
GRANTING BAIL IN RAPE CASES – IS IT BECOMING A WEAPON AGAINST SURVIVORS?

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ABSTRACT

This article talks about how giving bail to people accused of rape often harms survivors instead of protecting them. It explains that when such accused persons are released, they may threaten or hurt the victim again, making her scared to speak up. The paper highlights how India's justice system fails to keep survivors safe because bail is granted too easily, even for such serious crimes. It discusses real cases, laws, and court decisions that show these problems. The author suggests that India should make stricter rules for granting bail in rape cases, learn from other countries, and focus on the victim's safety first. The aim is to make justice real, not just a promise.

“Liberty is one of the most essential requirements of the modern man. It is said to be the delicate fruit of a mature civilization. It is the very quintessence of civilized existence and an essential requirement of a modern man.”

- John E.E.D. in "Essays on Freedom and Power"¹

“According to an NDTV report dated Dec. 18, 2023, a Gujarat man out on bail was accused of raping a 70-year-old survivor again.”*

After being granted bail for raping a 70-year-old woman, he allegedly **raped her twice and threatened her into silence**. He remains fleeing away, and the survivor now lives in deeper fear than before. This problem in our criminal justice system tends to give a license to the accused in a rape case to repeat the same offence and intimidate the victim.

In India, we worship women, as they are our caretakers and symbolize Shakti, the creator of life. But what do these selfless, devoted women receive in return for their blessings? Laws lacking the power to provide them with justice and protection. The data states this point clearly:

NCRB 2021: Only 28.6% rape convictions*

We say, and I do not deny that we indeed do have very stringent laws for rape carrying a very high punishment time, but are these impliedly deterring laws making sure that justice is served to victims? If more than 60% of rape accused get bail so easily, then how can we say that Rape is a heinous crime? Low conviction rate shows systematic failure, which might be due to mishandling of sensitive information by police, delays in medical examination, etc.

The release of rape accused on bail, especially without strict conditions, has far-reaching consequences — it not only endangers survivors but corrodes the very foundation of public faith in the rule of law. In a society flourishing with patriarchal norms and unequal power, bail in rape cases transforms from a procedural safeguard to a way of silencing, intimidation, and

*John E.E.D., Essays on Freedom and Power – Quoted on liberty

* NDTV Report, “Gujarat man accused of raping 70-year-old survivor while out on bail”, 18 Dec 2023

* National Crime Records Bureau (NCRB), Crime in India Report, 2021 – Conviction rate for rape cases (28.6%)

* Ministry of Statistics and Programme Implementation (MOSPI), 2023 – Conviction data on rape trials (2.56%)

injustice. These make the accused feel more powerful, and they may go on and commit more crimes while the victims feel unheard. The accused can easily threaten the victim, and they may refuse to testify, only giving more chances to the accused to commit more such crimes.

In Satendra Kumar Antil vs CBI (2022)*, it is specifically said that crimes having a punishment of more than 7 years are classified in category B, and for these crimes, bail should be given after a strict interpretation of the circumstances. But in reality, most of the Bails are given without following the due diligence of the above-mentioned case. Few benches take into consideration the gravity of Rape, but most of the benches blindly apply the rule of Bail the rule; Jail is the exception. Why then is this principle not followed in rape-related bail cases?

When Bail is given, the survivor often lives in fear of retaliation—directly or indirectly—through threats, stalking, or violence. In many cases, victims withdraw or turn hostile in court due to pressure from the accused or their associates. This is especially common in small towns or villages where the victim and the accused live in the same locality.

Survivors may feel that the legal system does not take their pain seriously, leading to psychological trauma, anxiety, and even suicidal tendencies.

The Unnao rape case (Kuldeep Singh Sengar vs CBI)* is a chilling example of the danger survivors face when the accused is not kept in custody. The High Court itself noted that the survivor's **father died in custody**, and other family members, including her lawyer, died **under suspicious circumstances**. Due to threats and fear, the Supreme Court had to intervene and direct **CRPF protection** for the survivor's entire family. This proves that granting bail in such cases is not just a legal formality—it puts lives at risk.

The most common problem in Indian society is that when the accused is released on bail, the blame shifts to the woman who is accused of lying, seducing, or trapping the man. The trauma of the victim grows when the accused is released on bail.

As the principle states that Bail is the rule and Jail is the exception*- when deciding upon rape cases, shouldn't this heinous crime come under the exception of not getting bail in quite a good

* Satender Kumar Antil vs. Central Bureau of Investigation and Ors., AIR 2022 10 SCC 51 (India)

* Kuldeep Singh Sengar vs. Central Bureau of Investigation (Unnao Rape Case), (2020) 14 SCC 15 (India)

number of cases, but our statistics show a different stance.

The main concern of the author lies with why Indian statutes do not have a specific law made for these heinous crimes, especially Rape, to deny Bail to rape accused at least in some specific circumstances to curb these rates? Is the judiciary lacking in this accountability? All this time, the judiciary has made guidelines for the courts to interpret, but not laws that are uniform for a large number of common cases.

When an accused gets bail soon after being arrested, the social signal is: "Even if you commit rape, nothing will happen immediately — you'll be out soon." This weakens the **deterrence** that criminal law is supposed to create. It gives **potential offenders a false sense of immunity**, especially in cases where the survivor is from a marginalized or poor background.

Bail discussions should revolve around the victims' right to a fair trial so that they can testify without fear or trauma. When the accused is released without strict conditions, it often leads to tampering of evidence, threats to the victim, etc.

A crime like rape must carry the weight of serious legal and social consequences. But quick bail sends the **opposite message** — that it's just another case.

The media plays a crucial role in the scrutiny of bail hearings as well. Headline cases like Nirbhaya, which get a lot of attention from media and news channels, make it to the public eye, demanding judiciary pay heed to these cases and not let any detail slip from their eye. While countless other cases, which are not as publicly exposed or do not make it to controversy, remain taken unserious and result in injustice to the victim.

Most of the courts cite delay in cases as a means to grant bail. This just shows judicial lack of responsibility. To solve this issue, there are solutions like judicial reforms and fast-tracking rape cases. Simply releasing the accused on bail cannot be used as a loophole, just because courts are slow.

Even when bail is granted with conditions — such as "do not contact the victim" or "report to police periodically" — enforcement is often weak or absent. There is **no centralized mechanism in India** to monitor rape accused once released. Police stations are already overburdened, and compliance with bail conditions is rarely audited.

These types of grievances in the system cause a psychological burden on victims. There tend to be so many victims who suffer from post-traumatic stress disorder, recurring nightmares, and loss of trust in society. In rural areas, families are often socially boycotted, which forces the survivors to relocate or discontinue education and employment. Granting bail to the accused in such situations deepens their fear of not being heard or provided with justice, and this reinforces a cycle of silence around sexual violence.

Also, a common defense for granting bail in rape cases is the principle of presumption of innocence or not guilty until proven guilty. While legally sound, this principle cannot override real and immediate threats, especially in rape cases. Presumption of innocence does not mean the accused has a right to roam free. In serious crimes, including rape, courts have upheld that liberty can be curtailed to ensure victim protection, prevent interference with evidence, or maintain public confidence. In *Rajesh Ranjan Yadav vs CBI*^{*}, the Supreme Court laid down this and I quote “We think that while it is true that Article 21 is of great importance because it enshrines the fundamental right to individual liberty, **a balance has to be struck between the right to individual liberty and the interest of society**. No right can be absolute, and reasonable restrictions can be placed on them; hence proved that the presumption of innocence principle cannot override individual liberty and society’s interest.

When the judiciary swiftly grants bail in high-profile cases to powerful accused, it often erodes public trust in law enforcement and decreases the reporting of future related cases. The judiciary, being one of the pillars of democracy, should take its responsibility to the utmost seriousness and not let the accused roam freely in the streets, causing more heinous crimes. When the judiciary grants bail without considering the full impact on the survivor, they are sending this message to the public that justice is negotiable, and it weakens the foundation of institutional trust for thousands of survivors watching silently.

In India, we often hear people say, “she was raped” — as if it’s something that just happened to her, like an accident. But when we say it like that, we forget to name the person who actually did it. The man who raped her disappears from the sentence, and all the attention goes to the woman’s pain. While her pain matters deeply, we also need to talk about who caused it. We need to start saying, “he raped her.” This small change in how we speak can make a big difference. It puts the blame where it belongs — on the rapist — and not on the woman. It also

^{*} *Rajesh Ranjan Yadav vs. CBI through its Director*, (2007) 1 SCC 70 (India)

reminds society that rape is a crime committed by someone, not just something that happened. And when rape accused are often released on bail, this shift isn't just about words — it's about holding the right person responsible.

The most common solution to this problem is firstly amending the Bhartiya Nyaya Sanhita (BNS)*, Bhartiya Nagarik Suraksha Sanhita (BNSS)*, which are the replacements for the Indian Penal Code (IPC) and Code of Criminal Procedure (CrPC) respectively, and special statutes like Protection of Children from Sexual Offences, 2012 (POCSO)*. Yes, there are indeed false allegations made with respect to these cases, which are a concern, but they're statistically rare, and safeguards can be built in without compromising survivor safety. One of the most important criteria to keep in mind is that the accused must prove exceptional circumstances to justify bail. For instance, in Canada, serious sexual assault cases require the accused to prove why they deserve bail. That shifts the burden and makes bail an exception. This is a serious reform required in Indian law as well, especially in rape or POCSO cases, where serious sexual assault cases apply the reverse onus bail.

Even in South Africa, Rape is classified as a Schedule 6 offence, which requires the accused to prove exceptional circumstances to be given bail. If countries like these can provide us with an example to create stricter laws for bail in rape cases, we can indeed change the scenario for the betterment of victim safety and trauma.

Other countries' jurisdictions, like the UK, impose strict reporting requirements and electronic monitoring for sexual offence accused on bail. The United States also uses sex offender registries and parole-style supervision before conviction in some cases. India can take inspiration from these models by creating a specialized bail-monitoring framework, which will help in reducing risks without completely restricting the right to bail.

Additionally, implementing **victim impact hearings** during bail applications and ensuring **strict post-bail monitoring**, including **electronic tagging, no-contact orders, and police check-ins**, could drastically reduce post-bail threats. A separate **fast-track bail bench** for sexual offences should be introduced, ensuring that victims are not left in limbo due to judicial

* Bharatiya Nyaya Sanhita, 2023, (BNS) §45 – replacing the Indian Penal Code, 1860

* Bharatiya Nagarik Suraksha Sanhita, 2023, (BNSS) §46 – replacing the Code of Criminal Procedure, 1973

* Protection of Children from Sexual Offences Act, 2012, §32, (India)

delay.

Practical solutions are required to work on ground reality, meaning it doesn't take away the right to apply for bail, rather it makes bail the exception, not the default. It shifts the burden to the accused, who must show that the survivor is safe, that they will not tamper with evidence or threaten witnesses, and that there's no delay caused by them.

The real issue is not why bail is given; real issues lie in that even after seeing so many cases where the accused was wrongly given bail, why is the judiciary still lacking a proper set of guidelines to prevent misuse of bail provisions? Why do we still lack a proper law to address this grave crime that is weakening the root of society and lessening the voice of victims?

Until the law recognizes that premature bail weakens justice and endangers survivors, we'll continue failing those we claim to protect. Justice must be seen happening in society practically.

When a survivor gathers the courage to speak up, the least the system can do is protect her — denying bail in rape cases isn't about punishment, it's about making sure she feels safe enough to be heard.