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EXECUTION VS. INDEPENDENCE: SUMMONED TO SILENT? WHY SUMMONING SENIOR LAWYERS BY THE ED RAISES ALARMING QUESTIONS

AUTHORED BY - ABHISHEK RAJ

In a nation like India, where the legal profession is one of the vital parts of the system that helps and safeguard justice to its citizens, we have recently seen several lawyers being summoned by the Enforcement Directorate (ED). And for what? Just for giving legal opinions even to their own clients. For this, they are asked to explain or clarify those opinions in front of the ED. This kind of action is not just alarming for lawyers it deeply impacts the legal system and every citizen who values the right to independent legal representation.

The main concern is simple but serious: can a lawyer be summoned or treated like a suspect just for doing their job? When legal advice something that lies at the core of justice is treated as a reason for investigation, it raises serious questions about professional freedom, constitutional rights, and the misuse of power by the state.

The Enforcement Directorate has been given power under the Prevention of Money Laundering Act (PMLA). Under this law, the ED can summon any person if they have certain information related to an ongoing investigation. Their main goal is to stop corruption and handle it on behalf of the state. This creates a major question: is the state using the ED as a weapon to target people who do not support them? They can summon any businessman, bank official, or even a private citizen. But does this mean that a lawyer whose profession is to guard the rule of law can also be summoned by the ED simply for giving legal advice to a client?

In the eyes of the law, such kinds of summons are allowed to prevent corruption in the country. But applying them to lawyers without any caution or evidence is dangerous. Giving legal advice to a person is not a crime. Unless there is clear proof that the lawyer was directly helping a client commit a crime, using this power against them undermines the very idea of justice. After all, lawyers are not participants in a case they are facilitators of the legal process.

One of the key principles in the legal profession is attorney-client confidentiality. In every situation, a lawyer has to maintain it. This means that any communication between a lawyer

and their client whether verbal, written, or in opinion form is private in nature. Because of this, a client speaks honestly and willingly, sharing things they may not share with anyone else, simply because of the trust they place in their lawyer. Without this, no one would feel safe seeking legal help. In India, this confidentiality is protected by the rule of law. Lawyers are duty-bound to protect whatever is shared with them by their clients. And when a lawyer is summoned and asked to explain a legal opinion they gave in confidence, that principle is directly threatened.

If summoning lawyers for this becomes a norm, clients will stop speaking openly. Lawyers will stop giving honest reviews to clients, and because of this, the entire legal system will suffer.

Recently, we have witnessed that when a lawyer is summoned for simply doing their work, it doesn't just affect them it affects the entire system. It impacts the key rights given by the Grund norm of the country. First, the freedom to practice any profession under Article 19¹(1)(g) of the Constitution. If lawyers can be targeted for representing someone or just for giving their honest legal opinion to a client, it limits their ability to work freely. Second, under Article 21², the right to life and personal liberty includes the right to a fair legal process and proper representation. If lawyers are afraid to take certain cases out of fear of being summoned, then people accused of crimes won't get the defence they deserve from the legal profession. Third, Article 22³ of the Constitution gives every arrested person the right to consult a lawyer. But what we are witnessing right now where lawyers themselves are under suspicion just for doing their job this right is infringed.

This will lead to what is called a chilling effect. It means people, especially lawyers, will start avoiding sensitive or controversial cases not because the nature of the cases is wrong, but because they fear being pulled into investigations by state-controlled organizations. That's a danger no democratic system can afford. A legal system can only remain fair if lawyers are free to represent their clients without any pressure. A lawyer giving advice or appearing in court for someone accused of any crime is not supporting the crime they are supporting the legal system that ensures every person gets a fair hearing.

¹ INDIAN CONST. art. 19 (1)(g).

² INDIAN CONST. art. 21.

³ INDIAN CONST. art. 22.

This doesn't mean that lawyers are above the law. If a lawyer is clearly involved in helping someone commit a crime like laundering money or hiding evidence, they can and should be investigated like any other citizen. But giving a legal opinion, drafting a document, or advising a client does not amount to criminal activity in the eyes of the law. Investigating agencies have to draw a clear line between suspicious conduct and genuine legal work. Without that line, enforcement power becomes a tool for fear and a means of oppression.

The state has a genuine responsibility to stop serious financial crimes. Crimes like money laundering and corruption are complex and often involve multiple layers of actors. Many times, professionals like lawyers may be misused in these schemes. But the solution is not to treat all lawyers as potential suspects. The ED should have a strong reason, supported by evidence, before summoning a lawyer in a case. Unclear suspicion or public pressure cannot justify crossing that line.

