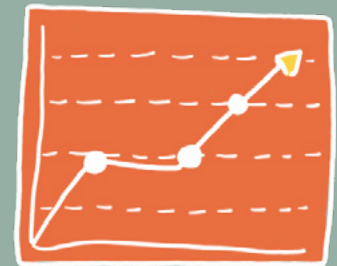
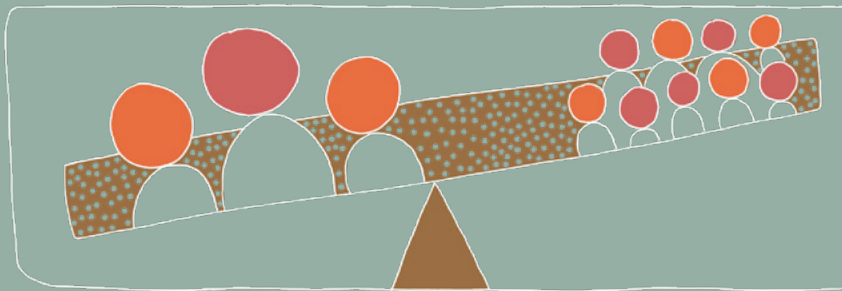




# Law



# and



# Everyday

HONESTLY



# Life



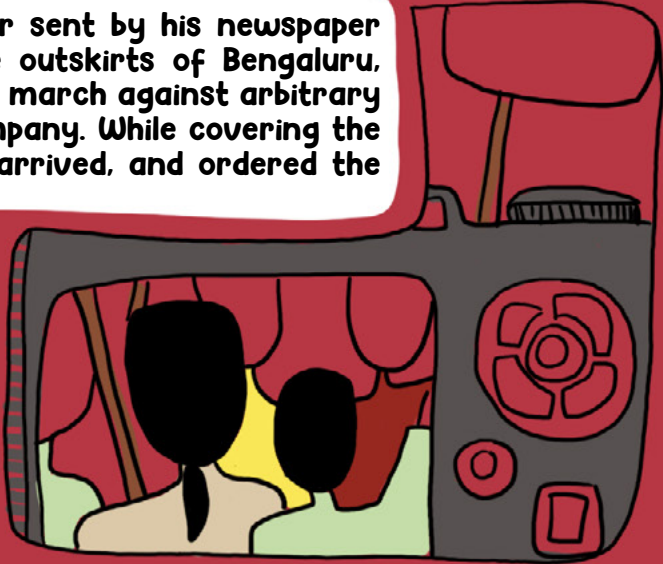
# Chapter 4: The Long Arm of the Law

Police powers and  
law enforcement

By Abhinav Sekhri



Salim was a prize-winning photographer sent by his newspaper to cover a protest in a hamlet at the outskirts of Bengaluru, where contract workers were staging a march against arbitrary termination of their contracts by a company. While covering the protest, Salim saw that the police had arrived, and ordered the protestors to disperse.



The ensuing chaos was being captured on film by Salim, but a police official objected to this and took him into custody and brought him to the nearest police station. There his phone and camera were taken from him, he was forced to give his passwords to the same during his questioning at the station which went on for hours. Finally, later that night, he was released by the police but only after signing an undertaking.

Dhruvika regularly worked two jobs to try and make ends meet. She had various loans that were owed by her late father, not to mention her own educational loans, besides helping her mother out with managing the house. Understandably, her ears perked up when she received a phone-call from a Rohit claiming to be an executive in a small-loans company that was willing to disburse INR 15 Lakhs to her within an hour as a loan at throwaway interest rates. She was hooked, and eagerly agreed to share her PAN card and bank details for one of her bank accounts that had approximately INR 7 Lakhs - her liquid savings. Rohit informed her that she will receive a message from her bank confirming receipt shortly and the loan documents will also be sent via a link which she must click to access the papers.



Once she clicked the link, her phone hung, but did lead her to a page with various documents which she began to see. She also received messages from her bank which she thought indicated disbursement of money. They did not - instead, the message said that INR 6.5 Lakhs had been withdrawn from her account and transferred to 'Hello Kitty'. Not knowing what to do, she immediately called the bank, who said they would reverse the transaction but failed to take any action. When she visited the branch the next morning, the manager asked her to file a police complaint.

The stories of Salim and Dhruvika are only mild exaggerations of what happens in daily life across India.

The criminal process is a maze which appears impossible to understand, let alone navigate.

POLICE  




Police, courts, and lawyers, all appear as figures of authority only to be obeyed or trusted but not to be questioned.



Not choosing to question what we don't know is, naturally, not the wisest course of action.



Which is where this discussion is meant to help, by giving you the necessary building blocks to ensure that interactions with the law can be grappled with effectively.



# The philosophy behind the procedure

It can feel at times as if the criminal process is operating on an endless loop, with the same questions being asked and answered at different points of time. There is some truth to this feeling, because ultimately the process is geared to answer a binary formulation — whether X did or did not commit the alleged offence — which we will call ‘The Question’.

The law’s engagement with The Question keeps getting more refined as the process moves further. This initial stage is followed by a more in-depth scrutiny of the materials while framing charge, including looking at whether the material is legally admissible, but without doubting its genuineness at all. Assume everything is true, and if you think it is groundless to proceed further, then stop proceedings and discharge the accused. If not, then frame charge and proceed to a trial where witnesses will come and give testimony on oath. The fullest answering of The Question takes place at the end of this trial, where the court is invited to test everything and ask itself whether the prosecution has established its case beyond a reasonable doubt. If yes, the accused is convicted and is heard

on the quantum of sentence. If no, she stands acquitted of all charges. Of course, travelling from the filing of an FIR to the final verdict of guilt or acquittal ordinarily takes years to pass.

In this chapter, we set out on this journey to understand these steps a little better, in the end, we deboard to take a closer look at one of the actors that form part of the criminal justice system.



## The Law

Just as all journeys need maps, we look to what the law is to guide our journey through the criminal process. We all know that the Constitution is the most important legal document. When it comes to criminal laws, the Constitution is given stiff competition by the triumvirate of the Indian Penal Code 1860, Criminal Procedure Code 1973, and Indian Evidence Act 1872. These statutes form the essence of the entire criminal process and are the daily currency for the criminal process. At present, the government has come up with new draft laws to replace these three statutes, and the same are being considered by Parliament. The new draft laws do not drastically change the landscape so as to hinder our understanding of the process through this chapter.



The Indian Penal Code (or IPC) is a mammoth text containing more than five hundred provisions. It details many kinds of offences, ranging from crimes against the human body, to crimes against property, and crimes against administration of justice. The IPC is what is called a general law of crimes and is complemented by various other statutes that create offences and form the special law of crimes.

Together with this substantive law of crime stand the Criminal Procedure Code 1973 [CrPC] and the Indian Evidence Act 1872 [IEA]. The CrPC is perhaps the most important of the lot, laying out the details of procedures followed during investigation and trials of offences. In a system where finishing trials takes considerable time, the rules regarding arrest and bail, as specified in the CrPC and interpreted by courts, become the real focus of the process. Besides investigations and trials, the CrPC also details the rules regarding police powers to issue temporary orders to deal with 'emergent threats' such as riots or demonstrations.



**Can you identify some Constitutional safeguards that apply specifically to criminal contexts?**



**In addition to statute books, Courts through their judgments also create guidelines that are binding on the criminal process and become a part of the ecosystem of the criminal justice system.**

# Setting the wheels in motion

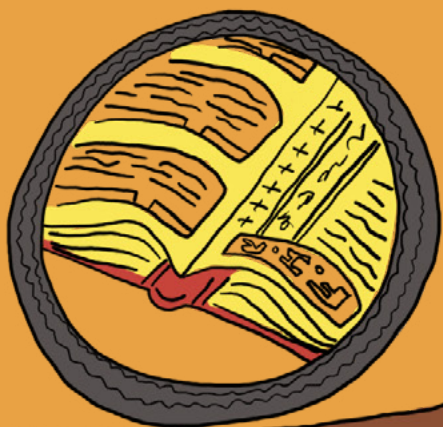
**Step 1:** Ordinarily a criminal investigation by police begins with the registration of a 'First Information Report' (FIR). It will list the different offenses made out on the bare reading of your complaint and list out the names of accused persons (if there are any persons clearly named). It will specify which officer has been marked as the 'Investigating Officer' for the case and will require you to affix your signature to affirm its correctness.

As a victim, you are entitled to a copy of the FIR, free of cost. In theory, any information lodged with the police that discloses commission of an offence that police can investigate without prior permission, requires an FIR be registered by them. In practice, there is no such automatic registration of an FIR.

**Step 2:** If an FIR is registered, the police begin investigating a case. Investigation technically refers to the steps taken by police to collect proof of the allegations in an FIR. Arrests, searches, seizures, questioning witnesses – all of these are steps taken to gather evidence. There is no time limit on how long an investigation can take, except where the suspect has been arrested and in custody. This initial stage is followed by a more in-depth examination of the evidence while framing charge, including looking at whether the material is legally admissible, but without doubting its genuineness at all. If everything is true, but the evidence is not enough the investigations are stopped and the accused is discharged.



A First Information Report will have a unique number which you should note along with its date and name of police station for all future reference about the case.



**Step 3:** Whenever the police conclude an investigation, it files a report with the court giving its recommendation on whether the case should proceed for a trial. When the police make a positive recommendation, the report is called a 'Chargesheet'.

The police are only making a recommendation on whether a case should proceed. The decision to go ahead with a case ultimately rests with the court which can disagree with the police' recommendation and not call upon a person to face trial.

**Step 4:** The fullest answering of 'The Question' takes place at the end of this trial, where the court is invited to test everything and ask itself whether the prosecution has established its case beyond a reasonable doubt. If yes, the accused is convicted. If no, she stands acquitted of all charges.



Note that contrary to some countries, both kinds of verdicts, of guilty or not guilty, can be appealed against in India.



Remember 'The Question'? This is the first of many stages at which the process asks 'The Question'. Only, here, if the evidence demonstrates on a first reading itself that the action committed is, in fact, an offense, does it proceed to a trial where witnesses will come and give testimony on oath.



From this point on in the journey, you must choose between two options and explore the steps involved in each situation through the criminal process. These are:

- A) If you are facing charges or**
- B) If you wish to prosecute the case**



# A) If you are Facing Charges

The Indian criminal process does confer rights to the person accused of a crime, but it would be wise to know and remember that the police hold all the cards, and one must pick one's battles. Let us look at the pre-trial stages and then at the trial stages.

Facing a police investigation in India carries a huge element of risk to personal liberty as police have wide powers of arrest without requiring judicial warrants, and many offences are designated as 'non-bailable' i.e. where bail is not available upon arrest as a matter of right, but is a matter of discretion for the concerned court. To better assess the risk to one's liberty, it is necessary to obtain and study the FIR filed against you.

To guard oneself against the threat of arrest, the CrPC provides for a remedy of 'Anticipatory Bail'. The result is that, in effect, the police will not be able to detain you in custody. Again, this remedy is not available as a matter of course. The court will decide each case on its own facts. It is important to talk to a lawyer and figure out what the best next steps are.



**Remember that police in many states now share FIR copies online, and otherwise steps can be taken to obtain a copy from the local jurisdictional court.**



**If you are arrested, the police have a right to detain you in custody for up to 24 hours, but for any detention longer than that they need a court's permission.**

Where you are arrested for a 'bailable' offence, you are entitled to release if you express a willingness to comply with the nominal conditions that the court or police may impose for release. If it is a 'non-bailable' offence that you are prosecuted for, however, that makes bail contingent on whether the judge thinks it is a fit case or not.



**Find out if your local police station shares copies of the FIRs online. What elements do you identify as common across FIRs?**





There are no statutory rules or guidelines which courts follow while making these decisions, except for a broad rule of thumb that in cases punishable with a maximum of seven years imprisonment an arrest should ordinarily not be carried out. Beyond this, every case stands on its own merits, and the quality of your legal representation will greatly determine the outcome of your bail application.

Arrest and custody are usually sought to interrogate the accused, which brings us to examining what rights does one have in respect of this process of questioning by the police in an investigation.



The Constitution guarantees a right against being compelled to be a witness against oneself. This only offers protection against force being used to get answers, where the burden lies upon the accused to later establish that she was forced into speaking.



**Grab a copy of the IPC and identify some common bailable and non-bailable offences**

Rejections of bail orders do not close the chapter forever – you can move for bail again before the same court in some time and try to show that circumstances have changed since the first round of litigation. Or you can move a superior court (all the way to the Supreme Court) against your initial rejection of bail and try and convince the superior court that the earlier orders were incorrect.

The right to legal advice during questioning whilst outside custody is almost non-existent, and barely existent for persons suffering custodial questioning. What mitigates some of the concerns is that any statement given to the police by any person whether in custody or not is not admissible as evidence of the truth of its contents, including confessions.

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In respect of trials, perhaps the most important elements from a rights' perspective are that an accused has:

- ✿ the right to question all witnesses,
- ✿ has a duty to answer questions posed by the court,
- ✿ and a right to choose whether to appear as a witness or not.

Exercising all or any of these rights, and discharging the duty to answer a court's questions, are matters which require legal assistance to fully understand the consequences of the choices being made.



Check out the fourth chapter of the Legal Services Authority Act of 1987 to see who qualifies for legal aid.

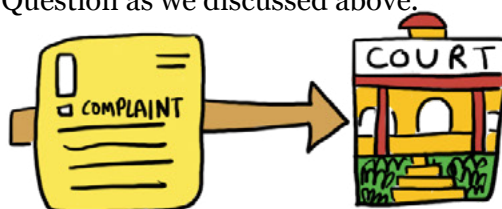


On legal assistance itself, there is a constitutional right to consult an advocate of one's choice and where a person cannot afford legal representation the Legal Service Authority Act of 1987 provides that such persons can avail of free legal assistance at the expense of the government. The process for availing free legal aid is different across all states and the court where an accused person is being produced has a duty to inform her of her right to free legal aid.

## B) If you wish to Prosecute a Case

Imagine if you were Dhruvika and must turn to the criminal process for seeking justice for the wrongs you have suffered. There are some choices to be made at the start itself. If you think you have all the evidence necessary to prove your case, are not under any immediate threat to your life from the accused, and do not need an FIR or some such document for other purposes (for instance, many insurance companies today require a police case to process insurance in cases of car thefts), then

you may wish to not go to the police at all and file a complaint straightaway in court. The court examines the complainant and if it thinks there is sufficient grounds to proceed to trial, it summons the accused and then we begin the process of answering The Question as we discussed above.



If you cannot go directly to court, your only other option is moving the police by filing a complaint. Filing a complaint is usually just the first step, which is followed by visits to the police station to explain the facts to the concerned officer and hope that it leads to registering an FIR. If not, you must write to the superior officer at the district level, and if that does not bring about any results, the last resort is filing an application before the concerned court asking that the police be directed to lodge an FIR.

Once an FIR is lodged, the police take over the investigation and your role as a victim is

- ⚙️ to offer whatever support you can to help them bring the case to court
- ⚙️ handing over available evidence,
- ⚙️ giving your statement to police and, if necessary, to a court (which is assumed as being more reliable).

You have

- ⚙️ the right to oppose any applications for bail that an accused might file
- ⚙️ the right to seek compensation.



**While the CrPC provides compensation upon conclusion of trial, many states have rules offering interim compensation before conclusion of the trial as well.**



**Look up the relevant rules in your state on compensation**

If the police upon concluding an investigation conclude that no case was made out, the law demands a victim be heard before the case is fully closed and the court must give you a fair opportunity to show why the case should go ahead to trial. At trial, if the case was instituted on your own complaint to court, then you remain fully in charge of the prosecution in most cases. If the trial began from an investigation lodged by the police, then the prosecutor is the lead counsel, and a victim can assist the prosecutor through the trial.



# The Many Sites of the Criminal Justice System

Knowing about your rights and the law is not enough without knowing anything about the physical spaces that we have to navigate while making our way through the criminal justice system. This includes, and is not limited to, the courtroom and court complex, the police station, a lawyer's office, and a prison.

In this section, we focus on the police station. Since matters of policing and law enforcement are ordinarily within the governance of India's many states, there is no single representation of what a police station looks like, its many actors, or its many functions. Nevertheless, there are some broad commonalities that we can identify wherever we turn.

Every state is divided into smaller districts for administrative purposes, and within each district is a host of police stations divided across imaginary territorial boundaries drawn for convenience by the authorities.



Knowing which police station governs which area is an important task because this is where you will have to go to lodge a complaint if ever in need of assistance.



Call the helpline (100 or 112) to confirm which local police station covers the area you reside in.

Every local police station is helmed by what the law calls a 'Station House Officer', more familiar by the acronym 'SHO'. This is usually an Inspector level officer (three stars on the shoulder lapel). The SHO is supported by Sub-Inspectors or 'SI' (two stars on the shoulder lapel), Assistant Sub-Inspectors or ASI (one star on the shoulder lapel), Head Constables (two chevron style marks on the upper arm), and Constables. Investigations are usually supervised by officers of the ASI rank or above.



Continuing with the similarities, every police station ordinarily has a 'lock-up' section which is where a person can be detained for up to 24 hours in connection with a case — or longer if such detention is authorised by a competent court. Every police station must also have at least one female police officer.

If you are aggrieved and have come to report a case, you are likely to be directed to the desk of the 'Duty Officer', a police official who is responsible for maintaining the 'General Diary' or 'Daily Diary' and is located near the entrance of the police station. This Diary is the official record of all goings-on in the Police Station, noting down every victim's visit, every officer's movement, and every case registration. The Duty Officer is likely to ask you to record your complaint in writing and hand it over, or s/he may ask you to narrate it and then make an entry based on the narration.

This process results in your complaint being given a formal serial number in the register, which becomes the first official record of your complaint and is commonly known as the 'Diary Number'. It becomes one reference for all future communication about your complaint. Getting a Diary Number is not the same as getting a First Information Report — there are still some hoops to go through, as we see below.

Depending upon what is the alleged crime that you disclosed, your complaint will probably be marked to one of the more senior officials in the police station for some kind of verification. The verification process is also called a 'Preliminary Inquiry' and can, at times, take weeks to complete. If the police official does find enough merit in your complaint, the verification results in the registration of a 'FIR'.



**Based on this section, prepare a checklist of persons, procedures and papers you are likely to encounter. Visit your local police station to see how many of these you are able to identify.**

# Postscript

During the time that this document was being prepared, the triumvirate of India's criminal laws was replaced by new legislation in the form of the Bharatiya Nyaya Sanhita 2023 (BNS) [replacing the Indian Penal Code 1860], the Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS) [replacing the Criminal Procedure Code 1973] and the Bharatiya Sakshya Adhiniyam 2023 (BSA) [replacing the Indian Evidence Act 1872]. While these laws have been passed by Parliament, they have not yet been brought into force. The government may bring the laws into force in one go, or as is more likely, by a staggered process by notifying only some parts at a time.

The coming of these new laws throws up important questions. The biggest one for us being: Is the document I read redundant? Thankfully, the answer to that is a clear 'no'. The new laws have not changed the structure and functioning of the criminal process by a great deal at all, and till such time as they are brought into force, life as we know will remain governed by the existing trinity of the IPC, Cr.P.C., and IEA. Even after the new laws are brought in force, any process that began at a time when the earlier laws were present, would continue to be governed by the earlier set of laws.

In respect of the changes to the criminal process brought about by the new laws, let us deal with them by adopting the same approach as the document, of first looking at what happens if we are ensnared by the process, and then turning to what happens if we must register a case ourselves to seek redressal.

The BNSS has introduced time limits for some parts of investigations and trials in the expectation that this may speed up the process. There are no changes to the structure of

how investigations and trials are conducted, however. Similarly, there are no changes to police powers of arrest, but there appears to be some expansion of the power with judges to order detention of persons during a pending investigation.

For victims, the BNSS has introduced relaxations in terms of where cases can be filed, reducing the need for us to call up 100 / 112 to find out which police station covers which parts of the city to decide where to lodge our case. The time-limits expected to speed up the process naturally will help victims too. But at the same time, there are some new hurdles for a victim seeking justice. In case you file a complaint straightaway in court and do not go to police, BNSS now requires that the accused must be heard even before the court decides to take any action on your complaint.

If you are more interested in exploring the differences and similarities between the old laws and the new ones, check out the entries under 'India' on the Modern Criminal Law Review website which has collected various materials under one roof [<https://crimlrev.net/mclr-resources-2/>].

# Chapter Glossary

## **Anticipatory Bail:**

A person aware that allegations have been made against her regarding commission of an arrestable (cognizable) and non-bailable offence can apply for this remedy, which results in a direction to the police to necessarily grant bail if they wish to arrest.

## **Cognizable offences:**

Crimes for which the police have the authority to arrest a person without needing a warrant. The police have the power to arrest a person without needing a warrant for certain serious crimes like the one Nisha was accused of.

## **Judicial warrants:**

are legal documents that authorize the police to arrest, search, or seize someone or something. They are issued by a magistrate or a judge after examining the evidence and finding probable cause. Judicial warrants in India can be of different types, such as arrest warrants, search warrants, production warrants, or remand warrants.

## **Prosecution:**

The legal proceedings and actions taken against a person accused of committing a crime. The term is used to describe both, the process of holding a trial as well as the legal side which will argue and present the case to the judge that the accused of a crime is guilty.



**Other Chapters in the book**

**Chapter 1: Our Spaces, My Rights**

**Chapter 2: The Constitution and You**

**Chapter 3: Court of Law - Enforcing your Rights**

**Chapter 4: The long arm of the law - Police powers and law enforcement**

**Chapter 5: Electing and working with your representatives - Becoming an engaged citizen**

[Access these and the full book here.](#)

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