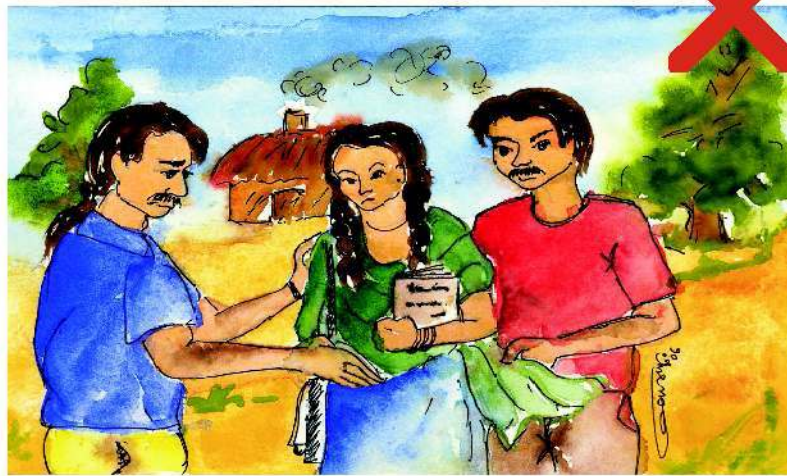


CHAPTER I
CRIMINAL LAWS AND WOMEN

A. OFFENCES AND ITS REPORTING



Renu, a student of class IX, was returning from school when some local boys tried to molest her. She came back and narrated the incident to her mother. Her mother asked her to forget about the incident and advised her to take a different route in future. However, Renu protested and said that she had been taught at the school that no one should succumb to injustice. So she decided to take action and who else but Meera didi was the obvious choice for all help and guidance. Renu approached Meera Didi and narrated the incident, Meera Didi, appreciated Renu's initiative and explained to her the basic provisions of the law, which every girl and a woman should be aware of so as to enable her to stand up and fight for justice and her rights.

❖ **What is an offence?**

- ❖ 'Offence' means any act or omission, which is punishable under the law.
- ❖ Offences against woman_and children include:
 - Rape, Murder, Grievous hurt, Assault
 - Molestation, uttering any word or making any gesture intended to insult the modesty of a woman,
 - Kidnapping, abducting or inducing woman to compel her marriage
 - Inducing any minor girl with intent that such girl may be forced or seduced to illicit intercourse with another person ,Selling or buying any minor for purposes of prostitution
 - Demanding, giving or taking of dowry
 - Subjecting a married woman to cruelty by the husband or any of his relative, Dowry death, etc
 - Marrying again during lifetime of husband or wife, enticing or taking away or detaining with criminal intent a married woman.
 - Voluntarily causing a woman with child to miscarry
 - Concealment of former marriage from person with whom subsequent marriage is contracted Marriage ceremony fraudulently gone through without lawful marriage

Information to police

- ❖ Any person who knows about the commission of an offence or a victim can go to the nearest police station and inform the police that an offence has been committed. This report has to be put down in writing. This is called an FIR or the First Information Report.



Reporting to the police

- ❖ FIR must contain the name and address of the accused, date, place and time of occurrence of offence, the manner of committing the offence, identity of witnesses and all such other particulars,

Duty of the police

- ❖ It is the duty of the police to register the information provided by any person.
- ❖ If the information is given orally, it shall be written down by the officer-in-charge of the police station or under his direction.



Copy of the FIR shall be given to the informant, free of cost

- ❖ The FIR must contain all relevant facts.
- ❖ FIR must be filed at the earliest possible opportunity. This is necessary for the sake of getting all evidence and to apprehend the offender.
- ❖ If a person gives information to the police officer about commission of **non-cognizable offence**, he shall enter such information in the book kept especially for such purpose. The officer shall then refer it to the Magistrate. A non-cognizable offence can also be directly reported to the magistrate, either in writing or orally.

- ❖ Since a non-cognizable offence is generally in nature of a private wrong or a personal offence, the police cannot investigate a non-cognizable offence unless ordered to do so by the magistrate.

Meera Didi told Renu and her mother that molestation is a cognizable offence. Act of pulling a woman, removing her clothes coupled with a request or force her for sexual intercourse, forcible touching any part of the body, uttering any word or making any gesture intended to insult the modesty of a woman are punishable under the Indian penal code. Meera Didi told them that they should accompany her to the police station and file a complaint.

Now even Renu's mother was convinced that not taking action against an offence is to submit oneself to a greater offence.

Remedy in case of refusal to file an FIR by the police:

- ❖ If the officer-in-charge of the police station refuses to record the information, any person aggrieved by such refusal may send, in writing or by post, the substance of such information to the Superintendent of police of the District.
- ❖ A complaint can also be made to the Magistrate. The Magistrate may call for a report from the investigating officer about the progress of the case

B. OTHER IMPORTANT RIGHTS

One day, Radha was alone at her home when suddenly someone knocked at the door. She opened the door to find a police constable waiting for her. He just said that she was under arrest, handcuffed her and took her to the police station. He did not even allow her request to be accompanied by some of her relatives who stayed just next door. At the police station, two male constables searched her and they also misbehaved with her and made sexual advancements. She was not even allowed to meet an advocate and was not even told of the charges against her while in custody.

Radha was in a complete state of shock. It was then that her relatives took her to Meera didi. Meera didi consoled Radha and said that police has the duty to protect people and not to harass them. Though they have been given some special powers for the enforcement of law and order, but they have no right to abuse such powers.

Meera Didi explained the following to Radha and her family members.

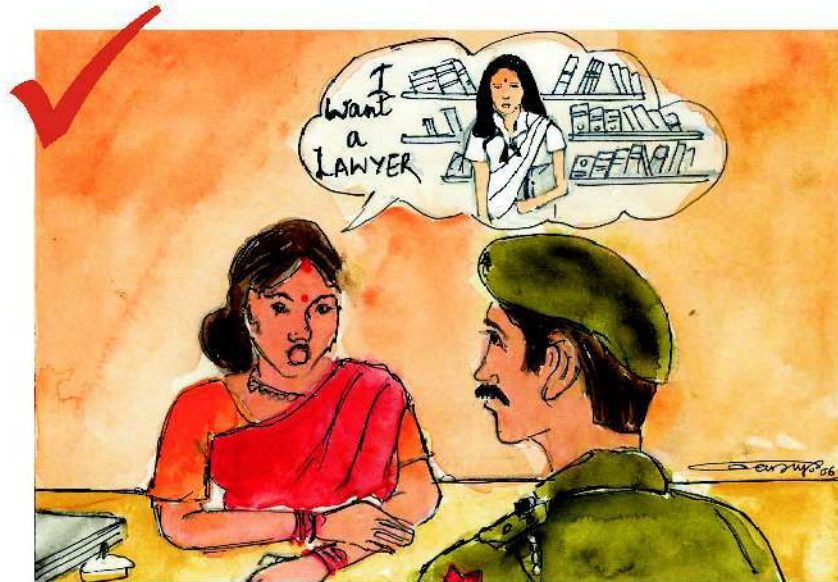
Rights at the time of Arrest:

- ☛ **Right to know the ground of arrest** – the police cannot arrest anybody without disclosing the grounds of arrest.

- ☛ **Right to know the full particulars of the offence.**
- ☛ **Right to inform the relatives/friends** - Every police officer making arrest has to immediately give the information regarding such arrest and the place where the arrested person is being held to any of her friends, relatives or such other persons as may be disclosed or nominated by the arrested person.



- ☛ **It is also the duty of the police officer to inform the person arrested of her rights.**
- ☛ No woman shall be arrested **after sunset and before sunrise**, except in exceptional circumstances and that too after obtaining the prior permission of the judicial magistrate.
- ☛ **Right to be produced before a magistrate without delay**- It is illegal to keep a person in detention for more than 24 hours without the orders of the Magistrate.



- ☛ **Right to consult a legal practitioner**-this right begins from the moment of arrest.



- ☛ **Manhandling and handcuffing**- it is illegal to manhandle a person at the time of arrest.



Right against harassment & torture



- ☛ **Search of arrested person**-Only a female police can search another female. The search should be carried out in a decent manner.



A male police cannot search the female

- A male officer can however, search a woman's house. Such search can be conducted even without a search warrant.
- A search and seizure, if any, must be made in presence of two independent and respectable persons of the locality.
- If anything is seized or recovered a **panchnama** has to be prepared. Two independent witnesses must countersign it.
- **Right to bail** - One has the right to know whether the offence for which she has been arrested is bailable or non-bailable. In a **bailable offence**, a person has a right to be released on bail by the police. In a **non-bailable offence**, the arrested person has to go to the court for bail. Only a magistrate can release such person on bail.

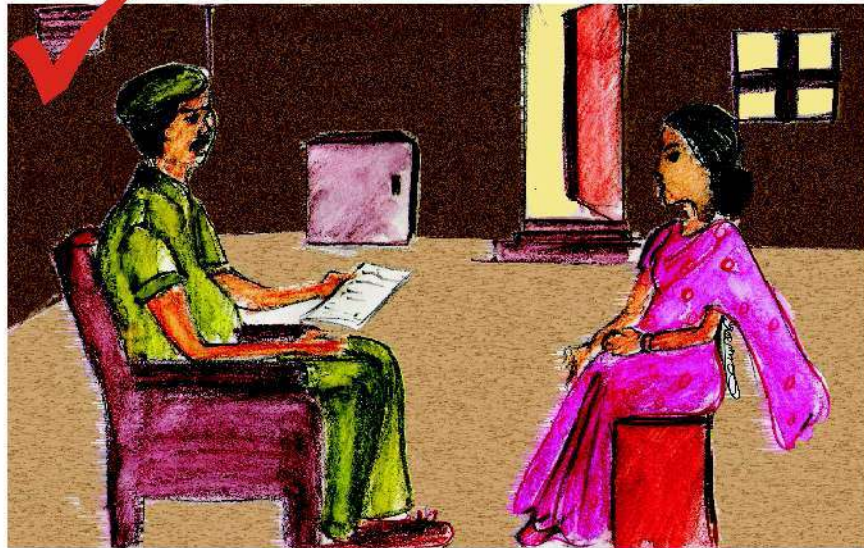
- If the arrested person is accused of a bailable offence and he is an indigent and cannot furnish surety, the Court shall release him on his execution of a bond without sureties.



Right to be examined by a medical practitioner

Enquiry and investigation

- The investigating officer has to give a written order to call anybody for interrogation at the police station.
- No person can be induced, threatened or coerced to answer any question.
- **RIGHT TO PROTECTION OF IDENTITY** – in case of a rape victim it is a duty that her identity shall not be disclosed by anyone including the media.

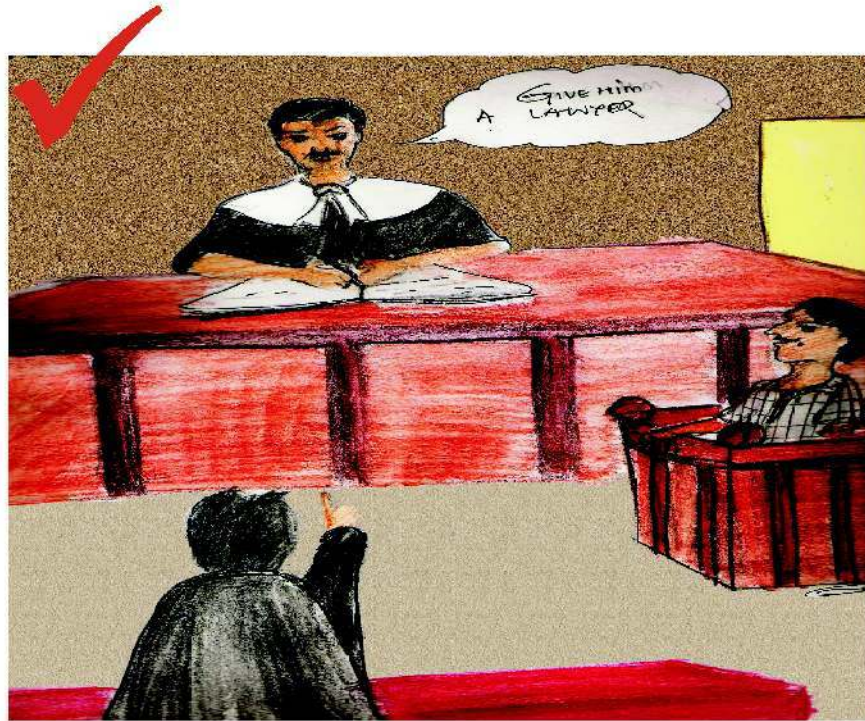


A woman cannot be called to the police station or anywhere else for examination as a witness. They can be questioned only at their residence

- Legal help or help of a friend during interrogation is allowed.

Rights at the stage of trial

1. **Right to free legal aid and right to be informed about it-** it is the constitutional obligation of the State to provide free legal aid to an accused person including a woman



2. **Right to be defended-** every person has the right to be defended by a lawyer at the trial.

Meera Didi thus assured Radha that she would help her in getting justice. Complaint against the alleged misbehavior could be made to the senior police officers and also to the Magistrate.

Radha was now ready to fight for her rights and the knowledge made her feel that she could even stand against the police for enforcement and protection of her rights.

C. IMPORTANT COURT DECISIONS

❖ ***D.K.Basu Vs State of West Bengal (1986) SC CWP 539/86.*** In this landmark case the Supreme Court passed the following directions/Orders

- **Disclosure of identity:-** While carrying out arrest and handling interrogation the police personnel should bear accurate, visible and clear identification and name tags with their designations.
- **Maintenance of record:-** The particulars of all such police personnel who handle interrogation of the person arrested must be recorded in a register.
- **Memo of arrest:-** Duty of the police officer to prepare a memo of arrest at the time of arrest - memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.
- **Disclosure of place of detention:-** Any person arrested or detained held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, that he has been arrested and is being detained at the particular place
- **Time and place of arrest:-** should be notified by the police to the next friend or relative of the arrestee or through the Legal Aid Organization in the District within a period of 8 to 12 hours after the arrest.
- **Duty of Police:-** 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.
- **Entry in Diary:-** An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next

friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

- **Right to medical examination:-** The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.
- The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody
- Copies of all the documents including the memo of arrest, referred to above, should be sent to the illaqa Magistrate for his record.
- The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
- 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.
- No arrest can be made because it is lawful for the police officer to do so. The existence of the power of arrest is one thing. The justification for the exercise of it is quite another.... No arrest should be made without a reasonable satisfaction reached after some investigation about the genuineness and bonafides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person his liberty is a serious matter
- Failure to comply with the requirements hereinabove mentioned shall apart from rendering the concerned

official liable for departmental action, also render him liable to be punished for contempt of court.

❖ **Sunil Batra v. Delhi Administration Writ Petition No. 2202 and 568 of 1977 Supreme Court**

The right against solitary confinement

- Condemned prisoners shall be merely kept in custody. They shall be entitled to the amenities of ordinary inmates in the prison like games, books, newspapers, reasonably good food, the right to expression, artistic or other, and normal clothing and bed. To eat together, to sleep together, to work together, to live together, generally cannot be denied to them.
- Fetters, especially bar fetters, shall be shunned as violative of human dignity, within and without prisons.

❖ **Prem Shankar Shukla v. Delhi Administration (SC)**

- **The right against handcuffing** – in this case the supreme court held that Handcuffing cannot be made routinely - handcuffing to be made on reasonable grounds – the escorting officer has to inform the reason for handcuffing to Judicial Officer before whom accused produced - escorting officer has to get approval from such Officer

❖ **Sheela Barse v. State of Maharashtra CWP 1053-1054 of 1982 (SC)**

The case dealt with **custodial violence to women prisoners** confined in the police lock up in Bombay. Women prisoners assaulted and tortured by the police in the police lock up. Directions issued by Supreme Court that

- Police lock ups where only female suspects should be kept and they should be guarded by female constables.

Female suspects should not be kept in police lock up in which male suspects are detained

- Interrogation of females should be carried out only in the presence of female police officers/constables.
- Whenever a person is arrested by the police and taken to the police lock up, the police will immediately give an intimation of the fact of such arrest to the nearest Legal Aid Committee and such Legal Aid Committee will take immediate steps for the purpose of providing legal assistance to the arrested person at State cost provided he is willing to accept such legal assistance
- Immediately informed of the grounds of his arrest and in case of every arrest it must immediately be made known to the arrested person that he is entitled to apply for bail.
- As soon as a person is arrested, the police must immediately obtain from him the name of any relative or friend whom he would like to be informed about his arrest and the police should get in touch with such relative or friend and inform him about the arrest.

❖ ***Paramanand Katra v. Union of India*** Writ Petition (Criminal) No. 270 of 1988 SC

Right to doctor's assistance – in this case a scooterist was knocked down by a speeding car. Seeing the bleeding scooterist, a person who was on the road picked up the injured and took him to the nearest hospital. The doctors refused to attend on the injured and told the man that he should take the patient to a named different hospital located some 20 kilometers away authorized to handle medico-legal cases. The man carried the victim, lost no time to approach the other hospital but before he could reach, the victim succumbed to his injuries.

Held that - ***preservation of human life is of paramount importance. The patient whether he be an innocent person or be a criminal, it is the obligation of those who are in-charge of the health of the community to preserve life***

- Every doctor whether at a Government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life. No law or State action can intervene to avoid/delay the discharge of the paramount obligation cast upon members of the medical profession... every doctor has total obligation and to treat the injured victim on his appearance before him either by himself or being carried by others.

Every doctor should be aware of this position and this decision shall be published in all journals reporting decisions of this Court and adequate publicity highlighting these aspects should be given by the national media as also through the Doordarshan and the All India Radio.