THE SIGNIFICANT ROLE PLAYED BY ADVOCATES

Any person who supports or recommends for the cause of others or for a change is said to be advocating for the cause. However, a person who takes up the noble profession to plead for the cause of others, to fight for the rights of others and to fight for justice is called an “Advocate”.

1. Advocates have been instrumental in spearheading movements in the society for a positive change. In modern times lawyers in various countries have given leadership to their nations. In the great American and French Revolutions many of the leading figures were lawyers. Abraham Lincoln, the great American President during the American Civil war was a lawyer, and so was Robespierre, the great French leader during the French Revolution, Lenin, the great leader of the Russian Revolution of 1917 was a student of law. Prominent freedom fighters belonged to the legal fraternity and played a leading part in the framing of our Constitution. Gandhiji, Pandit Nehru, Dr.Ambedkar, Alladi Krishnaswami Iyer, K.M.Munshi to mention just a few. Lawyers gave up their practice to join the freedom movement and many of them went to jail.

2. The reason why many great leaders in various countries were lawyers is that the legal profession is objectively in the position of producing
statesmen. This is due to two reasons:- 1) Lawyers belong to an independent profession, they are not subordinate to the Government or to anyone else and 2) they are directly in contact with society in its entirety as they have to deal with all kinds of problems of people from all sections of society, unlike say, doctors who are confined to medical problems or engineers who are confined to technical problems. Hence lawyers are the people who are most conversant with the problems of society as a whole.

3. The central function of the legal profession is to promote the administration of justice. Every civilised society sustains itself on the “Rule of Law” and the lawyers being the primary supporters of it aid and assist its operation in a meaningful measure. The existence of an independent Bar is a bulwark against authoritarianism. It is not a coincidence that in a dictatorship, lawyers are jailed on frivolous charges. And it is the courageous efforts of the lawyers that have led to overthrow of totalitarian regimes. Significance of “Rule of Law” cannot be minimised in any form of Govt. more especially in a democracy. Without Rule of Law and its upholders, be they in executive, legislature or in judiciary, democracy may not survive. If there is one principle which runs through the entire fabric of the Constitution, it is the principle of the Rule of Law and under the Constitution, the judiciary is entrusted with the task of keeping every organ of the state within the limits of the law and thereby making the Rule of Law meaningful and effective.

4. As such, it is clear that an independent judiciary is a must for the sustenance of democracy. If the Independent Judiciary is the pillar of the democracy, the Bar is the foundation of the Independent Judiciary. The Bar is the Mother of the Bench and the bright mirror of the Judicial Officers,
whose image, character and conduct is correctly and vividly reflected therein. Whenever there has been a need for a change or development in the society, the society has looked up to the Advocates. Justice V.R.Krishna Iyer once remarked, “The legal profession should be the midwife of the big change struggle to be born …… indeed, independence of the judiciary and fearlessness of advocates are conceptually close cousins. The legal profession has a cause and should bear the cross “. A fearless, vibrant and alert Bar would mean an independent and strong judiciary. It is to be further borne in mind that it is the members of Bar who are elevated to the Bench.

5. The legal profession is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilised society. It is to be noted that when people suffer from medical problems, they have to endure and suffer, whereas when people are meted out with injustice, it is intolerable and they pull down the whole structure. As such the administration of justice is one of the most essential functions of the modern welfare state. Men desire justice and it is the function of legal practitioners to plead for justice. Lawyer is considered as the guardian who can secure justice and liberty. Lawyers and Courts are the last refuge for the hapless and the harassed litigant. With the Alternate Dispute Resolutions getting the legal sanction, lawyers have also resorted to bringing about quick settlements using their best efforts.

6. The advocate is considered to be an officer of the Court. He not only owes a duty to his client but also to the Court, to assist the Court to the best of his ability in the administration of justice. The legal profession is considered to be a learned profession because a legal practitioner is required to be familiar with all branches of human knowledge as he is required to
deal with every topic under the sun. The practice of this profession requires constant study and learning throughout one's career. There is no escape from it. That is why law is said to be a jealous mistress. Today people are bringing to the Court for resolution diverse and complex social and scientific issues touching all aspects of life, be it public health, education, human rights, environment, reservations, elections, cyber space, genetic engineering, international legal disputes, intellectual property matters, etc. In this changing scenario, the members of the Bar have been successfully upgrading their knowledge and skills to assist the Court, by acquainting themselves with the latest developments not only in law but also in various other fields of human knowledge. All this requires a wide range of learning, continuing education and choosing the field of practice wherein one would like to specialize. It has been rightly said that “law is an ocean” and off late with the rapid developments in science, there has been new discoveries and insights into the unchartered and unknown areas of the ocean called law.

7. There are many thousands of Acts, and it is for the lawyers to apply the appropriate law knowing the object of the law. It is appropriate here to state that one who knows not the object of the law, knows not the law. The proverb “Knowledge is Power” is aptly applicable in the case of the legal profession and thus legal profession is rightly called the learned profession. The legislature may do well by enacting various laws and acts for the welfare of the society and nation in the various fields and areas. However, it would remain a paper tiger unless it is enforced by way of legal administration. In this, the advocates play a crucial role. To give a small illustration, the legislature in all its zeal to bring gender equality enacted several laws, both civil and criminal to promote the rights of the women. The legislature also enacted laws to give equal rights for women in property
matters. However, the advocates have played a very important role in enlightening the society (through their clients) regarding the laws and have advised to utilized it and enforce their rights. It can be seen that the women have started asserting their rights and their lot have become better than the past. Lawyers have a pivotal role to play in a developing society presenting unending challenges of evolutionary and revolutionary changes as they are directly in touch with the society.

8. The Advocates’ Profession is a unique profession in the sense that the members of the legal profession are pitched against each other to fight for the cause of their clients in search of truth and justice. A point which eludes the understanding of the common man and which is deprecated generally by the common man is the role played by the Advocates in the defence of Accused, “bad” people, criminals, people who do not deserve any protection and who in their opinion deserve to be punished. People attribute motives when an advocate represents his client. Also advocates representing criminals are looked upon as criminals since it is their premise that only a person who endorses the act of the criminals can plead for them. In this regard, since the recent past, there is a misconception and misunderstanding in the society about the role of an advocate and the nobleness of the profession. This has been so not only in India, but in a few other countries where there has been no proper understanding of the legal profession.

9. It is true, of course, that the legal profession has a long tradition of representing unpopular clients and causes, often at considerable personal and professional sacrifice. The reality is that, if lawyers can expect to be held accountable for the clients they represent, many simply will avoid
controversial representations. In recognition of this truth, the American Bar Association’s Model Rules of Professional Conduct, 1908 (ABA) provide that:

1. Lawyers have some basic obligation to undertake the representation of unpopular clients; and
2. a lawyer does not endorse a client’s conduct, character, or views by taking the client’s case.

Although the rules of professional responsibility vary from State to State, they are in general agreement on these points.

10. The Canons of ABA Model Rules of Professional Conduct, 1908 exhorts:- The Advocate is under an obligation to act in the best interests of his client. The advice must be given based upon what the lawyer believes to be in the best interests of the client and cannot be driven by the lawyer’s concern for the interests of some other entity, ideology, or cause, however exalted—including the lawyer’s own political or moral views.

Although a reference here is made to the A.B.A Model Rules of Professional Conduct, 1908, the same is followed in principle in all countries having the “Rule of Law”.

11. Canon 5 of the ABA Model Rules of Professional Conduct states:- It is the right of the lawyer to undertake the defense of a person accused of crime, regardless of his personal opinion as to the guilt of the accused; otherwise innocent persons, victims only of suspicious circumstances, might be denied proper defense. Having undertaken such defense, the lawyer is bound by all fair and honorable means to present every defense that the law of the land permits, to the end that no person may be deprived of life or liberty, but by due process of law.

12. The assumption that a lawyer personally agrees with every argument he or she makes is simply at odds with the realities of legal practice.
Invariably, there will be some arguments that, as a professional matter, the lawyer considers strong and others that, were the lawyer sitting as a judge, he or she would likely reject as weak. In all cases, a lawyer is required to make every non-frivolous argument available on a client’s behalf, regardless of his or her own feelings about what the ‘right’ answer should be. Infact, Canon 15 of the ABA Model Rules states:- No fear of judicial disfavour or public unpopularity should restrain a lawyer from the full discharge of his duty…….The lawyer owes entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability.

The relationship between an advocate and his client is of trust and therefore sacred.

These Rules are in large part, adopted to ensure that every litigant can, as a matter of due process obtain legal counsel. The Rules have been adopted in principle to ensure that the Justice Delivery System is in line and tune with the “Rule of Law”.

13. An advocate who is an officer of the Court, assists the Court in rendering justice. Judges neither have the time nor the resources to identify, research and analyze all of the legal issues presented by a case. Ultimately, judges must rely on the lawyers to present the facts and law of each case to them for decision, elucidating the relevant decisional principles. The validity of this reliance is itself premised on the assumption that each of the lawyers involved will vigorously advocate the client’s position, regardless of their own personal feelings about the correct outcome. A rule that permitted lawyers to be held accountable for the clients they represent, or the arguments they make, would fatally undermine this system.
14. Holding a lawyer accountable for his or her clients, and the arguments made on the client’s behalf, effectively denies the neutrality of the legal profession – the very essence of professionalism – and it denies the neutrality of the law itself.

15. As such, the ‘Rule of Law’ has permitted lawyers to carry on their profession without ultimately being blamed or punished for the clients they have represented. This “immunity” is, in fact, essential to the operation of a neutral legal system, which assumes that there are two sides to any question, presupposes that all parties ought to receive a fair hearing of their case, and depends upon lawyers to articulate the relevant legal principles so that disinterested judges can fairly resolve the issues presented.

Undoubtedly, the legal profession is called the noble profession and a lawyer has a multi-disciplinary role to play as a minister of justice, an officer of the Courts, a client’s advocate and member of an ancient, honorable and learned profession.