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BAIL JURISPRUDENCE IN INDIA: BALANCING PERSONAL LIBERTY AND THE INTEREST OF JUSTICE

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Abstract

Bail jurisprudence occupies a central position within the Indian criminal justice system as it seeks to reconcile two competing constitutional values: the individual's right to personal liberty and the State's obligation to ensure the fair administration of justice. The principle that "bail is the rule and jail is the exception" has been consistently upheld by the Supreme Court of India as an essential safeguard against arbitrary deprivation of liberty. The constitutional foundation of bail lies primarily in Articles 14, 19, 21 and 22 of the Constitution of India, which collectively guarantee equality before law, protection of personal liberty, due process, and safeguards against unlawful arrest and detention. Bail serves as a procedural mechanism that allows an accused person to remain free during the pendency of investigation or trial while ensuring his or her availability before the court whenever required. It embodies the presumption of innocence, a cardinal principle of criminal jurisprudence, by preventing punitive incarceration before conviction.

Despite these developments, India's bail system continues to confront several structural challenges, including overcrowded prisons, prolonged pre-trial incarceration, socio-economic inequalities, inconsistent judicial discretion, stringent bail provisions under special legislations such as the Unlawful Activities (Prevention) Act, 1967 (UAPA), Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), and Prevention of Money Laundering Act, 2002 (PMLA), as well as delays in investigation and trial. These issues often result in prolonged detention of undertrial prisoners, thereby undermining the constitutional promise of liberty and equal justice.

This paper critically examines the evolution of bail jurisprudence in India by analysing its constitutional foundations, statutory framework under the BNSS, landmark judicial decisions, comparative perspectives from selected jurisdictions, and contemporary challenges affecting the administration of bail. The study argues that while Indian courts have consistently

recognized personal liberty as a fundamental constitutional value, achieving an equitable balance between individual rights and societal interests requires comprehensive legislative reforms, uniform judicial guidelines, greater accountability, technological integration, and a more rights-oriented approach to criminal justice. Ultimately, the paper concludes that a fair, transparent, and efficient bail system is indispensable for preserving constitutional democracy, strengthening the rule of law, and ensuring that criminal procedure remains an instrument of justice rather than punishment before conviction.

Keywords: Bail Jurisprudence, Personal Liberty, BNSS, Constitution of India, Article 21, Criminal Justice System, Presumption of Innocence, Undertrial Prisoners, Judicial Discretion, Rule of Law.

Introduction

The concept of bail constitutes one of the most fundamental safeguards within the criminal justice system and serves as an indispensable mechanism for protecting the constitutional right to personal liberty. It reflects the principle that an accused person should not be subjected to unnecessary incarceration merely because criminal proceedings have been initiated against him or her. Since every accused is presumed innocent until proven guilty through a fair trial, detention before conviction should remain an exception rather than the norm. Bail, therefore, represents the delicate balance between protecting the liberty of an individual and ensuring the effective administration of criminal justice by securing the accused's presence during investigation and trial.

The significance of bail has increased considerably in modern constitutional democracies where human rights and due process have become central pillars of criminal jurisprudence. In India, the constitutional philosophy underlying bail is deeply rooted in Articles 14, 19, 21, and 22 of the Constitution, which collectively guarantee equality before the law, protection against arbitrary state action, procedural fairness, and the right to life and personal liberty. Article 21, in particular, has emerged as the constitutional cornerstone of bail jurisprudence. Through expansive judicial interpretation, the Supreme Court has consistently held that personal liberty cannot be curtailed except through a procedure that is fair, just, and reasonable. Consequently, arrest and detention must always satisfy constitutional standards of proportionality and necessity.

Historically, the law relating to bail evolved from English common law, where liberty was regarded as the norm and imprisonment before conviction was viewed as an extraordinary measure. Indian criminal procedure inherited these principles during the colonial period through the Criminal Procedure Codes enacted by the British administration. Following independence, constitutional jurisprudence significantly expanded the protection of individual rights, transforming bail from a procedural remedy into an important constitutional guarantee. The enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), replacing the Code of Criminal Procedure, 1973, represents another significant milestone in the evolution of India's criminal justice framework. While retaining the essential principles governing bail, the BNSS seeks to modernize criminal procedure through technological integration, victim-centric reforms, and greater procedural efficiency.

However, despite progressive judicial pronouncements, India's bail system continues to face serious practical challenges. According to official prison statistics, a substantial proportion of India's prison population comprises undertrial prisoners who remain incarcerated for prolonged periods due to delays in investigation, judicial backlog, inability to furnish bail bonds, and inconsistent exercise of judicial discretion. Socio-economic inequalities further aggravate the problem, as economically weaker individuals often remain in custody simply because they cannot satisfy financial conditions imposed by courts. Additionally, special legislations such as the UAPA, NDPS Act, and PMLA prescribe stringent conditions for granting bail, thereby creating tension between individual liberty and national security or public interest considerations.

Against this backdrop, the present study undertakes a comprehensive examination of bail jurisprudence in India by analysing its constitutional foundations, statutory evolution, judicial interpretation, comparative legal developments, and emerging challenges under the BNSS framework. It seeks to evaluate whether the existing legal framework adequately balances the competing interests of protecting individual liberty and ensuring the effective administration of justice. The paper further explores contemporary reforms required to create a more equitable, efficient, and constitutionally compliant bail system capable of safeguarding both the rights of the accused and the legitimate interests of society.

1. Background of Bail Jurisprudence

The concept of bail has evolved over several centuries as one of the most important safeguards against arbitrary detention and abuse of state power. The term "bail" originates from the Old French word *baillier*, meaning "to deliver" or "to hand over," signifying the temporary release of an accused person from custody upon providing assurance that he or she will appear before the court whenever required. The philosophy underlying bail is based upon the universally accepted principle that every person accused of a crime is presumed innocent until proven guilty through a fair judicial process. Consequently, imprisonment before conviction should not become a form of punishment but should be resorted to only when it is necessary to ensure the proper administration of justice.

The origins of bail jurisprudence can be traced back to medieval English common law. During the reign of King Henry II, the legal system recognized the necessity of releasing accused persons awaiting trial in appropriate cases to prevent arbitrary detention by the Crown. The Magna Carta of 1215 laid the constitutional foundation by declaring that no free person shall be deprived of liberty except through lawful judgment or due process of law. Subsequently, the Petition of Right (1628), the Habeas Corpus Act (1679), and the English Bill of Rights (1689) further strengthened protections against unlawful detention and excessive bail. These constitutional developments significantly influenced the evolution of criminal procedure throughout the common law world, including India.

During British colonial administration, India adopted several principles of English criminal procedure through successive Criminal Procedure Codes enacted in 1861, 1872, 1882, and ultimately the Code of Criminal Procedure, 1898. These enactments formally classified offences as bailable and non-bailable and vested courts with discretionary powers to grant bail depending upon the gravity of the offence, possibility of absconding, likelihood of tampering with evidence, and interests of justice. Although the colonial legal framework recognized bail as a procedural safeguard, it largely emphasized maintaining public order and protecting colonial authority rather than safeguarding individual liberties.

Following India's independence in 1947, the adoption of the Constitution in 1950 fundamentally transformed the legal philosophy governing criminal justice. The Constitution established individual liberty as one of the highest constitutional values and guaranteed equality, dignity, due process, and protection against arbitrary state action. Article 21,

interpreted expansively by the Supreme Court, gradually became the constitutional foundation of bail jurisprudence. The Court consistently held that any deprivation of personal liberty must satisfy the requirements of fairness, reasonableness, and proportionality.

More recently, the Bharatiya Nagarik Suraksha Sanhita, 2023 replaced the Code of Criminal Procedure, 1973 as part of India's comprehensive criminal law reforms. The BNSS substantially retains the foundational principles governing bail while introducing procedural innovations aimed at improving efficiency, digitization, victim participation, and speedy justice. At the same time, the judiciary continues to play a crucial role in harmonizing statutory provisions with constitutional guarantees by ensuring that restrictions on liberty remain proportionate, necessary, and consistent with Articles 14 and 21 of the Constitution.

Today, bail jurisprudence in India represents a dynamic interplay between constitutional rights, statutory provisions, judicial discretion, public interest, and evolving societal needs. It seeks to achieve a careful equilibrium between protecting individual freedom and preserving the integrity of the criminal justice system. The continuing development of bail law demonstrates the judiciary's commitment to ensuring that criminal procedure functions as an instrument of justice rather than oppression, thereby reinforcing the rule of law in a democratic society.

Figure 1: Evolution of Bail Jurisprudence in India

Ancient Indian Justice System

(Release on personal assurance in limited cases)



1215

Magna Carta

(Foundation of personal liberty)

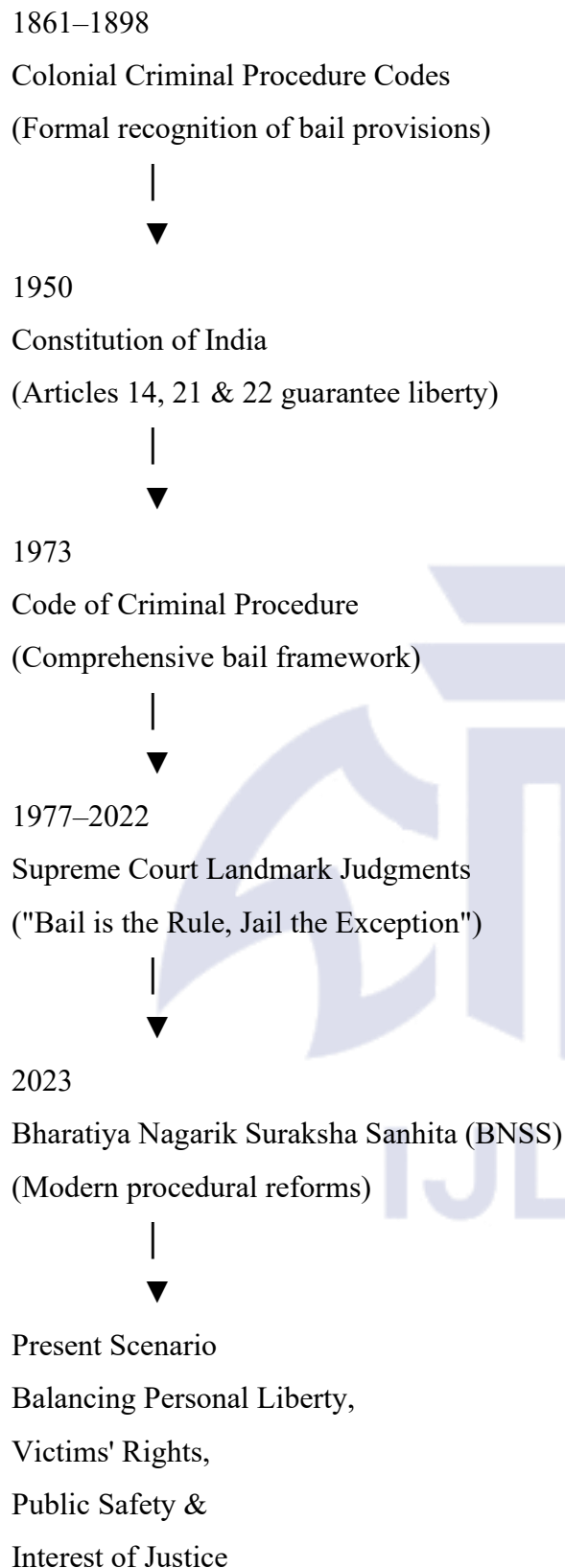


1679

Habeas Corpus Act (England)

(Protection against unlawful detention)





Explanation of Figure 1

Figure 1 illustrates the historical and constitutional evolution of bail jurisprudence, demonstrating how the concept of bail has gradually transformed from a procedural mechanism

into a fundamental constitutional safeguard protecting individual liberty. The journey begins with ancient legal traditions that recognized conditional release in limited circumstances and gradually evolved through English constitutional developments that profoundly influenced Indian criminal law.

The first major milestone is the **Magna Carta of 1215**, which established the foundational principle that no individual should be deprived of liberty except according to law. This principle became the cornerstone of modern constitutional democracies and laid the philosophical basis for the protection of personal liberty against arbitrary state action. The **Habeas Corpus Act of 1679** further strengthened these protections by enabling courts to review unlawful detention and ensuring that executive authorities could not imprison individuals without legal justification.

During the British colonial period, India adopted formal bail provisions through successive Criminal Procedure Codes enacted between **1861 and 1898**. These enactments introduced the distinction between bailable and non-bailable offences and vested courts with discretionary powers to grant bail. Although these provisions primarily served colonial administrative interests, they also established the procedural framework that continued after independence.

The adoption of the **Constitution of India in 1950** fundamentally altered the legal philosophy governing bail by recognizing personal liberty as a fundamental right. Articles 14, 21, and 22 collectively guaranteed equality before law, protection against arbitrary deprivation of liberty, and safeguards relating to arrest and detention. Judicial interpretation subsequently transformed these constitutional guarantees into the modern doctrine governing bail.

A major legislative development occurred with the enactment of the **Code of Criminal Procedure, 1973**, which comprehensively codified the law relating to regular bail, anticipatory bail, and default bail while expanding judicial discretion in accordance with constitutional principles.

From **1977 onwards**, a series of landmark Supreme Court decisions—including *State of Rajasthan v. Balchand*, *Gudikanti Narasimhulu*, *Hussainara Khatoon*, *Sanjay Chandra*, *Arnab Goswami*, and *Satender Kumar Antil*—established the constitutional doctrine that **"bail is the rule and jail is the exception."** These judgments emphasized that pre-trial detention should never become punitive and that courts must balance individual liberty with societal interests by considering factors such as the gravity of the offence, likelihood of absconding, possibility of tampering with evidence, and the overall interests of justice.

The replacement of the Code of Criminal Procedure by the **Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)** marks the latest stage in the evolution of Indian bail jurisprudence.

While preserving the constitutional commitment to personal liberty, the BNSS introduces procedural reforms intended to improve efficiency, facilitate digital criminal proceedings, strengthen victim participation, and ensure the timely disposal of criminal cases.

The present phase of bail jurisprudence reflects a mature constitutional framework that seeks to balance four interconnected objectives: **protection of individual liberty, effective criminal investigation, safeguarding victims' rights, and maintaining public confidence in the administration of justice.** As constitutional values continue to evolve, bail jurisprudence remains one of the most dynamic areas of Indian criminal law, requiring courts to constantly reconcile competing interests in a manner that upholds both the rule of law and the dignity of the individual.

2. Constitutional Framework Governing Bail

The constitutional framework governing bail in India is founded upon the principles of liberty, equality, fairness, and due process embodied in the Constitution of India. Although the Constitution does not expressly confer a fundamental right to bail, the Supreme Court has consistently interpreted various constitutional provisions, particularly Articles 14, 19, 21, and 22, to establish that the grant or refusal of bail must conform to constitutional standards of fairness, reasonableness, and non-arbitrariness. Bail jurisprudence therefore represents the practical manifestation of the constitutional commitment to protect individual liberty while simultaneously ensuring effective criminal administration.

The philosophy underlying constitutional bail jurisprudence is that every accused person is presumed innocent until proven guilty. Consequently, detention before conviction should not become a substitute for punishment. The criminal justice system must ensure that restrictions upon liberty are proportionate, necessary, and justified by compelling public interest. This constitutional approach has been consistently reaffirmed by the Supreme Court, which has repeatedly observed that personal liberty occupies a preferred position among fundamental rights and cannot be curtailed except through a procedure that is fair, just, and reasonable.

3. Statutory Framework under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)

The enactment of the **Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)** marks a significant milestone in India's criminal procedural law. Replacing the Code of Criminal Procedure, 1973

with effect from **1 July 2024**, the BNSS substantially retains the traditional principles governing bail while introducing several procedural reforms intended to improve efficiency, expedite criminal proceedings, strengthen victims' rights, and enhance technological integration within the justice system. The principal provisions relating to bail are contained in **Chapter XXXV (Sections 478–496.)**

1. Bail in Bailable Offences (Section 478)

Section 478 preserves the long-established principle that bail is a matter of right in bailable offences. Whenever a person accused of a bailable offence is arrested or detained, the police officer or Magistrate must release the accused upon execution of the prescribed bond or bail bond.

2. Bail in Non-Bailable Offences (Section 480)

Section 480 governs bail in non-bailable offences. Unlike Section 478, bail is not automatic but depends upon judicial discretion. While exercising such discretion, courts generally consider:

- seriousness of the offence;
- nature of accusations;
- prima facie evidence;
- possibility of absconding;
- likelihood of influencing witnesses;
- probability of tampering with evidence;
- previous criminal antecedents; and
- larger interests of justice.

3. Anticipatory Bail (Section 482)

Section 482 preserves the remedy of anticipatory bail, enabling a person who reasonably apprehends arrest for a non-bailable offence to seek pre-arrest protection from the High Court or Court of Session.

While considering anticipatory bail, courts generally examine:

- seriousness of allegations;
- antecedents of the applicant;
- possibility of fleeing justice;
- likelihood of misuse of liberty;

- motive behind the accusation; and
- need for custodial interrogation.

Anticipatory bail remains one of the most important procedural safeguards against arbitrary arrest.

4. Special Powers of Higher Courts (Section 483)

Section 483 confers wide discretionary powers upon the High Courts and Courts of Session to grant bail in appropriate cases. These superior courts possess broader jurisdiction than Magistrates and may impose suitable conditions to balance individual liberty with the interests of justice.

5. Maximum Period of Detention of Undertrial Prisoners (Section 479)

One of the significant reforms under the BNSS is Section 479, which seeks to reduce prolonged pre-trial incarceration by prescribing limits on detention of undertrial prisoners in appropriate circumstances. The provision aims to prevent indefinite incarceration where trial remains pending for extended periods and reflects the constitutional commitment to speedy justice under Article 21.

6. Other Procedural Provisions

The BNSS further regulates:

- execution of bail bonds;
- amount and reduction of bonds;
- sureties;
- forfeiture of bonds;
- discharge of sureties; and
- cancellation of bail where necessary.

4. Judicial Interpretation of Bail

Although bail is governed by statutory provisions, its practical development has largely been shaped by constitutional interpretation undertaken by the Supreme Court. Judicial decisions have transformed bail from a procedural remedy into an important constitutional safeguard protecting individual liberty.

Indian courts have consistently emphasized that personal liberty cannot be sacrificed merely because criminal proceedings have commenced. Every bail application must therefore be examined through the constitutional lens of Articles 14 and 21 rather than by mechanically applying statutory provisions.

5. Bail under Special Statutes (NDPS, UAPA, PMLA and Other Special Laws)

While ordinary offences are governed by the general principles of the BNSS, Parliament has enacted several special statutes that prescribe stricter conditions for grant of bail owing to the gravity of offences and larger public interest involved.

1. Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act)

Section 37 of the NDPS Act imposes stringent conditions before bail may be granted in cases involving commercial quantities of narcotic substances. Courts must be satisfied that:

- there are reasonable grounds for believing that the accused is not guilty; and
- the accused is unlikely to commit any offence while on bail.

These requirements considerably restrict judicial discretion.

2. Unlawful Activities (Prevention) Act, 1967 (UAPA)

Section 43D(5) of the UAPA prescribes one of the strictest bail standards in Indian criminal law. Bail ordinarily cannot be granted if the Court finds reasonable grounds for believing that the accusation is *prima facie* true.

The provision reflects Parliament's attempt to balance national security with constitutional liberty.

3. Prevention of Money Laundering Act, 2002 (PMLA)

Section 45 of the PMLA incorporates the well-known "twin conditions," requiring the Court to record satisfaction that:

- the accused is not guilty; and
- the accused is unlikely to commit any offence while on bail.

Although these provisions have undergone constitutional scrutiny, they continue to impose a significantly higher threshold than ordinary criminal offences.

6. Principles Governing Grant and Refusal of Bail

Indian courts have gradually evolved well-established principles for determining whether bail should be granted or refused. These principles seek to ensure consistency while preserving necessary judicial discretion.

The principal considerations include:

1. **Nature and gravity of the offence.**
2. **Prima facie case against the accused.**
3. **Severity of the prescribed punishment.**
4. **Likelihood of absconding.**
5. **Possibility of tampering with evidence.**
6. **Likelihood of influencing or threatening witnesses.**
7. **Criminal antecedents of the accused.**
8. **Possibility of repeating similar offences.**
9. **Requirement of custodial interrogation.**
10. **Health, age, gender, and humanitarian considerations.**
11. **Length of pre-trial detention.**
12. **Delay in investigation or trial.**
13. **Larger interests of justice and public confidence.**

7. Landmark Supreme Court Judgments on Bail

Case	Principle Established
State of Rajasthan v. Balchand (1977)	Introduced the celebrated doctrine that "Bail is the rule and jail is the exception."
Gudikanti Narasimhulu v. Public Prosecutor (1978)	Justice Krishna Iyer emphasized that liberty should ordinarily prevail unless compelling circumstances justify detention.
Hussainara Khatoon v. State of Bihar (1979)	Recognized speedy trial as a fundamental right under Article 21 and ordered release of numerous undertrial prisoners.
Gurbaksh Singh Sibbia v. State of Punjab (1980)	Constitution Bench laid down comprehensive principles governing anticipatory bail and held that judicial discretion should not be unnecessarily restricted.
Kalyan Chandra Sarkar v. Rajesh Ranjan (2004)	Explained factors governing successive bail applications and judicial discretion.

Sanjay Chandra v. CBI (2012)	Held that pre-trial detention should not become punitive and reaffirmed the presumption of innocence.
Dataram Singh v. State of Uttar Pradesh (2018)	Reiterated that personal liberty under Article 21 requires liberal consideration of bail applications consistent with justice.
Arnab Manoranjan Goswami v. State of Maharashtra (2020)	Observed that constitutional courts must protect personal liberty whenever unjustified incarceration occurs.
Satender Kumar Antil v. CBI (2022)	Issued comprehensive nationwide guidelines for arrest and bail, emphasizing that unnecessary arrests should be avoided and liberty must remain the guiding constitutional value.

4. Statutory Framework under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)

The **Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)**, which came into force on **1 July 2024**, replaced the Code of Criminal Procedure, 1973 (CrPC) as part of India's comprehensive criminal law reforms. Along with the Bharatiya Nyaya Sanhita, 2023 (BNS) and the Bharatiya Sakshya Adhiniyam, 2023 (BSA), the BNSS seeks to modernize criminal procedure while preserving constitutional values of justice, fairness, and personal liberty. The provisions relating to bail are primarily contained in **Chapter XXXV (Sections 478–496)**, governing regular bail, anticipatory bail, cancellation of bail, bail bonds, sureties, and the release of undertrial prisoners.

Section **478** provides that bail in **bailable offences** is a statutory right. An accused willing to furnish the required bail bond or personal bond must be released by the police officer or Magistrate, reflecting the principle that detention should not be unnecessary in less serious offences.

In contrast, **Section 480** deals with **non-bailable offences**, where the grant of bail is left to judicial discretion. Courts consider factors such as the nature and gravity of the offence, prima facie evidence, the possibility of absconding, tampering with evidence, criminal antecedents,

and the necessity of custodial interrogation. Humanitarian considerations are also recognized in favour of women, children, elderly persons, and individuals who are sick or infirm.

A significant reform under the BNSS is **Section 479**, which addresses prolonged detention of undertrial prisoners. It permits the release of eligible first-time offenders after completion of one-third of the maximum prescribed sentence and other undertrial prisoners after one-half of the maximum punishment, subject to statutory exceptions. This provision seeks to reduce prison overcrowding and uphold the constitutional right to a speedy trial under Article 21.

The BNSS also retains the provision for **anticipatory bail under Section 482**, enabling individuals apprehending arrest in non-bailable offences to seek protection from the High Court or the Court of Session. While considering such applications, courts examine the seriousness of the allegations, criminal antecedents, likelihood of absconding, requirement of custodial interrogation, and the interests of justice. Additionally, **Section 483** empowers the High Courts and Courts of Session to grant bail with appropriate conditions to ensure cooperation with investigation and trial.

The remaining provisions (**Sections 484–496**) regulate procedural matters relating to bail bonds, sureties, forfeiture, cancellation of bail, and re-arrest where bail conditions are violated. These provisions aim to ensure procedural fairness while preventing excessive or unreasonable bail conditions.

Although the BNSS provides the statutory framework governing bail, its provisions must be interpreted in harmony with **Articles 14, 21, and 22 of the Constitution of India**. Consequently, judicial discretion continues to be guided by the principles of equality, fairness, proportionality, and the presumption of innocence, ensuring that criminal procedure serves as a safeguard for personal liberty rather than a means of punitive detention before conviction.

5. Comparative Analysis of Bail Jurisprudence: India, United Kingdom, United States, Canada and Australia

Comparative Analysis of Bail Jurisprudence

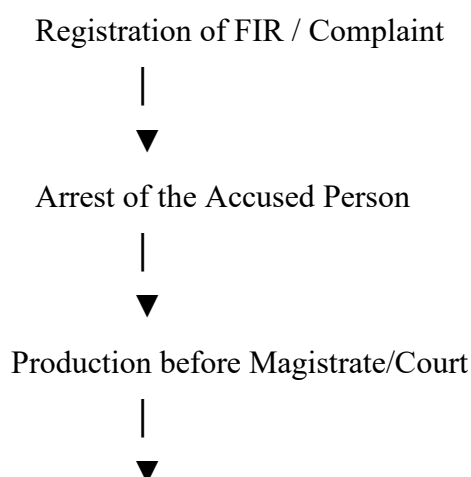
Bail jurisprudence across democratic legal systems seeks to balance the fundamental right to personal liberty with the need to ensure the effective administration of criminal justice. While

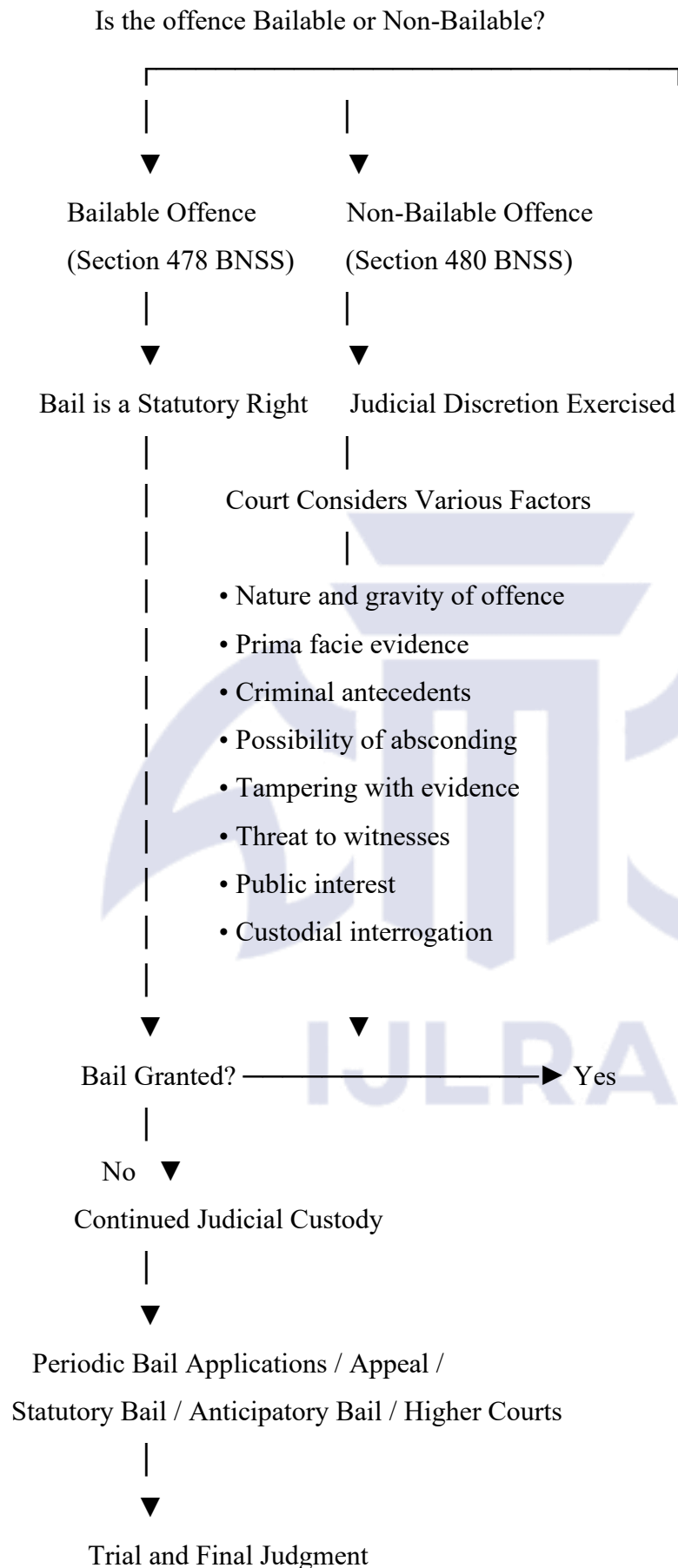
the presumption of innocence is universally recognized, different jurisdictions adopt varying approaches to judicial discretion, monetary bail, and preventive detention. In India, the **Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)** governs bail alongside constitutional safeguards under Articles 14, 21, and 22. Courts consider factors such as the gravity of the offence, likelihood of absconding, tampering with evidence, and public interest. However, special legislations like the **UAPA**, **NDPS Act**, and **PMLA** impose stricter conditions on granting bail.

The **United Kingdom**, through the **Bail Act 1976**, presumes bail as the norm and emphasizes non-monetary conditions such as reporting requirements and electronic monitoring rather than financial sureties. In the **United States**, the **Federal Bail Reform Act, 1984** has gradually shifted the focus from cash bail to risk-based assessments, considering factors like public safety and flight risk. **Canada** provides strong constitutional protection under Section 11(e) of the **Canadian Charter of Rights and Freedoms**, favouring release unless detention is justified, while minimizing reliance on financial conditions. Similarly, **Australia** adopts state-specific bail legislation that relies on structured risk assessment, supervised release, and technological monitoring.

A comparative analysis reveals that countries such as the United Kingdom, Canada, and Australia increasingly prioritize individualized risk assessment and conditional release over monetary bail. India can draw valuable lessons from these jurisdictions by reducing dependence on financial sureties, strengthening legal aid, introducing standardized bail guidelines, and expanding supervised release mechanisms. Such reforms would enhance consistency in bail decisions while ensuring a better balance between personal liberty and the interests of justice.

Figure 2: Decision-Making Process for Grant of Bail under the BNSS, 2023





Explanation of Figure 2

Figure 2 illustrates the procedural framework governing the grant of bail under the Bharatiya Nagarik Suraksha Sanhita, 2023. The process commences with the registration of a First Information Report (FIR) or complaint, followed by the arrest of the accused wherever considered necessary under law. After arrest, the accused must be produced before the competent Magistrate within twenty-four hours in accordance with Article 22 of the Constitution and the provisions of the BNSS. At this stage, the court determines whether the alleged offence falls within the category of bailable or non-bailable offences. If the offence is bailable, Section 478 of the BNSS grants the accused a statutory right to be released upon furnishing the prescribed bail bond or personal bond. However, where the offence is non-bailable, the court exercises judicial discretion after evaluating multiple factors such as the seriousness of the offence, the strength of the prosecution's case, the possibility of absconding, criminal antecedents, the likelihood of tampering with evidence or influencing witnesses, and the larger interests of justice. Depending upon these considerations, the court may either grant or refuse bail. Even where bail is initially refused, the accused retains the right to file subsequent bail applications before higher courts or seek statutory remedies such as anticipatory bail or default bail where applicable. Ultimately, the objective of the bail process is to ensure the accused's presence during trial while simultaneously safeguarding the constitutional right to personal liberty.

6. Current Challenges in India's Bail Jurisprudence

Challenges in Bail Jurisprudence (200 Words)

Despite significant constitutional and statutory advancements, the implementation of bail jurisprudence in India continues to face several practical and institutional challenges. One of the most serious concerns is the large number of undertrial prisoners who remain in custody due to delayed investigations, prolonged trials, judicial backlog, and inability to satisfy bail conditions. Such detention undermines the constitutional guarantee of personal liberty under Article 21 and the presumption of innocence. Inconsistent exercise of judicial discretion in bail matters also leads to uncertainty and unequal treatment of similarly situated accused persons, highlighting the need for uniform bail guidelines. Socio-economic inequalities further restrict access to justice, as economically weaker individuals often remain incarcerated because they cannot furnish sureties or meet financial conditions, while financially stronger accused secure release more easily. The stringent bail provisions under special legislations such as the Unlawful Activities (Prevention) Act, 1967, the Narcotic Drugs and Psychotropic Substances

Act, 1985, and the Prevention of Money Laundering Act, 2002 significantly limit judicial discretion and frequently result in prolonged pre-trial detention. Additionally, misuse of arrest powers, transitional challenges in implementing the Bharatiya Nagarik Suraksha Sanhita, 2023, shortage of judicial personnel, and inadequate technological infrastructure continue to delay bail proceedings and hinder the realization of a fair, efficient, and rights-oriented criminal justice system.

7. Recommendations

An effective bail system must balance individual liberty with the interests of criminal justice. To strengthen bail jurisprudence under the BNSS, uniform national bail guidelines should be framed to ensure consistency and transparency in judicial decisions. Greater reliance on non-custodial measures, such as personal bonds, supervised release, and periodic reporting, can reduce unnecessary pre-trial detention and prison overcrowding. Courts should also minimize dependence on monetary bail by considering the financial capacity of the accused, thereby promoting equal access to justice. Expedited disposal of bail applications through dedicated bail courts, technological integration, and strict timelines is equally essential. Regular training of judges and police officers on constitutional principles governing arrest and bail, along with periodic review of stringent bail provisions under special laws, would ensure that restrictions on personal liberty remain fair, proportionate, and consistent with constitutional guarantees.

8. Conclusion

Conclusion (150–200 words)

Bail jurisprudence is a cornerstone of the Indian criminal justice system, reflecting the constitutional balance between individual liberty and the administration of justice. Rooted in Articles 14, 21, and 22 of the Constitution and strengthened by the provisions of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), the legal framework affirms that pre-trial detention should remain an exception, not the norm. Judicial recognition of the principle that "bail is the rule and jail is the exception" reinforces the presumption of innocence and safeguards against arbitrary deprivation of liberty. Despite these constitutional and statutory protections, challenges such as overcrowded prisons, prolonged undertrial detention, inconsistent judicial discretion, socio-economic inequalities, and stringent bail provisions under special laws continue to impede effective implementation. Comparative experiences from jurisdictions like the United Kingdom, Canada, Australia, and the United States highlight the value of structured

bail guidelines, non-custodial alternatives, and reduced reliance on monetary bail. Strengthening these reforms, together with ensuring timely disposal of bail applications and consistent judicial practices, will promote a more equitable and efficient system. Ultimately, a fair and rights-oriented bail framework is indispensable for upholding constitutional values, protecting personal liberty, and maintaining public confidence in the criminal justice system.

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