CHAPTER III

THE PROFESSION OF LAW

Introduction

We now come to the other area of Gandhi's thought which will further help us understand Gandhi's philosophy of law. This is brought out through his views about law as a profession. These views deserve to be considered in depth partly because his knowledge of the profession of law has been also as an insider. Gandhi was trained as a barrister; he began his career as a lawyer and practiced for almost twenty years (1891-1912), before he gave up his practice. (His name was formally struck off from the roll of barristers on 10th November 1922, in virtue of being convicted on the charge of sedition.)

In this chapter, we go into Gandhi's experience as a lawyer, with a view to bringing out the kinds of views he held about law, lawyers, clients, the practice of law and the kinds of problems he thought, existed in relation to law.

Gandhi was trained as a barrister in England (1888-1891). He held certain views about the training in
relation to the practice of law. After training, he settled down in Bombay to practise law. One of the practices which he rejected during this very early experience was the system of tout, viz., a third party bringing the client and the lawyer together for a commission. These are considered in the first Section.

Also, of interest, is his continuous insistence on truth during his early practice as a lawyer -- especially, these are illustrated in the case of cost award and the case of Parsi Rustomji. The consideration of these cases raises the issue of truth in the practice of law. Section II is devoted to the consideration of some aspects of this issue.

Section III elaborates the lawyer-client relationship. One issue is concerned with Gandhi's insistence on settling disputes outside the courts and his reasons for doing so; i.e. his views on litigation. Second issue is concerned with his insistence that lawyers should not charge high fees.

Finally, are considered in Section IV, Gandhi's views on the role of the law courts and the lawyer's in a dependent nation.

Section V brings together his views on the profession of law in the light of the above considerations.
I. GANDHI'S EARLY EXPERIENCE AS A LAWYER

Before we consider some of the issues Gandhi raises about the legal profession, it may be useful to mention some facts about the beginning of his career. At an early stage, he found that being called to the bar was one thing, and practising law, another. There was the question of the lack of knowledge of Hindu and Mahomedan law; and there was also lack of confidence arising out of lack of experience.

"...notwithstanding my study there was no end to my helplessness and fear. I did not feel myself qualified to practise law." "It was easy to be called, but it was difficult to practise law. ...I had read with interest 'Legal Maxims', but did not know how to apply them in my profession... Besides, I had learnt nothing at all of Indian law. I had not the slightest idea of Hindu and Mahomedan law... It was out of the question for me ever to acquire his (Pherozeshah Mehta's) legal acumen, but I had serious misgivings as to whether I should be able even to earn a living by the profession" (Gandhi 1972:60-61).

What assured Gandhi, in spite of a lack of understanding and training for legal practice, and a lack of self-confidence, were the two qualities of honesty and industry.
He trusted the advice of one Mr. Frederick Pincutt, a Conservative Englishman, that, "Pherozeshah Mehta's acumen, memory and ability were not essential to the making of a successful lawyer; honesty and industry were enough. And as I had a fair share of these last I felt somewhat reassured"(Gandhi 1962:15-16).

Gandhi's Rejection of the Tout System

Gandhi had problems about functioning within the system, for example, the tout system. This was a practice according to which the contract between a client and a lawyer is established through a third party -- the tout -- for some monetary consideration. His attitude to this system is brought out in the case of one Mamibai; this case was conducted in a small cause court. His refusal to pay commission to the tout shows that right from the beginning of his career, he was utterly uncompromising in submitting to unfair practices, to earn a living.

But to conclude on this basis that Gandhi was not a good lawyer or that he was a failure, is to base one's judgment only on his first experiences, and to forget his later career in South Africa where he effectively and successfully functioned as a lawyer both in private causes and in public causes.
II. GANDHI'S INSISTENCE ON TRUTH

But to take the help of a tout or not was indeed a very minor matter, or a marginal matter. For Gandhi, the central issue (as a practicing lawyer trying to earn a living through the legal profession) was whether a lawyer could remain truthful and honest, and yet earn a living through the practice of law. Gandhi had doubts on this especially on account of the general reputation that the lawyer was also a professional liar in the interest of his client. "As a student I had heard that the lawyer's profession was a liar's profession. But this did not influence me, as I had no intention of earning either position or money by lying" (Gandhi 1927:273).

Thus, whatever might be the realities of the situation, Gandhi was clear that he was not going to make it his business to lie on behalf of his clients. In fact, he went out of his way to tell the truth, when to all appearances, it was likely to do considerable damage to the cause of his clients. We can, as illustrations, mention the following two cases: (i) the case of cost award and (ii) the case of Parsi Rustomji.
(1) The Cases

(i) The Case of the Cost Award: There was one case, he says, "which proved a severe trial." The case involved highly complicated accounts. The case had been heard in parts before several courts. Ultimately the book-keeping portion of it was entrusted by the court to the arbitration of some qualified accountants." The court award went entirely in favour of Gandhi's client. "But the arbitrators had inadvertently committed an error in calculation which, however small, was serious, inasmuch as an entry which ought to have been on the debit side was made on the credit side"(Gandhi 1927:273-74). The opponents, however, had opposed the award on the other grounds; Gandhi insisted that the error in calculation ought to be admitted before the court. The senior counsel disagreed with Gandhi and held that "no counsel was bound to admit anything that went against his client's interests"(Gandhi 1927:274). But Gandhi would not agree. He told the client: "I shall have nothing to do with the case if the error is not admitted"(Gandhi 1927:274). The client accepted to Gandhi's advice, and said, "Well, then, you will argue the case and admit the error. Let us lose, if that is to be our lot"(Gandhi 1927:274). The case went in favour
of his client. This experience says Gandhi, "confirmed... that it was not impossible to practise law without compromising truth" (Gandhi 1927:276).

(ii) The Case of Parsi Rustomji: Gandhi's insistence that his clients though guilty must tell the truth, and nothing but the truth, is well brought out in the dramatic case of one Parsi Rustomji (whom Gandhi describes as one who first became a co-worker and then a client). The Parsi was an importer of goods from Bombay and Calcutta. He, not infrequently, resorted to smuggling. But then, once he was caught; he ran to Gandhi and confessed his crime. Gandhi's answer was clear. "As to me you know my way. I can but try to save you by means of confession" (Gandhi 1927:278). The confession was to be made before the Customs Officer and later before the Attorney General. Gandhi pleaded the Parsi's case before both the authorities. The authorities spared the client from the ordeal of going to the jail but was ordered "to pay a penalty equal to twice the amount he had confessed for having smuggled." Rustomji adopted a novel method of confessing his guilt to the public. He "reduced to writing the facts of the whole case, got the paper framed and hung it up in his office to serve as a perpetual reminder to his heirs and fellow merchants" (Gandhi 1927:279).
(2) The Issue

(i) The consideration of these cases raise the following issues: How far can a lawyer insist on truth on the part of the client and on his own part in the practice of law? How far, in his practice of law, can a lawyer insist on truth: (a) tell the truth not only to the lawyer but also to the court, and (b) stick to the truth as he knows it both in relation to the client and in relation to the court?

The problem is this: (a) According to Gandhi, when the client is guilty, the lawyer should not take advantage of the legal loopholes to save him or should not try to evade his client's mistakes in any way. (b) Again, even though his client is right, a lawyer should not either by false representation or other such ways, try to prove him right.

To clarify further what Gandhi meant by truth in the practice of law, it needs to be mentioned here that for Gandhi, truth was not merely a personal demand; and his success was not a ground for the practice of truth, rather than untruth. For him, truth was essential if law and lawyers
were to perform their true function in the society with reference to the court, the client and the lawyer himself. This meant that according to him, a lawyer should not resort to telling deliberate lies, doctoring the witnesses’ evidence and so on, in favour of his client. But if this is all he meant, then he is saying something more than what the code of the legal profession said -- the code of the legal profession being the Advocates’ Act.

This brings us to the consideration of the relevant aspects of the Advocates’ Act.

(ii) The Advocates’ Act: The Advocates’ Act is laid down by the Bar Council of India. The norms laid down in Section 35 of the Act for the practice of law may be considered in terms of the triple obligations of a lawyer. These norms are: (A) his obligations to the client, (b) to the court, and (c) to his profession. "An advocate practising the law is under triple obligation -- an obligation to his clients to be faithful to them unto the last, an obligation to the profession not to besmirch its name, or injure its credit by any thing done by him and any obligation to the court to be and to remain a dependable part of the machinery through which the justice is administered" (Dwivedi and Sethi 1966:421).
(A) Duty to the Client: As regards the duty to the client the Advocates' Act says: "It is only when he knows his client is innocent, he should undertake to defend him, ...In more than 90 per cent of all criminal cases, the lawyer knows whether his client is guilty or not guilty ...if a lawyer knows his client to be guilty, it is his duty in such a case to set out the extenuating facts and plead for mercy -- in which the lawyer sincerely believes" (Dwivedi and Sethi 1966:526-27). "Where the lawyer is convinced, after studying the law and the facts, that his client cannot succeed his duty is to obtain the best settlement he can, fairly and expeditiously"(Dwivedi and Sethi 1966:527). On behalf of his client, he "must place before the Court all that can fairly and reasonably be submitted..."(Dwivedi and Sethi 1966:422). Further, "A solicitor must deal honestly and carefully, in accordance with instructions, with money or other property held on behalf of his client. He must keep proper books and separate trust account for the moneys of his clients"(Dwivedi and Sethi 1966:427).

(B) Lawyer's Duty to the Court: A lawyer's primary duty is to assist the administration of justice. Norms regarding lawyer's duty in this respect are as follows: "He cannot ethically, and should not by preference, present
to the Courts assertions he knows to be false" (Dwivedi and Sethi 1966:526). Norms regarding the lawyer's duty in this respect are as follows:

(a) "He must not be a party to the fabrication of false evidence. If he knows that his client has given false oral evidence, he should withdraw from the case if the client refuses to correct it. If a client insists on a false affidavit being filed, you should refuse to continue to act for him. (b) He should take care not to say anything to a client of whose honesty he is not sure, that may show the client how to improve his case by false evidence. (c) He must not present to the court on behalf of his client a dishonest claim or defence; but a defence that does no more than put the plaintiff to proof is proper. (d) Where the law lays on a litigant a duty to disclose facts, it is the duty of the legal adviser to see that true disclosure is made, and if the client refuses, to retire from the case" (Dwivedi and Sethi 1966:426).

As to the misconduct on the part of the lawyers the Act says: "Amongst various types of misconduct, there is none more reprehensible than such conduct as tends to impede, obstruct or prevent the administration of law or
to destroy the confidence of people in such administration..."(Dwivedi and Sethi 1966:426).

(C) Duty to the Profession: As to the lawyer's duty to his profession the Act says: "Lawyers usual behaviour, both in his office, and at the bar and in society, should be that of a man of probity, integrity, and absolute dependability"(Dwivedi and Sethi 1966:529).

To what extent does the Advocates' Act work in practice? It is not enough to have the rules. It is necessary to know how they work. What are the limits of their applicability? Such a discussion may disclose the factors that are responsible for the breach of truthfulness in the practice of law, given the present system. It may also help us to formulate the difference between the Gandhi approach and the approach embodied in the Advocates' Act and the actual legal practice.

The factors that lead to the violation of the norms laid down in the Advocates' Act could be categorized through the study of court cases relating to the misconduct of the lawyers. These cases for instance, are reported in the A.I.R. manual. We shall not go into the study of these cases.
Here it is sufficient to remark, that the lawyers do not sometimes go according to the Advocates' Act. This may be in order to gain an unfair advantage to the client. But sometimes it might be done to destroy the unfair advantage that the other side has.

(iii) The Advocates' Act speaks of the triple obligations of the lawyers: (1) to the client, (2) to the court, and (3) to the profession. Gandhi would accept this but would go further and stress the lawyer's obligation to himself, i.e., to his conscience.

The Advocates' Act is not clear on the issue which would override (a) if there is a conflict between his duty to the court and the duty to his own conscience, and (b) if there is a conflict between his duty to the client and his duty to his own conscience. But at one place, the Advocates' Act says that the lawyer must obey his own conscience and not that of his client. "The office of attorney does not permit, much less does it demand of him for any client, violation of law or any manner of fraud or chicane. He must obey his own conscience and not that of his client..." When it is only to harass, or injure the opposite party, the lawyer should decline to conduct such cases. The lawyer
owes his duty not only to the client but to the court and society" (Dwivedi and Sethi 1966:526).

Whatever the Advocates’ Act may say on this issue, in the actual practice of law, for the lawyer, the question is of taking advantage of every legal provision to prove his client right when he is right, and thereby to prove the other party wrong. When the client is guilty, the task is to protect the interest of the client by taking advantage of legal provisions and loopholes.

But in the case of Gandhi, there can be no doubt that if there is a conflict between his duty to the court and duty to his conscience, or, if there is a conflict between his duty to his client and his duty to his conscience the duty to his conscience overrides both.

Further, Gandhi is not saying merely this that the lawyers should not tell lies for the sake of either his client or for himself. He is also saying that the lawyers should not take help of all the legalities and technicalities to secure his client’s release when he is morally certain, or when he knows that the client is guilty. That is, he
wants the law to be used for securing justice, and also for preventing the perpetuation or occurrence of injustice.

(3) **Analogy: Doctor-Patient Relationship:** If, according to Gandhi, a lawyer should refuse to take advantage of law to protect the interest of his client, whether he is guilty or innocent, then it raises the question: is this not to let down the client? It is argued by some, for instance, that the doctor's duty is to serve the interest of the patient, once he accepts someone as a patient; while the lawyer's duty is to serve the interest of his client.

The point of the analogy is to consider the view that no matter whether the client is guilty or not, a lawyer must defend his client so as to serve the ends of justice, as it is the doctor's duty to cure his patient in order to restore health to him.

Take the case of the doctor and patient. The doctor does not ask how the patient got the disease through bad living, adultery etc.; a glaring case may be that the patient was injured when murdering somebody. Is it not expected that the doctor should treat the patient? It is believed that the doctor must look at his patient as a
patient and not as a criminal and a guilty person. So also, it is believed that no matter whether the client is guilty or not, a lawyer must defend his client.

But such analogical reasoning will not do. Then, what is the difference between a doctor-patient and lawyer-client relationship? The point is, in the case of the former, the ends of the patient and the ends of the doctor coincide. This is not so in the case of the lawyer and the client. The lawyer is the officer of the Government (i.e. the court) and hence his function is to help the cause of justice, and within this framework to help the cause of his client, and not to help the client at the cost of the framework of justice.

Thus, Gandhi’s insistence on truth is not a matter of personal conviction. It is a matter which is inherent in the proper function of law and society and in the proper dispensation of justice. And Gandhi insists on it without making any reservations on behalf of the clients. But, then the problem arises: the lawyer may be morally certain in the light of what he knows and the truth that he perceives in the light of what he knows. Is this enough to provide the lawyer for his cause of action? Is it not likely that
in this way, there may be miscarriage of justice, e.g., when the client wants to shield an actual criminal or when he does not tell the lawyer that he is really guilty? For this, Gandhi's answer is likely to be this, that, the miscarriages of justice arising out of this are likely to be less for many reasons, than the miscarriage that would arise and do arise because the lawyer wants to take advantage of all the legal technicalities and loopholes.

III. THE LAWYER-CLIENT RELATIONSHIP

Now, we come to another issue — the relationship between the client and the lawyer, apart from the question of truth. If Gandhi is not ready to make any concession to the client at the cost of truth, he is more than ready and willing to see that in his relationship with the lawyer, the lawyer does not exploit the client in any way. For instance, that he does not exploit him by leading him to litigation and further litigations. And if litigation is unavoidable, then he does not charge him fees which are unreasonable from every point of view — from that of the client, of the lawyer and of the society. It is these issues that we shall consider now.
To take up the issue of litigation first:

(1) Litigation

Litigation means going to the court of law to settle a dispute. In this case we are referring to the process of resorting to the court of law for settling disputes between ordinary citizens, and not between the citizen and the state, or between two states or between two corporate bodies.

Even in the best of legal systems functioning in a fair manner, litigation is avoided as far as possible. It has many disadvantages -- economic, social and moral. It is for this reason that in some countries litigation is avoided as far as possible, e.g., England and Japan. The same disadvantages which are present in any system, are accentuated further in India. What are Gandhi's views as to the consequences of litigation? These are considered under the heads: economic, social and moral consequences.

(i) Economic Consequences: Let us first consider, what sort of views Gandhi held as to the economic consequences of litigation. Gandhi bitterly complains that the law courts in India are probably the most extravagently run.
"The economic drain that the law courts cause has at no time been considered. And yet it is not a trifle. Every institution founded under the present system is run on a most extravagant scale. Law courts are probably the most extravagantly run. I have some knowledge of the scale in England, a fair knowledge of the Indian and an intimate knowledge of the South African. I have no hesitation in saying that the Indian is comparatively the most extravagant and bears no relation to the general economic condition of the people\(\text{\textcopyright YI, 6-10-1920}\).

One important reason for the economic drain on the part of the client is owing to lawyer's charging "exorbitant" and "unconscionable" fees. The issue of fees raises other issues, with which we shall be concerned later. The point here is of the economic consequences of fees for the client which are surely disastrous. Gandhi says, "...litigation,... would ruin the plaintiff and the defendant,..." and this is "...to no advantage of either party ... the winning party never recovers all the costs incurred\(\text{\textcopyright Gandhi 1927:99}\).

(ii) Social Consequences: The reason for lawyers charging exorbitant fees is to enrich themselves by taking maximum benefit out of their clients. This desire on the
part of lawyers leads to serious social consequences. For the sake of money, not only they multiply and advance disputes, but also manufacture them. He says, "the 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 their miseries, but to enrich themselves. It is one of the avenues of becoming wealthy and their interest exists in multiplying disputes. It is within my knowledge that they are glad when men have disputes. Petty pleaders actually manufacture them" (Gandhi 1938:55). Again he says, "some families have been ruined through them; they have made brothers enemies. Principalities, having come under the lawyers' power, have become loaded with debt. Many have been robbed of their all" (Gandhi 1938:56).

(iii) Moral Consequences: But these disadvantages mentioned under (i) and (ii) above are not the only ones. The most serious disadvantage is the moral one. But it is necessary to explain the moral disadvantage that Gandhi has in mind.

One moral disadvantage that the litigation causes, is ill-will. He says that on account of litigation "mutual ill-will was steadily increasing" (Gandhi 1927:99). But a
really serious disadvantage is that, one becomes unmanly when one resorts to law courts. "They (people) become more unmanly and cowardly when they resorted to the courts of law. ...We, in our simplicity and ignorance, imagine that a stranger, by taking our money, gives us justice" (Gandhi 1938:56-57).

It is clear from the above, that Gandhi would not like men to become unmanly by resorting to the court of law. What exactly he means by "unmanly" is not clarified by Gandhi. This may mean one of two things: (1) one resorts to law when there is disagreement which cannot be settled otherwise i.e., outside the courts. The alternative to amicable settlement outside the courts is, fighting it out through force. But this creates the problem that success in fight does not go only to the right; but could also go to the mighty. Therefore, moral force and pressure which Gandhi so effectively used at many times is the answer to the problem of settling disputes outside the court. The use of such means is illustrated in Gandhi's own case as a lawyer, viz., the case of Dada Abdulla, the case of the cost award and the case of Parsi Rustomji. In the case of Dada Abdulla, Gandhi used all his powers of persuasion on both the parties to come to an understanding outside
the court. Gandhi succeeded in settling the issue through compromise. This single incident convinced him beyond a shadow of doubt what the true function of a lawyer was and what the true practice of law was. "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 that the true function of a lawyer was to unite parties riven asunder. The lesson was so indelibly burnt into me that the large practice 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" (Gandhi 1927:100). In the case of cost award, Gandhi succeeded in making his client admit the error in the award, though the error was in his favour. And in the case of Parsi Rustomji, Gandhi persuaded Rustomji to make a clean breast of his guilt to the authorities.

(ii) The second thing may be this, that the client agrees with the adversary whether he is right or wrong. Gandhi says that the best way to avoid litigation is to agree with one's adversary. "It is much to be wished that people would avoid litigation. "Agree with thine adversary" quickly is the soundest legal maxim ever uttered. ...What
when we are dragged... to the courts? ...'Do not defend'. If you are in the wrong, you will deserve the sentence whatever it may be. If you are wrongly brought to the court and yet penalized, let your innocence soothe you in your unmerited suffering. Undefended, you will in every case suffer the least and what is more you will have the satisfaction of sharing the fate of the majority of your fellow-beings who cannot get themselves defended" (YI, 23-7-1919).

Finally, it may not be out of place to consider the tendencies in even some of the advanced countries like England and Japan to avoid litigation. Referring to the English situation, Brian Abel-Smith and Robert Stevens say that the law plays a less important role than in any other Western country. In giving reasons as to why this is so, the authors go on to say: "There has been an almost continuous dissatisfaction with the courts as a means of settling disputes, registered by businessmen over a period of more than a century. The costs, delays, formalities and publicity of court proceedings, and also the personal antagonisms engendered by the English approach to litigation, have led a large segment of the industrial and commercial community to abandon the courts and establish their own tribunals for settling disputes" (Vilhelm Aubert 1969:282).
In Japan most of the disputes are settled outside the court through reconcilement and conciliation. In an interesting article "Dispute Resolution in Japan", Takeyoshi Kawashima discusses why the Japanese are reluctant to go to the courts and describes the informal means of dispute resolution. The author says that few people go to the court and most of the disputes are settled by extra-judicial agreements. "The fairly small number of lawyers in Japan relative to the population and the degree of industrialisation suggests that people do not go to court so frequently as in Western countries and that the demand for lawyers' services is not great (Hattori, 1963)."

"It is of significance that, according to the survey conducted by this writer, extremely few claims arising from traffic accidents involving railroads and taxis were brought to court, and almost all of the cases were settled by extrajudicial agreements" (Vilhelm Aubert 1969:183).

To sum-up, Gandhi is very much against litigation. But this is true of all good lawyers and they would advise their clients either not to proceed, or to come to an agreement rather than to continue on legal steps or proceedings. Gandhi of course is for this, but he is for much more, for reasons of a different kind.
Generally, the lawyers do not want that the client should resort to litigation because it is a long drawn out, worrying and expensive business. Gandhi also would agree with all these. But for Gandhi another consideration is much more important -- the consideration that it is not moral to resort to court. People become unmanly when they resort to law courts. But sometimes it is inevitable. What to do then? Gandhi says, one must suffer injustice and be happy about it. (See p. [49])

Once again this brings out the very secondary position and dependent position that Gandhi gives to law. Resort to law is the result of helplessness rather than anything else. And law is to function primarily for justice and not for law. This shows that the functioning of law can be such as to lead to considerable miscarriage of justice.

But though Gandhi would like such a situation to develop (as it is in England and Japan) he would rather like that there should be no resort to law whatever. It seems that he would think there be injustice without law, rather than that there be injustice under the guise and cover of law.
Now, this understanding of law by Gandhi is a different kind of understanding from what one generally has. Generally, law is supposed to replace violence of personal conflicts or revenge and is a civilizing agent in a community; but in the case of Gandhi this is not so. Gandhi would agree that law is better than revenge; but his point of view is different. Gandhi advocates out of court agreement because he wants law to serve the purpose of morality. For him, from the point of view of morality law is a comedown.

This understanding of law also is in line with Gandhi's insistence on truth in legal practice, and also with what we have discussed in the second and the third chapters.

(2) Fees

The other issue is of fees. Gandhi is dissatisfied with lawyers charging exorbitant fees. He wants less fees to be charged for legal advice than was in practice. He makes his suggestions by considering the poverty of the Indian people and the need for justice. But these are the kinds of considerations that are common, and these are sought to be solved in various ways such as public legal aid and so on.
But it is the other reasons that Gandhi gives — those of a general character that are more important for us rather than these usual reasons. The other reasons are: (i) in terms of social utility, (ii) in terms of the availability of the legal talent to the poor, (iii) in terms of what is needed by the body which must be supplied by the body and (iv) in terms of the principle that intellectual work being its own reward.

(i) In terms of the social utility, Gandhi thinks that the lawyer's work is no more profitable to the country than that of a labourer. He asks: How is a lawyer entitled to higher wages than other manual workers, say, a carpenter?

Gandhi asks: "Why do they (lawyers) want more fees than common labourers? Why are their requirements greater? In what way they are more profitable to the country than labourers? Are those who do good entitled to greater payment? And if they have done anything for the country for the sake of money how shall it be counted as good?" (Gandhi 1962:234). Agreeing with Ruskin he says that "a lawyer's work has the same value as the barber's inasmuch as all have the same right of earning their livelihood for their work" (Gandhi 1927:224).
He persistently asks the lawyers not to charge much for their legal advice. He says, "Let them remember that practice of law ought not to mean more taking daily than, say, a village carpenter's wage" (H, 13-7-1940).

He says, "if India is to live an exemplary life of independence... all the Bhangis (sweepers), doctors, lawyers, teachers, merchants and others would get the same wages for an honest day's work" (H, 16-3-1947). Also Gandhi says, "If all laboured for their bread and no more, then there would be enough food and enough leisure for all, ...no cry of over population, no disease and ...misery" (H, 29-6-1935).

(ii) If the lawyer is allowed to demand higher payment, then it can only be the rich who can afford to buy good legal talents. But Gandhi thinks that the legal talent should be available to the poorest, so that they also can benefit from it. "Legal practice is not -- ought not to be -- a speculative business. The best legal talent must be available to the poorest at reasonable rates" (YI, 4-10-1920).

(iii) Gandhi vehemently insists on the need of manual labour. His intention is that everyone should work for his
or her food. "The needs of the body must be supplied by the body" (H, 29-6-1935). But without denying the importance of intellectual labour he stresses manual labour. He says, "Intellectual work is important and has an undoubted place in the scheme of life. But what I insist is on the necessity of physical labour. No man, I claim, ought to be free from that obligation. It will serve to improve even the quality of his intellectual labour" (Gandhi 1954:21).

(iv) One of the reasons that Gandhi gives for equal payment is that it should be kept out from the range of payment. According to him intellectual work is its own reward and for this, there should not be any payment. He says, "Mere mental, that is, intellectual labour is for the soul and is its own satisfaction. It should never demand payment. In the ideal State, lawyers, doctors and the like will work solely for the benefit of society, not for self" (H, 29-6-1935).

The important aspects about these reasons are two:

(1) Gandhi does not want that any special ability or advantage that one has to be utilized for personal
gain -- whether that be capital or intelligence or physical strength. This is in fact the doctrine of trusteeship applied to intelligence and legal talent.

(2) There is here also involved an associated principle -- that of varna. If for the moment we forget the hereditary nature of varna as it came to exist, even if it was not what it always means, then the varnas represent not only division of labour as sometimes people say, not division of functions only, but also a division of power. Therefore, Gandhi also wanted that different kinds of power should not be vested in the same group of people because, if this happens, then it enables a particular group to attain power and can hold society to ransom.

IV. LAWYERS IN A DEPENDENT NATION

The next issue to be discussed is not about profession of law in ordinary times, but the profession of law in special circumstances, e.g., when it is a profession in a dependent nation. It may be mentioned here, that the role of law in such a situation is different from its role in ordinary circumstances. What according to Gandhi is the
role of lawyers in a dependent nation? This partly depends upon his view as to the function of courts in such a situation?

The function of courts is to establish the authority of the government. "It does not require much reflection to see that it is through courts that a government establishes its authority..."(YI, 11-8-1920). "...they (the courts) support the authority of a government" (YI, 6-10-1920).

The lawyers who practise in the law courts interpret laws to the people and thus support government authority. It is for that reason that they are styled officers of the court (YI, 11-8-1920). The institution of the law courts is healthy when the government in charge of them is on the whole just (YI, 11-8-1920). What is the real function of courts? Gandhi says, "they are supposed to dispense justice and are therefore called palladile of a nation's liberty"(YI, 6-10-1920).

But when a government is unjust or unrighteous, it ceases to be palladile of liberty. For example, the institution of martial law tribunals and the summary courts are the instruments through which the government
had tried to crush the liberty of the Indian people (YI, 6-10-1920). "We deceive ourselves into a false belief when we think that British courts are the palladia of liberty. ... The judges' business is to rise superior to their surroundings. ... even the judges were not free from political bias" (YI, 23-7-1919).

Though Gandhi's criticism of the judiciary referred to an actual alien i.e. British judiciary, he made it clear that he was concerned not only with a foreign legal system but with a legal system as such. After criticizing the then legal practice he remarks: "Let no one suppose that these things would be changed when Indian judges and Indian prosecutors take the place of Englishmen. Englishmen are not by nature corrupt. Indians are not necessarily angels. Both succumb to their environment. There were Indian judges and Indian prosecutors during the martial law regime, who were generally guilty of just as bad practices as the Englishmen" (YI, 6-10-1920).

In such a situation the lawyers' duty is clear: When the nation decides to noncooperate they should join the movement. But it is not enough to fight the Government. They have to take the step of suspension of practice. "It is
perfectly true that it is the lawyers of today who are leading us, who are fighting the country's battles, but when it comes to a matter of action against the Government, when it comes to a matter of paralysing the activity of the Government, I know that the Government always looks to the lawyers, however fine fighters they may have been, to preserve their dignity and their self-respect. I therefore suggest to my lawyer friends that it is their duty to suspend their practice and show to the Government that they will no longer retain their offices, because lawyers are considered to be honorary officers of the courts and therefore subject to their disciplinary jurisdiction. They must no longer retain these honorary offices if they want to withdraw cooperation from Government" (Gandhi 1962:26-27).

But the suspension of practice on the part of the lawyers will not mean that the Government will lose its power to oppress. "I admit that under my plan this power of subjugating the people through the courts will still remain even when every Indian lawyer has withdrawn and there are no civil suits in the law courts. But then they will cease to deceive us. They will have lost their moral prestige and therefore the air of respectability" (YI, 6-10-1920).
Referring to the attempt on the part of the British Government to give an air of respectability to the Indian judiciary by appointing Lord Sinha to a high office and lack of administering justice, he says "Satan mostly employs comparatively moral instruments and the language of ethics, to give his aims an air of respectability" (YI, 6-10-1920).

The above considerations of Gandhi's view bring out the role of law, law courts and the lawyers in a society. It brings in a distinction, which is to be discussed later between a particular law, of a system of laws as a whole -- distinction which was made famous by Socrates. (Consideration of this, see chapter: Civil Disobedience of law.)

But, then, if the lawyers suspend practice, what will happen to law and order? Gandhi's answer is: "We shall evolve law and order through the instrumentality of these very lawyers. We shall promote arbitration courts and dispense justice, pure, simple, home-made justice, Swadeshi justice to our countrymen. That is what suspension of practice means" (Gandhi 1962:127).
In all the issues — his insistence on truth, aversion to litigation, aversion to high fees charged by lawyers and his views as to the role of lawyers in a dependent nation — what is presupposed is the same: morality is the foundation of the society and the law, and law is not the foundation of morality, or even its maintenance.

1. His insistence on truth presuppose that not law as law, but morality should decide the case. This gives law a different role from that which is given to law by those who uphold the Advocates' Act. For the Advocates' Act the client must be defended according to law; for Gandhi the client must be defended according to truth, whatever the difficulties of getting at the truth. Insofar as this is so, the Advocates' Act is an attempt to accept the second best when the first best cannot be had. But for Gandhi, the attempt is to continue to look for the first best. For him law is an instrument of morality. For others law is a substitute for morality.

2. His saying that resort to law is cowardice also shows that for him morality counts. Resort to law is not the triumph of morality, but the weakness of morality.
law is the weakness of individuals and society, not its strength. Whatever strength it could have, it could have only through morality. His aversion to litigation presupposes such a point of view.

3. Further, his aversion to lawyers charging high fees, shows that here also the moral considerations predominate. His contention that a lawyer should get the same wage as a manual worker implies that for him professions do not form a hierarchy; the lawyer is the same as everyone else. Such a point of view tells us something about how a lawyer is related to society rather than about how law is related to society. The lawyer is a trustee of his talents and not its owner. He must not therefore use his talents, to exploit others.

4. It is the same understanding of the relationship between law and morality that leads Gandhi to his estimation of the role of the lawyers in a dependent nation. He holds that the lawyers have a special duty in such cases to non-cooperate with the Government.

5. All throughout, law is or represents the failure of morality, and therefore, it is a way of publicly securing
general behaviour on the part of the public. Gandhi in this way emphasizes that law is dependent on society, not only for its origin, but also for its functioning; and he does not want society to become dependent on law for its existence. When this happens, law ceases to be law and society ceases to be society.
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