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BAIL JURISPRUDENCE IN INDIA – A CRITICAL ANALYSIS

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Abstract

The jurisprudence surrounding bail in India reflects an ongoing tension between the constitutional guarantee of personal liberty and the imperatives of criminal justice administration. While the Supreme Court has progressively interpreted bail provisions under the Criminal Procedure Code, 1973 in light of Article 21 of the Constitution, the practical realities remain troubling. Millions of undertrial prisoners, often from marginalized backgrounds, continue to face prolonged detention due to poverty, lack of legal aid, and discretionary bail decisions. This paper critically analyzes the evolution of bail jurisprudence in India, focusing on landmark judicial rulings, structural inequalities, and the recent criminal law reforms introduced under the Bharatiya Nagarik Suraksha Sanhita, 2023. It also draws comparative insights from jurisdictions such as the UK and the US to suggest reforms aimed at creating a fairer and more accessible bail system in India.

Keywords: Bail, Criminal Justice, Article 21, Undertrial Prisoners, Anticipatory Bail, BNSS 2023, Supreme Court of India, Judicial Discretion, Comparative Law, Bail Reform

1. Introduction

Bail is not merely a procedural formality in the Indian criminal justice system; it is a profound expression of the right to personal liberty under Article 21 of the Constitution of India. The presumption of innocence until proven guilty is a foundational principle of criminal law, and bail operates as a mechanism to uphold that presumption by allowing the accused to remain free, subject to conditions, during the pendency of trial. The Supreme Court has emphasized that the concept of bail embodies a balance between the interests of justice and the fundamental rights of the individual, and that incarceration without trial must be the exception rather than the rule.⁴⁹⁷

In practice, however, the administration of bail in India has faced serious challenges. Disparities in judicial discretion, socio-economic

bias, delays in bail hearings, and the misuse of pre-trial detention have led to a significant number of undertrial prisoners languishing in jails across the country.⁴⁹⁸ This gap between the theory and practice of bail law necessitates a critical and constitutional analysis.

Importance of Bail in the Indian Criminal Justice System

Bail serves as a safeguard against arbitrary detention, preserving both the liberty of the individual and the integrity of the legal process. As Justice V.R. Krishna Iyer famously noted, "The issue of bail is one of liberty, justice, public safety and burden of the public treasury."⁴⁹⁹ The current discourse around bail is particularly significant in light of recent legislative proposals

⁴⁹⁸ Y. Singh, *Evolution of Bail Jurisprudence: In the Prospect of the Constitution and New Criminal Laws*, SSRN (2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5012961.

⁴⁹⁹ *Gudikanti Narasimulu v. Public Prosecutor*, (1978) 1 SCC 240.

⁴⁹⁷ *Sanjay Chandra v. CBI*, (2012) 1 SCC 40.

such as the *Bharatiya Nagarik Suraksha Sanhita, 2023*, which seeks to overhaul the procedural criminal framework in India. These developments invite a renewed inquiry into the philosophical and practical underpinnings of bail jurisprudence.

Research Objectives and Methodology

The primary objective of this research is to critically examine the evolution, structure, and application of bail laws in India, with special emphasis on:

- Judicial interpretation of bail in landmark cases,
- Challenges and inconsistencies in the application of bail law,
- The socio-legal implications of pre-trial detention, and
- The potential impact of proposed criminal procedure reforms.

This study adopts a doctrinal legal research methodology, relying on primary sources such as constitutional provisions, statutes (especially the Code of Criminal Procedure, 1973), and judicial decisions from the Supreme Court and High Courts. Secondary sources including peer-reviewed articles, legal commentaries, and law commission reports are also used to support and critique the doctrinal base.

2. The Concept and Evolution of Bail

The roots of bail in India trace back to English common law, where it emerged as a safeguard against arbitrary imprisonment. Under the Magna Carta (1215), the foundational principle was that “no free man shall be seized or imprisoned... except by the lawful judgment of his equals or by the law of the land.”⁵⁰⁰ This laid the groundwork for modern bail as a legal tool to balance state interests in prosecution with individual liberty.

India, being a former British colony, inherited this framework and adapted it through both colonial statutes and post-independence constitutional principles. The legacy of “bail is a rule and jail is an exception”—a dictum of common law origin—was incorporated into Indian jurisprudence, especially through judicial interpretation in the post-independence era.⁵⁰¹

Bail and Personal Liberty under Article 21

Article 21 of the Constitution of India guarantees that “no person shall be deprived of his life or personal liberty except according to procedure established by law.” Bail represents one of the most vital expressions of this right. The Supreme Court of India has repeatedly held that the denial of bail amounts to a deprivation of liberty and must be justified on compelling grounds.

In *Sanjay Chandra v. CBI*, the Court remarked that pre-trial incarceration without justification violates the presumption of innocence and the right to life and liberty.⁵⁰² The judicial interpretation of Article 21 has expanded to include fair trial, legal aid, and bail as integral parts of the right to liberty. In *Hussainara Khatoon v. State of Bihar*, it was observed that indefinite detention of undertrials due to inability to furnish bail was unconstitutional.⁵⁰³

Statutory Framework: CrPC 1973 (Sections 436–439)

The Code of Criminal Procedure, 1973 (CrPC), codifies bail provisions under Sections 436 to 439:

- Section 436 deals with bailable offences, where bail is a matter of right.
- Section 437 outlines conditions for non-bailable offences, placing discretion with magistrates.
- Section 438 (introduced later) provides for anticipatory bail, a unique safeguard

⁵⁰⁰ *Magna Carta*, ch. 39 (1215); see also Y.P. Singh, *Bancusprudence*, J. Indian L. Inst., 2021, <https://www.jstor.org/stable/27248396>.

⁵⁰¹ J.P. Dubey, *BAIL: Law and Procedure with Tips to Avoid Police Harassment*, J. Indian L. Inst., 2011, <https://www.jstor.org/stable/45148571>.

⁵⁰² *Sanjay Chandra v. CBI*, (2012) 1 SCC 40.

⁵⁰³ *Hussainara Khatoon v. State of Bihar*, (1979) AIR 1369 (SC).

where a person can seek bail before arrest.

- Section 439 gives High Courts and Sessions Courts special powers to grant or deny bail.

These provisions aim to distinguish the severity of offences and allow judicial discretion while preventing unnecessary custodial detention. However, criticisms persist regarding inconsistent application, especially when economic or political status influences bail decisions.⁵⁰⁴

3. Judicial Interpretations and Landmark Cases

Judicial interpretation has been the lifeblood of bail jurisprudence in India. Over the decades, the Supreme Court has played a transformative role in expanding, clarifying, and at times redefining the principles governing the grant and denial of bail. Through landmark judgments, Indian courts have continuously reiterated the constitutional mandate under Article 21, ensuring that bail is not withheld arbitrarily and that personal liberty remains paramount.

One of the earliest and most influential cases is *Gudikanti Narasimhulu v. Public Prosecutor*,⁵⁰⁵ where Justice V.R. Krishna Iyer famously observed that bail is the rule, jail is the exception, marking a turning point in the court's understanding of pre-trial detention. This case introduced a more humanitarian and rights-centric interpretation of bail, emphasizing that denial should be grounded in real risk—such as absconding or tampering with evidence—and not mere accusations.

In *Hussainara Khatoon v. State of Bihar*,⁵⁰⁶ the Supreme Court condemned the prolonged incarceration of undertrial prisoners solely due to poverty and inability to furnish bail bonds.

⁵⁰⁴ Y. Singh, *Evolution of Bail Jurisprudence: In the Prospect of the Constitution and New Criminal Laws*, SSRN (2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5012961.

⁵⁰⁵ *Gudikanti Narasimhulu v. Public Prosecutor*, (1978) 1 SCC 240.

⁵⁰⁶ *Hussainara Khatoon v. State of Bihar*, AIR 1979 SC 1369.

The Court held such detention to be a violation of Article 21 and emphasized that the "procedure established by law" must be fair, just, and reasonable. This ruling brought the plight of thousands of poor undertrials into mainstream legal discourse and laid the groundwork for legal aid reforms in India.

In *Sanjay Chandra v. CBI*,⁵⁰⁷ the Court stressed the importance of the presumption of innocence and remarked that bail should not be denied merely because of the seriousness of the accusation. The Court emphasized that pre-trial imprisonment should not be used as a punishment and that economic offences, though serious, do not automatically justify denial of bail if no flight risk exists.

Another watershed judgment is *Arnesh Kumar v. State of Bihar*,⁵⁰⁸ where the Court criticized the mechanical arrests made by police in cases under Section 498A of the Indian Penal Code. The Court issued specific guidelines stating that arrest should not be automatic and that police must record reasons before denying bail. This case underscored procedural fairness and the need to protect liberty from arbitrary executive actions.

Finally, in *Satender Kumar Antil v. CBI*,⁵⁰⁹ the Court laid down comprehensive guidelines for bail in cases where chargesheets are not filed on time. It reiterated the principle that liberty cannot be sacrificed on the altar of delay and reinforced judicial accountability in bail decisions. The judgment attempted to systematize bail procedures and ensure that courts apply their discretion uniformly and constitutionally.

Evolution of Anticipatory Bail: The Sibia Case

The jurisprudence of anticipatory bail in India reached its defining moment in the landmark case of *Gurbaksh Singh Sibbia v. State of Punjab* in 1980. This decision remains a constitutional bedrock for interpreting Section

⁵⁰⁷ *Sanjay Chandra v. CBI*, (2012) 1 SCC 40.

⁵⁰⁸ *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.

⁵⁰⁹ *Satender Kumar Antil v. CBI*, (2022) 10 SCC 51.

438 of the Code of Criminal Procedure (CrPC), 1973, which provides for the grant of bail *in anticipation* of arrest. The core question before the Supreme Court in this case was whether anticipatory bail could be granted without limitations and what guiding principles courts should adopt while exercising this power.

The Court, in a five-judge constitutional bench, held that anticipatory bail is a statutory right intended to safeguard the individual from the possibility of harassment and unjustified arrest, especially in politically motivated or fabricated cases.⁵¹⁰ The bench explicitly rejected any attempt to impose rigid or blanket conditions on anticipatory bail, affirming that each application must be decided on the basis of the facts and circumstances of the case. The Court emphasized that the discretion granted under Section 438 must be exercised judiciously, not mechanically, and that any blanket refusal or narrow interpretation would defeat the very object of the provision.

Crucially, the Court clarified that anticipatory bail does not confer immunity from arrest altogether, but merely ensures that the person can remain free pending investigation, subject to conditions imposed by the court. This judgment laid the foundation for a rights-oriented approach to anticipatory bail, situating it within the broader spectrum of Article 21 rights—especially the right to dignity and freedom from arbitrary state action.

The *Sibbia* case remains a guiding precedent for Indian courts even decades later, especially in cases involving politically sensitive charges, personal vendettas, or where arrest is used as a tool of coercion. Later judgments such as *Siddharam Satlingappa Mhetre v. State of Maharashtra* reaffirmed *Sibbia*, underscoring that liberty should not be sacrificed at the altar of procedural formalism.⁵¹¹

5. Principles Governing Grant and Denial of Bail

The legal principles governing the grant or denial of bail in India are rooted in a delicate balance between the rights of the accused and the interests of justice. While the statutory framework under Sections 436 to 439 of the CrPC outlines the basic procedural parameters, it is judicial discretion that largely determines the outcome of bail applications. Indian courts have reiterated that this discretion must be exercised judiciously and not arbitrarily, guided by constitutional values and evolving jurisprudence.⁵¹²

The discretionary power of courts is central to bail decisions, particularly in non-bailable offences. While in bailable offences (Section 436 CrPC), bail is a right, in non-bailable cases (Section 437), the decision rests on the judge's assessment of various factors—the nature of the offence, the possibility of the accused fleeing justice, tampering with evidence, or influencing witnesses.⁵¹³ However, courts are also bound by the broader constitutional guarantee under Article 21, which mandates that deprivation of personal liberty must be fair, just, and reasonable. In *Gudikanti Narasimhulu v. Public Prosecutor*, the Court famously held that bail should not be denied merely because the charge is serious; rather, it must be based on real risk and not abstract fears.⁵¹⁴

Another key consideration is the grounds of arrest and reasons for continued detention. In *Arnesh Kumar v. State of Bihar*, the Supreme Court criticized the practice of routine arrests, stating that the power to arrest must be exercised with restraint and recorded justification. The Court mandated that police officers and magistrates provide detailed reasons when deciding to arrest or deny bail.⁵¹⁵ This decision institutionalized a higher threshold for custodial detention, particularly in offences

⁵¹⁰ *Gurbaksh Singh Sibbia v. State of Punjab*, (1980) 2 SCC 565

⁵¹¹ *Siddharam Satlingappa Mhetre v. State of Maharashtra*, (2011) 1 SCC 694.

⁵¹² *Dataram Singh v. State of Uttar Pradesh*, (2018) 3 SCC 22.

⁵¹³ *Criminal Procedure Code*, §§ 436–439, No. 2 of 1974 (India).

⁵¹⁴ *Gudikanti Narasimhulu v. Public Prosecutor*, (1978) 1 SCC 240.

⁵¹⁵ *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.

punishable with imprisonment of less than seven years.

The distinction between bailable and non-bailable offences also plays a pivotal role. Bailable offences typically involve less severe punishments and do not pose serious threats to public order, hence courts are expected to grant bail as a matter of course. In contrast, non-bailable offences demand a more rigorous scrutiny due to the potential gravity and impact of the alleged crime. Even here, though, liberty must not be denied as a form of punishment before trial.

Perhaps the most profound principle is the presumption of innocence—a golden thread that runs through all criminal law. The Supreme Court in *Sanjay Chandra v. CBI* underscored that this presumption is not just a theoretical right but a substantive guarantee that bail jurisprudence must honor.⁵¹⁶ The Court warned against using pre-trial detention to appease public outrage or as a substitute for proper trial, reinforcing that bail is a constitutional safeguard, not a privilege granted at the state's mercy.

Challenges and Critiques of Bail Jurisprudence in India

Despite a constitutionally guaranteed right to personal liberty, bail jurisprudence in India continues to face significant practical and systemic challenges. One of the most glaring concerns is the overcrowding of prisons due to the excessive detention of undertrial prisoners, many of whom remain behind bars for extended periods simply because they cannot afford bail.⁵¹⁷ Socio-economic discrimination remains embedded in the system, where the affluent often secure bail with ease, while the poor languish in custody. The absence of uniform judicial standards has also led to

⁵¹⁶ *Sanjay Chandra v. CBI*, (2012) 1 SCC 40.

⁵¹⁷ A. Sharma & D. Shetty, *Prison Pandemonium: The Consequence of Prison Overcrowding on India's Justice System*, Human Rights Law Rev. (2025), <https://humanrightslawreview.in/wp-content/uploads/2025/01/Prison-Pandemonium-The-Consequence-of-Prison-Overcrowding-on-Indias-Justice-System.pdf>.

arbitrary and inconsistent decisions, undermining public trust in the justice system.

Courts have acknowledged the misuse of arrest powers by police, particularly in cases under special laws like the UAPA or NDPS Act, where the threshold for bail is unusually high. Scholars argue that the bail process, instead of being a procedural right, has turned into an oppressive ordeal marked by uncertainty and class bias.⁵¹⁸ Delays in filing chargesheets, lack of proper legal aid, and procedural lapses often result in prolonged incarceration—effectively punishing the accused before trial.

Impact of Criminal Law Reforms (2023 Onwards)

In 2023, the Indian government introduced three major criminal law reform bills to replace the IPC, CrPC, and Evidence Act with the *Bharatiya Nyaya Sanhita (BNS)*, *Bharatiya Nagarik Suraksha Sanhita (BNSS)*, and *Bharatiya Sakshya Bill* respectively. The BNSS, 2023, which replaces the CrPC, has retained bail provisions but attempts to introduce procedural efficiencies like mandatory timelines for investigation and digital hearings.⁵¹⁹

However, critiques highlight that the reforms fail to address the core structural issues plaguing bail jurisprudence—such as vague police powers, judicial discretion without checks, and the lack of a standardized bail policy. According to Sharma and Shetty, the reforms are largely cosmetic and fail to engage in rights-based restructuring of the bail system.⁵²⁰ Moreover, while the BNSS recognizes the problem of

⁵¹⁸ R. Chitkara, *The Trials of Bail: Pre-Trial Presumption of Innocence Under the UAPA and General Criminal Laws*, 35 Nat'l L. Sch. India Rev. (2023), <https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1838&context=nlsir>.

⁵¹⁹ M. Akash, *New Criminal Laws in India: Confusing Legislation or Combating New Problems of Nation*, IJSRT (2024), <https://www.ijsrtjournal.com/article/New-Criminal-Laws-in-India-Confusing-Legislation-or-Combating-New-Problems-of-Nation>.

⁵²⁰ D.N. Narayan, *Custodial Violence: A Study on Legal Frameworks and BNSS Reforms*, Lumina Law Rev. (2024), <http://14.139.185.167:8080/jspui/bitstream/123456789/1489/1/LM0123008%20-%20Lumina%20L.pdf>.

undertrial detention, its proposed solutions remain largely procedural and do not ensure substantive liberty protections.

Comparative Jurisprudence: India vs. Other Jurisdictions

A comparative look at jurisdictions such as the United Kingdom and the United States provides valuable insight. In the UK, the Bail Act, 1976 provides a clear presumption in favor of bail and places a higher burden on the prosecution to justify its denial. Courts are required to record reasons in writing, and bail denial can be reviewed more easily.⁵²¹ Similarly, in the US, the Eighth Amendment prohibits excessive bail, and pretrial release programs backed by technology and financial risk assessment models have been widely adopted in several states.

In contrast, India lacks a codified "bail act" or uniform pretrial release system. While judicial pronouncements have evolved toward liberty, implementation is uneven, and systemic reform is overdue. Scholars like Kulshreshtha note that India's bail regime remains more judge-centric and discretion-driven, as opposed to rule-based systems elsewhere.⁵²²

7. Conclusion and Recommendations

Bail jurisprudence in India represents a vital intersection between individual liberty and the criminal justice system's need to ensure public order and trial integrity. While constitutional mandates and judicial interpretations have progressively advanced the cause of liberty, systemic issues like arbitrary arrests, prolonged undertrial detention, and socio-economic disparities continue to plague the implementation of bail law. The 2023 criminal law reforms, though timely, remain insufficient

in addressing these core challenges. A rights-based, uniform, and transparent bail regime is still an unmet aspiration.

Recommendations

1. Codify a Uniform Bail Law: Introduce a standalone Bail Act akin to the UK's Bail Act, 1976, codifying principles and limiting judicial arbitrariness.
2. Strengthen Legal Aid and Bail Hearings: Ensure effective legal representation at the pre-trial stage, especially for indigent accused.
3. Adopt Technology for Bail Decisions: Implement virtual hearings, digital bond systems, and automated case alerts to reduce bail delays.
4. Mandatory Bail Reasoning: Require courts to issue written, reasoned orders for granting or denying bail to ensure accountability.
5. Bail Reforms in BNSS: Amend the Bharatiya Nagarik Suraksha Sanhita to include explicit presumptions in favor of bail for non-violent, first-time offenders.
6. Data-Driven Monitoring: Establish a national bail database to track patterns, reduce inconsistencies, and inform policy reforms.

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