
BAIL, NOT JAIL: IS THE PRINCIPLE LOSING ITS MEANING IN INDIA?

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ABSTRACT

The same Bail, not jail" isn't just a snappy phrase; it's meant to be the cornerstone of India's criminal justice system, rooted in the constitutional promise of personal liberty under Article 21 and the very idea that a person is innocent until proven guilty. Yet despite decades of judicial reasoning and legislative reform, the reality on the ground tells a different story: undertrial prisoners routinely spend months, even years, behind bars before their guilt is ever established. This article takes a closer look at how bail law in India has developed constitutionally and statutorily with a particular focus on the newly introduced Section 479 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which was designed specifically to cut down on unnecessary pre-trial detention. Alongside we revisit some of the landmark judgments that elucidate the area of law in State of Rajasthan v. Balchand, Gudikanti Narasimhulu v. Public Prosecutor, Hussainara Khatoon v. State of Bihar, and Sanjay Chandra v. CBI, all of which, in their own way, strengthened the same message, locking someone up before they're convicted should be the exception, not a day to day course of action by courts. But knowing the law and living the law are two very different things, and this article doesn't bluff away from that gap. It digs into the everyday obstacles that keep the "bail is the rule" principle from actually working: chronic court delays, overflowing prisons, harsh and sometimes unrealistic bail conditions, and the simple fact that many accused persons simply can't afford bail even when it's granted. The ongoing Delhi riots conspiracy case is used as a real-world lens to examine just how contentious and drawn-out the question of prolonged incarceration without trial can become. Backing this up with hard numbers, the article draws on Prison Statistics India 2023 to show just how disproportionately undertrials still dominate India's prison population, a statistic that speaks louder than any doctrine. Finally, the piece doesn't just diagnose the problem; it offers some practical ways forward: courts adopting a more rights-conscious approach to bail decisions, faster and more consistent implementation of the safeguards already written into law, stronger legal aid support for those who need it most, using digital tools to flag undertrials who qualify for release, and building in regular judicial check-ins on detention status. The bottom line? The BNSS is a genuinely important step forward on paper, but paper reforms only matter if they're backed by real

implementation, judges who take personal liberty seriously in practice, and institutions willing to be held accountable. Until that happens, "bail is the rule, jail is the exception" will remain more of an aspiration than a lived reality for thousands of undertrial across the country.

Key Words: - Bail Jurisprudence, Undertrial Prisoners, Article 21, Bharatiya Nagarik Suraksha Sanhita (BNSS), Personal Liberty.

I. Introduction

The principle of bail, not jail has long been regarded as a cornerstone of India's criminal justice system. It reflects the constitutional commitment to personal liberty and the presumption of innocence, ensuring that an accused person is not subjected to unnecessary detention before being found guilty. However, in recent years prolonged pre-trial detention and delays in deciding bail applications have raised important questions about whether this principle is being applied consistently in practice.

While the Bharatiya Nagarik Suraksha Sanhita, 2023(BNSS),introduces significant reforms aimed at reducing unnecessary pre-trial detention, practical challenges continue to undermine the effective realization of these statutory safeguards.

This article examines the constitutional and legal foundation of bail in India, analyses key judicial decisions that have shaped bail jurisprudence and explores whether the gap between legal Principles and their practical implementation is widening. It also considers recent cases as illustrations of broader challenges facing India's bail system .

It argues that despite constitutional guarantees, progressive judicial pronouncements, and recent legislative reforms, the doctrine of “bail, not jail” often remains more aspirational than operational in practice.

II. Constitutional Foundation of Bail

“The issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that developed jurisprudence of bail is integral to a socially sensitized judicial process.”- Justice V. R Krishna Iyer

In Gudikanti Narasimhulu Case (1978) 1 SCC 240

The right to bail, as a facet of Article 21 of the Constitution of India ,has evolved through statutory codification and judicial interpretation. The Code of Criminal Procedure 1973(CrPc) and now the Bharatiya Nagarik Suraksha Sanhita,2023 (BNSS),codify procedural provisions regulating the arrest, detention and release of accused persons.

Article 21 of the Constitution guarantees the right to life and personal liberty. Bail serves as a mechanism to ensure that the liberty is not arbitrarily curtailed prior to conviction. In Sanjay Chandra v. CBI,[(2012) 1 SCC 40],the Supreme Court held that bail is not to be withheld as a punitive measure. Pre-trial detention, it emphasized, must be justified by necessity and not merely on apprehension or public pressure. The Supreme Court comprehensively elaborated on the fundamental objective of bail, emphasizing that its primary purpose is to ensure the accused's appearance at trial, and not to serve as a form of punishment or preventive detention. The court underlined that the deprivation of liberty must be treated as a punishment only after a person is found guilty through due process, and until every accused is presumed innocent.

Similarly in the State of Rajasthan v. Balchand (1977) 4 SCC 308, the Supreme Court famously observed that “bail is the rule and jail is the exception.” This principle has since become one of the foundational doctrines governing bail jurisprudence in India and continues to guide courts while balancing individual liberty with the interests of justice.

III. Bail is the rule and jail is the exception

“Bail is the rule and jail is the exception “ has now been “Jail is the rule and bail is a very rare exception. The evolution of bail jurisprudence in India reflects a dynamic interplay between constitutional mandates, judicial interpretation and evolving statutory framework. With the introduction of the Bharatiya Nagarik Suraksha Sanhita, 2023(BNSS) ,replacing the CrPc and the enduring influence of the Constitution of India, the concept and practice of bail continue to be refined. In Hussainara khatoon v. State of Bihar (1979) Supreme Court recognized the plight of undertrial prisoners and emphasized that speedy trial and right to bail are part of Article 21 .

IV. Contemporary Challenges

The order of Supreme Court of India on January 5, 2026 in the Delhi riots ‘Larger Conspiracy’ case, where it granted bail to five individuals but denied it to Umar Khalid and Sharjeel Imam has once again, raised questions regarding the manner in which Indian courts balance concerns of national security with the constitutional protection of personal liberty. Without commenting on the merits of the allegations or the correctness of the judicial determination, the case illustrates the broader debate surrounding prolonged pre-trial detention in cases involving serious offenses. By the time the matter reached the Supreme Court, several accused had spent more than five years in custody without the commencement of a full-fledged trial. The prolonged incarceration of undertrial prisoners, irrespective of the ultimate outcome of the prosecution, raises significant constitutional concerns under Article 21. It also revives the long-standing debate over whether delay in trial itself should constitute a compelling ground for the grant of bail.

The BNSS has also laid down the maximum period for which the undertrial prisoners can be detained. Section 479 of the BNSS (Section 436A CrPc) covers the provisions for the undertrial prisoners, subjected to a time period for which they have been detained. According to the said section if a person is not accused of an offense with death penalty or life imprisonment as one of its punishments, he shall be released on bail if he has been detained for a 1/2nd of the maximum punishment.

V. Why is bail still difficult in practice?

Despite constitutional guarantees and repeated judicial pronouncements that “bail is the rule and jail is the exception,” the reality remains significantly different. According to Prison Statistics India 2023, undertrial prisoners constitute approximately 76% of India's population, highlighting the persistent problem of prolonged pre-trial detention. A substantial proportion of India's prison population consists of undertrial prisoners who have not been convicted of any offence. Lower courts often adopt a cautious approach while deciding bail applications in serious offenses, leading to prolonged incarceration. Furthermore, economically weaker accused persons frequently fail to furnish sureties or comply with stringent bail conditions. Delays in investigation, frequent adjournments, and an overburdened judicial system further contribute to prolonged pre-trial detention. Consequently, the fundamental right to personal liberty guaranteed under Article 21 of the Constitution is often undermined in practice.

The introduction of Section 479 of the Bharatiya Nagarik Suraksha Sanhita, 2023, is a welcome legislative reform aimed at reducing unnecessary detention. However its effectiveness depends upon timely implementation by prison authorities, proactive judicial oversight and effective legal aid. Without proper enforcement, statutory safeguards may remain merely aspirational.

VI. Possible reforms:

To make the right to bail meaningful, several reforms deserve consideration. First, courts should adopt a rights-oriented approach while deciding bail applications, particularly where the accused is charged with non-violent offences. Second, digital mechanisms should be introduced to automatically identify prisoners eligible for release under Section 479 BNSS. Third, legal aid institutions must be strengthened to ensure effective representation for economically disadvantaged accused persons. Fourth, investigation and trial proceedings should be completed within reasonable timeframes to prevent prolonged pre-trial detention. Finally, periodic judicial review of undertrial detention should become an institutional practice to ensure continued compliance with Article 21 and the constitutional presumption of innocence.

VII. Conclusion

The Bharatiya Nagarik Suraksha Sanhita, 2023 marks an important step towards reforming India's criminal justice system. Through Section 479, Parliament has sought to reduce unnecessary incarceration and uphold the constitutional commitment to personal liberty. Nevertheless, legislative reform alone cannot guarantee justice. Effective implementation, judicial sensitivity, efficient investigation and accessible legal aid remain essential for translating statutory protections into practical reality. As the Supreme Court has consistently emphasized, the criminal justice system must balance societal interests with the individual's fundamental right to liberty. Only then can the constitutional vision that “bail is the rule and jail is the exception” become a lived reality rather than a mere legal principle.

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