



Bail for Women

For Prelims: Bail Provision in CrPC, Types of Bails

For Mains: Process of Arrests in case of women, CrPC & It's Provisions, Types of Bails

Why in News?

Recently, the [Supreme Court of India](#) granted **interim bail** to activist Teesta Setalvad stating that **“the relief of interim bail is granted to the appellant (Teesta) in the peculiar facts including the fact that the appellant happens to be a lady”**.

- [The Chief Justice of India](#) also made a reference to the bail provision in [Code of Criminal Procedure CrPC](#) that says **“being a woman is a possible ground for granting bail, even when otherwise it cannot be considered.”**

What are the Provisions available for Bail for Women?

- **The Code of Criminal Procedure CrPC:**
 - **Section 437 of the CrPC** deals with bail in case of [non-bailable offences](#). According to it, **person shall not be released on bail if:**
 - There is **reasonable ground to believe** that he has committed an offence **punishable with death or life imprisonment**, or
 - He has been **previously convicted for an offence** punishable with death, life imprisonment, or for **a term of seven years or more, or**
 - He has been convicted on **two or more occasions** on other offences with a **term between three and seven years**.
 - However, **Section 437 of the CrPC** also contains exceptions such as the court may grant bail even in these cases, if such person is **under the age of 16 or is a woman or is sick or infirm**.
- **Other Provisions:**
 - When a police officer requires the **attendance of any person** who he believes is acquainted with a case under investigation, the person **has to appear before the officer** (Section 160).
 - However, **no woman shall be required to do so** at any place other than the place in which she resides.
 - In its 84th and 135th Report in 1980 and 1989, the [Law Commission](#) suggested that the word **‘place’** is ambiguous, and it would be better to amend it to **‘dwelling place’**.

What does the CrPC say on the Arrest of a Woman?

- **Process of Arrest:**
 - A police officer **may arrest a person** who has committed a [cognisable offence](#) without a judicial order or a warrant (Section 41).

- If the person **does not submit to custody** based on the word or action of the police, **Section 46 enables the police officer to confine the person physically to effect the arrest.**
 - In 2009, a provision was added in CrPC to the effect that where a **woman is to be arrested, only a female police officer may touch the woman's person**, unless circumstances otherwise require.
- In 2005, through an amendment, a subsection was added to Section 46 to **prohibit the arrest of a woman after sunset or before sunrise.**
 - **In exceptional circumstances**, a woman police officer can obtain the prior permission of a **judicial magistrate** to make the arrest.
- **In Cases of Non-Appearance:**
 - The police may **seek entry into any premises** where they suspect that a person who is required to be arrested is present.
 - In a situation where any such place is an apartment in the occupancy of a female **(who is not the person to be arrested)** and if the woman is one who does not appear in public, **the police have to give notice to her so that she may withdraw before they enter it** (Provision to Section 47).
 - It adds that they shall **afford her every reasonable facility** for withdrawing before they break open and enter the place.
 - In another exception, a woman who intends to file a **defamation case**, but is one who does not appear in public according to custom, can ask someone else to file the complaint on her behalf.

What are Constitutional Provisions in India against Arrest?

- **Article 22:**
 - **Article 22** of the **Indian Constitution** grants protection to persons who are arrested or detained.
 - **Detention is of two types:**
 - Punitive Detention
 - Preventive Detention
 - **Punitive detention** is to punish a person for an **offence committed by him after trial and conviction** in a court.
 - **Preventive detention**, on the other hand, means **detention of a person without trial and conviction by a court.**
 - Article 22 has two parts—the first part deals with the **cases of ordinary law** and the second part deals with the **cases of preventive detention law.**

| Rights Given Under Punitive Detention | Rights Given Under Preventive Detention |
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| <ul style="list-style-type: none"> ▪ Right to be informed of the grounds of arrest. | <ul style="list-style-type: none"> ▪ The detention of a person cannot exceed three months unless an advisory board reports sufficient cause for extended detention. ▪ The board is to consist of judges of a high court. |
| <ul style="list-style-type: none"> ▪ Right to consult and be defended by a legal practitioner. | <ul style="list-style-type: none"> ▪ The grounds of detention should be communicated to the detenu. ▪ However, the facts considered to be against the public interest need not be disclosed. |
| <ul style="list-style-type: none"> ▪ Right to be produced before a magistrate within 24 hours, excluding the journey time. | <ul style="list-style-type: none"> ▪ The detenu should be afforded an opportunity to make a representation against the detention order. |
| <ul style="list-style-type: none"> ▪ Right to be released after 24 hours unless the magistrate | <ul style="list-style-type: none"> ▪ N/A |

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| authorises further detention. | |
| ▪ These safeguards are not available to an enemy alien. | ▪ This protection is available to both citizens as well as aliens. |

What is a Bail & Its Types?

▪ About Bail:

- Bail is the **conditional/provisional release** of a person held under legal custody (**in matters which are yet to be pronounced by the Court**), by undertaking a promise to appear in the Court as and when required. It signifies a security/collateral deposited before the Court for release.

▪ Types of Bail in India:

◦ Regular Bail:

- It is a direction given by the Court (any Court within the country) to **release a person who is already under arrest and kept in police custody.**
 - For such Bail, a person can file an application under **Section 437 and 439 of the CrPC.**

◦ Interim Bail:

- Bail granted for a **temporary and short period** by the Court till the application seeking **Anticipatory Bail or Regular Bail is pending** before a Court.

◦ Anticipatory Bail:

- A direction issued to **release a person on Bail even before the person is arrested.**
 - In this situation, there is apprehension of arrest and the **person is not arrested before the Bail is granted.**
 - For such Bail, a person can file an application under **Sec. 438 of the Code of Criminal Procedure (CrPC).**
 - It is issued only by the **Sessions Court and High Court.**

[Source: TH](#)

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