (conscience) is compatible with non-violence. If one merely acted on experiences such as strong emotions of anger or frustration, it inevitably would lead to violence and anarchy. However, reflecting on the experience gives way to a more strategic and ethical non-violent dissent.

⁸¹Autobiography: Collected Works (vol. 39 p. 374 CW as cited in Partha Chatterjee “The Moment of Manoeuvre” in *Debating Gandhi: A Reader* ed. A. Raghuramraju (New Delhi: OUP, 2006) 95, 99

CHAPTER 4

NARRATIVES AND CIVIL DISOBEDIENCE —THE CASE-STUDY OF AIKMM

I

In talking to social activists leading civil disobedience movements, a question they love to respond to is, “So what’s the story behind this?” The response is usually an interesting web of stories, events, incidents, hearsay and theories. The narratives that surround a social movement are of utmost significance and are always imbued with deeper meanings leading to a nuanced understanding of circumstances. To support a civil disobedience movement requires a thorough justification of why the law had to be broken. I argue that these justifications for disobedience have to be analysed also through a hermeneutics of its narratives. It is not enough to look for justifications in purely legal arguments, which are often reductive of experiences. I suggest in this chapter that narratives of movements are central in understanding the justifications of civil disobedience.

Until recently, most theorists of social movements have paid attention to (a) how social movements are organised and strategised, (b) what their demands are and (c) what their relation to the state has been.⁸² In fact, theorists, until the 1960’s, focused on collective behaviour, mob violence, anarchic nature of dissent etc. However, with the civil rights movements, anti-war and other movements of Western Europe and America in the 60’s and 70’s, theorists started focusing on the instrumental value of social movements, their constitutional and democratic principles involved, organisational behaviour, methods and praxis etc. These focused on the rationality of social movements. Too much of focus on the rational left out the emotional and cultural elements of social movements.⁸³

With its focus on rationality and institutionalisation, the sociology of social movements has forgotten that several other alternative structures of articulation exist. A study of social movements has to explore the emotional aspect of the event. It is emotions that influence our values and thus lead to action. Emotions of shame, humiliation, empathy, frustration; it is this that gives the impetus to act, that provokes and puts us in motion. Social movements, therefore, are a channelling and organising of these emotions in order to achieve a common end.⁸⁴ Civil disobedience movements often seem to direct an emotion of anger towards the opponent. Helen Flam notes, “Since it normally constitutes the prerogative of the powerful, social movements have to reappropriate the right to feel and display this particular emotion by their members”.⁸⁵

Civil disobedience movements, which are engaged in minority-identity politics such as the Dalit and feminist movements, have to begin with generating a sense of pride and hope to replace emotion of shame, humiliation or guilt experienced due to injustice. It requires an initial building up of an identity, articulating it in its positivity. So, along with reappropriation of anger directed at the opponent, the resisters have to generate emotions of pride in the ‘self’ as well. This also acts as a motivator to mobilise and spread awareness. Another emotion that has to be

⁸² See *Theories of Social Movements*, Editors of Salem Press (Pasadena, Salem Press: 2011) 3

⁸³ See ID

⁸⁴ Ron Eyerman “How Social Movements Move: Emotions and Social Movements” in *Emotions and Social Movements* ed. Helena Flam and Debra King (NY: Routledge, 2005) 41

⁸⁵ Helena Flam “Emotion’s Map: A Research Agenda” in *Emotions and Social Movements* ed. Helena Flam and Debra King (NY: Routledge, 2005) 20

overcome is that of fear. Fear could be a strong part of a civil disobedience movement. One requires courage in order to break an unjust law and face consequences for it, facing the police and the courts and continuing to stand by the reasons. The identity articulation has to construct emotions, which overcome this fear.

In an earlier chapter, we discussed that for Rawls, civil disobedience was a purely “political act” because “it is an act guided and justified by political principles, that is, by the principles of justice, which regulate the constitution and the social institution”. Rawls goes on to say that to justify civil disobedience, one does not appeal to principles of “personal morality or to religious doctrines, though these may coincide...”. The political conscience that drives civil disobedience for Rawls has its roots in his atomistic individual from the ideal theory. The criticism is of this separation of the political from religious, or of emotion from the rational, of law from morality. I shall discuss a case study of civil disobedience within the framework of the following thesis. *First*, the dichotomies of reason versus emotion or expressive versus instrumental, do not hold good in a study of dissent firmly grounded in experience.⁸⁶ *Second*, narratives and storytelling form a central part of social movement. Social movement actors often use storytelling and narratives to advance their goals. *Third*, to understand a social movement in terms of narratives is to understand the event in its broadness, and to accommodate for the emotional and cultural in it. It helps in overcoming faulty dichotomies of ‘reason and emotions’ or ‘instrumental and expressive’. The case study that I will discuss in this chapter has to be read in conjunction with this narrative-based understanding of civil disobedience.

II

This case study is primarily based on my interactions with Mr. Shashi Bhushan Pandit, the General Secretary of the *All India Khabadi Mazdoor Mahasangh* (AIKMM).⁸⁷ AIKMM is a union of waste pickers and rag pickers (*Khabadimalla*) in Delhi and the NCR (National Capital Region). My interview with him was to discuss a protest that was organised in Ghazipur against the establishment of Waste-to-Energy incinerators for the region. AIKMM’s Shashi Bhushan was leading this campaign with more than 300 people who gathered on 24th March, 2012. Their demand was the shutting down of this Waste-to-Energy incinerator, which generates pollutants detrimental to health and environment. The mechanism, they claim, is too expensive; it does not produce as much energy as was initially claimed. Far from eliminating landfills, these waste incinerators produced toxic ash and residues of nearly 200 toxic chemicals and heavy metals. Also, these incinerators affect the livelihood of over 200,000 waste pickers in and around Delhi for whom recycling waste is the primary source of livelihood.

In this section, I will narrate one such story of an incident of spontaneous disobedience that erupted in Delhi in 2010 in a conflict between the rag pickers (*khabadimalla*), the municipality and the contractors.

As per Mr Shashi Bhushan, out of all the household waste produced in Delhi, almost 80% of it is reusable. About 50% of the waste is organic (biogas, compost) and 30% can be reused, recycled etc. Only 20% of the waste is unusable. “Segregation at source is the best option we have now,” said Mr. Shashi Bhushan drawing attention to the fact that the rag pickers traditionally do this function of segregating the garbage and separating organic waste from the rest.

⁸⁶ For example, reasoning can also emerge out of emotions. If the emotion of fear is one form of experience in one cognitive state, understanding the reasons behind my fear another type of experience in another cognitive state. These two acts are not distinct but lead to one another. See Sundar Sarukkai “Ethics of Theorizing” in Sarukkai and Guru *The Cracked Mirror* (New Delhi: OUP, 2012)

⁸⁷ Interviews conducted in New Delhi in August, 2013. The quotes are from this interview, which was mainly in Hindi and translated to English by myself.

There are also Supreme Court judgments, which order municipalities to include the unorganised sector of rag pickers within the solid waste management practices. But, parallel to this judicial awareness is the increasing privatisation of the sector. Garbage management is outsourced to large private entities where companies earn more with every unit increase in garbage collected and deposited at the landfill. The calculations are tonnage-based, and the company is always in this fight to collect as much garbage as possible so as to make more money. The logic of waste pickers and segregation at source definitely does not fit into the logic of this micro-economy. Now, the municipality is also introducing incinerators for the garbage collected in landfills. Mr Bhushan claims that if the landfills polluted the soil until now, the incinerators will pollute the air.

Within this context is the NDMC and M/s Ramky Environment and Energy Ltd (hereinafter Ramky) who were given a contract for garbage management and disposal in the New Delhi region. The revenue is based on landfill discharge per tonne. However, individual rag pickers, who practice segregation at source, are seen as eating into the revenue of Ramky. The company appointed bouncers whose job was to harass the rag pickers and evict them. The bouncers (*goondas*) would forcibly collect anything between Rs. 1,000 and Rs. 7,000 from the rag pickers monthly. Several rag pickers had to leave their livelihood because these bribes were becoming unaffordable. One of the later demands that AIKMM made was to ask the company for payment receipts for these bribes made.

AKIMM, therefore, decided to go on protests and *dharnas* against NDMC. They filed an RTI demanding the contract (MoU) between NDMC and Ramky but the company refused it at first. In the 2nd appeal, however, Information Commissioner Shailesh Gandhi on 21st August, 2009, ordered the MoU to be given to the appellant within a month.

Jabbar is a rag picker who works and resides next to the community garbage bin on the street parallel to the Reserve Bank of India in New Delhi. This falls under the NDMC jurisdiction (New Delhi Municipal Corporation).⁸⁸ On a fine day, a bouncer came to Jabbar and demanded that he vacate the site within the next ten minutes. Jabbar refused and instead suggested to him that this was legally their source of livelihood and they had a right to be there.

Mr. Bhushan kept citing anecdotes about how the problem is not about one or two individuals, but thousands of rag pickers in the city who are left at the mercy of these companies and the municipalities. One of the demands of AIKMM is the need for a specific law that protects the rights of the rag pickers. “Our conflict is with the municipality, and your company bouncers have no right to evict us.” The bouncer threatened him with violent consequences if they did not vacate the place. Jabbar and a few others, who worked at the site, stubbornly did not move. Mr Bhushan told me that Jabbar had been working at that very garbage site for the past twenty four years and he had no place to go if evicted from there.

Ten minutes later, the bouncer pushed Jabbar away, shut the garbage can and locked it down. Ramky had introduced these garbage cans with locking systems in several parts of Delhi. Mr. Bhushan hinted, “Now we know why locking systems were installed in these garbage cans.” By this time, a few other rag pickers from nearby streets had collected at this place. The tension and fear was growing amongst them. Jabbar immediately dialled Mr. Bhushan’s phone asking him what to do.

Shashi Bhushan felt that this was a moment that called for disobedience. He suggested that Jabbar immediately break open the lock. By then, another person, Raghunath, arrived, updating Mr. Bhushan. “Raghunath is a young and aggressive comrade in his late twenties, who was getting frustrated by the day’s affairs.” Mr. Bhushan narrated to me the lecture he made to Jabbar and Raghunath. With the tone of a revolutionary orator, he said, “Raghunath, if we do not do this now, if we do not break open this lock right now... we might ourselves lock up all the

⁸⁸ Garbage is collected by informal means into the community garbage cans. The municipality is responsible for managing the waste from this point onwards. Ramky is the contractor that is contractually in charge of this site.

garbage cans in Delhi and just leave...we are here to fight this company. If we don't fight them right now, we might as well wrap up and run away like cowards."

"If this is not what you want; *if you want these locks to be opened forever... we have to break open these locks right now*. If you decide to break it after he leaves, it's useless." This adequately provoked Jabbar. He picked up a brick and smashed the lock open. The bouncer immediately called the police, which was now on its way to the site. Jabbar, Raghunath and other union members and rag pickers, who had collected there, now suddenly felt threatened by the coming of the police. Mr. Bhushan, however, was glad that the lock was broken and the police was on its way. "It's the police that we have to deal with now." He was confident that the police would not demand that these poor rag pickers be evicted from the place. "We did not want to fight with these contractors, they don't listen. It is the law that we have to depend on. And so, the government was the party to the conflict, not these contractors." "Our aim is to get to the government because it's ultimately the government that gets policies made for us anyway." Jabbar remained nervous thinking, "Bhushan is easily giving long lectures like a politician...but what might actually happen is still unclear."

The police then arrived at the site. The company bouncers immediately complained to the police and said, "These rag pickers have occupied the garbage can that is the company's property. So we locked it and demanded their eviction. But they illegally broke open the lock by force." To this, Bhushan responded: "The authorised contractor should have complained to the police, NDMC should have complained to you and then you could take action to evict the rag pickers. But who gave these thugs this right that belongs to you?" The policeman was a Haryanvi, who agreed with Mr. Bhushan.

By then, more members from the rag pickers' union were at the site. From time to time, even the rag pickers would have to pay bribes of Rs. 50 to Rs. 100 to the police. Everything was smooth, the bribes were considered reasonable and the police gave them some protection and support instead. "It is the policeman and these rag pickers who will ultimately have to live together in that place. It's not the contractor, nor the NDMC. They keep changing and leaving." The policeman sympathised with rag pickers.

Kabadivala are often landless untouchables who have never encountered the state or the police with such proximity. They live far in the margins, untouched, unspoken to. It was understandable how enraptured with fear some might have been. Both the parties to the dispute were summoned to the police station. The contractors told the policemen that Jabbar had illegally occupied their garbage can (*Kude-daan*). But the police by then was already favouring Jabbar and the rag pickers' union. So the policeman put the bouncer in the lock-up instead. The exact grounds of arrest are of little relevance in such circumstances. Mr. Bhushan then told the police that he was interested in a legal remedy and filing an official FIR against the contractors. The policeman instead suggested that this would just be a waste of everybody's time. "The more effective thing is for us to make a deal." The police inspector suggested, "From today, whether I am there or someone else takes my place, we will not allow any of these contractors to evict the rag pickers from that site. Our complete support is for the rag pickers. We assure these company contractors won't step into this locality, threatening these guys ever again." The police then got a signed apology from the bouncers, and went to the supporters gathered outside the station. "Please do not get tense about what happened today. We assure these guys would not repeat this again. We appreciate the work that you do and it's use to our city. We guarantee that nothing would go wrong in future."

III

For Mr. Bhushan, this was a clear act of civil disobedience. The event inheres in a flux of positions, negotiations, favours and obligations. The event inheres a lifeworld of rag pickers, bouncers as proxy to contractors, policemen and unionised activism. It is also expressive of the

nature of law and its play in grounded experiences. This was a case of spontaneous civil disobedience that erupted at the marginal site of garbage cans. Several of the rag pickers are untouchable refugees from Bangladesh. Mr. Bhushan recollected events from the past. He said, “The late 90’s in Delhi also saw the forced eviction of alleged illegal Bangladeshi immigrants, in which it was the rag picker community that suffered the most.”

These rag pickers, lying at the lowest in the hierarchy of existence, exist at the margins of law. Theoretical constructs of political obligation are experienced differently at these levels. For Rawls, as we saw in the earlier chapter, we have a natural duty towards justice and, therefore, a duty to obey every law in a nearly just state, such as a constitutional democracy. The Indian judiciary argues obligation through the more conventional social contract theories. India is a constitutional democracy and would be a nearly just state in the Rawlsian non-ideal sense.

What is the nature of political obligation that is experienced by the rag pickers dwelling in the urban garbage? To be clear, there is experience of political obligation but what is the nature of their obligation to the laws and the state? We saw that the police also take bribes from the rag pickers, Rs. 50 to Rs. 100, and give them some security and protection in return. This is why Bhushan was not afraid of the police; he believed the police would be supportive. And the police was supportive of them in the end. Towards the end of the narrative, it was the bouncer who was locked up. It is important to also note that the legal grounds of locking them up was not of significance; the policeman would have felt that this might just be the right thing to do in those circumstances. Even when Bhushan suggested an FIR and legal action, the police thought it was an unnecessary waste of time. More useful than a long trial was the apology and the promise of future protection and cooperation. None of these relations are based on codes of law and legal reasoning.

The relationship between the rag pickers and the state is not one of abstract natural duty or voluntary obligation. It is a deeper sense of *everydayness* that explains the obligation in the above narrative. The rag pickers and the policemen have a longer mutual relation. This does not mean it was non-hierarchical, but merely that what defines the political relations between the rag pickers and the police of that specific region is not a theory of natural duty, but an everyday experience of living together and cooperating towards coexistence (even an unequal one).

The plot in Mr. Bhushan’s narration travels through a fixed trajectory of conflict, followed by the event of disobedience, the justification for it and, finally, victory of good over evil. The narrative passed alludes to how Jabbar had to stand up for his right against a massive corporation; he was brushed aside and denied voice by a bouncer. Bhushan himself comes in as a voice of the revolutionary guiding the actions of innocent rag pickers, making them self-conscious of their own identity. Jabbar, realising his potential through his provoked political consciousness, strikes with a brick on the lock—*the metaphorical breaking of the lock as a conscientious breaking of a law*. The breaking of a lock becomes symbolic of the defiance, the broken lock as the key to freedom from the chains, the sympathy of the police, the apology and the victory of good over evil.

A civil disobedience movement is usually interested in changing government policies. In this case, AIKMM as an organisation, *inter alia*, is demanding a legislation for the protection of rag pickers, involving them in the garbage management processes by the Municipalities. The social activists use narratives as a means of gaining sympathy and mobilising support for the cause. But the government and policy makers are not willing to argue in this language of storytelling. Rather, they inhere in a positivistic language of expertise, reports, laws and lawyers, efficiency and revenue etc. Therefore, narratives often backfire on the civil disobedience movement itself.

Civil disobedience movements are left out of the field of the legal and the political, because they also often revolve around narrative-based articulation of experiences. Storytelling and oral performances are discursively as well as physically left out of formal politics. This, however, is not a limitation of narratives but the narrowed and specialised (exclusionary) scope

of policy-makers and politics. It is for this reason that analysis of social movements by theorists often ignores the narrative element in it, which implies ignoring experiences, emotions and cultures as well.

I once again use civil disobedience in this metaphorical sense. If civil disobedience is about morality and experience “*appropriating*” law, here we see storytelling and narrative language “*appropriating*” the language of policy making and politics. This “appropriation” is central to civil disobedience as a form of resistance.

The disobedience of the rag pickers against the contractors is also a struggle for the reclamation of space. The whole conflict arose out of a demand for eviction from a garbage bin (*koode-daan*). This site of the garbage is contested as a site of ownership, a site of legal rights and a site of livelihood; this spatiality is what needs to be analysed. Borrowing from Henri Lefebvre’s *Production of Space*, ‘space’ has to be interpreted not as a geographical location that is dead and inert, but rather as something socially constructed, organic and dynamic. Space here is not all passivity, but is generative.⁸⁹ To understand a certain experience is to understand the space; to change society is also to change the spatiality of it.

There are two relations with this space. One is a contractual relation, where the municipality signs an MoU with a contractor, and the contractor then has a legal right over the space. The other relation is one of livelihood, the relation of the rag pickers with the site. Even livelihood is an inadequate word because it is often the site of ‘labour’ as well as ‘home’. The *koode-daan* is both, the source of a rag picker’s livelihood as well as of her exclusion simultaneously. The semiotics of this site is such that it represents both home as well as exile simultaneously.

The dominant language of justice may be one of legality, laws and constitutionality. But in the experience of the rag pickers, they may adopt a language of self respect and dignity to articulate justice. Individuals and organisations like Mr. Shashi Bhushan and AIKMM fall in the mediating space between these two languages.

Our experiences are closely linked to our spatial location. Spaces co-constitute our experiences and produce different vocabularies. Following from Gopal Guru, who discusses this in detail, for Rawls, justice is in the vocabulary of individual rights, liberties, fairness; for Gandhi it is of *seva* and *achar* (service and practice), while for Ambedkar it is of *manuski* (self respect) and *mankhandana* (humiliation).⁹⁰ The community space where garbage is collected is often the profane while the posh localities and suburbs take on the purified and sanctified roles of the *agrahara*. Early twentieth century belief in India, including that of Ambedkar, was the political promise in the emergence of a modern social space in urban cities due to the pressure of colonial modernity, industrialisation and modernisation. Ambedkar believed that urbanisation would reduce social interaction and make people anonymous and strangers to each other. This would break down the caste barriers and reduce untouchability. But Gopal Guru notes that this transformation and reform expected through urbanisation never actually happened even in Ambedkar’s own lifetime.⁹¹

Gopal Guru instead suggests that caste boundaries were rigidified in urban areas as well. When untouchables migrated to cities such as Bombay, they were pushed into the slums of Dharavi or the Matunga labour camps. These slums became the garbage depot to posh elite colonies such as Malabar Hill. The elite here “did not distinguish untouchables from physical dirt. In their perception, untouchables were mobile dirt and dirt was mobile untouchability”.⁹² The point I am trying to make is that urban spaces continue to articulate the deep sense of social hierarchies. The denial of identities continues in the marginalised site of the *Koode-daan* (garbage

⁸⁹ See, Henri Lefebvre *The Production of Space* trans. by Donald Nicholson-Smith (Oxford, Blackwell Publishing; 1991)

⁹⁰ Gopal Guru “Experience, Space and Justice” in Sundar Sarukkai and Gopal Guru *The Cracked Mirror- An Indian Debate on Experience and Theory* (New Delhi: OUP, 2012). 89

⁹¹ ID at 90

⁹² ID at 90, 91

site). It is a part of this larger denial of identity that the rag pickers in Delhi continue to inhere in. Therefore, the claim for self-respect here firstly begins with a claim for the self, to be identified as existing, alive, autonomous rational humans. This assertion of self is followed by the claim for self-respect.

Another anecdotal point is that the entire event of disobedience that I discussed above occurred on the road parallel to the Reserve Bank of India located close to the Parliament Street and Sansad Marg Road area in New Delhi. This is one of the most elite and powerful spaces in the nation; the Parliament Street is truly the *agraharam* of the national polity. The police found more than thirty rag pickers assembled and creating disorder and somewhat occupying the *Koode-daan*. A collection of rag pickers, representing the profane in the sanctified Parliament Street, did put the police on an alert to bring the situation to *status quo* as soon as possible.

These are other aspects of what a philosophy of civil disobedience in its broadness has to account for. The Rawlsian, as we saw in the previous chapter, is an ultimate abstraction from the realities of *spatiality as justice*. Spaces are active and productive, while bodies embody labour. In the case study discussed above, space as well as the body (labour) is under contention. The affirmation of the self and of their labour (the body) is by an assertion of a right over the space (garbage site). I make this point without getting into other complicated questions of whether this assertion of right over the garbage will not perpetuate untouchability. The garbage site is both the site of humiliation as well as the source of livelihood for the rag picker. If they claim legal recognition of their livelihood, does it analogously mean a sealed confirmation of the caste status? These are important questions that arise from this episode but which I shall not be discussing in this article.

We saw that philosophers of civil disobedience insist that the ‘disobedience has to be aimed at changing or altering certain laws and policies that are absolutely unjust’. The basic conditions for civil disobedience according to Rawls are:

- a) the act is contrary to law,
- b) the act is conscientious and political,
- c) the act is usually meant to bring about a change in the law or policies of the government,
- d) the act is public,
- e) the act is non-violent,
- and f) the agent accepts the legal consequences of the act.

How does this case study fit within these Rawlsian qualifications? Is the act contrary to law? An act contrary to law is an illegal act such that it breaks one or more valid legislations. So, was breaking open the lock by Jabbar contrary to law? We can come back to this soon. The other qualifications have been clearly met: it was non-violent, they accepted the legal consequences and it was public disobedience. However, was it aimed at changing the law or policies of the government? Indirectly, yes. A change in law was definitely what they wanted. But this was a more long-term goal for the rag pickers as well as AIKMM. The immediate reason was a contestation or a struggle for space. Social justice here is from a contested standpoint.⁹³ Gopal Guru suggests a *contest concept* of social justice, which is contentious in nature because “it belongs to the realm of oppositional imagination which involves subaltern contestations of dominant or elite notions of justice and seeks to convert them in favour of an egalitarian social order... The contestations involve social groups with competing claims for refashioning and reordering their life vision through redescription and redistribution of moral and material resources”.⁹⁴

This civil disobedience movement is only partly about the change of laws or policies. What erupted was a spontaneous disobedience, not strategised or pre-planned but definitely well

⁹³ See Gopal Guru “Social Justice” in *Oxford Companion to Politics in India* ed. Pratap B. Mehta and Niraja Gopal Jayal (New Delhi: OUP, 2011) 364

⁹⁴ ID at p. 364.

thought of and rationally acted upon. This event of disobedience is not directly connected to a demand for another law (although it is a long term goal), but the immediate claim was one of morality.

My argument therefore is as follows: The Rawlsian theory requires the agent to resort to civil disobedience in order to change or alter a specific law or policy. But I am suggesting that this case study is an example of civil disobedience where the agent acted in disobedience but its objective was to reclaim a moral right as much as a legal right. The demand was for self-recognition and mutual recognition. Mr. Bhushan was clear that breaking the lock had to be done immediately and not after the bouncer left. If they failed to assert their right then and there, the self-respect would diminish. And so, Mr. Bhushan suggests that disobedience is for reclaiming this legal as well as moral right of recognition of decades of livelihood.

Was the act of breaking the lock illegal? The exact legality of it is unclear. And this is the other point that I am making. The exact legality of the act is always up for contestation and interpretations. Ramky is a contractor of NDMC that has the responsibility of managing and transporting garbage to the landfills. So Ramky does have a contractual right over the site. But, on the other hand, rag pickers have a right to livelihood, constitutional right of life and liberty; the Supreme Court has also asserted these constitutional rights of rag pickers. Having said this, would the rag pickers be in a position to chalk out the exact legalities of the act? But in the present case study, this question is unnecessary. Mr. Bhushan and Jabbar were articulating a higher moral right as the basis of disobedience and the specific contractual right of Ramky is of little significance to them. They were conscientiously breaking a law and also for strategic reasons.

The final point I want to make based on this case study is based on performance theory. Civil disobedience has a component of being a theatrical performance, a dramatic form engaged with the public as spectator. Civil disobedience as performance falls within the narrative-based understanding of social movement. It also gives a central place to emotional and experiential content rather than the purely instrumental or rational. “*If social movements articulate frames of understanding, the performance of protest actualises them.*”⁹⁵ The act of disobedience is a publicised performance; it is a corporal and embodied performance of disobedience like the making of salt in the salt-satyagraha or the breaking of a lock with a brick in this case or the setting up of hutments in the Chengara agitation case. The presence and performance of bodies calls attention to the *presence* of injustice, acting out and dramatising the *experience of injustice*. Again, because a performance is bodily, it is also emotive and evocative. The emotive presence is what I put in opposition to abstractions and absences of courtrooms and legal discourse.

When a legal demonstration goes unheard, the “performance of disobedience” makes it visible. When the anti-nuclear resistors in America were invisible, they trespassed into a prohibited airfield as a symbol of their dissent. In the Chengara case, it was far more radical. The agitators in that case threatened to hang themselves from the trees or burn themselves with kerosene if the police evicted them with force. The Chengara struggle caught national attention only when these suicide threats were made; this performance of threats was required for the movement to be visible. The ethics of this blackmail may be questionable. In this present case study, the disobedience of breaking the lock had to be done in the “presence” of the bouncer. It could have been done after he left but the performance of breaking the law was significant and needed the bouncer as the audience.

⁹⁵ Ron Eyerman “How Social Movements Move: Emotions and Social Movements” in *Emotions and Social Movements* ed. Helena Flam and Debra King (NY: Routledge, 2005) 49

CHAPTER 5

INSIDE AND OUTSIDE—READING SYMBOLISM INTO THE CHENGARA CIVIL DISOBEDIENCE

I

“What is a “reclamation of home” inside, becomes a crime of “encroachment” for the court outside.”

In this chapter I shall take up as a case study the Chengara agitation in Kerala as a unique and complex form of contemporary peasant civil disobedience in India. Other than reading the literature available on the movement, this chapter will primarily rely on my interview and brief interaction with the leaders of this movement—Laha Gopalan and Seleena Prakkanam.

Social movements remained largely under-researched in India until the late 1970s. Prior to that, much of the research in political studies focused on institutions, policy reforms, electoral representations, foreign policy, federalism, etc. The study of the government was the study of governance and state power. This preoccupation with institutions kept the study of social movements narrow and limited. If political science was doing this, the sociologists on the other hand remained focused on the study of traditional disciplinary concepts such as kinship, caste, modernisation and sanskritisation.

Studying social movements, especially the likes of civil disobedience movements, would lead to hybrid studies of sociological as well as political intertwining. The functioning of the state and its policies requires a study of the people it governs. In this case study, my attempt is to look at non-institutionalised collective action, at the cusp of the political and the sociological. Another limitation with the current literature on social movements is that most of these studies attempt to provide a conceptual framework in the form of typologies of social movements. For example, a significant work by M.S.A. Rao, studying the social movements of the 1970's, sought to analyse collective action in terms of its effects on social structure.⁹⁶ Movements were classified based on their orientation to change (radical or limited) and focus of change.⁹⁷ The four fold schema introduced to categorise the movements included revolutionary, reformist, redemptive and alternative. Ghanshyam Shah also gave a typology of revolt, rebellion, reform and revolution based on the objectives of the movement and methods used for it.⁹⁸ For Partha Mukherji, social movement typologies were accumulative, alternative or transformative.⁹⁹ Although such typologies are a useful means of study, they are not able to account for the dynamism of the movements (labelling by itself has this limitation and yet labelling is inevitable).

As we will see in this case study, the internal dynamics of a movement are always plural and changing over time. In fact, some movements need not even necessarily have a clear sense of objectives and means of achievement; they may have multiple leaders and internal factions. It is hard to account for this dynamism by using typology and classificatory methods of study. Also because the perspective I am interested in is not the “institutional” but the “experiential”. Experience as *conscience*; the experience of injustice and suffering that leads to the agitation, requires an exhaustive study. This also requires focus upon ‘emotions’ and ‘narratives’ rather

⁹⁶ Amita Baviskar “Social Movements” in *Oxford Companion to Politics in India* Ed. Pratap B. Mehta and Niraja Gopal Jayal (New Delhi: OUP, 2011) 382

⁹⁷ ID at 383

⁹⁸ Ghanshyam Shah *Social Movements in India: A Review of Literature* (Sage Publications, 2004) 29

⁹⁹ ID at p. 29

than clear articulations of objectives and methods. The latter can be documented in pamphlets and distributed by the movement itself but the former requires understanding and empathy. This case study is not able to achieve such an end, but attempts to.

II

Sudha Pai traces three distinct phases in the post-independence peasant movements: (a) anti-feudal movements demanding land in the immediate post-independence period, (b) rich farmers' movements in the 1970's and 1980's, and (c) fewer movements in the 1990's, despite globalisation and a deepening crisis in agriculture.¹⁰⁰ Other forms of classification focus on pre- and post-Naxalbari movements or pre- and post-Green revolution movements.¹⁰¹ In the past few years, however, we are seeing small farmers and tribals rising against the acquisition of land by state governments for industrial/mining projects to be undertaken by large, private national and international companies.

The anti-feudal movements immediately after independence demanded land reforms, redistribution of land, higher wages for labourers and an end to exploitation by landlords. This was a period with several land grab movements led by peasant leaders belonging to communist and socialist organisations. From the 1960s onwards, the Green Revolution had resulted in commercialisation of agriculture. Rich farmer organisations led the movements against the state, rather than landowners. They were interested in the rural-urban divide, issues of trade and industry, pricing and distribution of produce etc. The main approaches to studying peasant movements have been Marxist, nationalist and subaltern.¹⁰²

The Chengara Agitation seems to be a *hybrid return* to demands that haunted the state immediately after independence. On the basis of objectives of the movement and means and strategies, the Chengara movement resembles a turning back to the first phase of social movements in India. The backward turn, however, is marked by one crucial difference. It no longer limits itself to a class-based Marxist discourse and, in this sense, is closer to the new social movements theory.

III

The Chengara is a land grab movement, an “occupy” movement literally. It is a demand for permanent ownership of agricultural land for landless labourers by the transfer of ownership from those who own excess lands. The movement believes that the reason for landlessness in India is not economic but socio-cultural, including the historical marginalisation of Dalits and Adivasis. The Chengara struggle in this sense is a new social movement (NSM) rather than of the classical kind.¹⁰³ The classical struggles used a Marxist discourse focusing on ‘base and super-structure’ of economy and ‘class’ as a tool of study. NSM focuses on broader socio-cultural challenges, questions of identity, autonomy, justice and morality.

The *Chengara Samaram* (Chengara Struggle) was led by Mr. Laha Gopalan of *Sadbhujana Vimochana Samyuktha Vedhi* in the Pathanamthitta district of Kerala. The Secretary and Spokesperson of the movement was Ms. Seleena Prakkanam. On August 4th, 2007, around 300 of the Dalit, Adivasi and OBC families, mostly from Pathanamthitta, moved into the estates of Harrisons Malayalam Ltd. and reclaimed the land. The discussion in this chapter is about this

¹⁰⁰ Sudha Pai “Farmers’ Movements” in *Oxford Companion to Politics in India* Ed. Pratap B. Mehta and Niraja Gopal Jayal (New Delhi: OUP, 2011). 401

¹⁰¹ Ghanshyam Shah *Social Movements in India: A Review of Literature* (Sage Publications, 2004) 41

¹⁰² Sudha Pai “Farmers’ Movements” in *Oxford Companion to Politics in India* ed. Pratap B. Mehta and Niraja Gopal Jayal (New Delhi: OUP, 2011) 392

¹⁰³ See; the discussion on how there is nothing really ‘new’ about New Social Movements in Andre Gunder Frank and Marta Fuentes “Nine Theses on Social Movements” in *Economic and Political Weekly* (Vol. 22, No 35; 1987) 1503

‘occupation’. They encroached on the land, put up hutments and lived within these boundaries, blockading any form of entry. All outsiders were prohibited—the police, the bureaucrats, officials and politicians. They trusted no civilians either. Although fading, the struggle continues even today after so many years.

The *life world* within the walls of the Chengara occupation reminds one of Mario Vargas Llosa’s historical novel *War of the End of the World*. Set in later 19th century Brazil, the wandering mystical preacher Antonio Conselheiro drew thousands of followers to a makeshift religious settlement in Canudos. This motley crew of followers were the desperately poor, the sinners, outlaws, cripples and rebels under the leadership of the enigmatic Conselheiro. They organised as a militia fighting the newly emerging Republic of Brazil, fighting a war of ideas, a war on political institutions, legalities, assertion of national authorities, a demand for autonomy and self-determination. I make this reference not to romanticise the Chengara, for these two worlds are imaginations apart. I am merely suggesting the need for storytelling of experiences as a counter-hegemonic practice in the face of the factual universe of legalities, evictions and trespass. I merely seek to draw attention to the *life world* through this “inside” as opposed to the “outside”.

The immediate precedent to the Chengara, a similar peasant movement, was the Muthanga occupation in 2003. This was led by C.K. Janu of the *Adivasi Gotbra Maha-Sabha* (AGMS). Following a 48-day peaceful agitation, the Secretariat at Thiruvananthapuram had executed an agreement on 16th November, 2001 promising distribution of land to the Adivasis. The agreement was allegedly not honoured, which gave rise to severe resentment. In January 2003, the protestors entered and occupied the forest land at Muthanga, a reserved forest in the Wayanad Wildlife Sanctuary.¹⁰⁴

The act was clearly and admittedly a violation of law, but they claimed it was still within their democratic right to peacefully break the law for such a reason. This was a clear act of civil disobedience. It is not easy to theoretically box Muthanga into violent or non-violent civil disobedience. The protestors in occupation of the forest erected check-posts preventing the movement of forest officials. AGMS claimed that some *goondas* (thugs) working for the forest officers set off a fire near the occupied area to drive them away. In response, the protestors illegally detained some forest officers and released them on 18th February, 2003 at the intervention of the district administration. Action was taken by the state government to counter this threat. Operation Eviction was undertaken on 19th February, 2003, which left the protestors, including women and children, in a state of trauma, indignation and physical injury. The operation turned violent with the police opening fire on all, including women and children, leading to the death of a protestor. In order to justify the firing, the police had to claim that the agitation had turned violent in the first place.

Forcible occupation of land, as a method, is becoming more common in the peasant movements of India in this decade. The reasons for this recent unrest in the Kerala context can be traced back to its land reform laws in 1970’s. In relation to the Chengara, K. T. Rammohan suggests some of the weaknesses of these reforms.¹⁰⁵ First, the land reforms largely excluded the plantation sector from its scope. Second, it aimed at redistribution of land to small and middle level tenants and farmers, leaving out landless workers, who were mostly the socially disadvantaged castes and communities. Third, land ceiling laws were weak and ineffective. Most landowners circumvented the ceiling prescription through family partitions, selling or leasing to their own employees and workers etc. Four, the uplands including the Wayanad region are largely plantations. Most of these plantations include tea, rubber and coco, which are often economically viable, and hence owned by large private companies. This includes the Sterling

¹⁰⁴ *C.K. Janu v. Director, CBI & Ors* in WP(c) No. 32732 of 2003(v) in the Kerala High Court; Order Dated 4/12/2008

¹⁰⁵ For this discussion, See K. T. Rammohan “Caste and Landlessness in Kerala: Signals from Chengara” in *Economic and Political Weekly* (Vol. XLIII, No. 37; 2008) 14, 15

Group, which has, since the early 20th century, owned much of the Kannan Devan Hills in Munnar. In 2005, the Tata Tea Company, on acquiring the Tetley of the U.K., newly floated the Kannan Devan Hills Plantation Company.

The other big landowner is the Harrisons Malayalam Plantation Co. of R.P. Goenka. The company claimed to be holding 59,000 acres of land, while others claimed that it is much more.¹⁰⁶ Much of the individual ownership of the property is vested in the hands of Syrian Christians of the region as well. The Princely ruler of Travancore had given a 99-year lease to Harrisons Malayalam Ltd., which ended in 2006. Once the lease period lapsed, the land automatically was to be transferred to the original owner, which in this case, became the state government. The lease rights of Harrisons are under dispute in court even now. They have also been charged with several irregularities in the lease agreements. The Harrisons Malayalam plantation was acquired by R.P. Goenka in the 1980s.¹⁰⁷ The company has a turnover of over 300 crores, owns 23 tea estates, 8 rubber factories and 12 factories, along with several blending and processing units etc. R.P. Goenka recently divided the property between his sons Harsh and Sanjiv Goenka and continues focusing on rubber, tea and pineapple.¹⁰⁸ The case against Harrisons *inter alia* is also that they own excess land inclusive of the disputed land, which, under Rule 5 of the Kerala Land Assignment Rules, should be surrendered to the government.¹⁰⁹

IV

The High Court, represented by Justices K.M. Joseph and Joseph Francis, took a clear stand of refusing to even discuss civil disobedience. The puzzling questions around civil disobedience did not seem to even arise. No reasons were given as to why civil disobedience was not even worthy of a jurisprudential debate. Before discussing the refusal itself, I shall discuss the emerging “*rhetoric of refusal*” in the judgment. The judgment refuses to discuss civil disobedience of the Chengara people by using the following arguments:

1. Jurisprudence of property rights, including a Hegelian and a Benthamite position
2. By a misreading Gandhian *satyagraha*
3. Misinterpretation of social contract theory
4. Creating a fear of anarchy and lawlessness to which civil disobedience apparently leads

First, the judges discussed the jurisprudence on property rights by relying on G.W. Paton’s jurisprudence¹¹⁰, an introductory commentary on some western schools of thought. There is hardly any doubt that such texts cannot even remotely theorise on what land, property, livelihood and the concept of ‘home’ would mean to the Adivasi experiences in Pathanamthitta. The judges brush away the theory that resembles the arguments of the Adivasis. The theory is basically that the one who labours has a right over the object of labour. In similar spirit, the Adivasis argue that those who actually labour on the land must have right over it. To this argument, the judges gave a single response, “*But, this doctrine seems to imagine a simple state of society in which each man creates his own.*” To a theory that definitely deserves some analysis, the judges only say that the doctrine assumes a simple society. But this is not a surprising response at all; in fact, this is a common rhetoric against Adivasis, tribals, minors and even women in some

¹⁰⁶ See Para 23, *M/S Harrisons Malayalam Ltd. V. State of Kerala* on 18, May 2010. WP(C). No. 34707 of 2009(G) in Kerala High Court

¹⁰⁷ See Generally; http://articles.timesofindia.indiatimes.com/2011-03-04/india-business/28658709_1_harsh-goenka-ecat-software-firm (last accessed on 12.9.2013)

¹⁰⁸ See ID

¹⁰⁹ See, Contention of Advocate General C.P. Sudhakara Prasad in *M/S Harrisons Malayalam Ltd. V. State of Kerala* on 18, May 2010. WP(C). No. 34707 of 2009(G) in Kerala High Court.

¹¹⁰ G.W. Paton *A Textbook of Jurisprudence* (New Delhi: OUP, reprint 4th ed. 2007)

communities. Alluding to the Adivasi's argument as '*thinking simplistically*' is the judicial rhetoric here.¹¹¹

Second, the learned judges refer to Gandhi's writing in *Young India* dated 21st January, 1920. Gandhi writes, "*Every Satyagrahi was bound to resist all those laws, which he considered to be unjust and which were not of a criminal character, in order to bend the Government to the will of the people.*" They then quote Gandhi from *Young India* on 5th January, 1922, "*...civil disobedience is the inherent right of a citizen. He dare not give it up without ceasing to be a man. Civil Disobedience is never followed by anarchy, Criminal Disobedience can lead to it. Every State has to put down criminal disobedience by force.*" In a brazenly faulty reading of Gandhi, the learned judges interpret Gandhi to be saying that criminal disobedience is to be stopped by force. The judges do not explain why the Chengara occupation was criminal disobedience and not civil disobedience. The judgment raises a cry, "*Can the State and its officers stand by as mute spectators, when crimes are committed?*" "*We are of the firm the view that the answer to this question is negative.*"

The judges are so firm in upholding the *prima facie* political obligation that all else is secondary. What they do not realise is that Gandhi, when alluding to criminal disobedience, is referring to the committing of crimes such as theft, dowry, fraud, corruption etc. Breaking a law out of this immoral self-interest is criminal disobedience. Breaking a law conscientiously to resist injustice is civil disobedience. Gandhi prohibits the former, but says that the latter is an inalienable right.

Behind this patronising respect for Gandhi by the judges lies a denial of the crux of *satyagraha*, which is of conscientious disobedience. However, for them, disobedience is out of the question; it does not even merit a debate! Democracy, justice, rights and all else are debatable, but not political obligation. My argument is not even to justify or deny this right to disobedience; my argument is merely to point at a *self-imposed censure* of certain themes. It is almost as if certain themes were completely out of bounds. Within this universe of ideas, 'discipline, 'law and order' and 'normalcy' become exhaustive features that trump the demands for justice in a civil disobedience.

Third, another misinterpretation and misuse of theory in this judgment is of social contract. The judgment claims that the state is formed from a social contract between its constituents. This misuse is often used as an argument for enforcing political obligation and weeding out dissent. This is an excellent illustration of the hypothetical liberal theory of the 17th century being read *literally*, so as to mean "obligation to follow the law" and "the state's duty to enforce it", *as if* we literally volunteered to create *this* specific state and, therefore, we have to obey it. It is a classic case of how the factuality and historicity of the creation of nation-states and governments are forgotten for a theoretical construct.

Fourth, the central claim that echoes through all the different critiques of civil disobedience is that it leads to anarchy and lawlessness. It does not require a reading between the lines or a hermeneutics expert to understand what the judges are saying. Basically, they say that *lawlessness can take various forms*, meaning that it is sometimes disguised as civil disobedience. But, they warn us to not get carried away by this disguise. "*Every act of lawlessness which is tolerated by way of condonation is bound to create the impression in the minds of the law abiding people that lawlessness has its rewards.*" The judges, therefore, insist that lawlessness be dealt with appropriately and yet firmly, and that it is their constitutional duty to enforce the law in all circumstances. One is immediately reminded of the Nuremberg trials ("I was just following orders" argument of the judges) when such arguments are made. "*In these cases, defiance of the law is attended with considerable publicity. It is certainly not a healthy signal for a political democracy which has been operating for more than sixty years.*" A

¹¹¹ In Intellectual Property laws this doctrine of "labour leading to right over property" is guarded sacredly, but it becomes simplistic when Adivasis make the claim. Protecting the apparent labour and investments of companies into R&D, such as in patents and copyrights is considered a central doctrine in IP theory.

discussion on political democracy might have been a more useful form of reasoning than catching “healthy signals” of lawlessness.

V

Martin Luther King Jr.’s use of the term *tension* is of significance at this point. He stresses on the importance of *dramatising the issue* so as to force a confrontation on the issue of racism. He wrote, “*Non-violent direct action seeks to create such a crisis and establish such creative tension that a community which has constantly refused to negotiate, is forced to confront the issue.*”¹¹² For King, the *tension* he refers to is a type of ‘constructive non-violent tension’ that is necessary for growth. It is necessary to create this tension in our mind so as to let us shake free from the bondage of myths and half-truths so that we may leave our prejudices and enter realms of higher truth and justice.

This *tension* is often portrayed as anarchy and disorder and this fear of disorder, of anarchic violence that may erupt out of civil disobedience becomes the most powerful critique of the majority or the ‘secure’. This threat is the greatest fear in most philosophers and jurists writing on this topic as well. Yes, this is a legitimate fear, the movement may go out of hand, and disobedience may become criminal and barbaric, rather than civil and non-violent. However, there is something more to this insecurity and fear that people have, just by the mere utterance of disobedience. This ties into an understanding of what “discipline and order” must mean post-Foucault.¹¹³

Martin Luther Jr. puts it well when he says that the real obstruction towards freedom is not the White Citizen’s Councillor or the Ku Klux Klanner, but “...*the white moderate, who is more devoted to ‘order’ than to justice; who prefers a negative peace which is the absence of tension to a positive peace which is the presence of justice*”.¹¹⁴ Negative peace is possible even in a military regime, when curfews are ordered and no one is allowed to step out of their houses. There is a ‘peace’, but is this a “non-violent peace”?

The middle-class, the moderates, the upper-castes (even those who are ‘for’ social transformations), judges and legislators—everybody aims at this negative peace. They want transformation, but, “When the time comes, it will happen,” they say. King Jr. mockingly says, “*I agree with you in the goal you seek, but I can’t agree with your methods of direct action; who paternalistically feels that he can set the timetable for another man’s freedom; who lives by the myth of time and who constantly advises the Negro to wait until a ‘more convenient season’.*”¹¹⁵ King Jr. says, “*Lukewarm acceptance is more bewildering than outright rejection*”.¹¹⁶

J.S. Mill in his classical liberal texts such as *On Liberty and On Representative Government*, says that self-governance is the best form of governance. Yet, he thought that Indians and Africans do not deserve it because *they are not civilised yet*. Dipesh Chakraborty talks of this temporality of justice- industrialisation and science that happened in the West, and it will happen in India, *but not yet, not so soon, but when the time comes*. So, the anti-colonial movements had to claim in the same temporality, that they wanted their self-rule *now* instead of *not yet*.¹¹⁷ This temporal procrastination of justice is ever present even today, and this fear of chaos and insecurity is its big cause.

The point, therefore, is not about a negative peace, a forced silencing of *tension* disguised in the language of order or a repression of anger, which one day will be so repressed that the individual forgets the self and becomes an untouchable or a slave to another. *Tension* is not about violence, but about a striving for a positive peace, for social justice in its constructive sense. *Tension* is necessary to strive towards an *Ahimsa* in its metaphysical-Gandhian sense.

¹¹² Martin Luther King Jr. “Letter From Birmingham City Jail” in *Civil Disobedience in Focus* ed. Hugo A. Bedau p. 71

¹¹³ See for example; Michel Foucault *Discipline and Punish: The Birth of the Prison* (Penguin: 1991)

¹¹⁴ ID at p. 75

¹¹⁵ ID at p. 75

¹¹⁶ ID at p. 75

¹¹⁷ Dipesh Chakraborty *Provincializing Europe: Postcolonial Thought and Historical Difference* (Princeton Press, ed. 2007)

VI

The Kerala High Court, in *M/s Harrisons Malayalam Ltd. v. State of Kerala*, acknowledged the constitutional rights of Adivasis. However, since the law had been broken and law enforcement being the role of the courts, the courts held that eviction of the protestors had to be carried out regardless. The court only said, “As regards the issue relating to landless Adivasis, we take note of the Statement filed.” It held that the legality of Harrisons’ possession of land was not within the scope of this case, and had to be decided separately by the civil court. The Court then ordered eviction by the police and gave them operational freedom on how the eviction would be carried out. They, however, did place certain broad restrictions such as avoiding excessive use of force, suggesting that tear gas be used first and then a *lathi* charge, with “firing, naturally, to be resorted to as a last measure”.

The discussion in the remaining section is based on the author’s interview with Laha Gopalan and Seleena Prakkanam.¹¹⁸ I shall focus on their claims, arguments and justifications of this civil disobedience. A crucial qualification for civil disobedience in most theories, including the Rawlsian, is that civil disobedience has to be a tool of last resort. Only after all other legal means of resolution have been exhausted can one resort to civil disobedience. Is this qualification satisfied by the Chengara? Yes. Seleena as well as Laha Gopalan acknowledge the necessity of working “with” the government as inevitable. The demand for land could only be with the assistance of the state government. There was an intense process of awareness building 2 to 3 years prior to the land grab itself. Around 2004, they started creating awareness amongst the communities about land rights. The Chengara civil disobedience through encroachment began in 2007.

Seleena says “*The UDF government in power then was encouraging of our activism. We made several applications and notices of our demands to the government. A lot of written documents have been exchanged with the government in Trivandrum. We also had a video conferencing with them from Pattanamthitta itself. We raised around 150 issues, which were to be discussed with the government. All this was perfectly within the walls of the constitution, purely legal and peaceful....the Chief Minister after negotiations agreed to our demands. Such as, for 5 acres of farming land for all the landless....this 5 acres of land was not just for the Adivasis or the Dalits but for all landless labourers.*” They also negotiated for banking and financing facilities, trading, pricing etc. The government said that the demands would be met within three to six months.

When the government clearly started ignoring this agreement, they had to resort to other forms of protest such as demonstrations and fasts. “*We had written in our documents that if the ruling party did not cooperate, we would resort to forceful occupation. We were getting mentally prepared for the worst during those few months.*” However, Seleena also agreed to the fact that the government did not know about their ‘land grab strategy’. “*We did not inform them...we spent time, studied and analysed the region and specifically picked this site for occupation.*” When all other legal means of demanding justice failed, Laha claimed that they finally resorted to occupying by force. In August 2007, the families walked into the southern belt of the plantation of Athumpunkulam.

Seleena recalls the first 150 days of the occupation as intensely powerful and passionate. Several of the agitators were ready to lead the way. Many came with their families and had faith in the movement, believing something good would come out of it. “*The morning we first started the agitation, an opposition group forcefully entered this site. We had some conflict with them, they started throwing stones at us. Those who were hurt were immediately taken to the medical college hospital.*” Here, she is referring to the plantation workers who feared losing their jobs due to this occupation. The company then employed thugs to forcefully evict them. However, the first few days were successful. “*We set up our butment in the very first night of occupation.*” The site was fully organised into

¹¹⁸ Interview with Laha Gopalan conducted on 22nd August, 2013 at Pathanamthitta and Seleena Prakkanam on 23rd August at Pathanamditha. The interview was conducted in Malayalam.

committees that worked round the clock. They formed 6 committees, with 40 members and a convenor in each.”

Laha Gopal says, “*We started with 300 people who occupied this land in the beginning. They started putting up the huts and living there. Putting up the huts shows the reclamation of our land for ourselves...we also used notices, posters etc. to spread awareness among the people.*” The police was stationed outside the site from the very first day. The agitators had blockaded the occupied land and did not allow anybody to enter in. Exiting the land, too, was not easy any more.

This blockade symbolises not just the literal, but also the symbolic refusal of the state. This is the point of radical departure in the Chengara agitation—the marking of territories, the ruptured *inside-outside*. Laha Gopalan says, “*We prohibited not just the police but even civilians from entering. Only those with ID cards were allowed inside. We met people at the boundary wall to talk and discuss but we won’t let them enter.*” “*We didn’t trust most people at that time.*” Neither the police, nor even Collectors or bureaucrats were allowed to enter inside. At a later point, when asked if institutionalisation of the movement ever posed a threat to this, he answered that “*because we didn’t trust outsiders, we never had too many institutional problems. We never had reasons for institutionalisation at any point.*”

Listening to Seleena, however, gave one the impression that this lack of institutionalisation later proved to be the very cause for the decline of the struggle. The movement became too plural and dispersed. The inside of the movement attempted to pose the alternate, aiming at an internal self-sufficiency. It became a call for autonomy, self-regulation, an independent community. The protestors of course did not want to be completely cut off from the outside, as they required food, supplies, medication, etc. But the police reinforced the blockade letting them suffocate inside so they would be forced to leave the site. Nothing that would be helpful to the community inside would be allowed entry by the police. Delivering food and supplies to the protestors inside was a difficult task. It had to be completely hidden from the sights of the police and the thugs that Harrisons had employed for their eviction. The protestors found different routes to enter and to find their way through the backwaters. Seleena said, “*They would bring us sacks of rice, medicines and supplies. It was difficult, our demands inside couldn’t be adequately met.*”¹¹⁹ The police would carefully patrol the entire region preventing any form of help being given to the protestors.

Laha Gopalan made it sound as if his war against colonialism still hadn’t ended. It was as if, somehow, the Chengara agitation was a prolonged continuation of fighting the colonisers. Laha Gopalan visualised the movement to be Gandhian; it was meant to be a *Satyagraha Samaram*. His key words were *Santham* (the Sanskrit term for peace and quite) and *Samadanam* (balance), both seemingly powerful concepts within *Ahimsa*. Laha believes that times have not changed much since Gandhi and the British. “*Civil disobedience today is as necessary as it was back then, because little has changed.*” He kept using ‘Harrisons’ and ‘foreigners’ interchangeably. He would keep using metaphors of “*driving Harrisons out of this country*” to be meaning “*giving up the excess land*”. “*The Harrisons don’t have right over this land, but they still enjoy the resources here. They took the land from the King. But the King no longer exists, even the British no longer exist, everything has changed since then, a new government is in place, new laws have come, new states have emerged. And yet, Harrisons remains the same. They are stubborn enough not to leave.*”

While reasoning the larger cause for agitation itself, he gave the analogy of a chair. “*When you entered the room, we gave you place to sit. But you can’t then claim your right over that chair and not leave at all.*” But Harrisons apparently did just that. It is in this sense that I argued in the first part of this chapter that the Chengara ‘land grab’ seems to be reminiscent of the first phase of peasant movements in India, just after independence, but with the difference of being an NSM. “*The Satyagraha we practice is a Gandhian ‘way’ but we are not Gandhians ourselves.*” says Laha Gopalan. How

¹¹⁹ She narrated episodes when Chengara supporters would bring sacks of rice and kerosene for them, the police would mix the kerosene in the rice and sent it inside, making it unusable.

does he resolve this contradiction of following the Gandhian way, but himself being against Gandhi? Laha Gopalan insisted that we are yet to read and understand Ambedkar. Being an Ambedkar loyalist, he was critical of Gandhi. Ambedkar believed that only the constitutional framework and democratic representation could give answers to India's socio-cultural problems. However, the resolution had to be strictly within the four walls of constitutionality.

Gandhi, on the other hand, kept *satya* (truth) as the highest standard, rather than the Constitution and justified breaking of the law, if the law went against the truth (the moral conscience of the self). The unfolding of the state was not an end in itself for Gandhi; it was a means of self-realisation. Laha Gopalan, being a staunch Ambedkar loyalist, as generally is within the Dalit discourse, still decided to resort to a Gandhian philosophy ultimately. He believed not only in the constitution and the state, but also when justice was not done, "*we have to take it up and fight for ourselves*". Laha goes on to say that the British was, in fact, very supportive of Ambedkar and his ideals. "*Ambedkar's conflict was not so much with the British as it was with Gandhi. We stand in favour of Ambedkar always.*" "*Gandhi represents Jati*" (Jati which broadly implies caste). But they want to overcome and go beyond *Jati*. "*Ambedkar was not able to mobilise the Dalits in his struggle, he couldn't galvanise a movement. We still don't know Ambedkar. School, education, museums...there is no awareness of what he really stood for.*"

The Chengara leadership organised itself as *Sadhujana Vimojana Sangathan*, wherein *sadhu* does not mean the saint or the *sanyasi* or the innocent. Laha says that *sadhu* for them meant "*people who belong*", *this is for the people who belong to this land*. Laha Gopalan's use of the word "*sadhu*" is closer to the Adivasi and Dalit articulation of identities. "*Adi*" meaning 'from the beginning', 'earlier times' and "*vasi*" meaning 'resident of', in Sanskrit. Laha Gopalan articulates the movement in saying that the Adivasis and Dalits were on this land from the beginning of time, and the other castes and religions are intruders, they are foreigners the way British and Harrisons are.

If Laha's struggle is for the rights of the *sadhu* (meaning the one who originally belongs to this land), how would he, without contradicting himself, fight the cause of "all the landless labourers regardless of caste and communities"? He vaguely responds to this contradiction as follows: He accepts that this movement fundamentally is based on "belonging to the land". It is the *sadhu* that he is interested in protecting. For example, he accepts that "*Muslims in this sense don't belong to this land. But they don't have a place to go back to, and so they have to be included with us now. This includes the Nairs etc. who are all outsiders. But where would they go back to now, we can't send them away like that. They are not enemies. None of them are our enemies. The Chengara struggle creates a harmony for those who are hungry. The rest is secondary.*"

For him, to be a *Satyagrahi* needs a "qualification"; civil disobedience is a "specialised" act of protest. Its ethical nature was central. Satyagraha was more "inward looking" and aimed first at 'self-transformation' and only then at the socio-political. Laha Gopalan inherits this sense of spirituality in the Satyagraha. Self-restraint was central to the insides of the struggle. Those within the site had to follow strict moral conduct. The struggle was one where they were symbolically standing outside the walls of the law and the state, within the hutments of 'self-rule'.

This required a strict self-conduct and disciplinary living, for Laha Gopalan. "*Alcohol and intoxicants were absolutely prohibited from the very moment we entered the plantation. There was no negotiation on this point. More than 300 families, a total 2,000 people live there. None of them can ever indulge in alcohol while within the compound. If we ever caught them, we would send them out.*" Seleena says, "*The way alcohol breaks a family, we too were a family within these walls and we couldn't let alcohol break this family either.*" The pragmatics of the situation also required this strict self-restraint. The police and the company through its thugs (disguised as labourers) were always finding a way to falsely accuse them of violence or crimes. Laha realising this says, "*We have to be controlled and moral, live in self-restraint and behave in such a way that we give no reason for the police to forcefully intervene.*"

The police was kept away by suicide threats. "*In the beginning the movement was not too popular. At that point we had limited support of the activists. But when we started our suicide threats, only then*

did people take special interest in the movement.” They tied sarees on the trees and the men threatened to hang themselves from the branches. The women were ready with kerosene and petrol to set fire to themselves. This would have been a violent movement if the police still had entered our area. The High Court had ordered eviction. The police were also harassing and violent. *“They cut us off from the outside so we would perish due to lack of food and medicines. But we also had to ensure that the police doesn’t enter inside and take us away. We were forced to use suicide threats to ensure this.”*

The High Court had ordered the police to evict the protestors but without excessive use of force. For Laha, the suicide threats were a way of preventing the police from using this excessive force; this is what was making them comply with the High Court order in some ways. Is the threat of suicide violent? How does one think through other cases such as that of Irom Sharmila’s fast unto death protesting against Armed Forces Special Powers legislation? She is a proclaimed Gandhian satyagrahi in an authentic sense. And yet, the question of suicide as violence is puzzling. The ethics of these threats is questionable for being too coercive, taking away any space for dialogue.

The “occupation” of Chengara still continues but largely has faded and the leadership dissolved. This happened after the package was finalised by the government, during which time the people completely lost faith in both the movement and the government. But several people still live within those walls, cut off and blockaded from the outside. Laha Gopalan said, *“We negotiated a package. In a total of 9 zillas, people received 1 acre, or half an acre, or a few cents of land. In Muattupuzha for example, 30 families got good land and are happy there. In Mallapuram zilla, 20 people; in Kollam around 20 acres was given and Pathanamthitta, 4 people got some land. Totally, 74 people got rehabilitated out of more than 2,500.”* The government distributed land based on castes and communities. Adivasis got the highest, which was one acre of land; the Schedule Castes got half an acre while religious minorities got a few cents of land. A dismal Laha Gopalan says that the struggle was not hierarchical like this, *“We were a mixed group not just of Adivasis or Dalits, but also of Nairs, Brahmins, Muslims and Christians. We had Aachari and barber and tailor living together. . . All the landless, all the hungry were a part of this.”* The bigger disappointment remained the fact that such a small number out of the total participants got the land.

When asked if this was a ‘civil disobedience’, Laha Gopalan and Seleena categorically said that yes, it purely is. *“We usually have no need to break a law. But because we haven’t received the rights promised to us, what we deserved. We didn’t break any law, we only claimed what is right.”* Another significant point about both these interviews is in the interchangeable usage of moral right and legal right. They do not seem to make a distinction between the legal and the moral; for them, both overlap. *“We never broke a law, we only claimed our right.”* The puzzle of right and duty, which is at the core of western theory of civil disobedience, does not seem too stark in this context, because legal rights do not contradict the moral right for the Chengara. So, in the above sentence, if reclaiming their land was morally right, it is assumed to be legally right as well, and hence, no law was broken.

Seleena says that in dire circumstances like this, unlawful means for a larger cause is justifiable. *“If you don’t allow us to live, we will die. And even this attempt to suicide is illegal. We don’t have a right to sit in our land but don’t we even have to right to die in it?”* She goes on to question what it means by breaking a law: *“Someone has to ask, who really is breaking the law? People have to know what is wrong.”* Again, in saying this, Seleena is interchangeably using the ‘legal’ and the ‘moral’; breaking of law is not just breaking a legal code but also breaking a moral code. So, even if Harrisons does not break a legal code for whatever reason, it clearly is breaking a ‘moral’ one and that too is ‘disobedience’. In a more desperate tone, Seleena states, *“I have to sleep in my land. The land is here, it is present. I stand on it, work on it. Yet I have no right over it.”*

Seleena confessed that the conditions inside were worsening by the day. *“To leave the site was out of the question. The police would capture and harass us. Inside too, there was trouble. Either we had to go out and surrender to the police, or remain in and die.”* The ‘site’ failed as an alternative imagination, an experiment in autonomy. Rather, as Seleena claims, *“The site was a space of eternal internal struggles,*

issues we had to deal with on a day-to-day basis. And I, the Secretary and Spokesperson, was not just stuck between inside and the outside, but between the various factions inside itself.” It was traumatic inside the walls. There was a lack of all sorts: medicines, food and everyday supplies. “*We couldn’t shut our eyes for a moment out of fear.*” This was a fear of the outsider, the intruding police and the plantation companies.

When asked if it was a victorious struggle in the end, Seleena categorically said no, and Laha too admitted that it did not meet the goals that they had visualised at the start. The occupation, however, is still ongoing. Seleena says, “*The older groups have gone their own ways for various reasons. The internal situation was always plural and diverse; people from different parts and communities were a part of it, the common vision kept them together. But gradually, people lost motivation; they lost belief.*” The internal divisions also became overwhelming. Talking about the fading away of the movement by 2009, Seleena says that the protestors inside were human beings too. And human beings had dreams for a future. “*When days and years pass by and the dream seems bleaker, they decide to move on. They didn’t see hope in staying inside and felt it was better for the younger generation if they left the site.*” But, even to leave was a major risk. They have to sneak out in the dead of the night, diverting attention of the outsiders, because getting caught also meant harassment by the police or worse, by the company’s thugs.

Seleena split from the movement for various internal reasons. She had severe differences of opinion with Laha Gopalan. By then, the struggle started crumbling and fading. However, one of her problems and reasons for quitting, again, seem to be articulated in this sharp sense of the “inside-outside”. “*I have never owned a single piece of land. My family hasn’t ever owned land. But we have always been farmers. We were outcasts, we were outside even the religions. But inside the walls of the struggle, we were all one, and equal. This thought pulled me towards Chengara.*” But with a few years of living inside, she realised the limitations. “*I realised my deeper questions won’t be realised here. It’s a small universe inside. The movement became all about the land, the demand for the land. But we had larger problems in the world outside, of caste, of gender. Our problems were more than just demanding for land. I decided I had to leave.*”

The Chengara civil disobedience forays into one of the most radical experiments of contemporary dissent. It dared to move away and experiment with its ‘occupation-by-force’. This, literally an “occupy movement”, was stuck in between two worlds. In the inside was a community of the landless subalterns, the voiceless and the marginalised, reclaiming what they rightly believe is and has always been theirs. Outside is the nation-state, the citizen with rights, courts and institutions. Inside was a claim for autonomy, a claim for land that meant home, livelihood and a justice that would undo the violence of history. But was this movement ethical? Were the suicide threats an excessive use of coercion? Why did the struggle really fade? Is this a sign of the failure of the imagination itself, a sign of the futility of even attempting such a civil disobedience?

CHAPTER 6

CONCLUSION

Contemporary civil disobedience movements are more than just strategies and tactics of policy reform. Instead, these are newly emerging *experiences of democratisation*. Civil disobedience has become a questioning of certain basic conceptions of political philosophy. It is an attempt to refashion notions of democracy, which are purely institutional, such as voting, judiciary, coalition governments etc. It, instead, hints towards democracy as a culture, where obligation to law is not content-independent but dependent on the experiences of the people. The authentic civil disobedience as envisaged in this paper is an attempt at *recovery of democratisation but from below*, a direct democracy from grass-root experience, bottom-up, a democracy based not on consent but dissent.

This kind of democratisation is not about a “democratically formed governments” but about the *democratisation of dissent*. This is what Jacques Ranciere calls the “democratic paradox”, that internal difference is what constitutes a democracy, it is something ‘other than’ just a government.¹²⁰ For Ranciere, the democratic government is threatened by its own democratic life, a double bind. “*A good democracy is the taming of the rift between the egoistical behaviour and demands of the ‘democratic life’ of the people as opposed to the democratic government, its authority and political life.*”¹²¹ The democratic paradox as per Ranciere is thus: “*Democracy as a form of government is threatened by democracy as a form of social and political life and so the former must repress the latter.*”¹²²

This paper is about envisaging the ‘demand for democratic life’ that comes out of a *conscience* that is thinking and reflecting on the deepest of its *lived-experiences*. However, what has to be insisted upon, again and again, as Gandhi often did, is that with the demand for autonomy must come an analogous responsibility. Civil disobedience is about mutual transformation; it is about responsibility and self-restraint. Therefore, one has to earn the right to be civilly disobedient; it is not an inherent human right.

Civil disobedience in this work is also read as a critique of the dominating juridical discourse in India. The thesis consistently has been suspicious of the ‘legal’ because it is never able to adequately account for the excess of ‘experience’. Legal reasoning by its very nature is reductionist; it is based upon an individual abstracted from his experiences. But a disturbing feature in India in this past two decades has been that dissent is largely being reduced to legal and policy reform, for example, the anti-corruption movement, which was completely dominated by lawyers and jurists, and the entire movement narrowly focused on drafting of the bill. Another illustration is of the gang-rape protests of 2012, which was forcefully reduced to another legal campaign for criminal amendments, I.P.C and the Criminal Procedure Codes.¹²³ It only celebrated the J.S. Verma Committee report, quicker prosecution, faster trials, fast track courts etc. But my only point consistently has been that for the protestors, this gang-rape movement itself was about so much more. The experience of fear, threat and regulated feminine sexualities is always so much more inexpressibly broad. However, the dominant juridical discourse has this violent power of subsuming and reducing it to amendments and legal activism. An authentic civil disobedience would, instead, have fought not only for legal amendments, but this legal activism would also have been a part of a larger demand for experience, respect and recognition of the feminine body/human sexuality.

¹²⁰ Jacques Ranciere “Does Democracy Mean Something?” in *Dissensus: On Politics and Aesthetics* trans. Steven Corcoran (NY: Continuum International Publishing, 2010) 46

¹²¹ ID at 46

¹²² ID at 47

¹²³ See Generally; Criminal Law Amendment Act, 2013 and J.S. Verma Committee Report.

The final concluding remark is on the need to bridge the gap between the individual and the political. Gandhian satyagraha, in this sense, is a way of life for the nation as well as the individual. Satyagraha is not about confrontation but about cooperation; it is a process of conducting oneself (both the individual self and national self). It is not a nihilist in the face of injustice.¹²⁴ Perhaps it is the only philosophy of dissent that says, “It blesses him who uses it, and him against whom it is used”.¹²⁵ What other instrument of resistance can make such a claim other than civil disobedience?

¹²⁴ See; Devi Prasad “Satyagraha: the Way” in *India International Centre Quarterly* (Vo.;32, No.1, 2005) 45-46

¹²⁵ H.J.N. Horsburgh “The Distinctiveness of Satyagraha” in *Philosophy East and West* (Vol. 19, No.2, 1969)180

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