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LAW RELATED TO ARREST AND BAIL IN INDIA: A CRITICAL STUDY
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ABSTRACT

The bail system in India serves as a crucial safeguard, acting as a protective barrier between individual liberty and the demands of justice, with its foundation rooted in **Article 21** of the Indian Constitution. In principle, the legislature envisages bail as the norm and detention as the exception. However, several challenges — such as judicial delays, socio-economic disparities, and inconsistencies in judicial discretion — often undermine the ideal of equitable access to bail.

This analysis examines the legal framework and practical realities surrounding bail under the **Bharatiya Nagarik Suraksha Sanhita**, while also reflecting on landmark judicial pronouncements reinforcing the principle of "Bail, Not Jail." Drawing comparisons with practices in the United Kingdom and the United States, the study emphasizes that adopting structured guidelines and introducing non-monetary bail alternatives could help rectify existing imbalances within the Indian bail system.

Moreover, the research highlights the significant role socio-economic status plays in influencing the grant of bail, often leading to prolonged pretrial detention for marginalized individuals. The study concludes with specific recommendations aimed at addressing irregular judicial discretion, procedural delays, financial exploitation, and the unjust preferential treatment in granting non-custodial reliefs.

Implementing such reforms would move India's bail system closer to realizing the constitutional promises of rights and equality, thereby strengthening public trust in the criminal justice process.

Keywords

Liberty, Detention, pretrial detention, rights and equality.

INTRODUCTION

The Indian bail system lies at the very core of criminal law jurisprudence, aiming to balance the rights of an accused with the administration of justice. In a democratic framework, a person's liberty can only be curtailed under conditions sanctioned by law. Bail thus acts as a crucial procedural safeguard, allowing an accused individual to be temporarily released — either unconditionally or subject to certain terms — during the trial or appellate process, thereby preventing pre-conviction incarceration as a form of punishment.

In India, the right to personal liberty under **Article 21** of the Constitution forms part of the criminal justice framework. Despite its constitutional protection, the implementation of bail has increasingly come under scrutiny due to inconsistent practices and systemic abuse, particularly affecting the marginalized and economically disadvantaged sections of society. The problem is further compounded by a backlog of cases, overcrowded courtrooms, and congested prisons filled with undertrial prisoners, many of whom remain incarcerated solely due to their inability to meet bail conditions. Therefore, a critical reassessment of the current bail laws and practices is essential to ensure compliance with the constitutional guarantees of equality and non-discrimination.

The right to bail in India is deeply rooted in historical legal traditions inherited from the British legal system. The **Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)**, addresses bail provisions by classifying offenses into bailable and non-bailable categories. Under **Section 480** of the BNSS, bail is a right in cases of bailable offenses, whereas **Section 482** grants the judiciary discretion in non-bailable offenses. Additionally, **Section 485** empowers higher courts to either grant or deny bail based on specific grounds.

Importantly, the Indian constitutional framework also acknowledges bail as a constitutional right, as affirmed by the Supreme Court in *State of Rajasthan v. Balchand*¹, where it famously stated, "*Bail is the rule, jail is the exception.*" This principle embodies the essence of intrinsic justice, reinforcing the notion of "innocent until proven guilty." Nevertheless, despite these

¹ AIR 1977 SC 2447.

progressive precedents, practical implementation remains inconsistent, with significant disparities in how the right to bail is applied across different social and economic groups.²

This paper aims to provide a critical evaluation of both the legal framework and prevailing practices regarding bail in India. It seeks to highlight the structural and procedural factors that influence the granting or denial of bail. The study underscores the urgent need for reforms, especially considering the contemporary focus on judicial efficiency and human rights protections within criminal law.

The paper further examines landmark judgments, including *Armesh Kumar v. State of Bihar*³, where the Supreme Court reiterated that magistrates must strictly adhere to legal provisions while dealing with bail in minor offenses and avoid unnecessary detention of the accused. Through an analysis of key statutes and significant judicial decisions, this article endeavors to present a comprehensive understanding of the principles governing bail in India, their inconsistencies, and the reforms necessary to ensure a fairer and more equitable system.

² Dr. Janak Raj Jai, *Bail Law and Procedures with Tips to Avoid Police Harassment* 105 (Universal Law Publishing Co., Delhi, 1st edn., 2019).

³ [2014] 8 SCC 273.

Bail Laws and Their Governance in India

Under the Indian Constitution, several provisions of the **Bharatiya Nagarik Suraksha Sanhita (BNSS)** lay down the legal framework governing bail, upholding the ideals of natural justice and procedural fairness. These principles are not only enshrined within the BNSS but are also reinforced through judicial interpretations and broader constitutional and statutory mandates. Bail, which entails the conditional release of an accused individual based on a promise to appear before the court as required, exemplifies the delicate balance between safeguarding personal liberty and maintaining public order.

Indian bail laws have been crafted with the intention that no individual should suffer punishment prior to a formal finding of guilt, with the protection of liberty being a core component of **Article 21** of the Constitution. Nonetheless, decisions regarding the grant or denial of bail often hinge upon factors such as the nature and severity of the offense, the risk of the accused absconding, the possibility of tampering with evidence, and the financial capability of the accused to furnish bail.⁴

This multifaceted nature of bail proceedings has inadvertently led to social inequities, disproportionately affecting marginalized and economically weaker sections of society. It raises two critical concerns regarding fairness within the criminal justice system. Indian courts have consistently emphasized that bail should be the norm, even in cases involving serious offenses, with judges expected to exercise their discretion judiciously. However, the practical application of these principles often reveals inconsistencies, as highlighted by various case laws where socio-economic disparities influence the outcomes of bail decisions.

Such discrepancies underline the urgent need to reassess the operational framework of bail laws to better address the challenges faced in achieving genuine equity within the justice delivery system.

Criteria for Bail Eligibility in Indian Law

The legal provisions concerning the grant of bail in India are founded on principles that prioritize personal liberty while simultaneously safeguarding against the risk of accused individuals evading justice or obstructing legal processes. Bail is not merely a procedural formality; it serves as a critical mechanism that upholds the presumption of innocence and

⁴ Kush Kalra, Law of FIR, Arrest, Bail, Investigation & Trial 145 (Whitesmann, Delhi, 2024).

enables the accused to effectively prepare for their defense, a task that would be severely hindered by continued incarceration.

The **Bharatiya Nagarik Suraksha Sanhita, 2023** governs the framework for granting bail, with its execution largely dependent on judicial discretion. Under **Section 480** of the BNSS, the law recognizes bail as a right in cases of bailable offenses. In contrast, **Section 482** vests discretion in the judiciary for non-bailable offenses, allowing courts to assess circumstances on a case-by-case basis to determine the proportionality and reasonableness of granting or denying bail.⁵

Judicial Discretion and Bail: Principles and Limitations

In cases involving non-bailable offenses, the Indian legal system acknowledges a significant element of judicial discretion. Judges are expected to evaluate various factors such as the accused's character, potential for reoffending, and the risk posed to the integrity of the trial. Although discretion plays a pivotal role, it is not unbounded; judicial decisions must adhere to established guidelines.

In **State of Rajasthan v. Balchand**⁶, the Supreme Court famously declared that “bail is the rule and jail is the exception,” setting a foundational standard for the exercise of discretion in bail matters. Judicial officers are instructed to deny pretrial liberty only when there is credible evidence suggesting that the accused may abscond or interfere with the administration of justice.

Further refinement of these standards can be seen in the decision of **Sanjay Chandra v. CBI**⁷, where the Supreme Court emphasized that judicial discretion must not be exercised in a manner that amounts to punishment before trial. The Court criticized prolonged pretrial detention, especially in cases where the accused endures incarceration for durations disproportionate to the gravity of the offense.

Thus, while judicial discretion remains a cornerstone of India's bail system, it must always be exercised within the boundaries of proportionality, fairness, and respect for the individual's right to liberty.

Criteria for Evaluating Bail Applications

Certain criteria have been established to guide the evaluation of bail applications, which judges are required to consider to ensure the fair administration of justice and the maintenance of public

⁵ Asim Pandya, *Law of Bail: Practice and Procedure* 98 (Lexis Nexis, Delhi, 2nd edn., 2015).

⁶ [1977] AIR SC 2447.

⁷ [2012] 1 SCC 40.

safety. These guidelines are derived from statutory frameworks such as the Bharatiya Nagarik Suraksha Sanhita (BNSS) and are reinforced through judicial precedents governing bail proceedings.

Nature And Seriousness Of The Criminal Act

When deciding on bail, courts closely examine the nature and gravity of the alleged offense, particularly in cases involving serious crimes such as murder or terrorism. Given the potential threat that an accused in such cases might pose to the public and key witnesses, courts generally exercise caution and are less inclined to grant bail. In *Dinesh M.N. v. State of Gujarat*⁸, the High Courts referred to a Supreme Court ruling emphasizing that in matters involving grave offenses, the right to liberty, though fundamental, can be outweighed by the overarching concern for public safety and the interests of justice. Conversely, for less severe offenses, the principle of "Bail, Not Jail" is more readily applied, reflecting a balanced approach that upholds human rights while maintaining public order.⁹

Concerns Regarding Evidence Interference and Flight Risk

In bail proceedings, a crucial factor is the possibility of the accused tampering with evidence or attempting to flee. Courts exercise caution in evaluating whether the accused might influence witnesses, destroy critical evidence, or evade trial. In *Nimmagadda Prasad v. CBI*¹⁰, the Supreme Court emphasized that while granting bail, courts must always consider these risks without undermining the trial process. A strong likelihood of evidence tampering or flight justifies denying bail to maintain judicial supervision and prevent obstruction of justice.

Role of Public Prosecutors and Defense Counsel in Bail Matters

Public prosecutors and defense advocates play pivotal roles in shaping the court's perspective regarding bail. Prosecutors, acting on behalf of the state, seek to protect the judicial process by presenting evidence such as the accused's criminal background and the seriousness of the charges to argue against bail, particularly where public safety or strong societal concerns exist.

⁸ [2008] 2 SCC 406.

⁹ Shrinivas Gupta and Garima Chauhan, *Bail Law & Procedure - With Special Tips to Avoid Harassment by Police* 75 (Whitesmann, Delhi, 1st edn., 2021).

¹⁰ [2013] 7 SCC 466.

Conversely, defense lawyers work to safeguard the accused's right to liberty by highlighting factors like a clean criminal record, societal ties, and past compliance with judicial directions to argue in favor of granting bail.¹¹

Challenges in Bail Law and Practice in India

The issues surrounding bail laws and their application in India create significant obstacles to achieving fair justice for individuals accused of crimes. Although the judiciary supports the principle of "Bail Not Jail," its practical enforcement often falls short, as reflected in prolonged detentions, socioeconomic disparities, and the strategic manipulation of bail provisions. These challenges stem from systemic deficiencies in the legal framework, limited legal resources, and inconsistent interpretations of bail laws. One glaring concern is the excessive time undertrial detainees spend awaiting the hearing of their bail applications. Additionally, economic bias in determining bail amounts results in many accused persons being unfairly denied release, as they lack the financial means to meet bail conditions. In some cases, parties strategically misuse bail provisions to serve ulterior motives, undermining the pursuit of justice. These problems highlight the urgent need for structural reforms to make the bail system fairer, more rational, and widely accessible.¹²

Judicial Delay and Its Effect on Bail

Judicial delays significantly impact the bail process in India, leading to prolonged detention for individuals awaiting trial. The heavy caseloads and slow pace of hearing bail pleas contribute to this issue. In **Hussainara Khatoon v. State of Bihar**¹³, the Supreme Court highlighted that unnecessary pretrial detention violates **Article 21** of the Constitution, as it deprives individuals of their right to liberty without adequate justification. Such delays often leave underprivileged accused persons unable to secure timely legal representation, resulting in them being incarcerated longer than warranted by the alleged offense. This undermines the very essence of bail, turning pretrial detention into a form of punishment. Furthermore, political influence sometimes infiltrates bail proceedings, especially in high-profile cases, where bail hearings become battles to sway public opinion. However, courts have taken steps to prevent the misuse

¹¹ T. K. Pandit and Subhash Chandra Keyal, *Law of Arrest, Release, Bails and Bonds* 210 (Sodhi Publications, Delhi, 2nd edn., 2021).

¹² Analysing the Remedy of Bail Under Section 479 of BNSS, available at: <https://www.barandbench.com/columns/analysing-the-remedy-of-bail-under-section-479-of-bnss> (last visited on October 16, 2024).

¹³ [1979] AIR SC 1369.

of bail for political gain. For instance, in **Gautam Navlakha v. National Investigation Agency**¹⁴, the Supreme Court reinforced that bail provisions must not be exploited as tools for delaying justice, emphasizing judicial oversight to ensure bail serves its intended purpose.

Socio-Economic Biases and Discrimination

Socio-economic disparities represent a major barrier to equal access to bail in India. While the right to bail is fundamental, the reality is that many individuals from disadvantaged backgrounds are unable to meet bail conditions due to their financial situation or lack of legal support. In **Moti Ram v. State of Madhya Pradesh**¹⁵, the Supreme Court criticized the practice of setting exorbitant bail amounts that effectively keep poorer accused persons in custody. This practice not only limits their freedom but perpetuates cycles of inequality within the criminal justice system. Individuals from lower socio-economic backgrounds are disproportionately detained pretrial, while wealthier defendants can easily secure their release. Despite judicial efforts to address these inequalities and affirm that bail standards must be applied uniformly to all, the absence of a standardized framework for setting bail conditions across jurisdictions continues to harm the economically disadvantaged. This calls for the establishment of uniform bail guidelines that consider financial circumstances, ensuring that the right to liberty is not contingent on a person's wealth.

Bail as a Tool for Legal Strategy

Apart from judicial delays and socio-economic biases, another significant challenge to the effectiveness of the bail system in India is the tactical use of bail by various participants in the legal process. Legal practitioners and litigants often leverage procedural aspects of bail to secure strategic advantages in ongoing cases. For instance, defense counsel may file multiple bail applications, anticipating delays in their disposal by the courts, primarily to gain tactical benefits, particularly in cases that attract considerable public or media attention or during settlement negotiations. Conversely, public prosecutors may resist granting bail to ensure that the accused remains in custody, especially in situations where there is strong public sentiment favoring detention.

Political considerations frequently influence the strategic use of bail, particularly in high-profile cases involving prominent individuals, where bail hearings often become arenas for shaping public perception and media narratives. Recognizing these concerns, the judiciary has intervened

¹⁴ [2021] SCC OnLine SC 382.

¹⁵ [1978] AIR SC 1594.

to restrict such practices. In **Gautam Navlakha v. National Investigation Agency**¹⁶, the Supreme Court emphasized that bail provisions must not be misused by the accused, cautioning that bail should not be treated as a leisurely privilege. This judgment reflects the judiciary's commitment to ensuring that bail remains a safeguard for personal liberty rather than a tactic to obstruct justice.

Manipulating financial conditions attached to bail for strategic purposes undermines the equitable foundation of the bail system and diverts it from its primary objective — the protection of individual freedom. Addressing this issue requires heightened judicial scrutiny of bail applications and a consistent reaffirmation of the principle that bail is an extension of the fundamental right to personal liberty, not merely a tool for procedural maneuvering. This discussion asserts that the judiciary plays a crucial role in preserving the sanctity of bail proceedings by curbing its misuse and thereby reinforcing public trust in the fairness and integrity of the criminal justice system.

¹⁶ [2021] SCC OnLine SC 382.

CONCLUSION

An examination of bail law and its practical application in India highlights the ongoing conflict between protecting individual liberty and serving societal interests within the criminal justice framework. Although the constitutional foundation of India's bail system emphasizes the presumption of innocence and the prohibition of pretrial punishment, these ideals are often compromised in practice. Factors such as judicial delays in granting bail, socio-economic disparities, and the strategic exploitation of bail provisions frequently undermine these principles.

A significant concern arises from the broad discretion granted to judges and legal practitioners when deciding on bail matters, leading to inconsistent and unequal outcomes. This disparity particularly impacts marginalized communities, where socio-economic status heavily influences an individual's ability to secure release on bail and avoid unnecessary incarceration. Such inconsistencies expose hidden inequalities in the promise of equal justice under the law.

Although the doctrine of "Bail Not Jail" — firmly supported through landmark rulings — recognizes pretrial detention as an exception, especially in minor offenses, systemic barriers within the judiciary often dilute its effective implementation. A comparative analysis with the bail systems in the United Kingdom and the United States suggests that adopting stricter regulations and standardized practices could help eliminate arbitrary and biased bail decisions. Lessons drawn from the UK's structured bail guidelines and the debates surrounding cash bail reforms in the U.S. offer valuable insights for shaping more equitable bail reforms in India.

In conclusion, while Indian bail laws attempt to balance the protection of personal freedoms with the needs of justice, there is a pressing need for comprehensive reforms to bridge the gap between the constitutional ideals and their actual enforcement. Enhancing judicial efficiency, enforcing clear and fair bail guidelines, and addressing socio-economic disparities are essential steps toward building a more just and equitable bail system. Such reforms would ensure that the constitutional promise of justice — granting liberty without discrimination based on social or

economic status — becomes a living reality, thereby strengthening public trust in the criminal justice system.