
RIGHT TO BAIL IN INDIA: STATUTORY PROVISION OR CONSTITUTIONAL RIGHT

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ABSTRACT

The Right to Bail is unquestionably one of the most crucial rights of an accused person under the Criminal Justice System. Bail is founded upon the principle of personal liberty, equality and presumption of innocence, it maintains the balance between the rights of an individual and the societal interests. The Legal Regime governing bail within India is predominantly defined by statutory provisions laid within Bharatiya Nagarik Suraksha Sanhita, 2023, and decades of judicial interpretation of its applicability and meaning which has evolved and added new contours to the concept of bail, by linking it to the constitutional right of life and personal liberty under Article 21 of the Indian Constitution¹.

This paper employs a doctrinal method of research to critically analyse the nature of the Right to Bail and its relationship with the statutory and constitutional framework within the Indian legal system. It also examines the statutory provisions related to Bail, Judicial Interpretation of Article 21 in Landmark Cases of Bail, Principle of Presumption of Innocence and the speedy trial, and problems of overcrowded prisons and prolonged under trial periods. The paper argues that the procedural entitlement to seek bail originates from statutory provisions, but its substantive content and normative legitimacy are derived from constitutional values. It concludes that the Right to Bail occupies a hybrid position, functioning as a statutory remedy within a constitutional framework, thereby reinforcing the ideals of liberty, equality, dignity, and rule of law within Indian criminal justice system.

Keywords: Bail, Constitutional Right, Personal Liberty, BNSS, Article 21, Undertrial Prisoners, Criminal Justice System.

¹ INDIA CONST. art. 21.

I. INTRODUCTION

In a democratic system, criminal justice acts as a bridge between the need of the State to maintain law and order and fundamental rights of individuals guaranteed by the Constitution. Bail is an important safeguard provided in a criminal justice system for an accused. The principle of Bail is founded upon the doctrine that every person is considered to be innocent until proven guilty by a competent court of law. It is an essential safeguard of personal liberty which enables the appearance of the accused before the court and during the investigation period.

In India, the concept of bail is not merely a procedural feature of criminal law but has itself evolved as a vital aspect of constitutional jurisprudence. The judiciary's perception of fundamental rights for justice, liberty, equality and dignity has played a major role in the interpretation of the Constitution. The Constitution of India does not expressly recognize a fundamental right to bail, but in several cases it has been linked with the right to personal liberty guaranteed under Article 21.

The constitutional provisions governing the Right to Bail are largely based on Article 14, 21 and 22 of the Indian Constitution. As per Article 21, no person shall be deprived of his life or personal liberty except according to procedure established by law. The Supreme Court, by judicial activism and progressive interpretation of the Constitution, has added several safeguards which are important for a fair trial in criminal proceedings under Article 21. The Right to a Speedy Trial, Legal Aid, against Arbitrary Arrest, and the Principles of Fairness and Reasonableness are all part of personal liberty. This has significantly enhanced the constitutional principles of bail.

The laws pertaining to bail are largely mentioned in Bharatiya Nagarik Suraksha Sanhita, 2023 (previously the Code of Criminal Procedure 1973). It specifies distinction between bailable and non-bailable offences and lays down provisions for granting bail in both scenarios. In bailable offences, bail is considered as a right while in non-bailable offences, the grant of bail is discretionary. This discretion must be exercised by considering various factors, such as the nature and seriousness of the offence, the risk of the accused leaving the country, the risk of tampering with the evidence, the interests of the victim and the wider interests of justice.

The law of bail has undergone a transformative evolution over the years, largely influenced by

the judicial precedents. Judicial decisions consistently highlighted the importance to prioritize liberty unless compelling reasons justify its restriction. In the case of *Hussainara Khatoon v. State of Bihar*², the Supreme Court revealed the situation of thousands of under trial prisoners who have been incarcerated for more than the maximum sentence for the crime committed by them. The Court has acknowledged the importance of speedy trial as an integral part of Article 21 and the constitutional duty of the State in respect of the prevention of groundless arrest.

II. MEANING AND NATURE OF BAIL

The term “bail” is not defined within any Statute within India, nevertheless, the word “bail” has been used in Bharatiya Nagarik Suraksha Sanhita, 2023 and the term “Bailable Offence” has been defined under Section 2(1)(b) of BNSS, 2023. It is generally defined as the conditional release of the accused person from custody after providing security or the execution of a bond to ensure his appearance before the court when summoned.³ Black’s Law Dictionary defines bail as “The release of person from legal custody by providing security which could be cash deposit or a bond of assuring the appearance of the accused in court when required”.

Bail plays a vital role in criminal law and is one of the most important protections against deprivation of personal liberty. The nature of bail is closely connected with the principle of presumption of innocence of every accused person until he is convicted by a proper trial. The pre-trial incarceration should be considered an exception, since guilt is not determined during the arrest or detention.

The jurisprudential foundation of bail is based on the concept of separation between punishment and preventive detention. The primary purpose of detention before conviction is not to punish the accused, but to achieve legitimate aims like prevention of absconding, preservation of evidence, maintenance of public order and effective investigation⁴. Therefore, if it is possible to achieve those objectives without detaining the accused, then the grant of bail becomes constitutionally and legally desirable.

The Supreme Court has always ruled that liberty shall be the rule and detention be the exception. This has led to the famous doctrine of “Bail, Not Jail” which has been a guiding

² *Hussainara Khatoon v. Home Secretary, State of Bihar*, (1980) 1 SCC 81(India).

³ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 2(1)(b) (India).

⁴ Adv. Vyomesh Uday Warunjikar, *Right of Bail and Article 21 of Constitution of India, 1950*, SSRN Electronic Journal, at 52 (2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6728618.

principle of Indian Bail jurisprudence. The doctrine acknowledges that unnecessary incarceration has irreparable impact on the dignity, reputation, livelihood and social status of a person, even before the guilt is ultimately proven before the court.

Therefore, the nature of bail is more substantive than mere procedural privilege. It acts as an essential legal protection for personal freedom, the presumption of innocence and equity within the criminal justice system. In contemporary constitutional jurisprudence, 'Bail' is gradually becoming a part of the larger constitutional safeguard of personal liberty embodied in Article 21 of the Indian Constitution.

III. TYPES OF BAIL

There are commonly 4 types of bail as per the stages of the criminal proceedings-

1) Regular Bail-

Regular bail is granted to a person who has already been arrested and is in police or judicial custody. It allows the accused to secure release from custody while the investigation, inquiry or trial remains pending. The provisions relating to regular bail are discussed within Section 478 and 483. In bailable offence, the grant of bail is a right whereas in non-bailable offences, it is on the discretion of the court.

2) Anticipatory Bail-

Anticipatory bail is a legal remedy prior to arrest of a person who apprehends arrest for a non-bailable offence. It acts as a protection against unjust or malicious arrest, and can be issued by the High Court or the Court of Session pursuant to the Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023. The court may impose conditions while granting bail as reasonable step for protection.

3) Interim Bail

Interim Bail is temporary bail given for a limited period till the disposal of regular bail or anticipatory bail application. There is no specific definition of interim bail under the Bharatiya Nagarik Suraksha Sanhita, 2023 but the courts have inherent judicial powers to provide temporary protection as per the circumstances.

4) Default Bail (Statutory Bail)

Where the investigating agency does not complete the investigation process and prepare the final chargesheet within the stipulated time as prescribed by the law, then bail shall be granted. In respect of the BNSS, 2023, the accused acquires an indefeasible right to be released on bail by the completion of statutory period if he is willing to be released on bail. This acts as a protection against unlawful and indefinite imprisonment and to protect the personal liberty of accused.

All these bail types are vital aspects of the Indian Criminal Justice system and embody the legal principles upholding the sanctity of personal liberty and the efficient delivery of justice.

IV. CONSTITUTIONAL PROVISIONS OF THE RIGHT TO BAIL

The concept of bail is a special feature of the Indian constitutional jurisprudence. The constitution of India does not have a specific fundamental right to bail but, the judicial understanding of right to bail has evolved from being merely a statutory remedy to necessary protection of the right to personal liberty. The basic principle of bail is found in Article 14, 21 and 22 of the Constitution which together aim to safeguard the individual against any arbitrary deprivation of personal liberty and to ensure fairness in judicial proceedings. The Supreme Court has emphasized on the interpretation of law related to bail to align with the constitutional values including liberty, dignity, equality and due process of law.

1) Right to Bail under Right to life and personal liberty (Article 21)

Article 21 of the Constitution states that “no one shall be deprived of his life and personal liberty except in accordance with procedure established by law”⁵. Initially the scope of Article 21 was limited, but in the case of *Maneka Gandhi v. Union of India*⁶, the court stated that any law taking away the freedom of a person must be just, fair and reasonable and cannot be arbitrary, oppressive and unreasonable.

The concept of bail has been given constitutional significance within the protection of personal liberty guaranteed under Article 21. The expression “Personal Liberty” does not merely mean the liberty of body i.e. not only freedom from arrest and detention, from false imprisonment or

⁵ INDIA CONST. art. 21.

⁶ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (India).

wrongful confinement but means much more than that.⁷ An accused shall be presumed to be innocent until found guilty, and his detention before conviction is a serious infringement on liberty and is therefore subject to stringent requirement of justification. The aim of bail is to make sure that restrictions must remain necessary and proportionate.

The Supreme Court held that prolonged pre-trial detention violates the right to personal freedom. In the case of *Hussainara Khatoon v. State of Bihar*⁸, the court stressed upon the issue of the lives of the undertrial prisoners who were being tried for years and emphasized that the right to speedy trial is an integral part of the right to life guaranteed by Article 21. The decision emphasized that deprivation of liberty is not acceptable merely because criminal justice system suffers from systematic delays.

Similarly, in the case of *Gudikanti Narasimhulu v. Public Prosecutor*⁹, the Supreme Court stated that a bail application will be decided on the basis of constitutional values of liberty and justice rather than rigid procedural formality. The Court emphasized the need for balancing the interest of the society and the liberty of an individual in deciding the bail application.

2) Right to Bail under Equality before Law (Article 14)

Article 14 states the right to equality before the law and equal protection of the laws.¹⁰ The essence of Article 14 is not merely that of equality but that it forbids unjustified actions of the State. Article 14 assumes significance in bail jurisprudence as the release of accused on bail must be fair, rational, based on relevant considerations, not discrimination or arbitrariness. Article 14 mandates uniformity and consistency of judicial decision making. Bail is granted when the judiciary has discretion and, as such, imposes a constitutional obligation that this discretion must not be arbitrary. When deciding on bail applications, courts are expected to use objective criteria and exercise discretion judiciously.

The relevance of Article 14 of the Constitution becomes more evident when examined with disparities in access to bail. The Supreme Court has recognized that financial disadvantage should not be a constraint on liberty. Excessive bail amounts and stringent surety conditions frequently lead to continued incarceration of financially disadvantaged accused persons who

⁷ M.P. JAIN, *INDIAN CONSTITUTIONAL LAW* 490 (Justice D.Y. Chandrachud et al. eds., 8th ed. 2018).

⁸ *Hussainara Khatoon v. Home Secretary, State of Bihar*, supra note 2.

⁹ *Gudikanti Narasimhulu v. Public Prosecutor, High Court of A.P.*, (1978) 1 SCC 240 (India).

¹⁰ INDIA CONST. art. 14.

are unable to furnish financial security, while similarly situated affluent individuals secure release with relative ease.

In *Moti Ram v. State of Madhya Pradesh*¹¹, Supreme Court condemned excessive reliance financial condition of the accused when granting bail. Justice Krishna Iyer noted that the administration of bail must not discriminate against poor people, and the liberty should not be dependent on economic status of the people. The Right to equality in the constitution, guarantees that the law pertaining to bail shall be accessible, non-discriminatory and fair. It shall strengthen the general constitutional principle of equality before law and prevent arbitrary decisions by statutory authorities.

3) Right to Bail under Protection under Arbitrary Arrest (Article 22)

There are specific protections for people who are arrested or detained in Article 22. It requires that the reason for the arrest should be stated to the person arrested, and that he must be allowed to consult and be defended by a legal practitioner as per his discretion, and that the person arrested must be brought before a magistrate within 24 hours of his arrest.¹² The procedural safeguards are an integral part of the constitutional provisions of the Right to Bail. Article 22 is an expression of the constitutional principle against arbitrary and unlawful arrest. It gives the arrested person an opportunity to contest the legality of arrest and the right to be released from custody by proper legal means such as bail.

The Supreme Court has always applied Article 22 with the aid of Article 21 to bolster the procedural safeguards to be enjoyed by accused persons. Arrest does not imply continued detention, it must be on the discretion of the court whether incarceration is necessary or not. Thus, Article 22 acts as a procedural safeguard to ensure that the right to bail is exercised effectively and serves as a safeguard against arbitrary arrest.

The constitutional safeguards provided in Article 22 acquires greater significance in light of concerns regarding arbitrary arrest and abuse of criminal justice system. Article 22 strengthens the rights of accused persons and protects the liberty of the arrested person.

¹¹ *Moti Ram v. State of M.P.*, (1978) 4 SCC 47 (India).

¹² INDIA CONST. art. 22.

4) Presumption of Innocence & Constitutional Morality

The presumption of innocence is not specifically mentioned in the Constitution as a fundamental right but is part of the basic structure of criminal law and is backed by values of dignity, liberty and fairness. The rule is that the accused must be presumed to be innocent in all cases, until proved guilty.¹³

Constitutional morality demands that the exercise of power within an institution must be in a particular way which is consistent with the values of liberty, dignity, equality and justice that falls within the Constitution. Constitutional Morality requires the court to be more concerned with the liberty of the individual than with his detention unless there exist “substantial reasons” for the arrest.

In various cases, the Courts have consistently held that the excessive incarceration of prisoners, especially undertrial prisoners, is a threat to the constitutional values and undermines the trust of the citizens within the justice system. Therefore, the bail adjudication has to be humane, rights-oriented and liberty-centric in order to uphold the principle of constitutional morality.

Hence, the philosophical and normative bases of bail jurisprudence are the presumption of innocence and constitutional morality. It strengthens the Rule of Law principle that deprivation of liberty should be the exception and the criminal law procedure must be consistent with the ideals of democratic constitutional order.

V. STATUTORY FRAMEWORK GOVERNING BAIL IN INDIA

The right to bail in India is principally governed by the Bharatiya Nagarik Suraksha Sanhita, 2023(BNSS) and various special legislations, which outlines the process for the release of a person who has been arrested as an accused person while under investigation, inquiry or trial. The Constitution has not explicitly included right to bail, but the law outlines the circumstances that would allow for bail. Therefore, this study requires an analysis of the legislative provisions for bail.

The BNSS classifies offences as either bailable or non-bailable. Under Section 478 there is a right of accused persons to be released on bail in the case of bailable offences on provision of

¹³ Lokendra Malik & Shailendra Kumar, *Personal Liberty Versus Societal Interest: The State of Bail Jurisprudence in India*, 5 NLUJ L. & Pol'y Rev. 405, 421 (2020), <https://ssrn.com/abstract=3745602>.

bond or surety.¹⁴ This provision demonstrates that in certain categories of offences, bail can immediately be enforced.

In relation to non-bailable offences, Section 483 empowers the court to release the defendant upon considering factors such as nature of accusation, gravity of the offence, the possibility of absconding or the likelihood of interference with the administration of justice before granting bail.¹⁵ The release under non-bailable offences differs from release under bail in the case of bailable offence because it depends upon judicial discretion to maintain balance between the public interest and the interest of the individual.

A significant statutory safeguard embodied is that of anticipatory bail mentioned in section 482. The provision allows a person apprehending arrest for a non-bailable offence to obtain protection from the Court of Session or the High Court¹⁶. The inclusion of anticipatory bail within the statutory framework reflects the legislature's intention to protect the need of individuals against arbitrary or mala fide arrests.

Section 187(3) is another crucial provision that relates to default bail. If the investigating agency fails to complete the investigation within the prescribed statutory period, the accused acquires an enforceable right to be released on bail on payment of bond.¹⁷ It is intended to make sure there is no undue delay in investigation before the person obtains bail, and to uphold the rule that no person can be deprived of his freedom without good cause.

Section 43D (5) of the Unlawful Activities (Prevention) Act, 1967 states that the accused person under this act shall not be released on bail if there exist a *prima facie* case against him.¹⁸ This provision substantially restricts the authority of court to grant bail and permits prolonged pre-trial incarceration in cases involving crimes against national security.¹⁹

In Section 37 of the Narcotic Drug and Psychotropic Substances Act, 1985, there exists a special condition for granting bail in respect of certain offences. If the court believes that there is a reasonable ground for believing that the accused is not guilty and is unlikely to commit

¹⁴ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 478 (India).

¹⁵ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 483 (India).

¹⁶ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 482 (India).

¹⁷ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 187(3) (India).

¹⁸ Unlawful Activities (Prevention) Act, No. 37 of 1967, § 43D(5), India Code (1967).

¹⁹ Manu Sharma, *Bail is the Rule, Jail is the Exception – A Constitutional Imperative Even Under Special Laws Like UAPA*, 5(3) INDIAN J. INTEGRATED RSCH. L. 1345, 1355 (2025).

any crime on bail.²⁰

Similarly, Section 45 of Prevention of Money Laundering Act, 2002 imposes stringent conditions upon release of an accused and reflects the legislative intent to minimize financial crimes through restrictive bail regimes. These conditions are referred as “twin condition”. In these cases, grant of bail is an exception rather than rule.²¹

The statutory framework then lays down the procedural framework of bail in India. However, these provisions do not operate in isolation. Their application has to be done in reference to Article 14, 21 and 22 of the Indian Constitution. Consequently, the procedure for granting bail is prescribed by law, but is to a large extent shaped by Constitutional Law. It is an interaction between legislative provisions and constitutional framework that is at core of the contemporary Indian bail jurisprudence and raises the question whether bail is merely a statutory entitlement or evolved into constitutional right.

VI. EVOLUTION OF BAIL JURISPRUDENCE AND JUDICIAL DECISIONS

Judicial interpretations have played a crucial role in the development of the concept of bail within India. While the statutory provisions on bail are mentioned within Bharatiya Nagarik Suraksha Sanhita, 2023, the Supreme Court, in a series of judgments, has recognized bail as an important instrument to protect personal liberty enshrined within Article 21 of the Constitution. The judiciary emphasizes pre-trial detention as an exception and prioritizes individual liberty to be consistent with the interests of justice.

‘Bail, not Jail’ is the bedrock of the bail jurisprudence in India. The doctrine is based on a constitutional principle which states that an accused is presumed to be innocent until proven guilty and the need to prevent unnecessary deprivation of liberty before conviction.²² The primary reason of detaining the accused is to ensure his presence at trial and not as punishment. The Supreme Court held in various judgments that unless there is a real risk of absconding, tampering of evidence, influencing the witnesses or obstructing the administration of justice, then bail must be granted. This doctrine ensures protection of personal liberty within criminal

²⁰ Narcotic Drugs and Psychotropic Substances Act, No. 61 of 1985, § 37, India Code (1985).

²¹ Prevention of Money Laundering Act, No. 15 of 2003, § 45, India Code (2002).

²² Arya Verma, *Right of an Accused in India and Comparative Analysis*, MANUPATRA, <https://articles.manupatra.com/article-details/RIGHT-OF-AN-ACCUSED-IN-INDIA-AND-COMPARATIVE-ANALYSIS> (last visited June 22, 2026), at 11.

justice system.

Initially, the accused were denied bail due to excessive and unrealistic bail conditions. In the case of *Moti Ram v. State of Madhya Pradesh*²³, Supreme Court discussed the issue of economic inequality in the implementation of bail. Justice Krishna Iyer held that Criminal Justice System should not differentiate between the poor and rich. The conditions of bail shall be reasonable and proportionate to the accused's financial capacity. This precedent is still essential in terms of constitutional principles of equality and access to justice in cases of bail.

In the case of *Gudikanti Narasimhulu v. Public Prosecutor*²⁴, it was held that the bail decision shall be guided by constitutional values of liberty rather than rigid procedural structure and 'denial of bail' constitutes refusal to personal liberty and therefore requires strong legal justification.

As of January 2025, there are nearly 3.75 lakh undertrial prisoners, comprising 74.2% of total prisoners²⁵. This issue was discussed in the case of *Hussainara Khatoon v. State of Bihar*²⁶, the Supreme Court stated that the Right to Speedy Trial is a part of Right to Life and Personal Liberty guaranteed under Article 21 and that an undue delay, without a proper trial is contrary to fundamental rights. This judgment influenced the bail jurisprudence and acknowledged unnecessary incarceration as a violation of fundamental rights. It also established that procedural delays cannot justify deprivation of liberty and upheld the fundamental rights to safeguard undertrial prisoners.

The Supreme Court in the case of *Gurbaksh Singh Sibbia v. State of Punjab*²⁷, acknowledged the grant of anticipatory bail as an important safeguard to prevent arbitrary arrest and misuse of criminal process. The judgment established that anticipatory bail should not be governed by rigid structure, but by judicial discretion according to the facts and circumstances of each case. It strengthened constitutional protection of individual liberty to prevent it from arbitrary actions of state.

²³ *Moti Ram v. State of Madhya Pradesh*, supra note 11.

²⁴ *Gudikanti Narasimhulu v. Public Prosecutor, High Court of A.P.*, supra note 9.

²⁵ *National Legal Services Authority, Functioning of the Under Trial Review Committees: January to march 2025* 10 (2025).

²⁶ *Hussainara Khatoon v. State of Bihar*, supra note 2.

²⁷ *Shri Gurbaksh Singh Sibbia v. State of Punjab*, (1980) 2 SCC 565 (India).

The case of *Sanjay Chandra v. CBI*²⁸, reaffirms the rule of “proceed with caution” in the interest of proper investigation versus the constitutional rights of the accused. The Supreme Court reiterated that jail is for prevention and not punishment. The Court held that detention in custody before conviction should not be a substitute for punishment and merely seriousness of allegations cannot justify denial of bail. The judgment highlighted presumption of innocence and recognized personal freedom as fundamental constitutional right.

The landmark case of *Arnesh Kumar v. State of Bihar*²⁹ highlighted the misuse of powers by police authority. This case specially dealt with offences punishable with imprisonment up to seven years, the police shall satisfy statutory procedure before depriving individual liberty. The judgment highlighted that ‘Unnecessary arrests lead to overcrowded prisons and a violation of constitutional rights under Article 21 and Article 22.’ The decision indirectly restricted arbitrary arrests and strengthened the Right to Bail to reinforce constitutional principles of personal liberty.

“Twin Conditions” contained in Section 45 of the Prevention of Money Laundering Act, 2002 were declared to be unconstitutional in the case of *Nikesh Tarachand Shah v. Union of India*³⁰. The Supreme Court held that these conditions violated Article 14 and 21 of the Constitution and imposed unreasonable restrictions upon personal liberty.

The judgment of *Satender Kumar Antil v. Central Bureau of Investigation*³¹ is one of the most comprehensive pronouncements of the modern times on bail. The Supreme Court highlighted that “Bail is the Rule and Jail is the exception” and emphasized that the principle flows directly from Article 21. The Court also voiced concerns about the overcrowding of prisons of undertrial prisoners and issued guidelines to expedite the bail process and avoid frivolous arrests. The decision is particularly significant because it relates bail jurisprudence to constitutional right of liberty and due process, therefore strengthens the constitutional nature of Right to Bail.

In the case of *Union of India v. K.A. Najeeb*³², Supreme Court considered the limitations mentioned in Section 43D (5) of the Unlawful Activities (Prevention) Act, 1967. As per Article

²⁸ *Sanjay Chandra v. Central Bureau of Investigation*, (2012) 1 SCC 40 (India).

²⁹ *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273 (India).

³⁰ *Nikesh Tarachand Shah v. Union of India*, (2018) 11 SCC 1 (India).

³¹ *Satender Kumar Antil v. Central Bureau of Investigation*, (2022) 10 SCC 51 (India).

³² *Union of India v. K. A. Najeeb*, (2021) 3 SCC 713 (India).

21, prolonged incarceration and delay in trial violates “Right to Life and Personal Liberty” of an individual. The judgment reaffirmed that the final decision of balancing national security with fundamental rights of an accused rests with the court and constitutional guarantee of liberty cannot be eclipsed by statutory provisions.

Subsequently, in *Vijay Madanlal Chaudhary v. Union of India*³³, the Supreme Court upheld the constitutional validity of amended provision of Section 45 of the Prevention of Money Laundering Act, 2002. The Court recognized the gravity of financial crimes and accepted the legislative action of imposing stricter conditions for grant of bail. This judgment reflects the intent of judiciary to maintain a balance between individual liberty and the interest of state in combating serious money laundering cases.

These landmark judgments demonstrate that contemporary bail jurisprudence is not confined to ordinary criminal law but extends to special legislation, where constitutional principles of liberty, fairness and due process of law are balanced against concerns of national security and public interest.

VII. CRITICAL ANALYSIS

The legal nature of “Right to Bail” is one of the most important questions in contemporary criminal jurisprudence. The mechanism to obtain bail is definitely a statutory process in accordance with procedural law, notably the Bharatiya Nagarik Suraksha Sanhita, 2023. Over the years, judicial evolution has elevated bail from a statutory provision to constitutional safeguard. This development raises another question whether the source of authority of bail is limited to legislative acts or has acquired constitutional status through judicial interpretation of fundamental rights.

The proposition that bail is merely a statutory right warrants critical scrutiny. There is no explicit mention of “Right to Bail” in the Indian Constitution. Whether a person has legal right to seek bail, anticipatory bail or default bail depends on the specific provisions of the BNSS. Courts have the power to grant or refuse bail, according to the provision of the statutory framework. Accordingly, it could be said that Right to Bail is essentially procedural in nature and exists only as procedural right granted by legislature.

³³ *Vijay Madanlal Choudhary v. Union of India*, (2023) 12 SCC 1 (India)

However, this narrow interpretation does not explain the substantial constitutional transformation of bail jurisprudence. The interpretation of Article 21 has undergone a significant shift since the *Maneka Gandhi case*³⁴, which requires the restrictions upon personal liberty to meet the benchmarks of fairness, reasonableness and non- arbitrariness. The constitutional requirements governing bail have been increasingly imposed on bail arbitrariness. Consequently, the courts no longer consider bail to be a mere administrative procedure but a means to safeguard individual liberty.

The most striking case of the constitutionalization of bail is related to undertrial detention. The Supreme Court in *Hussainara Khatoon v. State of Bihar*³⁵ recognized prolonged incarceration without trial violates Article 21. Similarly, in *Gudikanti Narasimhulu v. Public Prosecutor*³⁶, the Court stressed that decision of bail must be guided by constitutional values of liberty, and not just by procedural aspects. The results of these decisions reflect that the legality of detention shall not be decided merely on the basis of legislation but also on the basis of constitutional principles.

A critical examination of contemporary bail jurisprudence demonstrates that constitutional principles frequently override certain statutory interpretation. Courts invoke Article 14, 21 and 22 while adjudicating bail matters. Personal Liberty, Equality before Law, due process and protection from arbitrary arrest are the pivotal issues in adjudication of bail. The judicial approach indicates that the interpretation and application of statutory provisions are shaped and governed by Constitutional values.³⁷

However, the condition of Indian criminal justice system can't be termed, as there exists a significant gap between constitutional ideals and its implementation. Many of the prisoners are still imprisoned because of their poor economic condition, inability to have a lawyer or lack of adequate legal assistance and resources. This had been a huge concern with regard to the effective implementation of Constitutional protections.³⁸

Special legislations prescribe stringent conditions for the grant of bail, often displacing the

³⁴ *Maneka Gandhi v. Union of India*, supra note 6.

³⁵ *Hussainara Khatoon v. State of Bihar*, supra note 2.

³⁶ *Gudikanti Narasimhulu v. Public Prosecutor, High Court of A.P.*, supra note 9.

³⁷ K. Swamyraj, *Bail Under Bharatiya Nagarik Suraksha Sanhita, 2023: A Critical Analysis*, 8 INDIAN J. L. & LEGAL RSCH. 12108, 12115 (2026).

³⁸ Madhu Rani & Rana Parveen, *Right to Bail as a Constitutional Right*, 5 INT'L J. L. MGMT. & HUMAN. 352, 360 (2022)

presumption in favour of liberty. Such restrictive provisions prove that the legislative policy can significantly restrict access to bail even when there exists a constitutional right. The conflict has been an ongoing debate between individual liberty and State's interest in criminal justice.

Furthermore, judicial discretion in bail matters has been inconsistent across the different courts. In similar situations often, different results are achieved which raises doubt regarding equality before law. The guidelines for the bail aren't uniform, it makes the practice of bail subjective and reduces the reliability and predictability of bail jurisprudence. The inconsistency indicates that constitutional safeguards do not necessarily lead to structural change and cleaner statutory standards.

As per theoretical expression, the "Right to Bail" occupies a hybrid position within Indian Law. It is not a fundamental right per se as it is not explicitly stated in the Constitution. It cannot also be considered a 'mere' statutory privilege as courts have repeatedly upheld the principle of personal liberty in adjudicating the cases of bail. The Constitutional right of personal liberty provides the normative basis for the existence of such a right, while the statutory provisions provide the legal basis to seek such a right.

Thus, the most convincing interpretation is that the bail in India has a dual nature. In terms of procedures, it is a statutory right, subject to the provisions of the BNSS. Substantially, however, it is constitutionally protected as per the Articles 14, 21 and 22 of the Constitution. The evolution of judicial doctrine represents the journey of Right to Bail from being a traditional statutory provision to an integral component of constitutional commitment to due process, dignity and liberty.

The persistent increase in the number of undertrial prisoners reflects deficiencies within criminal justice system and raises concern about the effective realization of the constitutional guarantee of speedy trial. Failure to ensure timely adjudication constitute violation of constitutional principle of fairness, due process and reasonableness, thereby imposing duty upon state to reform administration of criminal justice. Before conviction, pre-trial detention must be minimal and situationally justifiable to each individual case otherwise the authorities stand in breach of their duties, violating the fundamental rights of undertrial prisoners.³⁹

³⁹ Law Comm'n of India, Rep. No. 268, *Amendments to Criminal Procedure Code, 1973—Provisions Relating to Bail* (2017).

Accordingly, the contemporary position of Indian Law strengthens the notion of bail not being purely statutory or purely constitutional. Instead, it is a statutory remedy operating within a constitutional framework. The process of constitutionalization of bail jurisprudence has changed the way in which courts interpret and apply statutory provisions, ensuring that personal liberty remains the essential consideration in criminal adjudication. It is one of the most significant achievements of Indian constitutional jurisprudence and reinforces the principle that the power of the State should never be arbitrary or stand above the personal liberty or rule of law.

VIII. CONCLUSION

The Right to Bail is a crucial part of the Indian criminal justice system as a safeguard against arbitrary abuse of personal liberty. This research aimed to analyse if the Right to Bail in India was completely based on statutory or constitutional rights. The BNSS has laid a procedural foundation for regular bail, anticipatory bail or default bail. These provisions set out the legal process for an accused person to obtain release from custody and conditions to be fulfilled in granting the release. As per this legal point of view, bail undoubtedly possesses a statutory foundation.

However, the development in the Indian Constitutional jurisprudence suggests that the concept of bail can no longer be viewed as mere procedural privilege. In its progressive views of Article 14, 21 and 22 of the Constitution, the Supreme Court has always laid emphasis on ensuring that the adjudication of bail should be on the Principles of Personal Liberty, fairness, due process and protection from arbitrary detention. The judicial decisions discussed above, along with numerous other authorities, have recognized the constitutional values of bail and its relation with the right to life and personal liberty.

The study also brings to light the concept of 'Bail, Not Jail' as a constitutional principle in determining judicial discretion. The courts have held that in numerous cases that the pre-trial detention is the exception and an accused should only be detained when there exists a significant reason. Meanwhile, persistent challenges such as overcrowding in prisons, excessive periods of pre-trial detention, economic restrictions on acquiring bail rights, and limited provisions prevent the effective realization of constitutional rights.

Therefore, bail cannot be characterized exclusively as either a statutory right or a constitutional

right. The contemporary procedural mechanism of bail is certainly statutory, but is rooted in constitutional principles. Bail in India can be best understood as a statutory remedy operating within a constitutional framework, where legislative guidelines derive the meaning and legitimacy from overarching commitment to equality, liberty, dignity and the rule of law.

In conclusion, it can be said that the bail jurisprudence has been constitutionalized to a great extent in Indian criminal law. It is a testimony to the judiciary's ongoing quest to ensure that criminal justice is carried on in harmony with the core values of the Constitution. The future of bail jurisprudence, therefore, should be directed toward the strengthening of safeguards in the procedure, uniformity in judicial decision-making and improved access to justice so that the promise of personal liberty does not remain a mere theoretical concept but an effective remedy to every individual subject to criminal process.