

## Gently And Warmly Into The Light: Remembering Ashok H. Desai, Senior Advocate

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How does one capture with the written word the essence of a man who was simultaneously the quintessential English barrister but also Indian to the core; who was a socialist in the mould of Harold Laski – presumably from when he studied at the London School of Economics during the 1950s – but who was among the most sought after senior counsel by the largest Indian and multinational firms; who was simultaneously a Western liberal in his values and a confirmed Buddhist; who liked Sherlock Holmes novels and spy thrillers but equally enjoyed reading a biography of Leonardo da Vinci, a book explaining gene therapy to lay people or "A Theory of Justice" by John Rawls.

Having grown up in the era immediately following independence, Ashok Desai, or Ashokbhai as all of us in chamber called him affectionately, was a natural heir to the great lawyers and public figures who fought for India's independence. For him, hard work, decency and courtesy inside and outside court was important. Anybody who dealt with him always came away with the view that he was a thorough gentleman. But integrity, both at a personal and a public level was even more integral to his sense of

self. He was a thinker who pondered over issues of public importance and spoke out and acted against injustice or failings in the system and believed strongly in public service regardless of the personal sacrifice it would entail.

Ashokbhai was all of this and more but, what I admired the most about him, was his empathy and ability to relate to everyone at an individual level, regardless of age or status. He was never condescending, was incapable of malice, and never had a mean word to say about anyone.

Ashokbhai was a brilliant counsel who reached the pinnacle of success in the legal profession in India. I could recite all the traditional indicators of great success in the law and each one would be true in his case: that he was Solicitor General of India between 1989-90 ; Attorney General for India between 1996 and 1998; a recipient of the Padma Bhushan in 2001; argued path-breaking cases in the Supreme Court and in the Bombay High Court, too many to list; represented some of India's biggest corporate clients; and was one of the few counsel in the Bombay High Court and later the Supreme Court who always commanded the complete confidence of the bar and the bench.

But none of these truly do justice to the wisdom and humanity of the person who we – his juniors – loved and respected. When I joined his chamber, a couple of months after he had been appointed as Attorney General for India, during my first interaction with him, he instructed me to call him "Ashok" and not to refer to him as "Sir". After a bit of negotiation, he finally agreed that I call him "Ashokbhai" though I must confess that I continued to "sir" him most of the time. He also told me very emphatically that

he considered each and every one of his juniors to be a counsel in his or her own right and that I was free to take up my own cases.

Personal integrity meant that Ashokbhai never took up more cases than he thought he could handle so that he did not have to make false promises to advocates or solicitors who relied on him. Winning his case was important but never at the cost of his reputation for honesty and fairness to the court. Integrity at a public level meant that, during the Emergency between 1975 and 1977, despite recognizing that he might himself suffer the wrath of Mrs. Gandhi's Government, he fought the cases of political detainees such as Mrinal Gore, Madhu Dandavate and George Fernandes. Throughout his career, Ashokbhai appeared without charge in cases to vindicate civil liberties or to challenge the abuse of State power.

Shortly after I joined his chamber, I assisted Ashokbhai in giving the Government of India his opinion on an important issue concerning the consistency of India's import-licensing regime with its WTO obligations. He asked me to assist him again when the Commerce Ministry approached him about filing an appeal to the WTO Appellate Body after a WTO panel ruled against India in a patents dispute under the TRIP's Agreement. The international law firm that had assisted India at the panel stage had told the Government that there were no plausible grounds for an appeal. However, due to developments in Parliament, the Government insisted that all avenues be exhausted and an appeal filed. I helped Ashokbhai develop the grounds of appeal during the Dussehra vacation and he led India's delegation to the hearing in Geneva. Although India lost the appeal, it did result in the development of international trade law. Ashokbhai ensured not only was I a member of India's delegation but also that I got a chance to speak at the hearing. This is just one instance of Ashokbhai's generosity of spirit. Much later,

when I decided to leave the chamber and set up my own practice, Ashokbhai insisted, in keeping with his belief in public service, that I continue to work as an advisor to the Ministry of Commerce on WTO issues even if it detracted from my domestic law practice. I followed his advice for as long as I possibly could.

Ashokbhai was not a hard taskmaster. We were expected to reach the chamber by 9 am, though he started earlier, especially when he had a difficult case that day, which was most of the time. But, even for those of us who reached a "little" late on a particular day, we were done normally by 7 pm. By that time, each of us would finish preparing the note for the assigned case. On a rare day when additional research had to be done, he would ask us to return at 8.30 pm after dinner to have ice cream with him and to complete the research.

While we assumed initially that Ashokbhai called it a day at about 7 pm, the next morning we would always find that he had marked up his brief in light blue ink with his characteristic *anda* scrawled over key paragraphs and prepared his own notes. Mornings were when we frantically completed our research on the last-minute propositions that Ashokbhai found during his own reading the previous evening.

Learning in Ashokbhai's chamber happened naturally and organically without our even realizing that we were learning. For each brief, he would ask us to do research on some arcane question relating to civil procedure, the Indian Penal Code, evidence, contract or labour law that came up tangentially in the brief. We took it for granted that he needed the research done and had some larger strategy in mind that we could not comprehend. In hindsight, it seems clear that much of the time he was simply giving us opportunities to learn – to improve our own knowledge of the law.

During conference, we were supposed to wait until the solicitor briefing Ashokbhai had finished before we could contribute. It was important, he told us, not to interrupt a briefing lawyer. Most of us are grateful that he never directly told us that we were talking nonsense when making our little contribution. Instead, with rare exception, he would either smile wryly or look thoughtful and tell us "you are not wrong, you know", which most of us took as the highest compliment at the time. He would then give us his own take on the case in our discussion after the briefing solicitor had left, when we learned how clever – or not – our own thoughts were. But discussions were always free and frank and he welcomed our airing our views to the fullest.

Watching Ashokbhai present his arguments in court was always a learning experience. The felicity of expression, the delicate way he introduced his arguments in court, flitting from one submission to the next – all the while watching the bench intently to see which way the wind was blowing – before homing in on what he thought would swing the bench his way, was a joy to behold. He also gave us useful advice on how to be good counsel. He told us that we should avoid pitching our arguments too high as far as possible. More cases, he observed, had been lost by making an unnecessary submission during an SLP admission hearing to impress the client watching from the gallery and to "earn" your fee than had ever been won by making a brilliant submission at the end after the bench had already made up its mind in your favour, which could cause the judges to rethink their view.

Because of his great respect for the institution, Ashokbhai was slow to take offense even at outrageous statements from the bench in the Supreme Court. During my time in the chamber, at a hearing in a public interest litigation in the Supreme Court concerning the mass molestation of women at a political rally, the senior judge on the

bench made the astonishing comment that "... *rape is the mark that a conqueror leaves on the conquered populace*". As the Attorney General, who was representing the investigative authority, Ashokbhai was aghast at this comment but continued presenting his arguments. The senior judge then stated that he remembered a U.S. Supreme Court judgement about a policeman having molested a woman during a routine traffic stop. At this stage, Ashokbhai informed the bench that he would make every effort to locate the judgment and place it the next day. All of us spent the entire evening until 11 pm on this research – with the obligatory post-dinner ice-cream – but could not find a single judgment dealing with the molestation of a woman by a State trooper at a traffic stop. The next day, when arguments resumed, Ashokbhai informed the bench that we had not been able to locate any such judgment. To his utter shock, the senior judge responded that it was not important and he may have read about the incident in a magazine. By this time, Ashokbhai was thoroughly offended and sought an adjournment.

Learning was not just for the juniors. If any counsel used a particularly felicitous phrase in court, Ashokbhai would note it down in the little black book he kept in his coat pocket in which he noted down important precedents. And it was always an unalloyed pleasure to hear Ashokbhai's speeches at bar functions. Every speech was tailored to the audience and delivered in a conversational tone of voice, peppered with quotations, anecdotes and witticisms. It all seemed so effortless. But for those who watched him prepare them from behind the scenes, it was clear that took hard work. He would painstakingly edit them through multiple drafts, scoring out and substituting a word here and a phrase there until it was polished to perfection and to his complete satisfaction.

Listening to music was a must after work – along with a glass of Campari or wine. If one of us had not finished our research on a case, we would unfailingly be given the privilege of joining him for a glass of wine and a chat. Sometimes, Ashokbhai would even play Indian or Western classical music during conferences on the little Bose music system he had set up in his office, much to the annoyance of some solicitors.

I am also reminded of one morning, many years ago, that Ashokbhai and I, as one of his advisors on things audio-visual, rushed around to help him choose the best possible flatscreen TV so he could watch his favourite operas and historical dramas. His other favourite pastime was to meet intellectuals of all kinds – authors, civil servants, lawyers and judges from India and abroad – over intimate dinners at his home where he liked to discuss the burning issues of the day.

Being a member of Ashokbhai's chamber meant that we were part of his family and that he took a keen interest in what our partners and children did. Whenever he met my wife, he would enquire about her interests in literature and the latest books that she had read. When he visited our home, he would remember to bring chocolates for our children and engage with them, giving them a riddle or a logical conundrum to solve.

We were all regularly invited to his home with our partners where we were regaled with wine, single malts and homemade snacks in his basement office. Suvernaben, his beloved wife, always made us feel at home. If Ashokbhai's daughter Ami or sons Harsh or Jai were visiting him in Delhi with their families, we were often invited to dinner to meet them. After an hour of animated conversation on topics ranging from the law, politics and current affairs to history and science, we would go upstairs for a fabulous Gujarati feast or out to a nice restaurant.

What stood out most about Ashokbhai was his qualities as a human being. Dylan Thomas's advice that you should not go gently into the night but rage at the dying of the light was not something that could ever appeal to him. For Ashokbhai was always gentle and warm and his inner light always shone through. The self-realization that Ashokbhai aspired to is best understood from these verses written by Thich Nhat Hanh, one of his favourite Buddhist gurus:

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*Look at the ocean and the sky filled with stars,  
Manifestations from my wondrous true mind.  
Since before time, I have been free.  
Birth and death are the only doors through which we pass,  
Sacred thresholds on our journey,  
Birth and death are a game of hide-and-seek.  
So laugh with me,  
Hold my hand  
Let us say goodbye,  
Say goodbye, to meet again soon.*

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