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# Safeguarding Liberty: A Constitutional Analysis of Bail Jurisprudence in India

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RUDRAKSH JAIN<sup>1</sup>

## ABSTRACT

*“When the legislature, in its wisdom, has prescribed specific safeguards for an accused, it is the pious duty of constitutional authorities to prevent a criminal trial from vitiating the accused’s rights”.*

- District Judge, Pawan Kumar Jain.

*The concept of bail extends beyond being a mere procedural safeguard; it serves as a fundamental expression of the constitutional promise of personal liberty. In India, the jurisprudence surrounding bail has experienced significant evolution, particularly in its intersection with the rights enshrined in Articles 14, 19, 21, and 22 of the Constitution. This paper offers a comprehensive analysis of the constitutional and legal framework governing bail, with a focus on the doctrinal and judicial developments that have shaped its current form.*

*From ancient philosophical roots and colonial influences to modern legislative enactments like the Bharatiya Nagarik Suraksha Sanhita, 2023, the research traces how the right to bail has evolved as a vital counterbalance to the coercive powers of the State. It examines how the Indian judiciary, especially through landmark rulings such as Maneka Gandhi v. Union of India, redefined the meaning of “procedure established by law” to demand fairness, reasonableness, and just application.*

*Through an analysis of legislative provisions, historical development, and case law, the paper argues for a principled and transparent approach to judicial discretion in bail matters. It advocates for a system that upholds liberty as the norm and pretrial detention as the exception ensuring that bail is not treated as a privilege but as a right essential to the integrity of a democratic society governed by constitutional values.*

**Keywords:** *Bail, Constitution of India, BNSS 2023, Article 21, Default Bail, Judicial Discretion, Personal Liberty*

## I. INTRODUCTION

The jurisprudence of bail occupies a pivotal role in the Indian criminal justice system, intricately tied to the principles of personal liberty, due process, and the rule of law. Bail is inherently a legal mechanism that ensures the presence of an accused in court while

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safeguarding their liberty during the pendency of criminal proceedings. Essentially, it reflects the philosophy that an individual, until proven guilty, deserves the benefit of liberty unless a pressing justification for incarceration exists. Rooted in the constitutional promise of a fair trial and the presumption of innocence, the concept of bail serves as a counterbalance to the coercive powers of the State.

In India, where the criminal justice system is burdened by procedural delays and systemic inefficiencies, the significance of bail transcends mere statutory interpretation. The right to be released on bail, particularly in bailable offenses, is considered a matter of right, while in non-bailable offenses, it lies within the judicial discretion of the court. This discretion is neither absolute nor arbitrary; rather, it is guided by principles enshrined in the Constitution, particularly Articles 14, 19, 21, and 22. Article 21, which guarantees the right to life and personal liberty, forms the constitutional bedrock for bail jurisprudence. Any curtailment of this right must meet the threshold of “procedure established by law,” which has been judicially interpreted to mean a procedure that is just, fair, and reasonable.

Despite the clarity of constitutional intent, the bail process in India remains mired in inconsistencies and arbitrariness. The law provides for both regular bail and anticipatory bail, the latter being a unique Indian innovation codified under Section 438 of the Code of Criminal Procedure, 1973. Anticipatory bail, which grants pre-arrest protection, is based on the fear of unjustified arrest, frequently invoked in cases of false or politically motivated accusations. It is within this domain of anticipatory bail that the most critical tensions between personal liberty and societal interest arise. The challenge lies in assessing the justness of pre-emptive liberty without undermining legitimate law enforcement objectives.

The discretion conferred upon courts in bail matters is not unguided. It is shaped by judicial precedents, statutory frameworks, and constitutional mandates. However, in practice, the exercise of this discretion often varies widely across jurisdictions and individual cases, raising questions of fairness, equality, and predictability in the criminal justice system. Judicial pronouncements such as those in *Gurbaksh Singh Sibbia v. State of Punjab* and *Siddharam Satlingappa Mhetre v. State of Maharashtra* have attempted to provide guiding principles; nonetheless, judicial inconsistency persists. At times, courts have leaned excessively toward protecting liberty, while in other instances, they have succumbed to public pressure or security considerations, thereby denying bail even in the absence of compelling reasons.

Another layer of complexity is introduced by the social and economic aspects of bail. Indigent accused individuals, unable to provide monetary sureties, remain incarcerated for minor

offenses, underscoring the inequality ingrained in the bail system. The Supreme Court's recognition of this issue in *Hussainara Khatoon v. State of Bihar* established the groundwork for a more humane understanding of bail. Despite such interventions, practical barriers to liberty continue to exist for the underprivileged.

This paper aims to critically examine the legal, constitutional, and practical dimensions of bail, with a specific focus on judicial discretion and anticipatory bail. The study seeks to understand how courts navigate the fine line between upholding liberty and ensuring justice. It will explore the philosophical and historical roots of bail, the evolution of statutory provisions, and the interpretative shifts in judicial reasoning over time. By analyzing case law and legislative intent, this paper aims to provide a comprehensive account of how bail functions as a tool of justice, rather than a privilege subject to arbitrary denial.

Furthermore, the work will highlight the role of anticipatory bail as a shield against executive excesses and its significance in a democratic society. It will underscore the argument that anticipatory bail is not merely procedural relief but a substantive constitutional guarantee that requires careful protection. The interplay between Articles 14, 19, 21, and 22 of the Constitution and the bail provisions will be examined to show how constitutional morality must guide the exercise of judicial discretion.

Ultimately, this paper argues that the only sustainable way to balance personal liberty with societal security is through the principled and transparent use of judicial discretion. A standardized, rights-based approach to bail will not only uphold the values of the Constitution but also restore faith in the criminal justice system. This work contributes to the ongoing legal discourse by reaffirming the centrality of liberty and the judiciary's role in its preservation.

## **II. HISTORICAL AND THEORETICAL BACKGROUND OF BAIL JURISPRUDENCE**

### **1. History of Bail and Its Evolution**

Bail remains undefined under provisions of law and special codes. Law scholars and jurists have defined bail as “*a bond which secures the appearance of the accused during a trial*”. Bail has been described as a right more than a favour for the accused.

Several provisions of law deal with bail, such as:

- Chapter XXXV of BNSS, 2023
- Section 45 of PMLA, 2002 and other provisions.

Bail is not only the specific provisions of law but a collection of jurisprudence that secures a person's liberty.

The idea of bail has roots that go back much further than most people realize. One of the earliest references to it can be found in 399 BC, during the trial of Socrates. Historical records suggest that Plato tried to secure Socrates' release by offering a bond, hoping he could stay free while awaiting the outcome of his case. Although Socrates ultimately chose to accept his punishment, this attempt shows that the notion of temporary liberty before trial was already beginning to take shape, even in ancient times.

As legal systems evolved, the concept of bail took on a more defined form, especially in medieval England. British judges would travel around the country, holding what were called "sessions" or "quarter sessions", to hear cases and decide whether those awaiting trial should be released. These sessions weren't driven by sympathy for the accused. In reality, the motivation was practical; prisons were filthy, overcrowded, and poorly maintained. Undertrials, who hadn't yet been found guilty of any crime, were often kept in these conditions for long stretches without basic hygiene or food. Not only did this lead to needless suffering and death, but the unsanitary conditions frequently caused disease outbreaks, which spread beyond the prison walls and posed a danger to the general public. In that sense, granting bail became a way to protect society itself, not just the individuals behind bars.

These conditions caught the attention of early reformers, thinkers, lawyers, and human rights advocates, who began pushing for fairer treatment of undertrials. Their argument was simple but powerful: a person should not be punished before being proven guilty. Bail, they said, wasn't just about legal technicalities, it was about basic human dignity.

A major milestone in this journey was the Magna Carta of 1215, one of the earliest formal documents that tried to hold rulers accountable to the law. Forced upon King John of England by rebelling nobles, the Magna Carta didn't just protect the wealthy elite, it laid the groundwork for concepts like the rule of law and individual rights that still influence modern democracies today. Its famous Clause 39 declared:

*"No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land."*

This statement might seem basic today, but back then, it was revolutionary. It established the idea that no person can be detained without legal justification and that everyone deserves a fair hearing before their liberty is taken away. This principle has echoed through centuries of legal reform, including in India's own legal framework.

What began as a way to manage prison overcrowding eventually evolved into something deeper: a recognition that liberty is a fundamental human right, not something that should be given or taken away at the state's whim. From Plato's gesture to save Socrates, to the English lords demanding justice from their king, the development of bail reflects a growing belief that justice must begin with fairness, and that means giving people the chance to defend themselves before they are punished.

The Statute of Westminster, enacted in 1275, established the distinction between bailable and non-bailable offences. This legislation formed the foundation for how judges and officials approached bail decisions. Judicial authorities made fair and appropriate determinations by categorising offences while adhering to due process.

The Habeas Corpus Act of 1679 was introduced to prevent excessive delays between detention and bail hearings. Later, the Bill of Rights of 1689 emphasised proportionality in bail matters, declaring that "*excessive bail ought not to be required.*" This principle became the cornerstone of the Eighth Amendment of the U.S. Constitution. The subsequent noteworthy development in bail law came with the "*Bail Act of 1898*" This reform permitted judges to waive sureties when they deemed financial requirements would impede justice. This change particularly benefited impoverished individuals, who might otherwise remain incarcerated for minor offences due to their inability to afford bail.

## **2. Evolution of Bail in India.**

The first instance of bail in India was in the 17<sup>th</sup> century when an Italian traveller, Manucci, was charged with theft by the ruler of Punjab and later released during the trial on surety. Gradually, the British Empire colonised India, where the common law practices were implemented. The control of the British Raj through the East India Company on Indian Courts and Adalat led to a revolution in criminal jurisprudence in the Indian Judiciary. The criminal courts used two forms of bail: 'Zamanat' and 'Muchalka'. The judicial release on surety was termed 'Zamanat' whereas an obligatory, penal bond procured mandatorily was termed 'Muchalka'.

In 1861, the first Code of Criminal Procedure statutorily transposed the British system of Bail in the Indian Criminal Justice System. It was re-enacted later in 1872 & 1898, wherein the judicial magistrate or a sessions court was empowered to grant bail if the investigation was not completed within 24 hours.

However, the genesis of the bail in its present form can be culled out from the discussions between Shri H.S Gour and Dr Mian Sir Muhammad Shafi during Legislative Assembly

Debates [February 12, 1923]. During this debate, these two leading authorities discussed bail and the concept of 'reasonableness' in the grant/ denial of bail under the Indian Criminal Justice system. It was observed that the scale of bail for the accused stands on two primary principles:

1. Presumption of innocence until the guilt is proved beyond reasonable doubt.
2. The benefit of the doubt to the accused

Dr H S Gour and Mian Sir, Dr Muhammad Shaifi debated 'what's the purpose of bail'. The debate is as follows: "

**Dr. Gour** – *“What does the existing provision, however, provide? It says: no Magistrate shall release a person on bail if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused. The Magistrate is to prejudge the case, and he is to say to the accused: I have reasonable grounds for believing that you have been guilty of this offence; therefore, whatever may be the reasons which would move me to release you on bail, you cannot be released on bail. That is the sole criterion of bail. Now, if we turn to English law, we shall find a very different criterion there for releasing persons on bail, and in inviting this House to adopt either the one or the other, I shall ask the House to remember what the underlying principle is for arresting a person and releasing him on bail. It requires no sizeable legal training, such as that of my Honourable friend, the last speaker, possesses, nor does one need to be an unpaid Magistrate to understand that. When a man is arrested, the sole and single purpose of his arrest is that he should not run away, and when he is released on bail, the sole criterion for releasing him on bail and fixing the quantity of bail is that he should not run away. (Mr N M Samarath: "Nor commit suicide"?). Very few people do that, and even people under arrest sometimes commit suicide. That is the sole criterion. Well, I submit, if the Magistrate is assured that the man is not likely to run away - (The Honourable Sir Malcolm Hailey: "How?") best security against his absconding, is there any reason why he should be detained in custody?”* The reply of the Law Member was clear - may be quoted:-

**“Dr. Sir Mian Mohammad Shafi:** - *“Sir, it was said that the sole object of arrest is to prevent a person from running away or from protracting or delaying the trial. As a general rule, that is a perfectly legitimate criterion. I admit that that is the main purpose of arrest. But cases might be conceived where other considerations also come in. Let me give but one case which is not only possible but which we, some of us who have practised at the Bar long enough, can well conceive. A man falls out with two brothers. Bitter enmity subsists between that one man on the one side and the two brothers on the other. He has a fight with these two*

*brothers, intending to kill them, but succeeds only in killing one and injuring the other. He is arrested by the police. There is ample evidence against him to prove that he murdered one of the two brothers, and he knows that he cannot escape. He knows that he is sure to be convicted and hanged. Well, now, in a case like that, is it not conceivable that he would like to be released on bail and succeeded only in killing the one and simply injuring the other brother? Knowing that he will be hanged before he is hanged, he may take advantage of his release on bail to go and kill the other brother. Sir, with all deference, it is hardly right to say that the sole consideration is his presence at the next hearing date. There may be other considerations that come in cases of this kind. It seems to me that considering all the circumstances, seeing that admittedly the clause as we propose it is a decided advance, a decided improvement in the existing law, seeing also that the clause as we propose it gives the fullest discretion to the Magistrate in even the most serious class of cases in certain instances to release on bail and prohibits release on bail only when circumstances or facts have been established which have led the Magistrate to believe or have reason to believe that the accused has committed the offence - only in this very narrow circle is he prohibited from releasing the accused on bail in this most serious of all crimes, -I submit that the Legislature ought not to go beyond that, that the Legislature should limit in such cases the discretion of the Magistrate in so far as release on bail in non-bailable cases is concerned".<sup>2</sup>*

Two crucial aspects are pointed out here. Firstly, Bail must be granted with the sole purpose of assuring the accused's appearance at the trial. If the court is satisfied that appearance can be guaranteed through surety, the object of arrest, which is to secure appearance, is fulfilled, and an undertrial need not stay in prison. Secondly, a strict interpretation of bail as a surety for appearance may defeat the end of justice if the perpetrator commits the crime again or in any way interferes with the investigation. Thus, the judiciary is tasked with the impossible dilemma of balancing personal liberty with societal security. Judicial discretion needs to be exercised so that the rights of both the accused and the victim remain unvitiated by the trial process.

### **3. Beyond the Trial: Fairness Matters**

Trials have been conducted throughout mankind's history. The existence of social animals comes with inevitable disputes. A trial preceded by an investigation is the finest way to resolve a dispute. However, for such judgement to be fair, the trial process must ensure fairness and equity to all without fail; a trial without equity and fairness is not the process of

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<sup>2</sup> Parliamentary Debates, [https://eparlib.nic.in/bitstream/123456789/762589/1/clad\\_01\\_03\\_12-02-1923.pdf#search=null%20Legislative%20Assembly%20Debates](https://eparlib.nic.in/bitstream/123456789/762589/1/clad_01_03_12-02-1923.pdf#search=null%20Legislative%20Assembly%20Debates)



justice.

For instance, Witchcraft in medieval times was punished brutally by hanging or burning at the stake. To confirm witchcraft, a trial was conducted in many forms; one of the forms was the 'Swim test'. The accused would be tied securely along with a heavy rock and then thrown into the river. The object of the process was that the witch would survive such an act since Satan supports her and possesses dark magic, but an innocent would not float. Thus, the trial ended with the accused either drowned or burned at the stake if they survived.

The objective of a trial must not only be to determine the guilt of the accused but also to ensure the protection of the natural rights of every party involved. Incarcerating the accused for the entire trial prevents him from presenting the best defence for himself, which is his fundamental right. Also, it serves as a punishment even before adjudicating his guilt. Therefore, such austere measure must be taken only in exceptional circumstances. Bail, as a rule, allows the trial to serve its pious purpose, and jail, as an exception, enables the trial to ensure justice when necessary.

### III. CONSTITUTIONAL AND LEGAL FRAMEWORK GOVERNING BAIL IN INDIA

#### 1. Constitutional Bedrock of Personal Liberty in Arrest and Bail Jurisprudence.

The Constitution of India is a sacred document of the future.

The Roman Empire is a prime example of such demise; it was one of the strongest and most civilized of all the ancient empires. The empire upheld strong constitutional values, and the concept of democracy was itself given by Socrates. However, the absence of codified constitutional values allowed subsequent leaders to make mistakes that ultimately led to the empire's defeat.

*"The Roman Empire stood tall and formidable among the powers of the ancient world, yet in the end, it was undone not by external foes, but by the weight of its own internal decay."*

A strong Constitution guarantees a nation's immortality and survival. The Constitution of India, adopted on 26 January 1950, epitomizes robust and enduring values.

The Constitution of India was drafted for the citizens, placing their interests at its core; no institution, person, or office is superior to the citizens. Even the supreme Constitution does not surpass the interests of its citizens, as the ultimate value of the Constitution is simply its determination to protect them.

**Article 21** of the Constitution of India states that *No person shall be deprived of his life or*

*personal liberty except according to procedure established by law.*<sup>3</sup>

The plain reading of the article safeguards the life of every person except through the procedure of law. Thus, no person's right to life shall be affected without the procedure of law. A layperson may understand the article as a safeguard against others causing injury to themselves, but the object of the article is superior to that. The article restricts institutions' unjust actions that may cause harm or inconvenience to one's life.

If a criminal abducts and confines a person, he is guilty of a criminal offence under BNSS and the respective criminal laws. However, Art 21 seeks to protect a person when an officer authority or an institution of the government confines a person, depriving him of his personal liberty and dignity if such an act is done with due process of law. Such an act is a reasonable restriction upon a person's liberty, but if done without due process, then Article 21 is a remedy available to all.

Judicial precedents have evolved the scope and meaning of Article 21 with A.K. Gopalan v. State of Madras, 1950, to KS Puttaswamy v. Union of India in 2017.

In A.K. Gopalan Vs. State of Madras, AIR 1950 SC 27

During the election campaign, the accused was arrested under preventive detention to maintain peace and harmony in the community. Naturally the accused challenged such provision of law under Article 21, 19 and 14 of the Constitution, the Apex Court,

*"29. The phrase "procedure established by law" seems to be borrowed from article 31 of the Japanese Constitution. But other articles of that Constitution which expressly preserve other personal liberties in different clauses have to be read together to determine the meaning of "law" in the expression "procedure established by law." These articles of the Japanese Constitution have not been incorporated in the Constitution of India in the same language. It is not shown that the word "law" means "jus" in the Japanese Constitution. In the Japanese Constitution these rights claimed under the rules of natural justice are not given by the interpretation of the words "procedure established by law" in their article 31. The word "due" in the expression "due process of law" in the American Constitution is interpreted to mean "just," according to the opinion of the Supreme Court of U.S.A. That word imparts jurisdiction to the Courts to pronounce what is "due" from*

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<sup>3</sup> INDIA CONST. art. 21

*otherwise, according to law. The deliberate omission of the word "due" from article 21 lends strength to the contention that the justiciable aspect of "law", i.e., to consider whether it is reasonable or not by the Court, does not form part of the Indian Constitution. The omission of the word "due", the limitation imposed by the word "procedure" and the insertion of the word "established" thus brings out more clearly the idea of legislative prescription in the expression used in article 21. By adopting the phrase "procedure established by law" the Constitution gave the legislature the final word to determine the law".*

*"258. The point, however, is a short one and turns upon the interpretation to be put upon article 21 of the Constitution, which lays down that "no person shall be deprived of his ..... personal liberty, except according to procedure established by law." On a plain reading of the article the meaning seems to be that you cannot deprive a man of his personal liberty, unless you follow and act according to the law which provides for deprivation of such liberty. The expression "procedure" means the manner and form of enforcing the law. In my opinion, it cannot be disputed that in order that there may be a legally established procedure, the law which establishes it must be a valid and lawful law which the legislature is competent to enact in accordance with article 245 of the Constitution and the particular items in the legislative lists which it relates to".<sup>4</sup>*

Here, the Apex Court wrongly interpreted Article 21 with a strict interpretation rather than a purposive interpretation. The Hon'ble Court states that the constitutional makers were aware of the phrase "Due process of law" but chose to opt for "procedure established by law." Both phrases have different interpretations and effects since the former accounts for the law being fair and governing through the rule of law. In contrast, the latter requires the existence of a competent law to give effect to the law.

The judgment states that Parliament merely needs to be competent to draft the law under Article 245 of the Constitution; if such a law has been made through the competent legislature, then such a law may deprive one's personal liberty since such liberty has been deprived via 'procedure established by law.'

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<sup>4</sup> A.K. Gopalan v. State of Madras, AIR 1950 SC 27.

The judgement sets the *ratio* that ‘*personal liberty*’ is exhaustive of Article 19 and merely extends to freedom of the physical body; Article 21 was held to be a separate branch from Articles 19 and 14 and thus cannot be interpreted in harmony.

Nonetheless, The Apex Court in *Kharak Singh v. State of U.P.*,<sup>5</sup>

Interpreted personal liberty as, a careful reading of Article 19 reveals that the right to move freely throughout the territory of India, while part of a citizen’s liberty, is conceptually distinct from the broader right to personal liberty protected under Article 21 of the Constitution. The term “personal liberty” is both wider in scope and more narrowly defined, depending on the context. It includes a number of individual freedoms, such as the ability to eat, sleep, and engage in activities of one’s choosing, but it does not encompass all the freedoms listed under Article 19(1). For instance, while the rights to move freely and reside anywhere in India may overlap with personal liberty, the right to freedom of speech and expression under Article 19(1)(a) or the right to acquire and hold property formerly under Article 19(1)(f) are clearly distinct and do not fall within the ambit of “personal liberty” as contemplated by Article 21.

This distinction is crucial in understanding the harmonious interpretation of Articles 19 and 21. While both deal with facets of individual freedom, their text, structures, and intents differ. Article 19 sets out a list of specific freedoms available to citizens and also enumerates the precise grounds on which each of these freedoms can be reasonably restricted. In contrast, Article 21 provides a broader and more generalised protection, stating that no person shall be deprived of life or personal liberty except by the procedure established by law. This procedural requirement has been interpreted by the courts to mean that the law authorising deprivation must be just, fair, and reasonable.

The Constitution thus carefully attempts to strike a delicate balance between individual rights and the collective interests of society. The limitations imposed on State power, whether legislative or executive, act as constitutional guarantees against arbitrary action, safeguarding the personal liberty of individuals.

It is also important to distinguish between deprivation and restriction. Deprivation, in the context of Article 21, implies a complete denial of personal liberty, such as being imprisoned or otherwise restrained from exercising fundamental aspects of one’s autonomy. This would include the loss of basic freedoms like deciding when to eat, sleep, or work. On the other hand, restriction, such as that contemplated under Article 19(1)(d), implies partial or qualified limitations, such as being subject to curfews or travel restrictions within India. These are

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<sup>5</sup> *Kharak Singh v. State of U.P* 1963 AIR 1295.

considered less intrusive and are subject to reasonableness tests under Article 19(5), which permits such restrictions in the interest of the general public or for the protection of scheduled tribes.

This distinction becomes particularly significant when examining laws related to preventive detention or public order. For example, the provisions under Chapter VIII of the Criminal Procedure Code, which relate to the maintenance of peace and public order, often result in restrictions on movement or activities rather than a complete deprivation of liberty. Therefore, a law that results in total deprivation of liberty, such as incarceration, cannot be justified under Article 19(5) alone. It must satisfy the procedural and substantive requirements of Article 21.

In summary, while both Articles 19 and 21 seek to protect the freedom of the individual, they operate in different legal spaces, and their respective safeguards must be interpreted accordingly. Understanding this interplay is essential in ensuring that the State does not overreach its authority under the guise of maintaining public order, while also preserving the core constitutional promise of liberty for all individuals.

The Hon'ble Court distinguished Articles 21 and 19 by interpreting Art 19 as the freedom of the mere physical body, such as movement. But the presence of '*personal*' before liberty in Article 21 should embrace a superior meaning than freedom of physical body but shall extend to the quality of life and liberty with dignity.

## **2. The golden triangle of The Constitution**

The Apex Court continued to give a broad interpretation to Article 21 through several judgements, with the most famous and landmark being *Maneka Gandhi V. Union of India* 1978 1 SCC 248.

*"Article 21 occurs in Part III of the Constitution which confers certain fundamental rights. These fundamental rights had their roots deep in the struggle for independence and, as pointed out by Granville Austin in 'The Indian Constitution-Cornerstone of a Nation', "they were included in the Constitution in the hope and expectation that one day the tree of true liberty would bloom in India". They were indelibly written in the sub-conscious memory of the race which fought for well-nigh thirty years for securing freedom from British rule and they found expression in the form of fundamental rights when the Constitution was enacted. These fundamental rights represent the basic values cherished by the people of this country since the Vedic times and they are*

*calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent. They weave a "pattern of guarantees on the basic-structure of human rights" and impose negative obligations on the State not to encroach on individual liberty in its various dimensions Gopalan's case that certain articles in the Constitution exclusively deal with specific matters cannot be accepted as correct".<sup>6</sup>*

The Apex Court rejects the strict interpretation of Article 21 given in A.K. Gopalan (supra); the latter judgement gives a negative interpretation of the law. As reasoned by A.K. Gopalan (supra), part III of the Constitution assures the fundamental rights of citizens, where Articles 14- 18 emphasise equality, Article 19 assures freedom, Article 20 protects against wrongful punishment, and Article 22 guarantees rights against arrest. However, Article 21 is a negative right where the state or institution, through a procedure established by law, may strip any person of their fundamental rights, the procedure established itself may not need to concur with part III of the Constitution as long as it was enacted in a competent manner prescribed under Article 245.

Expressed otherwise, Articles 14, 19 and 21 are mutually exclusive, which construes that Articles 14 and 19 do not affect the working of Article 21.

Notwithstanding the above, the Hon'ble court in Maneka Gandhi (Supra) gave a positive and purposive interpretation to the Article, rejecting the prior one.

#### **a) Positive Interpretation**

Article 21 guarantees the right to live with dignity and the personal liberty of every person. An individual shall not be deprived of such right "without due process of law." The Apex court interpreted "without procedure established by law" to "due process of law," meaning the existence of a competent law is not the requirement for a person to be deprived of his right to life but the existence of a law that is fair, just, and reasonable and in itself is constitutional. This interpretation places a burden on the legislature and institutions to examine the fairness of the law itself before exercising it as a tool to affect someone's right to life.

#### **b) Negative Interpretation**

Article 21 allows the authority and institution to deprive a person of his right to life and affect a person's ability to live with personal liberty and dignity through due process of law. Such a

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<sup>6</sup> Maneka Gandhi v. Union of India 1978 1 SCC 248

provision, which enables the state to impact one's right to life, is of utmost necessity, as a person who poses a threat to society must be managed differently or more sternly than those who need protection. However, it still does not permit the state to act inhumanely toward that person but provides the state with the means to reasonably and proportionately limit that person's right to life for the collective good.

**c) From Procedure to Principle: The Influence of the Maneka Gandhi Judgment on Bail Law.**

Bail is one of the most complex areas of jurisprudence in criminal law, as a person is presumed innocent until proven guilty. Nonetheless, that person may still be required to remain incarcerated for proper due process to be followed. Maintaining a consistent balance between personal liberty and societal security remains a complex and often elusive task for the judiciary.

Bail laws require the accused to be treated with a firm hand in one instance and leniency in another. A static and permanent understanding of the provision of bail proves to be a failure in the face of the complexities of the dynamic facts of every case.

The ruling in *Maneka Gandhi* (supra) paved the way for a more balanced bail framework, liberal for those posing a minimal risk yet appropriately stringent when public safety demands it.

**d) Positive Interpretation**

Article 21 guarantees the right to live with dignity and the personal liberty of every person. An individual shall not be deprived of such right "without due process of law." The Apex court interpreted "without procedure established by law" to "due process of law," meaning the existence of a competent law is not the requirement for a person to be deprived of his right to life but the existence of a law that is fair, just, and reasonable and in itself is constitutional. This interpretation places a burden on the legislature and institutions to examine the fairness of the law itself before exercising it as a tool to affect someone's right to life.

**e) Negative Interpretation**

Article 21 allows the authority and institution to deprive a person of his right to life and affect a person's ability to live with personal liberty and dignity through due process of law. Such a provision, which enables the state to impact one's right to life, is of utmost necessity, as a person who poses a threat to society must be managed differently or more sternly than those who need protection. However, it still does not permit the state to act inhumanely toward that

person but provides the state with the means to reasonably and proportionately limit that person's right to life for the collective good.

**f) From Procedure to Principle: The Influence of the Maneka Gandhi Judgment on Bail Law.**

Bail is one of the most complex areas of jurisprudence in criminal law, as a person is presumed innocent until proven guilty. Nonetheless, that person may still be required to remain incarcerated for proper due process to be followed. Maintaining a consistent balance between personal liberty and societal security remains a complex and often elusive task for the judiciary.

Bail laws require the accused to be treated with a firm hand in one instance and leniency in another. A static and permanent understanding of the provision of bail proves to be a failure in the face of the complexities of the dynamic facts of every case.

The ruling in *Maneka Gandhi* (supra) paved the way for a more balanced bail framework, liberal for those posing a minimal risk yet appropriately stringent when public safety demands it.

#### **IV. CONCLUSION**

The jurisprudence of bail in India reflects the broader tension between personal liberty and societal interests, a balance that lies at the heart of constitutional governance. As this paper demonstrates, the evolution of bail laws and their interpretation by the courts, particularly through the transformative lens of Article 21, has gradually moved towards a more humane and rights-based framework. However, this doctrinal progress has not always translated into consistent practice.

Despite the judiciary's reaffirmation that bail should be the rule and jail the exception, systemic barriers continue to impede access to justice, especially for the poor and marginalized. Economic inequality, procedural delays, and the inconsistent exercise of judicial discretion often result in outcomes that are neither fair nor just.

To uphold the constitutional promise of dignity and equality, the exercise of bail discretion must be grounded in legal principles, guided by constitutional morality, and sensitive to the realities faced by underprivileged accused persons. Reforms must also aim at codifying clear standards for bail decisions and strengthening legal aid systems.

Ultimately, bail must be viewed not as a concession but as a constitutional necessity, a safeguard against arbitrary power and a cornerstone of individual freedom in a democratic



legal order.

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