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STRIKES THROUGH THE PRISM OF DUTIES: IS THERE A DUTY TO STRIKE UNDER THE INDIAN CONSTITUTION?

*Shubhankar Dam**

1. Introduction

A “labourer’s ultimate weapon”,¹ a “weapon for industrial warfare”,² an “inherent right of every worker”,³ are some of the creative expressions usually employed to describe a strike. From a legal perspective, strike may be described as a “simultaneous cessation of work on the part of workers.”⁴ The definition has been expressed in many other ways.⁵ Notwithstanding these definitional variations, the requirement of a collective effort appears fairly universal. The inequality of bargaining power between the management and the workmen makes the collective cessation of work a particularly potent weapon in negotiating favourable working conditions not limited to wages and welfare benefits. The significance of the right to strike as an effective tool for collective bargaining cannot be overemphasized.⁶

* National University of Juridical Sciences, Calcutta, India. I am grateful to Prof. A. M. Bhattacharya, Prof. B. S. Chimni, Prof. M. P. Singh, Ms. Meena Panickar, Mr. Shiju M. V., Mr. Bikramjit Dey and my colleagues Aditya Reddy and Vivek Tewary for their helpful comments on the paper. The usual rejoinder applies.

¹ *Andhra Pradesh State Road Transport Corporation Employees Union v Andhra Pradesh State Road Transport Corporation* [1970] Lab I. C. 1225 at 1226 (A. P.)

² *Federated Municipal and Shire Council Employees Union of Australia v Melbourne Corporation* [1918-19] 26 C. L. R. 508 (552-53) (HC) quoted with approval in *Bangalore Water Supply v A Rajappa* [1978] Lab I. C. 467 at 485.

³ *Supra* n 1.

⁴ *Farrer v Close* [1869] L. R. 4 Q. B. 602 at 612 quoted in O. P. Malhotra, *The Law of Industrial Disputes* 385 (1998).

⁵ See generally *Encyclopaedia of Social Sciences* Vol. 14 at 419.

⁶ See R. E. Matthew, *Labour Relations and the Law*, 563; see generally *Syndicate Bank v K. Umesh Nayak* [1994] II LLJ 836 at 849; *Mogan v Fry* [1968] 3 W. L. R. 506 at 516 quoted in Malhotra, *supra* n 4 at 393.

The decision of the Indian Supreme Court in *T. Rangarajan v Government of Tamil Nadu*⁷ upholding the dismissal of government employees who participated in a strike evoked passionate reactions. In validating the dismissal of the striking employees by the Tamil Nadu Government, the Supreme Court reiterated the proposition laid down in an earlier decision⁸ that there is no fundamental right to strike under the Indian Constitution. This article is a reassessment of the law on strikes under the Indian Constitution. Interestingly, on almost all occasions including *T. Rangarajan*, the Court has addressed the issue of constitutionality of strikes from a rights' perspective. This article addresses the issue from an entirely different perspective, i.e. from a duty perspective. In other words, is there a fundamental duty to strike under the Indian Constitution?

Part IVA of the Indian Constitution, introduced by the 42nd Constitution (Amendment) Act, 1976,⁹ enumerates mandatory fundamental duties for the citizens of India. The significance of the fundamental duties in the constitutional scheme is beyond doubt.¹⁰ The same is evident from the use of the word fundamental,¹¹ as also from the reference to the mandatory

⁷ (2003) 5 SCC 567.

⁸ See *All India Bank Employees Association v National Industrial Tribunal* AIR 1962 SC 171; *Kameshwar Prasad and Others v State of Bihar and Another* AIR 1962 SC 1166; *O. K. Ghosh v E X Joseph* AIR 1963 SC 812; *Radhey Shyam Sharma v Post Master General Circle, Nagpur* AIR 1965 SC 311; *Maneka Gandhi v Union of India* AIR 1978 SC 597.

⁹ § 11 Constitution (Amendment) Act, 1976.

¹⁰ Even before the inclusion of Article 51A, Hedge J. in *Chandra Bhawan v State of Mysore* (1969) 3 SCC 84 held that '[i]t is a fallacy to think that under our Constitution there are only rights and no duties. Provisions of Part IV enable the legislatures and the Government to impose various duties on the citizens.'; see generally *Rural Litigation and Entitlement Kendra, Dehradun v State of UP* (1985) 2 SCC 431; *Rural Litigation and Entitlement Kendra, Dehradun v State of UP* (1988) 4 SCC 226; *M.C. Mehta v Union of India* (1987) 4 SCC 463; *M.C. Mehta v Union of India* (1991) 2 SCC 353; *U.P. Pollution Control Board v Modi Distillery* (1987) 3 SCC 684; *Sachidananda Pandey v State of West Bengal* AIR 1987 SC 1109.

¹¹ The use of the word "fundamental" appears significant especially in the light of the opinion of Sikri C.J. in *Keshavananda Bharati v State of Kerela* (1973) 4 SCC 223. The learned Justice held:

I have referred to the variation in the language of the various articles dealing with the question of amendment or repeal in detail because our Constitution was drafted very carefully and I must presume that every word was chosen carefully and should have its proper meaning. I make this principle on the observations of the United States Supreme Court in *Holmes v Jennison* (10 L. Ed. 579) and quoted with approval in *Williams v US* (77 L. Ed. 1372) – 'In expounding the Constitution of the United States, every word must have its due force, and appropriate meaning, for it is evident from the whole instrument, that no word was unnecessarily used, or needlessly added...'

duty expressed by the words, '[i]t shall be the duty of every citizen...'. From the point of view of enforceability too, the status of fundamental duties remains unimpeached. While fundamental rights have been made specifically enforceable and what are known as Directive Principles of State Policy specifically non-enforceable, there is no provision that restricts the enforceability of fundamental duties. In the absence of any such specific limitation,¹² fundamental duties may be regarded as directly enforceable.¹³

Article 51A (b) states that it shall be the duty of every citizen "to cherish and follow the noble ideals that inspired our national struggle for freedom." There is near unanimity among historians that *ahimsa* and *Satyagraha*¹⁴ were noble ideals that inspired our national struggle.¹⁵ Propounded by Mahatma Gandhi, the ideological pillars of *ahimsa* and *Satyagraha* led millions of Indians to selflessly contribute to the aspirations of a liberated motherland. It, therefore, follows that for a fundamental duty to strike under the Constitution to exist, it must be shown that *Satyagraha*, as understood by the Mahatma, included strikes. This note broadly addresses two questions. Did *Satyagraha* as an "ideal that inspired our national struggle for freedom" include strike? Secondly, what are the conditions under which citizens could strike as part of this larger canvass of the *Satyagraha* practices?

In addressing the above issues, this article is divided into six small sections. Section 2 explains the meaning of *Satyagraha* as expressed in the writings of the Mahatma. The remainder bases itself on this explanation of *Satyagraha* and the importance of strike as part of *Satyagraha* philosophy. Section 3 discusses the first requirement of a valid strike: just cause.

¹² T. K. Tope, *Constitutional Law of India*, 364 (1992).

¹³ See Bhagwati J. in *Minerva Mills v Union of India* (1980) 3 SCC 625. He noted:

A rule imposing an obligation or duty would not therefore cease to be a rule of law because there is no regular judicial or quasi-judicial machinery to enforce its command. Otherwise the conventions of the Constitution and even rules of international law would no longer be liable to be regarded as rules of law. This view is clearly supported by the opinion of Prof. A.L. Goodhart who while commenting upon this point says, 'I have always regarded that if a principle is recognised as binding on the legislature, then it can be correctly described as a legal rule even if there is no court that can enforce it.'

¹⁴ *Satyagraha* has been referred to in the capital because it is probably the single most important phenomenon that contributed to India's freedom. The process is similar to other historical events such the Industrial Revolution, the Renaissance or in some respect the Reformation or Counter Reformation in Western Christianity.

¹⁵ See (II) Percival, Spear, *A History of India*, 198 (1999); see also R.C. Mazumdar, et al, *An Advanced History of India*, 971-2 (1978).

Section 4 explains the importance of non-violence in maintaining the just nature of strikes. Section 5 explains the necessity of examining the subject matter of dispute as a requirement flowing from the just nature of the strikes. Section 6 elaborates the final ingredient of valid strikes, the duty to protect one's honour. Section 7 contrasts these requirements with the public function that government employees perform and argues that the fundamental duty to strike is limited to citizens who are not exercising government functions.

2. *Satyagraha*: 'The Noble Ideal of our Freedom Struggle'

Satyagraha is a compound word that includes 'satya' and 'aghra.' Coined by the Mahatma himself in South Africa, *Satyagraha* literally refers to "insistence on truth" or "holding on to truth".¹⁶ He traced the principle of *Satyagraha* in the actions of legendary historical figures including Socrates, Prahlad¹⁷ and Mirabai.¹⁸ The principle, however, was not novel. It was merely an extension of the rule of domestic life to the political.¹⁹ For Mahatma, it was the infliction of suffering on oneself without rancour or hatred towards anybody for a just cause.²⁰ For a resistance based on the principles of *Satyagraha*, a real grievance was a necessary precondition.²¹ A *satyagrahi* is one who openly and civilly breaks a law because he considers them unjust and obedience to it dishonourable, but willingly submits to any penalty for such a course of action.²² A *satyagrahi* had to completely abjure the path of violence.²³ His only weapon is his uncompromising insistence on truth, i.e. the insistence on just law.²⁴ In other words, insistence on truth through self-suffering may be succinctly

¹⁶ See (Vol. 20) *Satyagraha* in *Complete Works of Mahatma Gandhi* 39 (New Delhi, Government of India: 2002).

¹⁷ A devotee of God in Hindu folktales persecuted by his unbelieving father.

¹⁸ Medieval saint-poetess of Western India, the Queen of Mewar.

¹⁹ *Supra* n 16.

²⁰ *Id.*

²¹ See (Vol. 16) *Speech at Public Meeting, Bombay*, *supra* n 16 at 457.

²² See (Vol. 16) *Letter to Governor of Bombay*, *supra* n 16 at 42.

²³ It was violence, suffering unto oneself that made a *satyagrahi* pure. Mahatma thus referred to the weapon of *Satyagraha* as a self-purification process. See *supra* n 16.

²⁴ *Id.* at 23. Mahatma explains the complete disassociation of violence from the process of *Satyagraha* on the following reasoning. He argues:

The question is asked why we should call any rule unjust. In saying so, we ourselves assume the function of a judge. It is true. But in this world, we have to act as judges for ourselves. That is why the *satyagrahi* does not strike his adversary with arms. If Truth is on his side, he will win, and if his thought is faulty, he will suffer the consequences for his fault.

regarded as the core of the *Satyagraha* philosophy.²⁵ Mahatma saw *Satyagraha* not only as a birth right, but as a duty too.²⁶

This philosophy of *Satyagraha* or civil disobedience was practised by a number of methods, including fasts, cessation of work, hartals and public demonstrations.²⁷ Strike may be regarded as one of the most important aspects of *Satyagraha*, may be only second to fasting.

The statement is clearly borne out by historical events. Mahatma's first experiment with *Satyagraha* in South Africa against the imposition of £3 tax on indentured Indian labourers was with the weapon of strike.²⁸ In India, the events in Champaran,²⁹ the Ahmedabad Mill incident,³⁰ the agitation against the tyrannical Rowlatt Act 1919³¹ and the 1930 Civil Disobedient Movement³² included liberal use of strikes to voice protest against the tyranny of the capitalists and the rulers alike.

Strike, for the Mahatma, was a "non-violent" weapon against oppressive laws and for securing just demands.³³ Clearly, it had an affirmative and negative connotation. In the affirmative sense, the weapon referred to the right of the people to demand honourable conditions of labour and living. In the negative sense, it implied the duty of the people to disobey orders which, on mature consideration, they regarded as unjust or oppressive.

²⁵ Supra n 16 at 41 The Mahatma, has also referred to *Satyagraha* as a religious movement. It is religious in the sense that it includes the process of purification and penance. It was not religious as meaning "pertaining to a religion". It was the development of the moral faculty that Mahatma regarded as religion. For further discussion on religion see *Speech at Meeting of Mill-hands*, Ahmedabad, in supra n 20 at 221.

²⁶ Id. Mahatma explains it in the following words:

This law of love is the law of truth. Without truth there is no love...Satyagraha has therefore been described as a coin, on whose face you read love and on the reverse you read truth. It is a coin current everywhere and has indefinable value.

²⁷ See Baidyanath Labh, *Satyagraha: Is it the Last Resort in Rediscovering Gandhi* 49, 52 (1998).

²⁸ In 1895 a bill was passed in Natal imposing a tax on indentured Indian labourers who wanted to settle in Natal as free men.

²⁹ *Satyagraha* in Champaran refers to the struggle led by the Mahatma against the exploitation of Indians by the European indigo planters in 1916.

³⁰ The Ahmedabad Mill incident refers to the strike by thousands of mill-hands against the non-payment of bonus and subsequently for the demand in the increase in wages by 35%.

³¹ Bill No. 2 of 1919. The Act sought to restrict individual liberty to an extent unprecedented in history and provided the police with arbitrary powers.

³² The Civil Disobedience Movement is epitomised by the famous *Dandi March* of the Mahatma when he walked to Dandi in Western India to make salt in defiance of the salt law regulation.

³³ See (Vol. 41) *Strikes*, supra n 16 at 408.

This prism of affirmative-negative expression will be employed to discuss conditions the Mahatma regarded as essential before any workforce could go on a strike. Given that strikes were a principle mechanism of performing *Satyagraha* and, therefore, a part of the noble ideal of our freedom struggle, the question as to the conditions under which one may strike assumes importance. In other words, what are the conditions under which a strike may be validly performed?

3. A 'Just' Strike

Mahatma laid great emphasis on the just nature of the demand. A strike was not a valid *Satyagraha* unless workers had a "real grievance".³⁴ He suggested that in making a demand one should be guided by a sense of justice.³⁵ For the success of a struggle, the workers³⁶ could rely solely on the righteousness of their demands.³⁷ In Natal, he fought for the impoverished, indentured Indians against the imposition of the £3 tax. Under the Bill, if an ex-indentured Indian left for India on the termination of the indenture or entered into further indenture, he was exempt from paying the tax.³⁸ He realised that the Bill was intended at making people continue to live as slaves or force them back to the country from where they came only to avoid starvation. It was under such circumstances that he described the tax as a "blood tax".³⁹ Describing the indentured labourers as "victims of gold hunger", he argued that passive resistance by striking⁴⁰ as not only proper but also the primary duty of every Indian in South Africa.

In the Ahmedabad Mill strike incident, 70% bonus earlier available to workers were withdrawn and restricted to 20%. The workers in turn demanded an increase in their wages by 35%. The Mahatma regarded the

³⁴ Id.; see also (Vol. 21) *Speech on Rights and Duties of Labour*, Madras, in supra n 16 at 169; (Vol. 24) *Notes*, in supra n 16 at 285.

³⁵ See *Ahmedabad Mill-Hands Strike (Leaflet No.2)*, in supra n 16 at 289.

³⁶ See (Vol. 16) *Ahmedabad Mill-Hands Strike (Leaflet No.13)*, in supra n 16 at 329.

³⁷ See *Ahmedabad Mill-Hands Strike (Leaflet No.2)*, in supra n 22 at 289. While explaining the qualities of character a worker must have to wield power, he suggested that '[h]e should have a sense of justice. If he asks for wages higher than his deserts, there will be hardly anyone who will employ him. The increase we have demanded in this struggle is reasonable.' A just demand in his opinion also had a number of other advantages. See *Ahmedabad Mill-Hands Strike (Leaflet No.7)*, in supra n 22 at 307. He suggested that, 'if we...ask only or what is our right, not only shall we win but there will also be increased goodwill between the workers and the employers.'

³⁸ See (Vol. 13) *The £3 Tax*, in supra n 16 at 321-22.

³⁹ Id at 321.

⁴⁰ See (Vol. 13) *Interview to Rand Daily Mail*, in supra n 16 at 375.

demand for a wage increase as valid. He recalled the abject poverty in which almost all workers lived. Poor ventilation, dirty clothes, filthy surroundings were the usual living conditions. Most had no money to send their children to education or to feed them well.⁴¹

Mahatma made a distinction between economic and political strikes.⁴² Strikes for economic betterment could not have a political end as an ulterior motive.⁴³ Political strikes, according to him, must be treated on their own merits and never mixed up with or related to economic strikes.⁴⁴ At the same time, he appealed to the student force of the nation not to resort to political strikes.⁴⁵ There was no denying that students should have their own heroes, but their devotion to them should be shown by copying the best in their heroes, not by going on strikes, even if the heroes are imprisoned or sent to the gallows.⁴⁶ Sympathetic strikes, according to him, must be taboo until it could be conclusively proved that the affected men had exhausted all the legitimate means at their disposal.⁴⁷ He opined that the labourers and artisans of India had not yet arrived at the degree of national consciousness which was necessary for successful sympathetic strikes.⁴⁸ Such strikes could only succeed when behind it is the fixed determination not to revert to service.⁴⁹

Mahatma was certain that no unjust strike could succeed. He asserted that all public sympathy must be withheld from such strikes.⁵⁰ For him, any demand which sought merely to take advantage of the capitalists' position was unlawful. But it was altogether lawful if the labourers were demanding wages to enable them to maintain themselves and to educate their children decently.⁵¹ Mahatma agreed that in deciding what was just and unjust, each person assumes the role of a judge.⁵² However, that by itself does not invalidate the action. He contended that in this world we always act as judges for ourselves,⁵³ but did not deny the possibility of one

⁴¹ See (Vol. 16) *Ahmedabad Mill-Hands Strike (Leaflet No.10)*, in supra n 16 at 313.

⁴² See (Vol. 46) *Strikes* in supra n 16 at 409.

⁴³ Id.

⁴⁴ Id. at 410

⁴⁵ (Vol. 81) *Constructive Programme: Its Meaning and Place*, in supra n 16 at 370.

⁴⁶ Id.

⁴⁷ Supra n 38 at 409.

⁴⁸ Supra (Notes) n 34 at 284.

⁴⁹ Id. at 285.

⁵⁰ See (Vol. 40) *Question Box*, in supra n 16 at 129.

⁵¹ Supra n 16 at 219.

⁵² Supra n 16 at 13.

⁵³ Id.

wrongly judging a cause as just. It is this possibility of error that leads us to two other important conditions of valid strike, i.e. complete abstention from violence and the willingness to submit the dispute to arbitration.

4. Justifying a 'Non-violent' Strike

Mahatma explained the non-violent nature of *Satyagraha* in the following words. He said:

Satyagraha differs from passive resistance as the North Pole from the South. The latter has been conceived as the weapon of the weak and does not exclude the use of physical force or violence for the purpose of gaining one's end; whereas the former has been conceived as a weapon of the strongest and excludes the use of violence in any shape or form.⁵⁴

Non-violence was the cornerstone of Gandhian thought. The principle has also found place in Article 51A (i) of the Constitution.⁵⁵ In *Satyagraha*, the struggle is with oneself rather than with anybody else. A *satyagrahi* never injures his opponent but always appeals, either to his reason by gentle argument or his heart by the sacrifice of self. For the Mahatma, violence always led to catastrophe.⁵⁶ For him it was suicidal to vent anger by criminal disobedience of the laws of the land.⁵⁷ Even with just demands, workers may lose their case if they resort to untruth, to violence or coercion.⁵⁸ He regarded as essential that workers do not resort to coercion for securing their demands.⁵⁹ Self-resistance was braveness and a reflection of a man's courage.⁶⁰ Even during the Ahmedabad Mill strike,

⁵⁴ Supra n 16 at 39.

⁵⁵ Article 51A (i) reads: It shall be the duty of every citizen of India to safeguard public property and *abjure violence*.

⁵⁶ Supra n 16 at 218.

⁵⁷ Id.

⁵⁸ Id.

⁵⁹ Id.

⁶⁰ See (Vol. 24) *Speech to Railway Workers, Chittagong*, in supra n 16 at 145. The Mahatma once explained the braveness of a Pathan. He said:

Once a Pathan working in a coal-mine came to me and bared his back before me. It was all sore and swollen. He told me that he had received blows without the slightest movement of his body that the tyrant had all but skinned him alive; but he submitted it all because of the pledge he has taken before me in the name of God. Were it not for this, how the man dare beat him, he asked. He could have crushed the like of him in no time.

he reiterated his plea of maintaining peace during strike.⁶¹ No victory was just unless it was achieved by pure means.⁶² On every occasion leading to *Satyagraha*, he was never tired of reminding people the importance of remaining non-violent. During his struggle in Natal, in an interview to *Rand Daily Mail*, he commented that “[t]he strike was being conducted on purely passive resistance lines, and men have instructions on no account to use physical force, to retaliate or to defend themselves physically.”⁶³ He paid rich tributes to the ability of men and women to suffer silently for the just cause. In a moving letter to the Indians before he was taken to Dundee jail on November 11, 1913, he wrote:

They have suffered horses’ kicks. They have silently endured kicks and blows by whites. Women have walked in the heat of the noon, two month old babies in arms and bundles on head. Everyone has braved the rigours of weather, heat and cold rain...We should put courage in the strikers’ hearts and advise them not to retaliate even if mercilessly kicked.⁶⁴

Mahatma saw an inherent relationship between just demands and absence of violence. Coercion, he suggested, weakens a movement. It erodes the credibility of the cause. For him, victory without pure means was meaningless⁶⁵. *Satyagraha* was incomplete unless workmen could resist the temptation to resort to coercion for securing their demands.⁶⁶ Self-resistance was braveness and a reflection of a man’s courage.⁶⁷

In other words, when the demands of workers are just, a strike would be spontaneous rather than manipulated. There would be no need for

⁶¹ See supra n 16 at 324; see also (Vol. 16) *Ahmedabad Mill-Hands’ Strike (Leaflet No. 2)*, in supra n16 at 290; (Vol. 16) *Ahmedabad Mill-Hands’ Strike (Leaflet No. 1)*, in supra n 16 at 286; (Vol. 16) *Ahmedabad Mill-Hands’ Strike (Leaflet No. 4)*, in supra n 16 at 297; (Vol. 41) *Independence*, in supra n 16 at 327.

⁶² See (Vol. 41) *Question Box*, in supra n 16 at 43. In reply to a question as to how a strike be conducted so that hooliganism and violence are avoided, the Mahatma observed:

A strike should be spontaneous and not manipulated. If it is organized without any compulsion there would be no chance for *goondaism* (Vernacular expression of hoogliganism) and looting. Such a strike would be characterized by perfect cooperation amongst the strikers...It goes without saying that in a peaceful, effective and firm strike of this character, there will be no room for rowdyism or looting. I have known such strikes. I have not presented a Utopian picture.

⁶³ See (Vol. 13) *Interview to “Rand Daily Mail”*, in supra n 16 at 375.

⁶⁴ Id at 401-02.

⁶⁵ See (Vol. 41) *Question Box*, in supra n., 13 at 43.

⁶⁶ Id.

⁶⁷ See (Vol. 24) *Speech to Railway Workers, Chittagong*, in supra n 13 at 145.

coercion. Nor would there be a need for violence to threaten workers. It is the solidarity arising from a just cause that would ensure that violence is eschewed. While this explains why a just strike *need* not resort to violence to ensure its efficacy, the reason as to why workers *should* not turn violent is far more profound. As suggested earlier, when workers decide that a cause is just, they sit in judgment about their own cause. While such a course of action does not necessarily become invalid, it does not attain finality either. It is only when the arbitrator too agrees that a strike was just does the righteous nature of the strike attain finality. If the arbitrator were to disagree about the just nature of the strike, responsibility for the violence perpetrated would be squarely on the workers. It was a responsibility better avoided. This reasoning leads us to the third requirement of a valid strike.

5. 'Arbitrating' the Dispute

The other significant principle regarding strikes that flows out of self-assessment regarding the righteous nature of the strike is the need to submit the matter for arbitration. Mahatma strongly advocated arbitration for the resolution of labour disputes. He reasoned his support for arbitration on a number of grounds. He opined that an unjust strike did not deserve public support.⁶⁸ However, the public had no means of judging the merits of a strike, unless it was backed by impartial persons enjoying public confidence.⁶⁹ Hence, there must be an arbitration accepted by the parties or a judicial adjudication. For the Mahatma, arbitration was primarily a means of reassessing the righteous character of the demands.⁷⁰ He suggested that both private dealings and differences between the Government and the subjects should be settled through a *Panchayat*. Such a practice has existed in India ever since the days of ancient kings.⁷¹ He suggested that the relationship between owners and the workmen be complementary rather than conflicting⁷². The practice of arbitration allows the development of relationship between the two wheels of an economy along such complimentary lines.⁷³ Similarly, the process of arbitration teaches people the lessons of patience.

⁶⁸ Supra n 42.

⁶⁹ Id.

⁷⁰ See (Vol. 16) *Message to Satyagrahi Agriculturists*, in supra n 16 at 434.

⁷¹ Id.

⁷² Supra n 16 at 219.

⁷³ See (Vol. 40) *Capitalism and Strikes*, in supra n 16 at 130.

He opined that to seek justice without resorting to violence was lawful.⁷⁴ At the same time he realised that for the process of arbitration to be fair to both parties, it was essential that workers had unions.⁷⁵ He suggested a process by which workers would approach the unions for the redress of their grievances.⁷⁶ If this was not achieved at the level of the union, they had a right to ask for arbitration. For him, the right to strike was inherent in every working man.⁷⁷ But while the arbitration process was proceeding, there could not be any strike,⁷⁸ for such an action would defeat the very purpose of the process.

Mahatma saw arbitration as an effective alternative to strikes. While not denying the inherent right of workmen to strike, he insisted on the use of the arbitration mechanism. But if workers are under an obligation to submit to the arbitration process compulsorily, what becomes of their “inherent” right to strike? What should be regarded as ‘the ideals that inspired the national struggle for freedom’: the duty of workers to strike or their duty to submit the dispute for arbitration? While it is undeniable that strikes played a role in settling labour disputes during our freedom movement, it is also significant to note that the duty to submit a dispute for arbitration also arose from the very right to strike. The shift in his emphasis in his writings from Natal to Ahmedabad is prominent. While in Natal and fighting against the “blood tax”, he exhorted the Indian community to contribute to the success of the strike. Nearly five decades later, he regarded Ahmedabad Labour Union as a model for all Indians to copy.

6. ‘Honour’ at Stake

The fourth and final ingredient of strike as part of the larger *Satyagraha* philosophy is the honour of the workforce. Every decision to go on a strike involves a pledge. For Mahatma, a pledge was an ‘*unshakeable resolution*’ (emphasis in the original)⁷⁹. He suggested to all strikers to fix an unalterable minimum demand and declare the same before embarking upon their strike⁸⁰. He suggested that if one remained firm and clung to the truth, one was bound to win. He regarded the duty to keep the pledge as

⁷⁴ Supra n 16 at 219.

⁷⁵ Id.

⁷⁶ Id.

⁷⁷ Id.

⁷⁸ See (Vol. 20) *Speech on Settlement of Mill Strike, Ahmedabad*, in supra n 16 at 354.

⁷⁹ See supra n 70 at 434.

⁸⁰ See (Vol. 24) *Notes*, in supra n 16 at 285.

one's dharma⁸¹. In the context of the Ahmedabad Mill strike the Mahatma said, '[t]he workers bore all these things in mind before taking their pledge and now cannot resume work without securing 35 percent increase, whatever the inducement held out and whatever the suffering they may have to go through. Their honour is at stake. If you weigh a pledge against a sum of hundreds of thousands, the pledge will be seen to be of greater consequence⁸².' Keeping one's pledge was also important for the sake of posterity.

For the Mahatma, every pledge was in the name of God and thus inviolable⁸³. He held in high esteem *satyagrahis* who could keep their pledge until death. In this message to the mill-hands of Ahmedabad, he spoke highly of the *satyagrahis* in Natal who died trying to keep their pledge. He recalled Imam Hassan, Hussain and Hurbat Singh as "bold and resolute *satyagrahis*" whose capacities could not be compared to anyone else.⁸⁴

For him, inability to keep one's pledge was a humiliation. He referred to the hasty nature of the Bhavnagar strike and the subsequent retraction of the same without having achieved their demands as unfortunate.⁸⁵ He was shocked to learn about the apology the strikers had tendered to the Maharaja.⁸⁶ He opined that no body of men could make themselves into a nation or perform great tasks unless they became as true as steel and unless their promises came to be regarded by the world like the law of the Medes and Persians, inflexible and unbreakable.⁸⁷ And it was about this resolve to honour one's pledge that he once commented, "the course of the sun may alter, but a pledge, just and taken after full deliberation shall not be abandoned"⁸⁸.

What does all this discussion add up to? Clearly, the Mahatma's speeches and writings suggests four attributes essential for a valid strike, "just cause", "non-violence", "willingness to submit the dispute for arbitration" and "the ability to hold on to one's pledge". Are all criteria compatible with one another? Can a union hold on to its initial pledge and yet submit

⁸¹ Id.

⁸² See (Vol. 16) *Ahmedabad Mill-Hands' Strike (Leaflet No. 12)*, in supra n 16 at 327.

⁸³ See (Vol. 16) *Speech to Ahmedabad Mill-Hands*, in supra n 13 at 293.

⁸⁴ Id.

⁸⁵ See (Vol. 13) *The £3 Tax*, in supra n 16 at 452.

⁸⁶ Id.

⁸⁷ See (Vol XVI) *Letter to the Press*, in supra n 16 at 365.

⁸⁸ See supra n 70 at 434.

the dispute for arbitration? What if the arbitrator were to regard the demands of the workers as unjust? Should workers still continue striking? Or should they resume work? If they followed the former course, it would go against the very purpose of arbitration and independent evaluation. If they follow the latter, their ability to hold on to their pledge would be belied. Are these contradictions in the Mahatma's philosophy of strikes?

It is submitted that they are not. What appear to be contradictions are reconciled by what the Mahatma regarded as his fight for Truth.⁸⁹ If the demands of the workers are righteous, they are destined to win. Was there any possibility of the arbitrator not agreeing with the righteousness of the demand? The Mahatma claimed there was none. There could be no clash between the interest of the arbitrator and the workers if the demands of the latter were just: determining the just nature of the demands was the sole task of the arbitrator. If what the workers are asking was righteous there can be no reason for the arbitrator to disagree with them. And, therefore, he suggests that if a *satyagrahi* has Truth on his side, he will win, and if he is faulty, he will suffer the consequences of his fault. Mahatma's faith in ultimate justice stemmed from his understanding of God whom he regarded as omnipotent.⁹⁰ It was this faith in the ultimate Truth prevailing in all actions of this universe that made the Mahatma reiterate that if the workers had just demands they were destined to achieve the same.

7. 'But not the Public Servants'

Notwithstanding these conclusions, Mahatma's opinion regarding strikes underwent a distinct change in the later years, especially post 1940s. He lamented the daily increasing demands of the labour world and their willingness to resort to violence for the impatient enforcement of those demands. Writing in 1947, he commented: 'going on strike [has become] an act of bravery.'⁹¹ Still worse was the fact that strikes were over trivial matters. Referring to the strikes in Bombay, at Tata Iron Works, in Gorakhpur and the celebrated strike of the Railway labourers in the Punjab, he commented that the reason for their partial failure was both poor leadership and the inability of strikers to find their own support to sustain the strike indefinitely. He suggested that the strikes in the Kanpur

⁸⁹ The Mahatma was an advocate of natural law, believing that there was something that could be regarded as the 'pure justice' or the 'ultimate Truth.' He urged humanity to pursue this 'ultimate Truth.' The word *Satyagraha* also has its root in 'Truth'; *Satya* as meaning the 'ultimate Truth.'

⁹⁰ See (Vol. 20) *Speech on Settlement of Mill Strike, Ahmedabad*, in supra n 13 at 353.

⁹¹ See (Vol. 45) *Advice to Mill-Workers*, in supra n 16 at 61.

coal mines or elsewhere meant material loss to the whole society, not excluding the strikers themselves.⁹²

Referring to the dock workers who had gone on strike demanding speedy implementation of the Pay Commission's recommendations, he commented that such strikes would lead to the undoing of the nation⁹³. He argued that one ought not forget that there was neither independence nor the kind of legislation we now have⁹⁴. For him strikes earlier had a meaning because they had no other way of making themselves heard.

For the Mahatma however, public servants had no right to strike. While arguing against indiscriminate striking, the Mahatma once commented, 'If the mills are closed for a day or a month, the mill owners would not have to worry about their daily bread. But what would happen to you who live from day to day. Similar is the case with Government clerks and postmen going on strike⁹⁵'.

The Mahatma had an opportunity to express his views about strikes by public servants when the Bhangis⁹⁶ went to strikes. He suggested that in such cases (referring to strike by Bhangis) the proper remedy was not a strike but a notice to the public in general and the employing corporation⁹⁷. For him a strike is a temporary measure in expectation of relief⁹⁸. He was clear on the view that there are certain matters in which strikes would be wrong. Therefore, he suggested that even if an absolute right existed, it was not proper to use it in certain circumstances⁹⁹.

Around 1947 a number of government employees belonging to different departments, including the Account General's Office in West Bengal and the Post and Telegraph department, the dock workers in Bombay and others, went on strike demanding an increase in their pay.¹⁰⁰ He was pained by the course of action the government employees had taken. For him, these departments existed not for the good of any particular individual but for the community. Their public duty overrode their right to strike.

⁹² See (Vol. 45) *Speech at Prayer Meeting*, in supra n 16 at 161.

⁹³ See (Vol. 48) *Speech at Prayer Meeting*, in supra n 16 at 187.

⁹⁴ Id.

⁹⁵ See (Vol. 45) *Advice to Mill-Workers*, in supra n 16 at 61.

⁹⁶ Indigenous term for scavengers.

⁹⁷ See (Vol. 41) *Question Box*, in supra n 16 at 163.

⁹⁸ Id.

⁹⁹ See (Vol. 40) *A Harijan's Letter*, in supra n 16 at 350.

¹⁰⁰ See (Vol. 46) *Speech at Prayer Meeting*, in supra n 16 at 148.

However, these critical words against “frequent strikes” can now be read as words against strikes generically. It is clear from the foregoing discussion that the Mahatma was against indiscriminate strikes, frequent strikes, strikes without just cause or strikes that went against national interest at that point of time. None of this is inconsistent with his recognition of strike as an inherent right of workers, provided the conditions discussed above are all present.

8. Conclusion

But what does all this discussion add up to? Two propositions may be concluded. Firstly, strike as an ingredient of the larger *Satyagraha* philosophy was an integral part of the “ideals that inspired our national struggle for freedom”. Therefore, when Article 51(1)(b) exhorts Indian citizens to “cherish *and follow* the noble ideals that inspired our national struggle for freedom” it includes a fundamental duty to strike. Secondly, strikes may be said to have been “inspired by our national ideals” only if it satisfies the conditions of “just demand”, “non-violence” and “willingness to submit the dispute for arbitration”. In other words, a strike that turns violent or a strike wherein participants refuse to submit to arbitration cannot be in pursuance of the fundamental duty under Article 51A(b). However, public servants have no such duty to strike under Article 51A(b).

So was the Indian Supreme Court correct in *T. Rangarajan*? Both yes and no. The Court was wrong when it held that strike as a weapon of collective bargaining for workers, whether public servants or not, had no constitutional protection. But it was correct when it held strikes by public servants as unconstitutional. The decision of the Supreme Court, as is obvious, overlooks a fundamental provision of the Constitution and, therefore, is *per incurium*. Irrespective of a fundamental right to strike under Part III, a fundamental duty in Part IVA undeniably exists under the Indian Constitution. Workmen have a constitutionally mandated duty to strike. And they must, provided conditions are satisfied. If workmen fail, they shall be failing in their constitutional duty to cherish and follow the noble ideals which inspired our national struggle for freedom.