Research Article

Volume 11:4, 2020 DOI: 10.37421/jfr.11.462

ISSN: 2157-7145 Open Access

The Language of Police Arrest in the Philippines

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Abstract

The policy of police arrest in the Philippines requires the reading of the Miranda doctrine to the arrestee as stipulated in the Philippine Constitution. This Miranda doctrine provides an arrestee or any suspect an awareness of his right to remain silent and to get his own lawyer. While some police officers observe such policy, others tend to disregard the significance of reading the Miranda doctrine during the actual arrest. Using the qualitative descriptive method and drawing data from interviews, this paper seeks to investigate the language of police arrest and to draw implications on the upholding of the Miranda doctrine in the Philippines. It also seeks to review the policy of police arrest and its alignment with the actual practice. The finding of the research reveals that there is a mismatch between the policy and practice of police arrest in the Philippines. In addition, the improper use of language in the legal domain leads to marginalization of arrestees who are at a great disadvantage before the law. Further, this study suggests the need to explain clearly the content and meaning of the Miranda doctrine by the arresting officer to the arrestee.

Keywords: Police arrest • Miranda doctrine • Marginalization

Introduction

Policies and practices of police arrest in the Philippines

The warrant of arrest is a written document which authorizes an arresting officer to capture a person so that the arrested individual will be able to respond for a crime he has committed. Based on the Manual of the Philippine National Police, rules on arrest purports the following: an arrest should be done only if there is a valid warrant of arrest issued by a person in authority; any form of violence shall not be used during the act of arrest; the arrested person shall not be put into further harm aside from what is essential under the given situation; arrests shall be done on whatever day/s of the week and at any time; and a judge is the sole authorized person to provide an arrest warrant.

The rule further states the following: the arresting police officer has an authority to call for assistance; he may go inside an edifice where the suspect or arrestee is located, if he is not allowed to enter after declaring that he has the right authority; in situations when he has went inside the edifice to do an arrest, he may go out from there if needed; and if an arrestee was able to escape, any individual has the right to bring him back into prison without any warrant. It is also stated in the said manual as regard to the rules of arrest that one of the important responsibilities of the police doing the arrest is to notify the person to be arrested of his constitutional right to remain silent or popularly known as the Miranda Doctrine. This doctrine is a fundamental right of every citizen arrested in the Philippines as stated in the Constitution of the Philippines. Why does the Philippine judicial system observe the Miranda Doctrine and why is there a need to use it during police arrest?

This right originated from the Supreme Court decision of the Miranda versus Arizona case in the United States of America. In the context of American jurisprudence, the Miranda rights is one of its fundamental principles

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Received 27 July, 2020; Accepted 26 September, 2020; Published 03 October, 2020

in American legal policy and practice. It is considered vital to the preservation of human dignity and to the fulfilment of human expressive freedom [1]. It is not a well-known right as posited by legal scholars, but it is also undoubtedly the most extensively recognized principle of criminal law among the members of the general public. The Miranda warning is the most famous criminal law principle in the world [2].

This right is incorporated in the Philippine Constitution, which states that, any individual who is investigated for a crime committed, shall be rightfully informed of his right to remain silent and to get an attorney of his own choice, and if he does not have any access to get a counsel, the government shall provide him. In addition, it must be taken into account that in the Philippines, our legal system is patterned after American jurisprudence, which is the primary reason why the Miranda doctrine is presently and continuously used during police arrest in the country. In the Philippines, the provision on Miranda doctrine requires stricter standards in terms of getting an attorney because the chosen legal professional must possess competence and should be the choice of the suspect or arrestee. It also provides stricter requirements in terms of waiving the right to counsel compared to the American version of the Miranda rights, wherein, it should be done in writing, and with the company of an authorized attorney. It also states that any admission attained against the requirements under the Miranda doctrine shall be disallowed to be used as an evidence against the suspect.

Methodology

Initially, the Philippine Miranda doctrine as used by arresting officers was read in two languages namely English and Filipino. After some amendments by the Philippine National Police on the rules of arrest, the said constitutional right can now be read or recited in other local languages such as llokano, Hiligaynon, Kapampangan, Bikol, Waray, Cebuano, Chabacano, Meranaw and Tausug. In addition, to make the Miranda doctrine more accessible to nonnative speakers in the country, the Philippine National Police also initiated the Philippine Miranda Rights Translation Project, which was undertaken in the year, 2016. The primary aim of this project was to translate and record the Miranda doctrine into four foreign Asian languages for easier access of the arresting police officers. This project was also pushed through due to the increase in foreign suspects being arrested in the country which entails the need to create translations in the Korean, Chinese, Taiwanese and Japanese languages.

One apparent characteristic of the Miranda doctrine is the use of legal

Mercullo HM J Forensic Res, Volume 11:4, 2020

language or legalese. As Tiersma in Solan et al. describes it, legal language is different in various aspects from ordinary or common language [1]. Tiersma cites that legal language is characterized by the use of technical and difficult vocabulary, utilization of passive and impersonal constructions, negation, nominalizations, lengthy and complex sentences, and being too verbose. Tiersma further says that lawyers have a language of their own making the language of the legal domain extensively diverse from common language. Holt and Johnson in Coulthard and Johnson also cites that the distinguishing feature of legal conversation is the use of questions [3,4]. Aside from that, it is also governed by a system of turn taking that police officers and arrestee adopt as Holt and Johnson [4] puts it. For them, it is essentially ordinary language being put to special use.

With the legal language present in the Miranda doctrine, it causes problems in comprehension, especially for a lay person such as the arrestee or the suspect. This is echoed in Tiersma wherein he cites that the features of legal English may impede communication with the people in authority and the public as well. Coulthard and Johnston [5] also describe the complexity of the language of legal documents and legal talk in terms of structure and syntax, but despite of its complexity, legal language possess peculiar institutional purposes and pragmatic impact.

Moreover, sociolinguistic research argues as cited by Eades in Gibbons and Turell [6] wherein it is not possible to deal with language and disadvantage before the law without considering the dynamics and complexities of the disadvantaged individuals. It has to be taken into account as well that one of the central factors involved in the failure to deliver equal treatment to all citizens is caused by the use of language and further emphasized that certain individuals are more disadvantaged than other people in the domain of law. These disadvantaged individuals include mentally incapacitated people, second language speakers, children, and some members of the minority group. As Gonzalez cites, citizens who do not have adequate competence in the language of the law which is English are said to be disadvantaged [7]. In this sense, individuals whose first language is not English have trouble in using and understanding the language of the legal domain. Hence, having less knowledge about English puts someone at a disadvantage position.

Eades in Gibbons and Turell [6,8] also states that, the most challenging aspect of any legal system is to deliver an 'equal protection of the law' to everybody. In order to address this, Eades cites that it necessitates an understanding of the intricacies of multilingualism, and the differences in culture and dialect, and the needs of individuals who are not expert in English, which is the language of the legal domain.

Moreover, Rogers cites that defendants who are mentally disordered possess a lack of understanding of the Miranda doctrine [9-11]. He cites that Miranda warnings seems to be unfamiliar to a majority of people. Meanwhile, Domanico [5] in his research on the use of Miranda doctrine shows that most suspects have a tendency to abandon their Miranda rights and immediately submit to interrogation, because police officers use strategies that will lead them to invoke their rights.

On the other hand, Bowen in his study, showed that minority group members such as the aborigines who are not good speakers of English have the tendency to incriminate themselves and have the feeling of confusion and disempowerment when faced with the process of the law [12]. Likewise, Rogers in his study also revealed that defendants who are in great need of legal help are those who are ignorant of the law, thus there is a need to explain the Miranda rights in a manner that will allow them to better know the meaning of it. Further, Rogers cites that juveniles' comprehension is not as good with adults [13]. With the presence of terminologies in the Miranda which are complex and legal in nature, it hinders the ability of youngsters to understand its content and importance.

With the aforementioned studies, it can be deduced that juveniles, ignorant individuals, mentally disordered defendants and those whose dominant language is not English are faced with the greatest disadvantage before the law. In situations where they are read the Miranda rights during actual arrest, they resort to waiving it because of the lack of awareness and knowledge

about it coupled with the difficulty of understanding due to the complex and difficult words that it has.

In the case of the arrestee, they can be considered disadvantaged because they belong to the second language speakers and are ignorant about legal language and the rules of law. It has to be emphasized that their dominant language is not English, which is the language of the legal domain. This kind of scenario puts them at risk to be marginalized and discriminated especially when they are faced with situation that uses the English language as a medium of communication during encounters with police officers. With the disadvantage and discrimination that arrestees face because of not being able to understand the Miranda doctrine, which is primarily attributed to the use of language, this study is conducted to investigate the language of police arrest in the Philippines and to draw implications on the upholding of the Miranda rights. This research project also aims to review the policy of police arrest in the Philippines in line with the actual practice. Further, this study hypothesizes that the improper use of language in the legal domain leads to marginalization of the people who are considered as disadvantaged before the law.

With these objectives at hand, this research is deemed significant for it will provide answers on how the improper use of language in the legal domain contributes to marginalization of disadvantaged individuals and at the same time this endeavour will add to the limited studies on language and law in the Philippine context.

Languages used in police arrests

This research project is intended to investigate the language of police arrest in the Philippines in order to know if the improper use of language leads to marginalization of people at the same time to be able to draw implications on the upholding of the Miranda doctrine. To carry out the said objective, the researcher used the descriptive qualitative method of research. Extracts of the data were gathered through interviews with selected respondents who are police officers in one of the regions in the Philippines who are doing the actual arrest. The research respondents were purposively selected by the researcher. Before the actual interview, the researcher initially visited the station of the arresting police officers in order to seek permission for the conduct of the interview and to set the date for the actual interview. After seeking permission from the respondents, an informed consent was given to them for ethical purposes. A set of questions were prepared by the researcher that were used for the interview. The researcher did notetaking and recording during the interview process. After the conduct of the interview, the researcher transcribed the recorded interview for data analysis.

Results and Discussion

The result of the interview revealed that some arresting officers observe the use of the Miranda doctrine during police arrest while there was one police officer who claimed that in their station, they do not anymore use and read the Miranda right during actual arrest. The non- reading of this right means that some, if not all, arresting officers do not follow the protocol on police arrest. The findings also revealed that during the actual arrest, the languages used by the arresting officer are either Filipino or the existing local language of the community. In terms of the use of the Miranda doctrine, the arresting police officer resorts to the use of the local language when it is read to the arrestee instead of using English or Filipino. Based on the transcribed interview, it clearly shows that the lack of understanding of the Miranda doctrine among the arrestees is attributed to the legal language that it has. The Miranda rights is characterized with complexity in terms of syntax and structure that may impede communication with people putting them at a great disadvantage before the law.

Extracts of the interview are as follows:

Extract 1

Police A: "Gumagamit kami ng Miranda kung nag-aaresto. Binabasa namin ito sa harapan ng taong may sala bago siya arestuhin. Sa maraming pagkakataon mas ginagamit namin ang Miranda na Filipino kaysa sa English

Mercullo HM J Forensic Res, Volume 11:4, 2020

kasi mas naiintindihan ito ng taong inaaresto. Kapag gumagamit kami ng English version ng Miranda ang nangyayari, pagkatapos bangitin ang linya kung naiintindihan ba ito ng taong dinakip, hindi makapagsalita ang tao. Ang pakiramdam ko hindi niya naiintindihan ang nilalaman ng Miranda kapag ito ay sinasabi sa Ingles kaya mas ginagamit namin ang Filipino na Miranda."

The first extract shows that the use of English in reading the Miranda doctrine hinders the understanding of the arrestee. Since English is not the first language of these suspects which is also the language of the legal domain, they find it hard to understand the Miranda doctrine if said in that language. When the arresting police officer reads the Miranda doctrine in English, the arrestee feels intimidated and threatened with the language used since it is not his dominant language or the language he understands best. Thus, arresting police officers resort to the use of the Filipino or Tagalog version of the Miranda doctrine in the hope that the arrestee will better understand what this right is all about.

Extract 2

Police B: "Pag ginagamit namin ang English version ng Miranda hindi ito agad naiintindihanng tao, kaya yung Filipino o Tagalog ang ginagamit namin. Pero may mga pagkakataon din kahit Tinatagalog na namin hindi pa rin ito makuha ng nadakip. Sa tingin ko yung problema nandoon sa content ng Miranda. Kasi nga hindi ito pamilyar sa kanila at siguro first time nila makarining nito kaya ganun yung reaksiyon nila. Hindi sila sumasagot Kung naiintindihan ba nila."

The second extract shows that the use of the English language as a medium of delivering the Miranda warning does not help the arrestee in comprehension, thus, an arresting police officer uses the Filipino language instead which is more familiar to the arrestee. The non- familiarity and lack of awareness of the Miranda doctrine, also contributes to the difficulty of understanding of these individuals. In addition, the cause of difficulty does not only lie on the language or the medium of communication used but the content itself such as the presence of complex words, and the syntactical structure which is lengthy and too verbose. As Coulthard and Johnston cites, legal talk is characterized by technical terms and complex syntax making it difficult for lay persons to understand. Thus, the presence of legal language is one of the deterrents towards understanding the Miranda doctrine as seen in this extract.

Extract 3

Police C: "Dito sa aming istasyon hindi na kami gumagamit ng Miranda pag nag-aaresto ng kriminal sa halip agad naming itong pinoposasan at dinadala agad sa prisinto. Pero pag gumagawa na kami ng report, isinusulat namin doon na binasa namin ang Miranda pero sa actual wala naman. Para sa akin parang hindi na ito mahalaga basahin sapagkat yun na ang naging nakaugalian naming gawin kung nag-aaresto."

The third extract shows that the arresting officer does not anymore use the Miranda doctrine during actual arrest. This shows that there is a discrepancy between the policy on police arrest and the actual practice. As stated on the rules of arrest in the manual of Philippine National Police, an arresting officer has the responsibility to notify the arrested person of his Miranda rights. This is also a fundamental right of every Filipino citizen who are arrested as in the Constitution of the Philippines. The non-reading of the Miranda doctrine in this case shows that some arresting officers do not follow the protocol on police arrest. As exhibited by this extract, there is a possibility that some arresting police officers in the Philippines do not also use the Miranda rights during actual arrest. This further suggests that there is a mismatch between policy and practice on police arrest in the Philippines.

Extract 4

Police D: "Pag mga bata bata ang aming nahuhuli, mas nahihirapan silang intindihin ang Miranda. Pero pag mas matanda na may posibilidad na maiintindihan nila kung anu ang ibig ipahiwatig nito. Gusto man naming ipaliwanag ng mas malinaw ang ibig sabihin ng Miranda ngunit dahil sa dami ng aming trabahho hindi na namin ito nagagawa. Sa tingin ko, ang dahilan na hindi naiintindihan ito ng karamihan ay baka sa mga salitang hindi pamilyar sa kanila at hindi pa nila narinig. May mga salita kasing mahirap intindihin kagaya

ng "counsel". Sa paraan din ng pagkakasabi kasi may mga pagkakataon na mabilis ung pagsasalita ng pulis na nag-aaresto at medyo mahaba din ito. Kaya sa tingin ko hindi ito maintindihan ng mga pangkaraniwang tao kagaya ng mga suspek na nahuhuli."

The fourth extract shows that one of the reasons for the difficulty of the arrestees or suspects of not comprehending the Miranda rights is the presence of unfamiliar words, as well as the structure and length of this right. Since majority of the suspects are not educated, they cannot immediately understand what the Miranda rights says. This shows that having less access to education means that a person is disadvantaged when they are faced with situations like dealing with the language of the law. Another factor that deters the understanding of the Miranda right is the manner of reading or delivering it by the police officer to the arrestee or suspect. Some arresting police officers are not aware of the fact that these suspects are not that good in comprehension due to language barrier and the difficult words that accompany it, so when the arresting police reads it in a hasty manner, it adds up to the burden of the suspect of not being able to understand it.

Extract 5

Police E: "Kapag binabasa na namin ang Miranda, wala kaming nakukuhang sagot ni ha ni ho. Dala na rin siguro ng takot at pangamba na makukulong sila. Akala kasi nila pag sumagot sila may posibilidad na hindi na sila mapawalang sala kaya hindi na lang sila nagsasalita. Dagdag pa nito, ang Miranda ay hindi talaga naiintindihan ng mga suspek kasi wala sila sa tamang pag unawa. Halos lahat ng nahuhuli namin ay walang pinag aralan kaya nakakaapekto ito sa kanilang pag-unawa sa Miranda. May mga pulis na nag aaresto na hindi maayos ung pagkakabasa, at ang mga salita na nasa Miranda ay masyadong teknikal at mahirap unawain. Kaya ang ginagamit namin na bersiyon ng Miranda ay iyong nakasulat sa aming lokal na salita dahil pagginamit namin ang English o Filipino mas lalong hindi ito maiiintindiha ng inaaresto."

The fifth extract shows that the lack of understanding on the part of the arrestee can be attributed on their fear and anxiety while being questioned and interviewed by the arresting police officer. It can also be seen that majority of the criminals are not educated which contributes to their difficulty of understanding the said doctrine. The technical and complex vocabulary are also contributing factors that leads to the suspect's struggle of comprehending the Miranda rights. In terms of the language used, the arresting police officer uses the Miranda doctrine translated in their local language for easier understanding and communication between the police and the arrestee. This shows that the use of the local language in reading the Miranda doctrine instead of the English language may lead to better chances of the arrestee to correctly understand and interpret the said right.

The findings of the study as shown by the extract revealed that arrestees find the Miranda doctrine difficult to understand and interpret because the words contained in it are unfamiliar to them and has a lot of technical words which do not suit to their level of understanding. Rogers cites the presence of unfamiliar terms in the Miranda warnings to affect the verbal comprehension of lay persons and the complexity of sentence structure can also lead to difficulty in understanding.

Another salient finding of the study on the reasons of difficulty in understanding the Miranda doctrine is because these suspects are not educated. Domanico cites that majority of suspects who are arrested do not have access to education, thus, they find the Miranda warning difficult to comprehend [5]. In addition to it, problems on comprehension are aggravated when the arrestee is young, mentally disabled. Rogers in mentions that the reading level of teenage suspects is not suited to the vocabulary of the Miranda warning, thus the need to explain clearly the content and meaning of it [12].

In order to address such problem, Rogers suggests that police officers doing the actual arrest shall deliver the Miranda doctrine in a "clear and unequivocal terms". Since, Miranda warnings does not exhibit clarity, there is a need to explain the Miranda rights most especially to the least knowledgeable suspects and other disadvantaged members of the society. By giving understandable warnings such as a clear and unequivocal Miranda rights, as

Mercullo HM J Forensic Res, Volume 11:4, 2020

Rogers declares, leads to better law enforcement without compromising the rights of the arrestee or suspect.

Further, the findings of the study also illustrates that arresting police officers use various languages during police arrest. The languages that are commonly used are Filipino and the local language of the community. It has to be noted that when the arresting police officers use English in reciting the Miranda rights, the arrestee cannot comprehend the said right. This can be a form of marginalization on the part of the arrestee because of the language factor at hand. Since English is not their first language, the use of such language put them at a great disadvantage before the law. Hence, this research suggests that to illicit understanding and communication between the arresting officer and the arrestee, the local language or any language familiar to the arrestee shall be used when reading the Miranda doctrine.

Moreover, the study also reveals that there is discrepancy between the policy and the actual practice of arrest. Some police officers do not anymore read the Miranda doctrine to the arrestee during the actual arrest. One of the major reasons for it is that police officers think that they do not anymore find the doctrine necessary during arrests and it is just for 'formality's sake'. Based on one of the interview extracts, an arresting police officer includes in the written report that they have 'used' the Miranda warning during arrests, however, in reality it is not actually observed. Thus, there is divergence between policy and practice [14,15].

The meaning of silence during police arrest

Further, results of the interview revealed that the arrestee after being read the Miranda rights and asked if he/she understood the said rights settle for silence instead of providing a yes or no answer. Silence according to the police officers is an admission of guilt on the part of the arrestee. Ainsworth in Solan and Tiersma cites that being silent during the moment of accusation means an affirmation. However, McCormick et al. cites that before a person can be admitted as guilty just because of exhibiting silence, it must be shown that the person heard and understood the accusatory language and had an opportunity to respond. In the case of the arrested person, they do not fully understand the content and meaning of the Miranda doctrine, so instead of asking clarificatory questions, they end up with silence so that the conversation will be terminated and no questions will be asked on them. Ainsworth adds that the assumption behind the rule is that, when confronted with an accusation of wrong doing, the only reasonable response is to issue an explicit, unequivocal, and unambiguous denial. However, this does not occur during cases where arrestees are asked if they have understood the Miranda doctrine. Instead, of answering, they resort to silence.

There are also instances wherein silence could mean disagreement or resistance to the questions of the arresting officer. The interview revealed that silence on the part of the arrestee does not only mean admission of guilt but a sign of disagreement especially if asked if they are guilty of the crime. Linguistic research suggests that the natural response of a person accused of wrongdoing is an immediate and unhesitating denial as reflected in Anita Pomerantz' concept of adjacency pairs. Pomerantz found out that in looking at the contrasting adjacency pairs, preferred seconds or agreements with the first speaker tend to be more fluid and rapid than dispreferred seconds or disagreements with the first speaker. The latter are marked by long pauses, hesitations, false starts, discourse markers, and the like. In other words, a response in an adjacency pair tends to be hesitant that is expressed through silence. Moreover, Dennis Kurzon's examination of question and answer adjacency pairs in police interrogation found similar patterns. In short, silence is well within the range of expected second elements in an adjacency pair that begins with an accusation if the second person disarees with the accusation, since as a dispreferred response it will tend to be non-fluent or even totally absent. These findings show that silence does not only assume guilt but can also be form of disagreement or resistance on the part of the arrestee to the arresting police officer. Silence therefore can mean both ways. It can be an admission of guilt or a resistance towards the accusation. But in this study, it revealed that silence, as an answer of the arrestees when they are asked if they have understood the Miranda doctrine is more of an admission of guilt or the crime they have committed.

Conclusion

Given the findings, this research suggests the need to review the policies on police arrest in the Philippines so that there is alignment of the policy to the actual practice. In addition, arresting police officers must be constantly reminded of the importance of reading the Miranda rights during police arrest so that the arrestee/s will be aware of the salient components of this right that is to remain silent and to get a lawyer. The research also suggests the need for the arresting police officer to explain clearly and conscientiously to the arrestee the content and meaning of the Miranda doctrine especially for individuals who are disadvantaged before the law such as second language speakers, intellectually disabled people, and minority groups. In this manner, the disadvantaged individuals will be able to receive an equal protection before the law. Finally, negligence to read the Miranda rights does not only violate the rules on arrest but it puts into peril the life of the arrestee.

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How to cite this article: Harriette Mae Mercullo. "The Language of Police Arrest in the Philippines" *J Forensic Res* 11 (2020) doi: 10.37421/jfr.11.462