

## **CHAPTER IX**

### **TRUTH AND JUSTICE**

#### **INTRODUCTION**

In this chapter, it is proposed to refer to truth in general, without repeating the avènements in earlier chapters, as to what is truth and would also to deal with Justice in a philosophical and legal sense of the word.

#### **SECTION I**

##### **RELATION BETWEEN TRUTH AND JUSTICE**

The concept of Truth has been dealt with in earlier chapters of this thesis. Justice is an abstract word and also a concrete idea. Justice means inherent righteousness. It also means rule of right. Justice means the right ordering of the society. Justice connotes many things. It is a reconciler. Justice is also a synthesis of political values. Justice is used in different sense, in different contexts, with different epithets. For example, we are given to understand and hear about Natural Justice, Judicial Justice, Distributive Justice, Retributive Justice etc,. But in short, Justice is nothing but

Truth implemented. Law is the hand maid of Justice. Law is meant for the attainment of Justice. The meaning of the word Justice in a common place and general way is Judicial Justice.

The present type of dispensation of Justice sans Truth was adopted in India from the west. This type of rendering of Justice may end in injustice in the present Indian system. The miscarriage of Justice is not taken seriously into consideration by present powers that be. For realising Justice at the outset, the ideal of Justice should be conceived. The next step is the creation of an entity or a frame work. The third step consists in making rules and regulations to transplant into reality the ideal of Justice already conceived. The frame work referred to just now, in other words, is known as constitution. The source of the last say or voice is with the people in a democracy. It is called Sovereignty. Sovereignty, is kept intact by the Constitution, which is Supreme. The three organs of the State, Legislature, Executive and Judiciary are creatures of Constitution. These three organs co-exist. They are co-equal. Constitution decides the destiny of a nation. That is why Mahatma Gandhi and M. N. Roy gave importance for future Constitution of India, during freedom struggle itself. Roy wrote future constitution of India before Independence. The fulcrum of Gandhi's future Constitution was Village Swaraj. He visualised and laid down the tenets of future Constitution of India in innumerable pages of his writings. Truth and Justice were the foundation of Gandhi's constitutional thoughts based on a four-tier system consisting of Village, District, State and Union, as distinct factors of administration. But after Gandhi's assassination, Nehru and

Ambedkar, the chief architects of Indian constitution over-looked Gandhi's Truth and Justice and constituted a two tier constitutional frame. They left the Village and the District Administration to the mercy of the State and Union Governments. That is to say, they have forgone village and district units, the two tiers from the purview of constitutional confines.

## SECTION II

### PLATONIC CONCEPT OF JUSTICE

The foundation of modern state was laid in ancient Greek city - states by the great Plato and Aristotle, the founding fathers of Politics. Plato in his work "*Republic*" dwells on the aim, end and character of ordinary and ideal State. In those days, society and State were bound up with each other. The city-state was called *polis*. It was brought into existence for Justice. It guaranteed the rights and duties of citizens. Its strength was the strength of Law.<sup>1</sup> According to Plato, the purpose of State was good life and right ordering of society. The right ordering of society was nothing but the accrual of Justice. Plato opined that justice was available in a state when every member of the state performed his or her duty. The idea and ideals of city state were copied and improved upon by the Romans. The advent of

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<sup>1</sup> Barker Earnest, Principles of Social and Political Theory, Oxford University Press, London, 1950, Pg. - 6. .

Christ and Christianity went a long way to separate society from the State. Great thinkers like Thomas Aquinas further developed the idea of State and Government and defined the confines of mundane and celestial boundaries.

The Platonic idea of Justice was succinctly put by his disciple Aristotle, in his treatise on *Politics*, in the following words.

"In order to deal rightly in matters of justice and to choose the right people for the office, it is necessary that citizens should know one another, know what kind of people they are. It is not right in this matters, to vote indiscriminately, which is what takes place when the population is excessive".<sup>1</sup>

The idea contained in the above paragraph was either borrowed by Gandhi or he had hit upon the idea on his own as an original thinker. It is nothing but the idea of Village Swaraj. The idea of Village Swaraj, is the core of Gandhi's politics and political philosophy. The Gandhian concept of justice is Platonic and the Platonic concept of justice is Gandhi an, though it may sound to be fiction. But it can only be concluded that truth is stranger than fiction. Plato and Aristotle ousted women from the purview of rights and citizenship and denied justice to them. But Gandhi recognized the rights of women with open arms.

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<sup>1</sup> Patel I. P. and Marjorie Sykes, Gandhi: His Gift of the Fight, Op. Cit., Pg. - 99.

### SECTION III

#### GANDHI'S CONCEPT OF JUSTICE

Gandhiji had conceived Justice from South Africa itself. His concept of justice was rooted in Ruskin's II "*Unto the Last*".<sup>1</sup> His concept of Justice was Sarvodaya. Sarvodaya means welfare of all. Gandhi took into consideration the last, the lowly and the least. He was against the concept of utilitarian theory. The utilitarians headed by Jeremy Bentham and John Stuart Mill were standing for the greatest happiness of the greatest number. Gandhi stood for the greatest or at least the minimum happiness of all. Gandhi's concept of Justice was to wipe every tear from every eye. He had given a talisman or directive as to his concept of Justice. It is inscribed in his *Samadhi* at Raj Ghat, New Delhi. It reads as follows:

"Recall the face of the poorest and the most helpless person whom you may have seen, ask your self if the step you contemplate is going to be of any use to him. Will it restore him to a control over his own life and destiny? In other words, will it lead to Swaraj or Self Rule for the hungry and spiritually starved millions of your country-men? Then you will find your doubts and your self melting away".

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<sup>1</sup> Gandhi M. K.. Autobiography. Op. Cit.. Pg. - 299.

Gandhi's concept of justice prompted him to question the exploitation of man by man. That is why he was against every type of mega enterprises. Gandhi criticised modern civilisation in his manifesto of revolution, Indian Home Rule or Hind Swaraj written in 1908.<sup>1</sup> He subjected doctors and lawyers to severe critique in Indian Home Rule. He was against big machines. He was also against spreading of railways to every nook and corner of India.

Gandhi wanted to put an end to exploitation of the weak by the strong in India. His ultimate intention was to stop the exploitation of the third world countries by advanced countries. To implement his concept of justice Gandhi wanted to make India free. That is why he fought for India's freedom. In tune with his concept of justice, he adopted a simple life-style. He was bold enough to say that his life was his message. For implementing the concept of justice, he visualised a picture of future Indian State and its Constitution. It was based on grass-root democracy. The Village Swaraj was the unit of administration in his scheme of things.

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<sup>1</sup> Gandhi M. K., Bind Swaraj, Nayajcevan Publishing House, Ahrnedbad - 1-1, 1938, Pg. - 34.

The Village Swaraj of his imagination was described by Gandhi in the following words:

"My idea of Village Swaraj is that it is a complete republic, independent of its neighbours for its vital wants and yet on many others, in which dependence is a necessity. Thus the first concern of every village will be to grow its own food-crops and cotton for its cloth. It could have a reserve, for its cattle, recreation and play ground for adult children. Then, if there is more land available it will grow fruitful money crops. The Government of the village will be conducted by the panchayat of five persons, annually elected by adult villagers. The panchayat will be the Legislature, Judiciary and Executive combined to operate for its year of office. Any village can become such a village without much interference from the government."<sup>1</sup>

But Gandhi's concept of Village Swaraj was over-turned by his western educated disciples. Nehru was an intimate colleague of Gandhi. Dr. Ambedkar was a strong critic, dissenter and opponent. Both of them were highly westernised. They did not know how matters really stand in our villages, as Gandhi knew. So when the new constitution was framed the basic concept of Gandhi's politics namely, Village Swaraj was given

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<sup>1</sup> Gandhi M. K, Harijan, Dated 26-7-19~2, Pg. - 238.

a complete go by. A centralised imperial bureaucratic state was brought into existence. It was modelled on the old Imperial Constitution of 1935. The main difference between the new Indian Constitution and the Government of India Act 1935 was introduction of adult franchise in the new Constitution. The Prime Minister entered into an alliance with I.C.S., the steel frame of British imperialism. There was nothing Gandhian with teeth in the Indian Constitution. Dr. Ambedkar drafted a two tier Constitution. It dealt with the division of powers and functions between the Centre and the States. The new Constitution gave a go by to district and village administration based on grass-root democracy. Dr. Ambedkar did not subscribe to village panchayat system. So there was no Constitutional guarantee for panchayat election in five years. Instead, three institutions without teeth, were set up at the instance of the then Prime Minister. They were Panchayat Raj System, Co-operatives and Community Developments. These three institutions had their decline and downfall in course of time. In short, India came to possess a Prime Ministerial dictatorship. The ultimate result was the cradle of democracy namely Assembly and Parliament became a battle field. Money and muscle power started to determine the outcome of election. With the burial of Village Swaraj, Gandhi's concept of justice was made to go astray. This brought India to the present sorry pass, where violence and untruth seized the place of Non-violence and Truth.

## **SECTION IV**

### **APPLICATION OF GANDHI'S CONCEPT OF TRUTH AND JUSTICE**

#### **a) BEFORE INDEPENDENCE**

Gandhi took on Law for the sake of Truth and Justice. As a lawyer, his foremost purpose was Truth and service of the fellow human beings. Gandhi was a seasoned and successful lawyer. He was aware of the miscarriage of Justice in the law courts of the world. Gandhi had definite and clear cut notion about the role played by legal profession in the administration of Justice. As officers of the court and as members of a learned profession, the strength and weakness of lawyers was well known to Gandhi. He was a practical idealist lawyer. He wanted the lawyer community in free India to make better justice available to millions of their less fortunate brethren. As a condition precedent to this, Gandhi envisaged a full-fledged Supreme Court for independent India. For Gandhi knew from experience that the Apex Court of a country was the last forum for justice and truth. That is why he made two speeches in London on 23-10-1931 and 19-11-1931 about the future Indian Supreme Court in the Federal Structure Committee of the Round Table Conference. Gandhi reposed tremendous faith in the

potential Apex Court of free India. It is reflected in the following words in his speech referred to above:

"Naturally the Supreme Court will be the guardian of the rights that may be considered to be common to all of us".<sup>1</sup>

The expectation of Gandhi about the Indian Supreme Court has not been belied. A great number of the Judges rose unto the occasion and upheld Truth and Justice except during the infamous Emergency. There were many lawyers who rose to the occasion for maintaining truth and justice before our Courts, whom Gandhi proudly called the harbingers of freedom. But there are also a number of lawyers who let down Gandhi's Truth and justice in the Supreme Court of India. This statement is not applicable to a few lawyers of character and rectitude in the Supreme Court. But their writ does not run. It is pertinent to refer in this juncture to Gandhi's opinion as to lawyers and legal profession as early as 1908. Gandhi had made the following caustic remarks about lawyers.

"Lawyers will, as a rule, advance quarrels instead of repressing them. Moreover men take up that profession not in order to help others out of miseries, but to enrich themselves. It is one of the avenues of becoming wealthy and their interest exists in multiplying dispute. It is within my knowledge that they are glad when men have disputes".<sup>2</sup>

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<sup>1</sup> Gandhi M. K., the Law and the Lawyers. Op. Cit.. Pg. - 228. .

<sup>2</sup> Ibid., Pg. - 248.

In a like manner Gandhi castigated the collection of exorbitant fees by Indian lawyers, in the following words:-

"There is something sinful in a system under which it is possible for lawyers to earn fifty thousand to one lakh rupees per month. Legal practice is not and ought not to be, a speculative business. The best legal talent must be available to the poorest at reasonable rate".<sup>1</sup>

In spite of the above opinion, Gandhi as a jurist endeavored for the spiritualisation of legal profession. This he wanted to do, by reforming and refining the system, the lawyer community, and judges of free India. As a first step he analysed, criticised and reviewed a host of British Indian court decisions which ended in untruth and injustice. On this score a telling instance from the former native state of Mysore has been cited. It is known as Dasappa's case. The Chief Justice of Mysore disqualified Dasappa, a High Court advocate and removed his name from the rolls of advocates of High Court of Mysore. For Dasappa made a speech supporting freedom struggle and praising Gandhi. Gandhi certified that "*Dasappa was a man of spotless character and unimpeachable honesty*". Gandhi's incisive

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<sup>1</sup> Young India, 6-10-1920, Pg. - 2.

article about Dasappa's case was published in *Harijan* dated 13-07-1940 (Page - 205). It culminated in revoking the punishment meted out to Dasappa by Chief Justice of Mysore. Here in this article Gandhi had opined that *"true advocate should not get for a day's work more than what a carpenter gets for his daily work"*.

The second step for reforming and refining legal profession was by prescribing qualities of role model advocates, emphasising the importance of duty. It is relevant to quote here Gandhi's own words:

"The duty of a lawyer is always to place before the Judges the true facts and to help them to arrive at the Truth and not to prove the guilty as innocent".<sup>1</sup>

According to Gandhi,

"True lawyer is one who places Truth and Service in the first place and the emoluments of the profession in the next place".<sup>2</sup>

Gandhi wanted to change the system. So he fought for Independence. He had expressed in unequivocal language, his creed, word and deed as to the behaviour of Judges of future India. Gandhi stated that Judges should be votaries of Truth and lead plain unostentatious living with high thinking.

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<sup>1</sup> Young India, 22-12-1927, Pg. - 427.

<sup>2</sup> Harijan, 26-1 h 1938, Pg. - 3.

## **b) AFTER INDEPENDENCE**

Gandhi thought Indian polity after independence would be definitely Truth oriented. He considered his co-workers Rajaji, Patel, Rajendra Prasad, Nehru and others like them to be the salt of earth. They were all famous lawyers. It was never thought that the salt will lose its savour. But the opposite happened. Gandhi visualised the following ideal state of affairs in free India.

"If India is to live an exemplary life of Independence which will be the envy of the world, all the sweepers, the doctors, lawyers, teachers, merchants and others would get the same wages for an honest days work. Indian Society may never reach this goal but it is the duty of every Indian, to set the sail towards that goal and no other, if India is to be a happy land"<sup>1</sup>

Gandhi conceived Truth and Justice will prevail in free India. for he had taught his followers the importance and dignity of Truth and Justice for 33 years by hundreds of object lessons. But fate did not permit him to be alive for more than six months after the advent of Independence. So Gandhi could not strive to implement his principles of Truth and Justice in the new Indian polity. In a way Gandhi was spared from seeing the decline and downfall of his Truth and Justice that was to follow at the hands of his chief disciples.

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<sup>1</sup> Harijan. 13-07-1940.

## **SECTION V**

### **THE PRESENT STATE OF AFFAIRS REGARDING TRUTH AND JUSTICE**

#### **DEVIATION FROM GANDHI'S PRINCIPLES**

The conception of justice, the creation of the state' and implementation of Truth through Law and Order for the sake of justice are the three phases of justice described in the forgoing paragraphs of the thesis. Of the three, the state is the most important entity. State is a people organised for Law within a definite territory, according to Woodrow Wilson an Ex-President of America. The State itself has three important organs. They are the Legislature, the Executive (Government) and the Judiciary. These three organs are to be, independent as far as possible. But at the same time they are interdependent and related. The behaviour or misbehaviour of individuals who man these organs decide the availability or absence of Justice in a country. The present state of Gandhi's concept of Justice can be gauged by having recourses to an important incident concerning the Legislature, the Executive (Government) and the Judiciary in India. That is to say, any incident concerning the Parliament, the Government of India and the Supreme Court of India. There cannot be a better incident for the above said purpose than the story of Mr. Justice V. Ramaswami's Impeachment case. It brings iilto sharp contrast the State of Truth, Justice, Law and order

and morality in India today. The facts of the case are well known. In short Mr. Justice V. Ramaswami was accused of various acts of illegality, extravagance, corruption and misbehavior during his tenure as Chief Justice of Punjab and Haryana High Court. On 27-2-91 Mr. Madhu Dandavate M.P., gave notice of motion to Speaker Mr. Rabi Rai for impeachment of Mr. Justice V. Ramaswami for his misbehavior and corruption. It was signed by hundred and eight Members of Parliament. V. P. Singh was the first signatory. The notice was signed under the Judges Enquiry Act 1968. The motion was admitted by the Speaker of Lok Sabha. He appointed a three member panel of most eminent Judges as per the provision of Judges' Enquiry Act. Mr. Justice Savant of the Supreme Court was the Chairman of the Panel. Mr. Justice P. D. Desai, Chief Justice of Bombay High Court and Mr. Chinnappa Reddy a famous Jurist cum retired Judge of the Supreme Court were the other two members. In spite of hurdles placed one after another by Prime Ministers, the Supreme Court of India cleared the impediments from the path of Justice, Savant Committee. The Savant Committee made their finding ready in keeping with procedure established by Law. The Committee Report was filed on 20-7-92. The report stated that out of fourteen charges against Mr. Justice Ramaswami, eleven have been proved. The substance of their finding is as follows:

"Justice Ramaswami's conduct, his several acts of omissions and commissions reflected in our findings on fourteen charges taken together discloses, wilful and gross misuse of office, purposeful and persistent, negligence in the discharge of

duties, intentional, habitual, extravagance at the cost of the public ex-chequer, moral turpitude by using public funds for private purposes in diverse ways, and reckless disregard, of statutory rules and brings disrepute to the High Judicial Office and dishonour to the institution of Judiciary and undermines the faith and confidence which the public reposes in the administration of Justice. The acts are of such a nature that his continuance in Office will be prejudicial to the administration of Justice and to the public interest. The acts therefore constitute' "misbehaviour" within the meaning of Article 124 (4) of the Constitution of India".<sup>1</sup>

The Speaker of the Lok Sabha did not act upon the Report for five months. The Speaker initiated follow up action only in December 1992. At long last on 10-5-1993 impeachment motion was taken up by the Parliament. Mr. Somanath Chatterji of Communist Marxist party made the opening speech indicting Justice Ramaswami on his several reckless acts of "misbehaviour", :misdemeanour and corruption. Then Mr. Kapil Sibil,

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<sup>1</sup> Sahay S" Gone At Last? The Story of V. Ramas\Vami's impeachment, Op, Cit., Pg. - 272.

advocate of the Supreme Court was permitted by the Speaker of the Lok Sabha to defend Mr. Justice Ramaswami. (Mr. Justice Veerasam., father - in-law of Mr. Justice Ramaswami is undergoing trial for the last twenty years under Prevention of Corruption Act.)<sup>1</sup> Mr. Kapil Sibil by his dramatic performance for six hours was able to create an impression on some of the Members of the Parliament. Mr. Sibil told Parliament that the impeachment motion was trifling and vile attempt "for purchase of few pieces of carpets and a few suitcases". Members of Parliament from Tamil Nadu issued a statement calling upon the Prime Minister to defeat the impeachment motion. The approach of Tamil Nadu M.P.'s was narrow and parochial. On the next day, Mr. George Fernandes came forward and enumerated the illegal acts committed by Justice Ramaswami and shattered to pieces the argument of Mr. Kapil Sibil. The AIADMK and Congress supported Justice Ramaswami. Many M.P.'s spoke for and against the motion. Mr. Somanath Chatterji gave a fitting reply winding up the impeachment motion. By this time the Congress Party engineered a rescue act. Congress leadership secretly entered into a package deal with Justice Ramaswami. The impeachment motion was put to vote. Congress M.P.s were given oral whip to abstain. One hundred and ninety six members of Parliament voted for impeachment of Justice Ramaswami. favouring his

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<sup>1</sup> 1991 SCC (CrI), Pg. -734.

removal. Not a single vote was cast in favour of Justice Ramaswamy. The Impeachment motion fell through since it failed to get the support of two **third.** majority of the members present in the House. This is an illustration of compromise with untruth and deviation from Gandhian concept of probity and integrity in public life. The failure of impeachment motion shows the archaic nature of our constitution network sans truth. Mr. Justice Ramaswam~ at the end announced his decision to resign from the Supreme Court. In short, the story of V. Ramaswami's impeachment process highlights the Constitutional assassination of Gandhi's Truth and Justice.

### CONCLUSION

#### HOW THINGS COULD BE CHANGED BY APPLICATION'OF GANDHIAN PRINCIPLES

Gandhi played politics before and after independence. After freedom power politics began to play and adversarial imperialist legal system was retained. Power politics is nothing, but absence of Truth. Adversarial legal system is also not Truth oriented. Thus Indian politics and legal system did not move through the route Gandhi had blazed. So Gandhi's Truth and Justice slowly suffered for the last fifty years. Now things have come to a head. The legal profession which brought about freedom failed to rise to the occasion. Leading advocates instead of becoming fellow worshippers of Truth, turned themselves out to be worshippers of Mammon. Lawyers, should become more justice conscious. Gandhi considered the extraction of

exorbitant fees by the lawyers to be a sinful action. The present state of affairs in the High Courts and Supreme Court of India as to lawyers fee is horrible. The reason for the miscarriage of Justice in the Apex Court is the greed of Senior Lawyers for money, without any limit, let or hindrance.

In the encircling gloom of hopelessness, the silver lining in the cloudy is the assertion of the Apex Court, and Judicial sensitivity for the Human rights of women, children and weaker sections of the society. It is relevant to cite a concrete example. The Gajaraula Nuns' rape case was brought to Supreme Court pleading the inability of the victims to seek justice. In that case the Supreme Court came down heavily on all concerned. Compensation was awarded to the victims.<sup>1</sup> The State Government was directed to initiate disciplinary proceedings against the Sub Inspector, Circle Inspector and lady Medical Officer after suspending them for their lapses. The State Government was directed to pay rupees two and a half lakhs as compensation to each of the two rape victims, rupees one lakh, to the nuns who were assaulted, and to the maid servant whose valuables were snatched away. A further direction was issued to the State Government to recover the amount paid from the officers held guilty of lapses and misconduct. The Supreme Court also set free four innocent persons undergoing fake trial in the sessions court as accused in the nuns' rape case. Police arrested the four innocent persons and tried to compel the victim nuns

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<sup>1</sup> 1995, Supplement (3) Supreme Court Cases, Pg. - 387.

to indict them. The above case is a landmark case as far as women's Human Rights are concerned.

Things could be changed by application of the following programme in tune with Gandhian nonns.

- a) Encourage public interest litigation to redress public grievances and make Justice available to the poorest of the poor.
- b) Promote the writing and submission of dissertation in Indian universities exposing the malpractices (in violation of law) committed by authorities in high places and seek to cleanse and purify public life.
- c) Create a four tier system of administration giving importance to village and district units along with state and Union and bring about structural reconstruction to make democracy more fruitful.
- d) Introduce Presidential fonn of Government with fixed time frame

- e) Make the process of appointment to the highest Judicial forums tenable and transparent.
- f) Prescribe age limit for politicians and ensure their retirement on par with Supreme Court Judges.
- g) Lay down National Policy on Human Rights and Human Duties and make them a part of curriculum in the educational institutions.
- h) Establish All India Law and Justice service.
- i) Teach books like **Gandhi: His Gift of the Fight** written by J.P. Patel and Marjorie Sykes, and *The Law and the Lawyers*, written by M. K. Gandhi in our schools and colleges and enable new generation to fight against injustice.

It is pertinent to quote Dr. Zakir Hussain as to the sum and the substance of Gandhi's Truth and Justice for the advancement of National life. He has said thus :-

"The basic principles of Gandhi's satyagraha was that Truth and Justice, can be established only by continuously intensifying moral awareness. The free moral agent (any social reformer) anxious to awaken this sensitiveness in others has to eradicate within himself the desire to use force or authority for the attainment of his ends. Gandhi challenged us to exercise our own freedom, as moral beings, obeying the moral law as demand of our own nature".<sup>1</sup>

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<sup>1</sup> Patel I. P. and Marjorie Sykes, Gandhi; His Gift of the Fight, Op. Cit., Pg. - 207