
STRINGENT BAIL CONDITIONS AND INDIVIDUAL LIBERTY: A CONSTITUTIONAL ANALYSIS

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The Debate Surrounding

“Bail is the rule and Jail is the exception.” This is the basic principle underlying the doctrine of Criminal Jurisprudence. This is because Article 21¹ of the Indian Constitution ensures that life and personal liberty may not be taken away except in accordance with the procedure established by law. The Supreme Court, in *Maneka Gandhi vs Union of India*,² stated that: “any law depriving a person of life or personal liberty must prescribe a procedure that is just, fair, reasonable, and not arbitrary or oppressive.” In doing so, it departed from the approach adopted in *A.K. Gopalan v. State of Madras*,³ where it was held that the mere existence of a law was sufficient to satisfy the requirement of 'procedure established by law', irrespective of its fairness.

Even so, Parliament has purposefully enacted a separate system of criminal law for offences considered serious enough to deserve exceptional treatment. The Prevention of Money Laundering Act, 2002;⁴ the Narcotic Drugs and Psychotropic Substances Act, 1985;⁵ and the Unlawful Activities (Prevention) Act, 1967;⁶ include stringent bail conditions and incorporate varying forms of “reverse burden” provisions, thereby limiting the ordinary protections available under general criminal law. The PMLA and NDPS Act expressly contain the contentious “twin condition” for bail, whereas the UAPA Act adopts a distinct but equally rigorous “prima facie” standard. All these acts deviate from the well-established principle of presumption of innocence. Once the prosecution establishes the foundational facts beyond reasonable doubt, the burden shifts to the accused to rebut the statutory presumptions.

According to this paper, the strict nature of these laws is neither arbitrary nor oppressive; rather,

¹ Constitution of India, art. 21.

² *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

³ *A.K. Gopalan v. State of Madras*, (1950) 51 Cri LJ 1383

⁴ Prevention of Money Laundering Act, 2002 (Act 15 of 2003).

⁵ Narcotic Drugs and Psychotropic Substances Act, 1985 (Act 61 of 1985).

⁶ Unlawful Activities (Prevention) Act, 1967 (Act 37 of 1967).

they are designed to serve the ends of the criminal justice system, as timely upheld by supreme court. However, the stringent nature of these laws does not make them absolute; in fact, they remain subject to the constitutional limitations embodied under Article 21.

Legislative intent behind the stringency

India, being a party to the three principal United Nations drug control conventions, is under an obligation to frame drug/narcotics regulating laws and to establish legal, administrative measures, to regulate production, manufacture, distribution and use of Narcotic and Psychotropic substances. Additionally, under Part IV, Article 47⁷ of the Indian Constitution it becomes duty of the state to prohibit the consumption of intoxicating drinks and of drugs which are injurious to health.

In response to domestic concerns and India's International treaty obligations, NDPS Act of 1985, came into force. The object of the NDPS Act is to control and regulate the operations relating to narcotic drugs and psychotropic substances. It also imposes stringent punishments on offenders. Primarily, Section 37(1)(b)⁸ of the NDPS act includes the "twin condition" for bail requiring the court to be satisfied that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. These conditions significantly restrict judicial discretion and reflect the legislative intent to treat narcotic offences as a distinct class of crimes warranting a stricter bail regime.

The PMLA was enacted by the Government of India in 2002 as a crucial step towards aligning with global norms, especially set up by the Financial Action Task Force (FATF)⁹ of which India is a member. The primary objective behind the enactment was to establish a robust legal framework for combating economic crimes. The Act seeks to prevent money laundering and provides for the confiscation of property derived from, or involved in money laundering. The act provides structurally similar twin bail conditions as in NDPS act.

In *Nikesh Tarachand Shah vs Union of India*,¹⁰ the supreme court struck down the twin

⁷ Constitution of India, art. 47.

⁸ Narcotic Drugs and Psychotropic Substances Act, 1985 (Act 61 of 1985), S. 37(1)(b).

⁹ Financial Action Task Force on Money Laundering, *The Forty Recommendations of the Financial Action Task Force on Money Laundering (1990)*.

¹⁰ *Nikesh Tarachand Shah v. Union of India*, (2018) 11 SCC 1.

conditions of bail under Section 45(1)¹¹ as unconstitutional for violating Article 14¹² and 21. Subsequently, in *Vijay Madanlal Choudhary v. Union of India*¹³ the Supreme Court upheld most provisions of the PMLA including the amended Section 45(1) twin conditions for bail, thereby affirming the stringent framework established by Parliament.

Additionally, the UAPA was enacted with the objective of curbing activities that threaten the sovereignty, integrity, and security of India. It serves as the nation's primary Anti-Terrorism law thereby punishing conspiracy, organizing terrorist camps, recruiting any person for terrorist acts, holding proceeds of terrorism etc. In view of the seriousness of the offence, UAPA permits the extension of police custody up to ninety days, deviating from the standard fifteen-days limitation.

Section 43D(5)¹⁴ of the Act substantially restricts the grant of bail in respect of offences under Chapters IV and VI¹⁵ by incorporating a twofold safeguard: first, the Public Prosecutor must be afforded an opportunity to oppose the bail application; and second, where such opposition is made, the court may grant bail only upon being satisfied that there are reasonable grounds to believe that the accusations against the accused are not Prima facie true. These measures ensure that any person engaged in offences related to terrorism and national security shall not be released on bail during the trial stage.

The Judicially Drawn Boundary Between Stringent laws and Personal Liberty

The stringency of these laws does not make them absolute; rather, the provisions remain subject to Article 21 which explicitly states that, "The deprivation of a person's life or personal liberty is permissible only in accordance with a legally established procedure." Recent rulings of the Supreme Court have outlined the constitutional constraints within which the twin conditions must be applied.

In *K.A. Najeeb v. Union of India*,¹⁶ the Supreme Court, while upholding the primacy of Article 21 of the Constitution, held that stringent bail conditions cannot indefinitely override the

¹¹ Prevention of Money Laundering Act, 2002 (Act 15 of 2003), S. 45(1).

¹² Constitution of India, art. 14.

¹³ *Vijay Madanlal Choudhary v. Union of India*, 2022 SCC OnLine SC 929.

¹⁴ Unlawful Activities (Prevention) Act, 1967 (Act 37 of 1967), S. 43D (5).

¹⁵ Unlawful Activities (Prevention) Act, 1967 (Act 37 of 1967), Chapter IV, VI.

¹⁶ *K.A. Najeeb v Union of India* (2021) 3 SCC 713.

constitutional guarantee of a speedy trial, even under a stringent statute such as the UAPA. Prolonged pre-trial detention may amount to punishment before conviction in the absence of a judicial determination of guilt.

However, the Supreme Court in *State of Punjab v Balraj Singh @ Billa*¹⁷ set aside regular bail granted to an accused under NDPS act observing that sovereignty of the country must prevail over Personal liberty, particularly in cases involving commercial supply of drugs, which affects National economy and public health.

In *Umar Khalid v. State (NCT of Delhi)*,¹⁸ the court relied on the twin conditions and refused bail because prima facie case was made out against the accused persons. The concern is that the court must ensure that its assessment remains a genuine prima facie evaluation rather than a mere endorsement of the prosecution's allegations in the absence of effective consideration of the accused's defense.

These cases illustrate instances where the courts, having regard to the distinct facts and circumstances of each case, have sought to strike a balance between the statutory provisions governing bail and an individual's right to personal liberty. The legislative intent behind such stringent provisions was clear—to impose a higher threshold for the grant of bail. However, this does not imply that an individual may be deprived of personal liberty and subjected to prolonged incarceration for an indefinite period.

Conclusion

Article 21 of the Constitution of India safeguards personal liberty and serves as the constitutional foundation for the principle that bail is the rule and jail is the exception. The constitutional debate surrounding stringent bail conditions is ultimately a question of balancing the State's interest in combating serious offences with the individual's fundamental right to personal liberty. While legislatures have enacted rigorous bail provisions to address threats such as terrorism, narcotics trafficking, and money laundering, such restrictions cannot operate in isolation from constitutional guarantees.

Article 21 mandates that any deprivation of liberty must be just, fair, and reasonable. The

¹⁷ *State of Punjab v Balraj Singh @ Billa SLP (Crl.) No. 896 of 2026.*

¹⁸ *Umar Khalid v. State (NCT of Delhi), 2022 SCC OnLine Del 2270.*

judiciary has played a crucial role in ensuring that statutory stringency does not result in arbitrary or prolonged incarceration, particularly where trials are delayed or unlikely to conclude within a reasonable time. Through its evolving jurisprudence, **the courts have recognized that pre-trial detention must not assume the character of punishment before conviction, as doing so would undermine the presumption of innocence.** The constitutional validity of stringent bail provisions, therefore, depends not only upon their legislative objective but also upon their application in a manner consistent with fairness and proportionality.

The judicial approach reflects an effort to harmonize legislative intent with constitutional values rather than allowing one to prevail over the other. Consequently, Article 21 continues to serve as a vital safeguard against excessive restrictions on liberty, ensuring that the pursuit of collective security remains consistent with the constitutional commitment to individual freedom.