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## Beyond Moral Vigilantism: Upholding the ‘Cab Rank Rule’ in Modern India

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*The obligation to represent guilty clients has long been a source of moral unease and public discussion in criminal justice systems, particularly in serious and emotionally laden cases. This paper examines the ethical, constitutional, and professional justifications for lawyers’ obligation to represent accused clients, irrespective of their personal beliefs about guilt. It examines this in the context of Indian law and traces the evolution of Article 21<sup>1</sup> case law from A.K. Gopalan<sup>2</sup> to Maneka Gandhi<sup>3</sup> and Hussainara Khatoon.<sup>4</sup> It illustrates how the right to a fair trial and legal representation has emerged as a crucial safety net against injustice and unfairness. The paper also examines the amendments in the Bharatiya Nagarik Suraksha Sanhita, 2023, specifically Section 341,<sup>5</sup> which expands the State’s obligation to provide legal aid beyond the scope of the former Code of Criminal Procedure. It analyses the moral obligations in the Advocates Act, 1961, and the Bar Council of India Rules<sup>6</sup> in relation to the cab rank principle, as established in the case of A.S. Mohammed Rafi v State of Tamil Nadu.<sup>7</sup> Through the presentation of recent examples of public disapproval against defence attorneys, this article shows how moral vigilantism affects the rule of law. Finally, it concludes that effective defence counsel is not a moral condoning of crime but a legal imperative that is essential to ensuring that the adversarial justice system remains sound.*

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<sup>1</sup> Constitution of India 1950, art 21

<sup>2</sup> A K Gopalan v State of Madras, Union of India AIR 1950 SC 27

<sup>3</sup> Maneka Gandhi v Union of India AIR 1978 SC 597

<sup>4</sup> Hussainara Khatoon and Ors v Home Secretary, State of Bihar, Patna AIR 1979 SC 1360

<sup>5</sup> Code of Criminal Procedure 1973, s 304; Bharatiya Nagarik Suraksha Sanhita 2023, s 341

<sup>6</sup> Bar Council of India Rules 1975, pt VI, ch II, r 5

<sup>7</sup> A S Mohammed Rafi v State of Tamil Nadu (2011) 1 SCC 688

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## INTRODUCTION

The defence of a guilty client, especially in criminal cases, is a task that requires the legal practitioner to make a case for themselves, both professionally and morally. The public generally views this practice in a negative light. According to thinkers like Jeremy Bentham, helping criminals, those accused of serious offences like theft, rape, and murder, in avoiding legal consequences is seen as both unethical and immoral.<sup>8</sup> This belief is widespread among people, regardless of their education, leading many to feel that it is wrong for a lawyer to defend someone they know is guilty.

Supporters of this viewpoint argue that a lawyer serves two roles: as a professional and as a legal officer. In their capacity as a legal officer, they have a duty to help the court uncover the truth.

This moral discomfort surrounding criminal defence is not merely theoretical. Its practical consequences become visible when advocates are publicly scrutinised or targeted for representing unpopular clients. A recent illustration of this tension can be seen in the aftermath of the rape case at R.G. Kar Medical College in Kolkata, where advocates representing the State of West Bengal faced intimidation, vilification, and sustained public criticism.<sup>9</sup> Advocates were subject to intimidation and social hostility for carrying out what was considered to be an unpopular professional task. This particular incident brings to the fore the dilemma that lawyers may face when their legal obligation conflicts with the sentiment of the people in highly polarised cases.

The lawyers who were involved in this particular case were doing nothing but fulfilling their legal obligation to ensure representation in court. Being harassed for doing nothing but carrying out one's duty is a serious question that raises concerns about the undermining of respect for the legal process and the ethical underpinnings of the legal profession.

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<sup>8</sup> Roger C Cramton, 'Why Defend the Guilty' (1984) 11 Cornell Law Forum 2

<sup>9</sup> Shivam Jadaun, 'The misunderstood role of advocates and importance of the cab rank rule in ensuring fair representation' *Bar & Bench* (20 September 2024) <<https://www.barandbench.com/columns/importance-of-the-cab-rank-rule-in-ensuring-fair-representation>> accessed 01 February 2026

It is often noted that thinking any path besides the one of duty can offer real security is a serious mistake. However, defining that duty is not always straightforward. The complex situations that advocates often face make it hard to figure out where personal moral instincts end and professional responsibilities begin. Consequently, the connection between an advocate and a guilty client frequently leads to significant ethical dilemmas and moral challenges.<sup>10</sup>

## CONSTITUTIONAL FOUNDATIONS OF DUTY TO DEFEND

One of the most basic tenets of Indian constitutional jurisprudence is that every individual has the right to be defended, no matter how guilty they may appear to be. The right to life and personal liberty is guaranteed under Article 21 of the Constitution of India,<sup>11</sup> which has been interpreted by the Supreme Court of India to include the right to a fair trial and legal representation. This interpretation of Article 21 was greatly strengthened in the case of *Maneka Gandhi v Union of India* (1978),<sup>12</sup> where the Court held that any procedure that may affect an individual's life or liberty must be just, fair, and reasonable. This marked a major shift in the interpretation of Article 21 and made legal representation a constitutional imperative. This was further reinforced in the case of *Hussainara Khatoon v Home Secretary, State of Bihar* (1979),<sup>13</sup> where the Court held that the right to free legal aid and a speedy trial was an essential part of Article 21, to ensure that poverty does not become a hindrance to justice.

Within the modern legal system, these constitutional duties have been given effect through procedural law. With the substitution of the Code of Criminal Procedure 1973 by the *Bharatiya Nagarik Suraksha Sanhita, 2023*, the statutory recognition of the right to legal representation has been expanded. The right to free legal representation, previously found in Section 304 of the CrPC, is now provided under Section 341 of the BNSS. Unlike its previous form, which was limited to Sessions trials, Section 341(1) of the BNSS<sup>14</sup> now requires that 'if the accused is unable to secure legal representation, the Court shall assign an advocate

<sup>10</sup> Louis J Rosenberg, 'The Status of an Attorney Defending a Guilty Client' (1900) 10 Yale Law Journal 24 <<https://openyls.law.yale.edu/server/api/core/bitstreams/45e030de-3b73-4d2c-a81e-8d7ca018fd9f/content>> accessed 27 January 2026

<sup>11</sup> Constitution of India 1950, art 21

<sup>12</sup> *Maneka Gandhi v Union of India* (1978) 1 SCC 248

<sup>13</sup> *Hussainara Khatoon and Ors v Home Secretary, State of Bihar, Patna* AIR 1979 SC 1369

<sup>14</sup> Code of Criminal Procedure 1973, s 304; *Bharatiya Nagarik Suraksha Sanhita 2023*, s 341

at the expense of the State at any stage of the trial or appeal.' This statutory provision further enshrines the constitutional mandate in Article 21 and ensures that the duty to defend is not merely a moral imperative but a procedural guarantee infused throughout the criminal justice system.

### **STATUTORY RECOGNITION AND THE EXPANSION OF LEGAL AID UNDER THE BNSS, 2023**

The effective realisation of the right to fair representation is contingent upon advocates being willing and able to discharge their professional responsibilities irrespective of personal beliefs about guilt or innocence. This obligation acquires greater significance in criminal trials, where the imbalance of power between the State and the accused is most pronounced. The prosecution machinery of the State enjoys unlimited resources and support, while the accused is often subjected to social condemnation even prior to adjudication. In this situation, the only force that can match the potential abuse of State power is the presence of an independent and fearless counsel. Without representation, the procedural safeguards may become empty promises, and the criminal trial may become nothing more than a mere formality, rather than a serious quest for justice. This obligation can be best stated in the cab rank rule, which is a doctrine that was developed in the United Kingdom through the Inns of Court, which states that an advocate has the duty to accept any case within his capacity, as long as there is no conflict of interest and the fee is reasonable. The analogy is between an advocate and a taxi that has to pick up the next customer in line, thus ensuring that everyone has access to legal aid.

Although the cab rank rule is not expressly codified in Indian law, a similar moral obligation is embodied in the Bar Council of India Rules under the Advocates Act 1961. These rules emphasise that advocates should not refuse business arbitrarily, particularly when it comes to poor or marginalised litigants. Rule 5 of the Rules of an Advocate's Duty Towards His Client explicitly provides that it is the duty of an advocate to fearlessly defend the interests of the client by all fair and honourable means, without regard to any unpleasant consequences. The rule further provides that an advocate must defend a person accused of a crime irrespective of his personal opinion regarding the guilt of the accused, while being

loyal to the law and the requirement that no person should be punished in the absence of sufficient evidence.<sup>15</sup>

The judicial power has also strengthened this ethical stance. The Indian judiciary has repeatedly underlined that the legal profession holds a special place in the constitutional scheme, being not only a service provider but a vital institution for the administration of justice. The judiciary has also acknowledged that advocates hold a public office by ensuring that the result of justice is arrived at through rational adjudication and not through popular passion or the will of the executive. Thus, any effort to delegitimise and intimidate advocates for carrying out defence work would impinge upon the independence of the legal system itself. In the case of *A.S. Mohammed Rafi v State of Tamil Nadu* (2011), the Supreme Court of India has clearly stated that Bar Associations lack the power to demand boycotts and prevent advocates from representing specific clients. The Court held that even the most detested and unpopular litigants are entitled to legal representation, and preventing advocates from appearing before courts affects the very foundation of the rule of law. This is a strong shield against social and institutional forces and sustains the moral underpinning of the cab rank principle in the Indian context.

## **EVOLUTION OF ARTICLE 21 JURISPRUDENCE AND ITS IMPACT ON DEFENCE RIGHTS**

To understand the modern relevance of the advocate, it is necessary to briefly locate the development of Article 21 jurisprudence. In *A.K. Gopalan v State of Madras* (1950),<sup>16</sup> the Supreme Court took a restrictive view of ‘procedure established by law,’ holding it to be any procedure legislated by the parliament, regardless of its fairness and reasonableness. In this limited paradigm, the right to defence was largely formalistic. This stance was categorically reversed in *Maneka Gandhi*, where the court constitutionalised fairness and reasonableness as necessary constituents of any legal procedure. The later judgment in *Hussainara Khatoon* gave concrete expression to this conceptual changeover by unmasking systemic injustices in undertrial prisoners and holding that free legal aid and speedy trial are sine qua non to real

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<sup>15</sup> Bar Council of India Rules 1975, pt VI, ch II, r 5

<sup>16</sup> *A K Gopalan v State of Madras* AIR 1950 SC 27

liberty. For the advocate, these judgments cumulatively establish that the obligation to defend is not a personal preference but a constitutional obligation to avert structural injustice.

### **MORAL VIGILANTISM AND THE THREAT TO THE RULE OF LAW**

The weakness of this right becomes apparent when public outrage stands in the way of legal counsel. The R.G. Kar Medical College case in Kolkata in 2024 is a good example of how moral vigilantism can be counterproductive to constitutional rights. Lawyers defending the accused were subjected to social ostracism and intimidation simply for the reason that they were defending the accused. This is clearly in violation of the Supreme Court's ruling in A.S. Mohammed Rafi and, on examination from the perspective of Article 21, is not a move towards securing justice but a strike against the rule of law and the Constitution's promise of enlightened liberty.

It is, however, important to note that the obligation to defend does not permit attorneys to act in an unethical or dishonest manner. Attorneys are officers of the court and owe a primary obligation to the cause of justice. Practices commonly referred to as 'sharp practice' are antithetical to professional ethics. Rule 5 of the Bar Council of India Rules on the Duty of an Advocate Towards the Court reiterates that an advocate must maintain the dignity of the court and must not mislead the court or resort to improper tactics while advancing a client's case.

For most defence advocates, the role of representing the guilty assumes a moral character that transcends the professional. The profession of criminal defence practice often puts defence lawyers in touch with the tough realities of social inequality, marginalisation, and failure. The accused are mostly from poor economic backgrounds, are uneducated, and have little understanding of their legal rights. In most instances, extended pre-trial detention, violence in detention, and police brutality further marginalise them. The defence lawyer, in this instance, has a role that is not only professional but also a crucial safety net against institutionalised oppression and injustice. The profession of criminal defence practice is not simply a matter of defending the innocent against the guilty. It is a matter of taking up the cause of justice, the constitution, and the complex realities of social life that often lie behind criminal behaviour. Many of the accused are victims of systemic poverty, neglect, abuse, or untreated mental illness. In the instance of women offenders, criminal behaviour is often

inextricably linked to coercion or domestic violence. For such offenders, the practice of defence is not merely about representation but about restoring dignity and humanity.

From a moral perspective, the argument for the necessity of effective defence advocacy is required to avoid unjust punishment and to ensure that the burden of proof is strictly satisfied by the prosecution. In the adversarial system of justice, defence lawyers have a crucial role in ensuring that if punishment is necessary, it must be proportionate and not imposed in ignorance of the mitigating circumstances of trauma, mental illness, or duress. Defence lawyers would normally answer such criticism with a rhetorical question: 'Would anyone not want effective defence advocacy if their own loved one were accused of a serious crime?' This rhetorical question points to the universal nature of the right to a fair trial and the egalitarian nature of the legal system.

Finally, the Indian criminal justice system's integrity is also dependent on the availability of passionate counsel for all accused, irrespective of their ability to pay for their defence, their social status, and their acceptance by society. The adversarial system practised in India is founded on the equality of arms between the prosecution and the defence, wherein the truth is expected to emerge as a consequence of the contestation of rival claims before an impartial judiciary. Such a system would collapse if the defence bar were intimidated, stigmatised, or morally disapproved of. The provision for due process in the Indian Constitution is founded on the assumption that each accused is given a fair chance to contest evidence, cross-examine witnesses, and present extenuating circumstances through competent legal counsel.

## CONCLUSION

The Indian system, thoroughly rooted in the adversarial system, places the burden of proof on the prosecution and relies on the strength of the bar on both sides to achieve just outcomes. The framers of the Indian Constitution were aware that one-sided or inquisitorial systems are liable to lead to disastrous injustice, a truth amply vindicated by history.

In summing up, the defence of guilty clients is a crucial aspect of the legal profession, founded on constitutional imperatives, moral foundations, and the pursuit of substantive justice. Lawyers are required to walk the tightrope of public morality, personal morality, and professional duty, while remaining steadfast in their allegiance to the rule of law. The viability of the criminal justice system is not dependent on public acceptability but on its

unswerving commitment to justice, due process, and equality before the law. The constitutional provision of equal justice can never be realised unless legal aid is provided to every accused, guilty or not, and regardless of public animosity. Any weakening of the duty to defend would not only jeopardise the rights of the accused but would also call into question the very foundations of constitutional governance and the administration of justice itself.