



## 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 84<sup>th</sup> and 135<sup>th</sup> 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.**

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

authorises further detention.	
<ul style="list-style-type: none"> <li>▪ These safeguards are <b>not available to an enemy alien.</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ This protection is <b>available to both citizens as well as aliens.</b></li> </ul>

## 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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