

# The Study of Laws Relating to Bail in Light of the Constitution and New Criminal Laws in India

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## Abstract

In Indian criminal law, the idea of bail is fundamental, and it is a widely accepted notion in many legal systems worldwide. Justice V. R. Krishna Iyer cited the phrase "Bail, not Jail" in *State of Rajasthan v. Balchand* (1977 AIR 2447), and it seems that this idea has since been softened. Thousands of impoverished or guilty prisoners are awaiting bail, but their cases have been pending for a very long time. The most significant aspect of our criminal jurisprudence is that, although placing someone in jail or prison is an exception, granting bail is the norm. Regretfully, it seems that fundamental values have disappeared. Because of this, an increasing number of people are spending lengthier amounts of time behind bars. Trial participants may not be able to comply with bail requirements due to a lack of funds or moveable or immovable property to find local sureties. Other difficulties include the absence of identifying documents, the methods used by the court system, the employment of advocates, and family support. The Indian Constitution's Article 21 protects everyone's right to life and personal freedom. The researcher carefully examined the terms of new criminal legislation in addition to studying the constitutional element of bail law in India. To support the goal of the study, the same researcher gathered material from a variety of sources, including books, journals, papers, government websites, Supreme Court cases, and other legal blogs. This paper examines the development of the bail provision in the Indian legal system, investigates the constitutional and jurisprudential features of the bail provision in India, and determines the causes of bail delays. Concepts associated with it. The research's conclusion emphasizes the breach of the general bail jurisprudential norm, which is the cause of the bail system's delay.

**Keywords:** - BNSS, Bail, legal system, Jurisprudence, Evolution, Principles.

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## 1. INTRODUCTION

The fundamental rule is bail, not jail, unless there are indications that the petitioner seeking an extension of bail may be evading justice, obstructing the administration of justice, or causing other issues by committing the same offenses repeatedly or intimidating witnesses, among other things. The Indian Constitution's Article 21 ensures that everyone's life and personal freedom are protected. When we are arrested by any law enforcement agency, we have the right to request bail because it protects our fundamental right to personal liberty and human dignity.

Section 482 of the Bharatiya Nagrik Suraksha Sanhita, 2023 (BNSS) now covers anticipatory bail, which was first provided under Section 438 of the Code of Criminal Procedure in 1973 (henceforth referred to as the CrPC or Criminal Procedure Code, 1973). The Law Commission of India's suggestion served as the foundation for previous criminal proceedings.

Which suggested adding a clause requiring anticipatory bail in its 41st report 1969. In contrast, the committee that was established under Ranbir Singh and a number of other members has advocated a new BNSS. Bail mostly consists of pre-trial limitations. It is placed on an individual to make sure they won't interfere with the administration of justice. The main reason anticipatory bail is required is that influential people often try to indict their rivals in order to disgrace them or for other reasons, which leads to their imprisonment. It doesn't seem reasonable to compel someone to submit to detention, remain in jail for a few days, and then ask for release when there are solid grounds to think that the accused is unlikely to flee or otherwise misuse his freedom while out on bail, with the exception of imaginary situations. The basis of the bail provision, especially anticipatory release, is the legal presumption of innocence, which holds that all individuals accused of a crime are deemed innocent unless proven guilty. Article 11 of the Universal Declaration of Human Rights<sup>1</sup> mentions this essential idea.

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<sup>1</sup> See UDHR.

### 1.1 Meaning of Bail

"Bail" refers to the procedure used to secure the release of an accused person who has been charged with a particular offense by guaranteeing his future appearance in court for a trial and requiring him to stay within the court's jurisdiction. "The security required by a court for the release of a prisoner who must appear at a future time" is how Black's Law Dictionary defines bail. Arrests are made in order to bring the accused before the court and administer justice. However, there is no reason to violate his liberty if the same goal can be accomplished without making any arrests. For this reason, the accused may be granted bail for conditional release.

### 1.2 Objective of the Study

1. To research the development of bail's statutory legal status under Indian law.
2. To comprehend the Indian bail jurisprudence's constitutional component.
3. To investigate the cause of the bail delay and comprehend the underlying ideas.

### 1.3 RESEARCH METHODOLOGY

Doctrinal research serves as the foundation for this study. The researcher has gathered information through a thorough analysis of several offline and internet sources. The author researched current economic offenses that resulted in arrests, as well as a variety of magazines and newspapers. A political party leader was just freed after years of imprisonment for economic offenses. The author then chose this term after deciding to comprehend Bail-related elements. Books, libraries, journals, Wikipedia, newspaper stories, live legal blogs, and other pertinent sources were consulted by the author for this work.

## 2. Research Gap

After examining every aspect of the topic, the researcher concluded that no article or other study topic that delves into the development of the bail provision and constitutional jurisprudence has been published. Consequently, this study unquestionably advances our understanding of the topic. The researcher looked into every aspect of the topic in the article and ultimately discovered that no research paper or other article has been published that delves into the development of the bail provision and constitutional jurisprudence. Thus, there is no doubt that this essay adds information about the topic.

## 3. The Development of Bail

Changes from the introduction of Bhartiya Nyaya Sanhita (BNS) and the evolution of the bail provision may be observed in the Cr.P.C. (Now BNSS) The Cr.P.C.1973 governs bail jurisprudence in India and provides information on the requirements and processes for granting bail. Judicial modifications have acknowledged and developed the legal gesture of bail, representing enormous and changing attitudes about the granting or refusing of bail. The idea of bail was initially introduced in Sections 216 and 258, as well as Sections 156 and 212 of the Code Criminal Procedure of 1861. Additional parts were added in 1872. Sections 496 and 497 of the 1898 law addressed bail in instances that were subject to bail and non-bailable cases, respectively. Additional parts and revisions were added in 1973. Lastly, in 2023, the New BNSS provided justification for the criminal judicial system's use of bail jurisprudence. It improved the provision's effectiveness and benefited the accused.

## 4. Bail's Statutory Legal Position

The Criminal Procedure Code of 1973<sup>2</sup> does not define the term "bail." Section 2(a) of the Cr. PC defines only the words "Bailable Offence" and "Non-Bailable Offence." Section 436-450 of the Criminal Procedure Code contains the provisions pertaining to bail and bail bonds. The word "bail" in clause (b) of the new BNSS Section 2 refers to the release of an individual who has been accused or suspected of committing an offense from the custody of the law subject to certain requirements set by an officer or court upon the signature of a bond or bail bond by said individual.

## 5. Bail instead of jail

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<sup>2</sup> Criminal Procedure Code, 1973

"Bail, not jail, was the rule" in 1977. Prior to making an accusation, the presumption of innocence theory was used. The Universal Declaration of Human Rights<sup>3</sup> is the foundation of the aforementioned philosophy, and the defendant is a better choice than the terms prisoner, convict, or accuse, which would suggest innocence<sup>4</sup>.

The judge denied bail in **P Chidambaram v. Directorate of Enforcement (2020)** due to the economic nature of the corruption charges. The Hon'ble Supreme Court, however, denied all other arguments and granted bail in the appeal case. Thus, bail is a process wherein the court grants an accused individual release based on security. Sometimes, a person's fundamental rights are violated by a bail delay. The idea that incarceration is an exception and bail is a norm is one that must be adhered to. Delays in obtaining bail can be attributed to a number of factors, including the intricacy of the case, ongoing investigations, prosecution objections, and other procedures. You may see that police frequently fail to prove their claims, and in other circumstances, they neglect to make sure prosecution witnesses appear on time.

## 6. The Indian Legal System's Bail Jurisprudence

1. The basic idea that everyone is innocent unless proven guilty is known as the presumption of innocence. It is only possible to prove an accused person's guilt beyond a reasonable doubt.
2. Protection of Rights: India's constitutional ideals consistently uphold and defend bail jurisprudence. According to Article 21 of the Indian Constitution, everyone has the inalienable right to life and liberty. Therefore, the State's Sovereign Power places the highest premium on advancing justice and fairness in the judicial system.
3. Judicial Discretion: As the protector of the Indian Constitution, the Supreme Court of India is required to uphold the fundamental principles of all Indian citizens.
4. Effective legal procedure: Providing bail to the accused also encourages an effective legal procedure. Consequently, it lessens jail congestion and delays in court processes or trials.
5. Expectant Bail as an essential entitlement According to the Indian Constitution, every person has the fundamental right to life and personal freedom under Article 21 of our Constitution. Unless it is carried out in compliance with the legal procedure, the purpose of this article is not to take away someone's life or personal freedom. The law grants bail because an individual cannot prepare their case for trial while detained; therefore it gives them a fair chance to make their case as strongly as possible. Furthermore, while an accused person is assumed innocent until proven guilty, detention of any type harms a person's reputation and keeps him from engaging in his regular activities. Therefore, one remedy is to seek for anticipatory bail in order to avert such inconveniences.

## 7. Arbitrariness in bail conditions

Any condition that a court deems necessary in the "interests of justice" who have been interpreted as "good administration of justice" or "advancement of the trial proceedings" should be avoided when granting bail to an accused person suspected of committing a non-bailable offense. There is some court discretion involved in determining the terms of bail. However, there has recently been a propensity to apply arbitrary bail conditions without using reasonable jurisdiction<sup>5</sup>.

## 8. Types of Bail

The phrases "bailable" and "non-bailable" refer to the two types of offenses that are discussed below.

- a. Offenses requiring bail: According to Section 2(a) of the CrPC, a crime is deemed bailable if it is specified as such in the First Schedule of the Code or if it is classified as so by any other law. When someone is accused of a crime that is they can ask for bail if they are subject to it. A police officer or other authority cannot deny the accused if they are prepared to pay bail. Section 436 of the CrPC 1973 grants the right to release anyone who is being held without a warrant and accused of a bailable offense at any time throughout the proceedings.
- b. Offenses not subject to bail: A crime is considered non-bailable if it is not subject to bail. A person accused of a crime for which there is no bail does not have the right to bail. The following conditions

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<sup>3</sup> Ibid.

<sup>4</sup> Black's Law Dictionary.

<sup>5</sup> See <https://www.barandbench.com/columns/the-need-for-bail-legislation-in-india>, last seen 27.10.2024.

must be met for the accused to be granted bail for nonbailable offenses: There are solid grounds to believe that he has committed a crime for which he faces the death penalty or a life sentence.

The defendant has committed a crime that is punishable by death, life in prison, or seven years or more in prison, or that the defendant has been found guilty of two or more crimes that are both cognizable and not subject to bail. There are exceptional cases in which the law gives special consideration in favour of cases where the accused is a minor, a woman, a sick person etc. [Section 437(1) CrPC].

### **8.1 India's requirements for granting anticipatory bail**

When determining anticipatory bail, the Supreme Court has listed a comprehensive and in-depth set of factors. They are as follows: -

- a. The gravity of the offense and the accused's involvement.
- b. The accused's criminal history, any incarceration following a conviction, the likelihood of evading justice, and any level of recurrence of the same or different offenses.
- c. The intent to arrest the applicant in order to harm or degrade him or her.

### **8.2 Typical requirements for issuing anticipatory bail**

The accused guarantees themselves for questioning. The accused refrains from engaging in any form of coercion, threats, harm, or other deception that might taint the evidence. The accused should not depart the country without the consent of the relevant court.

## **9. Bail Advantages**

The following are some of the main advantages of granted bail:

1. One can be appropriately attired for the trial.
2. An accused person's reputation can be protected.
3. A person is able to go to work.
4. Support for family is possible.
5. No possibility of torture by the police.
9. An advocate can be met at any moment.

### **9.1 Bail Disadvantages:**

The main reasons for granting bail are: burdens on the state; harm to the accused's reputation; and difficulty for the accused family to acclimate to society due of negative opinions held about them.

## **10. Final Results**

The researcher discovers that since the British Period, bail jurisprudence has changed. India's bail jurisprudence has developed during the course of modern history. Both the New Criminal Code and the previous Cr. P.C., 1973, had provisions pertaining to bail. The Indian constitution also shields the populace from the judiciary's capriciousness. Thus, the researcher concludes that Article 21 of the Indian Constitution upholds the right to life and establishes the worth of the individual. The ideals of the bail principle that is, that bail is the rule and jail is the exception are also undermined by the delay in bail, according to this article. The effectiveness of bail law is improved by a few additional bail-related concepts. The purpose of bail is to protect an individual's freedom. When someone has cause to think that they could be arrested on suspicion of committing a crime for which there is no bail, anticipatory bail becomes necessary.

## **11. Suggestions-**

1. To improve India's bail jurisprudence, the bail provision has to be evaluated and further amended.
2. More fasttrack quotations are required in order to resolve the outstanding instances.
3. A committee that investigates the causes of the bail delay must be established.
4. To fill the court's open seats, magistrates and judges must be appointed immediately.
5. Need a financial aid to help those in need so they can adequately represent themselves in court.
6. Trial convicts who cannot afford to retain a qualified attorney to represent them in court require a convenient and appropriate legal Aid facility.

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