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Legal Representation in India: Constitutional Guarantee Against Illegal Bar Association Advocate Boycotts

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Recent Developments:

- **Recently, the Ayodhya (Faizabad) Bar Association** resolved that none of its members would defend eight persons accused in the alleged embezzlement of **Ram Temple donation funds** and announced a **₹5 lakh penalty** on any advocate who chose to represent them.
- **The incident has revived the constitutional debate** on the **right of an accused to legal representation**, the **professional duties of advocates**, and the **constitutional requirement of a fair trial**.
- **Despite repeated Supreme Court judgments** declaring such resolutions **illegal, unconstitutional, and contrary to professional ethics**, similar resolutions continue to be passed by several bar associations across India.

Constitutional Basis of the Right to Legal Representation:

Constitutional Provisions:

- **Article 22(1):** Guarantees every arrested person the **fundamental right** to consult and be defended by a **legal practitioner of his or her choice**.
- **Article 14:** Ensures **equality before law** and **equal protection of laws**, requiring equal access to justice irrespective of the nature of the accusation.
- **Article 21:** The **Supreme Court** has interpreted the **Right to Life and Personal Liberty** to include the **right to a fair trial**, making effective legal representation an essential component of due process.
- **Article 39A:** Directs the State to ensure **equal justice** and provide **free legal aid** so that economic or social disabilities do not prevent access to justice.
- **Together, these provisions establish** that every accused person is entitled to legal representation regardless of the gravity, popularity, or public perception of the alleged offence.

Statutory Provisions:

- **Section 303 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023:** Recognises the right of an accused person to be defended by an advocate of his or her choice.
- **Legal Services Authorities Act, 1987:** Provides the institutional framework for **free legal aid** through **NALSA, State Legal Services Authorities, and District Legal Services Authorities**.

Professional Duties of Advocates:

Bar Council of India Rules:

- **The Standards of Professional Conduct and Etiquette** require an advocate to ordinarily accept a professional brief at a fee consistent with the advocate's standing and the nature of the case.

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- **An advocate may decline a brief only in exceptional personal circumstances**, but such discretion belongs to the individual advocate and not to a collective body.
- **A Bar Association has no legal authority** to prohibit its members from appearing for any accused person.

Judicial Pronouncements:

A.S. Mohammed Rafi v. State of Tamil Nad(2010):

- **The Supreme Court** declared resolutions passed by bar associations restraining advocates from defending particular accused persons as **wholly illegal, contrary to professional ethics, and against constitutional values**.
- **The Court held** that every accused person, irrespective of the alleged crime, has a constitutional right to legal defence.
- **The judgment emphasised** that lawyers perform a constitutional function and cannot assume the role of judges by deciding who deserves legal representation.
- **The Court referred to historical examples**, including **Indian freedom fighters, the accused in the assassinations of Mahatma Gandhi and Indira Gandhi, and Nuremberg Trial defendants**, all of whom received legal defence.

Kuldeep Agarwal v. State of Uttarakhand (2019):

- **The Uttarakhand High Court** clarified that the expression "**special circumstances**" permits only an individual advocate to decline a case personally.
- **The judgment categorically held** that no bar association possesses the authority to collectively prohibit legal representation of any accused.

J. Jayalithaa v. State of Karnataka (2014):

- **The Supreme Court** reaffirmed that a **fair trial** constitutes the central objective of criminal justice.
- **The Court observed** that a fair trial simultaneously safeguards the rights of the **accused, victim, and society**, thereby preserving public confidence in the justice system.

Pradyuman Thakur Murder Case (2017):

- **While dealing with attempts by the Gurgaon Bar Association to prevent representation of an accused**, the **Supreme Court** reiterated that protection of the **right to counsel** is indispensable for preserving the **Rule of Law**.

Constitutional Significance of the Right to Counsel:

Importance for Criminal Justice:

- **Legal representation ensures** observance of the principles of **Natural Justice**, particularly **Audi Alteram Partem** (hear the other side).
- **Effective legal defence reduces** the possibility of wrongful conviction and procedural injustice.
- **Independent legal representation strengthens** judicial legitimacy by ensuring that convictions result from lawful judicial determination rather than public pressure.
- **The constitutional commitment to Rule of Law requires** that justice must not only be done but must also be seen to be done.

Why Bar Association Boycotts Are Unconstitutional:

Constitutional and Institutional Concerns:

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- **Collective resolutions denying legal representation violate** the guarantees contained in **Articles 14, 21, and 22(1)**.
- **Such resolutions undermine** the constitutional promise of a **fair trial** and **due process of law**.
- **Professional associations cannot override** constitutional rights through internal resolutions.
- **The legal profession functions as an integral component of the administration of justice**, rather than as a pressure group or trade union.
- **Denial of legal representation ultimately affects** not only the accused but also the credibility of judicial outcomes.

International Perspective:

Global Human Rights Standards:

- **Article 11 of the Universal Declaration of Human Rights (UDHR):** Recognises the presumption of innocence and fair trial guarantees.
- **Article 14 of the International Covenant on Civil and Political Rights (ICCPR):** Guarantees the right of every accused person to defend himself or herself through legal assistance of choice.
- **India's constitutional jurisprudence broadly aligns** with these internationally recognised fair trial standards.

Recurring Instances of Similar Boycotts:

Major Cases:

- **2008 Mumbai Terror Attacks (Ajmal Kasab):** Lawyers initially declined representation before legal aid was eventually provided under judicial supervision.
- **2012 Delhi Gangrape Case:** Lawyers passed resolutions refusing to defend the accused.
- **2019 Hyderabad Veterinary Doctor Rape-Murder Case:** Local bar associations refused legal representation to the accused before the subsequent police encounter.
- **2017 Pradyuman Thakur Murder Case:** Judicial intervention became necessary to protect the accused's constitutional right to counsel.

Challenges:

Persistent Issues:

- **Public outrage often influences** professional decision-making within bar associations.
- **Weak enforcement of professional ethics** enables repeated violations despite settled judicial precedents.
- **Collective boycott resolutions create** obstacles in ensuring speedy and impartial criminal trials.
- **Media trials and public sentiment** may indirectly influence access to competent legal representation.

Way Forward:

Institutional Measures:

- **Bar Councils should initiate disciplinary proceedings** against unlawful collective boycott resolutions.
- **Courts should continue to enforce** constitutional guarantees through prompt judicial intervention.
- **Greater awareness of professional ethics** should be incorporated into legal education and continuing professional training.
- **Legal aid institutions should be strengthened** to ensure immediate representation whenever private counsel becomes unavailable.
- **Institutional independence of the legal profession should be preserved** while ensuring accountability to constitutional values