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# The Pinnacle of Judicial Parity: Right to be Defended and Access to Legal Aid from Arrest to Acquittal under Indian Criminal Law

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## ABSTRACT

*From the moment of arrest onward, individuals possess the right to legal representation, ensuring the protection of their rights during trial and other pre-trial proceedings. The article delves in the crucial need for early access to legal counsel, emphasizing its role in upholding individual liberties. Furthermore, it addresses concerns surrounding confession, bail and pre-trial detention, underscoring the significance of legal assistance in ensuring a fair process for those awaiting trial. The article deals into the importance of building a robust legal defense, encompassing effective cross-examination and evidence presentation. It also sheds light on how without fair trial the challenges faced by the accused, emphasizing the potential for miscarriages of justice in the absence of adequate legal aid. This article also examines the significant role played by the right to legal defense and access to free legal aid in achieving true judicial parity within the criminal justice system in India. It identifies challenges such as financial constraints and offers policy recommendations and legal reforms to address these obstacles. At the end this piece of writing put some suggestions to the well-addressed problems and way forwards. In conclusion, the article contends that the right to legal defense and access to free legal aid from arrest to acquittal are indispensable for the achievement of judicial parity and in protecting the important pillars of the natural justice. Upholding these rights not only ensures justice for individuals but also maintains the integrity of the entire judicial system, fostering a society founded on principles of equity, fairness and good conscience.*

**Keywords:** *Judicial Parity, Legal Defense, Access to Legal Aid, Criminal Justice, Constitutional Rights, Fair Trial, Legal Representation, Legal Reform.*

## I. INTRODUCTION

Ensuring a fair trial is a cornerstone in every legal system, providing every person with the opportunity to assert their innocence regardless of their financial circumstances or social status. Right to be defended and the legal aid—essential components in upholding the integrity of

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justice—are at the center of this idea of judicial fairness. This essay explores the complex terrain of the Indian criminal justice system, where the availability of legal aid and the right to a defense counsel travel with the accused from the point of arrest to the point of acquittal, therefore embodying the essence of an unbiased and just criminal legal system.

The Indian legal system, which is rooted in the country's fundamental principles, supports the very principle that everyone should have access to justice rather than it being a privilege reserved for the privileged. Article 22<sup>2</sup> of Indian Constitution says on the right to be defended, which serves as a buffer against capricious and arbitrary actions of the authorities. People have a right to legal representation from the moment of arrest; this is a fundamental principle of criminal law. This right is not limited to representation alone; it also includes the guarantee of a meaningful defense, in which counsels shield their clients by advocating the complexities of the judicial system and making sure that justice is not only done but clearly shown. At the same time, it is crucial to provide legal aid, particularly to those who are marginalized in society. As envisioned in Article 39A<sup>3</sup> of the Constitution, legal aid is a notion intended to promote equality by reducing the gap in access to legal representation between those who can afford it and those who cannot. With these constitutional provisions, Sections 303- “Right of person against whom proceeding are instituted to be defended” and 304- “Legal aid to accused at State expense in certain cases” of the “Code of Criminal Procedure, 1973”, mainly serve to achieve judicial parity in our criminal justice system.

As we begin this investigation, the point where the legal representation and aid converge in the Indian criminal justice becomes the pinnacle of judicial equity. It serves as a beacon that points the way toward a criminal justice system that is both unbiased and compassionate, making sure that differences in wealth do not tip the scales in favour of one side of the law.

## II. BACKGROUND AND DEVELOPMENT

The promotion of peace and harmony is crucial for the progress of a nation, and achieving this goal relies on a just and equitable legal system. In countries like India, characterized by diversity and operating as a welfare state, it becomes the duty of the government to ensure an impartial administration of justice. This impartiality is deemed essential for the fair functioning of the legal system. The emergence of the free legal access is aimed at fostering equal access to justice, irrespective of economic or other impediments. Likewise, the right to be defended, encapsulated in the principle of “*Audi alteram partem*”, has evolved as a fundamental tenet of the natural

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<sup>2</sup> Constitution of India, 1950, art 22.

<sup>3</sup> Constitution of India, 1950, art 39A.

criminal justice system. This principle underscores the idea that justice should not only be executed but should also be perceived. “The founding fathers of the Constitution of India had taken a positive approach towards doctrine of equal justice, which becomes apparent on the plain reading of the preamble of the constitution. It provides for justice in all its forms- social, economic and political. This preamble promise is further strengthened by provisions in Articles 14, 21, 22(1), 32, 39-A, 38, 41, 46, 142, 226 and 282 of the Constitution of India.”<sup>4</sup>

In India, the Constitutional mandates with preamble and fundamental rights, framework of criminal procedure law and judicial pronouncements of the Apex Court together provide the accused person’s right to be defended and access to legal aid. Providing free legal assistance in specific cases and ensuring the right to defense is a crucial element of a reasonable, fair, and just legal procedure for individuals accused of any offense. It is implicit in the guarantee of Article 14- “Equality before law” and Article 21- “Protection of life and personal liberty”. “United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems”<sup>5</sup> has provided for the right to be defended by legal practitioner and right to legal aid of any person who is “detained, arrested, suspected of, or charged with a criminal offence punishable by a term of imprisonment or the death penalty” at all stages of the criminal justice process.<sup>6</sup>

“It is, therefore, essential that access to justice is available at all stages of the criminal process. It ensures, amongst other things, protection of the rights of people when they are most vulnerable. It strengthens the criminal justice system. While availability of services of a trained lawyer at the stage of trial in a criminal prosecution and inferentially, of free legal aid for those who cannot afford a lawyer on their own, is already the norm in most jurisdictions, legal aid during pre-trial stages has its own importance.”<sup>7</sup>

### **III. RIGHT TO LEGAL DEFENSE**

Article-22(1) of the Constitution of India, 1950 tells “no person shall be denied the right to consult, and to be defended by, a legal practitioner of his choice.” This is also provided by the criminal code of our country.<sup>8</sup> “The due process of law incorporated in our constitutional system

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<sup>4</sup>[http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp\\_content/law/05.\\_criminal\\_justice\\_administration/11.\\_access\\_to\\_criminal\\_justice/et/8178\\_et\\_et.pdf](http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/law/05._criminal_justice_administration/11._access_to_criminal_justice/et/8178_et_et.pdf)

<sup>5</sup> <[https://www.unodc.org/documents/justice-and-prison-reform/UN\\_principles\\_and\\_guidelines\\_on\\_access\\_to\\_legal\\_aid.pdf](https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf)>

<sup>6</sup> Principle 3, Clause 20, Resolution No. 67/187, United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2012) <[http://www.unodc.org/documents/justice-and-prisonreform/UN\\_principles\\_and\\_guidelines\\_on\\_access\\_to\\_legal\\_aid.pdf](http://www.unodc.org/documents/justice-and-prisonreform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf)>

<sup>7</sup> <[http://117.239.39.53/docs/09052022/EarlyAccessstoJustice\\_1.pdf](http://117.239.39.53/docs/09052022/EarlyAccessstoJustice_1.pdf)>

<sup>8</sup> Code of Criminal Procedure, 1973, s 41D.

demands not only that a person is given an opportunity of being heard and defended before being condemned but also that such opportunity must be fair, just and reasonable.”<sup>9</sup> It is mandatory right of the an accused person to consult any lawyer and also defended by any legal representative of his choice.<sup>10</sup>

Section 303 of CrPC, 1973 read with this Article provides the right of a person to be defended against whom the criminal cases are instituted. Section says, “Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code, may of right be defended by a pleader of his choice.” It is intended to provide an opportunity of fair trial to the accused person.<sup>11</sup> “It must be stated that this section applies not only to the person accused of an offence but also to any person against whom proceedings such as maintenance of wives and children or security for keeping the peace and for good behavior etc. are instituted under the Code in any Criminal Court.”<sup>12</sup> If someone is denied the right to choose their own legal representative, as stated in this section, the trial will be deemed unlawful.<sup>13</sup>

The Supreme Court has affirmed the accused's right to seek advice from a legal practitioner of their choosing.<sup>14</sup> “Law is well settled that the Sessions Judge should appoint competent counsel to defend the accused during trial and sufficient time should be given to the advocate so appointed for preparation of the defence and taking effective steps to defend the accused.”<sup>15</sup> There cannot be a proper and fair trial unless these principles are strictly followed.<sup>16</sup> If an accused is denied opportunity if engaging or consulting his counsel, conviction will be set aside and re-trial will be ordered.<sup>17</sup> “The right conferred by Section 303 of the CrPC, does not extend to a right in an accused person to be provided with a lawyer by the State or by the Police or the Magistrate. That is a privilege given to him and it is his duty to ask for a lawyer if he wants to engage one and to engage one himself or get his relations to engage one for him. The only duty cast on the Magistrate is to afford him the necessary opportunity.”<sup>18</sup> The inclusion of the phrase “of his choice” implies that the accused should not be assigned an advocate or pleader against their will, and they should be allowed to be represented by a legal professional in whom they

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<sup>9</sup> Mamata Rao, Constitutional Law (second edition, 2021, EBC Publication) p. 328.

<sup>10</sup> *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27: 1950 SCR 88; *State of M.P. v. Shobharam*, AIR 1966 SC 1910: 1966 Supp SCR 239.

<sup>11</sup> *Tara Singh v. State*, AIR 1951 SC 441.

<sup>12</sup> Dr. N. V. Paranjape, *The Code of Criminal Procedure* (seventh edition, 2019, CLA Publication) p. 404.

<sup>13</sup> *Bashira v. State of U.P.*, AIR 1968 SC 1313.

<sup>14</sup> *Re Madhu Limaye*, AIR 1969 SC 1014: 1969 Cr LJ 1440: (1969) 1 SCC 292; *The State of Maharashtra v. Rajkumar Kochhar*, (1969) 72 Bom LR 797.

<sup>15</sup> R. V. Kelkar's *Criminal Procedure* (sixth edition -Reprinted, 2020, EBC Publication).

<sup>16</sup> *Debendra Pradhan v. State of Orissa*, 1996 Cri LJ (Ori).

<sup>17</sup> *Rajkishore v. State*, 1969 SC 321.

<sup>18</sup> *Tara Singh v. State*, AIR 1951 SC 441: 52 Cri LJ 1491.

have complete trust and confidence.<sup>19</sup> In adherence to the constitutional safeguards, the right to be defended is unequivocally enshrined in Article 22 of the Constitution of our country, complemented by the provisions of Section 303 of the CrPC, 1973. These legal provisions, read in conjunction, create a robust framework ensuring the right to a fair and competent defense, an indispensable facet of due process. The intersection of Article 22 and Section 303 fortifies the principle that no person should be deprived of their liberty without the opportunity to present a defense through legal representation. These provisions collectively stand as sentinels, guarding individuals against arbitrary deprivation of liberty. This right, fundamental to the administration of justice, underscores the commitment to protecting individual freedoms and ensuring a just and equitable legal process in accordance with the constitutional principles and statutory mandates of our nation. It resonates with the ethos that justice is not served solely by punishment but by ensuring a balanced, transparent, and fair legal proceeding, where the right to a robust defense is an integral and indispensable thread in the fabric of justice.

#### IV. ACCESS TO LEGAL AID

“Article-39A of the Constitution of India, 1950”<sup>20</sup> provides equal justice and free legal aid to the citizen who are deprived to secure justice for economic or other disabilities. The Article says, “The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.” The tenets outlined in this article are foundational and impose an obligation on the State to ensure that the legal system operates to foster justice with equal opportunities. Furthermore, it directs the State to facilitate free legal assistance through legislation or other means, preventing the denial of justice to any citizen.<sup>21</sup> “It provides for a holistic approach in imparting justice to litigating parties. It not only includes providing free legal aid via appointment of counsel for the litigants but also includes ensuring that justice is not denied to litigating parties due to financial difficulties.”<sup>22</sup>

The Honourable Court in *Khatri v. State of Bihar*<sup>23</sup> reiterated that the right to free legal aid is an essential ingredient of due process which is implicit in the guarantee of Article 21 of the Constitution. In *Hussainara Khatoon v. State of Bihar*<sup>24</sup>, the Supreme Court observed, “Article

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<sup>19</sup> Ratanlal & Dhirajlal, *The Code of Criminal Procedure*, (twenty-third edition, 2020, LexisNexis Publication).

<sup>20</sup> Inserted by the Constitution (Forty-second Amendment) Act, 1976, s. 8 (w.e.f. 3-1-1977).

<sup>21</sup> Mamata Rao, *Constitutional Law* (second edition, 2021, EBC Publication) p. 438-39.

<sup>22</sup> *Manoharan v. Sivarajan*, (2014) 4 SCC 163.

<sup>23</sup> (1981) 1 SCC 627.

<sup>24</sup> (1980) 1 SCC 98.

39-A emphasises that free legal service is an inalienable element of reasonably fair and just procedure for, without it, a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice.” The Honourable Supreme Court in a case also held, “the legal assistance to a poor or indigent accused, who is arrested and put in jeopardy of his life or personal liberty, is a constitutional imperative mandated not only by Article 39-A but also by Articles 14 and 21 of the Constitution. It is necessary *sine qua non* for justice and where it is not provided, injustice is likely to result and undoubtedly every act of injustice erodes the foundations of democracy and rule of law.”<sup>25</sup>

In adherence to this Constitutional mandate, “Legal aid to accused at State expense in certain cases” is provided under Section 304 of the Criminal Procedure Code. Section 304, sub-section (1) tells “Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State.” The procedure for choosing defense pleaders, the accommodations to be provided to them, and their fees are to be determined by rules established by the High Court, subject to prior approval from the State Government.<sup>26</sup> The State Government has the authority to issue an official notification directing the extension of comparable facilities to any class of trials conducted in other courts.<sup>27</sup>

The Honourable Supreme Court of India in *Sukh Das v. State of Arunachal Pradesh*,<sup>28</sup> has held that “a conviction of the accused in a trial in which he was not provided legal aid would be set aside as it is violated the Article 21 of the Constitution.” The Sessions Judge must inform the accused when he puts in first appearance before the Court that he is entitled to free legal aid, if he is unable to appoint a counsel to defend him.<sup>29</sup> The Court is under no obligation to provide to the accused, the lawyer of his choice if he wants to be defended at the expenses of the State Government.<sup>30</sup> “Where counsel appointed by the Court for the accused does not turn up at the time of hearing and the appeal is disposed of without hearing him, the case rightly deserved to be remanded for fresh hearing of the appeal.”<sup>31</sup> In *M.H. Hoskot v. State of Maharashtra*,<sup>32</sup> the Apex Court observed that Article 39-A of the Constitution was an interpretative tool for Article 21 and that partial statutory implementation of the mandate is found in Section 304 of CrPC,

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<sup>25</sup> *Sheela Barse v. State of Maharashtra*, (1983) 2 SCC 96.

<sup>26</sup> Code of Criminal Procedure, 1973, Section 304(2) (a), (b) & (c).

<sup>27</sup> Code of Criminal Procedure, 1973, Section 304(3).

<sup>28</sup> AIR 1986 SC 911.

<sup>29</sup> *Khatri v. State of Bihar*, 1981 Cri LJ 470 at 473; AIR 1981 SC 928; *Chandra Prakash Gajural v. Inspector of Police*, 2006 Cri LJ 1791(Mad).

<sup>30</sup> *Tahsildar Singh v. State of M.P.*, 1995 Cri LJ 1678 (MP).

<sup>31</sup> *State of Haryana v. Ram Diya*, AIR 1990 SC 1336.

<sup>32</sup> AIR 1978 SC 1548: 1979 SCR (1) 192.

1973. By the way “the enforcement of the Legal Services Authorities Act, 1987<sup>33</sup>, providing free legal aid to indigent litigants has been accepted as a socio-legal responsibility of the State as also the Central Government and therefore the provision relating to legal aid to accused at State expense under Section 304 of the CrPC, 1973 has now only an academic importance.”<sup>34</sup>

## V. CHALLENGES AND POSSIBLE SOLUTIONS

### (A) Challenges

- **Inadequate awareness and implementation-** Lack of awareness among individuals about the legal aid and right of defense. Inconsistent implementation of legal provisions, leading to disparities in access to legal aid.
- **Resource constraints-** Insufficient funds and resources act as barriers in accessing and implementing these practices.
- **Unavailability of skilled and quality legal representation-** Limited availability of skilled legal professionals in certain regions.
- **Procedural delays-** Lengthy judicial processes leading to delayed trials and inefficient case management contributing to prolonged periods of procedural delays.
- **Regional disparities-** Disparities in the availability and quality of legal aid services across different states and regions.

### (B) Possible Solutions

- **Enhanced awareness programs-** Implementing widespread awareness campaigns to inform individuals about their rights to legal aid and defense.
- **Increased funding and resources-** Allocating sufficient funds and resources to strengthen the legal aid infrastructure. Establishing dedicated funds for the provision of quality legal representation for economically disadvantaged individuals.
- **Professional development and training-** Investing in training programs for legal professionals to ensure a higher standard. Encourage them for *Pro bono* initiatives.
- **Reform of judicial processes-** Introducing reforms to expedite judicial processes and reduce procedural delays. Implementing efficient case management systems to streamline the legal process.

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<sup>33</sup> Legal Services Authorities Act, 1987, Section 12. Criteria for giving legal services.

<sup>34</sup> Dr. N. V. Paranjape, *The Code of Criminal Procedure* (seventh edition, 2019, CLA Publication) p. 406.



- **Uniform and standard implementation-** Ensuring uniform implementation of legal aid provisions across all states through strict monitoring and evaluation mechanisms. Encouraging inter-state collaboration to share best practices in legal aid services with the rules and regulations made under the Legal Services Authority Act, 1987.

## VI. CONCLUSION

“To no one will we sell, to no one will we deny or delay right or justice.”<sup>35</sup>

The journey from arrest to acquittal within the framework of Indian criminal law reflects the fundamental principles enshrined in the Constitution supported by few Sections of the criminal procedural law. With these landmark judicial precedents, as mentioned above, serve as a guiding path, illuminating that path towards a fair and equitable judicial process.

To scale the pinnacle of judicial equity, concerted efforts are needed. “The framework should strive to achieve the following three A’s; Awareness, Assertion and Adequate Arrangements.”<sup>36</sup>

By addressing the problems and implementing the possible solutions, the Indian legal system can move closer to achieving the pinnacle of judicial parity, ensuring that individuals have effective mechanism for right to be defended and proper means to legal aid from arrest to acquittal.

The evolution towards a more equitable legal system demands a collective commitment to upholding the basic principles of justice. The right to be defended and access to legal aid must not be mere privileges or legal documents but equitable rights, ensuring that every individual, from arrest to acquittal, is afforded the dignity and fairness they rightfully deserve for the sake of judicial parity.

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<sup>35</sup> Magna Carta, 1215, 40<sup>th</sup> paragraph of the Charter.

<sup>36</sup> Prof. Dr. Ranbir Singh - Access to Justice and Legal Aid Services with special reference to specific Justice [http://probono-india.in/Indian-Society/Paper/15\\_1023\\_Prof.%20Dr.\\_%20Ranbir%20Singh%20-%20Access%20to%20Justice%20and%20Legal%20Aid%20Services%20with%20special%20reference%20to%20specific%20Justice.pdf](http://probono-india.in/Indian-Society/Paper/15_1023_Prof.%20Dr._%20Ranbir%20Singh%20-%20Access%20to%20Justice%20and%20Legal%20Aid%20Services%20with%20special%20reference%20to%20specific%20Justice.pdf)