

Revisiting Gandhiji's life for tips on Legal Education

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*There is a famous non-lawyer of recent history, who comes close to being, like Lincoln, a transfigured lawyer, a lawyer who has simply grown beyond the usual confines rather than grown away from them, who has enlarged the scope of the lawyer's functions rather than changed them, who has kept the virtues of the lawyers and only deepened them. He loved his country and its people; he respected the civil authority even while opposing it; his weapons were non-violence and passive resistance; his aims were moderate and realistic; he was willing to negotiate and to advance step by step; he was humble in manner and took as his symbols the simple handicrafts of his people. And true to the negative leadership the lawyer exercises, he became a martyr to his country's liberty. He was an Indian lawyer named Gandhi**

Mahatma Gandhi, the man of the millennium¹ is not just an Indian phenomenon. As a serious thinker, moralist and humanist, he is an international figure to last forever in human history. "Gandhism", "Gandhian Thought", "Gandhian Philosophy" and "Gandhian Studies" have become important subjects of Universities across the globe.

It is folklore that Gandhiji studied law in England and became a barrister when he was barely 22 years of age. He practiced in India and South Africa as a lawyer for over twenty years. Later he gave up his practice of the profession and plunged into public service. In the course of freedom struggle he urged lawyers to suspend practice, and withdraw their support to the authority of an unrighteous government.

Gandhiji's life and experiences have valuable suggestions for legal education. No law teacher can ignore his contributions while teaching right to disobey unjust law (Jurisprudence: Natural Law), international law (peace, non-violence), Constitutional law (Liberties), law and morality, Theories of punishment etc. The whole idea of this paper is to make a limited study, not an exhaustive one, to articulate that Gandhiji's life can provide ample guidance in bettering legal education. It is hoped that this will be of special interest to law teachers. This article looks at Gandhiji's studentship, his entry and beginning in practice and further at Gandhiji's ethical practices in profession .

Legal education is the formal education in law schools endeavoring to produce lawyers. In India thousands of law colleges throughout the country are regulated by the Bar Council of India and universities to which they are affiliated. The character and caliber of legal professionals will directly depend on the quality of legal education. The performance and efficiency of the legal system will be dependent on the character and caliber of the legal professionals. Legal education is fundamental to the very foundation of the judicial system.²

Gandhiji as a law student

Gandhiji has been a very industrious student. He has written about the difficulties he encountered due to his poor English. He put tireless efforts in improving his English. He studied Latin as well. His autobiography has many references as to the books he read. It is pertinent to note the keen interest Gandhiji has shown in purchasing his own copies and reading.

There were hardly lectures to guide him. Minimum number of dinners were to be attended for about three years. The students had to report at fixed hours and remain present throughout the dinner. Gandhiji has written that earlier there used to be talks between the students and benchers in these dinner meetings and also speeches were e. These were helpful to the students to some extent. But during his time there were no speeches and no chances of interaction.

Gandhiji has written that the curriculum was easy and examinations were easier. Scrambling through notes on these subjects for two or three months students could pass. Also pass percentage used to be very high. Regular textbooks prescribed were scarcely read by students. But Gandhiji did not emulate them.

".... It was a fraud, I thought, not to read these books. I invested much money in them..."³ Gandhi put in fairly hard labour and succeeded in all the examinations.

Modern day law colleges have regular lectures, practical sessions and good libraries. But attendance in the lectures and libraries is dismally poor. Although the curriculum cannot be said to be easy, examinations are routine rituals with questions repeated without creativity in most of the subjects. Scrambling through buzzer notes for a few days, students are able to not only pass but also secure good marks. The authorities, references and law reports are hardly read except by a small percentage of dedicated students. Unfortunately most of them pass out with university degrees holding them out as qualified lawyers. It is but obvious that legal education should improve on this count. Examinations should be reasonably tough so that the students work hard and become better professionals.

Gandhiji as a beginner in practice

Legal education ought to be sound enough to teach students how to practice law and develop court craft. In addition to imparting knowledge in legal principles and rules, legal education shall focus on training in skills necessary for a law professional. Failure in this regard will be a serious lapse. Gandhiji has written how helpless he felt when he sought to practice.

"But notwithstanding my study, there was no end to my helplessness and fear. I did not feel myself qualified to practice law." "It was easy to be called, but it was difficult to practice at the bar. I had read the laws, but not learnt how to practice law."⁴

Gandhiji in his first case appearing for a defendant in a small causes court matter in Bombay which was not likely to last longer than a day, miserably gave up. "This was my debut .. had thus to cross examine the plaintiff's witnesses. I stood up, but my heart sank into my boots. My head was reeling....I could think of no question to ask..... I sat down and told the agent that I could not conduct the case,... I hastened from the court..."⁵

It gives a sense of pride to every Indian to know that this timid beginner, rose to become a great leader who when entered the court as an accused was greeted by the whole court which rose to its feet in admiration. Sarojini Naidu wrote:

*A convict and a criminal in the eyes of law : Nevertheless the entire court rose in an act of spontaneous homage when Mahathma Gandhi entered,- a frail, serene, indomitable figure in a coarse and scanty loin cloth...*⁶

Teaching court craft-- It is the duty of the law colleges to equip the students with the necessary confidence and skills to enable them to cope with the requirements of handling the matters in the court and in other professional avocations. Bar Council of India has included four compulsory practical training papers in the law course in the year 1997.⁷ Training in the following are to be provided-

- ❖ Professional ethics
- ❖ Contempt of courts – law and proceedings
- ❖ Public interest lawyering
- ❖ Legal aid, Para-legal services, Legal literacy
- ❖ Lok Adalats
- ❖ Legal writing
- ❖ Computers in legal practice
- ❖ Drafting of conveyances and pleadings
- ❖ Moot Courts
- ❖ Pretrial preparations
- ❖ Court visits and trial proceedings
- ❖ Law office management

The laudable objects of practical training need to be implemented seriously. As of today, practical training is internal subject. The colleges device the programmes and the examinations. Assessment is also done by the college. There is no audit by the University. Yearly reports to the Bar Council are made but there is neither feed back nor suggestions\instructions from the Council. Some universities like the Mumbai University Do not include the practical training marks in computing the marks for the award of the degree. When the students pass out they should be capable of handling at least the simple and the routine types of cases on their own. Or else the institutions will serve no purpose and become redundant.

Many law colleges fall short of minimum full time lecturers, library facilities and dedicated buildings. The pay scales are not attractive enough to lure best talents. UGC recognizes law not as a professional course but as a humanity. Law teachers are put on par with humanities teachers for pay scales and service conditions. Whereas law teachers put in 7 to 8 years for post graduation other teachers put in just 5 years! Full time teachers are not permitted to practice but non-practice allowance is not paid to them. It is high time serious efforts are taken to strengthen the law colleges and transforming the law courses into true professional courses.

It is the need of the day to segregate students who are seriously desirous of pursuing legal practice from those who seek general\liberal education in law. The former should be rigorously trained in advocacy skills and objectively assessed. The university may also consider awarding different degrees to the different courses. The lack of university initiatives in this regard has largely contributed to the dilution of standards in the professional legal education.

Gandhiji and ethics in legal practice

In law nothing is certain but the expense –S. Buttler

Laws are like cobwebs, which may catch small flies, but let wasps and honets break through—Jonathan Swift

Laws grind the poor and the rich rule the law—Goldsmith⁸

In all these and other blames, lawyers own a lion's share. 'Lawyers are liars' and the practice of law cannot be consistent with the pursuit of truth is the general public perception.

Universally Gandhiji is revered for his extraordinary love for truth. He believed in honesty and fair dealings in his profession. He condemned the practice of considering the clients as fit prey for pecuniary ambition. Gandhiji regarded law not as an intellectual legerdemain to make black appear white and white appear black, but as codified ethics. The profession of law became to him the means to enthrone justice, not entangle justice in the net of law.⁹ Gandhiji practiced law without compromising truth.

“Often I knew that my opponents had tutored their witnesses and if I only encouraged my client to lie, we could win the case. But I always resisted the temptation...In my heart of hearts I always I always wished that I should win only if my client's case was right ... I warned every new client at the outset that he should not expect me to take up a false case or to coach the witnesses with the result that I built up such a reputation that no false cases used to come ...”¹⁰

As an officer of the court, he considered it his utmost duty not to deceive the court. He would never accept a false case. He made it a practice to inform his client before accepting his brief that if, at any stage of litigation, he was satisfied that he was being deceived, he would be at liberty to hand back his brief, for as an officer of the court he could not knowingly deceive it. He had been known to retire from a case in open court, and in the middle of the hearing, having realized that his client had deceived him.¹¹

Gandhiji had the courage and conviction to call upon the client to confess if he is guilty and accept a verdict against self. His autobiography shows how one Parsi Rustomji was convinced to confess and apologize the smuggling. The case was thus compromised with Rustomji paying a penalty equal to twice the amount he had smuggled. Rustomji wrote the whole facts of the case, got it framed and hung it up in his office to serve as a perpetual reminder to his heirs and fellow merchants.¹² On one occasion, whilst Gandhiji was conducting a case he discovered that his client had deceived him. He saw him completely breakdown in the witness box. So without any argument he asked the magistrate to dismiss the case. The opposing counsel was astonished and the magistrate was pleased.¹³

Gandhiji while fixing fees never made them conditional on his winning the case. 'Whether my client won or lost, I expected nothing more or less than my fees.' He never issued a notice of demand against a client who committed default in payment of fees due to him threatening legal proceedings if the debt was not speedily liquidated and steadfastly refused to invoke the law to secure payment of his fees, for he held that his client if an honest man, would pay when he could, and if a dishonest man, could not be made the more honest by the use of legal compulsion.¹⁴ A large part of his practice was in the interest of public work, for which he charged nothing beyond out of pocket expenses, and these too he sometimes met himself.¹⁵

Gandhiji believed that the true function of a lawyer was to reunite the parties riven asunder. He advised his clients to settle the matters out of court as far as possible. Today with the severity of docket congestion in courts we seek to institutionalise alternative dispute resolution. ADR is one of the compulsory subjects in the LL.B course as prescribed by the Bar Council of India. Gandhiji has elaborately written how he persuaded his client Dada Abdulla and the opponent Tyeb Sheth to submit their case for an arbitration. There was a lot of uncertainty as to how long the litigation would take. The parties were already tired and the case was taking much of their time. Gandhiji's client won in the arbitration yet Gandhiji secured a concession of payments by installments for his opponent who would have been pushed to bankruptcy otherwise. Both the parties were happy over the result. In his years of practice he brought about private compromises of hundreds of cases.¹⁶

During his professional work it was his habit never to conceal his ignorance from his clients or his colleagues. Whenever he felt himself at sea, he would advise his client to consult some other counsel. If the client preferred to stick to him Gandhiji would ask him to let him seek the advice of a senior counsel.¹⁷

Bar Council of India has laid down the code of ethics for advocates.¹⁸ Advocates owe duties to the court, the client, the opponent and colleagues. Value education should be part of legal education also. It is important that the ends for which the advocacy skills are to be used are also to be imparted. But it is heartening to know that there is just lip service to the inculcation of values in legal education. Universally lawyer's profession suffers an ethical indictment. People look down upon lawyers who appear for the corrupt and the dishonest. Criminals are emboldened by such unscrupulous lawyers. Hardly we hear of any advocate who convinces his client to accept guilt and submit to the course of law. There is nothing unprofessional in pleading guilty or admitting mistakes. It is rather unprofessional to prolong, delay, deviate from truth and deceive the court. Law in fact institutionalizes confessions, admissions, plea bargaining, accord and settlement, compromises, etc.. It is the duty of the advocate to uphold the interests of the client but only by fair and honourable means.¹⁹ Abuse of the process of law is decried as a crime as well as a civil wrong.

The life and example of the Mahatma who ennobled the legal profession, who remained faithful to its highest tradition, and who showed the heights to which it can be raised ought to form part of the teaching and training of every law student. At a time when the legal and professional standards among both judges and lawyers have fallen woefully, it behoves the legal fraternity to bestir itself and infuse a moral tone into the profession by pledging itself with renewed vigour and deep devotion to the ideals and the precepts of Gandhiji and presenting him to the profession as a model truly worthy of the closest emulation.²⁰

References

1. T.J.S. George, India 1000 to 2000, Express Publications (Madurai) Ltd. 1999
2. Law Commission of India, 184th Report.,2002
3. M.K. Gandhi, An Autobiography, Navajivan Publishing House, 2005 (reprint) p.74
4. M.K. Gandhi, p.75
5. M.K. Gandhi, p.88
6. Speeches and writings of Mahatma Gandhi, 3rd ed., Natesan, Madras, Appendix II, p.45
7. Bar Council of India Circular No.4/1997
8. 'Immortal Quotations and Proverbs' Edited by Dr. P.D. Sharma, Navneet Publicataions,2002
9. Pyarelal, Mahatma Gandhi – The Early phase, Vol. I p.313
10. M.K. Gandhi, p.332
11. M.K. Gandhi, p.336
12. M.K. Gandhi, p.339
13. M.K. Gandhi, p.336
14. Polak, Brailsford and Lord Pethick Lawrence, Mahatma Gandhi, p.50 as cited in Op.cit, .The Law and the Lawyers
15. M.K. Gandhi, p.332
16. M.K. Gandhi, p.124
17. M.K. Gandhi, p.336
18. Under Section 49 (1)(c) of the Advocates Act, 1961
19. Bar Council of India rules governing advocates, Section II, 15
20. S.B. Kher, Introduction in M.K.Gandhi, The Law and the Lawyers, p.xix