



Law And Practice Related To Bail Or Jail In India: A Critical Analysis

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ABSTRACT :

The bail system is one of the guarded mechanisms in India that exists as a shield between personal freedom and justice, derived from "Article 21" of the Indian constitution. Ideally, there is a legislative expectation that detention should be the exception while bail should be the rule; however, impediments such as judicial delay, socio-economic factors, and variability in judicial discretion work against the principle of equal access to bail. This study analyses the legal and effective conditions related to bail by the "Bharatiya Nagarik Suraksha Sanhita" and looks into historical judgments that stress "Bail Not Jail." Drawing upon examples of practice in the UK and the US, this paper also shows that structured guidelines and non-monetary bailing options can level the current imbalance in the Indian bail system. Furthermore, the examination highlights how socioeconomic status influences the granting of a bond and hence pretrial detention of vulnerable persons longer than necessary. The study ends with precise recommendations on how to neutralize the irregularity of judicial discretion, the recurrent delays, the rampant financial creases, and shun the unconscionable favouritism of non-custodial measures in a bid to reform a just bail disposition. With progress in such changes, India's bail practices could be made closer to the provision of the constitution dealing with rights and equality, which goes a long way in improving public confidence in the criminal justice system.

Keywords : Bail in India, Bharatiya Nagarik Suraksha Sanhita, Article 21, "Bail Not Jail" principle, bail reform, criminal justice system, pretrial detention

Introduction :

The Indian bail system forms the very crux of the criminal law jurisprudence, which is geared to recognize the freedom of an accused and justice hand in hand. In any democratic society, only under conditions permitted by law, the state has the right to limit a person's freedom. In other words, bail is operational protection measure through which an accused person is freed either temporarily or subject to certain conditions during trial or appeal to avoid the possibility of detaining the accused as punishment before conviction. In India, the right to personal liberty as mentioned in "Article 21" of the constitution is a criminal right and therefore a part of the criminal procedure. Yet, the implementation of bail in India has become questionable because of the inconsistency and abuse of the system, raising concerns about arbitrary denial of a pretrial detention for the underprivileged and the marginalized. The problem is further exacerbated by a backlog of cases, congested courthouses, and prison houses where several under trial are incarcerated, mostly due to the inability to afford bail. That is why it is necessary to consider the existing law and practice of the issuance of bail in India, masked goal of discussing their compliance with the constitutional principle of equality and non-discrimination.

The right to bail is not an invention of Independent India but has a retrospective link with British legal tradition. Bharatiya Nagarik Suraksha Sanhita, 2023 deals with the provisions of bail bifurcates the offenses into bailable and non-bailable ones. "Section 480" of the BNSS, 2023 holds that bailable offenses are a right to bail, and "Section 482" is where the court has discretion in a non-bailable case. Furthermore, 'section 485' of the BnSS endowed the higher court with the power to either release or reject the bail on the grounds of... It is worth noting, however, that the Constitutional Law of India has recognized the right of bail as a constitutional right and recalled it in the case of *State of Rajasthan v. Balchand*¹, he penned the following statement: 'Bail is the rule, jail is the exception'. This principle explains the exercise of intrinsic justice that applies the principle of 'innocent until proven guilty'. Still, such antecedents, which prima facie suggest that one is entitled to bail as a right, cannot be translated into practice in India, especially in as much as they paint a picture of what the statutes say on the matter, and a revelation of the disparity and irregularities of its application exposes its shortcomings in providing equal access to this right.²

This paper seeks to undertake a critical evaluation of the legal status and the existing practice on bail in India to show how structure and law impact bail. The significance of the study is found at the intersections of specific concerns regarding the operation of the bail system and its role in protecting individuals from arbitrary detention and the general awareness of the systemic problem that may result in bias about the laws governing bail. This analysis is relevant because the emphasis in recent years has been paid to judicial reforms and human rights in criminal law. This study will look at such cases as "*Arnesh Kumar v. State of Bihar*."³ The Apex Court also reinforced the general direction pointed out that a magistrate should not deviate from the provisions of law concerning bail, especially in minor offenses, and not detain an accused unnecessarily. In an attempt to present a complete analysis of

¹ AIR 1977 SC 2447.

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.

the principles of bail in India, their inconsistency, and proposed changes, this article revolves around analysing selected case laws and statutes that deal with the concept of bail, as well as recent judicial pronouncements.

Legal Framework Governing Bail in India :

As per the Indian Constitution, various provisions of the BNSS, determine the legal policy on bail and preserve the principles of natural justice and procedural fairness, not only codified in the BNSS but also fortified by judicial dictum and principles of constitutional and statutory law. Bail, which refers to the release of an accused person from detention on some promise that he or she will present himself or herself before the court when required, is among the ideal examples of the tension that exists between individual freedom and public order. The laws relating to bail are made in India with the intention that no one should be punished until they are proven guilty, for which the right to liberty is protected under “Article 21” of the Indian Constitution. Still, the matters about the granting or refusal of bail usually depend on the type of crime, the likelihood of the accused’s flight, influencing factors to the attainability of evidence, and the economic conditions that likely dictate the feasibility of bail.⁴ This has resulted in this multiple-dimension aspect of bail, which thus results in this social injustice, especially on the side of those from the minority, and thus leads to two very important issues about equity in the criminal justice system. Indian courts have emphatically reaffirmed the principle of bail being the norm and not the exception so far as heinous crimes are concerned while the judges exercise their discretion. However, these principles have been seen to pose some difficulty when applied, as seen in the case laws, whereby differentiation in bail grants and the influence of socio-economic backgrounds tend to skew the results of the justice delivery system, hence making it crucial to undertake a review of bail provisions to unveil the difficulty in the operationalization of these principles.

Criteria and Conditions for Granting Bail :

The provisions of law relating to the grant of bail in India are based on such principles that this right to liberty is more than balanced out by principles that prevent innocent persons from slipping away and discourage obstruction of justice. Bail is not just a mere legal extension of maintaining formalities; it acts as a functional tool that respects the theory of ‘innocent until proven guilty’ as well as provides a chance for the accused person to prepare for his defense, which he cannot do easily if he has to undergo the rigors of jail. The Bharatiya Nagarik Suraksha Sanhita, 2023 provides for bail, but determinations on how to execute them are subject to judicial discretion. “Section 480” of the BNSS provides for a traditional requirement that includes that bailable offenses are bailable, and this is a right, while “Section 482” offers the judiciary based on the circumstances of the case discretions for non-bailable offenses. This makes bail decisions also guided by changing perceptions as judged by the court when defining the proportionality and reasonableness of either a refusal or a grant of bail.⁵

Judicial Discretion and Bail: Standards and Constraints

An aspect of discretion pervades bail decisions of non-bailable offenses in India, and judges hence use the standards that embrace character and other factors related to the accused and the likelihood of recidivism as well as risk to the trial process. While decision-making may best be served in a discretionary manner, it is not absolute; some guidelines are followed in the exercise of that discretion. In *“State of Rajasthan v. Balchand,”*⁶ while holding that “bail is the rule and jail is the exception,” This set a standard for judicial discretion. Judicial officers are directed to refrain from ordering pretrial detention only when judges are informed that there is a real likelihood that the accused will interfere with the administration of justice or fail to appear for trial. Some elaboration of these guidelines was made by the Supreme Court itself in *‘Sanjay Chandra v. CBI.’*⁷ The primary importance here is that discretion must not be given the colour of punishment before trial. The court again cordially detested the use of bail as a form of punishment, especially where trials take long and those detained end up spending so many months or years than the crime committed deserved. Therefore, the concept of judicial discretion, although central to bail law, does not operate in a vacuum but is circumscribed by the promise of proportionality and fairness to detain a suspect for any length of time based on other factors relating to the individual case.

Parameters for Assessing Bail Applications

The measures that have been put in place while handling bail applications are as follows, which judges must consider in order to improve justice and security. These parameters originate from statutory regulations like the BNSS and other endorsed case laws on use in proceedings.

Nature and Gravity of the Offense :

Bail takes into consideration the nature and seriousness of the offense, and more so when it is a very serious crime like murder or terrorism. In as much as the accused of such an offense is likely to re-offend, putting the public and potential witnesses at risk, the courts are reluctant to grant the accused a bond. The high courts of India cited in the case of *Dinesh M.N. v. State of Gujarat*⁸ the judgment of the Supreme Court stating that while dealing with such serious offenses, the court cannot grant bail despite it being the paramount right of a prisoner since the principle of public interest in safety and

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

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.

⁸ [2008] 2 SCC 406.

justice is even higher than that of liberty. However, where the offenses are not serious, the principle 'Bail Not Jail' is more easily invoked since it adopts a moderate human rights approach to safety.⁹

Risk of Evidence Tampering and Flight :

Another area considered important in bail is the risk of evidence tampering or flight risk, which is critical in bail matters. Courts are very sensitive to determine if the accused could exert some coercive influence on the witnesses, destroy the physical evidence that could implicate him/her, or avoid trial because of similar reasons. In "*Nimmagadda Prasad v. CBI*"¹⁰ the Apex Court was very clear that the possibility of such risks should always be considered while extending freedom through bail, but at the same time, it should not compromise the trial itself. That is why a high risk of tampering with evidence or flight can justify the denial of bail so that the accused remains under judicial control and does not subvert justice.

Role of Public Prosecutors and Defenders in Bail Decisions

Public prosecutors and defense attorneys bear great responsibility for the formation of the judiciary's vision of the risks and benefits of bail. As agents of the state, public prosecutors have the responsibility of keeping law and order by making certain that the accused does not frustrate the process of law. They love to give proof of some threats related to the people, like the criminal background of the accused, the type of charges preferred against him, etc., in an attempt to deny bail, especially in situations where stringent public pressure or security threats are prevalent. On the other hand, defense lawyers uphold the accused persons' right to liberty. Reasons that may be used to convince the court to release them on bail include no previous criminal record, interaction with society, and past compliance with court orders in case there was an earlier order on the same.¹¹

Criteria and Conditions for Granting Bail :

India has developed a set of guidelines and qualitative aspects or conditions for bail that combine both statutory and judicial legal provisions. Most fundamentally, bail is about protecting the rights of the suspect while ensuring the purity of the processes in a court of law. The power to grant bail is primarily ruled by judges in India, and currently, the matter of bail is determined on a case-by-case basis in the backdrop of the Bharatiya Nagarik Suraksha Sanhita and Article 21 of the Constitution of India. In light of this, the Supreme Court of the United States has leaned towards the rule that bail should be granted and jail should be the exception where a judicial officer is permitted to exercise discretion to deny bail when the interest of liberty allows it. However, this discretion is qualified so that the courts ought to ponder the possibility of the accused influencing the witnesses or destroying tainted evidence, or the likelihood of the suspect skipping the trial. The judiciary, in its role to interpret conditions about bail, shows that there should be an equilibrium needed between the independence of a person as well as the balance of justice. This balance becomes particularly relevant when socioeconomic disparities are taken into perspective in India, which affects an individual's right to bail in many ways. Therefore, there is a need for courts to apply discretion sparingly to avoid causation of undue detentions, especially to persons charged with petty crimes or those who have special needs. Moreover, public prosecutors and defenders appear to have significant importance in bringing out persuasion in favouring or opposing and granting bail, which produces some judicial effects. When such criteria and the functions of the involved parties are considered, it is possible to get a big picture of current bail practices and their drawbacks.¹²

Judicial Discretion and Bail: Standards and Constraints

The use of discretions in all bail is fundamental in the Indian systems of jurisprudence; their legal provisions enable a judge to consider specific subject cases that are deemed fit for granting bail. This discretion, however, is not complete and is conducted under standards that are intended to eliminate bias or arbitrary judgments. Court's function based on the earlier laid down principles in cases such as "*State of Rajasthan v. Balchand*"¹³ that, according to the Supreme Court, bail ought to be granted rather than denied, mostly to those convicted of minor crimes. Moreover, in the case of *Sanjay Chandra v. CBI*¹⁴, the Supreme Court of India also canvassed for a new dispensation with a rider that bail must not be a punishment before conviction and all the more compound when trials are invariably protracted. The degree of judicial discretion is also determined by the nature of the offense, the capacity and risk factors of the accused person escaping or influencing the evidence, and the socio-economic situation that defines the ability of an individual to access bail. For example, there is a need to exercise great caution when using discretion because some people within society are likely to be detained just because they cannot afford to pay for bail. Judicial discretion enables the courts to work intimately, and nevertheless, the courts are bound by statutory provisions that prescribe the circumstances in which different categories of offenses can be dealt with. Hence, discretion in bail decisions has a protective role towards individuals' rights, but it does not go scot-free on legal provisions in a manner that violates the justice and equity principle.

⁹ Shriniwas 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.

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

¹² B. R. Gupta and S. P. Mahanta, *Law of Bails and Bonds: Practice and Procedure* 135 (Lexman Publication, Delhi, 1st edn., 2022).

¹³ [1977] AIR SC 2447.

¹⁴ [2012] 1 SCC 40.

Parameters for Assessing Bail Applications

When dealing with bail requests, the judiciary looks at various factors that may be seen as meeting the objectives of ensuring the freedom of the person and the integrity of the process. All these parameters can be specified under certain statutory provisions within the BNSS and are supported by case laws that explain the ways of its practical implementation. Bail appeals are considered under tests that recognize criteria like the nature of the charge, the severity, among others, risks that the accused may cause to society and the effects of releasing him on society's stability. In "*Prasanta Kumar Sarkar v. Ashis Chatterjee*,"¹⁵ the Supreme Court of India set down specific criteria for bail matters and stated that each of the criteria has to be taken into account to ensure bail is not granted arbitrarily. The following are not exhaustive factors but instead are all integrated as influencing the judiciary's decision-making process. Consequently, it can be inferred that the evaluation of bail applications is not a straightforward legalistic approach but a multi-dimensional exercise, which takes into account the legal provisions that govern the Indian Criminal Justice System besides focusing on other parameters while deciding bail applications.

Nature and Gravity of the Offense

These factors are very important for the setting of bail because serious offenses attract rigorous evaluations of the suspects' bail. They are usually reluctant to tender bail to anyone who is suspected of a horrendous offense like murder or terrorism because safety concerns and judicial prerogatives presuppose it. In the case of *Dinesh M.N. v. State of Gujarat*¹⁶, the Supreme Court of India also emphasized the provisions of offense seriousness stating that for the offenders of heinous crimes, the prayer for bail should be considered only in cursory circumstances. On the other hand, where offenses are less serious, courts have no option but to offer a more lenient opportunity like the granting of bail until reasons for detention are sufficient. The type and seriousness of the offense therefore act as the simplest litmus to determine whether the rights of a person should be restricted for the good of society.¹⁷

Risk of Evidence Tampering and Flight

Again, other issues, such as the possibility of interference with evidence and the risk of flight, are also other significant factors in determining bail. Judges consider whether the accused will tamper with the witnesses or tamper with the evidence if they grant a bond, which would compromise the legal processes. In "*Nimmagadda Prasad v. CBI*,"¹⁸ the Supreme Court observed that the possibility of an accused winning over resources or being able to influence the potential witnesses is good enough reasons why one's bail should be denied to protect the sanctity of the trial. Moreover, the risk that the accused may escape jurisdiction is considered, which may be based on his prior behavior or the circumstances of the case. Therefore, the chance of altering evidence or escaping is a committed element that ensures bail decisions do not harm justice, prolonging the credibility of the legal system.

Role of Public Prosecutors and Defenders in Bail Decisions

Public prosecutors and defenders involved in the bail process especially influence the prospects and views of a variety of judiciaries. The public prosecutor is an agent of the state who may seek detention where he or she perceives that bail will frustrate an investigation or pose a threat to society. They are involved in preparing briefs or documents provided by law that explain why detention should continue in serious offenses or high-flight risk cases. On the other hand, defense lawyers aim at ensuring that their client is not detained, hence fighting for factors that will warrant a bond, for instance, a clean record, being a person of integrity to society, and having no intent of fleeing.

"Bail Not Jail" Principle: Balancing Liberty and Justice

The principle of bail, not jail, is based on the constitutional right of personal liberty under "Article 21" of the Indian Constitution, which also deals with the protection of life. This principle merely reiterates the principle of not detaining a person before a conviction has been made against them because that infringes on the concept of innocent until proven guilty, which is appreciated to be an injustice institution of a justice system. Originally, the concept of bail developed as a legal provision to eliminate the unjustified restrictive measures for a person accused of a crime. Within the criminal justice system of India, this principle holds the juridical approach that individual freedom is more important, but at the same time, there has to be a check and balance to protect society.¹⁹

Concept and Historical Development

The idea of 'Bail Not Jail' has changed a lot in India, especially in the legal perception. In the beginning, the model of bail that was practiced in India was greatly impacted by British law and comprised a large portion of legal discretion to determine the bail, which was decided by the nature of the crime and behavior of the accused. But in the post-independence period, the judiciary started focusing on the protection of individual rights as well as

¹⁵ [2010] 14 SCC 496.

¹⁶ [2008] 2 SCC 406.

¹⁷ Bail Provisions in Bharatiya Nagarik Suraksha Sanhita (New CrPC): Understanding Changes, *available at*: <https://www.livelaw.in/top-stories/bail-provisions-in-bharatiya-nagarik-suraksha-sanhita-new-crpc-understanding-changes-246680> (last visited on October 12, 2024).

¹⁸ [2013] 7 SCC 466.

¹⁹ To Attract Offense U/S 111(1) BNS Two Or More Persons Must Carry Out Continuous Unlawful Activity Leading to More Than One Chargesheet Within Last 10 Yrs: Kerala HC, *available at*: <https://www.livelaw.in/high-court/kerala-high-court/kerala-high-court-whether-previous-criminal-antecedents-necessary-attract-offence-organised-crime-under-section-111-bns-266913> (last visited on October 13, 2024).

constitutional provisions and made the courts realize that the right to bail also falls under 'Article 21'. The case of *"State of Rajasthan v. Balchand"*²⁰ plays a crucial role in post-arrest police process and hence constitutes a central feature in the analysis of the judicial treatment of the right to bail. This differentiation has itself become a revolutionary change in the cases on bail in India while delivering this judgment the Supreme Court set the principle that bail rather than Jail should be the rule. This principle complements the progressive 'Bail, not Jail' slogan which seeks to address the problem of misuse of pretrial detention.

Judicial Approach to "Bail Not Jail" in Recent Cases

Over the years, the Indian judiciary has remained firm on the "Bail Not Jail" policy, and from the great judicial pronouncements of recent years, the protection of the liberty of the subject has not lost its priority. In *"Arnesh Kumar v. State of Bihar"*²¹ has once again emphasized that arrest cannot be a customary procedure, especially for offenses that are bailable and punishable with imprisonment of seven years or less. The Court also noted that the police authorities should desist from arbitrary arrests based on minor offenses while frowning at the current tagline of "Bail Not Jail." Likewise, in *"Sanjay Chandra v. CBI"*²², the Supreme Court occupied the position that rejection of bail should not turn into an instrument for punitive confinement, more so when trial duration may invariably lead to prolonged pretrial confinement. Such cases illustrate that the Court's approach requires judicial scrutiny of the bail practices to sustain the fundamentals of fairness and proportionality setbacks. In addition, there are recent judgments holding failure to take into account the socio-economic status of accused persons for denial of bail discriminates against the poor. Therefore, using its judgments, the judiciary has remained very much aware of the rights of the accused to liberty and justice needs through such tenets as the appropriate, careful approach to pretrial detention.²³

Critical Analysis of Bail vs. Custody Debate

The phenomenon of bail as opposed to custody has remained a hot political issue the world over that envisages a struggle between individual rights and collective good in the Indian criminal justice system. The supporters of the "Bail Not Jail" principle have always been saying that pretrial detention is a violation of personal liberty and legal assumption of guilt when in fact the suspect is assumed innocent until proven wrong. This view has been supported in the courts, especially about the idea of bail as a check against unlawful imprisonment, especially in minor offenses. *Hussainara Khatoon v. State of Bihar*²⁴, it was noted that it is unconstitutional to detain undertrial prisoners for an indefinite period stating "Article 21" expeditious trial and release on modest offenses on nominal bails. But critics assert that they know that in some grave circumstances, bail poses a threat to the public, where the accused can abscond, interfere with the evidence, or re-offend. This is especially good news to the courts, especially in circumstances of persons suspected to have links with mobs, those involved in terrorism, and those who committed sexual assault.

The concern recently aroused in connection with bail has also drawn attention to socio-economic disparities, where well-endowed individuals can easily obtain bail much more easily than clients from less privileged backgrounds. In cases like *"Moti Ram v. State of Madhya Pradesh"*²⁵, the Supreme Court of India observed while formulating bail conditions that there is no reason why there should be any barrier in terms of financial capacity, and therefore, it cannot permit any condition that would be beyond the purview of an under-trial prisoner to come out on bail. This is a clear pointer to the fact that applying the "Bail Not Jail" principle is becoming a little more challenging because the efforts must be scaled up to accommodate those of lower socio-economic status. Still, the decision about granting or refusing bail, while it must rely on distinctions, is essentially discretionary, and this creates a problem of equity, where different judges may set different criteria when it comes to a party's felonies. Such variability has elicited debate and demand for uniform legislative benchmarks, particularly in a bid to reduce randomness in bail rulings.²⁶

In striking the balance between bail and custody, the Indian judiciary has tried to make a healthy and fair attempt to offer a system that does justice both in the simplest form to the rights of the accused while at the same time addressing the need for justice. The principle of "Bail not Jail" continues to hold today regardless of the current bail practices that communities are undertaking today, especially in this era where the courts have enhanced the supervised release system that presents ways of dealing with safety to the public while at the same time recognizing the liberty of individuals. However, the debate remains inconclusive since the functioning of different jurisdictions in each case appears to be more about articulating a balance between freedom justice, and national security. The jurisprudence on bail stands as testimony to this balancing process through the concentrates of bounding arbitrary detention constitutions as well as not allowing early release, which may jeopardize justice. This critique of bail against custody reveals that the "Bail Not Jail" principle remains needful of preservative effect as a bulwark against deprivation of liberty in India's jurisprudential terrain as the question of how to administer and expand the bail principle equitably continues to animate the discourse on bail practices.

²⁰ [1977] AIR SC 2447.

²¹ [2014] 8 SCC 273.

²² [2012] 1 SCC 40.

²³ *Bail Provision Under BNSS, 2023*, available at: <https://legalonus.com/bail-provision-under-bnss-2023/> (last visited on October 14, 2024).

²⁴ [1979] AIR SC 1369.

²⁵ [1978] AIR SC 1594.

²⁶ 'Section 482 of BNSS Widens Discretionary Powers of Courts Hearing Anticipatory Bail Applications': Chhattisgarh HC Grants Anticipatory Bail to a Woman and Her Uncle, available at: <https://www.scconline.com/blog/post/2024/09/30/s-482-bnss-widens-discretionary-powers-of-courts-hearing-anticipatory-bail-applications-chc-grants-anticipatory-bail/> (last visited on October 15, 2024).

Challenges in Bail Law and Practice in India :

The controversies involved in the Indian bail and laws impose severe restrictions on standards of justice for all those implicated in a criminal case. While the judiciary has its backing on the “Bail Not Jail” principle, the actual implementation of bail is rarely consistent with this principle, as seen by the effect of bail on detaining suspects for long periods, socioeconomic status biases, and even the tactical use of the provisions on bail. These problems originate from structural obstacles in the legal arena, scarcity of legal assets that are instrumental for this process, and divergent approaches toward the legal provisions governing bail. One clear breach is the undue plenty of time undertrial detainees spend waiting for their bail applications to be heard by the courts. Moreover, socio-economic bias in setting bail amounts results in some of such individuals being denied bail unfairly since they cannot afford to pay for it as independent business persons or they cannot intimidate the system as they were in the pretrial stage. Moreover, bails are sometimes used tactically within legal cases, wherein the parties misuse procedural laws to achieve higher goals contrary to justice. These complexities only go to illustrate how the law on bail in India can be a particular minefield, and with this, the systemic changes that are so badly needed to make its procedures less unreasonable, more equal, and more accessible.²⁷

Judicial Delay and Impact on Bail

There is a form of delay in the bail process that is more so associated with the Indian courts, whereby those awaiting trial may spend ample time in detention. The judiciary has a very huge number of cases and delays in hearing and disposal of bail applications. In *Hussainara Khatoon v. State of Bihar*,²⁸ the Supreme Court pointed to the consequences of protracted detention before trials by pointing out that pre-trial detention before trial other than through bail infringes “Article 21” of the constitution because it exposes under trials to calamity for long periods without remand hearing despite the availability of a constitutional right to bail. Judicial delay as a human rights violation affects a deprived individual to the extent that he or she cannot hire a lawyer to speed up his or her case, thus being detained for a period that is even longer than the apparent crime. Delays, like these erode the spirit of bail in as much as pretrial detention and look more like punishment than prevention. Political influence often manifests in the use of bail as a tactical manoeuvre; in many instances involving influential figures, bail applications escalate into battles over control of public opinion and media influence. Occasionally, the judiciary has intervened to curb such practices. For example, in the case of *Gautam Navlakha v. National Investigation Agency*²⁹, the Supreme Court emphasized that the provisions for bail should not be exploited by the accused as a mere delaying tactic. This reflects the court’s vigilance in ensuring that bail remains a tool for justice rather than obstruction.

Socio-Economic Biases and Discrimination

Another clear and major source of inequality in India by entailing journey for equality before the law is socio-economic biases in the process of bail. While justice requires proper access to bail as a right, the current bail system speaks to ill, damned, or otherwise incarcerated individuals who can provide a surety for the bonds or have a competent lawyer negotiate for their release. In *Moti Ram v. State of Madhya Pradesh*³⁰, the Supreme Court frowns at the practice of fixing outrageous bails where the poor individuals who cannot independently provide the bails are chained and confined. This practice not only limits the freedom of economically enfeebled persons but also creates a cycle in the criminal justice system. Those people who are from the low SES (Socio Economic Status) are more likely to be detained pretrial with no option for wanting to meet the bail, while on the other hand, the high SES defendants mostly have it easy. This social-economic inequality in the grant of bail brings to the fore an important question in the inequitable nature of the reunite for bail. These disparities are well understood by the judiciary, and through various judgments of the superior courts of the country, it has been reiterated that equal criteria should be followed for bail irrespective of rich and poor. Despite efforts made by the judiciary to reduce socio-economic factors, lack of self-authored proforma for the determination of conditions of bail has impacted adversely, and practices vary, overall disadvantaging the financially strapped individuals. As a result, the question becomes figuring out how to make bail conditions standard across states while still being aware of socio-economic differences, thus affording the right to liberty regardless of an individual’s financial standing.

Bail as a Tool for Legal Strategy

However, other factors that exist as challenges to the efficiency of bail systems in India include; Firstly, there are judicial delays and socio-economically biased outcomes. Secondly, the use of bail as a tactical measure by the distinct stakeholders in the legal process. It means that based on one or another procedural feature of bail, the legal practitioners and litigants may gain specific tactical advantages about the case. For example, defense lawyers may present numerous requests for bail, knowing full well that the court will take long to decide on them, but this may be for tactical reasons, especially where the case attracts a lot of public attention or is used as leverage during negotiations for a settlement. On the other hand, the public prosecutors may stand for not granting bail to the accused because they want the accused to remain detained, more so when the public is inwardly advocating for detention. Political influence often manifests in the use of bail as a tactical manoeuvre; in many instances involving influential figures, bail applications escalate into battles over control of public opinion and media influence. Occasionally, the judiciary has intervened to curb such practices. For example, in the case of *Gautam Navlakha v. National Investigation Agency*³¹, the Supreme Court mentioned that: The provisions for bail should not be misused by the

²⁷ 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).

²⁸ [1979] AIR SC 1369.

²⁹ [2021] SCC OnLine SC 382.

³⁰ [1978] AIR SC 1594.

³¹ [2021] SCC OnLine SC 382.

accused and it cannot be made a luxury period. This goes to show how the court is keen to making sure that bail is not exploited as a hindrance for justice. The alteration of fiscal terms to serve tactical goals, therefore, does not only act inapposite to the standard of equity but also shifts the focal point of the bail system away from its equities' goal of defending freedom to be a tactical component in litigation. This is a challenge that can only be met by substantially raising the bar of judicial scrutiny of bail applications and, more importantly, a firm focus on the core principles of bail that reminds the legal profession that bail is still an appendage of the right to personal liberty and not an adjunct of legal tactics. This paper argues that the judiciary plays an important part in preserving the holiness of bail practices to avoid its abuse by reinforcing the public's confidence in the fairness of the bail system as being a blatant aspect of criminal justice.

Conclusion :

The study of bail law and practice in India also reveals the tension between the free person and the interests of society in the context of the criminal justice system. The theoretical foundations of the bail system inherent in the Indian Constitution guarantee compliance with the principle of innocence and the prohibition of pretrial punishment. That, however, is the ideal that is frequently frustrated by practical considerations such as, for instance, judicial postponement of bail, socio-economic differentiation, and use of provisions to delay bail. The third area of concern is that due to the huge latitude left to the judges and paralegals in arriving at a bail determination, there are cases of disparate bail outcomes, hence shedding light on disguised inequalities in equal justice for all, particularly the underprivileged groups. In addition, the particular research is a vivid example of the unequal treatment of people, for the majority of whom socio-economic factors define the chance to be released on bail and avoid imprisonment.

The fact that "Bail Not Jail" backed using landmark judgments, identifies pretrial detention as an exception, especially for trivial offenses. Of course, such principles have been acknowledged by the courts, yet the various restraints in today's defective judicial system imply structured reforms. Comparing the bailing system of India with that of the UK as well as the US shows that having properly regulated practices and implementing strict standardization might eliminate unrelated and biased practices, which would make the bailing system fair and reasonable. Reflection on the well-structured guidelines in the UK and the debates within the United States concerning cash bail gives some useful experience that can be particularly helpful in formulating fair reforms in India.

In conclusion, Indian bail laws, as they continue trying to strike the balance between individual rights and justice, require further stalwart systematic changes to fill the existing disparity between law on the books and law in force. The efficiency of the judiciary, the current guidelines on setting more stringent bail conditions, and socio-economic factors can help in improving the fairness of bail. Such measures would ensure that the bail system represents the constitutional provision of true justice, where liberty is granted to anyone irrespective of their social and economic standing, thus encouraging the public to have confidence in the Criminal Justice System.

Suggestions :

Taking into account the challenges described in the analysis above, therefore, enhancing the Indian bail system must be a multi-faceted strategy. In this way, the systematic approach will provide the means to achieve necessary corrections, providing a more reasonable system of both matching parties' rights with justice and adapting bails to constitutional requirements of equality and justice. Below are targeted suggestions that aim to refine the bail process, minimize biases, and improve judicial efficiency:

- The application of a set of discriminant criteria at the discretion of judges in bail cases can therefore be another great asset in bringing order and reducing decisions based on prejudice. Guidelines of such types should provide specific standards for evaluating the characteristics of the crimes, possible risks of escaping and destruction of the evidence these defendants might pose, and other factors that should help the judges to make less arbitrary, more predictable decisions.
- As for the second aspect, the main cause of non-pecuniary damages resulting from pretrial detention is the excessive duration of such detention, within which it is necessary to denote the need to address the problem of judicial delay, the role of which has been discussed above. Time frames for processing bail applications such as those involving minor offenders would be far more effective and decrease pressure on individuals awaiting trial. Precise instructions for expeditious hearings would reduce case backlogs and create better conditions where an accused person does not stay in detention for long.
- Economic differences in the ability to post bail should be eliminated by using lawyers who charge little or no fee for those with low incomes. Overall, legal aid can be expanded to offer services for bail, especially for the minority to seek the help of a lawyer, as well as freeing individuals because of financial problems.
- Periodic review and rationalization of the amounts bailed would eliminate financial discrimination against the accused. There is also a need to have provisions for sliding-scale bail, which should mean that the poor should also have their bail measured in the same way that the rich have their bail measured.
- Thus, there are world practices that India can use in place of monetary bail, namely an ordered release, the obligation to report to the officer or the restrictions on traveling. These are non-monetary conditions that can ensure that applicants for bail are provided without feeling the pinch; hence, they can help eliminate many non-violent persons who are unnecessarily locked up due to financial constraints.
- This means that the implementation of constant policy-management seminars for judges where current general knowledge about the effects of socio-economic factors on the decision-making process in bail deliveries is passed to them will promote neutrality. Awareness of such points may lead to a mere reasonable appreciation of how some inequalities impair requests for bail, thus achieving more reasonably applied discretion.
- That is why some legal constraints related to the provisions regulating the frequency and purpose of bail are required so that the constitutional right is not misused as a mere method of legal proceedings. Most of those benefits would be highly valuable, especially in selective cases within high profiles that involve abuse of bail for delay or media advantage, thus enhancing the core role of bail as a guarantee for liberty.

- The implementation of using technology to fast track all the applications for bail and all the decisions that have been made can help to make the process more transparent. The current use of court calendars and electronic mail communication to monitor pending bail applications and judicial time can be regarded as an effective way to organize the entering case files, discover cases of possible delay, and avoid arbitrary detention due to negligence.

Adoption of these recommendations could turn the bail system in India to be fair, reasonable, and efficient as envisaged by the constitution while rebuilding the confidence of the public in the judicial system.