



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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ABOUT US



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

‘BALANCING JUDICIAL DISCRETION IN BAIL DECISIONS: A CALL FOR REFORM’

AUTHORED BY - SNEHA RAJENDRAN

ABSTRACT

The Indian bail system has been criticized for its lack of clarity and abuse of judicial discretion. The Supreme Court of India has emphasized the need for a more structured approach to bail, ensuring that the principles of justice are upheld. The current system relies heavily on judicial discretion, which can lead to inconsistencies and violations of defendants' rights. The document highlights the importance of balancing judicial discretion with the need for equal access to bail, suggesting reforms such as continuous monitoring and evaluation of bail reform efforts, leveraging data analytics and technology to oversee bail application progress, and mandating timelines for the disposal of bail applications. The document also discusses the significance of natural justice principles in ensuring fairness and reasonableness in bail decisions.

RESEARCH QUESTIONS

1. Is the Judicial Discretion treating bail as an exception, creating an anomaly, or is it in line with the general principles of bail as a rule?
2. To what degree does India adhere to the general Bail concept as a rule?
3. Is there any attempt made to restructure the bail system in order to reconcile the need for equal access to bail with judicial discretion?
4. Is it possible for judicial discretion to override defendants' rights in relation to the fundamental natural justice principles?

RESEARCH OBJECTIVES

1. To assess the current state of bail practice.
2. To evaluate judicial discretion in bail decisions.
3. To propose recommendations for bail reforms.
4. Comparative study between India and the USA enhances understanding of the topic.

INTRODUCTON

A court or law enforcement agency may use bail to temporarily release an accused person from detention while further legal actions are pending, as per *Section 2(b) of the Bharatiya Nagarik Suraksha Sanhita*¹. *Section 478 to 483 of the Bharatiya Nagarik Suraksha Sanhita*², expressly cover the requirements regarding the bail in India. These sections address the kinds of crimes that may necessitate bail, the circumstances in which it might be granted, and the process for filing an application for bail.

Since bail preserves the fundamental principle that an individual is "innocent until proven guilty," it is seen as a right. Instead of being put in jail, it allows the accused to keep their freedom and live their life as normal while they await trial. This right also protects the protection of personal liberty and life as stated in Article 21 of the Indian Constitution³.

However, the court will choose how the bail is utilized because it is a discretionary grant. Even though bail is typically granted, there are several circumstances in which discretion is required. A multitude of variables are considered while determining whether or not to grant bail, such as the seriousness, gravity, and type of the offense, the likelihood that the accused would appear in the court or even the risk of having the accused in the society, etc.

This discretion occasionally could result in mistakes and anomalies in the bail process. For instance, there may be instances in which individuals denied bail turn out to be innocent, or in which bail is granted to those who truly represent a threat to the community. Errors of this kind can be caused by human error, unclear legislation, or bias within the legal system. Consequently, bond is intended to protect the accused's rights; however, its granting is subject to the court's discretion, which can lead to errors or inconsistent bail applications.

JUDICIAL PRONOUNCEMENTS

The accused is granted bail in *Hussainara Khatoon v. State of Bihar*⁴ in accordance with constitutional principles that recognise the right to a speedy trial and the right to a fair trial as a fundamental right under the more extensive provisions of Article 21. An arbitrary denial of

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

² Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, § 478 to 483, Acts of Parliament, 2023 (India).

³ The Constitution of India, 1950, Article 21.

⁴ *Hussainara Khatoon v. State of Bihar*, MANU/SC/0119/1979.

bail would constitute a violation of the principles of justice.

The case of *Ram Govind Upadhyaya v. Sudarshan Singh*⁵ demonstrates the prudent application of discretionary measures; after all, the right to liberty constitutes a fundamental element.

The court was instructed in *Kalyan Chandra Sarkar v. Rajesh Ranjan*⁶ to exercise prudence and sound judgement when exercising its discretionary authority. This further underscores how the principles of justice can be achieved by exercising prudence in thought.

The precedent setting case of *C.B.I v. Amaramani Tripathi*⁷ demonstrated that when determining bond, it is necessary to consider character, means, standing, and nature of conduct in addition to financial status. In addition, the court issues an order instructing subordinate courts to refrain from imposing similar conditions on bail applications, as doing so violates the presumption of innocence.

The court established a rule in *Mahipal v. Rajesh Kumar*⁸ which presumes that the judicial mind will not be applied when insignificant circumstances exist to grant or deny bail. Bail should be granted in accordance with due judicial process, considering the merits and demerits of the case in light of prima facie evidence, since bail is not a constitutional right in the case of non-bailable-offences.

In the landmark case *Sanjay Chandra v. CBI*⁹, it was determined that when determining whether to grant bail, the ruling of the presiding judge must be considered. Instead of relying solely on public opinion to justify denial, a reasonable consideration should be given to the nature, profile, and criminal record of the accused.

Utilise the discretionary authority of the judiciary to strike a balance between the accused's liberty and the welfare of society at large. When an individual's arbitrary release has a detrimental effect on society, the judiciary should not be the only entity to intervene.

⁵ Ram Govind Upadhyaya v. Sudarshan Singh, Appeal (crl.) 381-382 of 2002.

⁶ Kalyan Chandra Sarkar vs. Rajesh Ranjan and Ors., MANU/SC/0214/2004.

⁷ State Through C.B.I v. Amaramani, MANU/SC/0677/2005.

⁸ Mahipal v. Rajesh Kumar, AIR 2020 SC 670.

⁹ Sanjay Chandra v. CBI, (2012) 1 S.C.C. 40 (India).

The defendant in *Motiram and Others v. State of M. P*¹⁰. was deprived of bond for failing to furnish the Chief Judicial Magistrate's mandated absurd sum of money that was required as bail. Nonetheless, the same was condemned by Justice Krishna Iyer of the Supreme Court.

Current correctional policy admits high-profile cases over low-profile ones, despite bond requirements. Overcrowding in the penitentiary improves current philosophy but opposes wise behaviour. In cases where the court is indifferent, finances strongly impact bail decisions. The "innocent until proven guilty" bail principle demands a legal framework change, therefore removing these hurdles will improve bail jurisprudence.

COMPARATIVE ANALYSIS – INDIA & USA

The general principle of bail is implemented in India, with the courts retaining the authority to determine its precise application. The Bharatiya Nagarik Suraksha Sanhita grants magistrates the authority to release defendants on bail bonds, with or without security, as a matter of right. Crimes that are punishable by law and do not require bail are those for which the police may appoint the suspect with or without a warrant of arrest. The magistrate subsequently renders a determination regarding the bailability of the defendant. Crime is classified by the Bharatiya Nyaya Sanhita as eitherailable or non-ailable. Bail is a discretionary matter when applied to non-ailable offences but a right in the case ofailable ones.

The application of the general norm of bail is subject to judicial discretion in the United States. As a result of the legal system presumption of innocence in the United States, bail is typically not denied absent a substantial danger of runaway or societal threat. The United States Supreme Court has emphasised that bail decisions should be governed by the presumption of innocence and that parole should be the norm rather than the exception.

Bail in India is determined through the exercise of judicial reasoning. The Indian criminal justice system uses judicial discretion in compliance with all laws and procedures. This discretion may be unfairly applied, with certain magistrates granting bail at a higher rate than others. Judicial discretion may violate defendants' rights by violating natural justice. The Supreme Court of India has acknowledged the bail system's flaws and role in apprehensive detention. The court wants changes to ensure justice and flexibility in courtroom procedures.

¹⁰ Motiram And Ors. V. State of M. P, A.I.R. 1978 S.C. 1594.

Bail is a matter of judicial discretion in the United States, where the authority to grant bail rests with the justices. While granting bail, however, specific regulations and standards must be adhered to. The protection of individual rights and due process of law are fundamental values that the United States highly regards.

The Indian bail system reform aims to reconcile judicial discretion and fair bail. The Supreme Court of India recommends a comprehensive bail law to handle the rising number of bail applications. The court has reviewed US and UK laws and watched Indian bond requirements.

The United States has enacted reforms to its bond system with the aim of resolving concerns regarding the impact of bail on marginalised communities and ensuring equitable access to justice. As an effort to provide alternative detentions for defendants who are comparatively secure and to reduce the use of cash bail, a number of states have enacted legislation in this regard.

In conclusion, similar principles regulate bail in both India and the United States; however, the extent to which these rules are applied is judicially determined. Despite efforts to address the challenges faced by both nations and ensure equitable access to bail, modifications to the bail systems have not been successful. Substantial discrepancies persist in the bail provisions of the two nations, and additional revisions might be required to guarantee the practical application of the fundamental tenets of bail.

CRITICAL ANALYSIS

Balancing Judicial Discretion in Bail Decisions

Bail or jail is a pragmatic court decision on fundamental rights. Justices have complete discretion on bail. The judge would weigh the accused's freedom and communal interests. Criminal Code Articles 14, 19, and 21 state: "Right to personal life and liberty in the context of the right to a speedy trial." *Kashmir Singh v. State of Punjab*¹¹ shows that postponing this procedure would be unjust and irrational. Bail remains a privilege for court-jurisdiction offences.

¹¹ *Kashmir Singh v. State of Punjab*, 1978 AIR 1594, 1979 SCR (1) 335.

As *Chief Justice of India, DY Chandrachud*¹² has said that, trial courts must amend common misconceptions in consideration of the individual right to personal liberty and obey the will of the people. As a consequence, the notion of establishing imprisonment as the exception and bail as the norm is progressively losing its significance.

The court ruled in *State of Rajasthan v. Balchand*¹³ that bail, is not jail, rather is the fundamental principle for achieving justice and deterring future offences. The court may set bail before or after the trial to make sure the defendant shows up to assist in the legal process when needed. Bail is typically used to protect the accused from prosecution and detention pending trial. Rights were acknowledged for bailable offences in the *41st Report of the 5th Law Commission of India*¹⁴, while discretion was maintained for non-bailable offences.

The current situation should be categorised as either a bailable or non-bailable offence, and in the case of non-bailable offences, any bail application must be substantiated with evidence that the facts and circumstances of the case align with *Section 478, BNSS*^{15, 16}.

*Section 480, BNSS*¹⁷, states that a court may grant bond to an accused individual upon consideration of reasonable grounds. As the Supreme Court bench was informed by *Justices Prashant Mishra and B.V. Nagarathna*¹⁸, presently, corruption and arbitrariness contribute to injustice and, as a result, disregard the significance of bail by failing to consider the nature of the offence and the accused's punishment.¹⁹

*BNSS Section 483*²⁰ requires discretion to be used prudently. Due to its potential impact on liberty, discretion must be balanced against public administration's justice purposes. Thus, carefully evaluate initially plausible grounds. The court should rule solely on the accused's shortcomings, not misbehaviour, without curtailing personal liberty.

¹² The Time of India, <https://timesofindia.indiatimes.com/?back=1> (Last visited on 18th April, 2024).

¹³ *Rajasthan v. Balchand*, A.I.R. 1977 SCR (1) 535.

¹⁴ Law Commission of India, Report No. 41: The Code of Criminal Procedure, 1898 (1969).

¹⁵ *Bharatiya Nagarik Suraksha Sanhita*, 2023, No. 46, § 478, Acts of Parliament, 2023 (India).

¹⁶ *Rasiklal v. Kishore Khanchan Washwahi*, (2009) 4 S.C.C. 446 (India).

¹⁷ *Bharatiya Nagarik Suraksha Sanhita*, 2023, No. 46, § 480, Acts of Parliament, 2023 (India).

¹⁸ *Rohit Bishnoi v. State of Rajasthan*, MANU/SC/0794/2023.

¹⁹ *Manoj Kumar Khokhar v. State of Rajasthan*, MANU/SC/0028/2022.

²⁰ *Bharatiya Nagarik Suraksha Sanhita*, 2023, No. 46, § 483, Acts of Parliament, 2023 (India).

Other legal documents, such as the Indian Constitution, ICCPR, ECHR (Article 5), and UDHR (Article 10), highlights the need for impartiality in national and local justice. According to *Justice V.R. Krishna Iyer*²¹, bail cannot be granted without a rebuttable negative criteria. Without fair court decisions, strict arbitrary procedures violates the individuals liberty and constitute judicial malfeasance.

Exploring the Need for Bail Reform in India

Bail reform initiatives in India aim to strike a balance between the need for judicial discretion and the imperative of ensuring equal access to bail. These initiatives include:

1. The Law Commission of India advocates for continuous monitoring and evaluation of bail reform efforts to gauge their efficacy. This involves leveraging data analytics and technology to oversee bail application progress and ensure prompt processing.²²
2. The case of *Satender Kumar Antil v. CBI*²³, highlighted the inefficacy of India's bail system and its role in exacerbating the crisis of undertrial incarceration. The Court provided comprehensive guidelines on laws related to bail, such as mandating timelines for the disposal of bail applications and laying emphasis on the need to enact a separate law for bail.
3. With over 75% of India's prison population comprising undertrials, the Supreme Court stresses the urgency of reforming bail laws while having a holistic reimagination of bail laws, considering parameters like offense demographics, bail timelines, and addressing socio-economic and structural barriers.²⁴
4. Bail's historical roots trace back to ancient times, as seen in Kautilya's Arthashastra. Presently, India's bail laws under the CrPC have led to jail overcrowding and swift arrests, prompting the Supreme Court to advocate for bail law reform.
5. The Criminal Procedure Code, 1973 (CrPC) is replaced by the BNSS, which also significantly modifies the bail requirements. Not granting bail for those facing numerous offenses, giving bail if the accused serves half the maximum punishment during trial, and permitting up to 15 days of police custody are some of the major modifications.

²¹ Babu Singh & Ors. v. The State of U.P. (1978) 1 S.C.C. 579 (India).

²² Drishti IAS, <https://www.drishtias.com/daily-updates/daily-news-analysis/reforming-india-s-undertrial-bail-system> (Last visited on 18th April, 2024).

²³ *Satender Kumar Antil v. CBI*, (2022) 10 SCC 51.

²⁴ The Hindu, <https://www.thehindu.com/opinion/op-ed/reform-bail-law-but-make-the-right-diagnosis-first/article65682565.ece> (Last visited on 18th April, 2024).

6. Under the slogan "Re. Strategy to favour bail and jail as an exception," the *Suo* attempted to reduce jail overcrowding and the associated dangers. In such circumstances, the Supreme Court deliberated on a policy. In 2017, following the Sonadhar disaster, the Convict Supreme Court granted parole to all convicted individuals who had completed their 10-year sentences without filing an appeal by 2021. The courts are rectifying the incorrect application of this concept
7. CJI NV Ramana's 2022 initiative, Fast and Secured Transmission of Electronic Records, expedites the delivery of bail orders issued by the court to prison authorities. The judiciary and society continue to be hampered by its discretionary nature, despite its professed dedication to reform.

In addition to addressing the issue of overcrowded jails and the requirement to adopt a separate bail statute, these bail reform measures in India seek to find a balance between the necessity of preserving judicial discretion and the urgency of guaranteeing equitable access to bail.

Limitations of Judicial Discretion

Judicial discretion is vital for fairness and adaptability in legal proceedings, but it can infringe on defendants' rights and natural justice principles. Natural justice, also known as "due process," encompasses the right to a fair hearing and the rule against bias, ensuring fairness, reasonableness, equity, and equality in judicial discretion.

Courts generally uphold natural justice, but there are exceptions, such as in administrative and quasi-judicial functions, where the doctrine can be relaxed for expediency, ensuring fair play. However, this does not mean that tribunals can disregard fair hearings or rely on hearsay evidence.²⁵

In *S.L. Kapoor v. Jagmohan & Ors.*²⁶, the Supreme Court of India addressed whether natural justice rules should apply when undisputed facts make formal notice unnecessary. The court concluded that fair play must still be present, except in cases with admitted or indisputable facts, where only one conclusion and penalty are possible. In such cases, courts may not compel

²⁵ Cyril Amarchand Blogs, <https://corporate.cyrilamarchandblogs.com/2018/03/principles-natural-justice-origin-relevance/> (Last visited on 18th April, 2024).

²⁶ *S.L. Kapoor v. Jagmohan and Ors.* (1981) AIR 136.

natural justice observance, not because the need is absent, but because futile writs are not issued.

While in the case of *Rasiklal Ranchhodbhai v. CWT*²⁷, the court struck down an order of the Commissioner by observing that passing a cryptic order without giving reasons violates the principles of natural justice. The court emphasizes the need for reasons to be substantial and cogent, not merely an apology for reasons.

Natural justice changes with society and law. Several Constitutional clauses guarantee fairness, reasonableness, equity, and equality. Natural justice principles preserve public confidence in the legal system and ensure fair and just State instrumentalities' operations under India's welfare state, as administrative agencies' duties and jurisdiction develop.²⁸

CONCLUSION AND SUGGESTIONS

Conclusion:

The Indian bail system has been the focus of discussion and grievance due to its lack of clarity and the abuse of judicial system. The granting of bail relies upon the accused's socioeconomic conditions and judges' interpretation, despite the fact that the concept of bail in general is pertinent. The existing system is severely criticised for not allowing everyone a fair opportunity to bail and for not accounting for the social situations of the nation.

A standard approach that requires judges to deny bail only in situations where there is a risk of escape, the accused is not cooperating, or there is a chance that evidence may be tampered with is important. Other forms of bail should also be considered, in order to ensure the appearance of the accused at the trial and to make bail accessible to individuals who are economically weaker.

Suggestions:

1. Establish specialized commissions whose job it is to keep an eye on and update bail rules so they are in line with changing social norms and justice ideals. These

²⁷ *Rasiklal Ranchhodbhai v. CWT*, (1980) 121 ITR 219 (guj).

²⁸ NIOS, https://nios.ac.in/media/documents/SrSec338New/338_Introduction_To_Law_Eng/338_Introduction_To_Law_Eng_L6.pdf (Last visited on 18th April, 2024).

commissions are able to offer professional suggestions regarding changes to bail procedures.

2. Examine the use of electronic monitoring technology to follow the whereabouts and activities of people released on bond. This will enable more sophisticated supervision to be provided without the need for wrist band detention.

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