

# FROM BOOKS TO REALITY: APPLYING MIRANDA PRINCIPLES TO INDIAN CRIMINAL LAW

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Apoorva Verma<sup>1</sup>

VOLUME 1, ISSUE 1 (JANUARY-JUNE 2025)

## ABSTRACT

*The well-known Miranda warning states:*

*“You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to an attorney. If you cannot afford an attorney, one will be provided for you. Do you understand the rights I have just read to you? With these rights in mind, do you wish to speak to me?”<sup>2</sup>*

*In India, although the rights of the accused are well established in law, their implementation and the fulfillment of procedural requirements remain a significant concern even today. The principles of not punishing a single innocent even at the cost of hundred guilty has been one of the pillar principle that has been reiterated everywhere, but the lack of awareness of rights and lackadaisical enforcement of laws has made the process itself the punishment where hundreds of innocent individuals face punishment daily. In India, as we can see in recent years our government has passed various legislations and acts that put the burden of proof on the accused, and also as we are well versed about the languishing condition of our legal system. So, it is not hard to imagine what kind of effect such requirements under the act are capable of producing, striking at the very roots of the constitutional spirit. In our country where legal literacy is still very low and where people are not even aware of their basic rights caused various difficulty to them. Especially people of lower strata greatly suffered from this. Through this paper we aim to analyze the rights of the accused and their current situation. We will also elaborate on the Miranda Rights and warnings and how they can prove efficient in the Indian system.*

**Keywords:** *Rights of accused, Miranda warnings, Constitution of India, Criminal*

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<sup>1</sup> Apoorva Verma, B.A., LL.B. (Hons.), Gujarat National Law University, 5th Year.

<sup>2</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966), [https://www.law.cornell.edu/supreuch/a\\_warning\\_could\\_act\\_as\\_a\\_simple\\_preventative\\_toolmecourt/text/384/436](https://www.law.cornell.edu/supreuch/a_warning_could_act_as_a_simple_preventative_toolmecourt/text/384/436).

## INTRODUCTION

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In the landmark case of *Miranda v. Arizona*, the US Supreme Court ruled that the police must inform all suspects in custody of their right to counsel and to remain silent as a constitutional protection, highlighting the inherently coercive nature of modern interrogation systems. It was held that individuals must be informed of their rights upon arrest, and that a violation of these rights may invalidate the arrest. This ruling introduced critical accountability for law enforcement officers in the United States.

Although India has similar laws in place to protect the accused, poor enforcement and low awareness—especially among disadvantaged groups—undermine these constitutional guarantees. Justice must balance between addressing the crime and respecting due process. A conviction must result from a fair and transparent legal procedure.

Through this article, we argue that incorporating Miranda-style protections in India could play a vital role in safeguarding the rights of the accused, strengthening procedural safeguards, and restoring the principle of innocence until proven guilty. The Miranda warning, which obliges police to inform suspects of their right to remain silent and access legal counsel, directly addresses common abuses seen in custodial processes. In India, where the legal system can feel impenetrable to common citizens, such a warning could act as a simple, preventive tool that immediately restores a sense of dignity and agency to those arrested.

## BACKGROUND

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After the decision of the US supreme court in the 1966 landmark case '*Miranda v. Arizona*,<sup>3</sup> the Miranda rights were incorporated into the constitution of the US. In this case, Ernesto Arturo Miranda was arrested by the police officers on the charges of rape, robbery and kidnapping. Police kept him under custody and interrogated him; which led him to sign a confession statement accepting all the accusations. This confession was used by the prosecution and because of this Miranda was convicted of crimes. When Miranda's lawyer came to know that he was deprived of the constitutional rights to remain silent and the right to get a lawyer, which is a violation of the fifth and sixth Amendments of United States, filed an appeal to the Supreme Court. After the hearing, the Supreme Court ruled in favour of Miranda and said that when the suspect is in custody, he/she must be warned about their right

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<sup>3</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

to remain silent and right to consult a counsel otherwise the confession can be used against them.

Basically, this Miranda rights means protection for the accused, to inform them about the rights of the Fifth Amendment, protection against self-incrimination and of the sixth amendment which talks about the right to a lawyer, before or during interrogation. So, that they can choose whether to use or waive these rights.

Although it is helping the suspects in many ways but there was also a section of society that thought that this right is restricting the power of police and is affecting their efficiency in investigation like many prosecutors and police said that only a few confess and many crimes remained unresolved<sup>4</sup>. Due to this there is high chance, that the criminal would go free and may again target the innocent. Congress viewed the 1966 crime rate, which was already too high and the concern that the Miranda is pushing the crime rate higher, triggered the congress to pass an omnibus crime control and safe streets act of 1968<sup>5</sup>. The “*Section 3501 of the Omnibus Crime Control and Safe Streets Act of 1968*” in the United States is a provision related to the admissibility of confessions and other statements. This provision governed the admissibility of confessions obtained by law enforcement officers and establishes rules for determining whether a confession was obtained voluntarily and is admissible as evidence in court. The Appeal against this act went to the Fourth circuit court of appeal, here the court held that, this act did not specify clearly how suspect is being protected from being forced to testifying against himself. Miranda filled the gap in the constitution. Again, the decision of Fourth Circuit goes to appeal in the Supreme Court of United State in *Dickerson V. U.S.*<sup>6</sup>, in which the Supreme Court of USA said that one of the main elements in Miranda was that a process must be in a place " that will inform the suspects about his right to remain silent and which will also reassure the suspect that this right will be respected. But if we compare it with section 3501 of omnibus crime control, it doesn't mandate warnings and instead treats them as a one element in the analysis. So, it failed to adhere to minimum standard given in Miranda's right. Therefore, Supreme Court of U.S. overruled the fourth circuit decision and held the section 3501 unconstitutional.

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<sup>4</sup> Richard A. Leo & George C. Thomas III, Police Interrogation and American Justice, 75 Harv. L. Rev. 449 (1962).

<sup>5</sup> Albert W. Alschuler, Miranda and the Politics of Custodial Interrogation, 54 U. Chi. L. Rev. 435 (1987).

<sup>6</sup> *Dickerson v. United States*, 530 U.S. 428 (2000).

## RIGHTS OF THE ACCUSED

Like any other country India also has the rights for the accused person which are divided into rights of the accused before trial, rights during the trial, and right after trial. According to Article 22(1) of the Indian Constitution<sup>7</sup> (*D.K. Basu v. State of West Bengal*)<sup>8</sup>, an arrested person cannot be held in custody without being informed of the reasons behind the arrest. Additionally, he will have the freedom to choose the lawyer he wants to represent him and consult with him.

In addition to it, under Article 20(3) of the constitution<sup>9</sup>, a person who has been accused of committing a crime is prohibited from being made a witness against themselves. Even under the Section 25 of Indian Evidence Act<sup>10</sup>, an individual who makes a confessional statement to a police officer would not even be considered admissible as evidence against him for the crime. Furthermore, according to Section 162 of the Criminal Procedure Code (Cr.P.C)<sup>11</sup>, statements made to the police during an investigation cannot be documented in writing or be signed by the person making them in order to prevent such document to be used as evidence in a subsequent investigation or criminal trial.

Under section 164(1) of Cr.P.C<sup>12</sup>, only a Metropolitan Magistrate or Judicial Magistrate has the authority to record confessions and statements made during an investigation. Also, before recording any confession, the Magistrate must explain to the subject that he is under no obligation to do so and that, should he do so, any confession could later be used as evidence against him.

Under section 50A of Cr.P.C<sup>13</sup>, as soon as the police takes someone into their custody, the said person has the right to notify their family members, friend or anyone else about the arrest (*D.K. Basu v. State of West Bengal*). Also, under section 56 and 57 of Cr.P.C<sup>14</sup> within 24 hours of the arrest, the accused must be brought before a magistrate.

<sup>7</sup> Constitution of India art. 22(1) (1950).

<sup>8</sup> *D.K. Basu v. State of West Bengal*, (1997) 1 S.C.C. 416.

<sup>9</sup> Constitution of India art. 22(1) (1950).

<sup>10</sup> Indian Evidence Act, 1872, § 25.

<sup>11</sup> Code of Criminal Procedure, 1973, § 162.

<sup>12</sup> Code of Criminal Procedure, 1973, § 164(1).

<sup>13</sup> Code of Criminal Procedure, 1973, § 50(a).

<sup>14</sup> Code of Criminal Procedure, 1973, §§ 55, 57.

## ASYMMETRICAL APPLICATION OF LAW & PRESUMPTION OF INNOCENCE

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The principle of presumption of innocence of the accused until he is found guilty at the conclusion of a trial on the basis of legal evidence is one of the fundamental principles of our legal system. In a democracy, the accused's rights are inviolable; therefore, even if he is charged with a crime, he retains his identity. The rights of individuals facing accusations encompass various aspects such as rights during arrest, search and seizure, trial proceedings, and other situations. In India, accused individuals are granted specific rights, with the foundational rights embedded within the Indian Constitution. These rights are based on the fundamental principle that individuals are entitled to safeguards against potential misuse of government authority in the form of persecution. The recent arrests of civilians from a cross-section of society as a result of the role played by investigating agencies has shifted attention back to the fundamental but simple rules of criminal law.<sup>15</sup> The discussion of this issue should not be confused with the authority of agencies to charge and try people who are allegedly implicated in various crimes. It is the rights of the accused that is the fundamental issue in such action by authorities.

Citizens are expressly protected from "self-incrimination" in Article 20<sup>16</sup>. The "Right to Life and Personal Liberty" is covered under the scope of Article 21<sup>17</sup>. Since compelling an accused person to testify would shift the burden of proof from the prosecution to the accused, the "presumption of innocence" has a direct relationship to the "right against self-incrimination." In *Selvi v. State of Karnataka (2010)*<sup>18</sup>, the Supreme Court ruled that Article 20(3)<sup>19</sup> should be interpreted in the Indian context with proper consideration for how rights interact, since this approach was recognized in *Maneka Gandhi's case (1978)*<sup>20</sup>. In light of this, it is important to consider how the "right against self-incrimination" interacts with the other aspects of "personal liberty" protected by Article 21, including the "right to a fair trial" and "substantive due process."<sup>21</sup>

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<sup>15</sup> Sudhir S. Malik, Rights of the Accused: The Indian Perspective, 20 Econ. & Pol. Wkly. 1223 (1985).

<sup>16</sup> Constitution of India art. 20 (1950).

<sup>17</sup> Constitution of India art. 21 (1950).

<sup>18</sup> *Selvi v. Karnataka*, (2010) 7 S.C.C. 263.

<sup>19</sup> Constitution of India art. 20(3) (1950).

<sup>20</sup> *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248.

<sup>21</sup> Dave D, Presumed Innocent, Right to Remain Silent and Burden of Proof, Times of India Blog (Dec. 19, 2019), <https://timesofindia.indiatimes.com/blogs/voices/presumed-innocent-right-to-remain-silent-and-burden-of-proof/> (last visited Aug. 25, 2022).

The burden of proof has been reversed in case of several recent criminal legislations in India, particularly those that were passed and put into effect after the year 2014. This denotes that guilt is presumed to exist. The onus is now on you to prove your innocence because the State has assumed that you have committed a crime. One such example is the National Register of Citizens in Assam. All Assamese nationals were required to present official certificates attesting to the citizenship of their ancestors before 1971. Those who were unable to must queue up before government tribunals and demonstrate their legitimacy. If they were unable to, they were imprisoned. The Himachal Pradesh Freedom of Religion Act 2019<sup>22</sup>, the “*Uttar Pradesh Vidhi Viruddh Dharma Samparivartan Pratishedh Adhyadesh 2020*” (Prohibition of Unlawful Conversion of Religion Ordinance)<sup>23</sup>, the “*Madhya Pradesh Dharma Swatantrya Adhyadesh 2020*” (Freedom of Religion Ordinance)<sup>24</sup>, and the Gujarat Freedom of Religion (Amendment) Act, 2021<sup>25</sup>, are the following state laws that have been passed on similar lines with the reversal of presumption of innocence principle.

In its recent ruling in *Vijay Madanlal Choudhary v. Union of India*,<sup>26</sup> the Hon’ble Supreme Court of India concluded that the Prevention of Money Laundering Act, 2002<sup>27</sup>, as amended from time to time (“PMLA”), and all of its provisions, were constitutional. The centre had argued to the court that “it cannot be maintained that presumption of innocence is a fundamental guarantee”. The bench rejected the arguments that the ED’s ECIR registration process is opaque, arbitrary, and in violation of an accused person’s constitutional rights and that the PMLA process is harsh because it disregards both the fundamental principles of the criminal justice system and the rights guaranteed by Part III of the Indian Constitution, specifically Articles 14, 20, and 21.<sup>28</sup>

It is not hard to imagine what kind of effect such requirements under the act are capable of producing, striking at the very roots of constitutional spirit. For example, a person who has been arrested under PMLA may be forced to make self-incriminating statements while under oath without being informed of the main charges against him. He is then obliged to establish his innocence. The ideas and principles of justice are all so engulfed in exceptions now, that

<sup>22</sup> Himachal Pradesh Freedom of Religion Act, 2019.

<sup>23</sup> Uttar Pradesh Vidhi Viruddh Dharma Samparivartan Pratishedh Adhyadesh, 2020.

<sup>24</sup> Madhya Pradesh Dharma Swatantrya Adhyadesh, 2020.

<sup>25</sup> Gujarat Freedom of Religion (Amendment) Act, 2021.

<sup>26</sup> *Vijay Madanlal Choudhary v. Union of India*, (2022) SCC OnLine SC 929.

<sup>27</sup> Prevention of Money Laundering Act, 2002.

<sup>28</sup> Farasat S, PMLA Verdict — Due Process Will Be Bulldozed, *The Hindu* (Aug. 9, 2022), <http://www.thehindu.com/opinion/op-ed/pmla-verdict-due-process-will-be-bulldozed/article65746752.ece> (last visited Aug. 25, 2022).



their foundations have lost all strength. Relying mainly on the legislative contention when the act on the face of it breaches the constitutional rights given to citizens is very discouraging, seeing the fact that the state of various rights of the accused in India are already rotting in the books of which the actual accused people have no access or knowledge of when they require it. The lofty ideals upheld in various rulings have not, in reality, resulted in real constitutional improvement. Personal liberty, on the other hand, is rapidly being viewed as a triviality. The bigger problem lies in the fact that legislations are being framed in such manner that the gross violation of the fundamental human rights such as the presumption of innocence, appears only procedural and not substantial- hiding the whole thing as a mere process<sup>29</sup>. This has been regarded as a grey area for a very long time and has been misused for political gains without any regard of the spirit of law and justice.

The concept of the presumption of innocence has faced varying interpretations in judicial proceedings over time and its position as a fundamental right has been quite debated. In *Noor Aga (2008)*<sup>30</sup>, the Supreme Court found that while the presumption may be a "human right," it cannot be "equated with the basic right and liberty adumbrated in Article 21." The Court was reviewing the harsh provisions of the NDPS Act, which overturned the presumption of innocence. In *Manu Sharma (2010)*,<sup>31</sup> the Court was taking into account how media trials may affect the accused's right to a fair trial. The court determined that such a scenario would be in contradiction to a fundamental rule of law and would violate the safeguards guaranteed to an accused individual under Article 21. The court emphasized that a media trial could potentially undermine the presumption of innocence. In *Sahara v. SEBI (2012)*<sup>32</sup>, the Constitution Bench explicitly stated that the presumption of innocence is a part of Part III of the Constitution "not only as part of rule of law under Article 14 but also as an Article 21 right," and as a result, the freedom of speech under Article 19(1)(a) can be restricted, under a balancing exercise, to protect the presumption from the risks posed by a media trial. This sentiment is carried forward in the second sentence. Third, the Court invalidated the two bail conditions under S.45 of the PMLA in the case of *Nikesh Shah (2018)*<sup>33</sup>, which the Supreme Court has since overruled, finding that they violated Articles 14 and 21. The Court justified

<sup>29</sup> Aakar Patel, Presumption of Guilt Violates a Key Principle of Common Law, Deccan Chronicle (Sept. 28, 2021), <http://www.deccanchronicle.com/opinion/columnists/270921/aakar-patel-presumption-of-guilt-violates-c.html#:~:text=In%20several%20criminal%20laws%20in%20India,%20and%20especially,it%20is%20for%20you%20to%20demonstrate%20your%20innocence>. (last visited Aug. 25, 2022).

<sup>30</sup> *Noor Aga v. State of Punjab*, (2008) 16 S.C.C. 417.

<sup>31</sup> *Manu Sharma v. State (NCT of Delhi)*, (2010) 6 S.C.C. 1.

<sup>32</sup> *Sahara v. SEBI*, (2012) 5 S.C.C. 429.

<sup>33</sup> *Nikesh Tarachand Shah v. Union of India*, (2018) 11 S.C.C. 1.

its application of S. 45, which it described as a "drastic" provision that violates the presumption of innocence, by saying: "Before application of a section which makes drastic inroads into the fundamental right to personal liberty guaranteed by Article 21 of the Constitution of India, we must be doubly sure that such provision furthers a compelling State interest for tackling serious crime."

Setting aside this minor difference, both verdicts signify a significant departure from the stance that Article 21 is unrelated to the presumption of innocence, implying that the State can eliminate this presumption without any constitutional consequences. Therefore, the recent court ruling should be viewed within the context of the sequence of judgments to date, revealing a regression or backward shift in trends. The severity of an offence has little to do with the validity of the accusations that are likely to be made against the accused. In other words, the severity of a claimed crime does not lessen the likelihood that the accusations are untrue. The criminal procedure contains a fundamental paradox i.e. the more serious the crime and the higher the public interest in gaining convictions of the guilty, the more vital it is to ensure the accused's rights<sup>34</sup>. Any process that aims to balance constitutional rights should initiate with the fundamental principle that the collective interest of preventing the wrongful conviction and harsh punishment of innocent individuals significantly outweighs the interest in ensuring the apprehension of a particular criminal. This underscores the pivotal role played by the presumption of innocence in safeguarding the fundamental rights of those accused.

### APPLICATION OF MIRANDA WARNINGS IN INDIA

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After considering the state of affairs in India regarding rights of the accused is quite frustrating and there is no benefit of having that silver lining (art 14 and art 21) to the cloud because most of the people cannot see it. Miranda rights are no panacea and so have been seen from its implementation in across 108 jurisdictions, especially America, itself which actually gave birth to the whole concept. But the fact that there are 108 countries that have adopted and implemented it with various creative variations, without disturbing the basic essence of Miranda should at least be considered as a reason for application of it in India also. In a country like India where the rates of legal literacy are still very humbling and even the awareness has been remedial rather than preventive, the access to rights on the face of

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<sup>34</sup> Michael J. Ryan, *Miranda's Truth: The Importance of Adversarial Testing and Dignity in Confession Law*, 43 N. Ky. L. Rev. 313 (2016).



investigation can prove very essential. Men and women are vulnerable to injustices and prejudice if they are unaware of their rights. One is at a disadvantage if they are unaware of their country's legal system.

Free legal aid is guaranteed by Article 39A<sup>35</sup> of the Indian Constitution, which calls upon the State to advance justice in accordance with equal opportunity. However, even after having such safeguards in the Constitution people have failed to avail them because they are unaware of the existence of such articles and sections written in the law books. They then fall prey to various discriminations and manipulations of enforcement agencies. The Miranda rights emphasize the value of adversarial testing, and our adversary system's foundational principles of dignity and the right against self-incrimination are also highlighted. The defendant being subjected to custodial interrogation and investigation should be given particular cautions in order to safeguard the privilege against self-incrimination and to maintain a "fair state-individual balance." The court in Miranda was concerned that contemporary interrogation techniques, which employ dubious psychological techniques, do not advance this crucial goal because they can foster an atmosphere of fear and pressure, which can even result in false confessions, which were one of the major factors in wrongful conviction. The scenario has still not changed much especially in India, as police enforcement remains regressive continuing in sorry state, overburdened and overworked with political interference and inadequately trained often the brunt of all this is cumulatively vented on the accused, as we have seen in the case of custodial cruelties. The fear of police still largely remains a reality in India and without knowing their rights often are subjected to harassing processes that they could avoid. The Miranda warnings can bring the accused on status quo by informing them of their rights that will immediately bring them relief without disturbing the investigation process.

The application of Miranda rights and warnings have also been criticized on various parameters of enforcement the primary grievance being that it blocks the enforcement of justice by impairing the police from getting information from accused. It has also been noted that giving so many rights to the accused can be a threat to the public safety and it gives various privileges to them which helps them enough buy time for them to escape the law. However, it must note that Miranda rights and warnings are not a constitutional straightjacket and to term so is a mischaracterization as they are already enshrined in the legal codes and

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<sup>35</sup> Constitution of India art. 39(a) (1950).

guaranteed by the fundamental rights. The only problem thus remains is their application which can be smoothly achieved by giving the Miranda warnings. The accused also remain a part of public when we talk about safety thus it would be unfair to exclude them as others when talking about rights and justice. Its application of rights cannot be distorted as privilege after few instances of misuse especially when the greater population-the poor and disadvantaged still doesn't have any access to it and must be seen in the context of majority population requirements.

## CONCLUSION

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The rights of accused in India are very detailed and practical however the enforcement and knowledge of them is not fundamentally guaranteed which makes it hard for common man to access it when required. Access to justice encompasses two primary aspects. Firstly, it entails ensuring justice for the victim of a specific crime, and secondly, it involves safeguarding the procedural rights of the accused. The process leading to any conviction must be characterized by fairness and equity. It must be kept in mind that achieving justice in a case necessitates a thorough consideration of the procedural aspects governing its conduct. Fundamental rights must be upheld, due procedures must be adhered to, and the accused must be provided with an impartial and equitable trial. However, with a plethora of real-world problems that run against the spirit of rights enshrined in Article 20(1)<sup>36</sup> of the constitution, the application of Miranda rights as a comprehensive set of protections for the accused can definitely ease the problem of exploitation and suppression of justice especially when the legislative machinery in India is going through a phase where undermining the rights of accused has been made a statutory routine. The proper use and enforcement of these rights must be made after appropriate consideration and changes that are more suitable for Indian scenario will hopefully do some good towards providing justice to the accused stuck in the Indian justice system.

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<sup>36</sup> Constitution of India art. 20(1) (1950).