

Karnataka High Court's Observation

Why in News?

The Karnataka High Court (HC) observed that it is unethical and illegal for lawyers to pass resolutions against representing accused in court.

What is the story behind?

- The Hubli Bar Association passed a resolution that objected to defend students arrested for sedition in court.
- So, the HC has asked the association to place on record a resolution withdrawing this resolution.
- This isn't the first time that bar associations has passed such resolutions.
- The Supreme Court (SC) has ruled that these are against all norms of the Constitution, the statute and professional ethics.

What does the Constitution say about the right of an accused?

- Article 22(1) gives the fundamental right to every person not to be denied the right to be defended by a legal practitioner of his or her choice.
- Article 14, also a fundamental right, provides for equality before the law and equal protection of the laws within the territory of India.
- Article 39A, part of the Directive Principles of state policy, states that equal opportunity to secure justice mustn't be denied to any citizen by reason of economic or other disabilities, and provides for free legal aid.

What has the SC said about such resolutions?

- **Case** - In 2010, a SC Bench dealt with the illegality of such resolutions under the A S Mohammed Rafi vs State of Tamil Nadu case.
- This case arose from a confrontation between a lawyer and policemen.
- So, the lawyers passed a resolution to not allow any lawyer to represent the police personnel.
- The Madras HC ruled this "unprofessional", after which lawyers appealed in the SC.
- **SC ruling** - The SC ruled that such resolutions are wholly illegal, against all traditions of the bar and against professional ethics.
- Every person, however may be, has a right to be defended in a court of law and correspondingly, it is the duty of the lawyer to defend him.

- It said such resolutions were against all norms of the Constitution, the statute and professional ethics, and declared them null and void.

How are professional ethics of lawyers defined?

- The Bar Council of India has **Rules on Professional Standards**, part of the Standards of Professional Conduct and Etiquette to be followed by lawyers under the Advocates Act.
- An advocate is bound to accept any brief in the courts or tribunals, at a fee consistent with his standing at the Bar and the nature of the case.
- The Rules provide for a lawyer refusing to accept a particular brief in “special circumstances”.
- In 2019, the Uttarakhand HC clarified that these special circumstances refer to an advocate who may choose not to appear in a particular case.
- But it says that he cannot be prohibited from defending an accused by any threat of removal of his membership of the bar association.

Have lawyers faced action for such resolutions?

- A writ petition was filed in the Uttarakhand HC after the Kotdwar Bar Association passed a resolution.
- This resolution stated that anyone who represented the accused in an advocate murder case would have their Bar membership terminated.
- The court held the resolution null and void.
- It directed the State Bar Council to initiate action against office-bearers of the Bar Association if such resolutions were passed in the future.
- It said that action under Section 15(2) of the Contempt of Courts Act, 1971, can be considered against advocates who interrupt court proceedings.

Source: The Indian Express