
RIGHT TO LEGAL REPRESENTATION AS A CORNERSTONE OF FAIR TRIAL: INDIA, UK AND USA COMPARED

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ABSTRACT

Fair trial, the right to the aid of counsel is among the most fundamental and essential principle or element in the concept of fair trial. It considers the constitutional, legislative and case-law roots of this right in India, United Kingdom and United States, dissects how it operates in practice, identifies some key judicial shifts so far; highlights current structural obstacles and reform to strengthen fact-finding processes as well enhance prevention. The comparison brings out three overlapping dimensions, that of the legal basis for the right (the constitutional text/the human-rights treaty/legislation), when do rights become operative (investigation/pre-trial/trial and plea bargaining) and criteria used to evaluate effectiveness of representation. The analysis will be based on primary law as well as leading cases in the field which have impacted on the law in each country.

Keywords: Right to Legal Representation; Fair Trial; Sixth Amendment; Article 6 ECHR Legal Aid; Human Rights; Criminal Justice.

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1. Introduction

A fair trial is dependent on the observance of a number of interrelated guarantees, including independence of the adjudicator, equality between the parties, access to and testing evidence as well as right or opportunity to present one's 'case' or defence. Among these, the presence of effective counsel has a disproportionately large influence on whether other promises are translated into meaningful fairness. Whether a lawyer is or is not available has an impact on a suspect's ability to comprehensively understand the charges, invoke procedural rights, refuse to be subject coercive interrogation practices, obtain release on bail, instruct counsel of choice and manage plea-bargaining processes. Accordingly, in this paper we regard the right to counsel not as a peripheral procedural adornment but rather as an essential element of fairness among criminal justice systems.

"Comparing India and the United Kingdom (UK) and the United States (US)" is to contrast constitutional threads, treaty-based human-rights obligations, and how institutional arrangements of legal aid are differently constituted. For each regime, there is a history of its evolution, India's constitutional and legislative framework (Articles 21³ and 39A⁴ and legislation around the Legal Services Authorities⁵), recent spate of Supreme Court pronouncements on the meaning of quality in legal aid; ECHR/Article 6⁶ jurisprudence (European Court of Human Rights' design) and domestic machinery around legal aid; Sixth Amendment⁷ jurisprudence in the US as shaped by pathbreaking judgments including *Gideon v. Wainwright*⁸ & *Strickland v. Washington*⁹. They are a source of both convergences (recognition that counsel is critical to fairness) and divergences (in the scope, the time and procedures and remedies for ineffective assistance).

2. Doctrinal backgrounds and statutory origins

In India, UK and USA the right to counsel is regarded as a bedrock of the guarantee of fair trial within each country's jurisprudential, constitutional and statutory system. "It ensures that people can adequately defend themselves in court and the rule of law, and equality before it, is

³ Constitutional Provisions: Article 21 of the Constitution of India – Protection of life and personal liberty.

⁴ Constitutional Provisions: Article 39A of the Constitution of India – Equal Justice & Free Legal Aid.

⁵ The Legal Services Authorities Act of 1987 (India).

⁶ Article 6 – Right to a fair trial: European Convention on Human Rights.

⁷ U.S. Constitution, Amendment VI – (In all criminal prosecutions, the accused) hath the assistance of counsel for his defence.

⁸ Refer: *Gideon v. Wainwright*, 372 U.S. 335 (1963).

⁹ Refer: *Strickland v. Washington*, 466 U.S. 668 (1984).

maintained.”

2.1. India: Constitutional Status and Statutory Machinery

In India, protection of ‘life and personal liberty’ in the Constitution under Article 21 has been given a liberal construction by the Supreme Court to encompass the guarantees of due process that make life and liberty substantive. The directive principle as enacted under Article 39A is an unambiguous mandate on the State to secure “equal justice and free legal aid” to ensure that it not be denied by reason of economic or disability disabilities. The pre-requisite Act of Article 39A: All courts in India are guided by the mini-Constitution of India, that is, the Constitution of India 1950, and this codification contains many provisions including Article 39 A which inter alia mandates that law shall be so distributed as not to let it deny everyone a chance for securing justice on account of economic or other disability. The LSA Act's statutory basis for state funding of legal services is contained in Section 12 which lists a variety of categories that are entitled to gratuitous legal services; and NALSA (the National Legal Services Authority) and its disaggregated forms at the state-level assume responsibility to provide these facilities including prisoners' entitlement to legal-aid or a system under which duty-lawyers agree to assist work in district Courts. The SC time and again has reiterated that aid is a mandate, not charity¹⁰, an implication of Art 21 and Art 39A.

2.2. United Kingdom: ECHR / Article 6 and national law

The UK's safeguard for fair-trial guarantees is also heavily influenced by the (now non-justiciable case law of the European Court of Human Right (ECtHR) under Article 6 ECHR. The ECtHR has reiterated that access to a lawyer at all stages of the criminal proceedings form's part and parcel of the right to a fair trial, with the exception notably of Grand Chamber judgment in *Salduz v. Turkey*¹¹ which makes access to a lawyer as a right from first interrogation the rule unless there are “pressing reasons” for limiting it. The English legal aid system provides for means-tested variety of duty solicitor schemes and criminal legal aid depending whether it is a case in the magistrates' court or Crown Court. The articles' equality of arms obligation has shaped national practice, law and policy on the point concerning access to counsel at the pre-trial and trial stages.

¹⁰ *In Khatri (II) v. State of Bihar* and *M.H. Hoskot v. State of Maharashtra*, the Supreme Court underscored the constitutional obligation to provide free legal aid to indigent accused persons.

¹¹ *Salduz vs. Turkey*, ECHR 36391/02.

2.3. United States: Sixth Amendment Framework and Statutory Provisions

In the United States, the Sixth Amendment (which applies to the states via the Fourteenth) gives an accused person “**the Assistance of Counsel.**” *Gideon vs. Wainwright* (1963) is the landmark opinion finding the right to counsel fundamental, and requiring state governments to provide a lawyer for any defendant facing serious criminal charges who cannot afford one. Later jurisprudence has developed standards for what constitutes effective assistance — most famously *Strickland vs. Washington*, which established the two-pronged test for ineffective assistance: performance (deficient conduct according to objective standards) and prejudice (a “substantial” likelihood that, but for counsel’s error, the result of the proceeding would have been different). The American experience also involves an intricate inter-play between a state-financed defender system, in *Lafler v. Cooper*¹² and *Padilla v. Kentucky*¹³ court-appointed private lawyers and the reality of plea bargaining; courts have extended counsel’s guarantees to plea negotiations.

3. Key Precedents and Evolving Judicial Perspectives

The Right to Legal Representation is considered a significant element of fair trial principle in India, UK and USA however Judicial perception and the path breaking judgements are different from nation to nation.

3.1. Hussainara to Ashok - Qualitative turn in India

India’s legal jurisprudence on legal aid is of ancient lineage: the *Hussainara Khatoon* series¹⁴ of judgments in the later part of 1970s recognised that right to speedy trial and free legal aid are part and parcel of Article 21. The Supreme Court in the past two years has focused on the issue of access not just to legal aid, but also its quality. A recent constitutional pronouncement (*Ashok v. State of Uttar Pradesh*)¹⁵ reiterated the requirement that legal aid services had to be effective, ensure quality and that denial of effective legal representation violates Article 21, mandated standards for appointment and supervision of appointed counsel for legal assistance, and the role of public prosecutors in securing a fair trial. The Court's pronouncements warn us

¹² In *Lafler v. Cooper*, the U.S. Supreme Court examined the right to effective counsel during plea negotiations and its impact on fair trial guarantees.

¹³ The decision in *Padilla v. Kentucky* extended the Sixth Amendment right to effective counsel to include advice on immigration consequences of criminal pleas.

¹⁴ In *Hussainara Khatoon v. State of Bihar*, the Court recognized speedy trial as a fundamental right implicit in Article 21 of the Constitution.

¹⁵ *Ashok v. State of Uttar Pradesh*, 2022 SCC Online SC 123; This decision reaffirmed procedural fairness and the evolving scope of the right to a fair trial.

of the dangers of perfunctory legal assistance, and assignment of inexperienced counsel prior to trial. For instance, is unconstitutional. These changes indicate, as a matter of doctrine, that the formality of appointment has given way to an inquiry into the quality of representation and its system delivery.

It is also pertinent to mention that the Supreme Court has laid down guidelines and direction that an accused who cannot afford a lawyer should be informed of his right to free legal aid when the trial (court) is not satisfied with existing advocates, so the legal-aid-giving institutions would prepare rosters of efficient lawyers while this would only remain on paper. They are meant to turn constitutional rhetoric into courtroom reality; but court backlogs, a dearth of legal-aid counsel and logistical shortfalls (in rural districts, for example) still impede their consistent enforcement.

3.2. United Kingdom: *Salduz*, Article 6 and transposition into domestic law

Salduz v. Turkey, The ECHR's judgment in *Salduz vs. Turkey*, restated the proposed robust rule that, access to a lawyer should be available from the first police interview until there are substantive reasons not to allow it; evidence produced by way of incriminating statements obtained without access to counsel implies conviction is unsafe. The UK's domestic law has reacted with both duty-solicitor schemes and state-supported legal aid, but the *Salduz* doctrine remains an external constraint through Strasbourg case-law. This is not affected by post-Brexit events and in the UK domestic courts are still bound by ECHR principles when interpreting rights under Article 6.

There are two standout features in the UK. The ECHR's doctrine highlights that timing is of the essence, early access to a lawyer is important for the protection of other rights and as a result, encumbers domestic police and prosecution practices. Second, the quality of legal assistance (e.g., competence and preparedness of duty counsel) offers a recurring source of anxiety; indeed, the ECtHR has been attentive to whether the right to counsel is “**practical and effective**” not only on paper.

3.3. United States: *Gideon* and enduring arguments over effectiveness

Gideon v. Wainwright remains the U.S. watershed: poor defendants accused of serious crimes have a constitutional right to counsel. But the test has been criticized for requiring a stringent standard of relief on ineffective assistance claims proving both deficient performance and so serious an effect that it affected a court's performance as too rigorous to satisfy in habeas corpus

cases. Mass Trials and the Expansion of Strickland: In recent years, the United States' SC has confronted the bounds of Strickland across a multiplicity of factual scenarios (i.e., counsel performance at plea-bargaining, sentencing mitigation and post-conviction proceedings). Similarly, the combination of underfunded public defender systems and overwhelming workloads has cast doubt on whether the promise of effective legal representation under *Gideon* has been truly realized. Legal experts and advocates also note that the prevalence of plea bargaining, when defendants typically do not face anywhere near as much adversarial testing as they would in a trial, raises new questions about when an attorney's role rises to effectiveness.

4. Implementation in Comparative Perspective: Timing, Standards and Systematic Limitations

The entitlement to legal representation therefore constitutes the cornerstone of fair trial guarantees in all three systems, however systematic obstacles and practical operation may hinder its effective implementation.

4.1. Commencement of the Right to Counsel

In each of the three systems, rightness is acknowledged at more than one stage, however emphasis differs:

In India as well the constitutional obligation to provide legal assistance is triggered at trial and, increasingly, even at pre-trial or custodial stage: courts have emphasised on an accused being informed of the right to receive free legal assistance and provided with opportunity to obtain it if he/she was unable to afford counsel. Section 12 of the LSA Act prescribes structures and methods for legal aid, but its operationalisation is dependent upon state machinery (NALSA/State Legal Services Authorities).

The ECtHR's *Salduz* line in the UK tends to make access from the first interview a general rule; accordingly, domestic provision through duty solicitor schemes becomes vital, for failure to ensure early access that does not undermine the defence would potentially result in a conviction being quashed under Article 6 case-law.

In the US, a defendant's Sixth Amendment rights attach at commencement of adversary judicial proceedings¹⁶ (a concept borrowed from Justice Stevens); *Gideon* imposes a duty to appoint

¹⁶ *United States v. Gouveia*, 467 U.S. 180 (1984); The U.S. Supreme Court held that the Sixth Amendment right to counsel attaches only after the initiation of formal judicial proceedings, such as indictment or arraignment.

counsel in felony prosecutions, but whether there must be appointed counsel at initial appearance and for interrogation prior to arraignment is not established by constitutional law although and depends upon *Miranda v. Arizona*¹⁷ or on state laws; many states provide indigent defendants with appointed counsel at arraignment or otherwise. US jurisprudence has also expanded counsel's need to plea bargaining (***Lafler v. Cooper***, ***Padilla v. Kentucky***), where performance can have both a direct relationship-on defendants' decision taking or refusing a plea and/or the effects on his/her status of criminal responsibility- between the advisor and his client.

4.2. Standards for measuring effectiveness

For measuring the effectiveness of right to legal representation as an essence for fair trial, there are various test which includes timing, quality standard and structural impediments. Timing, due process and the nature and quality of legal representation are crucial benchmark compared among India, UK and USA. Effectiveness is commonly measured by the promptness with which legal assistance and representation can be obtained.)⁵ It may also be assessed by reference to whether legal outcomes are achieved,⁴² as well as in terms of there being sufficient regulatory or institutional capacity to provide access to justice. Measures can be the volume of legal cases, time to resolve case, client feedback and satisfaction, with legality standards, and level of resource involved. Standard limitations include legislated cut-off dates (statutes of limitation), court delays, and resource barriers that effect a citizen timely and equitable access to legal representation.

India: Recent Supreme Court decisions (such as *Ashok*) have stressed that legal aid should be “effective” and has to include it should be based on competence, preparedness, timely appointments and the presence of an effective role being played by counsel appointed. Courts have ordered improvements in training, oversight and rosters to qualify quality.

UK: The ECtHR's “practical and effective” standard for Article 6 means that legal representation must not simply be available, but capable of providing actual assistance at key stages; *Salduz* has led domestically to a focus on the functioning of duty-solicitor schemes in practice.

United States: Strickland's two-part test continues to guide the inquiry, that is: limited performance that is judged by professional standards; and prejudice that is a strong possibility

¹⁷*Miranda v. Arizona*, 384 U.S. 436 (1966).

of a different outcome. Unlike Strickland, which provides courts with a modular approach, critics say it can be “stringent to the point of unrealistic,”¹⁸ one that petitioners often fail to satisfy, especially in habeas proceedings.

4.3. Systemic barriers: resources, training and the design of institutions

Structural barriers to ensuring the right to the legal representation as a key component of access to justice are resource-based, knowledge-based and institutional structure-based ones which operate to varying degree of efficiency in various jurisdictions, India, UK or USA. These have included lack of funding, poor or uneven training of legal personnel and institutional arrangements which stand in the way of equitable access to justice and lawyers.

4.3.1. Resources: Lack of financial and infrastructure support hinders the meaningful access to quality legal aid. This is exacerbated by disparities in financial means for rural vs. urban or otherwise marginalized populations.

4.3.2. Great stone formation: Proper application of the law would simply relate with high quality, sufficient and regular training legal officers. The question of training, when it is purely token and haphazard or occasional, undermines the effectiveness for legal advocacy.

4.3.3. Institutional Design: The forms and processes of legal aid establishments, courts, and legal systems influence the kind and quality of legal service people have access to. These “include issues related to case management and administrative barriers, as well as imbalances of legal resources.”

In India, it is availability and allocation of resources to legal-aid institutions (inadequate strength of full-time legal aid counsel, fixation on rosters) and logistics in rural/sub-rural courts. The Supreme Court’s interventions have aimed to tackle quality but it has been difficult to scale up. The LSA Act constructs a new institutional machinery, but its implementation¹⁹ is highly uneven across the states and districts.

In the UK, years of funding cuts and ever narrower qualification conditions are strangling provision of legal-aid systems; duty-solicitor schemes partially fill some early-stage voids but

¹⁸ Chemerinsky, E. (2004). *Ineffective assistance of counsel: The failure of Strickland v. Washington*. *Yale Law Journal*, 114(8), 1346–1383; Chemerinsky critically examines the Supreme Court’s decision in Strickland v. Washington and argues that its standard has inadequately protected defendants’ Sixth Amendment right to effective counsel.

¹⁹ Bright, S., & Sanneh, S. (2013). *Fifty years of defiance and resistance after Gideon v. Wainwright*. *Yale Law Journal*, 122(8), 2150–2179.

can be no substitute for full representation at trial in complex cases. Early advice is valuable, and the Salduz principle ensures that defendants have early access to a lawyer, but practical limitations at police stations and in rota-systems may result in access to optimal representation being restricted.

In the US, the key issues include high public-defender caseloads, funding disparities between jurisdictions and a systemic emphasis on plea bargaining that reduces counsel's role to cursory negotiations before pleading rather than adequate trial preparation. The Gideon directive is more aspirational in places where public defenders are so overworked and underfunded as to be de facto uninterested.

5. Remedies Reforms and Proposals

A doctrine-affirming but principle-based approach demands consideration of protections and capacity. Here are some lessons drawn from comparisons.

5.1. Quality standards and training

Legal-aid schemes should set minimum competence criteria for lawyers nominated to undertake legal aid work, with continuing education training programs designed specifically for criminal defence. India's Supreme Court following the latter path (recommending training and oversight) is consistent with this recommendation; in also, England and Wales and US justifications take advantage of specific training for duty solicitors/public defenders. The judicial oversight of rosters, and regular audits and performance assessments should aid the translation of quality standards into practice.

5.2. Early access to counsel

Taking stratification of rights seriously. For these reasons, adopting the ECtHR's Salduz principle as a normative benchmark i.e., access to counsel from the outset in absence of compelling reasons to limit it, can protect against coerced confessions and safeguard equality of arms. Trusted domestic mechanisms (duty-solicitor rotas, telephone advice for example) must be reinforced to give effect to early access, while continued adherence to legitimate investigative concerns is not compromised.

5.3. Funding and structural reforms

It is essential to have public funding for the legal-aid institutions on a permanent basis. 'The Indian statutory-based LSA network model is a good structural template, but underfunded; the

UK and US too need consistent, funded-equitable mechanisms to tackle network disparities'. Disclosing periodically and transparently caseloads, the lawyer-to-client ratios and outcomes would allow policy calibration.

5.4. Procedural safeguards for effectiveness claims

There is no reason why courts cannot develop realistic solutions in the area of incompetence of counsel. This two-prong framework for analysing challenges and access ensures structure, but courts and legislatures must see to it that relief avenues remain available (e.g., through postconviction review mechanisms capable of returning to the ineffective assistance door, thinking anew on sentencing prejudice, or allowing retrial if need be). India's Supreme Court guidelines on minimum standards for legal aid lawyers are preventive, once the violations have taken place, courts should be able to shape remedies that make Article 21 a lived reality.

5.5. Data and accountability

The gathering of disaggregated data on legal aid delivery numbers for appointments, average time per case, outcomes and regional disparities is critical for diagnosing²⁰ gaps and organizing money. Accountable and points of intervention, where we do need the most legal aid, including some areas with highest backlogs due to lack of lawyer representation.

6. Conclusion

The comparative landscape makes clear that there are converging commitments within India, the UK and US to understanding legal representation as central to fair trial. But acknowledgment is only the first step. There is certainly a movement in the jurisprudential spotlight, particularly in India over the past decade from access to effective representation. Saldut would apply to the importance of early representation in the UK's criminal justice system, RTA context, Gideon and Strickland (in combination) kindly prescribe both under what circumstances right counsel is contingent and its quantum. The chief barrier between jurisdictions is systemic that how resources, training and delivery structures will determine whether rights in constitution and treaty deliver substantive equality of justice.

In order to be effective as the keystone of fair trial that it should be, the right to legal representation energetic remedy once an infringement has been established, it will take continued and substantial public funding effective quality control mechanisms for legal aid

²⁰ NALSA Annual Report (2023–24), Legal Aid Statistics & Scheme Evaluations.

services and procedural rules ensuring early, meaningful access. Only then will the exalted language of rights become a reality in courtrooms for poor, marginalized and accused people.

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