



Revisiting Bail Laws in India: A Review of CrPC and BNSS in Light of Recent Legal Trends

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ABSTRACT

This review article critically examines the evolution and contemporary status of bail jurisprudence in India, focusing on the provisions of the Code of Criminal Procedure (CrPC) and the New National Bail Code of India (BNSS, 2023). Bail, as a fundamental aspect of personal liberty and criminal justice, has undergone significant changes through legislative reform and judicial interpretation. This study examines how the transition from the Commission of Public Prosecutions (CrPC) to the National Board of Public Prosecutions (BNSS) reflects a broader effort to modernize and streamline the bail process while addressing systemic delays and incarceration without trial. By analysing landmark judgments, legislative developments, and academic commentary, this article highlights continuities and changes in bail provisions, the impact on the presumption of innocence, and the role of courts in balancing individual rights and the public interest. The review identifies emerging legal arguments and challenges, including concerns about arbitrary denial of bail, the part of legal pleasure, and the impact of the BNSS on future criminal justice practice. The article concludes by emphasizing the need for a rights-based, transparent, and effective bail framework in India.

Keywords: *Bail Jurisprudence, Criminal Justice System, CrPC (Code of Criminal Procedure), Judicial Discretion, Legal Reforms in India, Bail Provisions.*

Introduction

Bail serves as an essential component of criminal law, aiming to uphold the accused's rights while maintaining the integrity of the justice system. Grounded in the principle that individuals are considered innocent until proven guilty, it helps avoid unwarranted pretrial imprisonment while securing the defendant's presence during legal proceedings. In India, the legal framework for bail is primarily governed by the Code of Criminal Procedure (CrPC), 1973, which categorizes bail into two categories: general bail, preventive bail, and interim bail. These provisions have long shaped judicial discretion and protected individual liberties within the criminal justice system.

However, the recent enactment of the Indian Code of Criminal Procedure (BNSS), 2023, which aims to replace the Code of Criminal Procedure, has brought about significant reforms aimed at modernizing and streamlining criminal procedure in India. The BNSS has tightened bail rules for certain crimes, strengthened the role of digital processes, and placed greater emphasis on protecting the rights of victims and witnesses. This represents a significant shift from a primarily defendant-centric approach to a more balanced model that considers the interests of all stakeholders.

This article provides a critical review of the evolution of bail jurisprudence in India through a comparative analysis of bail provisions under the Code of Criminal Procedure and the Basic Social Security Act. It examines recent judicial decisions, legislative amendments, and policy debates to identify emerging trends and future trajectories in bail law. Particular attention is paid to how courts interpret the right to bail in light of fundamental rights, personal liberty, and public interest. Judicial activism targeting unconvicted prisoners and prison overcrowding highlight growing concerns about prolonged detention without conviction. Furthermore, the review also assessed whether the reforms introduced by the BNSS had effectively addressed the shortcomings in the existing CrPC framework. Key topics covered included judicial discretion, the role of law enforcement, socio-economic factors influencing bail decisions, and persistent delays in court proceedings. The study also explores the practical challenges of implementing the new provisions and their impact on lawyers, police officers, and accused persons. In conclusion, this review aims to deliver an in-depth examination of the evolving landscape of bail laws in India, highlighting how the latest reforms under the BNSS will impact individual freedoms and improve the overall efficiency of the judicial system in the years to come.

The Legal Philosophy Behind Bail: Liberty vs. Societal Interest

The legal philosophy underlying bail is based on the subtle balance amid upholding the being's right to freedom and society's broader interests in justice and public safety. At the heart of this principle is the fundamental principle of the presumption of innocence, which guarantees that a person is entitled to liberty unless proven guilty beyond a reasonable doubt. Bail is a mechanism for preserving this right by allowing defendants to remain free while awaiting trial, thereby avoiding the punitive consequences of pretrial detention. This approach reflects the principle that punishment should be imposed only after conviction. Conversely, society's interests—such as ensuring public safety, ensuring the defendants appear for trial, and preventing further criminal behavior—must also be

carefully considered. The government has legitimate reasons to deny bail to those who might flee, commit further crimes, or obstruct the course of justice. This concern is particularly acute in cases involving serious crimes or high-risk individuals. Therefore, while the right to liberty is a fundamental right, it is not absolute and must be balanced against the need to protect society and maintain the integrity of the justice system. The court must consider the seriousness of the alleged crime, the defendant's prior record, the potential threat to public safety, and the likelihood that the defendant will appear at trial. The key challenge is to ensure that the bail system respects individual liberty without compromising public welfare and the efficiency of the administration of justice.

Literature Review

Singh (2024) examines the development of bail jurisprudence within the Indian lawful system, emphasizing its constitutional foundations and the impact of recent criminal law reforms. The study explores the evolution of bail provisions and focuses on the legal principles and constitutional guarantees that underpin the right to bail in India. It also examines the reasons for delays in bail and analyzes the principles that govern such delays. The study found that although bail is a fundamental aspect of Indian prisoner jurisprudence and widely recognized by judicial systems around the world, its implementation faces significant challenges. It is noteworthy that in *Territory of Rajasthan v. Balchand* (1977 AIR 2447), Justice V. R. Krishna Iyer had emphasized the principle that “bail is the rule and imprisonment is the exception” with the phrase “bail, not imprisonment,” but this principle appears to have weakened over time. Thousands of unconvicted prisoners remain in jail awaiting bail, and many of them face financial difficulties. Several factors contribute to this problem. Many detainees awaiting bail lack the financial means or assets to meet their bail conditions, such as posting a local surety. Furthermore, difficulties in obtaining identity documents, limited access to legal representation, and a lack of family support further hamper their ability to secure bail. These systemic problems undermine the constitutional guarantee protecting the right to life and personal liberty enshrined in Article 21 of the Indian Constitution.

Dixit, N., & Yadav, J. An analytical study is conducted on the evolution of bail jurisprudence in India and the discretion exercised by courts. Their research explores the complex interplay between judicial interpretation and legislative frameworks that influence bail decisions. The study takes an in-depth look at the factors that influence the granting or denial of bail and highlights the important role of judicial discretion in the Indian legal system. Using a comparative approach, the authors analyze landmark judicial decisions and legislative provisions to identify dominant trends, inconsistencies, and potential areas for reform in bail jurisprudence. Central to their investigation is the balance between maintaining individual liberty and protecting societal interests. They assessed key considerations such as the gravity of the offense, the risk of tampering with evidence or interfering with witnesses, as well as the fundamental principles of the impudence of simplicity and the right to a fair trial. Furthermore, the study highlights the challenges courts face in exercising their discretion over bail, including the tension between judicial activism and restraint, as well as the urgent need for consistency in bail decisions. The author also focuses on how bail laws affect access to justice, particularly for marginalized and vulnerable groups who often face systemic barriers. Through

detailed case studies and critical analysis, Dixit and Yadav contribute valuable insights to the ongoing debate on bail law in India. They have made recommendations aimed at improving the transparency, fairness, and consistency of bail decisions, while ensuring that constitutional protections and human rights remain central to the process.

Solanki, T., & Pareek, A. (2025). *Evolving Justice: Transforming Paradigms of Crime and Punishment Through the Lens of Contemporary Criminal Law Reforms*. Criminal law must continuously evolve to keep pace with societal changes and development, as static laws fail to meet contemporary needs. Traditionally influenced by British colonial frameworks, India's criminal justice system has undergone significant transformation to reflect indigenous values and modern realities. This evolution has been accelerated by the integration of technology in law enforcement and judicial processes, as well as the adoption of innovative crime prevention strategies. The introduction of the Bharatiya Nyaya Sanhita, 2023; Bharatiya Nagarik Suraksha Sanhita, 2023; and Bharatiya Sakshya Adhiniyam, 2023 signifies a significant transformation aimed at creating a more streamlined and reform-driven criminal justice system. These laws aim to strengthen the criminal justice framework through modernization, digital integration, and a renewed focus on safeguarding individual rights while enhancing public safety. This paper provides a comprehensive analysis of these new legislative measures, examining their potential to reshape crime control, judicial processes, and ultimately foster a more just and equitable society.

Kang, N., & Nayar, N. (2004). *The Evolution of Corporate Bankruptcy Law in India*. India's post-independence industrial strategies—characterized by import substitution, industrial licensing, and limitations on private enterprise—contributed to the rise of firms that were often inefficient and lacked competitiveness. With the onset of deregulation, increased foreign competition, and financial reforms, many of these financially troubled companies faced pressure to either exit the market or restructure their operations. However, India's existing legal, political, and social frameworks lacked a cohesive mechanism for the effective and fair resolution of insolvency cases, significantly hindering the much-needed industrial restructuring. Unlike the United States, which has a comprehensive bankruptcy code, India's corporate insolvency landscape consists of multiple legislative acts and special provisions. These laws govern liquidation and reorganization procedures but involve various agencies with overlapping jurisdictions, leading to systemic delays and procedural complexities. An effective bankruptcy system aims to maximize the overall value of assets to promote economic efficiency. In contrast, the Indian system is plagued by lengthy and costly liquidation and reorganization processes, poor valuation outcomes, and incentives for managers or shareholders to prioritize private gains over firm value. This paper critically evaluates the existing corporate bankruptcy framework within India's socio-political and economic context, highlighting its inherent biases and inefficiencies. It further examines the Companies (Second Amendment) Act, 2002, assessing its potential to streamline procedures and address the shortcomings of the earlier system.

Sagar et al. (2022). Bail: A Matter of Right or Discretion in the Indian Criminal Justice System. In the realm of criminal law, the concept of bail is intrinsically associated with the individual's right to personal liberty, a right enshrined under Articles 19 and 21 of the Constitution of India. Bail allows an accused individual to remain free during the trial process, enabling them to carry on with their daily life while awaiting the outcome of legal proceedings. Although bail is subject to certain conditions, the principle of presumed innocence until proven guilty guides the courts to generally adopt a liberal approach in granting bail. An important aspect of bail is the provision of preventive or anticipatory bail, which allows a person to apply for bail before being arrested, particularly in cases involving specific crimes. The right to bail depends on whether the offense is classified as bailable or non-bailable. For bailable offenses, bail is generally a right and is rarely denied. In contrast, for non-bailable offenses, the granting of bail is subject to the discretion of the judge and generally depends on a bona fide application by the accused. This article aims to explore whether bail in India is fundamentally a legal right guaranteed by law or primarily a matter of judicial discretion exercised on a case-by-case basis.

Khanna et al. (2015). Preventive Bail in India: A Solution to Criminal Process Abuses? In the Indian criminal justice system, individuals can apply for bail before being arrested, a provision known as “preventive bail.” While preventive bail does not prevent the filing of a criminal complaint, investigation, or trial of a criminal case, it protects an individual from police detention. This mechanism is often viewed as a safeguard to prevent a party from abusing a criminal process to harass or intimidate a competitor, and as a tool to prevent extortion through the criminal justice system. This paper explores the evolution of anticipatory bail in India and its growing application over recent decades. It investigates how this provision offers insight into the functioning of criminal investigations and trials in the country. Additionally, the study compares India’s anticipatory bail system with similar corrective mechanisms in other jurisdictions and discusses potential reforms or alternatives to address challenges associated with anticipatory bail in the Indian context.

Singh, P. (2021). *Right to Bail: A Critical Analysis in Reference to Under-Trial Prisoners in India* (Doctoral dissertation, Institute of Law, NU). Human beings are inherently social creatures, naturally inclined to engage and interact with others in society. Freedom and liberty encompass not only the right to express oneself and act freely but also the pursuit of happiness without unjust restrictions. However, the understanding of freedom and liberty is complex and evolves over time with changing societal values. While freedom is cherished, it is often overlooked that it is fragile and subject to constitutional principles designed to protect individual rights. In contemporary times, especially within the world’s largest democracy, freedom is viewed as a equilibrium among individual privileges and the responsibilities and objectives of the state within a legal framework. To maintain harmony between citizens and the state, many countries adopt constitutions—whether written or unwritten—to define and safeguard individual freedoms and liberties.

Rustogi, A. (2009). The right to bail is essential for an accused person, as pre-trial detention can have severe physical and psychological impacts despite the belief of blamelessness until established guilty. Bail during trial is a fundamental safeguard under the Criminal Procedure Code, 1973, representing a vital privilege of the accused. Bail law attempts to balance two competing interests: protecting society from potential risks posed by the accused, and upholding the principle of presumed innocence. Thus, bail provisions reconcile individual liberty with the demands of justice. Although the Criminal Procedure Code does not explicitly define bail, it categorizes offences into bailable and non-bailable. This paper examines the various bail provisions within the Indian criminal procedural framework.

Ali, S. A., & Mukhopadhyay, P. (2024). Critically examine the reform proposals put forward by the Center for New Indian Law (BNS) in 2023, which aim to replace the long-standing Indian Penal Code (IPC). The paper highlights the resistance such changes face and emphasizes the necessity of a thorough scrutiny of the BNS's provisions. It undertakes a theoretical comparison between the BNS and the IPC, focusing on legislative intent, potential colonial legacies, and concerns about anti-democratic features. The authors analyze issues such as patriarchal biases, problematic promises regarding marriage, linguistic imperialism, and ambiguities in punishments within the BNS framework. The study evaluates whether the new penal code genuinely represents a decolonizing reform or merely continues colonial-era continuities.

Singh et al. The right to privacy, being an essential facet of the right to life, holds a prominent place among the fundamental rights safeguarded by the Indian Constitution. With the rapid advancement of technology posing growing risks to personal privacy, judicial safeguards for this right have become a matter of pressing concern and active discourse. This paper explores the conceptual foundations of the right to privacy, relevant constitutional provisions, associated laws, and key judicial interpretations. It further compares India's approach to privacy rights with international practices, while addressing the challenges and issues faced in effectively safeguarding privacy in the country.

Kushwah et al. (2024) critically analyze the reforms introduced by the Bhartiya Nyaya Sanhita, 2023 (BNS) in the domain of sexual offences, replacing the Indian Penal Code, 1860. The study highlights key innovations such as redefining sexual offences, adopting a victim-centric approach, strengthening protections for under-trial individuals and witnesses, and introducing stricter punishments alongside victim compensation mechanisms. While the BNS aims to expedite justice and uphold dignity for victims, concerns remain regarding subjective interpretations of consent, procedural safeguards for the accused, and potential conflicts with principles like the presumption of innocence and proportionality. The paper also discusses witness protection provisions, noting ongoing challenges such as intimidation and systemic delays. Through the lens of criminal jurisprudence and constitutional values, the authors assess the BNS's efforts to balance punitive and rehabilitative objectives, gender neutrality, and preventing misuse of laws. The study concludes that the success of the BNS reforms will depend on judicial consistency, enforcement efficacy, and broader societal changes.

Objectives of The Study

- To examine the evolution of bail provisions in India with a focus on CrPC and the recently introduced BNSS.
- To review key judicial pronouncements shaping bail jurisprudence in India.
- To analyze the similarities and differences between bail provisions under CrPC and BNSS.
- To evaluate recent legal and policy trends influencing bail reforms in India.
- To identify emerging challenges and debates concerning the right to bail in the context of criminal justice reform.

Comparative Analysis: CrPC vs BNSS

The CrPC provides the framework for categorizing offences into **bailable and non-bailable** and outlines the respective procedures. However, discretionary power under CrPC has led to significant variation in how bail is granted across jurisdictions. Critics have long called for a more uniform and principle-based system.

The BNSS seeks to introduce reforms aimed at:

- Reducing judicial delays through digitalization and time-bound procedures
- Enhancing the role of victims and witnesses
- Laying down clearer conditions for bail, especially for habitual offenders and organized crime
- Introducing electronic monitoring in place of traditional sureties

Notably, under BNSS, there is **greater emphasis on protecting societal interests** and ensuring accountability in bail decisions, potentially narrowing the scope for judicial overreach.

Challenges and Implications

Despite the reforms, several challenges remain:

- **Implementation hurdles** such as training, infrastructure, and digital literacy in courts and police stations
- **Potential over-centralization of discretion** that could limit judicial flexibility
- **Risk of procedural delays** if digital systems are not efficiently integrated
- **Concerns over human rights** if stringent bail conditions disproportionately affect vulnerable groups.

Nevertheless, if implemented effectively, the BNSS could help reduce the number of undertrial prisoners, bring consistency to bail orders, and foster greater community faith in the convict judge technique.



Conclusion

The rule on bail in India is undergoing a transformative phase. The transition from CrPC to BNSS represents a broader effort to recalibrate the criminal justice system to contemporary needs. While the CrPC framework emphasized the liberty of the accused, the BNSS introduces a more **holistic approach**, factoring in victims' rights and societal interests.

The success of BNSS will depend on how well it can strike a balance between liberty and security, discretion and uniformity, and speed and fairness. Judicial interpretation and procedural safeguards will continue to play a critical role in determining the real-world impact of these legal reforms. This study underlines the rank of incessant evaluation and dialogue to safeguard that bail laws evolve in a manner that protects individual rights while promoting justice.

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