
BAIL AS A RULE OR EXCEPTION: A CRITICAL ANALYSIS OF EVOLVING BAIL JURISPRUDENCE IN INDIA

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ABSTRACT

Bail plays a crucial role as a fundamental right which aims at balancing individual freedom and administration of the law. The doctrine that “bail is the rule and jail is the exception” has always been adhered to by courts of law in India as part of ensuring that individual liberty provided for in Article 21 of the Constitution of India is protected. This article provides a critical analysis of bail doctrine in India. In this regard, an analysis will be undertaken on the basis of the constitutional underpinnings, legal provision and judicial decisions regarding bail principles in India. Judicial discretion in granting bail and significant decisions of the Supreme Court will be analyzed. The effect of restricted bail provisions in special laws on bail principles in addition to the effect of recent changes to the Indian Penal Code through the enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023 shall also be considered. By adopting a doctrinal research method, this paper asserts that while Indian courts have always upheld the significance of personal freedom, practical problems such as protracted periods of undertrial, crowded prisons and lack of uniformity in bail practices hinder the application of bail principles.

Keywords: Bail, Bail Jurisprudence, Personal Liberty, Article 21, Criminal Justice System, Undertrial Prisoners, Judicial Discretion, BNSS 2023.

1. INTRODUCTION

Personal liberty is the most basic value in a constitutional democracy, constituting one of the fundamental rights within the criminal justice system framework. Law of bail is one of the mechanisms in place that allows for the protection of personal liberty of individuals against unnecessary incarceration before establishing their guilt. As a principle of presumption of innocence, law of bail aims at balancing the rights of an accused and interests of society and proper judicial process. In particular, bail makes it possible to protect personal liberty by depriving the accused of freedom without sufficient justification¹.

In India, the role of bail becomes particularly important because of the guarantee of right to life and personal liberty stipulated in the Constitution under Article 21. With time, the Supreme Court has constantly stressed on the importance of making personal detention prior to conviction an exception in cases when bail is required to ensure proper conduct of judicial procedures. Thus, the principle of "bail is the rule and jail is the exception" has acquired constitutional status.

However, the application of the principle in practice continues to encounter certain problems as far as the bail law is concerned. Many persons continue to stay imprisoned prior to their conviction as the result of various delays and socio-economic factors that are relevant to bail in criminal cases. Emergence of offenses that require particular consideration such as terrorism, organized crimes, and economic crimes has also made its impact on bail law in India. Finally, some new changes related to bail were introduced into criminal law in the form of Bharatiya Nagarik Suraksha Sanhita, 2023.

Given this, it seems appropriate to make an attempt to analyze the concept of bail law, identify the constitutional basis of the same, evaluate bail jurisprudence in India, analyze existing challenges faced by current legislation, and discuss relevant contemporary reforms and trends in this sphere. More specifically, it is important to understand if the principle "bail is the rule and jail is the exception" still holds valid².

¹ Saxena, M. (2023). Critical Analysis of Bail Trends Prevalent in India in Comparison to Other Jurisdictions. Issue 3 Int'l JL Mgmt. & Human., 6, 1422.

² Jain, M., & Dixit, A. (2022). " Bail: A General Rule, Jail: An Exception" an Analysis. Issue 5 Indian JL & Legal Rsch., 4, 1.

1.1.Objectives of the Study

This study attempts to conduct an inquiry into the emerging jurisprudence of bail in the context of Indian constitutional values. The particular purposes of this study are:

1. To investigate the concept of bail, and its constitutional roots, especially within the purview of personal liberty guaranteed under Article 21 of the Constitution of India.
2. To explore the jurisprudence of bail through judicial landmarks, culminating in the emergence of the doctrine that 'bail is the rule and jail is the exception'.
3. To understand current issues and legislative advancements, such as Bharatiya Nagarik Suraksha Sanhita, 2023, and recommend steps for bolstering bail jurisprudence in India.

2. LITERATURE REVIEW

Singh and Kaur (2023) critically reviewed the state of the law relating to bail in India and pointed out that the existing legal provisions relating to bail needed an overhaul in order to achieve a better protection of the constitutional rights of the accused persons. These scholars have noted that although the courts in India had repeatedly declared that the legal presumption should be of bail being granted rather than denied, a good number of prisoners in jails had not been able to secure their release on bail because of various problems such as lack of uniformity among the judicial authorities, delay in proceedings, prison overcrowding, and socio-economic disadvantages³.

Singh (2024) was carried out on the development of the bail doctrine, both in terms of constitutional philosophy and new criminal statutes in India. This research considered the development of the doctrine of bail through judicial pronouncements, from constitutional interpretations to new criminal laws. It was noted that while considering the issue of bail, courts in India have always upheld the concept of personal liberty as a basic value and balanced it against the interest of administering criminal justice system. Another point that the author considered was the impact of Bharatiya Nagarik Suraksha Sanhita, 2023. The study concluded that while there were procedural changes in law, their success greatly depended on their

³ Singh, S., & Kaur, P. (2023). The Status of Bail Jurisprudence in India: Need Comprehensive Revamp. Issue 2 Int'l JL Mgmt. & Human., 6, 1386.

implementation⁴.

Sharma (2025) explored the legality of the concept of “bail being the norm and jail the exception,” especially as it applied to situations where special criminal law was concerned, including the Unlawful Activities Prevention Act (UAPA). The research focused on judicial pronouncements in relation to bail provisions within anti-terrorist laws and contended that constitutional provisions for freedom could not simply be made redundant by statute-based rules. It was found that bail restrictions often led to long periods of detention without sentencing and therefore raised questions about the fundamental right to freedom. It was stressed that even special legislation did not absolve judges from balancing national security concerns and constitutional promises of freedom⁵.

Pandey and Chandra (2025) revisited the bail law by analyzing the rules relating to bail provided in the Code of Criminal Procedure, 1973 vis-à-vis the laws regarding bail enunciated in the Bharatiya Nagarik Suraksha Sanhita, 2023. By doing so, the authors have tried to examine the latest developments in law and evaluated if the new bail procedure can meet any shortcomings in terms of bail practices. In their analysis, the authors found that although the BNSS has provided some procedural reforms which have helped to make bail procedures better, there were still many issues in this regard that had not been solved⁶.

Bandopadhyay et al. (2022) conducted a critical analysis of judicial guidelines in regard to bail in non-bailable cases. The research identified various criteria that are taken into account by courts when exercising their discretion on issues regarding bail such as the nature of the crime, the chances of flight, chances of tampering with evidence and other aspects of the matter from the perspective of public interest. According to the research, the use of judicial guidelines had greatly contributed to the achievement of consistency and justice in decisions regarding bail. However, the research established that a lot of variances existed in the use of these guidelines from case to case⁷.

⁴ Singh, Y. (2024). Evolution of Bail Jurisprudence: in the Prospect of the Constitution and New Criminal Laws. Available at SSRN 5012961.

⁵ Sharma, M. (2025). BAIL IS THE RULE, JAIL IS THE EXCEPTION—A CONSTITUTIONAL IMPERATIVE EVEN UNDER SPECIAL LAWS LIKE UAPA. Indian Journal of Integrated Research in Law Volume V Issue III| ISSN, 2583, 0538.

⁶ Pandey, A., & Chandra, S. (2025). Revisiting Bail Laws in India: A Review of CrPC and BNSS in Light of Recent Legal Trends.

⁷ Bandopadhyay, S., Chakrawarti, T., & Mazumdar, S. (2022). Bail in non-bailable offences: A critical analysis of Supreme Court guidelines. Nyaayshastra L. Rev., 3, 1.

3. RESEARCH METHODOLOGY

The current paper employs the doctrine method of legal research to undertake an inquiry into the jurisprudential aspects associated with the principle of bail in India. The doctrinal method is quite apt for the conduct of this research, as it entails the examination of legal doctrines, principles, statutory rules, judicial decisions, and constitutional doctrines pertaining to the issue of the law of bail.

Primary sources will form a key aspect of the research. These sources include constitutional documents, statutory laws, judgments and observations by the Supreme Court of India as well as High Courts, and legislations dealing with the question of bail. Specific focus has been laid upon the landmark cases dealing with the principle that "Bail is the Rule; Jail is the Exception". Furthermore, the research is expected to delve into the provisions of the Bharatiya Nagarik Suraksha Sanhita, 2023, and its implications on the bail administration in India.

Secondary sources for the research shall comprise scholarly books, journals, commentaries, legal reports, Law Commission reports, official documents, government publications, as well as academic papers on the topic of criminal justice and personal liberty. The purpose of employing such sources is to obtain a deeper understanding of theoretical foundations behind bail, contemporary problems faced, and emerging trends in this field⁸.

The scope of the study is delimited to the legal and constitutional aspect of bail in India. This means that only legal aspects and developments relating to the evolution of bail practice shall be considered. Thus, focus shall be laid upon the development of judicial thinking regarding bail, judicial discretion in bail matters, influence of special criminal statutes, and new legislative measures related to bail.

4. CONCEPTUAL AND THEORETICAL FOUNDATIONS OF BAIL

The idea of bail is based on the concepts of liberty, justice, and the presumption of innocence. On paper, it ensures that there exists a balance between the two major parties: the state, which needs to guarantee the presence of the defendant during the trial, and the accused person, who retains the liberty granted to them by the Constitution until found guilty by a court of competent

⁸ Bhardwaj, A. (2024). Evolution of Bail Provisions in Specialized Criminal Legislation: A Study of Indian Statutes and Judicial Precedents. Issue 2 Int'l JL Mgmt. & Human., 7, 1828.

jurisdiction. Thus, it can be concluded that bail is one of the main guarantees that ensure that pretrial detention cannot serve as a means of punishment and that the detention is lawful and justified.

4.1. Meaning and Nature of Bail

Bail is a process by which the accused is allowed out of prison upon the undertaking that he or she shall make it to the court when required for court appearances. The idea of bail is rooted in the English common law tradition, and it was devised with the aim of ensuring that unnecessary detention of an individual does not take place prior to the trial. Bail is thus an essential part of the presumption of innocence process, where the accused is presumed innocent until proven guilty by a court of law.

4.2. Objectives of Bail

The main aim of granting bail to the accused is the assurance of his presence during the process of investigation and trial without having to detain him unnecessarily. Granting bail also acts as a measure preventing any form of arbitrary detention and ensures the protection of the basic human right of personal freedom. It is also an attempt at striking a balance between the rights of the accused and those of the society.

4.3. Types of Bail in India

➤ Regular Bail

Bail under normal circumstances can only be granted after an arrest is made where the suspect is in detention. The granting of bail will facilitate the release of the accused from custody while awaiting the trial proceedings.

➤ Anticipatory Bail

Anticipatory bail refers to the measure which is taken before making an arrest for a non-bailable offense by someone anticipating that he may be arrested.

➤ Interim Bail

Bail interim is a type of bail which is given temporarily until the final disposal of an ordinary

bail petition⁹.

➤ Default Bail

Statutory bail is the legal right of the accused if the investigation agency has not completed the process of investigation and prepared the charge-sheet within the period prescribed by law.

Table 1: Types of Bail under Indian Law

Type of Bail	Purpose
Regular Bail	Release after arrest
Anticipatory Bail	Protection against anticipated arrest
Interim Bail	Temporary relief
Default Bail	Statutory right due to delay in investigation

5. EVOLUTION OF BAIL JURISPRUDENCE IN INDIA

The evolution of bail law in India has been greatly shaped by the judicial interpretation of constitutional values, especially Article 21 of the Constitution, which guarantees freedom of the person. Right from its inception, the Supreme Court has stressed the importance of pretrial detention being exceptional rather than normative and that the principle of granting bail should be based on principles of justice, fairness, and reasonableness. Over time, through various judgments, the Supreme Court has evolved the idea of bail as a right-based system of bail.

5.1. State of Rajasthan v. Balchand (1977)¹⁰

The historic ruling established the principles of bailing law for India. The famous dictum in the decision states that “Bail is the norm, while Jail is an exception.” This clearly shows that personal liberty cannot be restricted unjustifiably until proven guilty in court. The judgement established that only in exceptional cases should detention occur.

5.2. Gudikanti Narasimhulu v. Public Prosecutor (1978)¹¹

In this case, the Supreme Court has focused on the importance of striking the right balance

⁹ Dhoundiyal, B., & Chawla, P. (2025). From Loopholes to Legal Safeguards: Transforming Judicial Conduct in Bail Proceedings through Satender Kumar Antil versus CBI. *LawFoyer Int'l J. Doctrinal Legal Rsch.*, 3, 421.

¹⁰ State of Rajasthan v. Balchand, (1977) 4 SCC 308.

¹¹ Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh, (1978) 1 SCC 240.

between individual freedom and the well-being of society. It has stressed the need to ensure that all decisions on granting bail are taken through judicial discretion in an equitable and just way.

5.3. *Hussainara Khatoon v. State of Bihar* (1979)¹²

Through this case, the problems faced by prisoners who were not being tried for long periods of time came into focus. In the judgement passed on this case, the Supreme Court held that the right to speedy trial is an inherent part of Article 21.

5.4. *Sanjay Chandra v. CBI* (2011)¹³

The court reaffirmed that bail intended not for penal purposes but to secure the attendance of the accused at the trial. It emphasized that pre-trial detention could not be used as a means of punishment, while personal liberty could only be restricted in case of necessity.

5.5. *Satender Kumar Antil v. CBI* (2022)¹⁴

In this landmark case, the Supreme Court laid down certain guidelines to prevent unnecessary arrest and unnecessary detention of individuals in jail. The Supreme Court made clear that the concept of bail should reflect constitutional ideals and that liberty is the rule and not the exception in criminal jurisprudence.

Table 2: Landmark Judicial Decisions Shaping Bail Jurisprudence

Case	Year	Key Contribution to Bail Jurisprudence
State of Rajasthan v. Balchand	1977	Established the principle that “Bail is the rule and Jail is the exception.”
Gudikanti Narasimhulu v. Public Prosecutor	1978	Emphasized balancing liberty and societal interests.
Hussainara Khatoon v. State of Bihar	1979	Recognized speedy trial as part of Article 21.

¹² *Hussainara Khatoon (I) v. Home Secretary, State of Bihar*, AIR 1979 SC 1369.

¹³ *Sanjay Chandra v. Central Bureau of Investigation*, (2012) 1 SCC 40

¹⁴ *Satender Kumar Antil v. Central Bureau of Investigation*, (2022) 10 SCC 51.

Sanjay Chandra v. CBI	2011	Held that pre-trial detention should not be punitive.
Satender Kumar Antil v. CBI	2022	Issued guidelines to reduce unnecessary arrests and detention.

6. JUDICIAL DISCRETION AND FACTORS GOVERNING BAIL DECISIONS

The decision to allow or refuse bail is mostly discretionary in nature. Courts can only act based on the statute and constitution, but the granting or refusal of bail is usually made on the basis of the particular case before the court. Discretion on the part of the judge should always be used reasonably and justly for the sake of justice¹⁵.

6.1. Nature and Gravity of the Offence

An important factor when it comes to deciding on granting bail is the type of offence committed. The courts take a much more prudent course of action when it involves serious crimes that could lead to social repercussions.

6.2. Possibility of Absconding

The courts have to determine the likelihood of the accused absconding from the case if placed on bail. Social background, place of residence, occupation, and other such related factors may be considered in this regard.

6.3. Tampering with Evidence or Influencing Witnesses

It may be necessary not to grant bail if it is believed that the person accused of committing an offence might tamper with any evidence or witnesses, which would make a fair trial impossible.

6.4. Criminal Antecedents

It is possible to take into consideration the criminal record of the accused when considering an application for bail. Those with a record of committing the crime before can be treated with

¹⁵ Bansal, A., & Plaha, D. (2023). Presumption of Innocence in Bail Jurisprudence: Erosion or Evolution?. Int'l J. Jurid. L., 3, 38.

more severity.

6.5. Public Interest and Administration of Justice

The courts also take into account the wider interest of society and the necessity of upholding faith in the administration of justice. But public sentiment alone cannot become a valid reason for rejecting a bail application.

Table 3: Factors Governing Bail Decisions in India

Factor	Importance in Bail Determination
Nature and Gravity of Offence	Determines seriousness of allegations.
Risk of Absconding	Ensures the accused appears for trial.
Tampering with Evidence	Protects integrity of investigation.
Influencing Witnesses	Safeguards fair trial rights.
Criminal Antecedents	Assesses likelihood of repeat offences.
Public Interest	Balances liberty with societal concerns.

7. BAIL UNDER SPECIAL CRIMINAL STATUTES: EXCEPTION TO THE RULE?

Although bail is normally granted as a principle in normal criminal law, some exceptional criminal laws of India provide strict conditions for granting bail. Such laws have been framed for tackling grave crimes like terrorism, drug smuggling, money laundering, and criminal activities of an organized nature. Yet, the strict provisions for granting bail under such laws have given rise to certain apprehensions related to personal freedom and presumption of innocence¹⁶.

7.1.Unlawful Activities (Prevention) Act, 1967 (UAPA)

The UAPA contains strict provisions governing bail in cases involving terrorism and activities threatening national security. Courts may deny bail if there are reasonable grounds to believe that the allegations against the accused are prima facie true. As a result, obtaining bail under

¹⁶ Sharma, R. (2002). Human Rights and Bail. APH Publishing.

the UAPA is often difficult, leading to prolonged periods of pre-trial detention.

7.2. Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act)

The NDPS Act provides stringent guidelines for issuing bail especially where there are large-scale narcotics involved. It is incumbent upon the court to establish that the person accused of committing the offense is innocent and that he would not commit any offense while under bail. This makes the exercise of judicial discretion very difficult.

7.3. Prevention of Money Laundering Act, 2002 (PMLA)

In PMLA, there are strong conditions of granting bail for persons charged with money laundering offense. However, judicial interpretation has altered some elements of the provisions; nonetheless, the law still imposes tough conditions on the release of persons under arrest than normal criminal laws.

7.4. Impact on Bail Jurisprudence

The restrictive nature of the laws found within these special statutes has resulted in a departure from the principle of the common law that bail is a general practice while imprisonment is the exception. For many people, it is much harder to obtain their release on bail in such a situation than it would be if they were charged in accordance with normal criminal law.

8. BAIL UNDER THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023: RECENT REFORMS AND THEIR IMPLICATIONS

The new code which has been introduced is the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). The new code is replacing the existing code of criminal procedure which was drafted in the year 1973¹⁷. Although it retains the same fundamental structure regarding the provision of bail, some changes have been made in order to enhance the efficiency of criminal proceedings.

¹⁷ Verma, S., & Khan, A. M. (2025). Reimagining Bail Jurisprudence under the Prevention of Money Laundering Act: Constitutional Challenges and the Reverse Burden Paradigm. *LawFoyer Int'l J. Doctrinal Legal Rsch.*, 3, 935.

8.1.Provisions Relating to Bail

BNSS still recognizes the classification of offenses into bailable and non-bailable ones as well as retains discretion with courts while issuing bail orders¹⁸. In addition, there are certain clauses aimed at providing more transparency in the process of criminal proceedings.

8.2. Protection of Undertrial Prisoners

Another important aspect of the BNSS Bill is the focus on tackling the issue of the detention of undertrial prisoners¹⁹. The bill aims to minimize the detention of individuals when their cases are still being considered by court and thus upholds the constitutional principle of liberty.

8.3. Impact on Bail Jurisprudence

However, those that have been instituted by BNSS are indicative of an effort to strike a more pronounced balance between personal freedom and the administration of law. Through enhancing procedural efficiencies and curtailing unnecessary delays, these laws can potentially prevent the occurrence of long-term pretrial detention²⁰.

Table 4: Comparison between CrPC and BNSS

Aspect	CrPC 1973	BNSS 2023
Bail Framework	Existing provisions	Retained with procedural refinements
Undertrial Protection	Limited	Greater emphasis
Speed of Proceedings	Traditional approach	Focus on efficiency

¹⁸ Tahir, M. R., Azeem, H. M., & Iqbal, Z. (2024). Reforming Post-Arrest Bail in Pakistan: Lessons from a Comparative Study with India. *Review of Education, Administration & Law*, 7(4), 235-252.

¹⁹ Kumar, V., & Gupta, T. (2026). Challenges and Potential Negative Consequences of Bail Reform. *Perspectives on Justice: Essays In Criminal Law*, 25.

²⁰ Sekhri, A. (2025). Retaining the "Premium on Poverty": India's Perplexing Persistence with a Monetary bail Regime. *Mod. Crim. L. Rev.*, 2, 80.

9. CONCLUSION

It is important to note that the legal framework governing the law of bail is of utmost significance in the Indian criminal justice system because of its role in the protection of individual liberties. The history of bail jurisprudence in India has always been marked by a constant reaffirmation of the fact that the law of bail recognizes that "bail is the rule and jail is the exception". Nevertheless, it must be mentioned that despite the fact that there have been numerous instances of reformatory legislation along with an overwhelming emphasis from the judiciary on making sure that bail is considered a right, the practicalities associated with bail still pose serious issues in light of issues like prolonged undertrials, prison congestion, socio-economic problems, procedural delay and other issues related to restrictive provisions made in special criminal legislations. It can be seen from the findings of this research paper that despite the introduction of recent measures like the passage of the Bharatiya Nagarik Suraksha Sanhita, 2023, it still remains imperative for courts to ensure that bail is properly implemented as a fundamental right under Article 21 of the Indian Constitution.

Recommendations

- Conceive bail guidelines that guarantee uniformity in decision-making.
- Hasten the processing of bail requests, especially when there are prolonged periods of pre-trial detention involved.
- Upgrade the system of legal aid to ensure the availability of quality legal representation for poor defendants.
- Advocate for frequent reviews of the issue of undertrial detention to prevent unwarranted imprisonment.
- Foster a culture of adhering to the dictum that "bail is the norm while jail is an exception."
- Guarantee that restrictive provisions on granting bail in special acts conform to constitutional safeguards of individual freedom.
- Broaden judicial knowledge and competence on matters relating to bail jurisprudence

and the Constitution.

- Facilitate more efficient investigations and trials through improved systems.

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