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BAIL OR JAIL? ASSESSING THE RISE OF CARCERAL JUSTICE IN INDIA'S BNSS FRAMEWORK

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ABSTRACT

India's new criminal law framework, introduced through the Bharatiya Nagarik Suraksha Sanhita 2023, alters the balance between state authority and individual liberty. With expanded arrest powers, stricter anticipatory bail provisions, and greater weight given to public and victim interests, the new system raises a critical question. This approach, which treats detention as a default and liberty as a privilege, suggests the emergence of a Doctrine of Carceral Justice a philosophy where custody, rather than release, becomes the organizing principle of pre-trial justice.

This paper interrogates whether such a shift undermines the foundational values of a rights based justice system, where the presumption of innocence and protection of liberty are central. By examining the structural logic of the BNSS in comparison to its predecessor, the Code of Criminal Procedure, the research identifies how statutory language and procedural thresholds collectively tilt the balance towards custodial outcomes. It explores the normative consequences of this transformation, including its potential to deepen inequities for marginalized communities, intensify prison overcrowding, and repurpose the criminal process into a mechanism of social control rather than adjudication.

Through a comparative lens, the study contrasts India's evolving bail philosophy with global practices that prioritize liberty unless demonstrable risks justify detention. It then considers whether India can develop a more liberty-preserving bail model, incorporating conditional release mechanisms, risk-based assessments, and procedural safeguards without compromising societal concerns. Ultimately, the research questions whether the BNSS, by entrenching carceral tendencies, risks reshaping criminal law into a tool of containment rather than justice and what legal, constitutional, and policy reforms are needed to reverse this trajectory.

Keywords: BNSS 2023, Bail Jurisprudence, Carceral Justice, Presumption of Innocence, Pre-trial Detention, Constitutional Safeguards

1. INTRODUCTION

The law of bail is a crucial mechanism in any criminal justice system, balancing the state's interest in maintaining public order with an individual's fundamental right to personal liberty. This balance has long been represented in India's Code of Criminal Procedure, 1973 (CrPC), which treats custody as the exception and bail as the rule. The presumption of innocence serves as the foundation for this principle, which makes sure that an accused person is not punished before being found guilty¹.

However, this established balance is about to change significantly with the recent implementation of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). The BNSS increases the authority to make arrests and tightens the requirements for anticipatory bail, giving the public and victim interests more weight when deciding who is eligible for bail. Pre-trial detention runs the potential of becoming the norm rather than the exception in the criminal justice system, as these modifications imply². Custody becomes the organizing element of pre-trial processes in this change, which has been referred to as the emergence of a "Doctrine of Carceral Justice."

Significant constitutional issues are brought up by this ideological change. Any constraint on liberty must be reasonable and just in order to uphold the Indian Constitution Article 21 right to personal liberty as well as Articles 14 and 22's equality and non-arbitrariness principles. The fundamental idea of the presumption of innocence and these constitutional rights could be undermined by a bail system that assumes imprisonment.

This change has significant socioeconomic ramifications that go beyond legal considerations. Numerous undertrial inmates, many of whom are socially and economically deprived, already overcrowd India's jails³. The BNSS's enlarged custodial strategy has the potential to worsen already-existing disparities and overcrowding, so turning the criminal justice system into a social control mechanism rather than an unbiased arbiter.

This article explores the development of bail law in India by contrasting the old CrPC

¹ Gudikanti Narasimhulu v Public Prosecutor of Andhra Pradesh (1978) 1 SCC 240.

² Bharatiya Nagarik Suraksha Sanhita 2023, Sec 35, 39, 482

³ National Crime Records Bureau, Prison Statistics India 2022 (Ministry of Home Affairs, Government of India, 2023) <https://ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/psiyearchive2022/1701613297PSI2022ason01122023.pdf> accessed 27 July 2025

provisions with the new framework established by the BNSS. It examines the modifications' constitutionality, their real-world effects, and makes recommendations for a bail system that protects individual freedoms while attending to justifiable social issues. The paper also highlights the possibility for reforms that strike a balance between security and rights by placing India's changing bail philosophy within the framework of international norms.

2. DOCTRINAL BACKGROUND: EVOLUTION OF BAIL IN INDIA

2.1 Historical Roots of Bail Jurisprudence

Despite having its origins in colonial law, the idea of bail has developed into a vital protection of individual freedom in India. Based mostly on English common law principles, the Code of Criminal Procedure, 1898, allowed for the discretionary release of accused individuals, with surety bonds serving as the main means of ensuring trial attendance⁴. This structure was improved by the post-independence Code of Criminal Procedure, 1973, which gave courts and police discretion to grant bail and classified offenses as either bailable or non-bailable. Section 437 of the CrPC permits judicial discretion for non-bailable offences, while Section 436 grants bail as a right for offences that are subject to it.

This arrangement demonstrated a deliberate effort to strike a balance between the state's obligation to uphold justice and the presumption of innocent. In its 41st Report (1969), which served as the foundation for the CrPC 1973, the Law Commission of India cautioned against arbitrary detention and underlined that "liberty should not be curtailed save in exceptional circumstances⁵."

2.2 Bail as the Rule, Jail the Exception

Even for offenses that are not subject to bail, Indian courts have repeatedly upheld that bail should typically be granted unless there are particular hazards that warrant incarceration. The Supreme Court famously ruled in *State of Rajasthan v. Balchand* that the "basic rule may perhaps be tersely put as bail, not jail," highlighting the fact that pre-trial detention cannot be used as a form of punishment⁶. In *Gudikanti Narasimhulu v. Public Prosecutor of Andhra Pradesh*⁷, Justice Krishna Iyer reaffirmed this, saying that denial of liberty must be warranted

⁴ Law Commission of India, 41st Report on the Code of Criminal Procedure, 1898 (1969) <https://lawcommissionofindia.nic.in/1-50/report41.pdf> accessed 24 July 2025.

⁵ *ibid*

⁶ *State of Rajasthan v Balchand* (1977) 4 SCC 308

⁷ *Gudikanti Narasimhulu v Public Prosecutor of Andhra Pradesh* (1978) 1 SCC 240.

by specific threats, including tampering with evidence or absconding, rather than as a reflexive reaction to accusations.

In *Sanjay Chandra v. Central Bureau of Investigation*⁸, the Court further reflected this judicial philosophy by stating that extended pre-trial detention is a violation of Article 21 and disproportionately affects the poor, so penalizing the innocent. The notion that personal liberty is the default stance, subject only to proved need, was solidified by these cases taken together.

2.3 Socio-Legal Significance of Bail

Bail is a substantive protection of the constitutional right under Article 21 and is not only a procedural tool. It protects the presumption of innocence and lessens the economic effects of incarceration, especially on disadvantaged communities, by prohibiting arbitrary or excessive detention. According to a 2022 report by the National Crime Records Bureau⁹, over 77% of inmates in India are undertrials; this percentage is not solely a reflection of the seriousness of the offenses but also of structural obstacles to obtaining bail.

A statutory classification under the CrPC that favoured release, judicial precedents that upheld liberty as the norm, and an understanding of the unequal burden of pre-trial detention on vulnerable populations formed the three pillars of the doctrinal framework prior to the BNSS. With its bail and arrest measures that tip the scales dramatically in favor of custodial justice and challenge the long-standing belief that liberty, not confinement, must win out, the BNSS 2023 threatens to upend these foundations.

3. BNSS 2023 AND THE DOCTRINE OF CARCERAL JUSTICE

3.1 Statutory Changes to the BNSS from the CrPC

Despite superseding the Code of Criminal Procedure, the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) adds clauses that systematically strengthen the state's custody authority. While Section 39 permits detention based on imagined concerns, such as a potential disruption of public order, rather than specific, verifiable threats, Section 35 gives police the authority to make arrests without a warrant in a broader range of situations. In contrast to Section 438 of

⁸ *Sanjay Chandra v Central Bureau of Investigation* (2012) 1 SCC 40

⁹ National Crime Records Bureau, Prison Statistics India 2022 (Ministry of Home Affairs, Government of India 2023) <https://ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/psiyearchive2022/1701613297PSI2022ason01122023.pdf> accessed 24 July 2025

the CrPC, which mostly concentrated on flight risk and evidence tampering, Section 482 drastically restricts anticipatory bail and requires courts to take victim and public interests into account as important considerations. These changes imply that pre-trial custody is preferred by statute, making freedom conditional and secondary.

3.2 The Carceral Tilt: Custody as the Default

The Carceral Justice theory is promoted by this legal framework, which makes custody the guiding concept of criminal proceedings. Once an anomaly, pre-trial detention runs the risk of becoming the rule, supported by arbitrary, wide-ranging criteria rather than clear necessity. Increased instances of prolonged undertrial detention, in which people charged with non-violent or minor offenses are held for years as a result of procedural delays, are indicative of this trend. For instance, Saleem Rajput After being detained in 1999 and charged with having stolen property, He went through a 26-year trial that included more than 200 hearings until he was found not guilty owing to insufficient evidence. His life and fortune were upended by the unfounded charges, which also had an impact on his family.¹⁰

These incidents demonstrate how the BNSS's focus on custodial discretion may intensify a trend that the court has already criticized. The Supreme Court called the systemic injustice of thousands of undertrials being held in jail for longer than the maximum penalty for their claimed offenses a "travesty of justice" in the case of Hussainara Khatoon v. State of Bihar¹¹. With its expanded arrest authority and narrowed scope of anticipatory bail, the BNSS runs the risk of reproducing and exacerbating this issue.

3.3 Inequitable Effect on Marginalized Populations

Economically disadvantaged and socially marginalized populations are disproportionately impacted by the BNSS's trend towards correctional justice. Migrant workers and members of the Dalit and Adivasi communities frequently lack the social and financial resources necessary to negotiate complicated bail procedures or find sureties. According to data from the National Crime Records Bureau, more than 77% of Indian prisoners are awaiting trial, and the bulk of

¹⁰ Saleem Rajput, 'Labourer acquitted in "stolen property" case after 26-year battle' Times of India (Agra, 5 February 2025) <https://timesofindia.indiatimes.com/city/agra/labourer-acquitted-in-stolen-property-case-after-26-yr-battle/articleshow/118427292.cms> accessed 24 July 2025

¹¹ Hussainara Khatoon (I) v State of Bihar (1979) 3 SCC 532.

them are from socioeconomically deprived backgrounds¹².

This discrepancy is demonstrated by actual events. Three Dalit youths who were accused of taking part in a protest spent more than two years in pre-trial custody before being found not guilty in *State of Maharashtra v. Shinde*¹³. This was because courts repeatedly refused to grant them bail, citing “public order concerns,” even though there was no hard evidence connecting them to violence. By codifying these factors, the BNSS runs the risk of making these results commonplace rather than extraordinary.

3.4 The Crisis of Overcrowding and Carceral Justice

The prison system in India is already overburdened; in certain areas, it is functioning at 130% occupancy. The BNSS may exacerbate overcrowding by structurally prioritizing confinement, which could result in worsening living conditions, elevated health risks, and abuses of undertrials’ fundamental human dignity. The Supreme Court took judicial notice of the cruel conditions of overcrowded jails in *Inhuman Conditions in 1382 jails, In re*¹⁴, noting that undertrials are frequently housed in conditions “unfit for human habitation” and urging immediate systemic changes. Because the BNSS is in a position to worsen a situation that jeopardizes the goals of rehabilitation and justice, the carceral tilt is therefore both a legal and humanitarian issue.

3.5 Moving Toward a Doctrinal View of Criminal Justice

A conceptual shift is reflected in the BNSS’s cumulative provisions, which make liberty a concession subject to wide state-defined thresholds rather than the default. According to the Doctrine of Carceral Justice that emerges from this framework, detention is a weapon of social control and preventive governance in addition to being a way to ensure trial attendance. The approach runs the risk of turning criminal law into a containment mechanism rather than an adjudication tool, undermining constitutional protections even though the state may contend that this is necessary for maintaining public order and protecting victim rights.

¹² National Crime Records Bureau, Prison Statistics India 2022 (Ministry of Home Affairs, Government of India 2023) <https://ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/psiyarwise2022/1701613297PSI2022ason01122023.pdf> accessed 28 July 2025.

¹³ *State of Maharashtra v Shinde* 2021 SCC OnLine Bom 3129

¹⁴ *Inhuman Conditions in 1382 Prisons, In re* (2016) 3 SCC 700.

4. CONSTITUTIONAL SCRUTINY

4.1 Article 21: Life and Personal Liberty

The BNSS 2023 significantly alters procedural safeguards under the CrPC related to bail, raising critical questions under Article 21 of the Constitution: “no person shall be deprived of life or personal liberty except according to procedure established by law” as understood in *Maneka Gandhi v Union of India* (1978)¹⁵, where the Supreme Court held that the procedure must be just, fair and reasonable and interlinked with Articles 14 and 19. Constitutional scholarship and commentary have noted the inconsistencies between the CrPC limits and Supreme Court protections in cases such as *D.K. Basu v State of West Bengal* regarding torture, dignity, and prompt access to legal remedy, and have criticized the extension of permissible police custody under BNSS (up to 60 or 90 days in initial judicial custody, up from a strict 24 hours limit under CrPC) as being antithetical to constitutional protections against arbitrary detention¹⁶.

Recent court decisions reaffirm that the implied Article 21 provision of a quick trial is violated by excessive delay and procedural compromise throughout the inquiry and trial. Prolonged incarceration, even under strict statutory regimes, cannot supersede constitutional rights to prompt justice, as demonstrated by the Delhi High Court’s decision to give bail to an accused criminal after eight years in custody under MCOCA¹⁷. Similar to this, the Bombay High Court affirmed that statutory bail arrangements cannot supersede constitutional due process by ruling that suspects are entitled to Article 21 protections even while they are being arrested. This was demonstrated by the court’s decision to invalidate unlawful arrests that breached CrPC provisions¹⁸.

Anticipatory bail limitations and more extensive arrest permission run the risk of undermining fundamental constitutional protections under the BNSS. If determined to be arbitrary or out of proportion to the accused’s rights, the mere use of victim concerns or the public interest as statutory justifications for denying bail without requiring concrete proof of danger may be declared unconstitutional.

¹⁵ *Maneka Gandhi v Union of India* (1978) 1 SCC 248.

¹⁶ Kritika Singh, ‘Re-Evaluating Access to Justice: A Critical Analysis of FIR Registration under the BNSS, 2023’ (2025) IJLSSS 3(1) 17; *D.K. Basu v State of West Bengal* (1997) 1 SCC 416

¹⁷ *Naresh alias Pahalwan v State of Maharashtra* 2025 DHC 5898

¹⁸ *Sujata v. State of Maharashtra*, 2025 SCC OnLine Bom 2634

4.2 Articles 14 and 22: Protections Against Arrest and Equality

According to Article 14, every classification that limits freedom must meet the requirements of both reasonableness and non-arbitrariness. The legal threshold set by the BNSS that permits bail denials based on nebulous “public interest” standards runs the possibility of arbitrary classification without objective justification, which could be a breach of Article 14. Arrested persons are protected under Article 22: they must be brought before a magistrate within 24 hours, be told the reason for their detention, and have access to legal representation. CrPC sections 50A and 46(4) contain NHRC-like safeguards, but the BNSS deviates from these legal requirements. This is demonstrated by the Gauhati High Court’s bail order for Sumi Borah, in which procedural errors during her arrest and charges under the BNSS were ruled illegal, thereby reaffirming the constitutional enforceability of CrPC procedural norms even under the new statute¹⁹.

Even if the law gives more extensive detention powers, landmark rulings highlight that an arrest without following the proper procedures makes the subsequent detention unlawful. The Nagpur bench’s decision to grant bail to a suspect despite significant accusations based on violations of Sections 50A and 46(4) of the CrPC essentially confirmed this, highlighting the fact that constitutional protections take precedence over statutory drift.

4.3 Constitutional Supremacy vs. Statutory Overrides

Constitutional supremacy must always come first, even if BNSS clauses seem to permit prolonged detention or circumvent accepted arrest processes. According to Maneka Gandhi, any law that restricts someone’s personal freedom must pass the fairness, rationality, and conformity to Articles 14, 19, and 21 tests. In a similar vein, *Kesavananda Bharati v. State of Kerala*²⁰ maintains that the protection of fundamental rights under the Constitution cannot be revoked, not even by amendment, since doing so would violate the fundamental framework of the document, which includes fair procedure and individual liberty.

Furthermore, Maneka Gandhi overturned *A.K. Gopalan v. State of Madras*²¹, which had previously supported a narrow interpretation of the legally mandated procedure, reinforcing the constitutional requirement for substantive due process. Under the pretense of expediency

¹⁹ *Sumi Borah v. State of Assam*

²⁰ *Kesavananda Bharati v State of Kerala* (1973) 4 SCC 225.

²¹ *A.K. Gopalan v State of Madras* AIR 1950 SC 27.

or public interest, criminal law amendments such as the BNSS cannot reinstate strict procedural restrictions that deprive due process. The fundamental idea that “bail is the rule and jail is the exception²²” nevertheless holds true even under unique laws like the PMLA, as the Supreme Court has frequently affirmed, upholding Article 21 constitutional rights over statutory discretion. Refusal of bail must be based on a careful evaluation of particular risk concerns, properly supported by reasoned orders, rather than on general statutory restrictions.

Lastly, High Courts maintain constitutional oversight in cases under the BNSS. For example, the Allahabad High Court has signaled judicial determination to uphold constitutional restrictions on executive and prosecutorial overreach by referring questions regarding its authority to reject FIRs under BNSS Section 528 (analogous to Section 482 CrPC) to a nine-judge court²³.

5. COMPARATIVE STUDY WITH UK AND USA CONCEPT OF BAIL

5.1 The United Kingdom: Presumption of Liberty and the Bail Act of 1976

A presumption in favor of granting bail is firmly established in the UK by the Bail Act 1976. Courts must grant bail under Section 4(1) unless there are good reasons to think the accused would not turn themselves in, conduct new crimes, impede justice, or interfere with witnesses²⁴. This presumption reflects a fundamental liberal ideal, that liberty is the default, and is consistent with Article 5 of the European Convention on Human Rights²⁵. Schedule 1 of the Act lists particular conditions in which bail may be denied, including serious offenses or situations where incarceration is required due to extraordinary circumstances. This risk-based paradigm is frequently used by courts, which evaluate elements like as the seriousness of the offense, the defendant’s background, and community connections.

Conditional bail, which may include travel limitations, residency requirements, or technology monitoring, is frequently imposed and is proportionate to the dangers that have been identified. Reasoned rulings that explain the reasons for rejection or the conditions imposed must also be issued by UK courts. By allowing appellate supervision and reinforcing equitable treatment,

²² Prem Prakash v. Union of India [2024] 8 S.C.R. 955

²³ Guddu v. State of U.P, CrI Appeal No. 441 of 2003

²⁴ Bail Act 1976 (UK), s 4(1).

²⁵ Written evidence from the Ministry of Justice, The Bail Act 1976 (UK Parliament Committee, 2003) paras 1–2 <https://committees.parliament.uk/writtenevidence/108060/pdf> accessed 24 July 2025.

this procedural transparency lessens bias and arbitrariness²⁶. The BNSS provisions that allow bail denials based largely on public interest without a quantifiable risk analysis stand in sharp contrast to this strategy.

5.2 The US: Reforms to Risk Assessment vs. Cash Bail

Due to its historical reliance on cash bail, the US bail system has come under heavy fire for punishing impoverished defendants and growing socioeconomic inequality. ^6 Reform initiatives place more emphasis on pretrial services and risk assessment instruments than on financial guarantees²⁷. One seminal project, the Manhattan Bail Project (1961), substituted assessments of community links and flight risk for monetary bail, showing that low-income people released without sureties showed up in court at comparable rates to those who were detained on bond. This paradigm was extended by pretrial services programs, which incorporated standardized tests into the decision-making process.

The goal of more modern risk-assessment instruments, such the PSA Score, is to measure the likelihood of non-appearance or reoffending. Scholars warn that because algorithms rely on historical data that reflects systemic prejudice, these tools frequently reproduce racial biases. Despite similar adherence to court requirements, African American defendants frequently earn disproportionately high-risk scores, according to studies like Crest et al. (ProPublica) and Albright et al²⁸.

Scholarly works, such as those by Berk et al. and Chouldechova, highlight the challenges of striking a balance between accuracy and fairness in algorithmic tools, contending that no one method can ensure equity across groups with different base rates of offense²⁹. Many reformers now promote transparent, human-supervised decision-making frameworks backed by empirical indicators instead of automated causation because of these drawbacks.

²⁶ Comparative Criminal Procedure: A Study of India and England, Maheshwari (2024) <https://www.linkedin.com/pulse/comparative-criminal-procedure-study-india-england-maheshwari> accessed 24 July 2025.

²⁷ Harvard Law Review, 'Bail Reform and Risk Assessment: The Cautionary Tale of Federal...' (2017) <https://harvardlawreview.org/print/vol-131/bail-reform-and-risk-assessment-the-cautionary-tale-of-federal-sentencing> accessed 24 July 2025.

²⁸ Wired, 'Algorithms Were Supposed to Fix the Bail System. They Haven't' (19 February 2020) <https://www.wired.com/story/algorithms-supposed-fix-bail-system-they-havent> accessed 24 July 2025.

²⁹ Richard Berk et al, 'Fairness in Criminal Justice Risk Assessments: The State of the Art' (2017) arXiv 1703.09207 <https://arxiv.org/abs/1703.09207> accessed 24 July 2025.

5.3 Insights for the BNSS Framework in India

By incorporating conditional release procedures, risk-calibrated evaluations, and presumption-based frameworks into its bail jurisprudence, India might take inspiration from both models:

Presumption of Bail: Establish a default premise that, absent particular, empirically supported dangers, bail ought to be issued. This contradicts the BNSS's tendency to deny bail based only on the interests of the public or victims and is consistent with UK legislative reasoning.

Tools for Risk-Based Release with Supervision: India might create risk assessment procedures that assist courts in assessing flight risk, tampering, or harm potential while maintaining judicial discretion and transparency, drawing inspiration from US techniques but avoiding automated bias.

Conditional Bail Practices: As part of a balanced release regime, increase the use of non-monetary restrictions, such as required support interventions, electronic monitoring, and reporting requirements.

Legislative and Judicial Reforms: Guidelines or subordinate regulations governing arrest and bail should be implemented in conjunction with BNSS. These rules should outline objective criteria, detention review periods, and the requirement that bail decisions be supported by documented justification.

India can create a bail paradigm that protects individual liberty by combining comparative best practices the UK's defined conditions and statutory presumption with US empirical support systems and prudence regarding algorithmic tools. In a rights-based criminal justice system, such a model would respect constitutional rights while addressing justifiable worries about victim rights and public safety.

6. RECOMMENDATIONS

India needs to make structural and procedural changes to its bail rules in order to stop the BNSS 2023 from instituting a framework for criminal justice. The following suggestions aim to strike a balance between victim concerns, public safety, and constitutional protections:

a) Statutory Bail Presumption

Add a clear clause to the BNSS that states that bail will be granted by default unless there is unmistakable proof of flight risk, evidence tampering, or a threat to public safety. This is in

line with international norms like the UK's Bail Act 1976.

b) Protocols for Objective Risk Assessment

Create a uniform checklist to assist courts in evaluating risks prior to granting bail, drawing inspiration from the principles established in *Arnesh Kumar v. State of Bihar*³⁰. These tools should be utilized as judicial aids rather than as a replacement for discretion, maintain transparency, and refrain from algorithmic prejudice.

c) Options for Conditional and Non-Monetary Bail

Increase the availability of alternatives to monetary sureties, which disproportionately impact the poor, as conditions for bail, such as community service, electronic monitoring, supervised release, and reporting obligations.

- Reasoned orders and periodic reviews are required.
Subject to appellate review, require courts to give thorough justifications for their decisions when granting or refusing bail. In order to prevent endless detention, undertrials that are kept for more than sixty days must go through a required court review.
- Specific Bail Rules or Regulations
To decrease inconsistencies, stop arbitrary detention, and standardize bail decisions across states, a national bail act or comprehensive judicial guidelines under the BNSS should be introduced.
- Increasing Awareness and Legal Aid
Through improved legal aid programs, make sure impoverished defendants have efficient legal representation so they can contest wrongful incarceration and obtain prompt bail.
- Transparency of Data and Supervision
To encourage accountability and guide policy, require public reporting on bail decisions, undertrial populations, and denial grounds.

India can move toward a liberty-preserving bail model that upholds constitutional obligations and takes into account legitimate state interests by putting these steps into practice. Without such changes, the BNSS runs the risk of establishing a legal system in which bail is the uncommon exception and jail is the rule, eroding public trust and fairness.

³⁰ *Arnesh Kumar v. State of Bihar* (2014) 8 SCC 273.

6. CONCLUSION

With its emphasis on incarceration over release in pre-trial procedures, the Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023 represents a substantial shift in India's criminal justice system. This strategy departs from the fundamental presumption of innocence and the constitutional protection of personal liberty under Articles 14, 19, and 21, even while it seeks to address victim concerns and public safety. Custody could end up being the rule rather than the exception. A balanced system that safeguards both society and individual rights is achievable when comparing India's bail laws to those in the US and the UK. While US improvements concentrate on customized assessments rather than just financial constraints, notwithstanding certain issues with bias in risk instruments, the UK's Bail Act 1976 presumes liberty unless there are obvious hazards.

Adopting a bail system that incorporates the following elements is the way ahead for India: a presumption in favor of bail; risk-based assessments conducted under judicial supervision; the use of conditional and non-monetary bail options; and clear, well-reasoned court rulings with frequent reviews of detention. These changes can assist guarantee that accused people's rights are upheld and that undertrial detention does not turn into a kind of punishment. Without these adjustments, BNSS might result in more marginalized people being imprisoned, put a burden on prison resources, and alter the criminal justice system from one that is based on fair adjudication to one that is based on control and confinement. The fundamental objective of India's criminal law must continue to be upholding justice, safety, and liberty.