

nyaaya

ARREST ED

An educational guide explaining the laws regarding arrests & bail in India

The right to be free is the most basic human right. However, living with hundreds of other free individuals, means that there may arise a need to curb this right if it proves to be beneficial for justice.

This curbing of freedom under specific rules and conditions is referred to as an arrest.

There exist many ifs and buts when it comes to arrests. In India, an arrest is when a person is physically detained by the police the rules of which are explained here

specifically for adults (Age 18+)

Generally the police need permission from the magistrate to arrest someone. This permission is called a warrant & you have the right to ask to see this warrant in the situation of an arrest.

Along with that, you have a few other *rights* as well.



You can ask the police for identification & they must have accurate identification visible, including name, designation etc



You can ask to be examined by a medical professional or a doctor for injuries while you are in custody



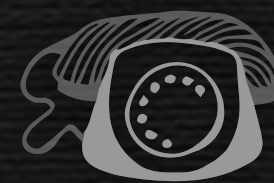
No person can be detained without being informed of the reasons & basis in law for arrest.



You can ask to be informed about your eligibility for bail



You should get a copy of the signed inspection memo



You can ask the police to call your lawyer



Along with these rules, there are a few specific guidelines for arresting a woman. Women can't be arrested before sunrise & after sunset.

Although there can be a few exceptions when this rule can be relaxed, the presence of a female constable is needed as well while arresting women.

Along with the police,
the magistrates (judges & tehsildars)
also have the power to place someone under arrest.

Post an arrest,

- It is a duty of the police to inform the **police control room** of the arrest.
- Along with that, investigations carried out as a **case diary** are submitted to the magistrate.
- **A charge sheet** which is a record of the charges made against a person are also submitted as well.



If there is a reasonable suspicion that someone has committed a crime, but the police are of the opinion that an arrest is NOT required, they can issue a notice instead.

The person must comply with the terms of the notice & as long as they do, the police would not arrest.



A contrasting scenario is when a person can get arrested without any warrant/notice. These are called cognizable offences, & can be of various kinds

In the scenario that -

The court has proclaimed a person as an offender

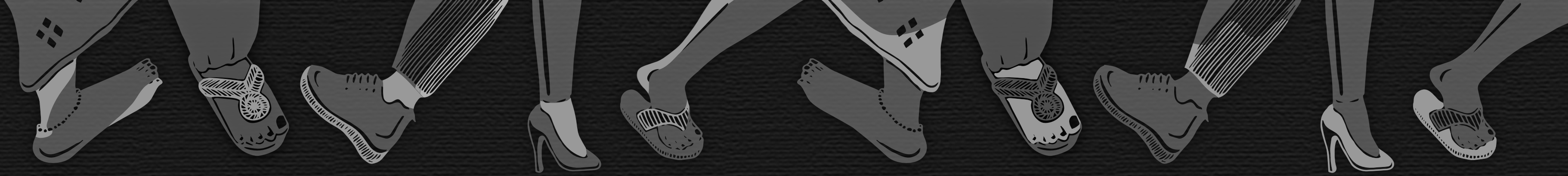
A person is found with stolen property

A person is causing trouble to an on duty police officer

A person has escaped from custody or jail

A crime is being committed in front of the police

There is reliable information or complaint that a person has committed a serious offence



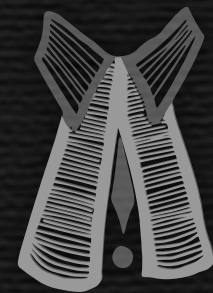
A famous legal maxim states, “It is better that 10 guilty escape than 1 innocent suffer”. Accordingly, there are also laws which can protect your fundamental rights against illegal and unconstitutional arrests. In such cases, one can file what is called a

HABEAS CORPUS Petition

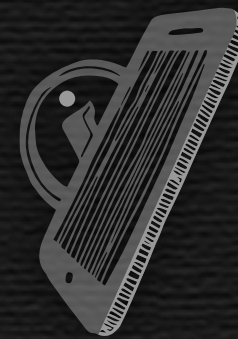
before any High court or Supreme court, and this is a fundamental right. Although this right is very broad, some examples in the light of which one file such a petition are -



Not being informed of reason of arrest and basis in law for the arrest by authorities



If denied the right to be defended by a legal practitioner of arrested person's choice



If information & details about the arrest aren't given by the police to friends/family of arrested person



If person isn't produced in front of amagistrate within 24 hours of arrest by police along with all required documents

BAIL

If you are placed under arrest, you have the **right to bail**, if the offence is a bailable offence. Especially if you are a woman, minor or physically unfit. The essential idea behind the concept of a bail is that if there isn't any substantial risk of the accused fleeing, then there is no reason for the person to remain imprisoned. Thus, bail is essentially when an accused promises that he will not run away or commit more crimes if released into society.

To make sure this promise is kept, the court follows some or all of the following 3 procedures.



Bail Bond

Money/Property deposited to the court to ensure that the accused does not flee. The bail bond is mandatory.



Personal Bond

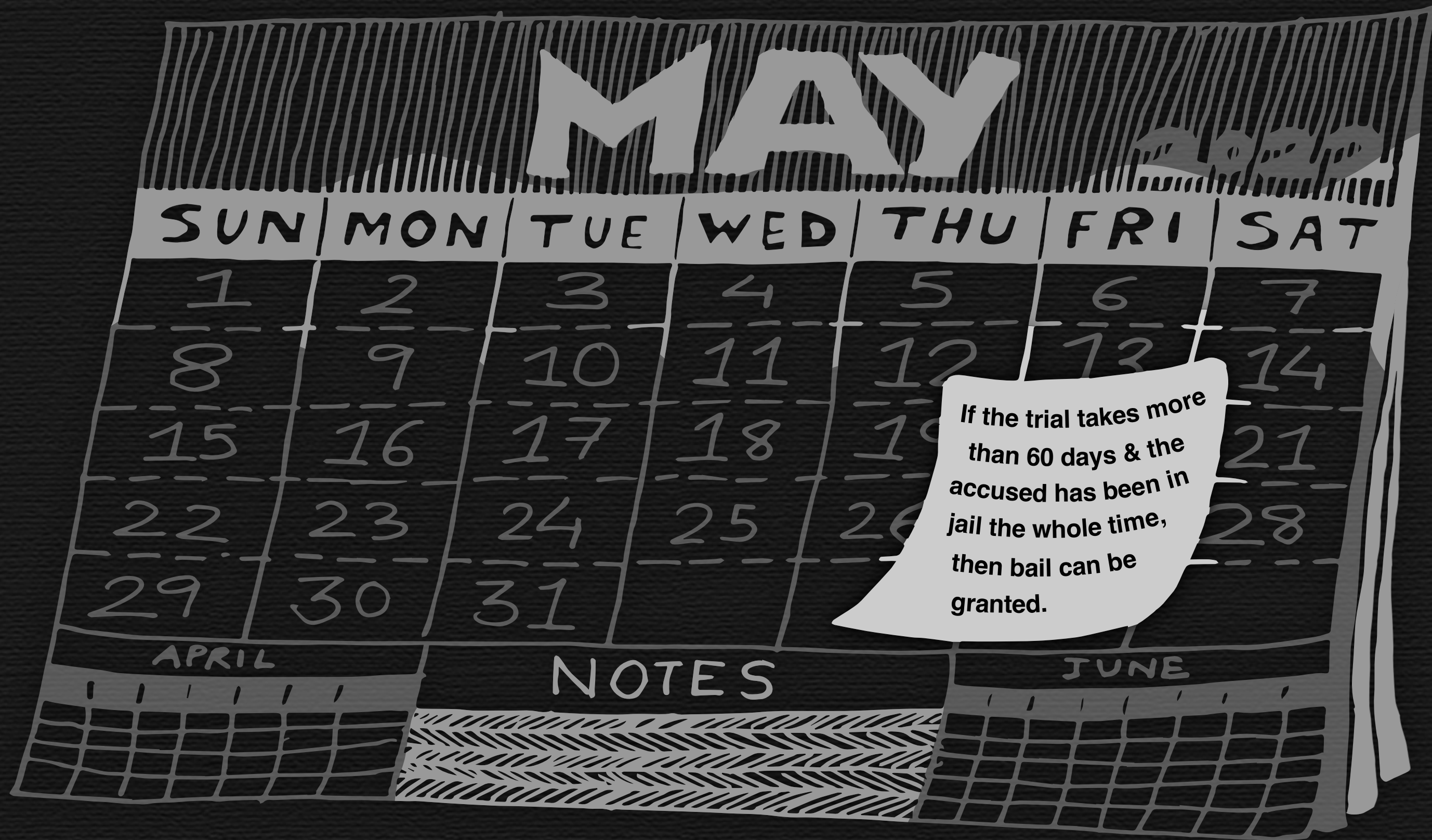
The court may release the accused on the basis of a promise, even forgiving the bail bond. This is based purely on the court's discretion.



Surety

A person who takes the responsibility in court for the accused, that they won't run away. This role can be passed on to another person.

It is possible for a person to get bail even for a non bailable offence albeit under strict conditions.
Either if it appears during the trial that the person has NOT committed the non bailable offence



It is even possible to get bail before you have even been arrested even in the case of non bailable offences. This law is called

ANTICIPATORY BAIL

and it allows a person to apply for bail even when not arrested if an FIR has been filed and they fear arrest in the near future. However, along with the rules of regular bail, there are a few promises that the person has to satisfy.

Person should be available for police interrogation as needed.

Person must not directly or indirectly threaten anyone who knows case facts.

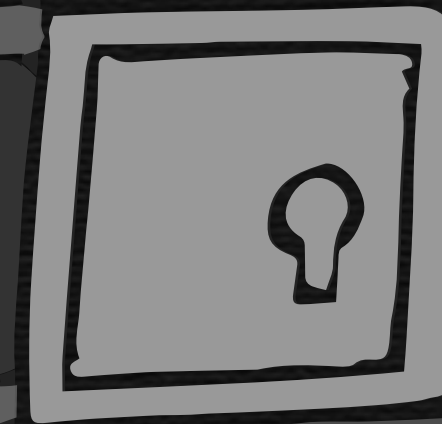
Person should not leave India without prior court permission.



Although bail is a right for any person facing arrest even for non bailable offences, there are times when the court can refuse to grant bail at all.

If the accused is facing a death penalty or a sentence of life imprisonment or imprisonment for more than 7 years the court can refuse to grant bail

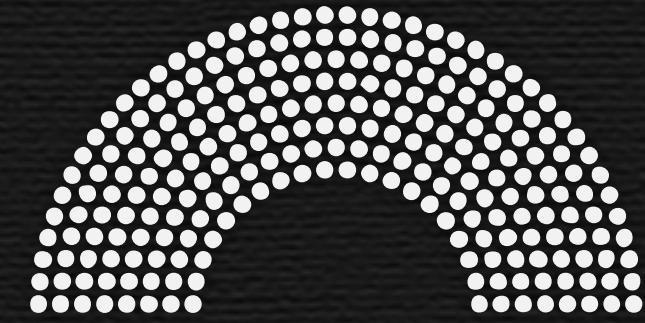
If the offence is cognizable / if the person has been convicted previously on 2 or more cognizable offences, then also the court can refuse to grant bail



The court can also CANCEL a granted bail if intimidating, bribing or tampering with a witness. ANY breaking of the conditions of bail can also lead to granted bail being cancelled. In the case of bothailable and nonailable offences, if the court cancels bail, then the person will be re-arrested.

In India, trials can go on for years together. An arrested person whose trial is going on (referred to as an “under-trial” prisoner has certain rights to being released to avoid being detained for years till proven guilty. The maximum jail time for such cases depends on the sentence for the crime the person has been charged for. If the person has been in jail for half the sentence as specified for that offence by the law, the court must release them





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An arrest can be a distressing event for any individual and their close ones.
Knowing your rights as a citizen of India regarding breaking the law can prove to be crucial for your safety!

Know more about arrests and bail here : <https://nyaaya.org/topic/arrest/>