



Ordinary Citizen's Power to Arrest an Offender- Advocate Nithia

You are a victim of, or a witness to, a crime. Being an ordinary citizen in India, what can you do?

The law permits you to ARREST THE OFFENDER.

The legal provision that empowers an ordinary citizen to arrest a person is found in Section 43 of The Code of Criminal Procedure, 1973, and states that "Any private person may arrest or cause to be arrested any person who in his presence commits a non-bailable and cognizable offence, or any proclaimed offender, and, without unnecessary delay, shall make over or cause to be made over any person so arrested to a police officer, or, in the absence of a police officer, take such person or cause him to be taken in custody to the nearest police station." The principle that forms the essence of this legal provision was set forth in a case in England thus: " For the sake of preservation of the peace, any individual who sees it broken may restrain the liberty of him whom he sees breaking it, so long as his conduct shows that the public peace is being endangered by his acts" (Timothy-1835 4 L. J. Ex. 81)

How, When, Why and WHAT NOT, TO DO:

Any citizen can arrest any other person who *in his presence* commits an offence that may cause tremendous damage to life and limb or damage to property.

If you are unaware of what constitutes a non-bailable and cognizable offence, use common sense; it is rightly said Law is "Common Sense Codified." The offence must be such that a rightful citizen or Police Officer would have arrested a person committing such an act.

You **must** ensure that such person is immediately handed over to the police. You may call the local police helpline to make them aware of such an arrest.

Tread carefully when using force to cause arrest. If you are arresting a violent offender, it is more than likely you will be met with resistance. Your force can and must be proportional to such resistance, never more. It may not be possible to measure and dole out such force, so the best bet is to remain calm.

If you ask for help from those around you, chances are that you will find them to be either (a) unruly or (b) indifferent. Assume that you are on your own. However, do not hesitate to ask for help if you are incapacitated in any way.

You **CAN NOT**:

- Beat the offender violently, especially if the offender is not violent.
- Interrogate the offender and make him talk. This is for the Police Officer to do. You simply cannot intervene in the process of justice except for causing arrest.
- Instigate people to beat up the offender so arrested.
- Restrain the arrested person in confinement beyond absolutely reasonable time required to hand him over to the Police.
- Misuse this provision to settle personal scores.



Remember:

1. If wrongly used, the person thus arrested can file a complaint for "wrongful detention".
2. If there is unnecessary delay in sending a person so arrested to the nearest Police Station, you may be held guilty of abduction or kidnapping.
3. You must remain calm to be able to take a rational decision and to determine the extent of force you require to do justice.

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