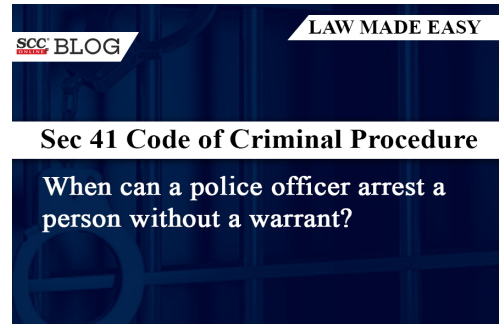


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## [Sec 41 Code of Criminal Procedure] When can a police officer arrest a person without a warrant?

*Can police officers arrest a person without reason? The answer is 'NO' and the explanation is provided in the blog below with an attempt to make the law easy and understandable.*

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When an ordinary person hears the word 'arrest by police', shivers run down their spine. The reason behind such a reaction is not the fear of police, but the lack of legal knowledge of when police can arrest a person. People have several doubts like 'Can police arrest a person on their own whims and fancies?', 'What is the law on arrest of a person with or without warrant', 'When can a police officer arrest without warrant?', and so on. The blog here is an attempt to settle the dust around – "When police may arrest without warrant" under Section 41 of the Code of Criminal Procedure ('CrPC').

**What is Section 41 CrPC? – A Quick Explanation**

Section 41 of the Code of Criminal Procedure provides for the circumstances of when a police officer may arrest a person without warrant. Now if we wish to understand this, it is important to understand what a warrant actually means.

The term is generally used for a statement granting official permission to do something. Legally speaking, Section 2(x) of the Criminal Procedure Code defines warrants case as “a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years”. Thus, a police officer can only arrest a person in case of a serious offence as reflected by the punishment imposed. To avoid arbitrariness during arrest of persons by police officers, detailed pointers have been provided under the Code of Criminal Procedure, 1973.

### **Section 41 CrPC: 9 Points for When Arrest is Necessary under CrPC Sec 41**

1. Section 41(1)(a): Empowers police officer to arrest a person without warrant when a cognizable offence is committed by a person in the presence of police.
2. CrPC Sec 41(1)(b): Provides for arrest by police on receiving a reasonable complaint/information or has reasonable suspicion of a cognizable offence having been committed, which is punishable with imprisonment of less than 7 years, or which may be extended to 7 years if the given set of conditions are satisfied. The additional conditions for such arrest as per Section 41(1)(b)(i) require the police officer to have reason to believe on the basis of such complaint, information, or suspicion that the said offence has been committed.

The Code of Criminal Procedure Sec 41(1)(b)(ii) gives additional set of conditions satisfying the police officer regarding necessity of arrest on the following conditions:

- a. To prevent further offence
- b. For proper investigation
- c. To prevent tampering with evidence
- d. To prevent inducement/threat/promise to anyone related dissuading from disclosing facts
- e. When presence before the Court cannot be ensured unless the person is arrested

In any case, the police have to record reasons in writing for not making an arrest, if such an arrest is not required. In addition to the above, Section 41(1)(ba) of CrPC further provides that arrest may be made if police have reason to believe or if they received credible information of a cognizable offence with punishment of more than 7 years or death penalty.

3. CrPC Sec 41(1)(c): Provides for arrest if a person has been proclaimed offender under the Criminal Procedure Code, or a State Government order.
4. Section 41(1)(d): When a person is found in possession of stolen property or such thing, he/she can be arrested as per this provision.

5. Section 41(1)(e): The clause provides for arrest of the person who obstructs police while such police officer is executing duty or escaped or attempts to escape from custody.
6. Section 41(1)(f): If a person is suspected of being a deserter from the Army, he/she can be arrested.
7. Section 41(1)(g): If reasonable information is received by the police regarding commission of an offence outside India, which is also a punishable offence if committed in India, such a person is liable to be apprehended in India.
8. Section 41(1)(h): The provision empowers police officer to arrest if a released convict commits breach of rule under Section 356(5) of CrPC.
9. Section 41(1)(i): If requisition is received from another police officer specifying a person to be arrested and the very cause of arresting, the police may arrest such person as per the given provision.

CrPC Section 41(2) clarifies that subject to Section 42 CrPC, no person can be arrested by police for a non-cognizable offence except under a warrant or Magistrate order.

## **Landmark Judgments on CrPC Sec 41**

### **Balance of Individual Liberty and Public Order**

The Court through *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273 put a stop over police officers arresting the accused unnecessarily, or the Magistrate authorizing casual/mechanical detention. The Court suggested the authorities to strike a balance between individual liberty and societal order while exercising powers under Section 41 CrPC when police may arrest without warrant.

### **Arrest Without Warrant in Non-Cognizable Offence**

While we discuss arrest without a warrant under Section 41 of CrPC particularly for a cognizable offence, the question arises, can a police officer arrest a person without warrant in a non-cognizable offence?

The Section 41(2) of Criminal Procedure Code, 1973 restricts arrest by Police Officer in a non-cognizable offence. The decision in *Om Prakash v. Union of India*, (2011) 14 SCC 1 makes it very clear that police officers lack any authority to arrest a person without warrant for non-cognizable offences. Thus, the law does not allow a police officer to arrest a person committing an offence without a warrant, unless facts and circumstances of the case warrant so in compliance with Section 41 CrPC.

### **Strict Compliance with CrPC Sec 41 and 41A**

In *Satender Kumar Antil v. CBI*, (2022) 10 SCC 51, the Supreme Court put the duty on the Courts to satisfy themselves on compliance with the relevant provisions of Section 41 and

41-A of Criminal Procedure Code. It upheld the importance of compliance under the said provisions with the words 'Any non-compliance would entitle the accused for grant of bail.'

## Recording Reasons for Arrest under CrPC

Do you think that a police officer can arrest any person without warrant as per his/her whims and fancies? That is not the case since the Supreme Court in *Hema Mishra v. State of U.P.*, (2014) 4 SCC 453 laid that Section 41(1) makes it compulsory for the police officer to record reasons of arrest, or even for not arresting a person in a particular case. The Court further explained that when arrest is not made under Section 41(1) CrPC, police officer has to compulsorily issue a notice of appearance under Section 41-A to such accused. The unwillingness of the alleged accused to whom notice under Section 41-A is issued to identify himself, could be grounds for arrest.

## How to Arrest a Judicial Officer?

Criminal law requires any accused person arrested by the police to be presented before a judge. But what happens if a judge has to be arrested? In a weird instance of Nadiad, wherein, a Chief Judicial Magistrate (CJM) was trapped, arrested, handcuffed and then paraded, the Court took note of it and made sure that such events do not repeat. The Supreme Court in *Delhi Judicial Service Assn. v. State of Gujarat*, (1991) 4 SCC 406 laid guidelines to be followed by State governments as well as High Courts, while arresting Judicial Officers.

## Section 41 of CrPC: Frequently Asked Questions

### Q- What is CrPC section 41 about?

**A-** Section 41 of Code of Criminal Procedure, 1973 lays the conditions for when police may arrest without warrant. The rule otherwise requires police officers to obtain an order from a Magistrate along with a warrant authorizing arrest of a person.

### Q- What is Section 41 and 42 of the CrPC?

**A-** While Section 41 of CrPC provides for circumstances when Police may arrest without warrant, Section 42 of CrPC provides for arrest without warrant in non-cognizable offence on refusal to give name and address.

### Q- What is the Supreme Court Judgement on Section 41 CrPC?

**A-** There are numerous Section 41 CrPC judgments like *Satender Kumar Antil v. CBI*, *Hema Mishra v. State of U.P.*, *Arnesh Kumar v. State of Bihar* are some of the many arrest without warrant case laws by Supreme Court which paved the way for protection of individual rights against arbitrary arrests by the authorities.

**Tags :** arrest of person with or without warrant | arrest without warrant case laws | arrest without warrant in non-cognizable offence | Code of Criminal Procedure |

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