

“BAIL AND JUDICIAL REVIEW”

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ABSTRACT

The institution of bail and doctrine of judicial review are core principles of a democratic justice system, particularly in the context of constitutional and criminal law. Bail is a legal mechanism to secure the freedom of an accused pending trial, upholding the presumption of innocence and safeguarding citizens from excessive pre-trial confinement. Judicial review, by contrast, acts as a constitutional check whereby superior courts can examine the legality and justice of judgments made by subordinate courts and executive organs, such as orders for the grant or withholding of bail. The balancing act between bail and judicial review assumes a critical role where the cases involve constitutional rights, procedural impropriety, and legal process abuse. This abstract discusses the development of bail jurisprudence in terms of constitutional provisions, judicial principles, case laws, and international human rights standards, and examines how judicial review serves as a corrective and supervisory device in ensuring that bail orders are made justly, equitably, and within the scope of the law. Stress is given to the judiciary's role to achieve a balance between personal freedom and public interest, particularly under special laws, and protection of rights of marginalized and undertrial groups through its judicial review power.

KEYWORDS: Bail, Judicial Review, Criminal Justice, Personal Liberty, Fundamental Rights, Constitution of India, Pre-trial Detention, Anticipatory Bail, Judicial Discretion, Human Rights, Article 21

1. INTRODUCTION

The principles of judicial review and bail are two integral pillars of criminal and constitutional law. Bail is a vital legal procedure aimed at guaranteeing the freedom of an accused person pending a criminal trial. It is a compromise between the right of the individual to be free and the interest of justice, specifically to make sure that the accused person does not abscond, tamper with evidence, or tamper with witnesses. Judicial review, however, is a wider constitutional principle which grants power to the judiciary to control the conduct of the legislative and executive arms of government. Together, bail and judicial review portray the dynamic tension among personal freedom,

state power, and judicial surveillance. While bail is primarily a criminal justice system activity, judicial review serves as a constitutional check to ensure that all government action remains within the framework of the Constitution. The relationship between the two becomes very important when courts are required to determine the legality of rulings pertaining to the grant or refusal of bail.¹

The principle of bail has developed over centuries of jurisprudence and differs in legal systems. Under common law traditions, bail is a conditional release of an accused subject to conditions that the individual will appear for trial. The terms of bail can range from personal bonds, sureties, to cash deposits, and are frequently decided by factors such as the

nature of the offense, previous criminal histories, risk of flight, and interests of justice. Bail should not be viewed as a punishment; instead, it is a temporary relief that enforces the presumption of innocence until guilt is established. In countries like India, America, and Britain, courts have again and again made it a point to hold that bail rulings should not be capricious and must capture the rights of the individual to liberty as safeguarded in constitutional traditions. Denial of bail, thus, particularly in cases of political concern or controversy, is often challenged by the courts through the mechanism of judicial review.²

Judicial review serves an important function in securing the rule of law and in averting abuse of state power. Judicial review becomes an important mechanism in the case of bail when executive or judicial officials exceed their discretion, such that bail is arbitrarily refused.³ This is especially applicable in preventive detention cases, political dissent cases, or accusations of abuse of special laws like anti-terrorist legislation or financial fraud acts, in which the state is likely to have a significant interest in detaining the accused without trial for as long as possible. Courts, by means of judicial review, analyze whether such rulings adhere to the doctrine of natural justice, proportionality, and procedural fairness.

The judiciary provides a check against executive excess and insures that the right to liberty is not offered up at the altar of national security or administrative expediency without adequate legal basis.⁴

Within democratic societies that are rule of law societies, the balance between individual liberty and collective security often plays itself out in bail jurisprudence. This is where judicial review is absolutely necessary. Judicial interference in bail cases tends to concentrate on whether the subordinate courts have applied proper legal standards and conformed to constitutional safeguards.⁵ Supreme Courts and High Courts throughout jurisdictions have intervened to rectify miscarriages of justice,

overturning judgments that are arbitrary, vindictive, or based on extraneous factors. In most instances, courts have emphasized that bail must be the rule and jail the exception, particularly in offenses that are not of a serious nature. Even where laws prescribe strict conditions for bail, like the Narcotic Drugs and Psychotropic Substances Act (NDPS) or the Unlawful Activities (Prevention) Act (UAPA), courts have called upon constitutional requirements through judicial review to avoid arbitrary detention.⁶

Judicial review of bail decisions is not only confined to the review of decisions taken by lower courts but also covers legislative provisions that could infringe on the core rights of citizens. Where provisions relating to bail are challenged as being disproportionately harsh or discriminatory, constitutional courts examine whether such provisions satisfy the test of reasonableness and proportionality under fundamental rights. For instance, compulsory denial of bail without the discretion of a judge or conditions that reverse the presumption of innocence can be subject to judicial review. In such a manner, judicial review plays not only the role of a procedural check but also a substantive check that bars unjust laws from encroaching on individual freedom.⁷

The coalescence of bail and judicial review is hence essential to the operation of a democratic legal system. Bail helps to ensure respect for the presumption of innocence and that people are not unfairly denied their liberty. Judicial review guarantees that the proceedings relating to bail are reasonable, fair, and constitutionally legitimate. Together, they represent the values of justice, fairness, and the rule of law. Courts, from this combined perspective, continue to influence the developing landscape of criminal jurisprudence and ensure that the fundamental values enshrined in constitutional democracies are protected.⁸

2. CONSTITUTIONAL PROVISIONS

The constitutional norms on "bail and judicial

review" stem from the overall assurances of the fundamental rights, particularly the right to liberty and the function of the judiciary to enforce the preeminence of the Constitution. In India, for example, the basis of bail is mainly Article 21 of the Constitution, which states that no individual shall be deprived of his life or personal liberty except in accordance with procedure established by law. This basic right is not suspended even during emergencies, reasserting the sanctity of individual freedom. The concept of bail is rooted in this very clause, since it guarantees an accused not to be detained at whim and gives an opportunity to attain temporary liberty awaiting the decision on a judicial process. Though the term "bail" per se does not find mention anywhere in the Constitution, its ethos runs in the veins of Article 21 and hence forms part of the most significant aspects of freedom ensured under constitutional law.⁹

Article 22 of the Indian Constitution also comes into play in the context of bail, especially that the preventive detention and the rights of the person arrested are concerned. This Article makes some provisions for safeguards to those arrested under regular laws, including the right to be informed of the reasons for arrest, the right to consult and be represented by a legal practitioner, and the obligation that they must be brought before a magistrate within 24 hours of arrest. These provisions, while procedural in nature, are essential in establishing the framework for the accused to apply for bail. They provide transparency and judicial supervision at the early stages of arrest, thereby giving people a chance to challenge their detention and seek bail. The same Article, however, excludes preventive detention, and that has generated substantial debate and litigation over how much the courts can review such detentions, especially when bail is refused under special laws.¹⁰

Judicial review is well entrenched in the Constitution by Articles 32 and 226, which grant to the Supreme Court and to the High Courts, respectively, the jurisdiction to issue

writs for the enforcement of fundamental rights and for any other reason. These provisions form the foundation of the doctrine of judicial review in India, giving courts the ability to scrutinize the validity of executive and legislative actions. When bail is withheld arbitrarily or when legislation places unjust limitations on the grant of bail, these constitutional remedies become essential instruments for the protection of liberty. The judiciary, by way of writ petitions under Article 32 or Article 226, can challenge orders of lower courts, detaining authorities, and even legislative provisions if they violate fundamental rights. Therefore, judicial review is a constitutional remedy to prevent abuse of power and to see that individual rights, such as the right to apply for bail, are not overstepped in the name of legal procedure.¹¹

In the United States, there are similar constitutional foundations in the form of the Eighth Amendment, which forbids excessive bail, excessive fines, and cruel and unusual punishment. While the U.S. Constitution does not assure a complete right to bail, but it does guarantee that bail, if issued, should not be fixed at an amount greater than is required to secure the accused's appearance at trial. This safeguard has been construed by courts as a check against arbitrary employment of bail as an instrument of oppression. Also, the U.S. Constitution's Due Process Clauses under the Fourth and Fourteenth Amendments assure a strong basis for judicial evaluation of laws and executive actions, particularly when they impact the life, liberty, or property of an individual. Such provisions have been cited by courts in order to question the equity of bail practices, the reasonableness of detention legislation, and the constitutionality of pretrial detention, in pointing out that judicial review safeguards the criminal process as being reasonable and in consonance with constitutional protections.¹²

The United Kingdom, which is functioning under an unstated constitution, lacks one constitutive document stating the right of bail or judicial review. But both principles are firmly rooted

in the tradition of common law and have been affirmed by statutory codes like the Bail Act 1976. The Human Rights Act 1998 enshrines the European Convention on Human Rights (ECHR) in domestic law, notably Article 5 of the ECHR which protects the right to liberty and security of person. In this system, any curtailment of liberty should be according to law, and people have the right to appeal against their detention before a court of law. Judicial review in the UK enables courts to scrutinize the legality of administrative and government actions, such as bail-related decisions, and has proven an important tool for holding authorities accountable for arbitrary or discriminatory decision making in criminal cases.¹³

3. CONDITIONS AND GROUNDS FOR GRANTING BAIL

The grounds and conditions under which bail is granted in the context of "bail and judicial review" are firmly embedded in principles of justice, freedom, and the rule of law. Bail is not to be viewed as a question of charity or bounty; instead, it is a natural right which stems from the presumption of innocence until convicted. Courts have consistently asserted that individual liberty is of the highest essence and can only be restricted by a reasonable, fair, and just legal process. The release on bail thus is not a discretionary but a determinate function that is determined by well-settled judicial factors depending on the nature of the crime, the accused's conduct, the investigation stage, and the interest of justice in general. The procedure is by nature a balancing act between the rights of the accused and the need to provide a fair and unobstructed trial. In all bail applications, the courts must determine whether detention of the accused has any proper legal purpose and whether release on bail would prejudice in any way the investigation or the judicial process.¹⁴

One of the main factors to be considered in granting bail is the gravity of the offense and

the severity of punishment under law. Generally, courts are more willing to grant bail in bailable offenses, where the right to bail is conferred as a matter of legal right. Conversely, in the case of non-bailable offenses, particularly grave crimes like murder, rape, terrorism, or big economic offenses, the courts are required to exercise judicial discretion through a scrutiny of the merits of each case. The gravity of the charge is not in itself a conclusive basis for refusal of bail. The courts also have to assess the prima facie evidence against the accused, and whether the charges, if established, are likely to lead to conviction. It is generally believed that bail should not be refused as a punishment, nor should it be refused based on public opinion or media trials. The general principle still stands that refusal of bail has to be founded on sound and legally tenable reasons, as opposed to mere speculative fears or unsubstantiated apprehensions.¹⁵

Another significant basis taken into consideration by courts is the possibility of the accused escaping from justice. Bail is a device which provides for the attendance of the accused at the trial process. Thus, if strong grounds exist for believing that upon release the accused may flee, avoid trial, or escape into jurisdictions outside of the law, courts may exact stringent conditions or even refuse to grant bail altogether. The previous behavior of the accused, any history of skipping bail or defiance of legal agents, becomes applicable in this calculation. In the same manner, if the accused is foreign or does not have stable roots in the nation, courts will demand surrender of passports, daily appearance in court, or posting of sureties to reduce the risk of flight. Bail conditions are therefore drafted not only to protect the liberty of the accused but also to ensure the proper administration of justice by making the trial go on without undue interruption.¹⁶

Tampering with evidence or interfering with witnesses is another reason that strongly precludes the grant of bail. Where the accused is in a position of power, influence, or authority—

political leaders, public officials, or members of criminal networks—there is a serious risk that the accused will interfere with justice if released on bail. This is especially important at the early stages of investigation when the prosecution is yet to gather vital evidence and the statements of witnesses are still susceptible to coercion or intimidation. Courts in such situations must consider the chances of such interference and the extent to which the accused can influence the concerned stakeholders in the case. In such cases, bail can be refused entirely or granted on very stringent conditions like no contact with witnesses, curtailed movement, or monitoring through electronic surveillance to reduce the risks involved.¹⁷

The accused's health condition, age, and other humanitarian considerations also constitute significant factors in granting bail. Judicial sympathy comes into play in cases where extended detention can cause permanent physical or psychological damage. Courts have also adopted a liberal stance in awarding bail to pregnant women, old people, or terminally ill persons, particularly when prison medical facilities are not equipped to deal with such situations. The judiciary has highlighted that although law has to run its course, it cannot be unmindful of human misery, and any detention that approaches the borders of cruelty or inhumanity is violative of the constitutional requirement under Article 21. Keeping this in perspective, the doctrine of proportionality gets activated, pushing courts to analyze if continued detention fulfills any substantial purpose or merely contributes to the misery of persons who are yet to be found guilty.¹⁸

Judicial review in bail acquires a specific significance when the courts are accused of disregarding or misapplying these reasons in their orders. The superior judiciary, via appellate or writ jurisdiction, examines whether the lower courts have applied the principles of law properly and whether the refusal or granting of bail is according to constitutional provisions.

This is not a ritual of mere correction of errors but an essential mechanism to avoid miscarriage of justice. If a lower court has refused bail without adequate reasons, or on reasons that are extraneous or legally flawed, the High Courts or the Supreme Court can step in to set aside such orders. In recent times, judicial review has been increasingly invoked for opposing prolonged undertrial detentions, arbitrary refusal of bail in cases having political motivations, and application of special legislation curtailing the right to bail. The higher courts, in such situations, tend to reiterate insistence on reasoned orders, transparency in judicial thinking, and adherence to constitutional norms.¹⁹

The dynamic nature of criminal activity, especially in fields like cybercrime, economic crime, organized crime, and terror, has also contributed to the enactment of special laws imposing strict conditions on the granting of bail. Legislations such as the NDPS Act, PMLA, UAPA, etc., contain 'reverse burden' provisions and lay down that bail shall not be granted unless the court finds on sufficient reasons that the accused is not guilty and is not likely to commit any offense while on bail. These statutory requirements have given rise to serious constitutional issues, particularly with regard to the presumption of innocence and the right to personal liberty. Judicial review is necessary in such situations, as courts have to see that such statutory provisions do not supersede basic rights or become tools for arbitrary detention. The courts, interpreting these special laws, have established elaborate jurisprudence elucidating that harsh bail conditions cannot be applied mechanically and have to be weighed against constitutional protections.²⁰

4. PRINCIPLES GOVERNING JUDICIAL REVIEW

The governing principles of judicial review in the context of "bail and judicial review" are based on constitutional supremacy, rule of law, and inherent powers of the judiciary to be the protector of fundamental rights. Judicial

review is a mechanism whereby courts examine the legality, reasonableness, and constitutionality of actions or decisions taken by public authorities, including the judiciary itself in inferior forums. Where bail is concerned, judicial review then becomes a powerful mechanism for the assurance that personal freedom is not unfairly restricted, and that decisions concerning a person's liberty are well-reasoned on the law and not based on whimsical, capricious, or extraneous grounds. The basis of judicial review is founded on the belief that no branch of authority, be it legislative or executive, is superior to the Constitution, and all their actions must be in line with its directives. This maxim is applied to granting or refusing bail, particularly where judgments are disputed as being contrary to Articles 14 (equality before law), 19 (liberty of movement), and 21 (protection of life and personal liberty) of the Constitution.²¹

One of the most basic precepts applying judicial review in the case of bail is that of reasonableness. The courts need to decide if the order for granting or withholding bail is based on reasonable considerations and material that is pertinent. The judicial review is not a re-hearing of the bail application on merit but rather if the lower court exercised discretion fairly, judiciously, and in conformity with the established principles of law. Where a decision is deemed to be manifestly unreasonable, arbitrary, or based on irrelevant considerations, the reviewing court may quash or vary it. The reviewing body checks whether the critical criteria—such as seriousness of the offense, risk of flight, likelihood of evidence tampering, and public interest—were duly balanced. Therefore, judicial review guarantees that discretion in cases of bail is not unfettered but amenable to guidance by rational judicial principles.²²

A second essential precept in the judicial review of bail orders is the doctrine of proportionality. This doctrine obliges that the limitation on an individual's basic right, be it the right to personal liberty, should neither be excessive

nor more intrusive than required to effectively attain the stated objective. The principle of proportionality is particularly relevant in situations involving preventive detention or harsh statutory conditions, for example, the UAPA or NDPS Acts. When the courts impose unnecessarily severe or disproportionate conditions for granting bail—e.g., unrealistically high surety amounts or mobility-restricting clauses—they can be open to judicial scrutiny to determine if such conditions are proportionate to the gravity of the alleged crime. The superior courts, specifically under writ jurisdiction, have on all occasions stated that the interference with liberty needs to pass the test of minimum impairment and that other options such as surveillance or periodic attendance are to be prioritized over jail whenever feasible.²³

The doctrine of non-arbitrariness is also essential in judicial review concerning bail. A bail order ought to be unbiased in any implication, political motives, or outside considerations. The Indian Supreme Court and other High Courts have repeatedly emphasized that arbitrary refusal of bail, particularly in politically charged cases, constitutes a violation of Article 14 and Article 21 of the Constitution. Judicial review serves as a safeguard against arbitrariness, protecting courts from deviating from the law and ensuring fairness in judicial decision-making. If a court has denied bail simply on grounds of public outcry or the accused or complainant's social standing, the orders are susceptible to being quashed in judicial review. The rule of law demands that justice shall be blind to identity and must exclusively depend on legal principles and evidentiary requirements.²⁴

The doctrine of natural justice is also at the center of judicial review in bail jurisprudence. Natural justice requires that a person be afforded a reasonable chance to be heard and that judgments are made on the basis of an impartial assessment of the case. In cases of bail, where the accused has not received a fair hearing or where relevant material has

been disregarded or suppressed, these procedural failures make excellent grounds for judicial review. The reviewing court examines whether or not the lower court has given proper opportunity to the accused, whether legal advice has been allowed, and whether the decision constitutes consideration of all facts and judicial precedents involved. The violation of natural justice, even in procedural matters, can result in the recall of bail judgments, reinforcing the court's position in maintaining the sanctity of judicial processes.²⁵

Constitutional morality and transformative constitutionalism theses also quietly guide judicial review in bail matters, especially in India. These propositions direct courts to interpret the Constitution so as to promote justice, liberty, and equality amidst a changing social situation. When bail is withheld disproportionately from marginalized groups, or when special laws lead to oppressive conditions for bail that impair basic rights, courts are implored to invoke these general constitutional principles in order to ward off injustice. Judicial review in this context turns into something greater than a judicial corrective; it turns into a constitutional imperative in order to ensure democratic values and the dignity of citizens. Essentially, these precepts authorize the courts to overstep the express terms of the law and enjoin more generalized norms of fairness and justice. Moreover, judicial review in cases involving bail decisions is guided by the principle of precedent and uniformity, especially where the appeals courts establish norms to be followed uniformly. The superior judiciary has established a few binding precedents on the handling of bail in heinous offence cases, economic offence cases, or custodial death cases. The uniformity of these judicial standards guarantees predictability and cohesion in the system of justice. If lower courts go against standard legal norms for which they provide inadequate reasons, their orders stand vulnerable to overturning by the process of judicial review. It is the function of the reviewing court to affirm the rules of law and

deter unauthorized deviations that have the potential of creating inequality or miscarriage of justice.²⁶

5. JUDICIAL TRENDS AND PRECEDENTS

Judicial trends and precedents involving "bail and judicial review" have notably changed over the years, illustrating the dynamic forces of constitutional interpretation, human rights jurisprudence, and balance between state power and individual freedom. Courts, particularly constitutional courts like the Supreme Court and High Courts in India, have progressively asserted their role in shaping bail jurisprudence through landmark decisions that emphasize the protection of personal liberty and the importance of judicial oversight. These precedents serve not only as legal benchmarks but also as guiding principles for subordinate courts, ensuring uniformity in the application of bail laws across jurisdictions. The judicial approach to interpretation has been pivotal in affirming the notion that the right of bail, while open to judicial discretion, is a fundamental aspect of the right to life and liberty of the person under Article 21 of the Constitution.²⁷

One of the most renowned precedents in Indian law is the case of *Gudikanti Narasimhulu v. Public Prosecutor* (1978), in which Justice V.R. Krishna Iyer enunciated the fundamental philosophy of bail jurisprudence. He strongly stated that "the issue of bail is one of liberty, justice, public safety, and the burden of the public treasury" and emphasized that the denial of bail should not be on grounds solely as a penalty in advance of trial. This judgment was revolutionary in its transformation away from punishment-based to a rights-oriented focus in bail, bringing to prominence the notion that the criminal justice system should never turn into an instrument of oppression. The judiciary through this case made it clear that the presumption of innocence must guide the approach to bail and that pre-trial detention must be the exception, not the norm.²⁸

Another landmark case in the context of bail

and judicial review is *Hussainara Khatoon v. State of Bihar* (1979), where the Supreme Court exercised suo motu jurisdiction over the fate of thousands of undertrial prisoners who were detained in jail for more than the maximum sentence provided for their suspected crimes. This seminal judgment enlarged the scope of judicial review to structural problems in the criminal justice system and set the stage for awarding bail to undertrial prisoners who had not been given a timely trial. The judgment reinforced the court's determination to protecting the right to speedy trial as an element of Article 21 and ordered judicial discretion in matters of bail cannot result in imprisonment without trial on an indefinite basis.²⁹

More recently, the Supreme Court has re-emphasized these principles when dealing with misuse of investigation powers and arbitrary arrest. In *Arnesh Kumar v. State of Bihar* (2014), the Court warned against mechanical arrests under Section 498A of the IPC and clarified that the police need to explain the reasonableness of the necessity of arrest. The ruling required magistrates not to grant detention lightly and had to exercise their judicial mind to the requirement of remand. This ruling widened the ambit of judicial review by bringing in a preventive mechanism against unwarranted denial of bail and practically forcing lower courts to work within constitutional limits. It re-emphasized that freedom cannot be offered to the altar of absolute police discretion and laid down that the judiciary has to act as a curb on such abuse of power.³⁰

The case of *Arnab Manoranjan Goswami v. State of Maharashtra* (2020) also reaffirmed the proactive role of the judiciary in ensuring individual freedom through the issuance of interim bail. Here, the Supreme Court acted on an emergent basis to set free the petitioner, noting that "courts must be alive to the situation where liberty is at stake." The judgment highlighted that constitutional courts cannot be mere silent spectators when liberty is

eroded, even in the name of procedural formalities. The judgment was a significant reflection of the manner in which judicial review of bail cases has developed to encompass live intervention to avoid miscarriage of justice, especially in politically charged or high-profile cases.³¹

In the sphere of special laws, in which the presumption of innocence gets watered down, judicial precedents have sought to harmonize state interests with constitutional rights. The case of *Union of India v. K.A. Najeer* (2021) is important, where the Supreme Court granted bail under the Unlawful Activities (Prevention) Act (UAPA), and held that even under harsher laws, prolonged detention without trial infringes Article 21. The court noted that statutory limits on bail cannot overpower constitutional protection and that judicial oversight continues to be an effective safeguard against indefinite detention. This case is a testament to the principle that although national security is vital, it cannot be permitted to be an excuse for constitutional abuses or the stifling of liberty.³²

The judiciary has also been careful to ensure consistency and predictability in bail jurisprudence. In *Sanjay Chandra v. CBI* (2011), relating to economic offenses, the Supreme Court granted bail to the accused even though the seriousness of the allegations was not taken into consideration, emphasizing that bail should not be refused simply because the offense is serious, especially if the trial is going to take a long time. This ruling stressed that judicial review of bail orders must entail a comprehensive consideration of the chances of conviction, trial duration, and the behavior of the accused. It also set the rule that bail orders must be specific to the facts of each case and that imprisonment without trial is not consistent with the fundamental principles of constitutional justice.³³

Where there is denial of bail without cogent reasons, judicial review has acted as a check on the situation. Reasoned orders have always been held to be a sine qua non of the proper

exercise of judicial discretion by the courts. In *Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana* (2021), the Supreme Court noted that bail orders cannot be made on whimsical or mechanical grounds but have to reflect a careful examination of applicable considerations. Judicial review in this context makes lower court verdicts non-above-the-board and subject to principles of transparency, reasonability, and fairness.³⁴

The doctrine of anticipatory bail, enabling people to approach the court for pre-arrest bail in fear of arrest, has also witnessed considerable growth by way of judicial interpretation. In *Siddharam Satlingappa Mhetre v. State of Maharashtra* (2011), the Supreme Court established detailed guidelines in support of liberal interpretation of anticipatory bail provisions under Section 438 of the Code of Criminal Procedure. The Court held that individual freedom is a fundamental constitutional right and anticipatory bail cannot be refused in an automatic way. It also underscored that anticipatory bail cannot be refused on general or vague charges. This judgment also exemplifies how bail judicial trends are inextricably linked with constitutional safeguards and the developing doctrine of judicial review.³⁵

In the field of judicial activism and public interest, courts have also taken note of matters such as prison overcrowding, unwarranted pre-trial detention, and discriminatory denial of bail to marginalized sections. Public interest litigations have prompted courts to issue general guidelines to the effect that bail be granted in minor offenses and that jail should not be a default mode for undertrials. These more extensive interventions represent a judicial trend that views bail not only as a case-specific issue but as a systemic problem demanding structural changes in judicial and police practices. Judicial review in these cases becomes a means not only of individual justice but of institutional accountability and reform.³⁶

By and large, judicial precedents and trends

in regard to judicial review and bail illustrate a clear pattern towards increasing civil liberties, keeping pre-trial detention from being employed as a punitive tool, and subjecting all government action to constitutional examination. Courts have increasingly acknowledged their function as protectors of freedom and have developed a rich precedential body that directs the exercise of discretion, requires transparency, and ensures the constitutional rights of the accused against procedural and statutory obstacles. The ongoing development of these trends reaffirms the adaptive and responsive nature of constitutional jurisprudence in the area of bail and judicial supervision.³⁷

6. INTERACTION BETWEEN BAIL AND JUDICIAL REVIEW

The relationship between bail and judicial review is a pivotal crossroads in constitutional law and criminal jurisprudence, where the constitutional right to liberty intersects with the judiciary's supervisory authority. Bail as a legal device works to protect the liberty of a person until trial, ensuring that the presumption of innocence is maintained and detention is not employed punitively prior to conviction. Judicial review, by contrast, is a constitutional mechanism to supervise and control the exercise of public power by public authorities, including the judiciary, to prevent any authority from transgressing or acting in contravention of legal and constitutional limits. The interaction between these two legal principles assumes a special importance when an individual claims that the denial or grant of bail has been done in an arbitrary, unreasonable, or in contravention of their fundamental rights. In such a situation, judicial review acts as a constitutional correction to ensure that rulings on individual freedom are thoroughly scrutinized according to law and adhere to norms of fairness, justice, and due process.³⁸

This contact takes on increased significance in the context of Article 21 of the Indian Constitution, which promises the right to life and

personal liberty, and has been liberally construed by the Supreme Court to embrace the right against arbitrary detention. Denial of bail impacts directly upon this fundamental right, particularly when the accused is subjected to long-term incarceration without trial.

In such situations, judicial review is a necessary remedy to challenge whether the detention is warranted under the existing legal norms. The courts, by way of writ petitions under Articles 32 and 226, have invoked their judicial review power to assess whether bail orders have been granted in a manner that is in accordance with constitutional protections. For example, where a lower court has denied bail on irrelevant grounds, failed to give reasons, or disregarded binding precedents, the constitutional courts have stepped in to quash such orders. This oversight is to ensure that lower judicial discretion does not become arbitrary and that liberty is not undermined by defective or biased orders.³⁹

The dynamic also manifests in cases where special laws such as the Unlawful Activities (Prevention) Act (UAPA), Narcotic Drugs and Psychotropic Substances (NDPS) Act, and Prevention of Money Laundering Act (PMLA) apply, imposing more stringent requirements for the grant of bail and reversing the onus of innocence. Under such statutes, bail is more difficult to secure because statutory limitations override general principles of criminal procedure. Judicial review in these situations becomes increasingly important, for it is among the few doors through which the courts can insure that constitutional ideals are not left at the mercy of national security or public order. By judicial review, the courts determine whether the limitations imposed by these special laws on bail are proportionate and justified, or whether they lead to gross injustice by allowing extended pre-trial detention without adequate justification. The judiciary has more and more claimed that although national interest is vital, it cannot support the total demolition of individual rights and that judicial

review must serve as the custodian of constitutional morality even when faced with rigid legislative regimes.⁴⁰

Judicial review crosses paths with bail orders in the context of handling the question of procedural impropriety and abuse of process. It is not infrequent that investigating agencies or complainants abuse criminal proceedings for ulterior reasons such as harassment, political vendetta, or economic coercion. In these situations, the grant or denial of bail becomes an issue that goes beyond personal facts and involves issues relating to the abuse of judicial and executive processes. Judicial review enables superior courts to review these bail orders not just on grounds of legal propriety but also in terms of constitutional values and institutional justice. In this way, the courts uphold the integrity of the judicial process and keep it from being employed as a tool of oppression. Such oversight also serves a deterrent function, discouraging frivolous or malicious prosecutions that rely on denial of bail as a strategy to coerce or intimidate the accused.⁴¹

The dimension of the interaction between bail and judicial review lies in the application of evolving judicial doctrines such as proportionality, manifest arbitrariness, and substantive due process. These doctrines, based on constitutional jurisprudence, form the context in which bail decisions can be challenged at judicial review. The doctrine of proportionality, for example, is frequently used to ascertain whether the refusal of bail is a disproportionate reaction to the offense charged, particularly where the accused is not likely to flee, does not pose any threat to the investigation, or has already been in custody for a significant period of time. Judicial review utilizes such doctrines to align bail jurisprudence with contemporary constitutional standards so that courts do not apply statutes mechanically but take into account the actual-life consequences of extended detention on the individual and his/her family.⁴²

Procedural protections under the criminal justice system also acquire constitutional richness through the interplay between bail and judicial review. These include the right to be informed of the reasons for arrest, the right to see legal advice, and the right to be presented before a magistrate within 24 hours of arrest. When these protections are breached, the validity of the detention—and hence the refusal of bail—can be challenged through review by the courts. Courts have on several occasions acknowledged that such procedural failures not only invalidate criminal proceedings but also constitute a direct infringement of constitutional rights. Judicial review in such situations acts as an effective method of protecting liberty, remedying illegality and irregularity that would otherwise go undetected in the regular appellate or revision process.⁴³

7. HUMAN RIGHTS AND BAIL JURISPRUDENCE

Human rights and bail jurisprudence are integrally connected to each other in the larger context of criminal justice and constitutional law. Bail, when understood in the context of human rights, evolves from being a mere procedural instrument into a real substance guarantee of liberty and dignity. In essence, bail is an expression of the presumption of innocence, a foundational concept in human rights jurisprudence that preserves the notion that all persons are to be assumed innocent until they have been proven guilty. This principle, codified in several international human rights instruments like the International Covenant on Civil and Political Rights (ICCPR), finds a direct echo in constitutional provisions like Article 21 of the Indian Constitution, which ensures the right to life and personal liberty. Denial of bail, especially without proper reason, is more than a matter of legal formality—it is a human rights concern since it involves physical privation of liberty, possible risk of custodial violence, and long-term socio-economic impact, most particularly for vulnerable persons.⁴⁴

Under human rights language, the privation of liberty should always be justified by a legitimate purpose and should be required and proportionate to it. Bail jurisprudence has increasingly embraced this logic, emphasizing that pre-trial detention should be the exception and not the rule. Courts in India and across democratic jurisdictions have often reiterated that unless there are compelling reasons—such as the risk of absconding, tampering with evidence, or committing further offenses—the accused should be granted bail. This is consistent with Article 9 of the ICCPR, which provides that "it shall not be the general rule that persons awaiting trial shall be detained in custody." The increasing impact of international human rights law on domestic bail jurisprudence has prompted courts to consider the broader effect of pre-trial detention on the right to a fair trial, the right to counsel, and the right to humane treatment in custody. Thus, human rights provide not only a normative framework for bail but also a framework of guiding principles by which to assess its practice in action.⁴⁵

The convergence of human rights and bail becomes especially relevant in the case of vulnerable and marginalised groups. People from weaker economic sections, minorities, women, Dalits, and tribal communities tend to be at systemic disadvantage in obtaining bail. They can be denied access to effective legal counsel, experience discrimination by the police, or be subjected to discriminatory treatment by the courts. In these instances, the withholding of bail adds to their marginalization and reinforces structural inequality in the legal system. Human rights-based bail jurisprudence aims to address this imbalance by bringing the principles of equity and non-discrimination into the decision-making process. Indian judicial rulings have acknowledged that the socio-economic status of an accused person needs to be taken into account at the time of bail adjudication and that imprisonment should not arise because of a person's inability to provide monetary sureties or hire costly lawyers. Hence,

human rights concerns serve as a moral and legal guide to courts so that the system of bail does not function as an entitlement for the wealthy but as a right to all.⁴⁶

Human rights' function becomes even more vital in the situation of prolonged detention without trial. Indian prisons are crowded with undertrial prisoners, a great number of whom have languished in prison for years without conviction for any offence. This situation is a brazen human rights violation, since it completely does away with the spirit of the presumption of innocence and punishes people in the absence of due process. In its numerous judgments, the Indian judiciary has recognized this crisis and released such undertrials on bail, particularly when the delay in trial is not the fault of the undertrials. Such judgments emphasize the idea that freedom cannot be taken hostage to inefficiencies of the system or delay of procedure. In addition, the courts have repeatedly emphasized that it is the obligation of the State to provide trials in a speedy manner, and where this obligation is not being discharged, intervention by the courts through granting of bail becomes a constitutional mandate based on human rights jurisprudence.⁴⁷

Another area where human rights converge with bail jurisprudence is the handling of arrestees and detainees in custody. Custodial torture, inhuman treatment in jails, and withholding of medical care are ongoing issues that convert the character of pre-trial detention into a serious breach of fundamental human dignity. Courts have acknowledged that the grant of bail in such cases not only promotes the cause of liberty but also serves as a preventive measure against custodial excesses. Human rights norms require that the dignity of all individuals, including the accused, be maintained and that the State ensure humane conditions of detention. Bail, in such a context, becomes an important instrument to safeguard people from degrading treatment and to promote the constitutional value of dignity.

Judicial interventions in bail on medical grounds or to avoid custodial abuse are an expression of this human rights perspective.⁴⁸

Over the last few years, the integration of human rights principles into bail jurisprudence has also given rise to the evolution of progressive procedural innovations. Courts have promoted alternatives to the conventional bail, including personal bonds, monitoring through the community, and technological means like the use of GPS tracking, in order to compel compliance with the conditions of bail without causing financial or physical inconvenience to the accused. These are based on the human rights ethos that the loss of liberty must be minimal and least restrictive. The focus on non-custodial interventions is consistent with the international human rights paradigm that aims to humanize the criminal justice system and minimize its dependence on imprisonment. These tendencies are indicative of an increasing realization that the justice system needs to evolve to promote individual freedoms in a meaningful and fair manner.⁴⁹

CONCLUSION

The interlocking arenas of bail and judicial review are the cornerstone of a liberty-oriented, equitable, and rule-of-law-based constitutional democracy. Bail, as a protector of individual freedom, serves a crucial purpose in securing the presumption of innocence and insulating individuals from the severe repercussions of pre-trial detention. Judicial review, in contrast, is a watchful constitutional mechanism to ensure that bail-related decisions are made within the parameters of legality, reasonableness, and non-arbitrariness. These principles together function to guard against the abuse of state power, provide procedural fairness, and protect the fundamental rights enshrined in the Constitution. The changing jurisprudence on bail, guided by constitutional requirements and human rights norms, manifests a mounting appreciation for balance between the interests of justice and individual liberty. The

courts have persistently reaffirmed that bail must not be denied as a punishment and that each refusal has to be legally justified and proportionate. Judicial review acts to guarantee such standards, bringing an important safeguard against both executive discretion and discretion of the trial courts. Because society and problems within society themselves are ever changing, this tension between bail and judicial review needs to continue adapting, sensitive as always to human rights, as well as responsive to constitutional standards.

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