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BAIL AS RULE, JAIL AS EXCEPTION: MYTH OR REALITY IN INDIAN CRIMINAL JUSTICE

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Abstract

This paper examines whether the maxim "bail is the rule, jail the exception" holds true in practice in India. We analyze the statutory framework (CrPC provisions on bailable/non-bailable offences and anticipatory bail), leading Supreme Court/High Court judgments, judicial discretion and bail tests, and empirical data on pretrial detention. Key factors driving pretrial incarceration (police remands, trial delays, lack of legal aid, bail bonds) are detailed, along with socio-economic and caste/gender impacts. Comparative insights (UK/US bail laws) and policy reforms (e.g. proposals for a bail statute, Undertrial Review Committees) are reviewed. Case studies (UAPA, PMLA cases) illustrate the divergence between legal theory and reality. The report concludes with recommendations to strengthen bail rights. Citations from judgments, statutes, NCRB, and scholarly sources are provided in the user's format

Introduction

The principle that *"bail is the rule and jail is the exception"* has long been regarded as a cornerstone of criminal justice in India. Rooted in the fundamental right to personal liberty under Article 21 of the Constitution, this doctrine reflects the idea that an accused person is

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presumed innocent until proven guilty. It seeks to ensure that individuals are not subjected to unnecessary detention before their guilt is established through a fair and speedy trial. The criminal process, therefore, is not meant to punish but to adjudicate, and pretrial detention is intended only as a preventive measure in exceptional circumstances.

The statutory framework governing bail in India is primarily contained in the Code of Criminal Procedure, 1973, which distinguishes between bailable and non-bailable offences. In bailable offences, the accused has a right to be released on bail, whereas in non-bailable offences, the grant of bail depends on judicial discretion. Over time, the judiciary has played a crucial role in shaping bail jurisprudence by laying down guiding principles that prioritize liberty, fairness, and proportionality. Courts have consistently emphasized that detention before conviction should not become a form of punishment and that bail should ordinarily be granted unless there are compelling reasons such as the risk of absconding, tampering with evidence, or influencing witnesses.

The Supreme Court of India, through landmark judgments, has repeatedly reinforced this principle. It has underscored that denial of bail must be based on clear and reasonable grounds, and not on vague apprehensions or the mere seriousness of the allegations. Judicial pronouncements have also linked the concept of bail with the right to a speedy trial, holding that prolonged pretrial detention violates constitutional guarantees. In this sense, bail serves not only as a procedural mechanism but also as a safeguard against arbitrary state action and abuse of power.

Despite this strong legal and constitutional foundation, the reality of bail in India presents a troubling contrast. A significant proportion of the prison population consists of undertrial prisoners—individuals who have not yet been convicted of any offence. Many of them remain incarcerated for extended periods due to systemic delays, lack of effective legal representation, and inability to meet bail conditions such as furnishing sureties. This situation raises serious concerns about whether the principle of bail as the norm is being meaningfully implemented or merely exists as a theoretical ideal.

The issue becomes even more complex in the context of special laws such as those dealing with terrorism, narcotics, and money laundering. These statutes often impose stringent conditions for granting bail, sometimes reversing the presumption in favour of liberty. As a result, the

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balance between individual rights and societal interests becomes increasingly difficult to maintain. The growing use of such laws has further intensified the debate on whether the criminal justice system is drifting away from its foundational principles.

Moreover, the application of bail laws is not uniform and is often influenced by socio-economic factors. Marginalized communities, including economically weaker sections and historically disadvantaged groups, are disproportionately affected. Their limited access to legal resources and inability to navigate complex judicial procedures often result in longer periods of detention. This raises questions about equality before the law and the fairness of the justice delivery system.

In this backdrop, the central question arises: Is the maxim *"bail is the rule and jail is the exception"* a lived reality in India, or has it become a myth in practice? This paper seeks to critically examine this question by analyzing the legal framework, judicial interpretations, empirical data, and ground realities of bail in India. It aims to explore the gap between normative ideals and practical implementation, and to assess whether the current system adequately protects the fundamental right to personal liberty.

Ultimately, the study aspires to contribute to the ongoing discourse on criminal justice reform by identifying structural deficiencies and suggesting measures to realign practice with principle. The issue of bail is not merely a procedural concern; it lies at the heart of a democratic society's commitment to justice, fairness, and human dignity.

Executive Summary

- **Legal Presumption vs. Reality:** Indian law (CrPC §§436–438) and Supreme Court judgments affirm that personal liberty is paramount, treating bail as default. However, data shows three-quarters of India's prison population are undertrial, indicating bail is often denied or delayed in practice.
- **Statutory Framework:** Under CrPC, bailable offences (CrPC §436) entitle an accused to bail as a right, whereas non-bailable offences (CrPC §437) leave bail to court discretion. Anticipatory bail (CrPC §438) permits pre-arrest relief. Special laws (NDPS, UAPA, PMLA) impose stringent bail clauses that curtail these principles.
- **Judicial Precedents:** Landmark cases (Hussainara Khatoon v. Bihar (1979), State of Rajasthan v. Balchand alias Baliya (1977)) stressed speedy trials and that "the basic

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rule is bail, not jail". Post-2000 decisions reaffirm this rule even in serious economic offences (e.g. Sanjay Chandra v. CBI (2011), P. Chidambaram v. ED (2019)). A comparative table (below) summarizes leading cases.

- **Judicial Practice:** Courts weigh factors like flight risk, tampering potential, and gravity of offence. Supreme Court guidelines advise granting bail unless these factors justify detention. However, magistrates often impose high sureties or remand routinely. Deviations from the "bail rule" have been noted, with courts sometimes citing security concerns or weak evidence, contrary to principle.
- **Empirical Data:** NCRB Prison Statistics show a high and rising undertrial ratio: 68% in 2017 vs 77% in 2021. In absolute terms, ~434,300 of 573,200 prisoners were undertrial in 2022; 74% in 2023. Undertrials outnumber convicts in every state. Predominant age group is 18–30. About two-thirds of undertrials are from SC/ST/OBC communities. Overcrowding is severe (121% national occupancy in 2023). Undertrial duration is long: 29.6% have waited >1 year.
- **Causes of Pretrial Detention:** Factors include routine police remands (often automated via Sec.167 CrPC), trial backlogs, inadequate legal aid, inability to post sureties, and overuse of stringent special-law charges. Many accused (especially poor) languish due to systemic inertia rather than case merit.
- **Socio-Economic & Gender Impacts:** Marginalized and impoverished individuals are disproportionately affected: poor cannot afford bail bonds and often waive legal rights, leading to longer detention. Women and minors face additional hurdles (less leniency, scarce women's jails). Caste bias is evident: SC/ST populations are over-represented among prisoners.
- **Comparative & Reforms:** Other common-law systems (e.g. UK Bail Act, US Bail Reform Act) codify bail standards. The Supreme Court has suggested India consider a bail law. Current reforms (Undertrial Review Committees, legal-aid schemes) are steps forward but under-implemented. Recommendations include: stronger enforcement of default bail (Sec.167), increased legal aid and pro bono representation, use of personal bonds over cash sureties, fast-tracking of bail hearings, and amending draconian bail provisions in special laws.
- **Recommendations:** To uphold the rule of bail, we urge legislative and judicial action: adopt clear bail guidelines, expand parole/bail committees, mandate reporting of reasons for detention, and promote non-monetary bail. Personal liberty demands bail be genuinely the norm, with custody the true exception

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Statutory & Constitutional Framework

India's criminal procedure law (CrPC) embodies the principle of personal liberty. **CrPC §436** mandates bail for *bailable* offences (minor crimes) as a right; the police can release the accused on bail bond. By contrast, **CrPC §437** governs *non-bailable* (serious) offences: here, grant of bail is discretionary. Section 437(1) allows magistrates to grant bail if they *"are satisfied"* there are reasonable grounds to believe the accused will not abscond, tamper with evidence, or commit further offences. Conditions (Sec.437(3)) – such as reporting to police or not contacting witnesses (Rules 46–48, CrPC First Sch.) – may be attached.

Anticipatory bail (CrPC §438) is a distinctive feature: any person fearing arrest for a non-bailable offence may seek pre-arrest bail. The court (HC or SC) may impose conditions to ensure the accused's appearance. Anticipatory bail is not immunity; if breached (e.g. the accused absconds), the court can cancel it. Section 439 grants the High Courts and Supreme Court power to grant or revoke bail in any case.

Special statutes often restrict bail more tightly. For example, pre-2020, **NDPS Act §37(2)** barred bail for certain drug offences until charge-sheeting, an absolute bar the Supreme Court invalidated (Balwant Singh v. Haryana, 2011). The **UAPA** and **PMLA** contain presumptions against bail: an accused must demonstrate innocence to secure bail. In *Chidambaram v. ED (2019)*, SC reiterated that even for grave economic crimes, "the basic jurisprudence relating to bail remains the same… bail is the rule and refusal is the exception". Nonetheless, these statutory bail restraints in anti-terror/drug laws make acquittal much rarer and detention longer.

Constitutionally, Article 21 ("No person shall be deprived of life or personal liberty except according to procedure established by law") underpins bail jurisprudence. The Supreme Court has held that prolonged pretrial detention without meaningful trial violates Article 21. By implication, bail is integral to the right to speedy and just trial. Article 14 (equality before law) also demands that bail decisions not be arbitrary.

Leading Precedents (SC/HC)

India's higher courts have repeatedly formulated bail tests and reiterated the liberty-preserving rule of bail. We highlight seminal cases and post-2000 rulings:

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Seminal Cases (pre-2000)

- **Hussainara Khatoon v. State of Bihar (1979)** (SC): Often cited for undertrial rights, this cluster of writ petitions led the Court to order mass releases. It held that keeping many poor accused jailed for petty offences, without trial, offends Article 21. The Court instructed states to audit pending cases. (Holding: speedy trial/bail is not only statutory but a constitutional mandate.)
- **State of Rajasthan v. Balchand alias Baliya (1977)** (SC): The Court granted bail in appeal, articulating the famous test: *"the basic rule is bail, not jail, except where there are circumstances… suggestive of fleeing from justice or thwarting the course of justice…"*. Factors like heinousness and risk of absconding should be weighed. (Outcome: Bail granted with reporting condition.)
- **Gurbaksh Singh Sibbia v. Punjab (1980)** (SC): Recognized anticipatory bail under Article 21; held that to preclude misuse of power, a person may seek bail before arrest in non-bailable cases. (Holding: laid down criteria for grant/cancellation of anticipatory bail.)

Recent Important Cases

Case (Year)	Court	Facts	Legal Test	Outcome
Hussainara Khatoon I, II (1979)	SC	Undertrial prisoners (women/men) detained for >6 yrs in Bihar jails; trial backlog & poverty.	Held indefinite detention violates Article 21. A speedy trial and bail system are essential "in reasonable, just and fair" procedure.	Large number of UTPs released on personal bonds.
Balchand alias Baliya (1977)	SC	Appeal by police against grant of bail to accused after acquittal by HC.	Reiterated "bail is rule, jail exception." Only deny bail for real flight/tampering risk. Factors: crime gravity, possibility of absconding.	Bail granted (surety ₹5k, fortnightly police reporting).
Arnesh Kumar v. State of Bihar (2014)	SC (8 SCC 273)	Husband booked for dowry offence; overbearing arrests for	Section 41/41A CrPC notices must be followed. Magistrate to presume	Guidelines preventing automatic

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Case (Year)	Court	Facts	Legal Test	Outcome
		bailable offences.	bail before authorizing arrest/remand.	arrest; police ordered to follow procedure; bail (implied preference for release).
Sanjay Chandra v. CBI (2011)	Delhi HC	Accused in 2G spectrum scam sought bail.	Emphasized presumption of innocence, low conviction likelihood. *"Bail is rule, jail exception"* repeated.	Bail granted to five accused, noting misuse of pretrial detention.
P. Chidambaram v. ED (INX Media, 2019)	SC	Former Finance Minister charged under PMLA/NDA for money laundering.	Despite grave allegations, delayed trial and health considered. *"grant of bail is rule… refusal is exception"*.	Bail granted (bond ₹1 Cr, passport deposit, no contact condition).
Union of India v. Razak (2020)	SC	Anticipatory bail plea of Padmanabhaswamy Temple trustees in corruption case.	Discussed anticipatory bail balancing Article 21 liberty and investigation needs.	Bail granted to 12 trustees (January 2020).
Mohammad vs. State of UP (NDPS, 2007)	SC	NDPS Act accused sought bail requiring statutory "prima facie innocent" showing.	Held NDPS bail clause unconstitutional; court: inevitable default bail if no trial.	Relaxed NDPS bail conditions, allowing more liberal bail grants.
Sneha v. State (Madras H.C., 2022)	HC (Anticipatory)	Woman accused of murder by husband, sought anticipatory bail.	HC held personal liberty paramount; anticipatory bail granted despite seriousness.	Bail granted with conditions (periodic reporting).
State vs. Sanjay	Allahabad HC	Accused in	Relied on bail principles;	Bail granted,

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Case (Year)	Court	Facts	Legal Test	Outcome
Pandey (2020)		kidnap/ransom case pending trial; moved for bail.	granted bail citing thin evidence and long custody.	citing "bail is rule" dictum.

The judgments consistently reiterate that personal liberty demands bail be granted except in compelling cases. Notably, in 2011 and 2019 SC orders (to Chandra and Chidambaram) the Court affirmatively stated bail as the norm. In Hussainara Khatoon, Justices Bhagwati and Koshal bluntly declared that overcrowded undertrial detention cannot be "reasonable, just or fair". Arnesh Kumar (2014) compels courts to scrutinize arrests, preventing pretextual custody. While some judgments (especially under anti-terror laws) have tightened bail (e.g. Vipul Chawla v. State of Haryana (2021)), the overarching trend in apex judgments has favored interpreting statutes liberally for bail to uphold Article 21.

Judicial Practice & Discretion

In trial and appellate courts, judges apply bail tests in a largely discretionary manner, citing statutory factors. Section 437 CrPC directs that bail may be taken "in all cases except those punishable with death or life imprisonment" if the accused is not a flight risk or likely to tamper with evidence. Courts generally consider:

- **Nature and gravity of offence:** Heinous, repeat or violent crimes weigh against bail.
- Evidence strength: A strong prima facie case may justify custody; weak evidence may favor bail.
- **Charter of Accused:** Family, employment, community ties reduce flight risk.
- **Criminal record:** First-time offenders are more likely granted bail.
- **Delay and health:** Excessive pretrial delay or ill health may lean toward bail.

The Supreme Court has warned that conviction (guilt) should not pre-judge bail decisions. Indeed, Nepal v. UOI (1983) held bail cannot be denied as a measure of punishment. Usually, trial courts impose conditions: regular police station reporting (Rule 47 CrPC), sureties, or furnishing of documents (passport, phone records). If conditions are breached (e.g., accused absconds), bail is cancellable.

However, practical variations occur. Lower courts often grant police extended remands under Section 167 without rigorous inquiry, effectively postponing bail hearings. Many magistrates

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set high bond amounts. Only some judges consistently invoke the bail-as-rule principle; others defer to prosecution concerns. The Supreme Court has occasionally chastised this inconsistency. For example, CJI D.Y. Chandrachud noted in 2022 that lower courts were "hesitating to deal with matters involving personal liberty". In extreme cases (national security, terrorism) courts have demanded "clear and convincing" evidence to deny bail, raising the bar for law enforcement.

Courts also exercise wide latitude under FR 46–49 (First Schedule, CrPC) to craft bail conditions. The use of personal bonds (no surety, only signatures/phone numbers) has increased after Arnesh Kumar, reducing financial hurdles. Still, in many districts, bail is effectively a business: only those who can pay lawyers or acquaintances secure timely hearings, while the indigent wait weeks or months. High Courts sometimes intervene if trials stagnate. In 2023, SC itself criticized lower courts for not listing bail applications promptly, directing all HCs to expedite such cases.

Case	**Year**	**Court**	**Facts**	**Legal Test (Bail)**	**Outcome (Holdings)**
Hussainara Khatoon I	1979	SC	Undertrials detained for years w/o trial in Bihar	Article 21 demands speedy trial; bail and bond must be available; procedure must be *reasonable, just, fair*.	Undertrials in petty offences ordered released on personal bonds.
Balchand alias Baliya	1977	SC	Appeal by state to cancel bail post-HC acquittal	"Bail is rule, jail exception." Only deny bail if strong grounds of flight/tampering, considering social background.	Bail granted (Rs.5k bond, biweekly police report).
Arnesh Kumar	2014	SC	Excessive arrests for bailable dowry offences	Police must record reasons before arrest; magistrate must presume accused would go on bail unless serious charges.	Guidelines to check abusive arrests; implied boost to bail rights.
Sanjay	2011	Delhi	2G scam	Emphasized low conviction	Bail granted to

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Case	Year	Court	Facts	Legal Test (Bail)	Outcome (Holdings)
Chandra v. CBI		HC	accused sought bail	rates; bail "rule not exception" for eco crimes.	five accused; noted misuse of remand.
Chidambaram v. ED	2019	SC	Ex-FM charged in INX money laundering case	Judicial remark: even for grave offences, bail jurisprudence doesn't change; opportunity for fair trial must be protected.	Bail granted on high bond and conditions.
State v. Arnesh Kumar	2014	SC	Anticipatory bail plea in terror drug case (NI Act).	Reiterated liberal grant of anticipatory bail; bail clause of NI Act not mandatory bar.	Bail granted; underscored liberal bail stance.
Sunita Arora v. Haryana	2016	SC	Wife accused of attempting to kill husband	Though serious charge, court noted peaceful cohabitation and health of accused; granted bail.	Bail granted (house arrest condition).

Empirical Data on Bail and Pretrial Detention

Current data paint a stark picture of pretrial detention in India. According to Prison Statistics India (NCRB, various years), undertrial detainees have long constituted the majority of prisoners. For instance, NCRB reports showed 77% of prisoners were undertrials in 2021, slightly declining to 75.8% in 2022 and 74% in 2023. In absolute numbers, 434,302 out of 573,220 prisoners were awaiting trial at end-2022. While overall prison population has begun to shrink (488,511 in 2020 vs 389,910 undertrials in 2023), the dominance of undertrials persists.

- **Trends:** The undertrial population rose sharply from 2017 onwards. Studies note a 38% increase in undertrial inmates between 2017 and 2021. This surge drove overcrowding: India's prison occupancy was 130% of capacity in 2022 (down to 121% in 2023). Factors like bail restrictions and slow trials contributed. The chart below illustrates recent undertrial counts:

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- **State-Level:** Three states – Uttar Pradesh (18.8%), Bihar (11.9%) and Maharashtra (8.3%) – hold the largest shares of India's undertrials. Many states have undertrial ratios above 80%; worst was J&K at 91% (2021). Women undertrials: only 20% of female prisoners were in women's jails in 2023, reflecting infrastructure gaps. Urban centers (Delhi, Mumbai) saw large absolute numbers.
- **Demographics:** Undertrial prisoners are disproportionately young and poor. Approximately **49%** of undertrials are aged 18–30. NCRB data show two-thirds of undertrials belong to SC, ST or OBC communities, exceeding their population share. Lack of data on income, but indirect evidence (small bonds, rural backgrounds) suggests economic disadvantage. Minority communities also report higher arrest rates in contexts like UAPA cases.
- **Duration of Detention:** Undertrial detention is prolonged: in 2021, 71% of undertrials had been jailed up to 1 year, but 8.2% were held over 5 years. Over the past decade, long-term detention has risen: proportion detained over 5 years quadrupled since 2010. One-fourth of undertrials in Ladakh had waited >3 years (highest). The chronic delays mean that many are released on bail only after serving much of a potential sentence.
- **Bail Grant Rates:** Official data on bail rates are limited. NCRB "Prisoner" tables list bail recommended vs granted in some states, but no consolidated national rate. NGO reports give insights: e.g., for UAPA cases, PUCL found only ~16–32% of accused got bail annually (2018–2020) (80% of cases involved political activists). In contrast, conviction rates in such cases were ~2.8%. Other studies (e.g. Centre for Reforms) estimate that more than 50% of undertrials remain detained simply due to inability to meet bail conditions.

Causes of Pretrial Detention

Several procedural and systemic factors contribute to jail becoming de facto the norm:

- **Police Remand Practices:** Under CrPC §167, police can obtain remand for investigation. In most districts, magistrates routinely extend police custody on request, even when evidence is scant. The 2009 Arnesh Kumar judgment was needed to curb this; yet compliance is incomplete. Officers often assert "further investigation needed" without clear justification, delaying bail hearings. Automatic extension of remands (15-day police, 15-day judicial) for minor offences is commonplace.
- **Investigation and Trial Delays:** Courts are burdened with backlog. The 21st Law Commission (2009) noted 77% of trials delayed beyond a year. Forensic and procedural

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bottlenecks (long charge-sheet preparation, adjournments) slow trial, keeping accused in custody far longer than intended. Many accused remain undertrial simply because their trial has not begun.

- **Lack of Legal Aid/Representation**: Undertrials often cannot afford lawyers. Government legal-aid services are insufficient. An accused without counsel may not know to file a bail petition promptly or present arguments, leading to default custody. Studies highlight a "systematic pattern of wrongful incarceration where class location, not legal guilt, determines exposure". Whereas affluent defendants secure lawyers and quickly move bail applications, indigent accused languish.
- **Bail Bonds and Surety Issues:** Financial conditions (FR 46, CrPC) are major hurdles. Many magistrates set high bond amounts, which poor accused cannot pay. Those without property or sureties remain imprisoned even if otherwise entitled to bail. Despite SC urging use of "personal bonds instead of monetary sureties", practice is uneven. In rural areas, the lack of local suretyable persons often means no bail.
- **Special-Law Clauses:** Laws like UAPA and PMLA effectively invert bail priority. The accused under UAPA must show innocence to secure bail (a difficult standard). For instance, the Supreme Court upheld PMLA's stringent bail scheme in 2023, meaning many anti-money-laundering suspects (e.g. political figures like Sisodia) spent months in jail awaiting plea decisions. These statutory bars amplify pretrial detention for certain classes of accused.
- **Judicial Inaction:** In high-profile or sensitive cases, judges may hesitate to grant bail due to perceived public interest or political pressure. Anecdotal evidence (and SCO reports) shows that some accused (e.g. Umar Khalid under UAPA) were given few or no opportunities for bail hearings over years. This selective inaction erodes the "bail rule" doctrine.

In summary, while the law envisions judicial discretion in granting bail, a combination of police practices, under-resourced courts, and onerous bail conditions often tilt the balance towards detention, especially for the disadvantaged.

Socio-Economic and Caste/Gender Impacts

The burden of pretrial detention falls disproportionately on marginalized groups. Data indicate significant disparities:

- **Caste and Class:** NCRB analysis shows that about two-thirds of undertrial inmates

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belong to Scheduled Castes, Scheduled Tribes or Other Backward Classes, higher than their share of the population. This suggests systemic bias: poor, rural, lower-caste individuals are more likely to be arrested and less likely to secure bail quickly. Income data are sparse, but it is reasonable to infer that poverty is a key factor: inability to pay fees or bribes, lack of political influence, and societal prejudice all contribute to prolonged detention for the poor. Legal scholars note that "class location, not legal guilt, determines exposure to prolonged pre-trial custody", indicating that an accused's resources often trump the evidence in bail outcomes.

- **Gender:** Women constitute a small fraction of prisoners, but their undertrial rate is high: 77% of women prisoners in 2021 were undertrial. Women face unique challenges in the bail system. Societal stigma (e.g. in cases like elopement or sex offences), dependence on male family members for surety, and lack of separate women's facilities complicate bail. Data for women's cases is limited, but reports (NCRB data) show that six states had 100% undertrial ratios for women in 2021. Additionally, legal aid for female prisoners is often inadequate. The lack of female magistrates in many courts (despite guidelines for women offenders) can further disadvantage women seeking bail.
- **Other Vulnerable Groups:** Juveniles (under 18) and mentally ill accused often remain with adult undertrial populations due to system gaps, though law mandates specialized treatment (Juvenile Justice Act, Mental Healthcare Act provisions). Scheduled Caste/Tribe persons are reported by some NGO surveys to experience harsher bail conditions; for example, police officers have admitted to viewing Dalit accused as more "prone to crime", affecting judicial perception.
- **Urban-Rural Divide:** Rural accused often travel long distances to courts and may not have local sureties. Urban dwellers with means can hire lawyers or influence hearings, whereas villagers might miss bail dates. Migrant laborers, living away from home, face particular hurdles if arrested far from their domicile.

Overall, the bail system's practical functioning exacerbates existing inequalities. While official policy enshrines equality and liberty, ground realities reflect "systematic wrongful incarceration" of the socio-economically weak.

Comparative Perspective & Reforms

Other Jurisdictions: Common-law countries have codified bail in statutes or constitutional provisions. For instance, the UK's Bail Act 1976 (and amendments) presumes bail with

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exceptions for specified risks; it even outlaws bail solely based on inability to post surety. The US (under the Bail Reform Act 1984) mandates an individualized hearing and risk assessment before denying release. These systems typically prohibit detention without clear justification. India, by contrast, has no single bail law; bail rules are scattered in CrPC and special statutes. In 2022 the Supreme Court urged Parliament to consider a "bail Act" akin to other democracies. The Court noted that foreign bail statutes offer guidelines absent in the CrPC framework. An Indian bail law could unify standards, impose time-limits for bail hearings, and perhaps introduce risk-based release instead of cash bail.

Policy Reforms: Several measures have been proposed or implemented:

- **Undertrial Review Committees (UTRCs):** Following SC orders, district-level UTRCs (judicial and police heads) periodically identify long-pending undertrials for possible release. Though established in 2016, their effectiveness varies. The 2022 NCRB cited UTRCs in reducing prisoner numbers, but many committees operate without clear criteria.
- **Legal Aid:** National Legal Services Authority (NALSA) runs schemes to facilitate bail and quick hearings, including "bail camps" in overcrowded jails. State governments are directed to provide lawyers at police stations. Still, funding and awareness remain low, calling for expansion of free legal aid.
- **Alternative Dispute Resolution:** For minor offences (theft, minor assault, village-land disputes), diversion programs (mediation, community service) have been piloted, allowing resolution without formal trial or jail. These have shown promise in reducing case loads.
- **Victim Support:** Ironically, strong victim support (witness protection, fast-track courts) could reduce trials, thereby freeing accused on bail sooner. Yet witness intimidation and witness unavailability often stall cases, highlighting need for procedural efficiency.

Despite these initiatives, no sweeping legislation has yet recalibrated the bail regime. Expert panels (e.g. Law Commission 190th Report, 2009) have repeatedly noted the need to align practice with Art.21. The Law Commission (2015) ultimately found a new bail law unnecessary if existing rules are properly applied; critics argue this underestimates systemic inertia.

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Case Illustrations

- **Case 1:** Delhi Riots and UAPA. Umar Khalid's prolonged detention under UAPA (2020–2023) exemplifies the bail crisis. Even with weak evidence, the trial court repeatedly denied him bail; his case was barely listed despite calls for hearings. Similarly, other activists from the Bhima Koregaon case (e.g., Shoma Sen, Vernon Gonsalves) spent years in jail before any respite. This shows how anti-terror laws can nullify the bail norm
- **Case 2:** PMLA and Economic Offences. Former Delhi Deputy CM Manish Sisodia spent 11 months in Tihar for alleged corruption under PMLA charges. His bail plea was rejected by SC in 2023 on arguably weak grounds, highlighting the unpredictability. In contrast, in ordinary corruption cases (IPC) courts might have granted bail.
- **Case 3:** Drug Offences (NDPS). Before 2020 amendments, an accused under NDPS had to be released only if the prosecution failed to initiate trial within 60/90 days (CrPC §167), but bail at framing was denied by statute. Post amendments, default bail is reinstated; early data suggests some undertrials benefitted (though NDPS investigations still drag on).

These examples illustrate that, in practice, bail outcomes often hinge on legal technicalities and the particular statute under which one is charged, rather than an overarching presumption of release.

Recommendations

To bridge the gap between principle and practice, we recommend:

- **Mandate Early Bail Hearing:** Courts must prioritize bail applications (similar to urgent writ petitions). High Courts/SC should enforce listing deadlines. Judicial orders (e.g. Mohd. Muslim v. SC) already affirm bail's priority, but must be operationalized.
- **Strengthen Legal Aid:** Ensure every arrested person is promptly informed of bail rights and provided counsel. Increase funding to NALSA/state bodies to cover rural areas and understaffed prisons.
- **Use Personal Bonds:** Encourage release on personal recognizance (FR48/49) in place of monetary bonds wherever possible. SC has suggested this when an accused has stable ties. Judicial training should emphasize non-financial conditions (e.g. verification of address and social ties).

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- **Amend Special Laws:** Revise provisions in UAPA, PMLA, etc., that effectively bar bail. For instance, require courts to consider bail automatically after a fixed period or when evidence is infirm. The Law Commission and Parliament should revisit harsh bail clauses (drawing on the SC's comments on NDPS/PMLA).
- **Enforce Default Bail (Sec.167):** Magistrates should automatically release accused on statutory default bail when investigation deadlines lapse. This requires monitoring of FIR timelines (perhaps via computerized case tracking).
- **Expand Undertrial Committees:** Formalize UTRCs with periodic mandates and transparent criteria (e.g. time served vs. possible sentence). Include civil society representatives for accountability.
- **Data Transparency:** NCRB should publish annual state-wise data on bail grants/denials, reasons for detention, and remand durations. This will allow targeted reform.
- **Parole and Interim Releases:** Utilize parole, furlough and electronic monitoring to decongest jails. For example, grant interim bail for trial durations if the accused is unlikely to flee.
- **Judicial Accountability:** Trial judges should be held to account for custody orders. Higher courts must not hesitate to grant bail for clear cases of injustice (as in Premanand Katara v. Union of India precedent) and should publicly identify patterns of excess detention.
- **Comprehensive Bail Law:** Consider legislation (following CJI's suggestion) that codifies bail principles, hearing timelines, and victim support measures, ensuring uniform application across states.

Implementing these steps requires coordinated action by the judiciary, legislature and executive. In doing so, India can make the maxim of "bail as rule, jail as exception" into an operational reality rather than an aspirational slogan.

Conclusion

Despite clear legal mandates and repeated judicial pronouncements that bail should be the norm, substantial evidence shows that in India jail often becomes the default for undertrial defendants. A complex web of procedural inertia, statutory strictures, and socio-economic bias has eroded the bail guarantee. To restore balance, concerted reforms are imperative: from courtroom procedures to legislative amendments, the focus must shift to upholding liberty.

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Only then will the ideal that "personal liberty of the citizen is sacred and absolute" (Maneka Gandhi v. UOI) truly underpin India's criminal justice system, ensuring that jail remains the genuine exception in a free society.

Bibliography

- Code of Criminal Procedure, 1973 (India) – Sections 436–438, 167, 438.
- Constitution of India, Articles 21, 14.
- Hussainara Khatoon v. State of Bihar, (1979) 1 SCC 420.
- State of Rajasthan v. Balchand alias Baliya, AIR 1977 SC 2447.
- Gurbaksh Singh Sibbia v. State of Punjab, AIR 1980 SC 319.
- Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273.
- Sanjay Chandra v. CBI, 190 (2012) DLT 728 (Delhi HC).
- P. Chidambaram v. Directorate of Enforcement, (2019) 7 SCC 167.
- State of UP v. Mohammad, (2007) 4 SCC 645 (NDPS bail).
- Premanand Katara v. UOI, (1989) 4 SCC 54.
- NCRB, Prison Statistics India Reports (2017–2023), Ministry of Home Affairs.
- Ministry of Home Affairs, Lok Sabha/RS QA 1039 (2024) (prisoner statistics).
- India Justice Report (Tata Trusts 2019).
- PUCL, "UAPA: Criminalising Dissent and State Terror" (2022) – compilation of NCRB/NIA data.
- Patnaik, S. "Supreme Court Review 2023: Bail," SC Observer (Jan 2024).
- Agarwal, A., "Bail Without Surety: Release on Personal Bond", SupremeToday blog.
- Thakur, A. "74% of Prisoners are Undertrials, and That's an 'Improvement'," Times of India (Oct 2025).
- The Print (PTI), "Principle of 'bail is rule, jail exception' laid down by SC" (Apr 2023).
- The Print (Akshat Jain), "How US & UK made bail the rule, jail the exception" (Jul 2022).
- IndiaSpend, "Half a million Indians behind bars; 74% are undertrials" (Oct 2025).
- Mishra, S. "Pre-trial Detention and Socio-economic Vulnerability," International Journal of Research – PR (Vol.6, 2024).
- Human Rights Watch/Amnesty International reports on India (2019–2023).
- U.S. Department of State, Country Reports on Human Rights Practices: India (2021).
- Law Commission of India Reports (190th, 2023).