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Reform of Bail Law in India

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ABSTRACT

The principle that “bail is the rule, jail is the exception” is meant to protect individual liberty – yet, in today’s India, the reality often falls short of that promise. Arbitrary arrests, long periods of pre-trial detention, and the difficulty of securing bail continue to plague the criminal justice system, especially for the poor and marginalized. This paper explores how the bail system, despite constitutional safeguards under Article 21 and established judicial principles, frequently operates in a way that undermines the presumption of innocence.

*By closely examining the legal provisions under the Code of Criminal Procedure, 1973, and analyzing key Supreme Court decisions such as *State of Rajasthan v. Balchand* (1977), *Dataram Singh v. State of U.P.* (2018), and *Satender Kumar Antil v. CBI* (2022), the study highlights both the progress made and the gaps that remain. Drawing from real-world cases, data on undertrial prisoners, and recent judicial observations, the paper argues for urgent reforms – from simplifying bail procedures to rethinking how courts assess flight risk and social background.*

Ultimately, the aim is to ask a simple but vital question: How can we make bail truly accessible for all, and not just for a privileged few? Ensuring that liberty is the norm, not the exception, is essential if India’s criminal justice system is to stay true to its constitutional values.

I. INTRODUCTION

Personal liberty is a foundational element of any democratic society. In India, it is enshrined under Article 21 of the Constitution, which guarantees the right to life and personal liberty.² Yet, this right is routinely curtailed by the misuse of arrest powers and the rigid and inconsistent application of bail laws. Although the Supreme Court of India has long reiterated that bail should be the norm and not the exception, the reality is starkly different, particularly for underprivileged individuals who are unable to meet the financial or procedural requirements often attached to bail.³

The concept of bail serves a dual purpose: it ensures that an accused person appears before the

¹ Author is a Student at Amity University, Noida, India.

² Constitution of India, Article 21

³ Abhinav Sekhri, "Bail and the Poor: A Socio-Legal Examination of Pre-Trial Detention in India", NUJS Law Review, Vol. 12, 2019.

court when required, and it upholds the presumption of innocence until proven guilty. However, the actual operation of the bail system often undermines these goals. Many undertrial prisoners spend months or even years in custody for minor, non-violent offences simply because they cannot afford bail.⁴ This paper explores the current bail regime in India, the challenges faced by those entangled in the system, and the reforms necessary to bring it in line with constitutional guarantees. In light of these systemic challenges, it becomes imperative to assess both legal theory and ground realities to ensure that the principle of liberty is not sacrificed at the altar of procedural inefficiency.

II. LEGAL FRAMEWORK ON BAIL IN INDIA

The bail system in India is governed primarily by the Code of Criminal Procedure, 1973 (CrPC), especially Sections 436 to 439.⁵ These provisions classify offences into bailable and non-bailable categories:

- **Regular Bail:** Granted under Sections 437 and 439 after an individual has been arrested.
- **Anticipatory Bail:** Provided under Section 438 for persons apprehending arrest.
- **Interim Bail:** Temporarily granted pending a final decision on regular or anticipatory bail.

Under Section 436, bail in bailable offences is a matter of right. For non-bailable offences under Sections 437 and 439, it is subject to the court's discretion. Although the statutory language provides broad discretion to judges, this discretion is expected to be exercised judiciously and in harmony with the values of justice and liberty.

However, the lack of clear guidelines for exercising this discretion often leads to inconsistency and arbitrariness. In many cases, lower courts are hesitant to grant bail due to fear of criticism if the accused later commits a crime while out on bail.⁶ This has led to a culture of excessive caution that undermines the presumption of innocence and erodes the fundamental right to liberty.

III. JUDICIAL DECISIONS AND THE PRINCIPLE OF LIBERTY

Judicial interpretations have played a critical role in shaping India's bail jurisprudence. A few landmark judgments have significantly influenced this domain:

⁴ Ibid

⁵ Code of Criminal Procedure, 1973, Sections 436–439.

⁶ Rajeev Dhavan and Raju Ramachandran, "Arrests and Bail: A Human Rights Perspective", (1996).

- State of Rajasthan v. Balchand, AIR 1977 SC 2447: Justice V.R. Krishna Iyer emphasized that bail, not jail, should be the rule, reinforcing the principle of liberty.⁷
- Dataram Singh v. State of Uttar Pradesh, (2018) 3 SCC 22: The Supreme Court reiterated that an accused is presumed innocent until proven guilty and that personal liberty should not be sacrificed unless there are compelling reasons.⁸
- Satender Kumar Antil v. CBI, (2022) 10 SCC 51: The Court outlined clear procedural safeguards to prevent unnecessary arrests and directed the lower judiciary to follow Sections 41 and 41A of CrPC more rigorously.⁹
- Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273: The Court further mandated the use of Section 41A for offences with punishment of less than seven years and highlighted the need for caution in arresting individuals at the pre-trial stage.¹⁰

Despite these rulings, the compliance on the ground remains minimal. Many magistrates mechanically deny bail without considering the nature of the offence, the socio-economic condition of the accused, or the feasibility of alternatives to incarceration.¹¹ This judicial disconnect continues to widen the gap between constitutional promises and actual outcomes.

IV. PROBLEMS AND GAPS IN THE CURRENT BAIL SYSTEM

The current bail system is fraught with issues that demand urgent attention:

- **Arbitrary Arrests:** Arrests are frequently made without adhering to statutory safeguards, in clear violation of Sections 41 and 41A of the CrPC.¹²
- **Undertrial Overcrowding:** According to the National Crime Records Bureau (NCRB), over 77% of India's prison population comprises undertrial prisoners, a majority of whom are poor and illiterate.¹³
- **Disparity in Bail Decisions:** There is a lack of uniformity across courts, with similar cases receiving drastically different outcomes.¹⁴
- **Socio-economic Discrimination:** Bail conditions often require financial sureties or property bonds, effectively excluding the economically disadvantaged.¹⁵

⁷ State of Rajasthan v. Balchand, AIR 1977 SC 2447.

⁸ Dataram Singh v. State of Uttar Pradesh, (2018) 3 SCC 22.

⁹ Satender Kumar Antil v. CBI, (2022) 10 SCC 51.

¹⁰ Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273.

¹¹ Abhinav Sekhri, *supra* note 2.

¹² Code of Criminal Procedure, 1973, Sections 41 and 41A.

¹³ National Crime Records Bureau (NCRB) Prison Statistics 2021.

¹⁴ Rajeev Dhavan and Raju Ramachandran, *supra* note 5.

¹⁵ Abhinav Sekhri, *supra* note 2.

- **Lack of Legal Aid:** Access to competent legal counsel is limited, especially in rural areas and among marginalized communities.

Empirical Evidence of Bail Misuse

Multiple empirical studies have underscored the socio-economic biases embedded in the bail process. A 2021 study by the Vidhi Centre for Legal Policy found that over 60% of bail orders lacked reasoning, raising concerns about arbitrary judicial conduct. Further, the Delhi High Court Legal Services Committee (DHCLSC) reported that in over 70% of cases, undertrials remained in custody for extended periods due to their inability to afford sureties, even when bail was granted.¹⁶ These patterns indicate that access to bail is more a function of wealth and privilege than legal merit.

V. RECENT REFORMS AND JUDICIAL INITIATIVES

In *Satender Kumar Antil*, the Supreme Court laid out a new procedural framework that categorizes offences and aligns bail with the severity of charges. The judgment reaffirms that arrests should be the last resort and encourages alternatives such as notices for appearance under Section 41A of CrPC.¹⁷

Additionally, several Law Commission Reports have proposed significant reforms:

- **41st Report (1969):** Recommended changes to reduce the discretionary power of police and magistrates.¹⁸
- **78th Report (1979):** Suggested the incorporation of non-monetary bail options.¹⁹
- **268th Report (2017):** Advocated for a risk-based assessment model and the use of personal recognizance bonds in place of cash bail.²⁰

Despite these recommendations, legislative follow-through has been inconsistent. There is a growing need for Parliament to codify these suggestions and ensure their implementation through statutory reforms.

VI. SUGGESTED REFORMS

To address the systemic issues in the bail process, the following reforms are essential:

- **Codified Guidelines:** Establishing clear criteria for granting bail to reduce arbitrariness and enhance predictability.

¹⁶ Vidhi Centre for Legal Policy, "Fair Trial Rights and Bail Orders in India," Policy Report, 2021.

¹⁷ *Satender Kumar Antil vs CBI*, (2022) 10 SCC 51.

¹⁸ Law Commission of India, 41st Report (1969)

¹⁹ Law Commission of India, 78th Report (1979)

²⁰ Law Commission of India, 268th Report (2017)

- **Economic Sensitivity in Bail Conditions:** Bail amounts should be proportionate to the financial capacity of the accused to prevent detention solely due to poverty.
- **Expansion of Non-Monetary Bail Options:** Courts should increasingly rely on personal bonds, community ties, or digital monitoring as alternatives.
- **Training of Judicial Officers:** Continuous sensitization and training of magistrates and judges on bail jurisprudence and human rights obligations.
- **Technology Integration:** Leveraging video conferencing and digital filing to expedite bail hearings, especially in remote areas.
- **Performance Audits:** Introducing performance audits of judicial officers to assess adherence to bail norms.
- **National Bail Policy:** Developing a national framework to harmonize bail practices and promote uniform standards across jurisdictions.

VII. CONCLUSION

India's bail system stands at a critical juncture. While the theoretical framework advocates for liberty and restraint in pre-trial detention, the actual implementation often results in injustice, especially for the underprivileged. The overuse of arrest and the underuse of bail reflects not only legal inertia but also societal biases.

Reforming the bail system is not merely a legal requirement; it is a moral and constitutional imperative. A long-term solution requires a coordinated approach involving the legislature, judiciary, and executive. India must consider developing a national bail policy that integrates risk-based assessment tools, prioritizes non-custodial measures, and institutionalised legal aid services. The time is ripe for the judiciary to play a transformative role not just through judgments, but by monitoring compliance and advocating for legislative change.

Moreover, reform must address the root causes of inequity—economic disparity, limited legal awareness, and systemic delays. Strengthening legal aid, enhancing judicial infrastructure, and educating the public about their rights are key measures to bridge the gap between law and justice. Community-based alternatives to incarceration, such as probation and community service, should also be explored more robustly to reduce the burden on jails.

Policymakers must work collaboratively with civil society and legal experts to craft nuanced, flexible policies that cater to India's socio-economic diversity. Transparency in bail decisions, regular data publication, and accountability mechanisms should be integral to the reform process. Such steps would ensure that the criminal justice system serves as a protector, not a

persecutor, of individual liberty.

Only through a combination of legislative amendments, judicial accountability, and administrative reforms can we ensure that the principle of liberty is upheld in practice, not just in principle. A fair and efficient bail system is the bedrock of a just criminal justice framework — one that treats every individual with dignity, regardless of their socio-economic background.

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