

The Most Important Lawsuit in History? Gandhi and the Abdulla Sheth Case

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As the 19th century was coming to a close an Indian merchant based in the South African port of Durban, named Dada Abdulla Sheth, filed a lawsuit in Pretoria against another group of Indian merchants. Possibly this was the most important lawsuit in history. Because of his participation in this lawsuit, an obscure and miserably unsuccessful lawyer named Mohandas Gandhi embarked on the path that transformed him into the father of Indian independence and the originator of the practice of nonviolent civil disobedience.¹

The Inns of Court: Acquiring the Best Legal Education

On September 4, 1888 – at the age of 18 – Gandhi left his native Porbandar in the Indian state of Gujarat to study law in London for two years at the prestigious Inns of Court. In January 1891 he passed the law examination, and the following June he was called to the bar as an English barrister and enrolled in the High Court in London. Gandhi's elder brother, also a lawyer, had sponsored his studies in London. He naturally had "high hopes" for his younger brother's future career and indeed expected him to have "a swinging practice," according to Gandhi's autobiography. [84] However, Gandhi tells us that despite his diligent labor among the law books in London, "there was no end to my helplessness and fear" as he returned to India to take up the practice of 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. I had read with interest 'Legal Maxims', but did not know how to apply them in my profession. 'Sic utere tuo ut alienum non laedas' (Use your property in such a way as not to damage that of others) was one of them, but I was at a loss to know how one could employ this maxim for the benefit of one's client. ... I had not even learnt how to draft a plaint, and felt completely at sea. ... I had serious misgivings as to whether I should be able to even to earn a living by the profession. [75]

A Disastrous Beginning in Law Practice

Upon his return from England, Gandhi attempted to set up practice in India's

¹ Although Gandhi is frequently referred outside India as Mahatma Gandhi, "Mahatma" was not his first name but rather an honorific bestowed on him by others meaning "Great Soul."

commercial capital, Bombay. By his own account, he was a total failure. After a period of time observing the great Indian advocates of the day argue cases in the High Court² – whom he described as roaring like lions³ – Gandhi ventured to try his own first case. It was a minor matter in the Small Causes Court.

“I appeared for the defendant and had thus to cross-examine the plaintiff’s witnesses. I stood up, but my heart sank into my boots. My head was reeling and I felt as though the whole court was doing likewise. I could think of no question to ask. ... Indeed I did not go to court again until I went to South Africa.”⁴

An Opportunity to Start Anew

Thus after only six months in Bombay. Gandhi closed his law practice and moved back to his hometown, Rajkot. There he set up a modest office where he drafted routine legal documents referred to him by his brother.⁵ It is possible that Gandhi would have remained an obscure legal scrivener in Rajkot, and the history of India – and indeed the world – would have been vastly different. But fortunately a trading company in Porbandar wrote to Gandhi’s brother offering to pay Gandhi’s travel and living expenses to go to South Africa for a year to assist with an important piece of commercial litigation pending there. Gandhi was to be a translator and liaison between the merchant in charge there, Abdullah Sheth, and the firm’s English lawyers. “This was hardly going there as a barrister,” Gandhi observed. “It was going as a servant of the firm.” But tempted by the opportunity to see a new country and of having new experiences, Gandhi accepted the offer.

Gandhi set sail Durban in 1893, and ended up staying in South Africa for ___ years, becoming a very successful and influential lawyer. And it was in South Africa – not India – that Gandhi first developed and implemented his principles of nonviolent civil disobedience, that he brought back to India as the central strategy of his ultimately successful campaign for independence from Britain.

² “I used to attend High Court daily whilst in Bombay, but I cannot say that I learnt anything there. I had not sufficient knowledge to learn much. Often I could not follow the cases and dozed off. There were others also kept me company in this, and thus lightened my load of shame. After a time, I even lost the sense of shame, as I learnt to think that it was fashionable to doze in the High Court.” 23

³ “I had heard of Sir Pherozechah Mehta as one who roared like a lion in law courts. How, I wondered, could he have learnt the art in England? It was out of the question for me ever to acquire his legal acumen, but I had serious misgivings as to whether I should be able to even to earn a living by the profession.”

⁴ 21-22.

⁵ 24.

When Gandhi arrived in South Africa and met with one of Abdullah Sheth's lawyers, A. W. Baker, Baker told confirmed that his role in the case was to be a modest one.

"We have no work for you here as [a] barrister, for we have engaged the best counsel. The case is a prolonged and complicated one, so I shall take your assistance only to the extent of getting necessary information. And of course you will make communication with my client easy for me, as I shall now ask for all the information I want from him through you."⁶

Gandhi, however, was able to turn what seemed a limited and menial task into "a most valuable experience of my life" during which gained confidence that he "should after all fail as a lawyer." He tells the reader of his autobiography that he not only "acquired a true knowledge of legal practice"⁷ but even further "learned the secret of success as a lawyer."⁸ Interestingly, in the same sentence where Gandhi says he acquired a true knowledge of legal practice he also said, "Here it was that the religious spirit within me became a living force." He also described that crucial year as the time when he "had opportunities of learning public work and acquired some measure of my capacity for it."

Gandhi relished the work of getting to know his client well and learning the facts of the case intimately.

"I took the keenest interest in the case. Indeed I threw myself into it. I read all the papers pertaining to the transactions. My client was a man of great ability and reposed absolute confidence in me, and this rendered my work easy. ... As a result, I acquired such a grasp of the facts of the case as perhaps was not possessed even by the parties themselves, in as much as I had with the papers of both parties."⁹

⁶ 43.

⁷ LL 44, Auto 95. "Both parties had engaged the best attorneys and counsel. I thus had a fine opportunity of studying their work. The preparation of the plaintiff's case for the attorney and the sifting of facts in support of his case had been entrusted to me. It was an education to see how much the attorney accepted, and how much he rejected from my preparation, as also to see how much use the counsel made of the brief prepared by the attorney. I saw that this preparation for the case would give me a fair measure of my powers of comprehension and my capacity for marshaling evidence."

⁸ LL 44, Auto 95.

⁹ LL 45, Auto 96. Gandhi went so far as to teach himself the basics of commercial accounting. "As I began to study the case, I felt as though I ought to begin from the ABC of the subject. ... Book-keeping I had learnt neither at school nor during my stay in England. [T]he case ... was mainly about accounts. Only one who knew accounts could understand and explain it. But the clerk went on talking about this debited and that credited, and I felt more and more confused. I did not know with what P. note meant. I failed to find the word in the dictionary. I revealed my ignorance to the

Gandhi described the litigation as “no small case.”¹⁰ His client, the plaintiff, was seeking £40,000, a large sum in those days. A central claim was for the specific performance of promise to deliver promissory notes. The defence was that the promissory notes were fraudulently taken and lacked sufficient consideration. According to Gandhi, “[t]here were numerous points of fact and law in this intricate case.”¹¹

Within the first week of meeting his client, Gandhi learned that Abdullah Sheth feared that any attempt to establish an amicable relationship with the defendant could backfire. As Gandhi prepared to travel to Pretoria, where the defendant had his business, his client warned him not to stay with members of his ethnic community, the Memons, because the defendant had great influence among those who lived in Pretoria:

“Should any one of them manage to read our private correspondence, it might do us much harm. The more you avoid familiarity with them, the better for us.”

Gandhi replied,

“I shall stay where your lawyer puts me up, or I shall find out independent lodgings. I don’t worry. Not a soul shall know anything that is confidential between us. But I do intend cultivating the acquaintance of the other party. I should like to be friends with them. I would try, if possible, to settle the case out of court. After all Tyeb Sheth is a relative of yours.”

Gandhi wrote that this “mention of a probable settlement somewhat startled the Sheth, I could see.” His client said:

“Y ... es, I see. There would be nothing better than a settlement out of court. But we are all relatives and know one another very well indeed. Tyeb Sheth is not a man to consent to a settlement easily. With the slightest unwariness on our part, he would screw all sorts of things out of us, and do us down in the end. So please think twice before you do anything.”

“Don’t be anxious about that,” said I. “I need not talk to Tyeb Sheth, or for that matter to anyone else, about the case. I would only suggest to him to come to understanding, and so save a lot of unnecessary litigation.”

clerk, and learnt from him that P. note meant a promissory note. I purchased a book on book-keeping and studied it. That gave me some confidence. I understood the case. I saw that Abdulla Sheth, who did not know how to keep accounts, had so much practical knowledge that he could quickly solve intricacies of book-keeping.” 38- 40.

¹⁰ LL 44, Auto 95.

¹¹ Id.

The Train to Pretoria

The Academy Award winning movie, Gandhi, begins the story of Gandhi's life with a long tracking shot of a train steaming through the night, with the subtitle _____. The shot dissolves to a scene enacted within the cramped confines of a train compartment – a first-class compartment. A very young-looking Gandhi, dressed in the stiff formal attire of a English barrister, is addressed by a ruddy-faced officer of the railroad as “coolie” and told to move to third class. Gandhi retorts in astonishment that he has a first-class ticket, that he always travels first class, and that he is an attorney traveling to Pretoria on a client's business. The official responds, “there are no colored attorneys in South Africa.”¹² Gandhi proudly recites his credentials – trained at the Inns of Court and called to the bar at the High Court of Chancery in London – leading to the syllogism that “since I am an attorney, and in your eyes colored, there is at least one colored attorney in South Africa.” Infuriated by Gandhi's refusal to back down, the official tells him to “move your black ass back to third class” or be thrown off at the next station.

Gandhi's own account of this event is somewhat less colorful but no less dramatic. Told by the official “you must leave this compartment,” Gandhi reports saying, “I refuse to get out voluntarily.” The official then summoned a police constable “who took me by the hand and pushed me out. My luggage was also taken out. I refused to go to the other compartment and the train steamed away.” [93]

It was winter in South Africa, and Gandhi was thrown off the train in Maritzburg, which was located at a high altitude.

“[T]he cold was extremely bitter. ... I sat and shivered. There was no light ... I began to think of my duty. ... Should I ... go back to India, or should I go on to Pretoria ...? It would be cowardice to run back to India without fulfilling my obligation. The hardship to which I was subjected was superficial – only a symptom of the deep disease of colour prejudice. I should try, if possible, to root out the disease and suffer hardships in the process. So I decided to take the next available train to Pretoria.” [93-94]

From that point on, Gandhi was determined to make “an intimate study of the hard conditions of the Indian settlers, not only by reading and hearing about it, but by personal experience. ... [M]y mind became more and more occupied with the question as to how this state of things might be improved. But my principal duty for the moment was to attend to the case of Dada Abdulla.” [109]

Becoming a Lawyer

One of the most important lessons Gandhi learned from working on Abdullah Sheth's

¹² Indeed, it appears from Gandhi's autobiography that he was the first attorney of color to practice in the British colonies of South Africa. {cite}

case was the “paramount importance of facts,” something he had not “fully realized” before.¹³ According to Gandhi, “Facts mean truth, and once we adhere to truth, the law comes to our aid naturally.” In his Autobiography he illustrated this point not only with Abdullah Sheth’s case, but also by telling the story of a case later in his career.

“In a certain case in my charge I saw that, though justice was on the side of my client, the law seem to be against him. In despair I approached [famous barrister of South Africa] Mr. Leonard for help. He also felt that the facts of the case were very strong. He exclaimed, “Gandhi, I have learnt one thing, and it is this, that if we take care of the facts of the case, the law will take care of itself. Let us dive deeper into the facts of this case.” With these words he asked me to study the case further and then see him again. On a re-examination of the facts I saw them in an entirely new light, and I also hit upon an old South African case bearing on the point. I was delighted and went to Mr. Leonard and told him everything. “Right,” he said, “we shall win the case. ...”¹⁴

Gandhi’s commanding knowledge of the facts convinced him that his client’s case was “very strong indeed,” but his deep relationship with his client led him to an even more profound conclusion.

“I also saw that the litigation, if it were persisted in, would ruin the plaintiff and the defendant who were relatives and both belonged to the same city. No one knew how long the case might go on. Should it be allowed to continue to be fought out in court, it might go on indefinitely and to no advantage of either party. ... The lawyer’s fees were so rapidly mounting up that they were enough to devour all the resources of the clients, big merchants as they were. The case occupied so much of their attention that they had no time left for any other work. In the meantime mutual ill-will was steadily increasing. I became disgusted with the profession. As lawyers, the counsel on both sides were bound to rake up points of law in support of their clients. I also saw for the first time that the winning party never recovers all the costs incurred. Under the Court Fees Regulation there was a fixed scale of costs to be allocated as between party and party, the actual costs as between attorney and client being very much higher. This was more than I could bear. I felt it my duty was to befriend both parties and bring them together.”

Apparently over the course of the next year Gandhi was able to establish a good relationship with the defendant while respecting at the same time his client’s warnings to be constantly wary. Confident that both parties “desired an immediate termination of

¹³ LL 47, Auto 96 {?}.

¹⁴ Id. In this same passage Gandhi also referred to “the late Pincutt’s advice – facts are three-fourths of the law.”

the case, if possible,” he “ approached Tyeb Sheth and requested and advised him to go to arbitration.”

“I recommended him to see his counsel. I suggested to him that if an arbitrator commanding the confidence of both parties could be appointed, the case would be quickly finished.”

Gandhi wrote, “I strained every nerve to bring about a compromise. At last Tyeb Sheth agreed. An arbitrator was appointed, the case was argued before him, and Dada Abdulla won.”

At this point, most lawyers would consider their work complete. But not Gandhi.

“But that did not satisfy me. If my client were to seek immediate execution of the award, it would be impossible for Tyeb Sheth to meet the whole of the awarded amount, and there was an unwritten law among Porbandar Memans living in South Africa that death should be preferred to bankruptcy. It was impossible for Tyeb Sheth to pay down the whole sum of about £37,000 and costs. He meant to pay not a pie less than the amount, and he did not want to be declared bankrupt. There was only one way. Dada Abdulla should allow him to pay moderate installments. He was equal to the occasion and granted Tyeb Sheth installments spread over a very long period. “

Convincing his client to show mercy to his defeated opponent was Gandhi’s greatest challenge in this case, and his greatest satisfaction.

“It was more difficult for me to secure this concession of payment by installments than to get the parties to agree to arbitration. But both were happy over the result, and both rose in the public estimation.”

Gandhi was a gifted storyteller (which no doubt contributed to his success as a lawyer). When he began the story of Abdullah Sheth’s case, he told his reader, “ It was ... here that I learned the secret of success as a lawyer.” It is not until the end of the story, though, that he revealed the profound and surprising nature of this secret.

“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 realized that 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.”

POSSIBLE TEACHING NOTES:

Gandhi's story offers not only a compelling alternative model for the practice of law; it also provides a parable for legal education. The story begins with Gandhi doing "all the right things" to become a lawyer in his day. At considerable sacrifice, he attended the best law school in the common law world, the Inns of Court. He followed up this prestigious education with observation in the most important trial courtrooms of India, watching famous lawyers at work in the commercial hub of Bombay. This conventional approach to becoming a lawyer not only failed to teach him how to practice law, it set up him up for such humiliating failure when he did attempt to put his license to work that his future career development came close to being permanently stunted.

What saved his career as a lawyer? The opportunity to spend a long time working "behind the scenes" on one case. Indeed, a whole year devoted to a single case.

His assignment: "getting necessary information" and "communication with the client" (He was a "solicitor" to the "solicitor", Mr. Baker. But unlike an articled clerk, he was the primary contact with the client.)

He began his work in exactly the right way. He assured his client that "Not a soul shall know anything that is confidential between us."

Although his client was illiterate, that did not prevent Gandhi from recognizing that he was "a man of great ability"

Importance of facts.

Being a lawyer is not

- courtroom advocacy (roaring like a lion)
- but quiet patient work learning the facts of a case and gaining the trust of a client

And success is not winning cases but bringing riven parties together.