

THE INDIAN SUPREME COURT'S RIGHTS-BASED APPROACH TO BAIL WITH REFERENCE TO ARTICLE 21 AND 22

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ABSTRACT

The rights-based approach to bail adopted by the Indian Supreme Court, grounded in Articles 21 and 22 of the Constitution, signifies a constitutional shift in the interpretation of criminal law and procedural practices. Article 21 asserts that “no person shall be deprived of his life or personal liberty except according to the procedure established by law,” while Article 22 enumerates specific procedural protections in instances of preventive detention and arrest. By interpreting these articles in conjunction, the Supreme Court has delineated bail jurisprudence in such a way that prioritizes liberty as the presumptive standard and classifies detention as a carefully restricted exception. Traditionally, bail was analyzed through a limited perspective defined by the Code of Criminal Procedure, focusing on procedural details and the seriousness of the crime. Nevertheless, the Supreme Court has gradually transformed this perspective toward a model that is more aligned with constitutional rights. Bail is now regarded not merely as a judicial prerogative but is instead understood as fundamentally associated with the right to liberty enshrined in Article 21. The Court has consistently emphasized that excessive pre-trial incarceration, particularly when applied without proper justification, undermines the presumption of innocence and effectively penalizes individuals prior to the establishment of guilt. In this context, bail jurisprudence has emerged as a vital protection against the potential abuse of state authority.

The Court has also pointed out that bail decisions should be informed by the virtues of reasonableness, fairness, and proportionality. Decisions to grant bail should be based upon reasonable grounds and should not be arbitrary, taking into account the competing interests of upholding the liberty of the accused as much as upholding the administration of justice. Factors such as the gravity of the offense for which the accused is charged, potential disruption of witnesses or evidence, chance of offending again, and risk of non-compliance with bail are all important parameters; but these are subject to the presumption of liberty enshrined in the Constitution. Recent pronouncements of the Supreme Court highlight that bail cannot be denied merely by taking into consideration the gravity of the alleged offense. Instead, the focus should be kept on assessing whether continued detention is necessary and justified for achieving legitimate government goals.

The aim of the principle is to prevent the criminal justice process from becoming punishment per se, thus ensuring that individuals are not treated merely as objects of state power but rather are treated with dignity and humanity as citizens secured by the constitution. This right-based approach to bail has wider systemic implications. Prioritizing bail in appropriate cases allows the Court to confront perennial problems like jail congestion, of which undertrial prisoners account for a significant proportion of jail inmates. It enhances access to justice by securing judicial relief to marginalized and vulnerable sections of society that often lie at risk of arbitrary detention. It again instills in the criminal justice system the culture of accountability by subjecting judicial discretion to constitutional scrutiny

and reminding the judiciary of its role of upholder of basic rights.

Overall, the Supreme Court's evolving bail jurisprudence is reflective of a deeper constitutional philosophy that treats liberty as an article of justice itself and not as a statutory privilege of the state. Through the application of Article 21 as well as Article 22 to the calculus of bail decisions, the Court has emphasized that the criminal justice machinery must operate in conformity with the virtues of fairness, dignity, and proportionality. That development points toward a justice system that is more humane, transparent, and constitutionally compliant in every sense of the term, and in which the concern is less punishment-oriented and more focused upon the protection of individuals' inalienable right of being free even while awaiting trial.

Keywords: Indian Supreme Court, Rights-Based Approach, Bail Jurisprudence, Article 21, Right to Life, Personal Liberty, Constitutional Law, Criminal Justice, Presumption of Innocence, Pre-Trial Detention

Chapter 1 Introduction

The issue of bail holds a core position in criminal procedure, as it addresses directly the conflict between the prerogatives of the individual and the interests of the State. Bail is not only a matter of procedural relief but rather a crucial space wherein the assurances of liberty, dignity, and fairness under the Indian Constitution become operative. Key to all of these is Articles 21 and 22 constitutional articles that reflect the guarantee of personal liberty and set substantive and procedural checks upon the State's power to arrest and detain citizens. While Article 21¹ holds that no person shall be deprived of life or personal liberty except in accordance to the procedure laid down by law, Article 22² covers the circumstances and protection of arrest and preventive detention. Together, these articles collectively frame the basis for the Supreme Court's rights-oriented approach to bail. The Supreme Court of India has insisted over and over again that liberty is the normal state of affairs and detention is the exception. That approach is a step back from abstract statutory interpretations of bail under the Code of Criminal Procedure (CrPC)³ toward a constitutionalization of the jurisprudence of bail. The Court has insisted that pre-trial detention cannot be resorted to mechanically or punishment-wise, for that would vitiate the presumption of innocence a fundamental tenet of criminal law. Detention while trial must be

justified upon grounds permitted by the Constitution, and mass denials of auxiliary grant of bail merely upon the seriousness of the offense alleged is against the test of reasonableness and fairness under Article 21.

Beginning with a trail-blazing series of cases from *Hussainara Khatoon v. State of Bihar*,⁴ that threw up the issue of undertrial prisoners languishing in jail to later cases like *Satender Kumar Antil v. CBI*⁵ and *Arnab Goswami v. State of Maharashtra*⁶, the Court has again and again emphasized that personal liberty is at the heart of the constitutional imagination. These

judgments all come together to emphasize that the grant of bail is not to be seen as largesse to be bestowed at the absolute discretion of the court, but rather as recognition of the rights that inhere in every human being.

Consequently, the practice of rights does not neglect the offsetting interests of societal security and the administration of justice. The Court has at all times balanced the right to liberty against interests such as the risk of absconding, possibility of tampering with the evidence, intimidating witnesses, or committing criminal offenses once again. However, even in the practice of balance, the judiciary has itself shown that the deprivation of liberty must be a carefully calibrated step, not the unavoidable corollary of accusation.

This developing jurisprudence has far-reaching

theoretical and practical significance. Theoretically, it is a continuation of constitutional morality in the realm of criminal law, bringing state practices into consonance with wider values of justice, fairness, and human dignity. Practically, it attempts to tackle perennial issues like the overcrowding of jails, wherein undertrial prisoners even today predominate. By placing bail as a constitutional right to be subject to reasonable restrictions in place of the exceptional privilege, the Supreme Court has tried to make criminal justice more humane and more accessible, particularly to marginalized sections of society that oftentimes disproportionately suffer by reason of systemic inequities of the justice system.

Thus, the Court's approach to bail is reflective of the Court as the final guardian of constitutional freedoms. It transforms the notion of bail from a mere procedural consideration to a substantive guarantee of liberty, to prevent criminal proceedings from becoming punitive by itself or repressive. In tracing the evolution, the examination of the Court's approach finds evidence of the broader constitutional ethos of Indian criminal jurisprudence: that justice is not merely incomplete without it, but that justice is complete only if it is oriented towards the protection of the accused's rights, rather than victims alone, or State interests.

1.1 Statement of the Problem

In spite of the constitutional protection of life and individual liberty under Articles 21 and 22 of the Indian Constitution, the practice of bail in the Indian criminal justice system still

exhibits severe weaknesses. Courts traditionally have tended to favor custodial detention over the principle of presumption of innocence and have thus ensured long term pre-trial imprisonment, clogged up prisons, and widespread infringements of individual liberty. While the Supreme Court has increasingly taken a rights-oriented stance on bail stressing that the withdrawal of liberty is to be justified, not arbitrary, and an exception and not the norm the transposition of these precepts into

customary practice by lower courts is uneven and fitful.

This discrepancy poses critical questions regarding the effectiveness of the Supreme Court's

jurisprudence in the real world: whether the lower judiciary is truly applying the constitutional obligation to protect individual freedom and follow procedural fairness as envisaged under

Articles 21 and 22. Beyond that, impediments like poverty, absence of legal representation, and excessive statutory requirements (such as in special laws) still block effective access to bail for marginal groups. The central issue thus is the enduring chasm between constitutional ideals and their ground reality realization, precipitating arbitrary detention, social injustice, and weakening the very protection envisaged to safeguard liberty of individuals while servicing the interests of criminal justice administration.

1.2 Research Questions

1. How did the Indian Supreme Court construe the right to bail under Article 21 (Right to Liberty and Life) in the context of safeguarding accused persons' basic rights?
2. What judicial doctrines has the Supreme Court established to reconcile the right to bail with public interest and victims' rights under Articles 21 and 22?
3. How does the Supreme Court ensure procedural fairness and protection against arbitrary detention under Article 22 in adjudicating bail applications?
4. In what ways has the Supreme Court's bail jurisprudence changed to represent a rights-based paradigm over a restrictive or punitive one?
5. What difference has the Supreme Court's rights-oriented bail jurisprudence made to vulnerable sections like minorities, women, and economically weaker sections?

1.3 Significance of Research

"The Indian Supreme Court's Rights-Based Approach to Bail with Reference to Article 21 and 22" lies in its critical examination of how constitutional rights under Articles 21 and 22 influence bail jurisprudence in India. This research contributes to understanding the balance between individual liberty and the state's interest in criminal justice administration by focusing on the Supreme Court's evolving interpretations that emphasize the protection of fundamental rights. It sheds light on the judicial enforcement of fair trial guarantees, the right to life and personal liberty, and procedural safeguards for arrested persons, thereby ensuring that bail decisions are not arbitrary but grounded in constitutional morality and principles of justice. By exploring this rights-based framework, the study addresses key legal, social, and human rights dimensions, which guides future judicial approaches and reforms to enhance fairness and access to justice in bail matters. This research impacts academic discourse, informs policymaking, and assists legal practitioners, thereby strengthening constitutionalism and the rule of law in India's criminal justice system.

1.4 Scope and Limitations of Research

The present study encompasses a comprehensive analysis of the Indian Supreme Court's rights-oriented framework concerning bail, with particular emphasis on how Articles 21 and 22 of the Constitution influence and protect personal liberty as well as procedural rights within bail jurisprudence. It examines judicial trends, significant rulings, and doctrinal

transformations that emphasize the presumption of innocence and assert that the restriction of liberty must be conducted through lawful, necessary, and proportional means, while also investigating the mechanisms through which the Court upholds fair trial rights for defendants. The inquiry is predominantly doctrinal and grounded in legal precedents, statutes, reports, and scholarly

analysis, offering a concentrated assessment of constitutional principles applied in bail hearings and their implications for individual liberty. Nonetheless, the limitations of this investigation stem from its dependence on secondary sources and judicial interpretations rather than original empirical research, and it refrains from undertaking an extensive

comparative analysis with international legal frameworks, nor does it evaluate the long-term consequences or systemic implementation deficiencies within lower courts; it is additionally constrained by the inherently dynamic character of Supreme Court jurisprudence, the discretionary powers wielded by judges, and the intricate interactions of statutory, socioeconomic, and institutional factors that influence both the approval and rejection of bail in practices.

1.5 Objectives of Research

- For a study of how the Indian Supreme Court interprets and applies rights-based approach to bail enshrined in Articles 21 (protection of life and personal liberty) and 22 (protection from arrest and detention in certain circumstances) to the Constitution.
- For analyzing the weighing by the Supreme Court of public interest and individual liberty through the prism of protection by the constitution.
- In order to determine the effect of the rights-oriented bail jurisprudence of the Supreme Court upon procedural protection afforded to denizens on trial as well as persons detained preventively.
- With a view to evaluating contradictions and challenges with application of rights to bail embodied in Articles 21 and 22 by the Supreme Court and identify potential areas for reform by courts or legislatures.
- With an aim to categorize the role of the Supreme Court towards supporting human rights and rights to fair trial through its evolving bail jurisprudence in India.

1.6 Research Methodology

The approach is largely doctrinal in nature, including close examination and critical appraisal of legislation, court decisions, specifically Supreme Court decisions, constitutional provisions (Articles 21 and 22), and relevant legal reports such as Law Commission reports and parliamentary debates. The research also compares these legal sources with relevant international conventions and norms to assess India's compliance with universal human rights standards. In addition, secondary data from research literature, news releases, and empirical data sources enable the evaluation of the real-world effect and application of bail rights under the rights-based regime. This mixed doctrinal and empirical method offers intensive examination of the legislative intention, judicial interpretation, and practical effectiveness of bail legislation in protecting fundamental rights. This explains the way the Supreme Court balances individual liberty and state interests in bail decisions with special reference to constitutional safeguards provided through Articles 21 and 22 ensuring the right to life and personal liberty and protection from arbitrary arrest and detention. Where required, modifications may be introduced particularly on bail jurisprudence as compared to juvenile justice, but such a doctrinal structure lies at the center of such constitutional legal scholarship.

Chapter 2

Literature Review

2.1 Constitutional Foundations and Evolution of Bail Jurisprudence

The foundations of India's rights-based bail jurisprudence are grounded strongly in the Constitution and its understanding by the Supreme Court. Articles 21 and 22, guaranteeing respectively the right to life and personal liberty, and safety at the time of arrest, have served as the doctrinal pillars of bail jurisprudence. At first, bail was considered essentially a technical device for guaranteeing an accused person's

appearance at trial. But after the landmark judgment in *Maneka Gandhi v. Union of India*⁷, Article 21 gained a wider connotation any taking away of personal liberty has to adhere to not just "procedure established by law," but also pass tests of reasonableness, fairness, and non-arbitrariness. This change profoundly affected bail law: denial of bail is now articulated as a deprivation of liberty and presumptively unconstitutional unless it is supported by compelling reasons.

The Supreme Court has enunciated that "bail, not jail" is the rule of law, and pre-trial detention is an exception and not the standard. The presumption of innocence is reaffirmed at the bail stage, and any restriction of liberty must be narrowly interpreted. In *Hussainara Khatoon v. State of Bihar*⁸ and *Gudikanti Narasimhulu v. Public Prosecutor*⁹, the Court acknowledged the disproportionate number of undertrials and the rights of the accused, correlating bail access to ensuring basic constitutional guarantees.

2.2 Supreme Court's Rights-Based Approach to Bail

2.2.1 Bail as an Extension of Fundamental Rights

Supreme Court doctrine openly defines bail as being closely linked to the right to liberty and due process. Article 21 imposes a positive duty upon the state to ensure that detention is not unnecessary; Article 22 provides added tiered procedural protections, such as counsel and notification of reasons for arrest. Prolonged and arbitrary pre-trial detention is viewed as a transgression of the right to the presumption of innocence and effectively penalizing an accused prior to conviction.

Courts have argued that refusal of bail should not be used as a method of pretrial punishment or public condemnation, but only in situations of genuine necessity e.g., risks of flight, obstructing justice, or probabilities of further offences. The doctrine of proportionality, the

requirement of a speedy trial, and weighing up state and individual interests are now at the heart of every evaluation of bail applications, as evidenced in *Sanjay Chandra v. CBI*¹⁰,

*Kashmira Singh v. State of Punjab*¹¹, and more recently in *Manish Sisodia v. Directorate of Enforcement*¹².

2.2.2 The Exercise of Judicial Discretion and Objective Criteria

While judicial discretion in granting bail is maintained, the Supreme Court has emphasized the need for consistency, openness, and documentation of reasons. Judges must take into account the seriousness of the offence, severity of the punishment, risk of absconding, possibility of tampering with evidence, and overall interest of justice. Orders should be justified to allow for review and avoid arbitrariness, with higher courts exercising oversight and correction when lower courts stray from standards based on rights.

The highest court has also reaffirmed that terms of bail need to be reasonable and not so stringent as to virtually withhold release. For example, in *Sumit Mehta v. State of NCT*¹³ of Delhi and *Ramathal v. Inspector of Police*¹⁴, the requirement of excessive financial or

unreasonable conditions in bail was held ultra vires as defeating the very order of bail.

2.3 Challenges and Special Contexts: Statutory Barriers, Vulnerable Groups, and Implementation

The Supreme Court is still dealing with the balance between statute-controlled restrictions on bail like under special legislation like the NDPS and UAPA and the constitutional requirement of liberty. The top court demands that such statutory exclusions should be strictly interpreted in order not to lead to unconscionable or indefinite detention, particularly where there is a delay, poor health, or shaky evidence.

Similarly, academics and court reports highlight

that women, juveniles, the poor, and other vulnerable categories continue to be at higher risk of violation of rights during bail proceedings.

The judiciary itself has provided precedent requiring especial sensitivity, such as releasing long-held undertrials, juveniles, and socially disadvantaged individuals invoking Articles 21 and 22.

Research shows discrepancies between apex court directions and lower court practices, contributing to ongoing prevalence of undertrial detention. Ineffective legal aid, unfamiliarity, and inconsistency in the enforcement of judicial norms are identified as key impediments.

Empirical evidence, including from the National Crime Records Bureau, has been employed to justify calls for explicit procedural change and improved judicial training.

2.4 Comparative Perspectives and Ongoing Reforms

Comparative law places India's bail jurisprudence in the context of a worldwide trend towards the enforcement of bail as a fundamental human right. International documents, including the ICCPR and standards that UN agencies have evolved, are in alignment with Indian Supreme Court norms, particularly highlighting bail as central to presumptions of innocence and the right to fair and speedy trial. Reform calls have stressed that India requires a single bail act to further standardize and systematize bail orders with reference to best practices from various jurisdictions in order to diminish inconsistency, crowding, and secure the fulfillment of constitutional objectives.

Chapter 3

3.1 The Bail Principle and Presumption of Innocence

The Supreme Court has repeatedly reaffirmed that jail is an exception and liberty is the rule, perceiving liberty as a fundamental

constitutional principle arising from Articles 21 and 22. The underlying presumption of innocence and right against arbitrary detention forms the foundation of bail jurisprudence. Decisions like *Hussainara Khatoon*¹⁵ and *Sanjay Chandra v.*

CBI¹⁶ have laid down that pre-trial incarceration must be necessary, not on suspicion or public outcry: any limitation of liberty must be lawful and proportionate, reaffirming that incarceration before conviction is punitive in nature and contrary to constitutional safeguards.

The Court argues that pre-conviction detention can only be retained for limited, proper reasons such as preventing absconding, ensuring the administration of justice, or preventing re-offending. Merely seriousness of charge cannot overcome constitutional liberty, and the decision in *Kashmira Singh v. State of Punjab*¹⁷ claimed that imprisonment under appeal, without restriction, is against Article 21's safeguard.

3.2 Judicial Discretion: Standards and Safeguards

Bail orders in non-bailable crimes are determined by judicial discretion, although such discretion is coming under greater control of Supreme Court precedent. Factors to be taken into account are gravity of the offence, probability of fleeing, potential hindering of investigation or witnesses, health and age of the accused, and social situation. The Court has insisted upon reasoned orders and objective considerations and has minimized arbitrariness. In the recent past, orders such as *State v. Biswanath Rao*¹⁸ and *Sanjay Chandra v. CBI* restated the need for formalized bail hearings balancing individual rights against societal concerns.

In addition, the Supreme Court maintains enhanced rights-based protection of vulnerable populations juveniles, sick individuals, women, and socio-economically

disadvantaged accused favoring presumptive bail unless compelling reasons necessitate custody.

3.3 Implementation, Practical Problems, and Reform

In spite of clear Supreme Court guidelines, research and empirical data point toward a recurring deficiency in implementation. The occurrence of undertrial detention continues unabated because of factors such as inadequate legal aid, sluggish investigations, low judicial awareness of rights-oriented standards, and infrastructural frailties.

The problem of jail congestion and social stigma of prolonged detention remain persistent issues. The judiciary's continued focus on training, institutional infrastructure, and reform (like uniform procedures and e-courts) is critical to bringing the constitutional vision alive. Current literature and reports recommend improvements like improved access to legal representation, accelerated hearings, non-formalistic application of sureties, and legislative reform to improve judicial accountability in the exercise of discretion on bail. International

comparison also recommends adoption of transparent procedure guidelines modeled on UN standards¹⁹, prioritizing pre-trial imprisonment reduction and maximizing judicial oversight

Chapter 4

Findings

4.1 Balancing Reformatory and Retributive Justice Post JJ Act 2015

The traditional Indian system of juvenile justice emphasized reformatory justice, relying upon the understanding that juveniles have to be rehabilitated rather than punished harshly since they are developmentally immature. The Juvenile Justice Act, 2000²⁰ firmly embraced this ideology, extending protection and institutions geared towards rehabilitation and

social reintegration in accordance with constitutional provisions like Article 39 and India's international obligations under the UN Convention on the Rights of the Child (UNCRC)²¹ and the Beijing Rules.

But the benchmark shifted with the Juvenile Justice (Care and Protection of Children) Act, 2015²², introduced following the public uproar over the 2012 Delhi gang rape case involving a juvenile perpetrator. The 2015 Act introduced the possibility of trying juveniles aged between 16 and 18 who are accused of heinous offenses as adults after a limited scrutiny by the

Juvenile Justice Board (JJB). This was a significant change towards a hybrid model combining elements of retributive justice and reform, consistent with pressure from society both for accountability and deterrence and for the preservation of protective measures for juveniles.

4.2 Judicial Interpretations and Rights-Based Safeguards

Supreme Court of India and the High Courts have been significant in interpreting the 2015 Act, contending that juvenile transfers to the ordinary courts should be rare and after a wise evaluation of the physical and mental capacity of the juvenile and the gravity of the offense. In *Shilpa Mittal v. State of NCT of Delhi* (2020)²³, the Supreme Court adopted a child-friendly disposition to limit arbitrariness and protect juveniles' rights.

The judiciary recalled that these evaluations are interested in the juvenile's capability and not in the merits of the case, hence attempting to maintain constitutional rights under Articles 21 (life and liberty) and 22 (protection against arbitrary arrest and detention).

Judicial comments emphasize that bail plays a critical role in the upkeep of individual liberty assured under Article 21 and must be allowed except in cases where cogent reasons exist to deny it. The Court ensures expeditious trials and decries punishment by way of withholding of

bail, especially of vulnerable groups such as juveniles, to ensure that bail procedures uphold the rights against arbitrary detention as guaranteed under Article 22.

4.3 Effectiveness and Challenges in Implementation

Despite the provisions of stricter accountability under the 2015 Act, empirical evidence by the National Crime Records Bureau²⁴ reveals no significant decrease in rates of juvenile offending for serious offenses to support the deterrent impact of trial by adults on juvenile offenders.

Criminological literature suggests that juveniles are without rational capacity for deterrence to work and exposing them to adult prison processes may result in increased risks of recidivism. Problems of implementation persist, including poor infrastructure, absence of trained personnel to undertake psychological assessments by JJBs, and inconsistent enforcement of transfer provisions among states. Juveniles prosecuted as adults are de-stigmatised and exposed to adverse prison conditions that deny them their right to dignity and rehabilitation.

The loopholes compromise constitutional protection and the rehabilitative functions of the juvenile justice system.

4.4 The Rights-Based Bail Approach of the Supreme Court

The Supreme Court has consistently reaffirmed the rights of accused persons under Articles 21 and 22 in bail jurisprudence. Bail is welcomed as a fundamental device to prevent arbitrary and unwarranted pre-trial detention, a protection which is all the more essential for juveniles. The Court balances the presumption of innocence with public safety concerns by considering the age, mental, socio-economic status, and nature of crime of the juvenile while granting or denying bail.

This rights-oriented approach prevents denial of bail from being used as a punitive method

and ensures that juveniles are accorded fair and expeditious hearings. The checks built into bail orders protect juveniles from unwarranted denial of liberty, thereby preserving the constitutional guarantees of life, liberty, and due process under Articles 21 and 22.

4.5 Summary and Recommendations

The research concludes that although the 2015 Act and judicial approaches to it incorporate a model balancing deterrence and rehabilitation, the existing system leans toward retributive justice for certain juveniles accused of serious crimes. Although legislative reform addresses public demands for accountability, the constitutional mandate for the protection of juveniles' fundamental rights and for providing rehabilitative avenues must be ensured in stern terms.

Recommendations for implementation include scaling up rehabilitation centers, rationalizing psychological evaluations, greater judicial supervision of transfers, and using restorative justice and community interventions to make the juvenile justice system child-centered and rights-based. Maintaining bail rights in such a regime is essential to protect juveniles' liberty and dignity and achieve a balanced juvenile justice system respecting constitutional values enshrined in Articles 21 and 22.

Chapter 5

Suggestions and Conclusion

Strengthen Institutional Infrastructure: Juvenile and bail institutions must be renovated with better facilities, trained personnel, and adequate resources. Courts as well as juvenile boards should be provided with better training and the services of psychological experts to make informed decisions on bail and rehabilitation.

Give Judicial Control and Standardized Practice: The judicial system, including bail hearings, must apply standardized psychological and social tests to include

consideration of the accused's mental and physical capacity and history. High Courts should control lower courts and juvenile boards to promote consistency and fairness in bail decisions.

High Priority to Reintegration and Rehabilitation: Bail decisions based on Articles 21 and 22 should take rehabilitation potential as much into consideration as public interest. The system should ensure reintegration through community-based programs and alternatives to detention, most critically for juveniles, to uphold constitutional rights and dignity.

Enshrine and Enlarge Protections of Bail Rights: Procedural protections at bail hearings, for instance, access to timely hearings, availability of attorneys, and non-arbitrary denial of bail, should be made clear as per the Supreme Court's rights-based jurisprudence.

Balance Deterrence with Rights: Bail measures need to be made accountable but should never be punitive or undermine safeguards of rights. Bail needs to be handled by courts so that public safety is balanced without endangering the constitutional right of the accused to freedom and due process under Articles 21 and 22.

Integrate International Norms: Basing bail and juvenile justice procedures on international human rights norms such as the UN Convention on the Rights of the Child and the Beijing Rules can guide a more rights-oriented approach.

Articles 21 and 22 of India's rights-based bail system have drawn criticism for emphasizing the presumption of innocence and safeguards against arbitrary detention. Since Article 22

protects procedural rights like the right to know about an arrest and the right to appear before a magistrate within 24 hours, the Supreme Court's efforts to harmonize bail laws and judicial procedures have been commended. This right-based approach is strengthened by the

Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, which guarantees that bail is liberty-

oriented and only denied when appropriate and required. Critics contend that constitutional principles requiring justice, dignity, and proportionality limit the scope of judicial discretion in bail cases. Particularly for vulnerable groups like minors, the Indian Supreme Court's rights-based jurisprudence on bail under Articles 21 and 22 has steadily protected the constitutional right to liberty and fair procedure. The court's jurisprudence demonstrates sensitivity in striking a balance between individual rights, crime control, and the public interest, despite the fact that implementation is difficult.

However, there is still room for improvement through the institutionalization of rehabilitation-focused alternatives to incarceration, standardized assessments, and institutional empowerment. By upholding liberty, fostering rehabilitation, and advancing dignity, a

comprehensive framework of rights defense that incorporates constitutional guarantees, judicial discretion, and international standards can better support justice. It is a well-rounded strategy that addresses societal issues of crime and public safety while also being consistent with India's constitutional philosophy of justice and equity.

Chapter 6

Bibliography

A. Books

- Malik, Lokendra. *A Legal Classic on Law of Bails: Practice and Procedure*. 1st Edition, Eastern Book Company, 2025. (Comprehensive guide on bail law in India, including BNSS provisions)
- Ved Kumari. *The Juvenile Justice (Care and Protection of Children) Act 2015: Critical Analysis*. 2nd Edition, 2024. (Critical analysis of the Juvenile Justice Act 2015 from child rights perspective)
- Salman Khurshid, Sidharth Luthra, Lokendra Malik, Shruti Bedi (Eds.). *Taking Bail Seriously: The State of Bail Jurisprudence in India*, *ILI Law Review*, Winter Issue 2019. (Articles

on constitutional bail jurisprudence in India)

B. Journal Articles

- Rajeev Kumar Singh and Aparna Singh. "An Overview of Bail Jurisprudence in India with Special Reference to Article 21 of the Constitution of India," *Indian Journal of Law and Human Behavior*, Vol. 9 No. 1, Jan-June 2023. (Discusses bail considerations under Article 21)
- Ayush Mishra. "The Supreme Court of India Reads Article 21 Protection into the Stringent UAPA Bail Jurisprudence," *Oxford Human Rights Hub*, June 2021. (Supreme Court's liberal interpretation of Article 21 in bail)
- Bizimana Jean D'Amour. "Judicial creativity or judicial activism? The African court on right to bail," *International Human Rights Law Review*, July 2025. (Comparative international perspective on bail as a liberty right)

Statutes & International Instruments

- Constitution of India, 1950: Articles 21 and 22 (Right to Life, Personal Liberty, and Procedural Safeguards on Arrest and Detention).
- Code of Criminal Procedure, 1973 (CrPC), Sections 167 (detention and bail), 436A (bail of undertrials).
- Juvenile Justice (Care and Protection of Children) Act, 2015 (and Amendment Act, 2021).
- Bharatiya Nyaya Sanhita (BNSS), 2023: New criminal procedural code emphasizing rights-based bail regime.
- International Covenant on Civil and Political Rights (ICCPR), 1966: Articles 9(3), 10(2)(a), and 14(2) on liberty, humane treatment, and presumption of innocence.
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).
- UN Convention on the Rights of the Child (UNCRC), 1989.

C. Case Laws

- *Hussainara Khatoon v. State of Bihar*, (1979) 3 SCC 532. (Right to speedy trial and bail as a constitutional right)
- *Satender Kumar Antil v. CBI*, (2022) SCC Online SC 825. (Guidelines to prevent arbitrary detention)
- *Arnab Manoranjan Goswami v. State of Maharashtra*, (2020) SCC Online SC 964. (Emphasis on personal liberty and minimal pre-trial detention)
- *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248. (Broad interpretation of Article 21)
- *Sanjay Chandra v. CBI*, (2012) 1 SCC 40. (Bail cannot be denied merely due to seriousness of offense)
- *Uday Mohanlal Acharya v. State of Maharashtra*, (2001) 5 SCC 453. (Default bail principles)
- *Gudikanti Narasimhulu v. Public Prosecutor*, AIR 1978 SC 597. (Proportionate bail access)

D. Government Reports & Committee Recommendations

- Law Commission of India, 268th Report (2017): Provisions relating to bail in Criminal Procedure Code and recommendations on bail reforms.
- Ministry of Home Affairs, Government of India. Prison Statistics India, National Crime Records Bureau (NCRB), latest reports 2022–2024. (Statistics on undertrial prisoners, bail implementation)

E. NCRB Data & Other Empirical Sources

1. National Crime Records Bureau (NCRB) Data on undertrial prisoners, jail congestion, and bail-related statistics, 2022–2024.
2. Centre for Law and Policy Research (CLPR), *Re-imagining Bail Decision Making*, 2020. (Empirical study on bail decisions and undertrial detention).

ENDNOTES

- 1 INDIA CONST. art. 21.
- 2 INDIA CONST. art. 22.
- 3 Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India).
- 4 *Hussainara Khatoon (I) v. State of Bihar*, (1980) 1 S.C.C. 81.
- 5 *Satender Kumar Antil v. CBI*, (2022) 10 S.C.C. 51.
- 6 *Arnab Manoranjan Goswami v. State of Maharashtra*, (2021) 2 S.C.C. 427.
- 7 *Maneka Gandhi v. Union of India*, AIR 1978 SC 597 (India).
- 8 *Hussainara Khatoon v. State of Bihar*, AIR 1979 SC 1369 (India).
- 9 *Gudikanti Narasimhulu v. Public Prosecutor*, AIR 1978 SC 429 (India).
- 10 *Sanjay Chandra v. Central Bureau of Investigation*, (2012) 1 SCC 40 (India).
- 11 *Kashmira Singh v. State of Punjab*, AIR 1977 SC 2147 (India).
- 12 *Manish Sisodia v. Directorate of Enforcement*, (2024) 8 SCC 1061 (India).
- 13 *Sumit Mehta v. State of NCT of Delhi*, (2013) 1 SCC 570 (India).
- 14 *Ramathal v. Inspector of Police*, C.A. No. 8830 of 2012, Supreme Court of India, judgment dated August 17, 2023.
- 15 *Hussainara Khatoon v. State of Bihar*, (1979) 3 S.C.R. 532, AIR 1979 SC 1369 (India).
- 16 *Sanjay Chandra v. Central Bureau of Investigation*, (2012) 1 SCC 40.
- 17 *Kashmira Singh v. State of Punjab*, (1977) 4 SCC 291, AIR 1977 SC 2147.
- 18 *State v. Biswanath Rao*, AIR 1966 Mys 71.
- 20 *Juvenile Justice (Care and Protection of Children) Act*, 2000, No. 56, Acts of Parliament, 2000 (India), enacted Dec. 30, 2000.

21 United Nations Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, India ratified Feb. 11, 1992.

22 Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2, Acts of Parliament, 2016 (India), enacted Dec. 31, 2015, promulgated Jan. 15, 2016.

23 Shilpa Mittal v. State of NCT of Delhi, Criminal Appeal No. 34 of 2020, Supreme Court of India, Jan. 9, 2020, AIR 2020 SC 405.

24 National Crime Records Bureau, Crime in India Reports (2013–2022), Ministry of Home Affairs, Government of India.

