Access to Justice: Arguing for Miranda Rights in India

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Law and Poverty

ACCESS TO JUSTICE:

ARGUING FOR MIRANDA RIGHTS IN INDIA

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# TABLE OF CONTENTS

## INDEX OF AUTHORITIES
- Statutes Referred: i
- Cases Referred: ii

## INTRODUCTION

## RESEARCH METHODOLOGY
- Aims and Objectives: 3
- Scope of the Research: 3
- Research Pattern: 4
- Disclaimer: 4
- Acknowledgments: 4

### 1. CRITIQUING LEGAL AID MECHANISMS
- 1.1 The Theoretical aspect of Legal Aid: 5
- 1.2 Analysing the Findings from the Survey: 6

### 2. DK BASU AND BEYOND
- 2.1 What are the DK Base Guidelines: 8
- 2.2 The Implementation of DK Basu Guidelines: 9
- 2.3 Juveniles and the System: 11

### 3. POLICE AND THE LAW
- 3.1 The fallacy of *Ignorantia Juris Non Excusat*: 13
- 3.2 The Police and Implementation of the Law: 14
- 3.3 Police Brutalities in India: 15
- 3.4 Reforms in the Police Act: 15

## CONCLUSION

## BIBLIOGRAPHY
- Books Referred: ii
- Articles Referred: ii

## APPENDIX
INDEX OF AUTHORITIES

Statutes Referred:

- The Constitution of India
- The Indian Penal Code, 1860
- The Code of Criminal Procedure, 1973
- The Indian Police Act, 1861
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- Strafprozessordnung (German Criminal Procedure Code)
- The European Union Letter of Rights
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Arnit Das v. State of Bihar, AIR 2000 SC 226 ................................................................. 12
Biswanath Prasad Singh v. State of Bihar, 1994 Cri LJ 242 .................................................. 2
Dickerson v. United States, 530 US 428 ........................................................................... 15
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Hussainara Khatoon v. State of Bihar, 1980 (1) SC 1369 ........................................................ 6
Khetri v. State of Bihar, 1981 (1) SCC 635 ....................................................................... 6
Krishna Bhagwan v. State of Bihar, AIR 1989 Pat. 217 ...................................................... 12
Maneka Gandhi v. Union of India, AIR 1978 SC 597 ........................................................... 2
Miranda v. Arizona, 384 US 436 .................................................................................. 3, 14, 17
Prakash Singh v. Union of India, (2006) 8 SCC 1 ................................................................... 16
Ranjan Dwivedi v. Union of India, 1983 (3) SCC 307 ............................................................ 6
Rudul Shah v. State of Bihar, AIR 1983 SC 1086 ................................................................. 10
Sebastian Hongray v. Union of India, AIR 1984 SC 571 ...................................................... 10
State of Maharashtra v. Mayor Hans George, AIR 1965 SC 722 ......................................... 15
Sukh Das v. Union Territory, 1986 (2) SCC 401 ................................................................. 6
Vineet Narain v. Union of India, AIR 1998 SC 889 ............................................................... 16
INTRODUCTION

It is very often said that poverty means the degeneration of human rights. Rights, that are meant to be inalienable to human kind since their existence. One of the most important of these rights is the right to due process. Every person has a right to life and be tried by fair and just procedure\(^1\). It is highly unfortunate that while law seems to be in place for the protection of such rights, it fails in its implementation. The citizen is not aware of such law and more often that not, the poor man has to bear the brunt of actions. Poverty, is inextricably linked to the criminal legal system when it comes to the ‘access to justice’ and the protection of rights and freedoms.

The right to life and liberty\(^2\), of which due process is an essential part has been given the highest regard in the Constitution and considered inviolable in nature. The ‘procedure established by law’ as explained in Maneka Gandhi’s case\(^3\), must be reasonable, fair and just. In a country where more than 250 million people are below the poverty line, the fairness of the system still remains to be seen. The legal system in the country is against the poor. The goals of socialism and equality have not yet been realized and remain a distant dream. Most laws are made to facilitate the growth of wealth for the rich and the few that are made for the poor fail in their implementation. The legal system itself, apart from the provision for legal aid, has done nothing to support the poor in the country.

Access to justice can be understood in two ways- firstly, getting justice to the victim of a particular crime and secondly justice, in the protection of the rights of the accused. The procedure to every conviction must be fair and just. An achievement of justice in a case must consider the procedure by which it is conducted. Rights must be preserved, procedure must be followed and the accused must be given a free and fair trial. In the research, I have chosen to look at the latter aspect of ‘access to justice’. The rights of the accused are vital in the conduct of a trial. When a poor citizen stands as an accused, he needs to be aware of his rights. He needs to know that he has a right to free legal aid, a right to have his relatives informed, and most importantly, not to be tortured or be subjected to custodial violence. The situation in the Country

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\(^2\) Article 21, The Constitution of India.
\(^3\) Maneka Gandhi v. Union of India, AIR 1978 SC 597.
is such that with a large majority of the people illiterate, such people are ignorant of their rights and the government on its part is doing nothing to educate them. It seeks to rest on the clichéd principle of *ignorantia juris non excusat*, that ignorance of the law is no excuse.

On the same lines, the Federal Court of the United States in 1966 pronounced the famous ‘Miranda Rights’ in *Miranda v. Arizona*[^4]. What is said was that on arrest, every person must be read out his rights and the consequences of such abrogation would be the freedom of the arrested person. It attached, some degree of accountability on the police and state machinery for the protection of the rights of the citizens. In India, the case of *DK Basu v. State of West Bengal*[^5], the Court issued directions in the form of requirements that are to be followed at the time of arrest. In the case, the Court relied on Miranda and tried to secure, atleast in theory, rights to the accused. However, such procedures are far seen to be implemented. Numerous incidents have taken place where the police authorities have abused procedure and resorted to violence. This project looks at rights granted to the accused in relation to poverty and illiteracy. It shall seek to critique the legal system and address the issue of police accountability that is gaining importance today. To facilitate his research, the author has conducted a field study, the data collected from which will be used to further his conclusions about the topic.

RESEARCH METHODOLOGY

Aims and Objectives
This research aims to include some sort of Miranda rights to protect the accused in India. This is closely linked to the situation of poverty in the Country as most of the people in this groups are unaware of their rights and the state must act to secure them. It seeks to act as a ground work for a greater issue, demanding for equality and protection of the rights of the accused.

Scope of the Research
The project includes both empirical and descriptive forms of research. The researcher has used theoretical arguments and supported his propositions with the help of factual data. In the descriptive forms of research, many statutes, case law and articles have been studied. The empirical study involved a field study in the city of Mumbai. The key features of this study were;

- A total of 25 people who were arrested by the police at any time were interview. They were located in the police stations, Courts and the Arthur Road Under Trial jail.
- 8 police stations were visited and 4 inspectors were interviewed. Of these 3 were located in high society areas and 5 in the slum areas of Mumbai. The purpose was to see the disparity in the application of the law to people of various groups.
- The researcher spent 20 days in the Arthur Road jail studying the conditions of the Under trial accused in the jail.
- The relatives of 7 prisoners were visited in the slum areas of Mumbai that included Dharavi and Sion.
- 2 juveniles were interviewed in the jail who had not yet been transferred to the juvenile justice home in Mumbai.
- In selecting the 25 people to be questioned, factors such a income, location, age and occupation were considered.
Research Pattern

The project has been divided into three main parts.

- Part One talks about the provision of legal aid and its implementation in the country. On the basis of the research conducted, it argues that the law is not implemented properly and proposes certain changes in it.

- Part Two explains the basis of the DK Basu judgment and looks at the application of the guidelines in the city of Mumbai. This part also talks about the condition of juveniles and present interesting case studies of the persons interviewed. A passing reference is made to Women and ‘access to justice’.

- Part Three talks about the issue of police accountability in India. Perspectives are presented on the fallacy of *ignorantia juris* and the attitude of the Police towards the poor. In the end, the changed in the 145 year old Police Act are discussed.

Disclaimer

It is requested that all the prisoner details presented be strictly private and not circulated. The researcher had to sign a bond as per the Maharashtra Prison Rules for his jail visits which included that not details be let out.

Acknowledgments

The researcher would like to thank all the people who supported him in his endeavour. This would include Adv. Vrinda Grover, Ms. Saumya Uma, Co-ordinator, ICC- India, Ms. Madhu Mehra, Director, PRAYAS. The warm hospitality of the prisoners and their families is also appreciated.
1. CRITIQUING LEGAL AID MECHANISMS

1.1 The Theoretical aspect of Legal Aid

In 1976, an Amendment was passed to the constitution mandating for free legal aid. The Article provides that, the State shall secure that the operation of the legal system promotes justice and provide free legal aid so that justice is not denied to anyone. The right to free legal service is an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and it is implicit in the guarantee of Article 21 of the Constitution of India. The Courts have the responsibility for interpreting the Constitution so as to ensure implementation of the directives and to harmonize the social objective underlying the rights of individuals.

In the famous Bhagalpur Blindings Case, the Hon’ble Supreme Court observed that a large majority of the population is illiterate and an even more number is not aware of the rights conferred upon them by law. The law ceases to be their protector because they do not know that they are entitled to the protection of law and they can avail of the legal services programme for putting an end to their suffering. Today, the Magistrate or the Sessions judge is under an obligation to ask the accused if he has access to a lawyer or is unable to engage a lawyer on account of poverty and indigence. If so then the State must provide him with one. The obligation is upon the State to provide him with one and the accused need not necessarily apply for legal aid. The Supreme Court has held that it would be a mockery of the legal aid program if it were to be left to the poor, ignorant and illiterate to ask for legal aid. In doing so, the State cannot cite financial constraints and other reasons for not providing a lawyer. The law does not permit the State to deprive its citizens of constitutional rights on a plea of poverty.

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11 Sukh Das v. Union Territory, 1986 (2) SCC 401
The Constitutional provisions of legal aid have also been used to expand and interpret the right conferred by Section 304 of the Code of Criminal Procedure\(^\text{12}\) which states that when the accused does not have means to engage a pleader, the Court must assign him with one.

1.2 Analysing the Findings from the Survey

While the above gives us an idea of the theoretical side of legal aid in India, the greater issue at hand is whether it is being practiced the way it is envisioned. Statutory declarations do create rights but they are to be followed up by the executive for their enforcement.\(^\text{13}\) At this stage, we shall glance at the findings of our field study that was conducted in the city of Mumbai.

![% of People Aware of the Provision for Legal Aid](image.png)

**Table 1.1**

We can conclude from the data presented in table 1.1 that about 77% of the questioned accused were not aware of the provision of free legal aid at the time of arrest. While that remains the data collected from around 25 people, national statistics show us that more than 80 percent of the people who are arrested do not have an idea of the provision for legal aid.\(^\text{14}\)

The above analysis represents the figures of people who were not aware of the provision of free legal aid at the time for arrest. However, the law says that after arrest, upon bringing the accused in front of the Magistrate, it is the Magistrate’s duty to ask the accused if he has access to a


lawyer and if not inform that the state will provide him with one. After this stage, every interrogated accused was aware of the provision for free legal aid. It remains to be seen whether such legal provisions are strictly implemented or not?

Studies show us that apart from 2 of the interviewed people, none of them were provided with a State lawyer after the first appearance. Most of them now have access to a lawyer thanks to NGOs like PRAYAS and the India Centre for Human Rights and Law. A few people did not have access to a lawyer for at least 4 months until an Ngo came to their rescue. This is not the situation only in the city of Mumbai. Reports show us that today, there are still a large majority of people in jails without lawyers. I would like to suggest then that the provision for a free lawyer should be made at the stage of the arrest and not at the stage of trial when he is brought before a magistrate. Also, the DK Basu guidelines that state that the accused may be given the opportunity to have a lawyer with him during interrogation should be amended to ‘must be given an opportunity to have a lawyer during interrogation’. In this manner, the accused will also be aware of his rights with the help of the lawyers. It is hoped that such provisions are given important in government policies to protect the rights of the accused.

2. DK BASU AND BEYOND

2.1 What are the DK Base Guidelines

In 1996\textsuperscript{16}, the Supreme Court of India came up with significant guidelines to protect the rights of the accused. The decision was concurrent with the aspect of poverty and illiteracy in the Indian society. It is a judgment that came in light of the abuse of power by the police and issues of custodial violence. Today, this decision is regarded as revolutionary in the sense that it protects the rights of the accused in the country. To put it simply, the DK Basu guidelines\textsuperscript{17} state the following:

1. Clear identification of the police personnel carrying out the arrest.
2. A memo of the arrest must be prepared that must be attested by a relation or a respectable person in the locality.
3. The arrested person shall be entitled that a friend or relative know of his arrest.
4. The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
5. The arrested person must undergo a medical examination to check for any bodily injuries.
6. Such medical examination should take place every 48 hours during his custody.
7. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
8. A police control room should be provided at all district and state headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

Furthermore, a failure on the part of the State official not to make the arrested person aware of such rights shall render the concerned official liable for police action. Such person may also be punished for contempt of court\textsuperscript{18} that may be instituted by the High Court of any State. Also, the

\textsuperscript{16}DK Basu v. Union of India, AIR 1997 SC 610.
\textsuperscript{17}Ibid. at para 36.
\textsuperscript{18}Section 345, Code of Criminal Procedure, 1973.
arrested person then gets a right to compensation\textsuperscript{19} for the violation of his rights under Articles 14 and 21 of the Constitution of India. However, none of the procedures to the followed above shall affect the ongoing investigation process. The accused shall still be tried as a normal convict.

The Court in the present case directed the Director General of Police and the Home Secretary of every State to see to it that such instructions are notified at every police station and put up in a conspicuous place.\textsuperscript{20} Such boards are to be in three languages; English, hindi and the local language.

2.2 The Implementation of DK Basu Guidelines

With this theoretical understanding, we shall now look at the grouped data collected during the field work. I must say that many interesting inferences were drawn while doing the study that further support the notion for stronger rights for the accused in India.

Table 2.1

<table>
<thead>
<tr>
<th>%AGE OF PEOPLE WHO WERE READ OUT THEIR RIGHTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Read out the rights</td>
</tr>
<tr>
<td>27%</td>
</tr>
<tr>
<td>not read out rights</td>
</tr>
<tr>
<td>73%</td>
</tr>
</tbody>
</table>


\textsuperscript{20} DK Basu \textit{v. Union of India}, AIR 1997 SC 610 (para 40).
he was brought to the Court, the judge informed him that he was being charged for three more offences: wrongful restraint\textsuperscript{21}, hurt\textsuperscript{22} and endangering the safety\textsuperscript{23} of others at separate instances. The judge did not take cognizance of the above incident and sent him to the Under Trial jail. Even after six months, his chargesheet is yet to be given to him. He had not got a hearing for the past 4 months.

Table 2.3 shows us that around 82\% of the relatives of the people arrested were informed of the arrest. While this is much better than the other data collected, the result remains far from satisfactory. The above three tables show us that the implementation of the guidelines of the Courts have largely failed. They had been made to secure the rights of the poor but are not used to protect them. The system in the country has always been against the poor and doesn’t work for their upliftment.

2.3 Juveniles and the System

The rights of juveniles have always been a point of discussion in the legal system. The Courts have always sought protection for them. At present, they are ought to be governed by the Juvenile Justice Act\textsuperscript{24}. The common procedure is that when a person is arrested, his medical test is ought to be done. If he looks like a juvenile, then his age proof must be asked for, else an age determination test must be done for him. Based upon the results of the tests, he must be transferred to the juvenile justice home. This procedure has also been given the sanction of the courts at many instances\textsuperscript{25}.

Of the people that were interviewed, two of them were juveniles. I would like to take this opportunity to cite the story of one Sunka Sankappa. Sunka is a seventeen year old who has been charged under section 302 for the offence of murder. Upon arrest he did not have a school certificate to prove his age and a medical test was subsequently done. For the past three months, he is in the under trial jail at Arthur Road in Mumbai and has not yet been transferred. When he was taken to Court, the judge did not even bother about his age and is still trying him. I myself

\textsuperscript{21} Section 341, Indian Penal Code.
\textsuperscript{22} Section 334, Indian Penal Code.
\textsuperscript{23} Section 337, Indian Penal Code.
\textsuperscript{24} Juvenile Justice Act, 1986.
went and talked to the judge about this case and he said he didn’t co operate with the police in
the investigation and felt that there is a strong possibility that he was lying. He later promised to
look into the case as the results of the age determination test were not yet known to him. Sunka is
a young boy who didn’t even know about the protection to juveniles under the law. His alleged
ignorance is acting to his doom.

By mere appearance, the police do not seem to co operate in such instances towards the
treatment of juveniles. People like Sunka are staying in the under trial major offences jail at
Arthur Road and as a result are exposed to big criminals. They are not getting the benefit of the
law that is made for them. Juveniles are victims of the system and due respect must be given to
their interests in the policies of governments.  

91 Minn. L. Rev. 26.
3. POLICE AND THE LAW

The above chapters are indirectly related to a greater issue of accountability and responsibility on the part of the government to educate the citizens about the law and not abuse the powers in the hands of the state machinery. In this chapter we shall discuss mainly about the attitude of the police towards the poor and the treatment meted out to them. This will later lead us to conclude the need for checks in the police functioning today.

3.1 The fallacy of *Ignorantia Juris Non Excusat*

Legal systems all over have been based upon the common maxim of *ignorantia juris non excusat*, that is ‘ignorance of the law is no excuse’. The principle, the had first originated in the Code of Justinian\(^{27}\), was used as a defence by the government when people said they did not know about the law. The reason then was that it was simple to understand and not complex in nature.

With time, law became more and more complex in nature and so did the excuse of the government for using this principle. Now, they said, “it was a small evil in exchange for a greater good”\(^{28}\). If this was removed then everyone would claim that they did not know the law which would then become difficult to prove. What it then did become was a manner by which the government shed the responsibility for educating its citizens about the law. It removes any trace of accountability on the part of the government and places the burden on the common man to know the law.

In the past few decades, some Courts in the world are trying to do away with this maxim in the area of ‘rights education’. They seek to place the burden on the government to educate the citizens\(^{29}\). It all started in 1966 with *Miranda*\(^{30}\) and similar instances in the United Kingdom\(^{31}\) and other European nations\(^{32}\). In the USA, this issue was recently upheld in *Dickerson v. United*
States. As regards to the situation in India, the Courts have always sought to apply and interpret the maxim in its strict sense without any exceptions. In this way, DK Basu was a relief to the poor. But the fact remains that the government does not have any responsibility to educate the poor in this country. All mechanisms of accountability seem a distant dream.

I argue that the rights of the poor would be secured only if the government takes upon itself the responsibility to protect them. Such responsibility does not seem to exist in India. It is then imperative that if this country must develop, the rights of a 250 million people must be secured.

### 3.2 The Police and Implementation of the Law

I would like to approach the aspect of police accountability by showing how the police is presently implementing the law. The data presented is based on the research that was conducted by myself in the month of December in the city of Mumbai.

The DK Basu judgment says that the rights laid down in para 36 must be placed in a conspicuous place in every police station. In the eight police stations that were visited, only three of them were in a place that could be well seen. The rest five were in the office of the inspector which is visited only by a few of them. These five police stations were in the slum areas of Mumbai that included the Dharavi, Sion and Chembur areas of Mumbai. On questioning a few police constables, I learnt they knew about the procedure and the way it was to be followed.

On enquiring as to how many cases are reported to the Control room within 24 hrs, three persons reported by myself were not known to the control room for the next 48 hours. One of them by the name of Walekar was placed in a police locker for 2 days and there was no record of his arrest.

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33 Dickerson v. United States, 530 US 428.
3.3 Police Brutalities in India

The issue of police brutalities and custodial violence and no surprise in this system of ours. According to the statistics of the National Human Rights Commission alone, in the year 1999, there were 193 custodial deaths in the country. Every day violence in the police station is not a new phenomenon. Sadly, there is no law in the Country to protect the citizens from torture specifically. Such brutalities have been read into the normal sections of assault and hurt in the Indian Penal Code. The Courts have also at numerous instances discussed the issue of custodial violence and condemned the same.

In the Survey conducted by the researcher, around 41% of the people interviewed had been subjected to some form of violence or the other at the hands of the police. Some of them also included lathi beatings and slaps. One of them, a juvenile, was even paraded around the police station in his underwear. If this is just an analysis of 25 odd people in the city of Mumbai, we can only imagine what would be happening in the whole of India. I again get down to the same argument that there is a great need for police accountability in the country to stop such acts of violence against the poor and illiterate.

3.4 Reforms in the Police Act

We today have a 146 year old Police Act. The first comprehensive review at the national level of the police system after independence was undertaken in 1977, when the Government of India appointed the National Police Commission. In its first report, the Commission dealt with the modalities for inquiry into complaints of police misconduct in a manner which will carry credibility and satisfaction to the public regarding their fairness and impartiality and rectification of serious deficiencies in the system. Various Committees that have been set up after this period like the Dharma Vira Commission, Julio Roberto Committee, Soli Sorabjee Committee and the Padmanabiah Panel have zeroed in on the maladies of the Police Act and called for drastic
changes in the functioning of the system. I argue that the issue at hand is not ‘police reform’ that these committees and judgments propose but that of ‘police accountability’. Our country has not taken a serious stance on the issue of Police accountability and the status of such investigations.

In the United States of America, the rights of individuals have always received supremacy over the investigation process. This is to the extent that, if the rights of arrested persons are affected, then the investigation to that extent will be declared invalid. In this manner, some degree of responsibility to follow the law is placed on the Police. Similar situations must be applied in India too so that the rights of the poor are protected in this country. The accused must have full knowledge of his rights at the time of the investigation and if he is not aware of them, the state must remind him of them.

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43
CONCLUSION

The above chapters give us an idea about the present Indian legal system and its attitude towards the poor. I would like to reiterate that this research presents an argument that some sort of Miranda rights must exist in India. Not only that, but there also must be some degree of responsibility attached to not following the rights. The argument is supported by the survey conducted by the researcher in the city of Mumbai. The researcher honestly believes that this represents to some extent the situation in the whole of India.

In addition to the strict application of the DK Basu guidelines, there must be other provisions to protect the rights of the accused. These may include, as mentioned in the previous chapters, to have the right to a lawyer at the time of interrogation, if the accused cannot afford one, he must be provided one at the investigation stage and not the trial stage. I would also like to take this opportunity to stress on educating the police on the importance of the protection of rights and treatment to arrested persons.

Governments exist for the people. The term people would not mean a certain section of the society by the nation as a whole. The primary duty of the government is to protect the rights of its citizens. I argue that the protection of these rights must include the primary right to due process and such concerns must not be rebuked by law and order considerations. Poverty in this country is a disease and must be an important factor in every action by the State. This includes, the rights of arrested persons. The survey conducted is evident of the need for such rights in India. I hope that this project has explained to the reader the need for such policies in India. I have sought to present it as an initial groundwork for a greater theoretical argument of whether such rights should exist.
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