

# ROLE OF ADVOCATES IN INDIAN DEMOCRACY\*

‘**A**dvocate’ is neither conceptually nor ideologically defined in the

Advocates Act, 1961. All that it says is – “Advocate means an advocate entered in any roll under the provisions of this Act.”<sup>1</sup> The definition carries us nowhere except to the performance of the ritual of being enrolled. The word ‘advocate’ has originated from ‘*advocare*’ which means ‘to summon to one’s assistance’. An empirical meaning of advocate can be crafted out by defining him as a person learned in law and duly admitted to practice; one who assists the consumer of justice with advice and pleads for him in open court to secure justice for him. In one of its pronouncements, the Supreme Court has observed that an advocate is an officer of justice and friend of the court<sup>2</sup>. In yet another case, the Supreme Court observed that the paramount consideration of the Bench and the Bar forming a noble and dynamic partnership, geared to the great social goal of administration of justice, puts the lawyer, appearing in the court, in a class by himself. He is not an agent nor his client an employer. To treat him so, would be doing injustice with the towering eminence of the legal profession. The lawyer is an engineer of the rule of law in society<sup>3</sup>.

## **Democracy**

Democracy, as understood by the framers of the Constitution of India, is not an embodiment of legal or political principles nor is it merely a form of governance. It is much more and taller than that. It is an embodiment of great moral and spiritual principles which are, to some extent, mystique principles. If democracy was to be reduced to certain legal and political principles only, then the entire life and vitality of democracy would be lost. Acharya J.B. Kripalani, speaking before the Constituent Assembly on October 17, 1949 said, “democracy is equality of man and implies fraternity and non-violence above all. Violence is anathema to democracy”. He further said, “If we want to use democracy as only a legal, constitutional and formal advice, we shall fail. The whole country should understand the moral, the spiritual and the mystique implications of the word ‘democracy’<sup>4</sup>.”

There would be several eminent speakers, speaking on the subject today. The purpose of my speaking is by no means to pre-empt the volume of wisdom that is going to be bestowed by the speakers this afternoon. I only wish to initiate the topic.

## **Role of Advocates**

The role of advocates in leading the path of democracy is to be found suggested at least at three places : first, the Preamble to the Constitution; second, Article 51A of the Constitution; and third, the Preamble of the Chapter on Standards of Professional Conduct and Etiquette as enunciated by the Bar Council of India.

## **Preamble**

The Founding Fathers of the Constitution handed down the Constitution of India to us, at a point of time, when we had already earned independence but we were yet to be formalised into a sovereign democratic republic. If we have the vision to read between the

lines of the Preamble to the Constitution, we can read, the framers of the Constitution making a declaration, akin to prophecy that the people of India were destined and shall have to fight yet another battle for freedom. The freedom earned on 15th August, 1947 became a matter of fact on 26th January, 1950 and we were told to get ready and gear up for fighting for justice – social, economic and political. One of the best sellers in the market is a book entitled “Freedom is Not Free”. The book is thought-provoking and touches our hearts. The theme of the book is that though India has earned freedom but Indians – citizens of India, we the people of India, are yet to be freed. We have got rid of the yokes of foreign rule, thanks to the non-violent movement of the father of the nation, Mahatma Gandhi, and the sacrifices of the numberless freedom-fighters, but the freedom has been achieved only externally; internally it is yet to be achieved and that would not be done unless justice – social, economic and political has been secured and guaranteed to ‘we, the people of India’. The real ‘people of India’ are not the elite class nor those who fight the election and win. It is the common man in the streets, the one who lives in villages, or the ‘little man’ who has a right to vote but not yet the power to exercise the right freely and consciously. He is socially backward, economically down-trodden and politically pushed behind.

History bears testimony to the fact that those who led the fight for freedom were by and large the lawyers. Mahatma Gandhi, the father of the nation, Jawaharlal Nehru, the first Prime Minister of India, Dr. Rajendra Prasad, the first President of India, Sardar Vallabhbhai Patel, the first Home Minister of India, most of the members of Constituent Assembly, which drafted the Constitution, led by Dr. B.R. Ambedkar were all lawyers. If democracy in India has to have any meaning, it is the legal fraternity, *i.e.*, the advocates, who shall have to give their lead, once again, for securing to the people of India justice, liberty, equality and fraternity – the four words used in the Preamble – each word bustling with philosophical, moral and mystique connotation.

### **Article 51A**

How do the advocates assume this role? What should be their guiding star? An indication is given by Article 51A of the Constitution of India which speaks of fundamental duties. The foundation of this Article is laid on the first tenet of democracy which dictates the citizens to ask not what the society can do for them; but ask themselves what they can do for the society. This Article consists of 10 clauses which must be learnt by heart by every advocate. The prettiest of the 10 clauses is the last one which says that it shall be the duty of every citizen of India to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement. The role of advocates in democracy is to strive towards excellence – individual and collective. Their thinking has to be excellent and their activity has to be excellent. His Excellency, Dr. A.P.J. Abdul Kalam, the President of India, delivering the first Palkhivala Memorial Lecture, gave this excellence the name of ‘righteousness’ and prompted the advocates to keep on asking these few questions time and again to themselves – ‘Am I a righteous person? Am I a righteous advocate? What I have done today or what I am going to do soon hereafter, does it satisfy the test of righteousness?’ If the answer is ‘yes’, the advocate is discharging the role which is expected of him in a democracy. I am confident that if the lawyers think on these lines then the nation is bound to rise, constantly, to higher levels of endeavour and achievement.

### **Professional Conduct and Etiquette**

The Preamble to the Chapter on Standards of Professional Conduct and Etiquette reads:

“An Advocate shall, at all times, conduct himself in a manner befitting his status as an officer of the Court, a privileged member of the community, and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity may still be improper for an Advocate.”<sup>5</sup>

Friends, briefly I have touched the Preamble to the Constitution which is the spirit and backbone of the Constitution of India (as I have chosen to say in one of my memorial lectures), the Chapter and Article on Fundamental Duties and the Code of Conduct and Professional Ethics which you have chosen to lay down for yourselves. If you have showered your love and affection on me from the depth of your hearts, let my message also reach the depth of your hearts.

### **Epilogue**

I close my speech of the day by quoting from a memorable speech delivered by Dr. A.P. J. Abdul Kalam, the President of India, on September 5, 2002 at the inauguration of the National Judicial Academy, Bhopal. Though, His Excellency was speaking of Judiciary, what he said applies equally to any law professional. A lawyer is an officer of the Court and in that sense an integral part of the justice delivery system. I quote:—

“Judiciary is the Angel and the Marshal that ensures that such a democracy survives. Judiciary is not simply making judicial pronouncements or enforcing law in a case. Judiciary is the whole process of interpreting the social, political, economical and human environment to ensure that that wholesome life with dignity and distinction is sustained. The edifice of justice thus stands exalted, high on a pedestal that the whole Nation looks up to. The fundamental and over-riding importance of the system cannot be overstated and the need for constantly maintaining its purity not forgotten. There cannot be any erosion of values, corrosion of quality or any cobwebs in the procedure. The majesty of law and justice has to be maintained with magnanimity and magnificence. The members of the judiciary therefore become inviolable role models, the perfect incorruptible ideals of a civilised society. It is this that we have to strive for, attain and sustain.”

Every advocate must conscientiously and continuously remind himself that it is his primary obligation to maintain the majesty of law and justice with magnanimity and magnificence. The role of any advocate in Indian democracy is to be an inviolable role model and to be a perfect incorruptible ideal of a civilised society. We all have to firmly resolve that we shall strive for, attain and sustain these ideals. That is the role of advocates in Indian democracy.

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\* Speech at a Symposium on 17th July, 2004, at Gwalior.

1. Advocates Act, 1961, sec. 2(a).
2. Haniraj L. Chulani, AIR 1996 SC 1708.
3. Jamilabai Abdul Kadar, AIR 1975 SC 2202.
4. CAD, Vol. 10, 1949, pp. 452-53.
5. See: Advocate's Act by Subramanyam, p. 297.