

**CLASS- LL.M. IInd SEMESTER**

**SUBJECT- LAW AND SOCIAL TRANSFORMATION**

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**TOPIC- ROLE OF LAW, FUNCTIONS OF LAWYERS AND JUDGES**

The Judiciary is the third organ of the government. It has the responsibility to apply the laws to specific cases and settle all disputes. The real 'meaning of law' is what the judges decide during the course of giving their judgements in various cases. From the citizen's point of view, Judiciary is the most important organ of the government because it acts as their protector against the possible excesses of legislative and executive organs. Role of Judiciary as the guardian-protector of the constitution and the fundamental rights of the people makes it more respectable than other two organs.

**FUNCTIONS OF JUDGES:**

**1. To Give Justice to the people:**

The first and foremost function of the judiciary is to give justice to the people, whenever they may approach it. It awards punishment to those who after trial are found guilty of violating the laws of the state or the rights of the people.

The aggrieved citizens can go to the courts for seeking redress and compensation. They can do so either when they fear any harm to their rights or after they have suffered any loss. The judiciary fixes the quantity and quality of punishment to be given to the criminals. It decides all cases involving grant of compensations to the citizens.

**2. Interpretation and Application of Laws:**

One of the major functions of the judiciary is to interpret and apply laws to specific cases. In the course of deciding the disputes that come before it, the judges interpret and apply laws. Every law needs a proper interpretation for getting applied to every specific case. This function is performed by the judges. The law means what the judges interpret it to mean.

### **3. Role in Law-making:**

The judiciary also plays a role in law-making. The decisions given by the courts really determine the meaning, nature and scope of the laws passed by the legislature. The interpretation of laws by the judiciary amounts to law-making as it is these interpretations which really define the laws.

Moreover, 'the judgements delivered by the higher courts, which are the Courts of Records, are binding upon lower courts. The latter can decide the cases before them on the basis of the decisions made by the higher courts. Judicial decisions constitute a source of law.

### **4. Equity Legislation:**

Where a law is silent or ambiguous, or appears to be inconsistent with some other law of the land, the judges depend upon their sense of justice, fairness, impartiality, honesty and wisdom for deciding the cases. Such decisions always involve law-making. It is usually termed as equity legislation.

### **5. Protection of Rights:**

The judiciary has the supreme responsibility to safeguard the rights of the people. A citizen has the right to seek the protection of the judiciary in case his rights are violated or threatened to be violated by the government or by private organisations or fellow citizens. In all such cases, it becomes the responsibility of the judiciary to protect his rights of the people.

### **6. Guardian of the Constitution:**

The judiciary acts as the guardian of the Constitution. The Constitution is the supreme law of the land and it is the responsibility of the judiciary to interpret and protect it. For this purpose the judiciary can conduct judicial review over any law for determining as to whether or not it is in accordance with the letter and spirit of the constitution. In case any law is found ultra vires (unconstitutional), it is rejected by the judiciary and it becomes invalid for future. This power of the court is called the power of judicial review.

### **7. Power to get its Decisions and Judgements enforced:**

The judiciary has the power not only to deliver judgements and decide disputes, but also to get these enforced. It can direct the executive to carry out its decisions. It can summon any person and directly know the truth from him.

In case any person is held:

- (i) Guilty of not following any decision of the court, or
- (ii) Of acting against the direction of the court, or
- (iii) Misleading the court, or
- (iv) Of not appearing before the court in a case being heard by it, the Court has the power to punish the person for the contempt of court.

### **8. Special Role in a Federation:**

In a federal system, the judiciary has to perform an additionally important role as the guardian of the constitution and the arbiter of disputes between the centre and states. It acts as an independent and impartial umpire between the central government and state governments as well as among the states. All legal centre-state disputes are settled by the judiciary.

### **9. Running of the Judicial Administration:**

The judiciary is not a department of the government. It is independent of both the legislature and the executive. It is a separate and independent organ with its own organisation and officials. It has the power to decide the nature of judicial organisation in the state. It frames and enforces its own rules.

These govern the recruitment and working of the magistrates and other persons working in the courts. It makes and enforces rules for the orderly and efficient conduct of judicial administration.

### **10. Advisory Functions:**

Very often the courts are given the responsibility to give advisory opinions to the rulers on any legal matter. For example, the President of India the power to refer to the Supreme Court any question of law or fact which is of public importance.

### **11. To Conduct Judicial Inquiries:**

Judges are very often called upon to head Enquiry Commissions constituted to enquire into some serious incidents resulting from the alleged errors or omissions on the part of government or some public servants. Commissions of enquiry headed by a single judge are also sometimes constituted for investigating important and complicated issues and problems.

## **12. Miscellaneous Functions:**

Besides the above major functions, the judiciary also performs several other functions. Some such functions are the appointment of certain local officials of the court, choosing of clerical and other employees. Cases relating to grant of licenses, patents, and copy rights, the appointment of guardians and trustees, the admission of wills, to appoint trustees to look after the property of the minors, to settle the issues of successions of property and rights, issue of administering the estates of deceased persons, the appointment of receivers, naturalization of aliens, marriage and divorce cases, election petitions and the like.

### **Judiciary enjoys a big importance in the eyes of the people because it acts as:**

- (1) The dispenser of Justice.
- (2) Protector of the rights of the people.
- (3) Guardian protector of the Constitution of the State.
- (4) Arbiter of center-state disputes.
- (5) Safeguard against Legislative and executive excesses.
- (6) Check against arbitrary exercise of powers by the power-holders.
- (7) Guardian of Rule of Law and Justice.

## **FUNCTIONS OF LAWYERS**

Indian Legal Profession has been enrolled with nearly 1.4 million advocates across the country being one of the largest and the oldest professions in the world. In order to practice Law as an advocate, we should be enrolled with the Bar Council of India.

An Advocate is considered as an officer of the Court and is a part of the court. He should always respect and co-operate with the proceedings of the court.

The statement, “A lawyer is and must ever be the high priest at the shrine of justice”, a religious metaphor, reflects the view of the lawyer’s special role on the administration of justice as contemplated by the American Bar Association in the first national code of legal ethics in the USA. The religious metaphor was developed in the context of viewing Courts as the ‘shrines of justice’, and lawyers as the ministers of the “courts of justice robed in the priestly garments of truth, honor and integrity”. Even in a secular context, the statement still captures the essence of the role of an advocate in the mechanism of administration of justice in the society.

- It is necessary to appreciate the role an advocate plays in the society. The development of lawyers as a class of professionals can be attributed to the need for trained persons who can form the competent interface to facilitate the interaction between the lay persons and the judiciary. This involves providing legal advice in matters of rights, liberties or property of the client within the framework of legislative and legal rights, and representing the client in the event of a dispute before an adjudicatory body. In fact, if law is viewed as a ‘public good’ which is frequently technical and not self-executing, meaningful access to law requires the assistance of a lawyer. Particularly, in most jurisdictions, the members of the legal profession are conferred the status of privileged members of the community, and occupies an exclusive domain with the privilege of pleading and acting on behalf of suitors being restricted only to enrolled advocates and attorneys. This monopolistic character of the legal profession entails certain high traditions which its members are expected to upkeep and uphold.

- The lawyer plays an indispensable role in the mechanism of administration of justice. However, the lawyer has a particularly onerous and multi-dimensional role to fulfill. As expressed by Mathew, J., “A Counsel has a tripartite relationship: one with the public, another with the court, and the third with his client. That is a unique feature. Other professions or callings may include one or two of these relationships but no other has the triple duty.”[1] The satisfaction of the obligations and expectations arising out of these three relationships are frequently difficult to reconcile. The role of the advocate in these three capacities requires a closer scrutiny.
- The lawyer, as a professional, to some extent, acts on behalf of the client, and representing the client. This is particularly relevant in an adversarial system of adjudication followed by common law countries which is characterized by a neutral adjudicating authority, which, on the basis of the arguments and evidence placed before it, arrives at a conclusion. The role of an advocate in an adversarial system, therefore, is to represent the case of the client before the adjudicating authority. As a professional, the functional role of an advocate, in essence, is comparable to that of a legal technician.
- An advocate is specially trained in the technical profession of ‘law’, and with his grasp over the subject matter; professional function consists largely of providing counsel for clients about how to escape or mitigate the incidence of the law’s obligations, availing of the loopholes and the ambiguities of law. An advocate is essentially an adviser to his client. The contractual arrangement creates an obligation on the part of the advocate to offer sound legal service, and place before the court all that can fairly and reasonably be submitted on behalf of his client. The oft-quoted comment of Lord Reid in the celebrated case of *Rondel v. Worsley* succinctly conveys the essence of the duty of an advocate towards his client: “Every counsel has the duty to his client fearlessly to raise every issue, advance every argument, and ask every question, however distasteful, which he thinks will help his client’s case”.
- More importantly, he should not let his personal opinion, or considerations of unpleasant consequences or reactions that he may expect to face in the performance of his duty towards his client affect the quality of services he provides to the client. At the same time, it would be erroneous to view an advocate as merely a professional –

that would lead to the risk of degenerating the legal profession into a trade or mere sordid pursuit for livelihood and accumulation of wealth, with professionals indulging in “briefs merchandise”.

- It must be clarified that an advocate is obligated to act so as to protect and uphold the interest of his client by all fair and honorable means. As has been frequently emphasized, he also acts in the capacity of an officer of the Court. The role of advocates as officers of the Court is to assist the Court in the administration of justice. Lawyers collect materials relating to a case and thereby assist the Court in arriving at a correct judgment. Furthermore, being a responsible officer of the court and an important adjunct of the administration of justice, the lawyer also owes a duty to the court as well as the opposite side.
- The Bar and the Bench constitutes the two wheels of the carriage of justice. The success of the judicial process often depends on the services of the legal profession. The function of both the Bar and the Bench in an adversarial system of dispute resolution are clearly made out, and the need for a dynamic relationship of co-operation between the two is acute. Advocates, as members of the Bar and officers of the Court, have the responsibility of ‘keeping the stream of justice pure and unsullied’ so also to enable it to administer justice fairly and to the satisfaction of all concerned.
- This involves two aspects – firstly, to uphold the dignity of the judicial office and maintain a respectful attitude towards the Court, and secondly, to ensure that under no circumstance, any illegal or improper means is used to mislead the Court. The primary duty of the lawyer is to inform the court as to the law and facts of the case and to aid the Court to do justice by arriving at correct conclusion. Since the court acts on the basis of what is presented by the advocates, the advocates are under the obligation to be absolutely fair to the Court. All statements should be accurate, and the advocate is under a sacrosanct obligation to ensure that he does not, through any act or omission lead to the possibility of misrepresentation, or mislead the court or obfuscate the case in any manner.
- the advocate owes a duty to his client in the capacity of a professional, and towards the Court in the capacity of an officer and the friend of the Court. However, this may and often does lead to a conflict. In cases of conflict, as far as possible, the advocate tries to

balance his competing obligations. However where the conflict is irreconcilable, as an officer of the court concerned in the administration of justice, he has an overriding duty to the court, to the standards of his profession, and to the public. the most frequently quoted observation capturing the essence is the statement of Lord Denning: **“It is a mistake to suppose that he is the mouth piece of his client to say what he wants: or his tool to do what he directs. He is none of these things. He owes allegiance to a higher cause. It is the cause of truth and justice.”** It follows from this, that an advocate is under an obligation to ensure that he does not consciously misstate the facts or knowingly conceal the truth. He has the duty to present before the Court a fair picture of the case of his client to help the Court to arrive at a judgment in the dispute. This includes producing all the relevant authorities, even those that are against him. He should not shy from producing all the relevant documents, even those that are fatal to his case. In case of conflict between the most specific instructions of his client and his duty to the court, the latter takes precedence.

- The role of advocates in the administration of justice, and the tension between the role of the advocate as a professional vis-à-vis as an officer of the Court can be understood best in light of the role of an advocate in the society. ‘Justice’ is the cornerstone in a democratic society characterized by the rule of law. In an adversarial system, the advocate could be described, to some extent, as a minister of justice.

The public impact of the legal profession can be gauged by the observation by the Supreme Court in *All India Judges Association v. Union of India*<sup>1</sup>, wherein it was expressed that the administration of justice and the part to be played by the advocates in the system must be looked into from the point of view of litigant public and the right to life and liberty guaranteed under Article 21 and right to grant legal aid as contemplated under Article 39A of the Constitution. The aspect of the advocate as a public servant is closely tied to the fact key role he plays in the developmental and dispute-processing activities and, above all, “in the building up of a just society and constitutional order.” Being the custodian of the monopolistic power statutorily granted by the nation, the lawyer is obligated to rise to the expectations of him in being a

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<sup>1</sup> 1992 (1) SCC 119



member of the society worthy of confidence of the community in him as a vehicle of social justice.

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