

“FROM EXCEPTION TO NORM: THE TRANSFORMATION OF BAIL UNDER UAPA”

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ABSTRACT

The dissertation explores the ongoing tension in India between the demands of national security and the protection of civil liberties, particularly as reflected in the bail framework under special criminal laws. The well-established principle that “bail is the rule and jail the exception,” laid down in *State of Rajasthan v. Balchand*, becomes difficult to sustain in practice due to statutes such as the Unlawful Activities (Prevention) Act, 1967 and the National Investigation Agency Act, 2008. These laws introduce heightened thresholds for granting bail, requiring courts to undertake a preliminary evaluation of the case even before trial begins.

As a result, judicial decision-making is constrained, often leading to extended periods of pre-trial detention. This raises important concerns under Articles 14 and 21 of the Constitution, which guarantee equality before the law and protection of personal liberty. Bail, in this context, is not merely procedural but closely tied to the presumption of innocence and the right to a fair and speedy trial. Earlier decisions, such as *Gudikanti Narasimhulu v. Public Prosecutor*, strongly reinforced these principles. However, later rulings most notably *National Investigation Agency v. Zahoor Ahmad Shah Watali* have shifted the balance by limiting judicial scrutiny and giving primacy to the prosecution’s version at the bail stage.

Section 43D(5) of the UAPA has been particularly criticised for turning bail hearings into proceedings resembling a trial, while simultaneously restricting the accused from effectively challenging the evidence presented by the prosecution. This issue is not merely theoretical but is evident in everyday judicial practice. Bail hearings in trial courts often span multiple sittings and involve detailed examination of case records and investigative materials. In places such as Delhi, it is common for accused individuals to remain in custody for long durations before their trials even begin, making the process itself burdensome and punitive.

The dissertation analyses whether the operation of bail provisions under such special laws aligns with constitutional requirements of fairness, proportionality, and due process. It also situates the Indian framework within a broader comparative and international context concerning pre-trial detention.

The central argument advanced is that the cumulative effect of stringent bail provisions, systemic delays, and limited judicial scrutiny has normalized what were intended to be exceptional measures. In practice, pre-trial detention begins to function as a form of punishment rather than a preventive mechanism. This development calls for critical examination, as it risks undermining core principles of criminal justice. The study ultimately argues for clearer judicial standards, stronger procedural safeguards, and legislative reform to restore a more balanced approach between national security imperatives and individual liberty.

Keywords– *Bail jurisprudence, Pre-trial detention, National security, Presumption of innocence, Due*

process.

INTRODUCTION

1.1 CONCEPTUAL UNDERSTANDING OF NATIONAL SECURITY IN CONSTITUTIONAL DEMOCRACIES

The understanding of national security has evolved throughout history. The previous definition of national security focused on two elements which were border protection and military threat defense. The definition now includes political stability and economic strength and public order maintenance as additional components. National security in India as a constitutional democracy requires limits because it operates within a framework established by fundamental human rights protections and legal principles. The actual problem starts with national security definition because it determines how far government authorities can exercise their powers without violating constitutional boundaries.¹

National security used to be defined as safeguarding the State from outside threats to its safety. The State received extensive powers to execute this mission. The understanding of this concept now exists in a new form. Security functions today as a constitutional basis for State actions in modern constitutional systems. Government actions which restrict fundamental rights require legal boundaries to define their limits. The Indian Constitution enables State actions to protect national security even though it lacks a specific definition of national security. The Constitution permits rights restrictions through provisions which include Article 19 limitations and Article 22 preventive detention and emergency powers. The powers exist as limited rights which have judicial review rights for their reasonability assessment.²

The judicial system established this equilibrium through its various decisions. In *A.K. Gopalan v. State of Madras*, The Supreme Court initially showed a lot of deference and gave power to the

preventive detention law. This position later changed with *Maneka Gandhi v. Union of India*, The Court extended personal liberty rights under Article 21 through its decision. The Court established that all restrictions must maintain both fairness standards and reasonable standards instead of applying arbitrary standards. The shift demonstrated that national security measures do not possess absolute power which bypasses constitutional checks. The two concepts of national security and civil liberties must be viewed as existing in complete opposition to each other. The democracy becomes vulnerable when security receives excessive treatment at the expense of rights, while the complete dismissal of security issues proves to be unworkable. The correct equilibrium represents our greatest challenge.³

National security has developed into a broader concept during the past few years. The current definition of national security now includes protection against terrorism and organized crime and cyber threats and internal conflicts. The Unlawful Activities Prevention Act 1967 because of this development which grants the State broader authority while enforcing more demanding operational processes. The laws establish essential security measures, but they create risks because they limit individual freedom. The criminal justice system displays this truth in a clear manner. Defendants who face criminal charges experience life threat because legal system operates under the assumption that they will be found guilty. The new approach to bail has introduced significant changes to the system. The accused person needs to demonstrate their eligibility for release while the State must validate the need to keep them incarcerated.⁴

The actual application of this rule produces major impacts. In multiple trial courts, defendants stay incarcerated for extended durations as their legal proceedings progress at a slow pace which sometimes results in their trials remaining

unstarted. The situation becomes problematic because people who face detention without official legal penalty must endure the experience as if they received punitive punishment. The situation creates major problems regarding the rights protection established by Articles 14 and 21 of the Constitution. Some scholars use the term "exceptionalism" to describe a situation where special regulations become part of normal legal procedures. The temporary solution which served as an emergency measure has developed into a permanent system that endangers constitutional democracy.⁵

International law provides essential insights which help to explain the problem. The International Covenant on Civil and Political Rights permits governments to impose restrictions for national security purposes but requires them to demonstrate that such measures remain necessary and proportionate. The Indian constitutional framework includes these principles as common legal standards which show inconsistent application throughout the entire legal system. Courts dealing with such issues must find a way to establish equilibrium between two opposing forces. The executive branch handles security matters, which leads courts to depend on that branch for their decisions. The executive branch needs security, but the court system must prevent any violation of constitutional rights. The concept of proportionality serves as a crucial tool for courts to evaluate whether particular actions exceed their necessary limits or meet their required standards.⁶

The latest developments have not resolved all existing issues. Security laws are frequently written in wide-ranging terms which result in delayed investigation and trial procedures that make matters worse. The system results in both inconsistent application and potential misuse of the regulations. The assessment of cases becomes especially challenging for courts during bail proceedings. National security needs to be assessed together with constitutional rights. The system needs to achieve equilibrium between individual freedom and just process and

responsible governance. The Constitution serves as the basis for determining how India maintains this equilibrium through its actual practice. The main difficulty lies in protecting State interests without compromising the constitutional rights which the Constitution guarantees.

1.2 THE IDEA OF CIVIL LIBERTIES AND PERSONAL FREEDOM UNDER THE

CONSTITUTION OF INDIA

The fundamental rights which people possess to maintain their personal freedom from government intrusion form the fundamental basis of constitutional democracy. The Indian Constitution provides these rights to citizens through Part III which contains protection measures described in Articles 14 19 and 21. The two elements work together to establish power boundaries which prevent leaders from using their authority in random ways. The rights established in this document serve as official protections which demonstrate a dedication to maintaining fairness and dignity while holding people accountable for their actions. People use civil liberties to protect themselves from physical detention. The rights extend to people through multiple freedoms which include their ability to speak and express themselves freely and move throughout space and protect themselves from unlawful detention and access to equitable legal procedures⁷. The rights which people possess reach beyond their immediate existence. The Constitution permits governments to implement reasonable limitations that serve the purpose of maintaining public order and safeguarding national security although authorities require valid reasons before applying such restrictions. The restriction must fulfill three essential conditions which include legal requirements and need and balanced response to protect essential rights.

The judicial system brought about the development of civil liberties understanding in India through its interpretation work. The Supreme Court established a more limited judicial perspective during its initial period which brought about the decision. *A.K. Gopalan v. State*

of Madras, The system established separate treatment for fundamental rights which limited the extent of judicial examination. The Court in *Maneka Gandhi v. Union of India* created a new interpretation of personal liberty which required all restrictions to meet standards of fairness and justice and reasonableness. The concept of substantive due process became established through this development. The legal framework of Article 21 has expanded to encompass various rights that include the rights to privacy and dignity and the right to a speedy trial. In *Justice K.S. Puttaswamy*

v. Union of India,⁸ the Court established privacy as an essential right which protects individual autonomy rights fundamental to the constitutional system. The presumption of innocence exists as an essential element of this discussion because it protects the right to a fair trial, even though it lacks direct mention in the Constitution.

The courts have established that pretrial detention must not serve as a form of punishment. The concept appeared in the idea in *State of Rajasthan v. Balchand*, The court showed that bail should be given to every person who requests it during their court appearance. The legal system needs procedural safeguards because they function as essential tools that defend individual rights. Article 22 provides certain protections in cases of arrest and detention, such as the right to be informed of the grounds of arrest, the right to consult a lawyer, and the requirement of being produced before

a magistrate within twenty four hours. The Constitution allows preventive detention because it shows the struggle between individual rights and governmental needs. The civil liberties of individuals face a greater threat when their rights to free expression conflict with urgent security needs and public safety measures. The State can use reasonable restrictions to restrict rights but these restrictions must stay within proper limits which protect essential rights. The situation becomes more complicated when special criminal laws such as

the Unlawful Activities (Prevention) Act, 1967, which create stricter regulations for arrest and detention and bail procedures, come into effect. The laws proceed to establish exceptional procedures which create doubts about their capacity to sustain a proper balance between individual freedom and national security because they require the accused to prove their innocence.⁹

Theoretical concerns do exist in practical situations. The combination of investigation delays and trial delays together with vague legal terms results in extended periods of detention. The two concepts of pre-trial detention and punishment enter a state of confusion in these situations, which creates significant constitutional issues. The courts have attempted to solve this issue through their rulings which include the case of *Gudikanti Narasimhulu v. Public Prosecutor*, The issue continues to exist at the location where they showed how to achieve equilibrium between individual freedoms and community needs. The international community brings attention to the same issues which emerge in this situation. The International Covenant on Civil and Political Rights establishes legal frameworks which permit security-based restrictions as long as those restrictions fulfill both necessity and proportionality requirements. The Indian legal system adopts these principles because they exist as fundamental rights which citizens possess but require specific legal procedures to enforce.¹⁰

State security and individual rights have always existed in a state of conflict. The State holds responsibility to ensure public safety while it defends society against dangerous elements. The State operates under constitutional boundaries which establish safeguards for citizens' rights to freedom. The conflict between these two elements has existed since the development of social contract theory. Hobbes, Locke, and Rousseau established the basis for state authority acceptance

by individuals, whereas modern constitutional frameworks, including India's system, grant state

power only when it safeguards individual rights. The Constitution establishes this equilibrium through fundamental rights, which permit limitations that can only happen according to designated requirements.¹¹ The court system required to protect this standard until the Maneka Gandhi case established a new approach, The establishment of national security procedures needs to meet established fairness and reasonableness standards which apply to both legitimate government actions and military operations. National security cases present additional difficulties because of their special nature. The executive branch receives some level of deference from courts because judges understand the need for special expertise in these matters. The system risks entering dangerous territory because judges may start to trust executive power too much. Special criminal laws such as UAPA enforce more rigorous requirements than standard legal procedures. In *National Investigation Agency v. Zahoor Ahmad Shah Watali*, The Supreme Court established a narrow bail policy which mandated courts to base their judgments on the prosecution's initial evidence. Critics of this practice argue that it restricts defendants from mounting effective defenses while bail hearings function as preliminary trial proceedings. The existing conditions demonstrate a shift toward preventive justice which prioritizes the identification of future threats instead of the punishment of current criminal behavior. The practice needs specific circumstances to prove its validity because it creates dangers of mixing together prevention and punishment techniques.¹²

Proportionality doctrine establishes its significance through its application to these specific matters. The courts have used this principle to determine if rights restrictions are acceptable although the Constitution does not specifically mention it. The State requires proper measures to accomplish its legitimate goals because their implementation should not excessively restrict citizens' rights. The approach has been applied to a variety of cases including

Modern Dental College v. State of Madhya Pradesh and *Justice K.S. Puttaswamy v. Union of India*. The method has shown inconsistent results when used for national security cases. Courts sometimes rely too heavily on the State's claims without checking if there are other options that need less restriction. The relationship between national security and civil rights will always create new conflicts. The principle remains active in constitutional governance. The actual implementation of this balance

process determines its effectiveness. The Indian system functions through judicial interpretation, legislative decisions, and the existing constitutional structure. The main difficulty arises when the State attempts to protect national security because it threatens to undermine the rights that protect the Constitution's essential principles.¹³

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