The powers to arrest rank among the most important in the Indian Constitution since they directly impinge upon a person’s right to freedom, an inalienable right in a democracy like ours. In the interest of maintaining law and order and for preserving the right of other individuals to be able to exercise their right to freedom, it may be necessary to arrest persons who may pose a threat to civil society.

Given the importance of the powers of arrest and the consequences resulting from its exercise, the Criminal Procedure Code (CrPC) has a number of checks and balances that spells out the exact conditions under which an arrest may be made. Unfortunately, this power is also abused, which results mostly from our ignorance.

Following are some pointers that should help us to assert our rights:

**Q. How is ‘arrest’ defined? When is a person ‘arrested’?**

For a term as important as this, arrest is not defined in the CrPC or any other law. It is understood to be a restraint placed on one’s personal liberty.

In practical terms, a person is said to be ‘arrested’ if the police officer making the arrest actually touches or confines the body of the person to be arrested, unless there is a submission to the custody by word or action. A police officer is authorized to use all force necessary to effect the arrest.

**Q. Is a warrant required to arrest a person?**

Not always. A warrant required to arrest a person is known as an arrest warrant.

An ***arrest warrant*** is defined as a written order from a court to a police officer to arrest a person and produce him/her before the court.

**Q. So when can a police officer arrest a person without warrant?**

A police officer is empowered to arrest a person ***without warrant or order from a Magistrate*** under the following conditions:

- When the person has committed a cognizable offence or there is reasonable suspicion, complaint or information that the person has committed a cognizable offence.

- If the person possesses any implement of house breaking; or

- who has been proclaimed as an offender either under this Code or by order of the State Government; or

- in whose possession anything is found which may reasonably be suspected to be stolen property

- who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

- who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

- a requisition for his arrest has been received in oral or written form by another police officer. The burden of providing an excuse in all the above cases will lie with the accused.

- if he is a released convict who breaks any of the terms of his release

- if he has committed an offence outside India that is punishable under an extradition law

- if he belongs to one or more categories of persons specified under sections 109 and 110 of the CrPC.

**Q. That is a very wide list. What checks and balances has the system put in place?**

A police officer can arrest a person without warrant only when there is ‘credible information’ or grounds of ‘reasonable suspicion’ for arrest. Though these terms are hard to define and will vary case to case, the burden of proving that a person ‘deserved’ to be arrested without a warrant rests with the police officer. Willful excess of his powers by a police officer is punishable with a maximum sentence of 7 years, a fine or both.

**Q. What is the form of the arrest warrant?**

The arrest warrant should be in writing, signed by the presiding officer of the court and should bear the seal of the court.

**Q. How long does it remain in force?**

It remains in force until it is cancelled by the court that issued it or until it is executed.

**Q. What all details should it contain?**

To ensure that the correct person is arrested, it should contain the name, father’s name, caste/tribe, nationality and residence of the person to be arrested. It should also specify the offence charged, the name of the district and the court issuing it.

**Q. Under what conditions can a warrant be rejected?**

If the warrant is signed but not sealed, if the details of the person to be arrested are incorrect, the warrant is defective and any arrest issuing therefrom is illegal and a very serious offence under the law.

**Q. Does a person have the right to know the offences under which he/she is being arrested?**

Yes. The person also reserves the right to see the warrant.

**Q. What if the police officer has no power to arrest a person?**

The arrest itself would be illegal in that case. The person is entitled to object to such an arrest.

**Q. Is a warrant required in the event of a non-cognizable offence?**

If a non-cognizable offence is committed, an arrest warrant issued by the court is required. A police officer who arrests a person for a non-cognizable offence without an arrest warrant commits an offence of wrongful restraint or confinement unless the police officer is accorded protection under Sections 81, 96, 97 and 100 to 105 of the CrPC.

If a non-cognizable offence has been committed and this person refuses to give his correct name and address or gives a false one to a police officer can be arrested without warrant. If the correct name and address has been obtained, the person should be released with or without sureties to appear before a Magistrate. In case the bond has not been executed and more than 24 hours have passed after arrest, the person should be sent to the nearest Magistrate having jurisdiction over the case.

You can read more about bails and bonds here.

**Q. What happens after a person is arrested?**

The person ***MUST*** be produced before the Magistrate ***WITHIN*** 24 hours of being arrested. If not produced before a magistrate within that time, the person must either be discharged or sent to the Magistrate. Any extension of the arrest is unlawful unless extended by a special order of the Magistrate.

At the end of the 24 hours, the Magistrate may extend the judicial custody of the accused to a maximum of 15 days at a time if there are adequate grounds for detention. The total period of detention cannot exceed 90 days (for offences punishable with death, life imprisonment or imprisonment for a term not less than 10 years. In all other offences, the maximum period of detention is 60 days.

Irrespective of whether the investigation has been completed, if the accused is not able to furnish bail within 60 days or 90 days as the case may be, custody may be extended. In case of a non-bailable offence, the arrested person may be kept in judicial custody until the trial is over.

**Q. Can a private citizen arrest another person?**

Yes. A private citizen can arrest a person if a cognizable and non-bailable offence is committed in his presence or the person is a proclaimed offender. The person executing the arrest should hand over the arrested person to a police officer or the nearest police station at the earliest.

**Q. Are members of the Armed Forces granted immunity?**

A member of the Armed Forces cannot be arrested for anything done by him/her in the discharge of his/her official duties until the central government grants permission. For arresting a member of the Armed Forces for an offence committed while engaged in the duty of maintaining public order under a state government, permission of the state government is required.

**Q. What are the rules governing the arrest of women?**

Save in exceptional circumstances, no woman will be arrested after sunset and before sunrise. For these exceptional circumstances, a woman officer will obtain prior permission of the Judicial Magistrate within whose jurisdiction the offence is committed or arrest is to be made.

**Q. Is it necessary to handcuff a person?**

No. Unless there is a threat that the person concerned is violent or a desperate character and is likely to escape from custody.

**Q.What are your rights when arrested?**

- The arrested must be informed of the reasons for the arrest.

- The arrested has the right to see a copy of the warrant in case there is one.

- The accused has the right to consult a lawyer of his/her choice. In case the accused is unable to get one, the court can nominate a lawyer to represent the accused from the free legal consultation of the court.

- The arrested has to be produced before a Magistrate within 24 hours of arrest.

- The arrested must be told whether the offence is bailable or not.

- The arrested should, upon request, be examined medically and all major and minor injuries should be recorded in an ‘inspection memo’ which should be signed by the police officer and the arrestee.

The police officer executing the arrest too has some rights to the accused:

- Information regarding the arrest and the place where the arrested person is being held shall be given to the friends, relatives or other persons nominated by the accused.

- The police officer must also inform the accused of this provision.

- An entry of the person who has been informed must also be made.

**Q. What powers does a police officer have for search and seizure?**

Please refer to our section on search and seizure.

--Ends