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BETWEEN LIBERTY AND CUSTODY: A COMPARATIVE JURISPRUDENTIAL STUDY OF BAIL AND REMAND IN THE CRIMINAL JUSTICE SYSTEM

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Abstract

Every criminal justice system must answer one uncomfortable question: what should happen to a person who is accused but not yet convicted? Bail and remand are the two legal answers. Remand authorises the State to hold the accused, and bail lets the accused wait for trial in freedom. This article examines both institutions through the Indian legal framework, namely **Articles 21 and 22 of the Constitution and the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)**, which replaced the Code of Criminal Procedure, 1973. It traces how Indian courts moved from the maxim "bail, not jail" to a structured jurisprudence of default bail, anticipatory bail and statutory release of undertrials. It then compares the position in the United Kingdom, the United States, Russia and France. The comparison shows four philosophies: a rights-based presumption of liberty (UK), a risk-based preventive model (US), a court-authorised and time-limited model (Russia) and an exceptional-detention model run by a specialised judge (France). The study concludes that India's real problem is not a lack of law but the way pretrial discretion is exercised, and it offers reforms drawn from the comparative experience.

Keywords: Bail; Remand; Pretrial detention; Presumption of innocence; BNSS 2023; Article 21; Anticipatory bail; Default bail; Comparative criminal procedure

1. Introduction

Imagine two people arrested on the same night for the same alleged offence. The first is released within hours because a relative arranges a surety. The second spends four years in prison before a trial even begins, and is acquitted at the end. Neither has been convicted of anything. The only difference is how bail and remand worked in their cases.

This is the core tension of **pretrial justice**. Society has a legitimate interest in ensuring that the accused appears at trial, that witnesses are not threatened and that evidence is not

destroyed. The accused is, however, presumed innocent, and imprisonment before conviction is punishment without a verdict. Every legal system draws its line somewhere along this spectrum, and where it draws the line says a great deal about how it values liberty.

The problem is acute in India. According to the **National Crime Records Bureau's Prison Statistics India**, roughly three-quarters of the prison population consists of undertrials, people who have not been convicted.¹ The **Law Commission of India, in its 268th Report (2017)**, reviewed the bail framework with this pressure in mind. It dealt about disparity in bail access, overcrowded prisons and financial barriers.²

This article is organised as follows. Part 2 sets out definitions and the legal framework. Part 3 explains the concept in detail, following an accused person through the system. Part 4 collects landmark Indian judgments. Part 5 compares the UK, US, Russia and France. Parts 6 and 7 offer analysis and suggestions, and Part 8 concludes.

2. Definitions and Legal Framework

2.1 Key definitions

Bail is defined in **Section 2(1)(b) of the BNSS** as the release of a person accused or suspected of an offence from the custody of the law, upon conditions imposed by an officer or court, on the execution of a bond or bail bond. In plain terms, it is a conditional promise: *I will be present when the law needs me, and the State lets me stay free until then.*³

Remand has no one-line statutory definition in Indian law. It refers to the judicial authorisation of an accused person's continued detention after arrest, under **Section 187 BNSS** (formerly Section 167 CrPC). It takes two forms:

- **Police custody:** the accused is held at the police station for interrogation.
- **Judicial custody:** the accused is held in prison under the magistrate's authority.⁴

Bailable and non-bailable offences. In a bailable offence, bail is a *matter of right*. In a non-bailable offence, it is a *matter of judicial discretion*. The classification appears in the **First Schedule of the BNSS**.⁵

Bond and surety. A bond is the accused's own *undertaking*. A surety is a *third person who guarantees* the accused's appearance.

¹ Nat'l Crime Records Bureau, Ministry of Home Affairs, Prison Statistics India 2024, at [page number] (2026), [https://ncrb.gov.in/\[exact-URL-path\]](https://ncrb.gov.in/[exact-URL-path]).

² Law Commission of India, *Amendments to Criminal Procedure Code, 1973 – Provisions Relating to Bail* (Report No. 268, 2017).

³ The Bharatiya Nagarik Suraksha Sanhita, 2023, § 2(1)(b), No. 46, Acts of Parliament, 2023 (India).

⁴ Bharatiya Nagarik Suraksha Sanhita, 2023, Act No. 46 of 2023, § 187

⁵ The Bharatiya Nagarik Suraksha Sanhita, Act No. 46 of 2023, sch. I.

2.2 The constitutional foundation

- **Article 21** guarantees that no person shall be deprived of life or personal liberty except by procedure established by law, and since *Maneka Gandhi v. Union of India* (1978) 1 SCC 248 that procedure must be fair, just and reasonable.⁶
- **Article 22(1)** gives the arrested person the right to be informed of the grounds of arrest and to consult a lawyer.
- **Article 22(2)** requires that the arrested person be produced before a magistrate within 24 hours, excluding travel time. It is the constitutional source of remand jurisdiction.

2.3 The statutory map: CrPC to BNSS

Concept	BNSS 2023	CrPC 1973 (repealed)
Arrest without warrant; notice of appearance	S. 35	S. 41, 41A
Grounds of arrest to be communicated	S. 47	S. 50
Production before magistrate in 24 hours	S. 58	S. 57
Remand; default bail	S. 187	S. 167
Bail in bailable offences	S. 478	S. 436
Maximum detention of undertrials	S. 479	S. 436A
Bail in non-bailable offences	S. 480	S. 437
Anticipatory bail	S. 482	S. 438
Special powers of High Court and Sessions Court	S. 483	S. 439

The substantive offences are now in the **Bharatiya Nyaya Sanhita, 2023 (BNS)**, which replaced the Indian Penal Code. Special statutes such as the **NDPS Act, 1985 (S. 37)**, the **PMLA, 2002 (S. 45)** and the **UAPA, 1967 (S. 43D(5))** impose additional, *stricter bail conditions*.⁷

3. The Concept in Detail

3.1 The journey of an accused: an illustration

Take Raj, a 28-year-old accountant, arrested at 9 p.m. on a Monday on allegations of cheating and forgery.

Step 1: Arrest. The police must have a legally valid reason and must tell him the grounds (S.

⁶ 1978 AIR 597, 1978 SCR (2) 621

⁷ Narcotic Drugs and Psychotropic Substances Act, 1985, § 37; Unlawful Activities (Prevention) Act, 1967, § 43D(5); Prevention of Money Laundering Act, 2002, § 45.

47).⁸ For offences punishable with up to seven years, the police are encouraged to issue a *notice of appearance* (S. 35(3)) instead of arresting him.⁹

Step 2: The 24-hour clock. By 9 p.m. on Tuesday, he must be before a magistrate (S. 58). This is the first judicial check on police power.¹⁰

Step 3: The remand decision. If the police say the investigation cannot be finished in 24 hours, they ask for remand under S. 187.¹¹ The magistrate must apply his mind rather than sign mechanically. He may:

- release him on **bail** if the offence is bailable;
- send him to **police custody** (up to 15 days in total, a period the BNSS allows to be used in parts during the first 40 or 60 days of the 60/90-day detention period);
- send him to **judicial custody**.

Step 4: The ticking investigation clock, or default bail. The law does not allow investigation to run indefinitely. If the police do not file the chargesheet within **90 days** (offences punishable with death, life imprisonment or imprisonment of at least ten years) or **60 days** (all other offences), Raj acquires an *indefeasible right* to bail, called **default or statutory bail** (S. 187(3)).¹² The right survives only if he applies for it before the chargesheet is filed.

Step 5: Regular bail. At any stage, he may apply to the Magistrate, then to the Sessions Court or High Court (S. 480, S. 483), and ultimately to the Supreme Court.¹³

Step 6: Statutory release. If he is still an undertrial after a long period, S. 479 BNSS may release him.¹⁴

3.2 The forms of bail

(a) Bail as of right (S. 478). In a bailable offence, release is automatic on furnishing a bond. A person who cannot arrange surety within a week of arrest is presumed indigent and must be released on personal bond. This addresses what is called *poverty detention*.¹⁵

(b) Regular bail in non-bailable offences (S. 480). This is a discretionary power with one important limit. The accused shall not be released if there are *reasonable grounds for believing* he is guilty of an offence punishable with death or life imprisonment. The exceptions are

⁸ Bharatiya Nagarik Suraksha Sanhita, 2023, § 47.

⁹ Bharatiya Nagarik Suraksha Sanhita, 2023, § 35(3).

¹⁰ Bharatiya Nagarik Suraksha Sanhita, 2023, § 58, No. 46, Acts of Parliament, 2023 (India).

¹¹ § 187, Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India).

¹² Bharatiya Nagarik Suraksha Sanhita, 2023, § 187(3).

¹³ Bharatiya Nagarik Suraksha Sanhita, § 480, 483 (2023).

¹⁴ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 479.

¹⁵ Bharatiya Nagarik Suraksha Sanhita, 2023, § 478.

persons under 16, women, and the sick or infirm. Courts typically weigh:

1. the nature and gravity of the accusation;
2. the severity of the likely punishment;
3. the risk of absconding;
4. the risk of tampering with evidence or influencing witnesses;
5. the prima facie case;
6. the accused's antecedents and character;
7. the length of custody already undergone and the likely time the trial will take.

The first six factors protect the process, and the seventh protects the person.¹⁶

(c) Anticipatory bail (S. 482). This is a pre-arrest remedy for a person who fears arrest on a non-bailable accusation. The expression is misleading, because the bail does not "anticipate" anything. It is a direction that *if* arrested, the person shall be released on bail. India has an unusual institution here. Many countries have no real equivalent, as the comparative section shows.¹⁷

Illustration: A businessman in a bitter partnership dispute learns that his partner has lodged a criminal complaint to pressure him. He approaches the Sessions Court for protection from arrest and is directed to cooperate with the investigation while remaining free.

(d) Default bail (S. 187(3)). This is the only bail that is truly a right even in serious offences, and it forces the State to finish what it started.¹⁸

(e) Statutory bail for long undertrials (S. 479). A *first-time offender* who has served *one-third of the maximum sentence* for the offence is entitled to release. Others become eligible after *one-half*. It does not apply to offences punishable with death or life imprisonment, or where multiple cases are pending. The jail superintendent must apply to the court once the person becomes eligible.¹⁹ In *In Re: Inhuman Conditions in 1382 Prisons*, the Supreme Court held in August 2024 that the section applies to undertrials in cases registered before 1 July 2024, and directed jails to identify eligible undertrials.²⁰

(f) Interim bail. Short-term relief granted while the main bail application, regular or anticipatory, is still pending. It keeps the person free for the days or weeks the court needs to decide.

¹⁶ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 480, India Code.

¹⁷ Bharatiya Nagarik Suraksha Sanhita, § 482 (2023).

¹⁸ Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023, § 187(3).

¹⁹ Bharatiya Nagarik Suraksha Sanhita, 2023, § 479.

²⁰ In re Inhuman Conditions in 1382 Prisons, W.P. (C) No. 406/2013, Order of 23 Aug. 2024 (SC) (2024 LiveLaw (SC) 632).

(g) Bail pending appeal (S. 430). After conviction, an appellate court can suspend the sentence and release the convict on bail while the appeal is pending. The presumption of innocence no longer applies at this stage, so courts look at the strength of the appeal and the time it is likely to take.²¹

(h) Transit bail. This is a short-term protection from arrest for a person travelling to the court that has jurisdiction in another State, so that the person can apply for regular or anticipatory bail there. It has no express statutory basis and has been developed by the High Courts as a practical remedy.

Illustration: A man living in Chennai learns that an FIR has been registered against him in Delhi. Before he can reach a Delhi court, he fears arrest by the Delhi police. The Madras High Court gives him a few days' protection to travel and apply in Delhi.

(i) Bail under special statutes. This is not a separate type, but a stricter version of regular bail. Laws such as the NDPS Act (S. 37), UAPA (S. 43D(5)) and PMLA (S. 45) add "twin conditions" that the court must satisfy before granting bail. This reverses the usual presumption of liberty and is a major reason why prolonged custody continues.²²

3.3 Conditions and cancellation

Courts may impose conditions: surrender of passport, regular reporting, restrictions on contacting witnesses, residence requirements. The conditions must be reasonable and tied to the purposes of bail. A condition that serves no such purpose, such as an impossible financial surety, is effectively a refusal of bail in disguise. Bail may be cancelled if the accused violates conditions or misuses liberty. Courts distinguish *rejection* of bail from *cancellation* of bail, and require very cogent reasons for the latter.

3.4 Special statutes: the twin-conditions problem

Special laws such as the NDPS Act (S. 37), the PMLA (S. 45) and the UAPA (S. 43D(5)) reverse the usual logic. The court may grant bail only if it is satisfied that there are reasonable grounds for believing the accused is *not guilty* and *will not commit an offence while on bail* (the NDPS and PMLA formula), or if the accusation is not *prima facie true* (UAPA). Effectively, the accused must show something close to innocence at a stage when no evidence

²¹ Bharatiya Nagarik Suraksha Sanhita, 2023, § 430, Act No. 46 of 2023.

²² Narcotic Drugs and Psychotropic Substances Act, 1985, § 37; Unlawful Activities (Prevention) Act, 1967, § 43D(5); Prevention of Money Laundering Act, 2002, § 45.

has been tested. The constitutional tension this creates is addressed in the cases below.²³

4. Landmark Case Laws (India)

The foundational principle: liberty is the rule

- ***State of Rajasthan v. Balchand* (1977) 4 SCC 308.** Justice Krishna Iyer stated that the basic rule is bail, not jail, except where there are circumstances suggesting the accused may flee or tamper with evidence.²⁴
- ***Gudikanti Narasimhulu v. Public Prosecutor* (1978) 1 SCC 240.** The Court held that personal liberty is too precious to be lightly curtailed, and that bail decisions must weigh the individual's liberty against social interest.²⁵
- ***Moti Ram v. State of M.P.* (1978) 4 SCC 47.** Excessive, unaffordable sureties defeat bail. The Court observed that bail should not be set at levels the poor cannot meet, and that the surety system must not discriminate on the basis of wealth.²⁶

The undertrial crisis

- ***Hussainara Khatoon v. State of Bihar* (1980) 1 SCC 81.** This case exposed thousands of undertrials in Bihar's prisons who had been detained for periods longer than the maximum sentence for their alleged offences. The Court held that the right to speedy trial is part of Article 21.²⁷
- ***Hussain v. Union of India* (2017) 5 SCC 702.** The Court reiterated that bail applications should be decided expeditiously and called for systemic measures to reduce delay.²⁸

Anticipatory bail

- ***Gurbaksh Singh Sibbia v. State of Punjab* (1980) 2 SCC 565.** A Constitution Bench refused to tie anticipatory bail to rigid conditions or a fixed time limit. It held that the

²³ Narcotic Drugs and Psychotropic Substances Act, 1985, § 37; Unlawful Activities (Prevention) Act, 1967, § 43D(5); Prevention of Money Laundering Act, 2002, § 45.

²⁴ 1977 AIR 2447, 1978 SCR (1) 535, 1977 ALLCRIC 360, AIR 1977 SUPREME COURT 2447, (1978) 1 SCR 535, 1977 SC CRI R 429, 1977 UJ (SC) 650, 1977 CRI APP R (SC) 333, (1977) 4 SCC 308, 1977 SCC(CRI) 594, 1978 ALLCRIR 35

²⁵ 1978 AIR 429, 1978 SCR (2) 371, AIR 1978 SUPREME COURT 429, (1978) 1 SCC 240, 1978 SCC(CRI) 115, (1978) 1 SC WR 446, 1978 CRI APP R (SC) 35, 1978 ALLCRIC 80, 1978 SIMLC 220, 1978 SC CRI R 99, (1978) 2 SCR 371

²⁶ 1978 AIR 1594, 1979 SCR (1) 335, AIR 1978 SUPREME COURT 1594, 1978 SCC(CRI) 485, 1978 U J (SC) 747, 1978 CRI APP R (SC) 315, 1978 4 SCC 47, 1978 KER LT 747

²⁷ 1979 AIR 1369, 1979 SCR (3) 532, AIR 1979 SUPREME COURT 1369, 1980 (1) SCC 98, (1979) PAT LJR 410, (1979) 3 SCR 532 (SC), 1980 SCC (CRI) 40

²⁸ AIR 2017 SUPREME COURT 1362

power is wide and should be exercised with judicial discretion, applying the principle that liberty is the norm.²⁹

- **Siddharam Satlingappa Mhetre v. State of Maharashtra (2011) 1 SCC 694.** The Court reaffirmed *Sibbia*, cautioned against detention being used as a tool to harass, and listed factors for courts to weigh.³⁰
- **Sushila Aggarwal v. State (NCT of Delhi) (2020) 5 SCC 1.** A Constitution Bench held that anticipatory bail need not be time-limited and can continue until the end of trial, unless the court finds a good reason to limit it.³¹

Arrest and remand safeguards

- **Joginder Kumar v. State of U.P. (1994) 4 SCC 260.** The power to arrest is distinct from the justification for it. Arrest should not be routine.³²
- **Arnesh Kumar v. State of Bihar (2014) 8 SCC 273.** In a case about the misuse of the anti-dowry-harassment provision, the Court directed that police must record reasons for

²⁹ 1980 AIR 1632, 1980 SCR (3) 383, AIR 1980 SUPREME COURT 1632, (1980) 2 SCWR 172, 1980 SCC(CRI) 465, 1980 MADLW (CRI) 135, 1980 CRI APP R (SC) 189, 1980 CHANDLR(CIV&CRI) 153, 1980 (2) SCC 565

³⁰ AIR 2011 SUPREME COURT 312, 2011 AIR SCW 3813, AIR 2011 SC(CRI) 308, 2011 (2) AIR BOM R 213, 2011 (1) AIR KANT HCR 586, (2011) 1 ORISSA LR 405, (2011) 1 GUJ LH 11, (2010) 4 KER LT 930, (2010) 4 MAD LJ(CRI) 745, (2010) 12 SCALE 691, (2011) 1 KCCR 125, (2011) 2 MH LJ (CRI) 16, (2010) 4 CURCRIR 436, (2011) 48 OCR 1, (2011) 72 ALLCRIC 962, (2011) 1 ALLCRILR 1, (2011) 2 GUJ LR 1614, (2011) 1 RECCRIR 126, 2011 CRILR(SC&MP) 1, 2011 (1) SCC 694, (2010) 2 MADLW(CRI) 1385, (2011) 1 CRILR(RAJ) 1, (2011) 1 MPHT 430, (2011) 99 ALLINDCAS 242 (SC), (2011) 1 BOMCR(CRI) 293, (2010) 4 DLT(CRL) 703, 2011 CALCRILR 1 488, (2011) 1 CHANDCRIC 177, 2011 (1) SCC (CRI) 514, 2011 (1) CRIMES 109 SN

³¹ AIR 2020 SUPREME COURT 831, AIRONLINE 2020 SC 74, (2020) 1 CRIMES 225, (2020) 1 KER LT 545, (2020) 1 RAJ LW 373, (2020) 1 RECCRIR 833, (2020) 266 DLT 741, (2020) 2 ADJ 322 (SC), (2020) 2 SCALE 772, (2020) 77 OCR 845

³² 1994 AIR 1349, 1994 SCC (4) 260, AIR 1994 SUPREME COURT 1349, 1994 (4) SCC 260, 1994 AIR SCW 1633, 1994 AIR SCW 820, 1994 AIR SCW 1651, 1994 AIR SCW 816, 1994 AIR SCW 1886, 1994 (1) FAC 8, 1994 CALCRILR 69, 1994 SCC(CRI) 623, 1994 UP CRIR 87, (1994) 3 SCR 661 (SC), 1993 () JT (SUPP) 180, 1994 CRIAPPR(SC) 128, 1994 (4) SCC 569, 1994 UP CRIR 354, 1994 SCC(CRI) 265, 1994 (2) SCR 257, 1994 SCC(CRI) 1311, 1994 (1) SCC(SUPP) 594, 1994 () APLJ(CRI) 390, 1994 SCC(CRI) 1801, 1994 FAJ 81, 1994 (3) SCR 661, 1995 (1) BLJR 439, 1994 CALCRILR 145, (1994) 3 JT 423 (SC), 1994 (1) UJ (SC) 239, 1994 (1) UJ (SC) 671, 1994 APLJ(CRI) 310, 1994 SCC(CRI) 1172, 1994 UP CRIR 435, 1994 (1) SCC(SUPP) 601, 1994 (1) UJ (SC) 180, (1995) 1 IJR 51 (SC), 1995 (1) IJR 51, 1994 CRILR(SC&MP) 484, 1994 CRILR(SC MAH GUJ) 484, 1994 (2) BLJR 975, 1994 (1) SCC 410, (1995) ILR (KANT) 1, (1995) ILR (KANT) 1987, (1994) 1 CRICJ 750, (1994) ALLCRIC 168, (1994) SC CR R 412, 1994 SCC (SUPP) 1 594, 1994 UJ(SC) 1 180, 1994 CRILR(SC MAH GUJ) 6, (1994) SC CR R 485, 1994 SCC (SUPP) 1 601, 1994 CRILR(SC&MP) 71, (1993) CRILT 704, 1994 CRILR(SC MAH GUJ) 261, (1994) 2 CRIMES 106, (1993) 4 CURCRIR 473, (1994) 1 ALLCRILR 26, (1994) 1 ALLCRILR 383, (1994) 1 ALLCRILR 45, (1994) 1 ALLCRILR 831, (1994) 1 CHANDCRIC 15, (1994) 1 CHANDCRIC 54, (1994) 1 CRICJ 646, (1994) 1 CRIMES 230, (1994) 1 CRIMES 725, (1994) 1 CURCRIR 83, (1994) 1 CURLJ(CCR) 245, (1994) 1 EASTCRIC 259, (1994) 1 EFR 437, (1994) 1 FAC 8, (1994) 1 MADLW(CRI) 370, (1994) 1 RECCRIR 641, (1994) 2 BLJ 20, (1994) 2 CHANDCRIC 78, (1994) 2 CRICJ 595, (1994) 2 KER LJ 97, (1994) 2 RECCRIR 383, (1994) 2 RECCRIR 601, (1994) 2 SCJ 127, (1994) 2 SCJ 230, (1994) 7 OCR 553, (1994) ALLCRIC 431, (1994) ALLCRIC 98, (1995) 1 CHANDCRIC 49, (1995) MAD LJ(CRI) 49, 1994 CRILR(SC MAH GUJ) 46, (1994) JAB LJ 562, (1994) 1 CURCRIR 48, (1994) 2 CRICJ 13, (1994) MAD LJ(CRI) 378, 1994 CRILR(SC&MP) 46, 1994 CRILR(SC&MP) 6, (1994) 2 CRICJ 22, (1994) 21 CRILT 391, (1994) 2 CURCRIR 413, (1994) 2 EFR 475, (1994) 1 KER LT 919, (1994) 2 PAT LJR 27, (1994) 2 CURCRIR 401, (1994) 2 ALLCRILR 247, (1994) 1 JT 102 (SC), (1994) 2 JT 689 (SC), (1993) 6 JT 549 (SC)

arrest and that magistrates must not authorise detention mechanically. Failure may attract departmental action and contempt.³³

- **Prabir Purkayastha v. State (NCT of Delhi) (decided 15 May 2024).** A remand order was held invalid because the arrested person had not been furnished with written grounds of arrest.³⁴ The same reasoning appears in *Pankaj Bansal v. Union of India* (2024) 7 SCC 576, which concerned the PMLA.³⁵

Default bail

- **Uday Mohanlal Acharya v. State of Maharashtra (2001) 5 SCC 453.** The right to default bail is indefeasible, but is lost if the accused does not claim it before the chargesheet is filed.³⁶
- **Rakesh Kumar Paul v. State of Assam (2017) 15 SCC 67.** The accused is entitled to the longer or shorter period according to the maximum punishment of the offence.³⁷
- **Bikramjit Singh v. State of Punjab (2020) 10 SCC 616.** Default bail is part of the right to life and liberty under Article 21 and cannot be defeated by the court's delay in dealing with an application.³⁸

Prolonged detention and special statutes

- **Sanjay Chandra v. CBI (2012) 1 SCC 40.** In a high-profile economic offence case,

³³ AIR 2014 SUPREME COURT 2756, 2014 AIR SCW 3930, (2015) 1 MADLW(CRI) 318, (2014) 3 CRILR(RAJ) 721, (2014) 4 MH LJ (CRI) 47, 2014 (3) SCC (CRI) 449, (2014) 2 GUJ LH 547, 2014 CRILR(SC&MP) 721, (2014) 2 MARRILJ 465, (2014) 140 ALLINDCAS 118 (SC), 2014 (2) CALCRILR 457, 2014 (8) SCALE 250, 2014 (140) ALLINDCAS 118, 2014 (8) SCC 273, 2014 (3) ABR (CRI) 46, 2014 ALLMR(CRI) 1705, (2014) 3 CRIMES 206, (2014) 2 DMC 546, (2014) 2 ORISSA LR 562, (2014) 210 DLT 599, (2014) 2 GUJ LR 1848, 2014 CRILR(SC MAH GUJ) 721, (2014) 4 CAL HN 73, (2014) 3 RECCRIR 527, (2014) 3 CRIMES 40, (2015) 1 MPLJ 117, (2015) 1 CIVLJ 852, (2014) 4 MPHT 81, (2014) 4 KANT LJ 177, (2014) 3 KER LJ 330, (2014) 3 KER LT 143, (2014) 3 MAD LJ(CRI) 353, (2014) 58 OCR 999, (2014) 3 PAT LJR 314, (2014) 3 RAJ LW 2171, (2014) 3 CURCRIR 144, (2014) 3 ALLCRIR 2670, (2014) 8 SCALE 250, (2014) 3 JLJR 313, (2014) 3 GAU LT 102, (2014) 3 BOMCR(CRI) 362, (2014) 3 KCCR 1977, (2014) 3 DLT(CRL) 151, (2014) 86 ALLCRIC 568, (2014) 3 ALLCRILR 623, 2014 CRILR(SC&MP) 506, (2014) 2 ALD(CRL) 779

³⁴ *Prabir Purkayastha v. State (NCT of Delhi)*, (2024) 8 SCC 254.

³⁵ *Pankaj Bansal v. Union of India*, (2024) 7 SCC 576.

³⁶ AIR 2001 SUPREME COURT 1910, 2001 (5) SCC 453, 2001 AIR SCW 1500, 2001 (2) EASTCRIC 256, 2001 (2) ALLCRIR 1213, 2001 (2) GUJLR 1148, 2001 (2) LRI 588, 2001 (2) GUJLH 493, 2001 SCC(CRI) 760, 2001 CGLJ 302, 2001 (3) SCALE 29, 2001 ALL MR(CRI) 713, 2001 (4) JT 262, 2001 (5) SRJ 94, 2001 (2) BLJR 1330, 2001 (2) RECCRIR 452, (2001) SC CR R 913, 2001 CHANDLR(CIV&CRI) 144, (2001) 2 ALLCRILR 380, (2001) 3 MAHLR 1, (2001) 2 ORISSA LR 290, (2002) 22 OCR 1, (2001) 2 PAT LJR 182, (2001) 3 SCJ 1, (2001) 2 CURCRIR 100, (2001) 3 SUPREME 142, (2001) 2 UC 58, (2001) 42 ALLCRIC 952, (2001) 2 BLJ 650, (2001) 3 CHANDCRIC 54, (2001) 2 CRIMES 150

³⁷ AIR 2017 SUPREME COURT 3948, 2017 (15) SCC 67, AIR 2017 SC(CRI) 1475, (2017) 4 KER LJ 8, (2017) 4 KER LT 284, (2017) 4 PAT LJR 53, (2017) 68 OCR 1, (2017) 9 SCALE 24, (2017) 101 ALLCRIC 287, 2017 CALCRILR 3 319, (2017) 4 ALLCRILR 275, (2017) 3 RECCRIR 996, (2017) 3 ALLCRIR 2474, (2018) 2 CRIMES 62, (2017) 242 DLT 79, (2017) 178 ALLINDCAS 75 (SC), (2017) 4 JLJR 37, (2017) 3 DLT(CRL) 879, (2017) 5 GAU LT 1, (2017) 3 CURCRIR 371, (2017) 4 MAD LJ(CRI) 62, (2017) 2 ORISSA LR 817, (2017) 3 UC 1756, 2018 (1) SCC (CRI) 401

³⁸ AIR ONLINE 2020 SC 865

the Court held that the object of bail is to secure attendance at trial, not to punish, and that long pretrial detention is unjustifiable merely because the offence is grave.³⁹

- **Union of India v. K.A. Najeeb (2021) 3 SCC 713.** Despite the restrictions under the UAPA, constitutional courts can grant bail where the accused has endured prolonged incarceration with no prospect of trial concluding.⁴⁰
- **Vijay Madanlal Choudhary v. Union of India 2022 SCC OnLine SC 929.** The Court upheld the twin conditions in the PMLA,⁴¹ though the latter case of *Manish Sisodia* (decided 9 August 2024) reaffirmed that bail remains the rule and that prolonged pretrial detention cannot be used as punishment even in such cases.⁴²
- **Satender Kumar Antil v. CBI (2022) 10 SCC 51.** Perhaps the most important modern decision. The Court classified offences into four categories (A: up to seven years; B: death, life, or over seven years; C: special statutes with twin conditions; D: economic offences outside C) and set out guidelines for each. It stressed compliance with the arrest safeguards of Sections 41 and 41A CrPC and urged Parliament to consider a standalone Bail Act.⁴³

5. Comparative Jurisprudence

The fundamental question across jurisdictions is the same: *on what basis, by whom, for how long, and with what alternatives may an unconvinced person be detained?* The answers differ.

5.1 United Kingdom: the presumption of bail

Framework. The principal statute is the **Bail Act 1976**. **Section 4** creates a *general right to bail*. The right is displaced only where the court finds *substantial grounds* for believing the defendant, if released, would fail to surrender, commit an offence, or interfere with witnesses or obstruct justice (**Schedule 1**).⁴⁴ Under the **Legal Aid, Sentencing and Punishment of Offenders Act 2012**, defendants with no real prospect of a custodial sentence

³⁹ AIR 2012 SUPREME COURT 830, 2012 (1) SCC 40, 2011 AIR SCW 6838, AIR 2012 SC (CRIMINAL) 47, 2011 (13) SCALE 107, (2012) 1 MH LJ (CRI) 516, (2012) 1 CHANDCRIC 247, 2012 (1) SCC(CRI) 26, (2011) 108 ALLINDCAS 41 (SC), (2011) 4 CURCRIR 261, (2011) 4 CRIMES 323, (2011) 13 SCALE 107, (2011) 75 ALLCRIC 934, (2012) 1 GUJ LH 93, (2012) 1 MADLW(CRI) 46, (2012) 1 UC 151, (2012) 2 CGLJ 149, (2011) 4 DLT(CRL) 578, 2012 (1) ALD(CRL) 599, 2012 (1) KLT SN 36 (SC)

⁴⁰ AIR 2021 SUPREME COURT 712

⁴¹ *Vijay Madanlal Choudhary v. Union of India*, (2022) 10 SCC 201.

⁴² *Manish Sisodia v. Directorate of Enforcement*, 2024 INSC 595.

⁴³ *Satender Kumar Antil v. CBI*, (2022) 10 SCC 51 (India).

⁴⁴ Bail Act 1976, c. 63, § 4 (UK).

generally cannot be remanded in custody.

Arrest and police detention. Under the **Police and Criminal Evidence Act 1984 (PACE)**, a suspect may be held for up to 24 hours (s. 41), extendable to 36 hours by a superintendent (s. 42), and up to a maximum of 96 hours with a magistrates' warrant (ss. 43–44).⁴⁵ Terrorism suspects may be held for longer under the **Terrorism Act 2000**. After charge, a person is either bailed or remanded to court. Under s. 128 **Magistrates' Courts Act 1980**, remand periods are generally limited to eight clear days at a time.⁴⁶

Custody time limits. The **Prosecution of Offences Act 1985**, s. 22 and its regulations cap time in custody before trial: 56 days between first appearance and summary trial, and 182 days between sending for trial and the start of a Crown Court trial. If the prosecution misses the limit without having obtained an extension, the defendant must be bailed. This is closer to Indian default bail than most other models.⁴⁷

Exception for grave offences. Section 25 of the **Criminal Justice and Public Order Act 1994** restricted bail for people charged with homicide or rape who had a previous conviction for such offences, unless exceptional circumstances existed.⁴⁸ The European Court of Human Rights in *Caballero v. United Kingdom* (2000) 30 EHRR 643 held that this kind of automatic bar violated **Article 5(3) of the ECHR**, because the judge could not assess the individual facts.⁴⁹

Case law. *R v. Mansfield Justices, ex p. Sharkey* [1985] QB 613 confirms that bail conditions must have a proper connection with the statutory grounds for refusing bail. Since the **Human Rights Act 1998**, Article 5 ECHR (liberty and security) is directly applied by English courts.⁵⁰

Pre-charge bail. After the **Policing and Crime Act 2017**, release under investigation was tightened by a 28-day initial limit on pre-charge bail, extendable with authorisation.

Distinctive feature: a statutory presumption in favour of bail, which makes denial the exception requiring reasons.

5.2 United States: from money to risk

Constitutional frame. The **Eighth Amendment** forbids "excessive bail", but does not

⁴⁵ Police and Criminal Evidence Act 1984, c. 60, §§ 41–44 (Eng.)

⁴⁶ Magistrates' Courts Act 1980, c. 43, § 128 (Eng.)

⁴⁷ Prosecution of Offences Act 1985, c. 23, § 22 (UK).

⁴⁸ Criminal Justice and Public Order Act, 1994, c. 33, § 25 (Eng.)

⁴⁹ *Caballero v. United Kingdom*, 2000-II Eur. Ct. H.R. 115.

⁵⁰ *R v. Mansfield Justices, ex parte Sharkey*, [1985] Q.B. 613 (Eng.).

guarantee a right to bail. The **Fifth and Fourteenth Amendments** supply due process, and the **Fourth Amendment** supplies the requirement of a prompt probable-cause determination.⁵¹

Federal statute. Under the **Bail Reform Act of 1984 (18 U.S.C. § 3142)**, the judge may release the defendant on personal recognizance, on conditions, or detain the defendant if no condition can reasonably assure appearance and community safety.⁵² For certain offences (for example, serious drug offences or offences involving firearms), there is a *rebuttable presumption* of detention. The **Speedy Trial Act 1974** sets a 70-day target for trial.

Landmark cases.

- ***Stack v. Boyle*, 342 U.S. 1 (1951)**: bail set higher than necessary to ensure appearance is excessive.⁵³
- ***Gerstein v. Pugh*, 420 U.S. 103 (1975)⁵⁴ and *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991)⁵⁵**: a probable-cause hearing within 48 hours of warrantless arrest is generally required.
- ***United States v. Salerno*, 481 U.S. 739 (1987)**: the Supreme Court upheld preventive detention based on future dangerousness. This gave the American system a *dual purpose*: appearance *and* community safety, not just appearance.⁵⁶
- ***Bearden v. Georgia*, 461 U.S. 660 (1983)⁵⁷ and *In re Humphrey* (Cal. 2021) 11 Cal.5th 135⁵⁸**: courts must not jail people simply because they are too poor to pay.

The cash-bail debate. The United States is distinctive for its **commercial bail bond industry**, in which a private bondsman guarantees the bond for a non-refundable fee. Critics argue that this makes liberty depend on wealth. Reforms include **New Jersey's Criminal Justice Reform Act (2017)**, which largely replaced money bail with risk assessment, and **Illinois's SAFE-T Act**, which abolished cash bail from September 2023. The majority of people in US local jails are awaiting trial.

Distinctive feature: open preventive detention on grounds of dangerousness, combined with a historically money-based release system now under reform.

⁵¹ See, e.g., Brandon Buskey & Colette Tvedt, *Bail and Pretrial Release*, at 42 (2026) (stating that the Eighth Amendment forbids "excessive bail" but does not guarantee a right to bail, while the Fifth, Fourteenth, and Fourth Amendments supply due process and probable-cause requirements).

⁵² 18 U.S.C. § 3142.

⁵³ *Stack v. Boyle*, 342 U.S. 1 (1951).

⁵⁴ *Gerstein v. Pugh*, 420 U.S. 103 (1975).

⁵⁵ *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991).

⁵⁶ *United States v. Salerno*, 481 U.S. 739 (1987).

⁵⁷ *Bearden v. Georgia*, 461 U.S. 660 (1983)

⁵⁸ *In re Humphrey* (Cal. 2021) 11 Cal.5th 135

5.3 Russia: court-ordered custody, a ladder of measures and fixed time limits

Framework. Pretrial custody is governed by the **Code of Criminal Procedure of the Russian Federation (UPK RF)**, Federal Law No. 174-FZ of 18 December 2001, in force since 1 July 2002.⁵⁹ **Article 22 of the Constitution** permits arrest, detention and remand in custody only on a court decision, and a person may not be held for more than 48 hours without one.⁶⁰ A suspect detained by the investigating authorities under arts. 91–92 UPK must be released after 48 hours unless a court has ordered custody or extended the detention (**art. 94**).⁶¹

Two requirements (arts. 97 and 108 UPK). Custody requires:

1. **Reasonable grounds:** grounds to believe that the accused will abscond, continue criminal activity, threaten witnesses or other participants, or destroy evidence or otherwise obstruct the proceedings (**art. 97(1)**); and
2. **Sufficiently serious charge:** the offence must carry more than three years' imprisonment and no milder measure must be possible (**art. 108(1)**). For offences carrying up to three years, custody is exceptional and is available only if the person has no permanent residence in Russia, his identity is not established, or he has breached an earlier measure or absconded from the investigation or the court.

Even then, custody must rest on an **individual assessment**. Under **art. 99** the court must weigh the gravity of the charge, the person's character, age, health, family status and occupation, and its order must state the concrete circumstances that justify custody (**art. 108(1)**). **Art. 108(1.1)** bars custody for specified economic offences committed in the course of business activity, subject to listed exceptions.⁶²

Alternatives. **Art. 98** lists the measures of restraint. Apart from custody they include an undertaking not to leave the area and to behave properly (**art. 102**), personal surety (**art. 103**), a *prohibition of certain actions* (**art. 105.1**), *bail* (**art. 106**) and *house arrest* (**art. 107**). Custody is available only if no milder measure is possible, and a judge who refuses a custody motion may, on his own initiative, order bail or house arrest instead (**art. 108(7.1)**).⁶³

Time limits and review. A custody motion is heard by a single district-court judge, with the suspect, the prosecutor and defence counsel present, within eight hours of the materials

⁵⁹ Ugolovno-Protsessual'nyi Kodeks Rossiiskoi Federatsii [UPK RF] [Code of Criminal Procedure] Fed. Law No. 174-FZ, Dec. 18, 2001 (Sobr. Zakonod. RF 2001, No. 52 (pt. I), Item 4921) (Russ.).

⁶⁰ KONSTITUTSIIA ROSSIISKOI FEDERATSII [KONST. RF] [Constitution] art. 22 (Russ.).

⁶¹ Ugolovno-protsessual'nyi kodeks Rossiiskoi Federatsii [UPK RF] [Code of Criminal Procedure], arts. 91, 92, 94 (Russ.).

⁶² Ugolovno-protsessual'nyi kodeks Rossiiskoi Federatsii [UPK RF] [Code of Criminal Procedure], arts. 97, 99, 108 (Russ.).

⁶³ UPK RF [Code of Criminal Procedure], arts. 98, 102–108 (Russ.).

reaching the court (**art. 108(3)–(4)**). The order can be appealed within three days (**art. 108(11)**). Custody during the investigation may not exceed **two months (art. 109(1))**. A judge may extend it to **six months** and, for grave and especially grave crimes in particularly complex cases, to **twelve months**. Only in exceptional cases involving especially grave crimes can it reach **eighteen months**, and then the accused must be released (**art. 109(2)–(4)**). Once the case reaches court, custody during trial is normally capped at **six months** and may be extended in blocks of up to **three months** for grave and especially grave offences (**art. 255**).⁶⁴ A person later acquitted, or whose prosecution ends on rehabilitative grounds, can claim compensation for unlawful custody (UPK ch. 18; Civil Code art. 1070).⁶⁵

Case law. In **Ruling No. 4-P of 22 March 2005**, the **Constitutional Court** held that a defendant cannot be kept in custody after the case reaches the trial court without a court order.⁶⁶ The **Supreme Court Plenum**, in **Resolution No. 41 of 19 December 2013** (as amended), directs courts to ground custody on verified evidence rather than the investigator's assumptions, and to consider milder measures first.⁶⁷ At the European level, **Kalashnikov v. Russia (ECtHR, 2002)** found a violation of the "reasonable time" guarantee of Article 5(3) in a case of pretrial detention lasting several years. Russia ceased to be a party to the Convention on 16 September 2022, so later judgments no longer bind it, but the earlier case law remains a benchmark.⁶⁸

Distinctive feature: a constitutional court-order requirement, a graded list of milder measures and hard maximum terms for custody. In practice, however, Russian courts granted about 88% of some 97,000 custody motions in 2024, according to the Supreme Court's chairperson.⁶⁹

5.4 France: detention as the last resort, decided by a specialised judge

Framework. French law distinguishes **garde à vue** (police custody) and **détention provisoire** (remand). Both are governed by the **Code de procédure pénale (CPP)**.

Police custody. Under **arts. 62-2 to 64 CPP**, garde à vue may last **24 hours**, extendable by another 24 hours on the authorisation of a prosecutor or judge,⁷⁰ and up to **96 hours** for

⁶⁴ Uголовно-Процессуальный Кодекс Российской Федерации [UPK RF] [Criminal Procedure Code] arts. 108(3)–(4), 108(11), 109(1)–(4), 255 (Russ.).

⁶⁵ Гражданский Кодекс Российской Федерации [GK RF] [Civil Code] art. 1070 (Russ.).

⁶⁶ Конституционный Суд Российской Федерации [KS RF] [Constitutional Court] Mar. 22, 2005, Postanovlenie No. 4-P (Russ.).

⁶⁷ Postanovlenie Plenuma Verkhovnogo Suda Российской Федерации [Plenum of the Supreme Court] Dec. 19, 2013, No. 41 (Russ.).

⁶⁸ *Kalashnikov v. Russia*, App. No. 47095/99 (ECtHR, 2002)

⁶⁹ Russian Courts Acquitted 1,800, Convicted 543,000 Defendants in 2024 – Supreme Court, Interfax (Feb. 20, 2025), https://www.interfax-russia.ru/military/news_eng/419269.

⁷⁰ Code de procédure civile [C. pr. civ.] [Code of Civil Procedure] arts. 62-2 to 64 (Fr.).

organised crime and terrorism (**art. 706-88**). The person has the right to a lawyer from the start, to notify a relative and to see a doctor.⁷¹

The principle of liberty. Article 137 CPP states that a person under investigation remains free.⁷² The law offers a *ladder of measures*:

1. **Judicial supervision, (art. 138)**, which may include conditions and a financial *cautionnement*;
2. **House arrest** with electronic tag, (**art. 142-5**);
3. **Detention** only if the first two are insufficient.⁷³

Conditions for detention. Under **arts. 143-1 and 144 CPP**, detention is allowed only for serious offences (generally a crime punishable by at least three years). The judge must find that detention is the *sole means* of achieving one of listed objectives, among them preserving evidence, preventing pressure on witnesses or victims, protecting the person, guaranteeing availability for justice, ending the offence or preventing its renewal, or, for crimes only, ending an exceptional disturbance of public order.⁷⁴

Who decides? Since the **Law of 15 June 2000** on the presumption of innocence, detention is ordered by the **Juge des libertés et de la détention (JLD)**, a judge distinct from the investigating judge, after an adversarial hearing (**art. 145**). The idea is to separate the person investigating from the person deciding whether to detain.⁷⁵

Time limits (art. 145-1, 145-2). Detention is generally capped at **four months**, renewable, with a ceiling of about **one year** in most cases. For crimes, it is **one year** renewable in **six-month** blocks, up to **two years** in the usual case. The *chambre de l'instruction* hears appeals. A person later released without charge or acquitted can claim **compensation** for wrongful detention (**art. 149 CPP**).⁷⁶

Constitutional and European case law. In **Decision 2010-14/22 QPC (30 July 2010)**, the Conseil constitutionnel struck down the rules on garde à vue as incompatible with the rights of the defence, leading to the reform of April 2011.⁷⁷ In **Medvedyev v. France (ECtHR Grand Chamber, 2010)**⁷⁸ and **Moulin v. France (ECtHR, 2010)**⁷⁹, the European Court held that a

⁷¹ C. pr. pén. art. 706-88.

⁷² CODE DE PROCÉDURE PÉNALE [C. PR. PÉN.] art. 137 (Fr.).

⁷³ Code de procédure pénale [C. pr. pén.] art. 138 (Fr.), Code de procédure pénale [C. pr. pén.] art. 142-5 (Fr.).

⁷⁴ CODE DE PROCÉDURE PÉNALE [C. PR. PÉN.] [Code of Criminal Procedure] arts. 143-1, 144 (Fr.).

⁷⁵ Code de procédure pénale [C. pr. pén.] [Criminal Procedure Code] art. 145 (Fr.), *amended by* Loi 2000-516 du 15 juin 2000, Journal Officiel de la République Française [J.O.], June 16, 2000, p. 9038.

⁷⁶ Code de procédure pénale [C. pr. pén.] [Criminal Procedure Code] arts. 145-1, 145-2, 149 (Fr.).

⁷⁷ Conseil constitutionnel [CC] [Constitutional Court] decision No. 2010-14/22 QPC, July 30, 2010, J.O. 14199 (Fr.).

⁷⁸ *Medvedyev v. France* (ECtHR Grand Chamber, 2010)

⁷⁹ *Moulin v. France* (ECtHR, 2010)

French prosecutor is not a "judge or other officer" with the independence required under Article 5(3). This pushed France toward greater judicial control.

Distinctive feature: a graded ladder of alternatives, a separate "liberty judge" and a right to compensation for unjustified detention.

5.5 At a glance

Feature	India	UK	USA	Russia	France
Core philosophy	Liberty as rule; discretionary bail	Statutory right to bail	Risk and dangerousness	Court order; graded measures	Detention exceptional; ladder of measures
Main statute	BNSS 2023	Bail Act 1976; PACE 1984	Bail Reform Act 1984	UPK RF arts. 97–109, 255	CPP arts. 137–148-8
Who decides	Magistrate / Sessions / High Court	Police, then magistrates / Crown Court	Judge or magistrate	Judge (Const. art. 22)	JLD, a specialised judge
Time for judicial check	24 hours	24–96 hours (police)	~48 hours	48 hours	24–48 hours (96 for organised crime)
Trial-delay safeguard	Default bail (60/90 days); S. 479	Custody time limits	Speedy Trial Act	Fixed maximum terms (arts. 109, 255)	Fixed maximum durations
Pre-arrest protection	Anticipatory bail	None formal	None formal	None	None formal
Compensation for wrongful detention	Limited, indirect	Limited	Limited	Statutory (UPK ch. 18)	Statutory (art. 149 CPP)

5.6 What each system teaches the others

- **India** has a distinctive anticipatory bail remedy and the idea of default bail, an effective check on investigative delay.
- The **UK** shows the value of a presumption with an express list of exceptions, and of

hard custody time limits.

- The **US** shows both the danger of letting money determine liberty and the need for *evidence-based risk assessment* as a replacement.
- **Russia** shows that a *court-order requirement* and *hard maximum terms* can bound custody on paper, although a high rate of approval of custody motions shows that such safeguards also depend on searching scrutiny by judges.
- **France** shows how a *graded ladder* and a *separate liberty judge* can structurally discourage routine detention.

6. Analysis: The Gap Between Law and Practice

India's statutory scaffolding is far from weak. It has constitutional protection, 24-hour production, default bail, statutory release and a mature body of case law. The difficulty lies in implementation:

1. **Mechanical remand.** Magistrates often sign remand orders without examining whether detention is necessary, contrary to the direction in *Arnesh Kumar*.
2. **Unequal access.** Many accused cannot meet surety requirements, despite *Moti Ram*. Legal aid often arrives late.
3. **Seriousness-based refusal.** Bail is frequently denied because the offence is grave, which conflates the *gravity of the allegation* with the *need for custody*.
4. **Special statutes.** Twin conditions and long investigation windows make bail a rarity, and prolonged custody becomes de facto punishment.
5. **Hierarchical drift.** Lower courts, wary of criticism, tend to avoid granting bail, so cases climb to the High Court and Supreme Court, which are overburdened.
6. **Information gaps.** The prison authorities do not always track who is eligible under S. 479 or default bail.

7. Suggestions

1. **A consolidated Bail Act or code, as proposed in Satender Kumar Antil**, with express presumptions, criteria and time limits, borrowing the UK's structure of a stated right and listed exceptions.
2. **Reasoned, individualised remand orders.** Magistrates should record why custody is necessary and why a notice of appearance or lesser measure would not suffice, following the French "sole means" principle.

3. **A graded ladder of alternatives**, including electronic monitoring, reporting conditions and personal bonds, to be considered *before* custody. This is the French and Russian practice.
4. **Fixed maximum terms with judicial extension**, as in Russia. Custody should lapse at fixed intervals unless a judge extends it by a reasoned order, without waiting for the accused to apply for release.
5. **Digital tracking of eligibility**. An e-Prisons-linked system should alert courts and jail superintendents when an undertrial becomes eligible for default bail or S. 479 release.
6. **Funded legal aid at the first remand hearing**, so that the accused's case is argued when the custody decision is first made.
7. **Replace wealth-based sureties** with risk-based, means-sensitive conditions, avoiding the American cash-bail trap.
8. **Statutory compensation for wrongful pretrial detention**, adopting the French and Russian approach.
9. **Calibrate special statutes**. Twin-condition provisions should be read down by courts, or amended by Parliament, so that long incarceration without trial automatically triggers bail review, as *Najeeb* suggests.
10. **Data transparency**. Publish court-wise bail grant and rejection rates, durations and reasons to enable evidence-based reform.

8. Conclusion

Bail and remand reflect a society's attitude to a simple question: how much liberty is a person owed before a court has found him guilty? The jurisprudence examined here suggests that the answer is rarely a matter of law alone. England entrenches a presumption of release, America allows preventive detention but is wrestling with its money-based system, Russia requires court authorisation and fixed time limits for custody, and France treats detention as the exception supervised by a dedicated judge.

India's own journey, from *Hussainara Khatoon* to *Satender Kumar Antil* and the new BNSS provisions, shows a legal system that has in principle accepted that liberty is the rule. The task now is to make that principle operate in the ordinary magistrate's courtroom. The test is not how elegant the statute is, but whether Raj, the ordinary accused of this study, can reliably expect that his custody will be justified, reasoned, time-bound and reviewed. A system meets this standard when pretrial detention becomes a measured exception and not an unexamined routine.