
"Bar associations in Karnataka instructing members not to represent accused in sedition cases violates constitutional morality."

The events over the last couple of months in the context of the Citizenship Amendment Act (CAA) have been unprecedented in the country. Civil society, students, activists, ordinary people from all walks of life have been protesting peacefully against the CAA, without a break, in so many parts of India. We have never witnessed this level of a collective outcry against the discrimination that the new citizenship law brings.

We have also not witnessed what has been happening in Karnataka over the past couple of months. Courts, which are meant to be places of refuge from injustice, a place for all to be heard and a forum where every person — including a person accused of the most heinous crime — can receive a fair trial, are turning into mob houses, preventing legal representation for accused persons.

In two separate instances, advocates' associations in Karnataka have passed resolutions preventing any legal representation for persons who were involved in protests against the CAA and charged under different criminal offences. The first instance was in Mysuru in January, when a young student who was participating in an anti-CAA protest, holding a poster stating "Free Kashmir", and many others were charged with sedition. The Mysuru District Bar Association on January 16, passed a resolution directing all lawyers to not to file a vakalath and appear for this student, labelling her as "anti-national". The Bar Association went even further and attached a copy of the resolution at multiple locations in the Mysuru City Court Complex and sent messages through print/electronic media to all its member advocates not to represent her.

Thereafter, this month, when two Kashmiri students were charged with sedition again in relation to protests against the CAA, the Hubli Bar Association passed a resolution ordering lawyers not to appear for these students and represent them. The students were beaten up and manhandled when they were produced before the court. Despite directions from the Karnataka High Court permitting lawyers to represent them and directing that there should be police protection provided, the lawyers were manhandled and faced violence when they attempted to file bail applications for them.

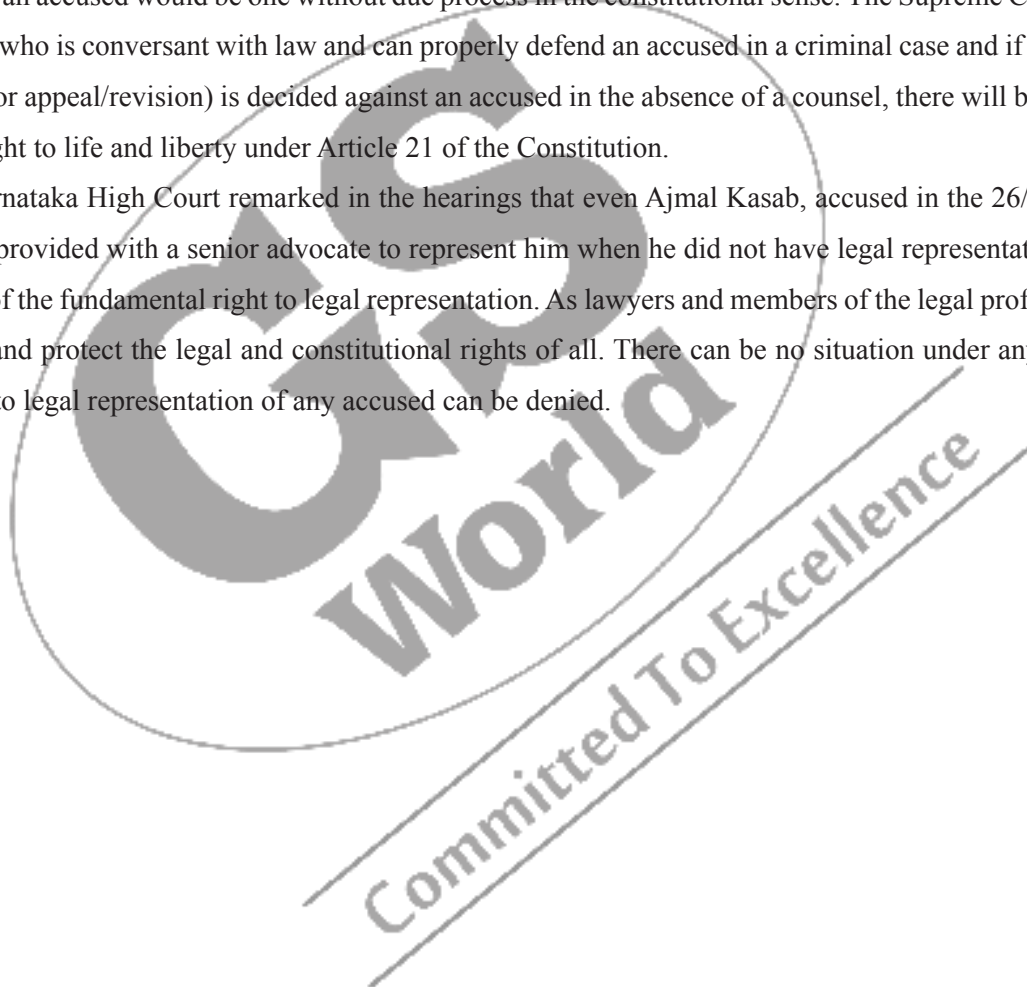
This pattern of bar associations passing resolutions asking lawyers to not represent the accused, coupled with violence in the court premises, is completely illegal. While these resolutions have no binding effect of, the violence in the court premises would deter any lawyer engaged by the accused to appear for them, or put such lawyers' life in danger. It would certainly ensure that any local lawyer from the district bar would not dare to appear for them.

Not only is such action illegal and criminal when coupled with violence, it also is a violation of a fundamental right to legal representation guaranteed to all accused persons. Article 22 (1) of our Constitution guarantees that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of their choice. Hence, every accused has a fundamental right to legal representation and it is rather horrifying to see that bar associations are themselves seeking to deprive accused persons of this precious right.

The Supreme Court in the case of Mohd. Sukur Ali v. State of Assam (2011) held that in a criminal case, even if the counsel engaged for the accused does not appear for any reason, the court should not decide a criminal case against the accused in the absence of his/her counsel and in such a situation the court should appoint another counsel as amicus curiae to defend the accused.

This is because the liberty of a person is the most important feature of our Constitution and it cannot be taken away without giving the accused a proper trial — which means a trial with legal representation. A hearing without a lawyer representing an accused would be one without due process in the constitutional sense. The Supreme Court held that it is only a lawyer who is conversant with law and can properly defend an accused in a criminal case and if a criminal case (whether a trial or appeal/revision) is decided against an accused in the absence of a counsel, there will be a violation of the accused's right to life and liberty under Article 21 of the Constitution.

The Karnataka High Court remarked in the hearings that even Ajmal Kasab, accused in the 26/11 Mumbai attacks case, was provided with a senior advocate to represent him when he did not have legal representation, and that is the true import of the fundamental right to legal representation. As lawyers and members of the legal profession, it is our duty to uphold and protect the legal and constitutional rights of all. There can be no situation under any circumstance where the right to legal representation of any accused can be denied.



Expected Questions (Prelims Exams)

Q. The Karnataka Bar Association has been in the news for not representing the accused in connection with sedition cases. consider the following statements in the context of the rights provided by the constitution to the accused:

1. Every accused has the fundamental right to legal representation.
2. Non-representation of the accused would be a violation of Article-21.
3. Under Article 22 a person can be detained without stating the basis of arrest.

Which of the above statements is/are correct ?

- (a) Only 1 (b) 1 and 2
(c) Only 3 (d) 1 and 3

Note: Answer of Prelims Expected Question given on 29 Feb., is 1 (a)

Expected Questions (Mains Exams)

'The principle of ensuring legal aid to both the prosecution and prosecuted prevails in the Indian judicial system.' In such a way, how does the decision not to contest the case of the accused in sedition cases in Karnataka violate the fundamental principle of justice? Discuss. (250 words)

Note: - The question of the main examination given for practice is designed keeping in mind the upcoming UPSC main examination. Therefore, to get an answer to this question, you can take the help of this source as well as other sources related to this topic.

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