



# PERSONAL LIBERTY AND CRIMINAL JUSTICE: A CRITICAL STUDY OF BAIL LAWS IN INDIA

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## ABSTRACT

The bail system in India stands at a critical juncture where constitutional aspirations of personal liberty collide with systemic realities of mass undertrial incarceration, discriminatory surety conditions, and restrictive special legislation regimes. This research article undertakes a comprehensive examination of bail laws in India, analyzing their constitutional foundations, statutory frameworks, judicial interpretations, and contemporary challenges. The study traces the evolution of bail jurisprudence from the colonial period through the Bharatiya Nagarik Suraksha Sanhita, 2023, demonstrating a progressive movement toward rights-based protection of personal liberty. However, this constitutional progress remains substantially unfulfilled in practice, with approximately seventy-six percent of India's prison population consisting of undertrial prisoners, many from socio-economically marginalized communities. Special bail regimes under the Unlawful Activities (Prevention) Act, 1967, the Narcotic Drugs and Psychotropic Substances Act, 1985, and the Prevention of Money Laundering Act, 2002 create stringent and often constitutionally problematic barriers to pre-trial release. The judicial response, while innovative and rights-protective in landmark decisions, has not been sufficient to transform institutional practices across the criminal justice system. The article concludes that fundamental reform of the bail system is imperative—encompassing legislative modification of monetary surety requirements, introduction of statutory bail review mechanisms, strengthening of legal aid provisions, and recalibration of special bail regimes through the lens of constitutional proportionality. Such reform is essential not merely for administrative efficiency but for the realization of Article 21's promise of personal liberty as a fundamental constitutional right for all citizens.

## KEYWORDS

Bail, Personal Liberty, Article 21, Criminal Justice, Undertrial Prisoners, Constitutional Rights, UAPA, NDPS, PMLA, Presumption of Innocence, Pre-trial Detention, Fundamental Rights, Judicial Discretion, Legal Aid, Criminal Procedure

## 1. INTRODUCTION

Personal liberty represents one of the most foundational and inalienable rights recognized by civilized societies. Article 21 of the Indian Constitution guarantees that "no person shall be deprived of his life or personal liberty except according to procedure established by law." The bail system operates as the primary mechanism through which this constitutional guarantee is given practical application within criminal proceedings. Bail enables accused persons to remain free pending trial completion, thereby preserving the presumption of innocence—a principle that an accused is innocent until proven guilty beyond reasonable doubt. The word "bail" derives from Old French "baillier," meaning to deliver or hand over, and in legal context refers to the provisional release of an accused person upon furnishing security that ensures future court appearance. The Indian bail framework, historically governed by the Code of Criminal Procedure, 1973 (CrPC), underwent significant transformation with the enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which came into force on July 1, 2024. The bail provisions of Sections 436, 437, 438, and 439 of the CrPC formed the foundational structure for decades, establishing categories of bailable and non-bailable offences and prescribing differential procedures for bail grant in each category. The BNSS, 2023 introduces modifications and innovations to address contemporary challenges while retaining the basic structural framework.

The significance of bail in India's criminal justice system cannot be overstated. The nation confronts a severe crisis of undertrial prisoners—thousands languishing in jails for years while awaiting trial, frequently for offences carrying lesser penalties than already-served incarceration. According to the National Crime Records Bureau (NCRB) Prison Statistics India 2022, approximately seventy-six percent of India's total prison population consists of undertrial prisoners, representing an estimated 4.34 lakh individuals. This alarming statistic reflects systemic failures in the bail mechanism and underscores the urgent necessity for comprehensive reform. The Supreme Court's jurisprudential development has progressively shaped bail law in India. Landmark decisions including *Hussainara Khatoun v. State of Bihar*, *Gudikanti Narasimhulu v. Public Prosecutor*, *Gurbaksh Singh Sibbia v. State of Punjab*, and *Satendra Kumar Antil v. CBI* have established important principles regarding bail grant factors, anticipatory bail nature, and the constitutional imperative to protect personal liberty. These decisions establish that liberty is the rule and detention the exception, that the presumption of innocence must inform bail determinations, and that courts must exercise their discretion in favor of personal liberty except where cogent, specific, and proportionate justifications exist. However, special legislations including the Unlawful Activities (Prevention) Act, 1967 (UAPA), the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS), and the Prevention of Money Laundering Act, 2002 (PMLA) create stringent conditions that substantially reverse the presumption of innocence and place severe restrictions on bail rights. These provisions have generated intense judicial scrutiny and academic debate, raising fundamental constitutional questions about the compatibility of such restrictions with constitutional values and the presumption of innocence.

The present article seeks to critically examine India's bail laws, exploring their historical foundations, statutory provisions, judicial interpretations, and contemporary challenges. The examination addresses the interface between personal liberty and criminal justice in the bail context and identifies areas where reform is necessary to ensure the bail system functions in consonance with constitutional values and principles of fair justice. The article progresses through conceptual and historical foundations, statutory frameworks, judicial trends, the undertrial crisis, special bail regimes, and reform imperatives.

## 2. CONCEPTUAL AND HISTORICAL FOUNDATIONS OF BAIL:

Bail in its essential conception refers to the release of a person from custody on the condition that they will appear before the competent court at a future date when required. This conception carries implicit recognition that an accused person retains the presumption of innocence until guilt is established through due process of law, and that pre-trial detention must function as the exception rather than the rule in a rights-conscious legal system. The concept encompasses multiple interrelated ideas—at its most basic level, bail refers to the security, personal or monetary, that an accused person or surety furnishes as a guarantee of future appearance. At a deeper level, bail represents a jurisprudential commitment to the value of liberty and recognition that the State's power to detain must be exercised sparingly and justifiably.

The Supreme Court in *State of Rajasthan v. Balchand* articulated this principle succinctly by observing that "the basic rule is bail, not jail," and that courts must lean toward bail grant unless compelling reasons to the contrary exist. The jurisprudential foundations of bail are rooted in the recognition that detention before conviction serves only instrumental purposes—ensuring accused presence at trial, preventing evidence tampering, and protecting the community from potential harm. Once these instrumental justifications are absent or can be met through less restrictive conditions, the presumption favoring liberty ought to prevail. This understanding has been progressively strengthened through judicial interpretation of Article 21 of the Constitution.

The historical evolution of bail in India stretches from the colonial period when English procedural law was transplanted onto Indian soil through successive Codes of Criminal Procedure enacted in 1861, 1872, 1882, and 1898. The colonial bail framework was principally concerned with ensuring accused appearance before colonial courts with little regard for accused rights or pre-trial detention conditions. The surety system introduced under colonial law had a distinctly class-based character, favoring those with property and social connections while systematically excluding the poor. After independence, the Law Commission of India recommended criminal procedure law revision in its 41st Report of 1969, leading to the Code of Criminal Procedure, 1973. The 1973 Code introduced significant improvements to the bail framework, most notably the inclusion of anticipatory bail provision under Section 438, which was a landmark departure from earlier law. The provision was introduced following Law Commission recommendation that persons of standing could be subjected to false complaints and that the power to seek bail before arrest was essential to protect such persons.

The post-1973 period witnessed substantial judicial development of bail law through landmark Supreme Court decisions that expanded personal liberty scope and established important bail principles. The decision in *Maneka Gandhi v. Union of India* in 1978 transformed Article 21 interpretation, establishing that the procedure depriving a person of liberty must be fair, just, and reasonable. This expanded interpretation had significant implications for the bail framework, meaning that bail conditions and procedures had to meet constitutional reasonableness standards. The expansive interpretation of Article 21 in *Maneka Gandhi* created new possibilities for protecting personal liberty in the bail context by establishing that Articles 14, 19, and 21 form an interconnected "golden triangle" of fundamental rights requiring that any procedure depriving liberty must satisfy each of these provisions.

### 2.1 BAIL CATEGORIES UNDER INDIAN LAW:

Indian bail law recognizes several distinct categories, each governed by specific statutory provisions and judicial principles. Regular bail (Sections 437/439 CrPC / Sections 480/483 BNSS) refers to the release of accused persons from post-arrest custody. In cases involving bailable offences, bail is a matter of right under Section 436 CrPC. In non-bailable offences, bail is discretionary and is governed by Section 437 (for Magistrates) and Section 439 (for

Sessions Courts and High Courts). The court considers factors including offence gravity, flight likelihood, evidence tampering possibility, and accused criminal antecedents. Anticipatory bail (Section 438 CrPC / Section 482 BNSS) is a pre-arrest form enabling persons apprehending arrest to seek Sessions Court or High Court direction that, in arrest event, they shall be released on bail. The Supreme Court in *Gurbaksh Singh Sibbia v. State of Punjab* held that anticipatory bail must be understood broadly and courts should not apply unduly restrictive conditions. This decision has been crucial in protecting individual liberty from false arrest threats. Default bail, also termed statutory bail, arises when investigating agencies fail to complete investigation and file charge-sheets within statutory time limits prescribed under Section 167(2) CrPC. The accused becomes entitled to bail as a right upon expiry of sixty days for serious offences and ninety days for other offences. This provision is a significant safeguard against prolonged pre-trial detention, though it has faced implementation challenges across the country. The presumption of innocence operates as a cornerstone of criminal justice and fundamental fair trial principle. Under this principle, every accused person is presumed innocent until guilt is established beyond reasonable doubt through due process. The presumption places the burden of proof on the prosecution and requires that pre-trial liberty deprivation be justified by compelling and specific reasons. In bail context, the presumption operates as a powerful normative argument favoring pre-trial release.

### **3. STATUTORY FRAMEWORK GOVERNING BAIL:**

The Code of Criminal Procedure, 1973 provided the primary statutory framework for bail in India until the Bharatiya Nagarik Suraksha Sanhita, 2023 enactment. The bail provisions of the CrPC were organized around the central distinction between bailable and non-bailable offences, with different procedures applicable to each category. Section 436 CrPC provided that in cases of bailable offences, bail was a matter of right—an accused person charged with a bailable offence was entitled to bail as a matter of course, without judicial discretion exercise. The only question was the adequacy of sureties or security offered. Section 437 CrPC governed bail grant by Magistrates in non-bailable cases, conferring discretionary power on Magistrates to release accused persons on bail, subject to certain conditions. However, the section imposed restrictions on bail grant in cases involving offences punishable with death or life imprisonment, creating a presumption against bail that the accused had to rebut. Section 439 CrPC conferred wider and more plenary bail power on Sessions Courts and High Courts—these courts could grant bail in any case, including those involving death or life imprisonment offences, subject to the court's satisfaction regarding relevant considerations.

The Bharatiya Nagarik Suraksha Sanhita, 2023, which replaced the CrPC from July 1, 2024, introduces several important changes to the bail framework. While the basic bail structure is largely retained, the BNSS incorporates significant innovations and modifications. One of the most significant changes is the introduction of a new provision under Section 479 governing bail for first-time offenders who have completed half of the maximum imprisonment period for their offence while awaiting trial. This provision is a direct legislative response to the undertrial prisoner crisis and represents an important step toward reducing the number of undertrial prisoners in Indian jails.

The BNSS also introduces electronic monitoring as a possible bail condition, reflecting the global trend toward using technology as an alternative to detention. Under Section 480 BNSS, courts are empowered to impose electronic monitoring as a bail condition, which may include electronic ankle monitors or similar devices. While this provision has potential to reduce unnecessary detention, concerns have been raised about privacy implications and the

availability of infrastructure for electronic monitoring across the country. Special legislation governing bail presents significant challenges to the ordinary framework. Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967 provides that no accused person shall be released on bail if the court is of the opinion that there are reasonable grounds for believing that the accusation is prima facie true—a condition effectively inverting the presumption of innocence. Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 similarly imposes twin conditions requiring the court to assess likelihood of guilt as a precondition for bail. Section 45 of the Prevention of Money Laundering Act, 2002 contained similar twin conditions, which the Supreme Court in *Nikesh Tarachand Shah v. Union of India* struck down as unconstitutional. Parliament subsequently amended the provision, and the amended section's constitutional validity continues to be debated.

#### 4. JUDICIAL TRENDS AND LANDMARK DECISIONS:

The Supreme Court of India has been the primary architect of bail jurisprudence, establishing through its decisions the principles that guide lower courts in bail determinations. A survey of landmark decisions reveals a consistent trend toward expanding personal liberty scope while acknowledging criminal justice legitimate interests.

*Hussainara Khatoon v. State of Bihar* was a watershed moment in Indian bail jurisprudence. The case arose from public interest litigation exposing the appalling conditions of undertrial prisoners in Bihar who had been in custody for periods exceeding the maximum sentence for their accused offences. The Supreme Court held that the right to speedy trial is a fundamental right under Article 21 and directed the State to take immediate steps for the release of undertrial prisoners who had been in custody beyond reasonable periods. In *Gudikanti Narasimhulu v. Public Prosecutor*, Justice V.R. Krishna Iyer delivered one of the most eloquent and philosophically rich judgments on bail law, emphasizing that the fundamental issue is one of personal liberty within criminal justice context. He articulated the principle that bail involves a complex of considerations rooted in the overarching values of freedom, dignity, and justice.

The decision in *Gurbaksh Singh Sibbia v. State of Punjab* elaborated the principles governing anticipatory bail, rejecting restrictive conditions and reaffirming that anticipatory bail must be understood as a constitutional protection available to innocent persons facing false arrest threats. The Court's generous interpretation of the anticipatory bail provision has been crucial in protecting individual liberty. The Constitution Bench held that anticipatory bail must be construed broadly, that courts should not impose unduly restrictive conditions, and that anticipatory bail, once granted, does not have to be limited in duration unless specific reasons exist. In *Sanjay Chandra v. CBI*, the Supreme Court held that bail's object is to secure the accused person's trial appearance and that bail is not punitive. The Court emphasized that bail grant is the general rule and bail refusal is the exception, and that this principle must not be subordinated to offence gravity alone. The Court categorically stated that the object of bail is merely to secure the accused person's presence at trial and not to punish the accused. The decision in *Satendra Kumar Antil v. CBI* represents one of the most comprehensive recent articulations of bail jurisprudence by the Supreme Court. The Court, noting the continuing undertrial prisoner crisis, issued detailed directions for the effective bail provision implementation across all courts and called upon lower courts and High Courts to adopt more proactive approaches to bail grant in appropriate cases. The judgment re-emphasized the constitutional imperative of personal liberty and called for systemic measures to address the undertrial prisoner crisis. The Supreme Court specifically noted that the

undertrial prisoner crisis represents a continuing constitutional emergency demanding immediate judicial and legislative attention.

## 5. THE UNDERTRIAL PRISONER CRISIS:

The undertrial prisoner crisis in India represents one of the most severe and persistent manifestations of systemic criminal justice failure. An undertrial prisoner is a person arrested and in custody pending trial completion. In India, undertrial prisoners constitute an overwhelming majority of the total prison population—according to NCRB Prison Statistics India 2022, undertrial prisoners accounted for approximately seventy-six percent of the total prison population, with an estimated 4.34 lakh undertrial prisoners in various jails across the country.

The scale of undertrial incarceration in India reflects multiple interconnected failures—in the bail system, in case investigation and prosecution, in the court system's trial capacity, and in the legal aid system's representation capability. The impact on individuals and families is devastating, with undertrial prisoners frequently losing livelihoods, family relationships, and social standing as a result of prolonged incarceration before any conviction. The problem is compounded by the fact that a significant proportion of undertrial prisoners are those accused of minor offences who cannot afford bail bond furnishment. The inability to secure bail release is thus directly linked to poverty, creating a system in which the constitutional right to personal liberty is effectively conditioned on economic resources.

One of the most significant dimensions of the undertrial prisoner crisis is the role of socio-economic barriers in preventing accused persons from accessing bail. The monetary conditions typically attached to bail—including surety furnishment requirements and financial condition meeting—operate as barriers to the poor, who may be entirely unable to satisfy these conditions regardless of innocence or offence minor nature. Research has consistently shown that a disproportionate number of undertrial prisoners come from the poorest and most marginalized Indian society sections—Scheduled Castes, Scheduled Tribes, religious minorities, migrants, and persons without formal employment.

The Supreme Court has repeatedly recognized the constitutional imperative for bail system reform to address the undertrial prisoner crisis. In *Hussainara Khatoon v. State of Bihar*, the Court held that the continued incarceration of undertrial prisoners beyond reasonable periods violates the right to life and personal liberty under Article 21. In *Satendra Kumar Antil v. CBI*, the Court directed lower courts to take proactive approaches in bail matters, particularly with respect to undertrial prisoners who have been in custody for extended periods. Beyond the socio-economic barriers faced by individual accused persons, the undertrial prisoner crisis is also a product of institutional and systemic failures within the criminal justice apparatus. Delayed trials, inadequate judicial infrastructure, insufficient prosecutorial capacity, overburdened legal aid systems, and inadequate prison management collectively create conditions in which undertrial imprisonment becomes the default outcome rather than the exception. The trial pendency crisis in India—with millions of cases pending before subordinate courts—directly contributes to the undertrial prisoner crisis.

## 6. SPECIAL BAIL REGIMES AND CONSTITUTIONAL CHALLENGES:

The Unlawful Activities (Prevention) Act, 1967 (UAPA), the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS), and the Prevention of Money Laundering Act, 2002 (PMLA) represent the most stringent special bail regimes in Indian law. The UAPA is the primary counter-terrorism and anti-extremism legislation, and its bail provisions have been sources of significant controversy and constitutional challenge. Section 43D(5) of the UAPA provides that no person accused of offences under Chapters IV and VI shall, if in custody, be released on bail unless the Public Prosecutor has been given hearing opportunity and the court is satisfied that there are reasonable grounds for believing that the accusation is prima facie true. This provision effectively means that a court cannot grant bail unless satisfied that the accusation against the accused is likely to be true—a standard essentially inverse to the presumption of innocence. The impact of this provision has been to make bail virtually inaccessible for persons accused under UAPA. Numerous cases have documented the prolonged incarceration of activists, journalists, academics, and ordinary citizens accused under UAPA, many of whom have spent years in pre-trial custody without bail. The use of UAPA against peaceful dissent and the consequent bail denials have raised serious concerns about the compatibility of the law with the constitutional guarantee of personal liberty. The Supreme Court's decision in *Arnab Ranjan Goswami v. Union of India* reaffirmed that the right to personal liberty is fundamental and that liberty denied is liberty lost forever. The Court emphasized that constitutional courts must not stand idly by in cases where liberty is at stake. The Court held that the High Courts cannot abdicate their constitutional jurisdiction to grant bail by mechanically applying special legislation conditions; their duty to protect personal liberty under Article 21 remains paramount. Section 37 of the NDPS Act imposes twin conditions for bail in cases involving commercial quantities of narcotics: the court must be satisfied that there are reasonable grounds to believe that the accused is not guilty of the offence, and that the accused is not likely to commit any offence while on bail. The twin conditions effectively reverse the burden of proof, requiring the accused to demonstrate their innocence as a condition for bail. This provision has been upheld by the Supreme Court as a necessary measure to combat the serious social harm caused by drug trafficking. The Prevention of Money Laundering Act, 2002 Section 45 originally provided twin conditions similar to those under NDPS for bail in money laundering offences. These conditions were challenged in *Nikesh Tarachand Shah v. Union of India*, where the Supreme Court struck down the conditions as violating Articles 14 and 21 of the Constitution. The Court held in *Nikesh Tarachand Shah* that the twin conditions in Section 45 were irrational because they linked the rigour of bail to the scheduled offence severity rather than to the money laundering offence itself. Parliament subsequently amended Section 45 in 2018 to restore the twin conditions with modifications, and the amended provision has been challenged in the courts on constitutional grounds.

### 6.1 JUDICIAL RESPONSE TO SPECIAL LEGISLATION:

The judiciary has sought to respond to the challenges posed by special bail regimes through a combination of constitutional interpretation, procedural safeguards, and judicial monitoring. The Supreme Court's development of the principle that constitutional courts retain jurisdiction to grant bail even in special legislation cases when fundamental rights are at stake has been particularly important. In *Union of India v. K.A. Najeeb*, the Supreme Court held that even in cases where Section 43D(5) UAPA creates a higher threshold for bail, a constitutional court can grant bail if the accused's fundamental rights, particularly the right to a speedy trial, are being violated. This decision established an important constitutional floor below which even stringent special legislation cannot go, providing a mechanism for relief in cases of extreme and unjustified pre-trial incarceration. The Supreme Court held that even

under Section 43D(5) UAPA, the constitutional jurisdiction of the High Court and the Supreme Court to grant bail when fundamental rights are infringed remains unaffected; the statutory threshold does not oust constitutional power.

The Court has also developed important procedural safeguards for bail proceedings in special legislation cases, including the requirement of a reasoned order, the obligation to hear both parties, and the recognition that the assessment of whether the accusation is prima facie true must be based on specific evidence rather than mere reliance on the prosecution's case diary. The development of the principle that constitutional courts retain jurisdiction to grant bail even in special legislation cases when fundamental rights are at stake represents a significant judicial protection mechanism for personal liberty.

## **7. BAIL REFORM: FROM DETERRENCE TO RIGHTS-BASED APPROACH:**

The transformation of the bail system from a deterrence-based to a rights-based model requires fundamental legislative reform. Several specific legislative changes have been proposed and discussed in the context of bail reform in India. First, the abolition or radical reform of the monetary surety requirement has been widely recommended. The requirement to furnish a surety who meets financial conditions effectively denies bail to the poor and constitutes a form of economic discrimination. Alternatives to monetary bail—including personal recognizance release, community supervision, reporting requirements, and electronic monitoring—should be made available as alternatives or supplements to monetary bail conditions. Second, the introduction of a statutory right to bail review is necessary. Currently, there is no systematic mechanism for the periodic review of bail decisions, meaning that accused persons who are denied bail at the initial stage may remain in custody for extended periods without their bail status being reconsidered. A statutory requirement for periodic bail review would ensure that changes in circumstances are taken into account and that prolonged pre-trial detention is not allowed to continue without fresh justification.

Third, the Law Commission of India has recommended the amendment of the CrPC / BNSS to provide that courts must give reasons for refusing bail in non-bailable cases. While this requirement exists in some degree already through judicial practice, a statutory provision would ensure greater consistency and accountability in bail decision-making.

Fourth, the establishment of a dedicated bail court or fast-track mechanism for bail applications in cases involving undertrial prisoners who have been in custody for extended periods would address the backlog in bail proceedings and ensure timely justice for those whose liberty is at stake. Electronic monitoring introduces the possibility of addressing concerns about flight risk and community safety while preserving the accused's fundamental right to personal liberty. However, the introduction of electronic monitoring in the Indian context raises significant concerns about privacy, the digital divide, and the adequacy of infrastructure.

### **7.1 EMERGENCE OF RIGHTS-BASED APPROACH:**

The emergence of a rights-based approach to bail in India is closely linked to the development of a broader human rights culture through judicial activism and constitutional interpretation. The expansive interpretation of Article 21 in *Maneka Gandhi v. Union of India* and its progeny transformed the constitutional landscape for bail, establishing that the right to personal liberty is not merely a procedural protection but a substantive constitutional right that must be actively protected against arbitrary invasion. Under a rights-based approach, bail is understood not as a privilege

that the State graciously extends to accused persons but as a constitutional right that must be denied only when specific, compelling, and proportionate justifications exist. This approach shifts the burden from the accused—who under the deterrence model must justify their entitlement to bail—to the State, which must justify its decision to detain. The principle articulated in *State of Rajasthan v. Balchand*—that the basic rule is bail, not jail—has become a foundational maxim of Indian bail jurisprudence. Progressive courts have also developed the practice of granting bail with conditions that are tailored to address the specific risks identified in the individual case, rather than adopting a blanket approach to bail conditions. This individualized approach to bail is more consistent with the rights-based model and ensures that liberty is restricted only to the extent necessary to address legitimate concerns. The rights-based approach to bail is also concerned with the quality of justice in bail proceedings, including the right of the accused to legal representation, the right to a reasoned decision, and the right to challenge bail conditions through appellate processes.

## 8. CONCLUSION AND RECOMMENDATIONS:

The study of personal liberty and criminal justice through the lens of bail laws in India reveals a complex and evolving legal landscape in which constitutional promise and practical reality are often in tension. Bail, as a legal mechanism, occupies a position of central importance at the intersection of the State's power to enforce criminal law and the individual's fundamental right to personal liberty. The manner in which the bail system operates—who gets bail, on what terms, how quickly, and with what legal support—is a direct measure of the justice system's commitment to equality, dignity, and the rule of law. The historical evolution of bail law in India, traced from its colonial origins through the CrPC, 1973 to the BNSS, 2023, reveals a progressive movement toward a more rights-conscious framework. The constitutional transformation initiated by *Maneka Gandhi v. Union of India* established that personal liberty is a substantive constitutional right subject to strict scrutiny, and subsequent judicial decisions have consistently applied this principle to expand bail protection scope. The crisis of undertrial prisoners represents the most stark and urgent manifestation of the bail system's failure. With approximately seventy-six percent of India's prison population consisting of undertrial prisoners, many of whom are poor, marginalized, and unable to access bail due to socio-economic barriers, the promise of Article 21 remains unfulfilled for millions of individuals. This crisis is not merely a legal problem but a profound human rights challenge that demands urgent and sustained attention from all stakeholders in the criminal justice system. The special bail regimes under UAPA, NDPS, and PMLA raise fundamental questions about the compatibility of stringent bail restrictions with constitutional values. The inversion of the presumption of innocence through reverse burden provisions in bail matters, the broad application of special legislation to a wide range of activities including peaceful dissent, and the consequent prolonged incarceration of accused persons without bail represent serious threats to personal liberty. The path forward lies in sustained commitment to the principles of the Constitution—that liberty is the rule, detention is the exception, and that the dignity and rights of every person, regardless of their social standing, must be protected and upheld by the law. Future legislative reforms must be guided by the principle that bail is not a matter of grace but of right, that the conditions attached to bail must be reasonable and proportionate, and that the resources of the State must be directed toward ensuring that the bail system functions effectively and equitably for all citizens. The realization of this vision will require sustained political will, judicial commitment, and social advocacy. But the stakes—the personal liberty of millions of Indians—demand nothing less.

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