

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

---

Volume 8 | Issue 5

---

2025

© 2025 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

---

This article is brought to you for free and open access by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact [support@vidhiaagaz.com](mailto:support@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# Unravelling the Impact of BNSS, 2023 on Bail Jurisprudence in India

---

JAHNVI RAJ<sup>1</sup> AND GANGA RANE<sup>2</sup>

## ABSTRACT

*This paper deeply explores the enormous consequences of the Bhartiya Nagarik Suraksha Sanhita (BNSS) 2023 on India's existing bail jurisprudence. It tries to provide a complete study of the modifications implemented, comparing them to the previous Code of Criminal Procedure (CrPC) and the Indian Penal Code (IPC). This paper aims to provide significant insights into the country's future bail administration landscape by conducting a thorough examination of key modifications, potential implications, challenges, and recommendations. The Bhartiya Nagarik Suraksha Sanhita (BNSS) 2023 represents a substantial transformation in India's criminal justice system, particularly in bail jurisprudence. This abstract concisely outlines the fundamental improvements implemented by BNSS to streamline and update the existing bail structure. It discusses how the new measures are intended to address issues such as judicial discretion, extended undertrial prisoners, and the balance between individual liberty and social security. Furthermore, this paper is laying the groundwork for a more in-depth investigation of BNSS's transformative impact on bail jurisprudence.*

**Keywords:** *Bail jurisprudence, Bailable, Non-bailable, Reformatory approach, Prison, Prisoners, Undertrial.*

## I. INTRODUCTION

In criminal law there is a concept of 'bail is the rule and jail is the exception', which was coined in *State of Rajasthan v. Balchand (1977)*<sup>3</sup> this means that majority of the time, a person who is accused of a crime will be given bail instead of being put in jail before their trial. This idea comes from the presumption of innocence, which says that a person who is accused is not guilty until proven otherwise. Article 21 of the Indian Constitution<sup>4</sup> illustrate that everyone has the right to personal freedom this principle also upholds it. The evolution of bail jurisprudence can be traced back to the colonial era. The core idea was to impose English laws of protecting justice

---

<sup>1</sup> Author is a student at Bharati Vidhyapeeth Deemed to be University, New Law College, Pune, India.

<sup>2</sup> Author is a student at Bharati Vidhyapeeth Deemed to be University, New Law College, Pune, India.

<sup>3</sup> State of Rajasthan v. Balchand, (1977) 4 S.C.C. 308 (India).

<sup>4</sup> Constitution of India, Art. 21 (1950).

along with individual liberty. Later, the idea was incorporated in CrPC with more reformative actions. Although CrPC didn't explained the term 'bail', but it did explain 'bailable offences' and 'non- bailable offences'. BNSS provides a more reformative law in respect of bail jurisprudence, making it more effective to the justice system. But, the question arises, Are the provisions incorporated under BNS enough to provide justice to each and every bailor? Is the reformative actions valid? The stats of NCRB reports submits 4.3 lakhs under trails in the year 2023.

During the British colonial era Indian Penal code, 1860 was enacted. It was a system to provide justice to the person committing offences. After the review of these criminal law, the Ministry of Home affairs thought that the system is outdated and doesn't comply with the modern problems, unable to solve the cases faster resulting into delay in the Indian justice system. Therefore; BNSS was introduced in December 2023, and enacted in July, 2023 after considering the changing nature of the society and the need of updated law, protecting men rights as well as making it more victim-centric and efficient legal framework. It introduced new offences and brought new changes in the existing one. As it was also seen that in some cases only the sections were changed but the subject matter remained the same. So, it can be seen as one of the most significant reformative change of 2023 in legal sphere.

#### **(A) Objective**

- Conduct comparative analysis between the bail provisions of the CrPC,1973 and the provisions of newly enacted BNSS,2023.
- To analyze secondary data on undertrial prisoners and bail patterns.
- To underscore the prospective challenges in the implementation of the BNSS bail provisions.
- To recommend reforms for effective bail administration.

#### **(B) Methodology**

This paper has been framed through a mixed-method approach, using Non-Empirical inductive qualitative-quantitative reform-oriented research methodology. From a qualitative point of view, this research incorporates an in-depth review of the existing literature, including case laws, reports, and legal documents, so as to gain an insight into theoretical frameworks regarding bail jurisprudence reforms. The quantitative aspect of this research will aim at analyzing statistical data about the undertrial prisoners, rates of bails, and judicial discretion that are highly relevant in the domain of bail jurisprudence. These data sources would add non-

empirical evidence to support qualitative findings and allow establishing the level at which BNSS has reforms in bail jurisprudence.

## II. ANALYSIS

### (A) Bail under old laws- CrPC, 1973

In legal term, bail refers to the temporary release of an accused person from custody, for an exchange of security. The CrPC didn't defined the term 'bail'. *Hussainra Khatoon v. State of Bihar, (1979)*<sup>5</sup>, illustrated, Bail as liberty, under Article 21. However, the term bailable and non-bailable offences are defined under section 2(a)<sup>6</sup> of CrPC and its applicability is defined under section 436<sup>7</sup> and 437<sup>8</sup> respectively. *Gudikanti Narasimhulu and Ors. V. Public Prosecutor (1978)*<sup>9</sup>, bail decision must weigh liberty v. public interest. Section 438 defines anticipatory bail where person get bail before they are arrested for non-bailable offences, it is safeguard against malicious and politically motivated arrests. *Sibbia v. State of Punjab (1980)*<sup>10</sup>, it was seen as, anticipatory bail provides protection from misuse of arrest. The high court and session court have discretionary power to grant bail even for those offences where a lower court may have been barred from doing so under section 437 of CrPC, the court can also cancel the bail guaranteed to a person if they have violated any condition or tried to influence the witnesses. In case, *Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav (2004)*<sup>11</sup> the court elucidate bail can be refused if strong prima facie case; repeated bail plea need change in circumstances.

### (B) Bail provision under BNSS, 2023

In literal term, bail is all about "we will let you go home now, but you promise to return when we call". As it given it *Sanjay Chandra v. CBI (2011)*<sup>12</sup>, although the fundamental philosophy of a bail jurisprudence remains the same, an accused person is presumed innocent until proven guilty. Therefore, their liberty should not be curtailed unless absolutely necessary. The definition of "bail" was added under section 2(1)(b)<sup>13</sup> of BNSS. The term bailable and non-bailable is mentioned under section 2(1)(c)<sup>14</sup> and its applicability is given under section 478<sup>15</sup>

<sup>5</sup> Hussainra Khatoon v. State of Bihar, (1979) 3 S.C.C. 532 (India).

<sup>6</sup> Code of Criminal Procedure, No. 2 of 1974, § 2(a) (India).

<sup>7</sup> Code of Criminal Procedure, No. 2 of 1974, § 436 (India).

<sup>8</sup> Code of Criminal Procedure, No. 2 of 1974, § 437, India Code (1974).

<sup>9</sup> Gudikanti Narasimhulu & Ors. v. Pub. Prosecutor, High Court of A.P., MANU/SC/0089/1977 (India).

<sup>10</sup> Gurbaksh Singh Sibbia v. State of Punjab, MANU/SC/0215/1980 (India).

<sup>11</sup> Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav, MANU/SC/0214/2004 (India).

<sup>12</sup> Sanjay Chandra v. C.B.I., MANU/SC/1375/2011 (India).

<sup>13</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, § 2(1)(b) (India).

<sup>14</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, § 2(1)(c) (India).

<sup>15</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, § 478 (India).

and 480<sup>16</sup> respectively. In case of, *Rajeev v. State of Allahabad (2025)*<sup>17</sup>, the court in its judgement held that, if under trail not tried within 60 days, automatic bail under section 483<sup>18</sup>, would be granted. Direction for grant of bail to person apprehending arrest a given under section 482<sup>19</sup> of BNSS. *Sameer Khan v. State of MP (2025)*<sup>20</sup> anticipatory bail must balance the accused's liberty with victim's safety. Section 483 grants special powers to High court and Session court, for bail. In the case of, *Kailash v. State of M.P, (2024)*<sup>21</sup>, the bail granted on parity with co-accused ensure uniform treatment of accused.

### III. COMPARATIVE ANALYSIS

- The CrPC 1973, didn't defined, 'what is bail', but the term bailable and non-bailable offences were given under sec 2(a). Under the provision of CrPC, in bailable offences a person gets bail by police or court for petty offences; if he provides required bond while in non-bailable offences, the court has the discretion as to grant bail after considering nature of offence committed.

**WHEREAS;** 'Bail' is explicitly mentioned under section 2(1)(b) of BNSS, 2023 as release from jail or police custody with certain conditions given by state.

- In regard of anticipatory bail, before the commencement of BNSS if a person wants a anticipatory bail for non-bailable offences the court could grant it with clear criteria and 7 days notice to the public prosecutor to ensure court hear both the side, preventing misuse of anticipatory bail.

**WHEREAS;** under BNSS anticipatory bail was retain but it removed the requirement of 7 days prior notice to public prosecutor, as now the court had wider discretion to decide the matter to give a bail or not based on "if they think fit so".

- It was the obligation of the police officials to file the chargesheet within set time, as per section 167(2)<sup>22</sup>, CrPC, failure to do, grants bail to the accused. The time set was 90 days for serious offences i.e. whose punishment is more than 10 years, life or death and 60 days for other offences and the accused must be in the police custody 15 days immediately after arrest. The provision is set as to protect the accused from pending

---

<sup>16</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, § 480 (India).

<sup>17</sup> *Rajeev v. State of Allahabad*, MANU/UP/2818/2024 (India).

<sup>18</sup> Bharatiya Nagarik Suraksha Sanhita, No. 45 of 2023, § 483 (India).

<sup>19</sup> Bharatiya Nagarik Suraksha Sanhita, No. 45 of 2023, § 482 (India).

<sup>20</sup> *Sameer Khan v. State of Madhya Pradesh and Ors* MANU/MP/4398/2024

<sup>21</sup> *Kailash v. State of M.P.*, MANU/MP/3036/2024.

<sup>22</sup> Code of Criminal Procedure, No. 2 of 1974, § 167(2) (India).

detention without trial. For example- if police keep you in custody for 96 days for murder without chargesheet the court must give you bail.

**WHEREAS;** under section 187 of BNSS the condition for statutory bail is same i.e. failure of submitting chargesheet by police within 90 days for serious crime and 60 days for crime whose punishment is less than 10 years. But the police custody of 15 days limited to the 60 days for crime whose punishment is more than 10 years; but if punishment is for less than 10 year the 15 days police custody limited to 40 days, the custody has been taken all together or in part as well.

- The CrPC, 1973 allow the bail of first-time offender in some cases however wasn't explicitly structured that they get less punishment than actual punishment of that crime.

**WHEREAS;** in BNSS it is explicitly mention under section 479 that the first-time offender seek bail after serving one third of the maximum sentence if the offence is not punishable to life imprisonment or death. It focuses on reducing jail overcrowding and help the first-time offender to reintegrate into society instead of having in jail for years for pity or moderate offences. In Jharkhand, 23 undertrials were released, between mid-late July based on the recommendation of the Local Undertrial Review Committee (UTRC) using this provision as per the Times of India. We argued that it's like a putting public safety in risk as accused may threaten or influence witness after releases but its benefit looks more than its consequences.

- Under CrPC, it was not mandatory for e-filing of cases in the court of jurisdiction. Although e-filing was introduced in 2005 and advance e-filing portal was made in 2021 but still most of the necessary documents was required to be submitted physically in the court.

**WHEREAS,** in BNSS ranging from FIR report to judgement of the court has been made compulsory under BNSS, 2023. Section 2(1)(a) of BNSS includes 'Audio -video electronic' which includes use of any communication devices for the purpose of video conferencing and by such other means that they may provide. For serious crimes (7 years or more imprisonment), the BNSS, 2023 mandates forensic experts to visit crime scenes and record their investigations using video.

#### IV. UNDER TRIAL PRISONER AND BAIL PATTERNS

As per the Prison Statistics India-2022 Out of the total 573,220 prison intimates in India, 434,302 were undertrial prisoners reported by National Crime Records Bureau (NCRB). These

are those who are waiting for their trial, it amounts approximately 75.8% of the total prison population as per India Justice Report 2025 (compiled by civil society organization). This number increases overtime from 66% in 2012 to 76% in 2022 resulting into more judicial backlog. When we talk about bail trend for undertrial prisoner in CrPC, 1973 it has been given under section 436A which illustrate undertrial prisoners were eligible for release on bail after serving half of the sentence. But the effectiveness of this provision seen to be decline within some year as in 2016, only 0.119% of undertrial were eligible to release under this section which was deduced to 0.096% in 2022. There is also reflections of gender disparities in its application as male success rate fell from 60.35% in 2016 to 36.87% in 2022, female undertrials peaked at 100% in 2018 but reduced to just 17.31% by 2022 and when looking toward transgender none of them is eligible to get bail under this provision till 2022. After looking to its worsening trend Undertrial Review Committee (UTRCs) established in 2015 by Supreme Court as a systematic bail mechanism with its recommendation 5,917 undertrial prisoner were released on bail, yet implementation gaps persist nationwide. Then to furnish it the provision of BNSS, 2023 i.e. section 479 reduces the punishment for first time offender to the one-third of the maximum prescribed sentence while for undertrial prison it's same that is one-half of the maximum period of imprisonment specified for the offence, not applicable on the offences punishable with death. The supreme court in *Re: Inhuman Conditions in 1382 Prisons (2024)*<sup>23</sup> illustrates that this provision has to be a retrospective effect applies to undertrial already in custody before BNSS came into force. In *Satendra Kumar Antil v. CBI*<sup>24</sup> court likely to expand section 479 benefits even in special statues like PMLA, NDPS or UDPA if trial delays aren't caused by the accused. As we observed BNSS, 2023 ensures shorter custody before bail, retrospective application, special protection for first-time offender, poor prisoners and extended relief over special laws like- NDPS, UAPA, TADA make it more efficient.

#### **(A) Judicial and practical challenges**

In Indian legal system, we have observed the lack of judicial functioning in certain matter from the regulation of bail when IPC and CrPC was regulating. Under the purview of BNSS, many sections were introduced and the legal pattern was changed as to reduce the time taken for providing justice before the introduction of BNSS and BNS. But the main question arises how much time will the judiciary take to implement the new laws? What would be the effect on preceding cases in which judgements are not yet provided.

---

<sup>23</sup> *Re: Inhuman Conditions in 1382 Prisons v. Union of India & Ors.*, MANU/SCOR/144144/2024 (India).

<sup>24</sup> *Satender Kumar Antil v. Cent. Bureau of Investigation & Ors.*, MANU/SC/0851/2022 (India).

We can identify that, it is a challenge on the part of judges to adapt new laws and give the judgement. The main root of 'speedy justice' has been somewhere undermined because, BNSS provides 15 days of police custody which can be done in parts during the initial days of police custody. This could lead to denial of bail for the entire period depending upon the crime committed, if the police haven't exhausted the full 15 days. The timeline fixed for the default bail proceedings could be somewhere inconsistent as the time provide is 60-90 days which could lead to delay in providing justice and quicker detention. In, *Rakesh kumar Paul v. State of Assam (2017)*<sup>25</sup>, it clarified the entitlement to default bail under CrPC, but it is now being tested under BNSS. The BNSS directs to reduce the powers of the judiciary to make judgement in certain matters, as it has seen to be arbitrary. But, there is a need to keep balance between the domains legal framework as the case may make it necessary to provide gave the power to the police officer to use handcuffs while making the arrest of the person in serious matters such as murder, rape, illegal possession of arms and ammunition or any other offences under state as per section 43(3)<sup>26</sup>. In CrPC, the offences where the handcuffs would be used was not mentioned. The possibility of misuse, has been increased now. Prisons overcrowding still remains a serious issue. And further delay in justice, impacting the rights of under trail prisoners. Economic disparities may occur as people with poor background may find it difficult to afford bail bonds. The overburdening of cases effects the court environment. Also applying new provisions on precedent case have doubled the work. The BNSS had made technological implementation compulsory for streamlining legal proceedings but would need technological infrastructure which could lack at some places. The modern legal concepts which are introduced under BNSS like cybersecurity, electronic tools need to be consistent with the traditional aspects.

## V. FINDINGS

BNSS, 2023 provided broader implications for the criminal justice system. It explicitly mentioned the 'bail' provision, which made it easy to understand what bail actually is. It made provisions of anticipatory bail more efficient as it removed 7 days prior notice to public prosecutor and provides wider discretion to judges to look upon the matter. It restricted the power of police custody as it was given to be of 15 days from the initial day of arrest, but was limited to 60 or 40 days for more or less serious crime respectively under BNSS, 2023. Also, special protection has been provided for the first time offender as their punishment was reduced to one-third of the maximum sentence to get bail. It has also widen the scope for technological

---

<sup>25</sup> Rakesh Kumar Paul v. State of Assam, MANU/SC/0993/2017 (India).

<sup>26</sup> Bharatiya Nagarik Suraksha Sanhita, No. 45 of 2023, § 43(3) (India) (2023).

integration in judicial proceedings, like e-filing, case proceedings, witness hearing, court judgements which are done through online mode.

## **VI. CHALLENGES AND LIMITATION**

Unlike CrPC, the BNSS, 2023 does not identify bail as a 'RIGHT' in non bailable offences. It contradicts, the principle of 'bail, not jail', especially for those who are undertrial. There is no mention of specific criteria for certain offences, which can bring ambiguity and give more discretionary powers to the judges. The underdeveloped legal framework is also a challenging ground, as lack of technological infrastructure with technological advancements in legal framework cannot go hand in hand. The main aim of BNSS,2023 was to make it victim-centric but the extend in the custody of police and restrictions on bail for specific categories, has undermined the principle of 'innocent until proven guilty'. The removal of 7 day notice to public prosecutor further removes the idea of fairness in procedural method. It is observed that the provision of BNSS, 2023 somewhere contradict with balance between law and society.

### **(A) Recommendations:-**

To make the provision of BNSS,2023 the law ministry needs to establish review mechanism which make periodic judicial review of undertrial detention and the rate of bail granted to them and provide report to held other agencies accountable. There is need to codify guidelines for bail, like in case of extend of judicial discretion imposing how much power the judge possess that they can apply to give bail. The trail of bail needs to be time bound as in that much specific time the different matters need to be sorted. The law related to bail need to be amended as there are lists of factors which needs to be considered before granting bail like: Nature and gravity of the offence, the criminal history of accused, the list of absconding accused etc. Majority of the bail principles are based on Supreme Court judgements and legal fiction, like presumption of innocence need to be codified so that it can uniformly apply to all court as it helps in reducing the reliance on judicial discretion and ensures more consistence application of law. BNSS,2023 need to clarify the strategic nature of police custody that don't bypass the statutory bail provisions. It should ensure that the accused should get legal aid service as soon as they are arrested. Promoting personal bond and sureties and bail fund for people who are socio-financially backward. Need to give training to stakeholders like judges, advocates, lawyers, victims, accused, prosecutors on bail law and human rights. This recommendation will make the bail jurisprudence provision consistent with the fundamental principle of liberty, justice and rule of law.

## **VII. CONCLUSION**

To wind-up, implementation is the key for better working of judiciary. The reforms made under BNSS, 2023 are a way forward for greater justice system but are not yet sufficient. It is not merely an incremental change but a transformative change designed to modernize, streamline and humanize the criminal justice system, particularly concerning bail jurisprudence. Looking towards the future, the BNSS, 2023 holds the promise of more equitable, transparent, effective and efficient bail structure. Yes, the challenges still exist but are not unconquerable, we can overcome it with comprehensive training initiatives, digital infrastructure developments, strengthened legal-aid, continuous monitoring and public awareness. We sum-up that, India can pave the way for the bail system that truly uphold the principle of equality, liberty, justice and social security.

\*\*\*\*\*

**VIII. REFERENCES**

- Ratanlal & Dhirajlal, *The Code Of Criminal Procedure Act, 1973* (22<sup>nd</sup> edition LexisNexis 2023).
- S.N. Mishra, *The Code of Criminal Procedure, 1973* (23<sup>rd</sup> Edition, Central Law Publications 2023).
- Ratanlal & Dhirajlal, *The Bharatiya Nagarik Suraksha Sanhita, 2023*, vol. 1(23<sup>rd</sup> edition lexisNexis 2024).
- S.N. Mishra, *The Bharatiya Nagraik Sanhita, 2023*, (24<sup>th</sup> edition, Central Law Publications 2024).
- National Crime Records Bureau, *Crime In India 2022: Statistics* (Ministry of Home Affairs 2023).
- *An Analytical Study of Bail Jurisprudence and the Discretionary Power of Court Relating to Bail in India*, vol. 4, *IJHSSM* 45 (2024).
- *Indian Justice Report, Indian Justice Report 2025* (Tata Tr. 2025).

\*\*\*\*\*