

## **Bar Association and Professional ethics : A Study in the light of Supreme Court's decision in A.S.Mohammed Rafi's Case\***

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- 1) The legality of the Bar Association resolution that none of its members will appear for an accused came up for consideration in A.S.Mohammed Rafi's Case.<sup>1</sup>
- 2) It has been noticed that several Bar Associations have passed resolutions in the past as follows: -<sup>2</sup>
  - (i) That they will not defend a particular person or persons in a particular case;
  - (ii) When there are clashes between the policemen and lawyers, that no one will defend the policemen in the criminal case;
  - (iii) (a) That they will not defend a person who is alleged to be a terrorist or  
(b) a person accused of a brutal or heinous crime; or  
(c ) involved in a rape case
- 3) The Supreme Court referred to several historic cases such as<sup>3</sup>
  - (i) Revolutionary writer Thomas Paine who was jailed and tried for treason in England in 1792. Thomas Erskine, an advocate was briefed to defend him, when at a time he was the Attorney General for the Prince of Wales. The advocate was warned, that if he accepts the brief, he will be dismissed from service. He accepted and eventually dismissed from service. However his observations are very relevant. "From the moment that any advocate can be permitted to say that he will or will not stand between the crown and the subject arraigned in Court, where he daily sits to practice, from that moment the liberty of England are at an end".

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\* A.S.Mohammed Rafi Vs. State of Tamil nadu, AIR 2011 SC P. 308

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<sup>1</sup> Supra

<sup>2</sup> Supra Para 15

<sup>3</sup> Supra Para 19

(ii) Indian cases similar to one of the English case has been referred to such as

- (a) The revolutionaries in Bengal during British rule were defended by lawyers;
- (b) Indian communists were defended in the Meerut conspiracy case;
- (c) Razakars of Hyderabad were defended;
- (d) Sheikh Abdullah and his co-accused were defended;
- (e) Alleged assassins of Mahatma Gandhi and Indira Gandhi were defended;
- (f) Dr. Binayak Sen has been defended; and
- (g) Bhulabhai Desai defended the accused in INA trials in Red Fort at Delhi (1945 to 1946)

4) Thus, there is ample evidence to show that Indian Lawyers have never shirked their responsibility on the ground that they would become either unpopular or it is personally dangerous for him to defend such persons. It was noticed that in spite of such high traditions established by Bar, several instances have occurred about the refusal to defend certain accused persons<sup>4</sup>.

5) In USA, it is provided that in all criminal proceedings the accused shall enjoy the right .... to have the assistance of counsel for his defence.<sup>5</sup> In a famous case, the convictions were set aside on the ground of denial of a fair opportunity to secure counsel of their own choice.<sup>6</sup> Right to be heard would be effective only if there is a right to have the assistance by the counsel.

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<sup>4</sup> Supra Para 21. See the observations of the Supreme Court at this para

<sup>5</sup> For details see the Sixth Amendment to the U.S. Constitution

<sup>6</sup> Powell Vs. Alabama , 287 US 45, 1932

6) The disadvantages resulting from the refusal to be heard by counsel are :-

- (h) Accused will not be in a position to determine for himself whether the charge levelled is good or bad;
- (i) Accused may be convicted on incompetent evidence or irrelevant evidence or inadmissible evidence; and
- (j) The accused faces the danger of conviction, despite his innocence as he may not be in a position to know how to establish his innocence. This would amount to denial of due process.

7) It is interesting to point out the American Lawyer Clarence Darrow (1857-1930) who expressed the strong view that every accused, no matter how wicked, loathsome, vile, repulsive as he may be regarded by the society, has to be defended in Court. Clarence Darrow would accept the briefs of such persons in view of the firm belief that 'every person has the right to be defended in Court and correspondingly it was the duty of the lawyer to defend.. By such actions Clarence Darrow came to be known as 'Attorney for the Damned', Lawyer who took cases of clients without regard to personal danger brought nobility and glory to the legal profession. Such lawyers have also inspired the younger generation to take up law as their profession.

8) The Constitution of India and Rules framed by Bar Council of India imposed a duty on the lawyers to defend the causes and not to refuse to accept briefs. The Constitutional provisions guarantees that no person arrested shall be detained in custody without being informed, as soon as may be the ground of his arrest and shall not be denied the right to consult and be defended by a legal practitioner of his choice.<sup>7</sup> The rules framed by the Bar Council of India provides that an advocate is bound to accept any brief in Courts or tribunals before any other authorities in or before which he proposes to practice at a fee consistent with his standing at the Bar

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<sup>7</sup> See for details Art 22(1) of the Constitution of India.

and the nature of the case.<sup>8</sup> Special circumstances may justify his refusal to accept a particular brief. Therefore, it is abundantly clear that professional ethics require that a lawyer cannot refuse a brief, provided the client is willing to pay his fee and the lawyer is not otherwise engaged.<sup>9</sup>

9) A resolution of the Bar that no member of the Bar will appear for a particular accused, is against all norms of the Constitution, the statute and professional ethics. It is also against great traditions of the Bar which took cases where persons were accused of treason and other serious offences.

10) Democracy and the rule of law can be maintained only by providing access to justice through legal profession and no person shall be denied of the right to be defended by a lawyer. In a historic reference to Ramayana, we have the instance of King Ravana sentencing Hanuman to death for his refusal to leave the Lankan territory. Rama's Brother made appearance for Hanuman and questioned the validity of the sentence as opposed to Dharma Sastras and got the sentence revoked.

11) The Supreme Court's decision upholding the right of a person to be defended by a lawyer and corresponding duty of the lawyer to defend strengthen, not only the cause of legal profession but also strengthens the rule of law and democracy in the Country.

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<sup>8</sup> See for details Chapter II about the standards of professional conduct and Etiquette

<sup>9</sup> Supra. Para 32