

# GANDHI THE LAWYER

by H. E. Mall

To commemorate the 109th birth anniversary of MAHATMA GANDHI

So much has already been said and written about this complex and many faceted personality that George Woodcock in his book on Gandhi was constrained to say:

“Neither national liberation or social revolution is a category sufficiently wide to contain the objective that evolved with and out of Gandhi’s life of action. He was not concerned primarily with the creation of an Indian nation or with the abolition of poverty. Indeed he was opposed to nationalism in its narrower definition for he sought to make his fellow countrymen feel that in becoming fully Indian they were also becoming citizens of the world, unbound by exclusive loyalties of race or creed or class. And far from wishing that man should cease to be poor he taught that a deliberate poverty based on the conscious shedding of attachment to material things was the happiest of possible human conditions.”

Though he was educated and trained to be a lawyer he only practised as such until about 1914 when he left the shores of South Africa to return to India. He was called to the bar on the 10th June 1891 and on his return to India this shy, serious-minded and earnest young barrister found that there was no demand for his services in Rajkot and so proceeded to Bombay. Conscious of the fact that he knew little or no law he visited the Court daily in the hope of learning some law by seeing justice in action. He was shocked to discover that not only the most humble vakils (solicitors) but also the most exalted barristers all obtained cases by employing the services of touts who hung about the Courts. He felt that touts were a disgrace to the profession and refused to have anything to do with them. So for several months he did not get a case. One day, however, he did receive a brief to appear in the small causes Court. The trial commenced and during the proceedings when he stood up to cross-examine his first witness he was utterly dumbstruck. The words just refused to leave his mouth and in utter humiliation he walked out of the Court and returned the brief and his small fee to another practitioner. One can well imagine the shattering effect this experience had on this sensitive young man. He returned to his lodgings and there and then made up his mind that he was not suited to the practice of law and went in search of a job as a school teacher. He had no qualifications and consequently could not find a job. He returned to Rajkot and there assisted an attorney in doing chamber work. Just as things were looking particularly gloomy fate stepped in in the shape of an opportunity to go to South Africa to assist in litigation which involved a wealthy merchant of Durban who also hailed from Rajkot. So in April 1893 the young Gandhi set forth to South Africa to render his services to Dada Abdullah Seth, a prominent businessman who had a very large claim (£40 000) against an equally prominent businessman from Pretoria. Why was

it necessary for Dada Abdullah Seth to import a barrister from India? Ved Mehda in his book on Gandhi and his disciples says: “The local Indian lawyers working on the case there were all so deficient in English that they could not even carry on the necessary legal correspondence and the merchant decided he wanted someone trustworthy from Porbamdard who had been to England, to help them with their English for about a year.” Quite clearly the author is historically incorrect for there were no Indian lawyers in South Africa at the time. Gandhi himself was the first Indian ever to practice as a lawyer in South Africa. Within days of his arrival in Durban Gandhi went one day to the Magistrate’s Court in Durban as an observer. A Magistrate noticed him standing there with his turban on and immediately ordered him to remove his turban. Gandhi did not understand this request. He was taken aback and refused to remove his turban but was constrained to leave the Court.

The case for which he had come from India was to be argued in the Transvaal and Gandhi immediately set about acquainting himself with the facts in issue. He demonstrated to himself his ability to unravel the complicated skein of events and occurrences and was pleased with his own powers of comprehending the facts and his capacity for marshalling evidence for his client. It was during the preparation of this case that he learnt a valuable lesson, namely that if a lawyer takes care of the facts of the case the law will take care of itself. Gandhi says he learnt that ‘facts mean truth and once we adhere to the truth, the law comes to our aid naturally.’ As the days and the weeks went by it dawned on him that if this trial were to commence there was no saying how long it would take before it was finalised. It was easy to discern that a protracted trial such as this would ruin both the plaintiff and the defendant. This plus the fact that already bitter hatred was being generated between the parties as a result of the dispute caused Gandhi to recommend to his client that efforts should be made to settle the matter by arbitration. Dada Abdullah Seth was persuaded by Gandhi and with his consent Gandhi made overtures to the defendant and his efforts resulted in the dispute being referred to arbitration and was eventually settled. Both parties were obviously satisfied with the result and Gandhi says:

“My joy was boundless. I had learnt the true practice of law. I had learnt to find out the better side of human nature and to enter men’s hearts. I realised the true function of a lawyer was to unite parties riven asunder. The lesson was so indelibly burnt into me that a large part of my time during the twenty years of my practice as a lawyer was occupied in bringing about private compromises of hundreds of cases. I lost nothing thereby — not even money, certainly not my soul.”

Dada Abdullah Seth had engaged Gandhi's services for about a year and this period had come to an end and Gandhi was making preparations to return to India. At that time the Natal Legislature had before it the "Franchise Amendment Bill" which it was debating. It contained a provision aimed at disfranchising the Indians of Natal. At a farewell party on the day before he was due to leave there appeared an article in the Natal Mercury referring to the debate on this important bill. This article read in part:

'The Asiatic comes of a race impregnated with an effete civilisation with not an atom of knowledge with the principles or traditions of representative government. As regards his instinct and training, he is a political infant of the most backward type from whom it is an injustice to expect that he should have any sympathy for our political aspirations.'

Those present at the farewell party were stunned at the news and prevailed upon Gandhi to stay on in Durban for a while to help them mount a campaign against the bill. The merchants agreed amongst themselves to retain Gandhi as their counsel and the farewell party took on the atmosphere of a working committee meeting.

It became necessary for Gandhi to make an application to the Supreme Court to be admitted as an advocate. This application was opposed by the Natal Law Society whose secretary filed an affidavit in which he based his opposition on two grounds, namely:

- (a) that the applicant had not furnished the original certificate which had been issued to him by the 'Inner Temple' — it being contended that a certified true copy from the Bombay High Court was not good enough,
- (b) that the applicant was not a European and therefore ought not to be admitted to practise as an advocate.

At the hearing of this application the latter ground was not proceeded with and, despite the objection contained in the first ground, Gandhi was admitted as an advocate. Almost immediately after he was admitted Gandhi set up chambers in Durban. Some of the more important cases which he handled are reported in the early Natal Law Reports. He was well supported by members of the Indian Community and one can fairly assume that he had a varied commercial practice. It appears that in the Natal of those days an Indian entering a Courtroom was required to remove his shoes and his headgear and to 'Salaam' or salute the Bench. Failure to do so amounted to a contempt of Court. This practice of leisurely colonial days was bound to be challenged in a Court of law sooner or later and it is not surprising that Gandhi was instrumental in successfully attacking this practice. Gandhi's legal practice was disrupted during the Anglo-Boer War. It is well known that during the war he and a band of his followers organised themselves in to an ambulance core and rendered voluntary service.

After the war Gandhi was admitted as an attorney in the Transvaal Republic and set up practice in Johannesburg.

As a lawyer he maintained the highest traditions of his profession. Indeed he imposed on himself the duty to observe the strictest discipline in his search for the truth. This unusual lawyer warned every new client at the outset that he should not be expected to take up a false case or to coach the witnesses about their evidence. He was sorely grieved on one occasion when after winning the case he discovered that his client had deceived him.

On another occasion it transpired in the middle of a case that his client was not telling the truth. Gandhi discovered that he had been deceived by his client who broke down in cross-examination. Without argument, Gandhi asked the Magistrate to dismiss his case. Opposing counsel was no doubt astonished and the Magistrate pleased. His devotion for truth had become well known in the Indian Community and it enhanced his reputation amongst his colleagues.

He says in his autobiography that:

'During my professional work it was also my habit never to conceal my ignorance from my clients or my colleagues. Whenever I felt myself at sea I would advise my clients to consult some other counsel.'

He looked upon his practice of the law as a service to his community and looked upon himself as a servant of 'truth'.

From all accounts Gandhi had a busy legal practice but, as might be expected, his public activities as organiser and leader of the Indian Community had first call on his time. His fearless search for and adherence to truth as a lawyer pervaded all his other activities and bred in him a discipline which, in the course of time, changed Gandhi the lawyer to Gandhi the Mahatma. South Africa was the crucible in which he tested and fashioned a new weapon in his fight against injustice and racial discrimination. The two main components of this weapon were the observance of truth and a total commitment to "non-violence". The second passive resistance campaign resulted in some amelioration of the lot of the Indian Community and resulted in the passing of the Indians Relief Act.

He returned to India in 1914 where his great fame as a political leader had preceded him. Though he never practised law again his friends Polak, Brailsford and Pethick-Lawrence in their biography of Gandhi say:

'Strange as it always seemed to many of his contemporaries Gandhi also carried with him to his dying day the legal outlook which he had imbibed during his early youth when he had studied law in a lawyer's office in London. This unusual combination of the saint and the lawyer made him often a baffling person with whom to conduct negotiations.' □