

A Lawyer can help delineate the issues, present the factual contentions in an ordinary manner, cross-examine witnesses and otherwise safeguard the interests of the party concerned. The right to representation by a lawyer or other person may prove to be part of Principles of Natural Justice in any proceedings before formal authority or investigation if there is no provision to the contrary. Generally, the right to legal representation is not considered a mandatory part of the right to Fair Hearing. The right to representation is as regarded more of an exception than the general rule.

Position in India:

Legal assistance from a lawyer is held by the Supreme Court of India as essential requisite of the procedure established by law. The court holds that if a person does not have legal aid, her or his deprivation of liberty is unconstitutional and void. In disciplinary inquiries as in other quasi-judicial proceedings, however, lawyers are not always considered necessary. In fact, the very purpose of creating administrative tribunals is to provide a de-professionalized dispute settlement mechanism and therefore, at times there are statutory provisions for the exclusion of lawyers.

The right to counsel springs from Article 22 of the Constitution of India which provides that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

The defence of the indigent accused by a pleader assigned by the State should be made available to every person accused of an offense (i.e. in all criminal trials) so that mere poverty may not stand in the way of adequate defence in a proceeding which may result in the deprivation of liberty or property or loss of reputation. The right to counsel is thus recognized as a basic ingredient of a criminal trial, and the law should go as far as possible in assuring that this ingredient is not absent.

This principle has also been affirmed by the Indian Supreme Court in the 1974 case of R.M. Wasawa. In R.M. Wasawa, the Court proclaimed that indigence should never be a ground for denying fair trial or equal justice. Particular attention should be paid to appoint competent advocates, equal to handling complex cases, not patronising gestures to raw entrants at the Bar. Sufficient time and complete papers should also be made available so that the advocate chosen may serve the cause of justice.

Moreover in Cr.P.C. section 303 provides that 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. Section 304 of Cr.P.C. provides that 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 Cr.P.C. provides that in all criminal prosecutions, the accused has a right to have the assistance of a counsel and the Cr.P.C. also requires the court in all criminal cases, where the accused is unable to engage counsel, to appoint a counsel for him at the expenses of the State. Howsoever guilty the appellant upon the inquiry might have been, he is until convicted, presumed to be innocent. It was the duty of the Court, having these cases in charge, to see that he is denied no necessary incident of a fair trial. It is equally true that the absence of fair and proper trial would be violation of fundamental principles of judicial procedure on account of breach of mandatory provisions of Section 304 of Cr.P.C.

Section 304 of the Cr.P.C, 1973 enables the Session Courts to assign the pleader for the defence of the

accused at the expense of the state provided he is unrepresented and the court is satisfied that he has no sufficient means to engage a pleader. The selection of such pleader, the facilities to be given to him by the court and his remuneration are to be governed by the rules that may be framed by the High Court in this regard with previous approval of the State Government. This facility also extends to any class of criminal trials before other courts as indicated earlier to try criminal cases in the State as it applies in relation to trials before Courts of Sessions.

While interpreting section 304 of Cr.P.C. the Court in the case of *Ranjan Dwivedi v. Union of India* (1983), also stated that there is no doubt that the accused is entitled to financial assistance to engage a counsel of the accused choice. It also remarked that the government should implement legislation that has appropriate schemes for free legal aid.

However the right to counsel during interrogation by the police was not recognised in Cr.P.C. until the amendments made in 2010 due to the judgment of the SC in the case of *D.K.Basu vs. State of W.B.* (1997). Section 41-D was inserted in Cr.P.C. which provided that when any person is arrested and interrogated by the police, he shall be entitled to meet an advocate of his choice during interrogation, though not throughout interrogation.

The denial of legal representation in quasi-judicial proceedings is justified on the ground that lawyers tend to complicate matters, prolong the proceedings, and destroy the essential informality of the proceedings. It is further justified on the ground that representation through a lawyer of choice would give an edge to the rich over the poor who cannot afford a good lawyer.

Thus, right to counsel is an essential right and must be safeguarded by the judiciary.

Condition in China

According to Article 125 of the [Constitution of the People's Republic of China](#) and Article 11 of the Criminal Procedure Law of 1996, Chinese citizens have the right to legal counsel in court. The accused's right to counsel in China only comes into being once a case goes to trial. It does not exist at the investigative stage. A [suspect](#) under investigation only has the right to retain a lawyer to assist in securing bail, making procedural complaints, and seeking details from the police on the nature of the crime alleged, and not to start building a defense. A suspect gains the right to retain a lawyer upon having been interrogated or subjected to movement restrictions by the authorities. In cases defined as involving state secrets, the right to counsel is more heavily restricted: a lawyer may only be appointed to assist the suspect with the investigating body's permission. Chinese law allows courts to appoint a lawyer for a defendant unable to hire one, and it is mandatory for courts to appoint a lawyer to the blind, [deaf](#), and mute, minors, and anyone facing the death penalty. The Chinese government operates thousands of legal aid centers nationwide for indigent defendants. The provincial governments rather than the central government are responsible for setting the threshold at which an economically disadvantaged person meets the criteria for legal assistance.

Condition in France

The [Napoleonic Code](#) of Criminal Instruction, adopted in [France](#) in 1808 and inspiring many similar codes in [civil law](#) countries, made it compulsory that the defendant should have a lawyer when tried in the [assize courts](#) (which judged severe crimes).^[14] All criminal defendants in France enjoy right to counsel, and there is also a right to counsel in civil and administrative cases. State-funded legal aid for those facing criminal, civil, and administrative cases is available to those legally resident in France, and in some cases can be used for cases in another [jurisdiction](#) in Europe. Eligibility is means-tested, with a sliding scale of support based on income. Those at or below the lowest threshold are entitled to full legal assistance with all costs paid by the state, while higher-

income individuals are entitled to have only 55% or 25% of their legal costs covered, depending on their income. State-funded legal advice is provided through a network of public legal advice centers throughout France. Some centers offer free legal advice to anyone living in the [department](#) while others restrict their services to those with modest incomes.