

Right to Personal Liberty and Bail under BNSS: A Constitutional Perspective

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ABSTRACT

The right to personal liberty is a cornerstone of constitutional democracy in India, enshrined under Article 21 of the Constitution. The law of bail acts as a procedural safeguard to protect this liberty against arbitrary arrest and detention. This paper critically examines the relationship between personal liberty and bail under BNSS, analyzing whether the new framework strengthens or dilutes constitutional protections. This paper offers a comprehensive analysis of the constitutional and legal framework governing bail, with a focus on the doctrinal and judicial developments that have shaped its current form. As a result, the challenges posed by crime vary significantly from one society to another, evolving over time in response to changes in social processes and structures. Using doctrinal research methodology, the study incorporates statutory texts, Supreme Court judgments, constitutional principles, empirical under trial statistics and scholarly literature to assess both the progressive and problematic dimensions of the new bail regime. Through an analysis of legislative provisions, historical development and case law, the paper argues for a principled and transparent approach to judicial discretion in bail matters.

Keywords: Bail, Default Bail, Judicial Discretion, Personal Liberty, Detention, Surety.

INTRODUCTION

Bail is a fundamental component of criminal law, serving as a bridge between individual liberty and the state's interest in justice. In India, the principle that "bail is the rule, jail is the exception" reinforces the presumption of innocence, a cornerstone of democratic societies. This principle ensures that detention before conviction remains limited, aligning with Article 21 of the Indian Constitution, which guarantees the right to life and liberty. Bail is defined as the setting free of the defendant by releasing him from the custody of law and committing him to the custody of his sureties who are obligated to produce him to appear for his trial at specific date and time.¹ The Supreme Court in **State of Rajasthan v. Balchand**², emphasized the principle that "bail is the rule and jail is the exception." This principle reflects the importance of personal liberty in criminal jurisprudence. The discourse on bail in India cannot be reduced to procedural technicalities; it is fundamentally a question of liberty versus state power. The principle that "bail is the rule and jail is the exception", articulated in *State of Rajasthan v. Balchand*, reflects not merely judicial policy but constitutional morality. From a subjective standpoint, BNSS appears reformatory in structure but cautious perhaps overly cautious in redistributing power between the individual and the state. The concern is not what the law says, but how it may operate in practice.

1. CONSTITUTIONAL FRAMEWORK OF PERSONAL LIBERTY

i. Article 21: Evolution

The constitutional framework of personal liberty in India is primarily rooted in Article 21, which guarantees that no person shall be deprived of life or personal liberty except according to procedure established by law. However, the real strength of this provision lies not in its text, but in its judicial interpretation, which has transformed it from a narrow procedural safeguard into a broad guarantee of human freedom. Initially, in **A.K. Gopalan v. State of Madras**³, the Supreme Court adopted a formalistic approach, holding that any procedure enacted by law was sufficient to deprive a person of liberty, regardless of its fairness. This interpretation gave the State wide authority and limited judicial scrutiny. To safeguard

¹ Iyer, v. R. Krishna. "CODE OF CRIMINAL PROCEDURE I." BAIL, www.iilsindia.com/studymaterial/320679_1601207180.pdf.

² *State of Rajasthan v. Balchand* AIR 1977 SC 2447; (1978) 4 SCC 308

³ *A.K. Gopalan v. State of Madras* AIR 1950 SUPREME COURT 27,

individuals from such misuse of the legal process, the provision of anticipatory bail⁴ was introduced in the Criminal Procedure Code of 1973. The 1960s saw the first national bail reform movement in the U.S.⁵ culminating in the passage of the Bail Reform Act of 1966. In contrast, non-bailable offences are those not explicitly marked as bailable in the Code or the First Schedule. Generally, “offences punishable with imprisonment of three years or more are categorized as non-bailable due to their greater seriousness⁶. This position was fundamentally altered in *Maneka Gandhi v. Union of India*, where the Court held that such procedure must be just, fair and reasonable. This marked the introduction of substantive due process into Indian constitutional law and ensured that arbitrary state action could not curtail liberty.

ii. Expanded Meaning of Liberty

This shift reflects a movement from legal formalism to constitutional morality. Article 21 is no longer satisfied by the mere existence of law it demands that the law itself be fair and non-arbitrary. Further expansion occurred in *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, where the Court held that the right to life includes the right to live with dignity. This broadened personal liberty beyond physical freedom to include qualitative aspects of life. Additionally, in *Hussainara Khatoon v. State of Bihar*⁷, the Court recognized the right to speedy trial, linking procedural delay with violation of liberty.

iii. Golden Triangle (Articles 14, 19, 21)

A crucial development in *Maneka Gandhi* was the integration of Articles 14, 19, and 21 often referred to as the “golden triangle”. This means a law depriving liberty must not be arbitrary (Article 14), it must respect freedoms under Article 19 and it must follow fair procedure under Article 21. This interlinking ensures that personal liberty cannot be curtailed through isolated legal provisions. It forces the State to justify its actions across multiple constitutional dimensions, strengthening individual protection.

The integration of Articles 14, 19, and 21 often called the “golden triangle” ensures that state action must be non-arbitrary (Article 14), freedoms must be respected (Article 19) and liberty must follow fair procedure (Article 21). While the constitutional framework is robust in theory, its effectiveness depends heavily on implementation. Arbitrary arrests, delays, and systemic inefficiencies continue to challenge the realization of personal liberty. According to code, a person accused of a bailable offence, “at any stage of the proceedings”, is “entitled to be released on bail”, even if they are arrested without a warrant⁸. Bail serves as a procedural safeguard against arbitrary detention and prolonged incarceration, particularly in cases where the trial is likely to take a considerable time. It ensures compliance with constitutional mandates under Article 21 of the Constitution of India, which guarantees the right to life and personal liberty. However, if the evidence presented by the prosecution is strong and compelling, the court may reasonably presume that the accused could attempt to avoid standing trial, and in such cases, may deny bail⁹.

3. Bail as a Reflection of Presumption of Innocence

The principle of presumption of innocence forms the backbone of criminal jurisprudence, requiring that every accused be treated as innocent until proven guilty. Bail operates as the practical enforcement of this principle, ensuring that individuals are not subjected to punishment in the guise of pre-trial detention. The Supreme Court in *State of Rajasthan v. Balchand* established the guiding doctrine that “bail is the rule and jail is the exception.” This reflects the understanding that detention before conviction must be justified by necessity, not imposed as a routine measure. In *Gudikanti Narasimhulu v. Public Prosecutor*, the Court emphasized that decisions on bail must balance liberty and societal interests, cautioning against

⁴ Manali Singh, “Anticipatory Bail and the Criminal Justice System in India,” 3 *Indian Journal of Law and Legal Research* 1–8 (2021).

⁵ Satwinder Singh and Palakdeep Kaur, “The Status of Bail Jurisprudence in India: Need Comprehensive Revamp,” 6 *Issue 2 International Journal of Law Management & Humanities* [i]-1401 (2023).

⁶ Paulomi Das, “Detailed Study of Bail in India,” 1 *LexForti Legal Journal* 20–30 (2019).

⁷ *Hussainara Khatoon v. State of Bihar* AIR 1979 SUPREME COURT 1369,

⁸ Madhu Rani and Rana Praveen, “Law Relating to Bail under Indian Law,” 2 *Part 2 Indian Journal of Integrated Research in Law* 1–8 (2022).

⁹ Perna Sharma, “Misuse of Bail Provisions in India,” 6 *Issue 2 International Journal of Law Management & Humanities* 1941–54 (2023).

mechanical denial of freedom. Similarly, in *Sanjay Chandra v. CBI*, it was held that pre-trial detention should not be punitive, especially when trials are likely to be prolonged. Further reinforcing this principle, *Dataram Singh v. State of Uttar Pradesh* reiterated that the grant of bail is the general rule, grounded in the presumption of innocence. Despite strong judicial articulation, the practical reality often diverges. Courts frequently rely on the gravity of the offence as a decisive factor, sometimes treating accusation as indicative of guilt. This undermines the presumption of innocence and converts bail from a right into a discretionary privilege. In essence, bail is not a matter of punishment or acquittal but a conditional release aimed at securing the presence of the accused while preserving personal liberty and the fairness of the criminal justice process. An individual who breaches the conditions of a bail bond will not be entitled to bail again¹⁰. Bail, when denied without compelling reasons, risks transforming the criminal process into a form of pre-conviction punishment. Thus, its proper application is essential to maintain the constitutional balance between individual liberty and state interests. The general principle is to grant bail rather than deny it, as a person is presumed innocent until proven guilty beyond a reasonable doubt¹¹.

4. Types of Bail under BNSS

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) broadly retains the traditional classification of bail from the earlier CrPC framework. However, from a constitutional perspective, these categories are not merely procedural distinctions they represent different degrees of protection of personal liberty under Article 21.

i. Regular Bail

Regular bail is granted after arrest, primarily in non-bailable offences at the discretion of the court. In *Sanjay Chandra v. CBI*, the Supreme Court emphasized that detention should not be used as a form of punishment, reinforcing that regular bail must be granted unless compelling reasons exist. Regular bail reflects the judiciary's role as the primary guardian of liberty, but excessive discretion often leads to inconsistency in its application. The delays in trial thus become a critical factor influencing the court's decision on bail¹². The Supreme Court has emphasized that the concept of bail embodies a balance between the interests of justice and the fundamental rights of the individual, and that incarceration without trial must be the exception rather than the rule¹³. Disparities in judicial discretion, socio-economic bias, delays in bail hearings, and the misuse of pre-trial detention have led to a significant number of undertrial prisoners languishing in jails across the country¹⁴.

ii. Anticipatory Bail

Anticipatory bail is granted before arrest, protecting individuals from arbitrary detention. Recognized as a vital safeguard in *Gurbaksh Singh Sibbia v. State of Punjab*, the Court held that anticipatory bail is an essential component of personal liberty. Further clarified in *Sushila Aggarwal v. State (NCT of Delhi)*, where it was held that such protection can extend till the end of trial. Anticipatory bail acts as a preventive shield, but its effectiveness depends on accessibility and judicial willingness to grant it.

iii. Default (Statutory) Bail

Default bail arises when the investigation is not completed within the prescribed time (60/90 days). In *Uday Mohanlal Acharya v. State of Maharashtra*, it was held to be an indefeasible right. This was reinforced in *Bikramjit Singh v. State of Punjab*, where the Court linked it directly to Article 21. Default bail is the strongest protection of liberty, as it limits state power and penalizes investigative delay.

¹⁰ Madhav Saxena, "Critical Analysis of Bail Trends Prevalent in India in Comparison to Other Jurisdictions," 6 Issue 3 International Journal of Law Management & Humanities 1422–54 (2023)

¹¹ Anudatt Dubey, "An Analysis of the Law Relating to Bail in India," 4 Issue 2 Indian Journal of Law and Legal Research 1–9 (2022).

¹² Dakshq Baweja, "Judicial Discretion in Grant of Bail," 5 Issue 1 Indian Journal of Law and Legal Research 1–7 (2023).

¹³ *Sanjay Chandra v. CBI*, (2012) 1 SCC 40.

¹⁴ Y. Singh, *Evolution of Bail Jurisprudence: In the Prospect of the Constitution and New Criminal Laws*, SSRN (2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5012961

iv. Interim bail

Interim bail is temporary relief granted pending final disposal of a bail application. Though not always explicitly codified, courts have recognized its necessity to prevent undue detention during legal proceedings. Interim bail reflects judicial flexibility, ensuring that procedural delays do not result in unjust incarceration. While BNSS retains these categories, their effectiveness depends less on statutory design and more on judicial interpretation and implementation, which ultimately determine the real protection of liberty.

5. Default Bail as a Constitutional Guarantee

Default bail, also known as statutory bail, represents one of the most significant safeguards of personal liberty within the criminal justice system. Under the BNSS framework (continuing the earlier CrPC scheme), an accused becomes entitled to bail if the investigation is not completed within the prescribed period 60 days or 90 days, depending on the nature of the offence. The roots of bail in India trace back to English common law, where it emerged as a safeguard against arbitrary imprisonment. Under the Magna Carta (1215), the foundational principle was that “no free man shall be seized or imprisoned... except by the lawful judgment of his equals or by the law of the land¹⁵. The legacy of “bail is a rule and jail is an exception” a dictum of common law origin was incorporated into Indian jurisprudence, especially through judicial interpretation in the post-independence era¹⁶. The concept of bail is also supported by the presumption of innocence, a basic principle of criminal jurisprudence. An accused person is presumed innocent until guilt is proved beyond reasonable doubt in a court of law. Therefore, mere accusation cannot justify continued incarceration.

i. Liberty Against State Delay: Unlike regular or anticipatory bail, default bail is not based on judicial discretion but arises from prosecutorial failure. It reflects a constitutional principle that the State cannot curtail liberty indefinitely due to its own inefficiency. In *Uday Mohanlal Acharya v. State of Maharashtra*, the Supreme Court held that the right to default bail is an “indefeasible right” once the statutory period expires and the accused is prepared to furnish bail.

ii. Judicial Reinforcement of the Right: The constitutional importance of default bail has been repeatedly affirmed. There are some important judgements. In case of *Rakesh Kumar Paul v. State of Assam* in this case ambiguity in time limits must be resolved in favor of the accused. *Bikramjit Singh v. State of Punjab* here default bail is part of Article 21. *M. Ravindran v. Directorate of Revenue Intelligence* there once the right accrues, it cannot be defeated by later filing of the charge sheet. From a subjective perspective, default bail transforms Article 21 into an enforceable safeguard against investigative delay. However, in practice, its effectiveness is often diluted due to lack of awareness among accused persons, procedural technicalities and delays in asserting the right. This creates a gap where a strong constitutional protection becomes contingent on procedural efficiency. Default bail stands as a powerful reminder that personal liberty cannot be subordinated to administrative delay. While BNSS retains this safeguard, its real value depends on consistent judicial enforcement and timely assertion by the accused. Judicial interpretation has expanded this provision to require that such procedure must be just, fair, and reasonable. In *Sanjay Chandra v. CBI*,¹⁷ the Court remarked that pre-trial incarceration without justification violates the presumption of innocence and the right to life and liberty. In *Hussainara Khatoon v. State of Bihar*,¹⁸ it was observed that indefinite detention of undertrials due to inability to furnish bail was unconstitutional.

6. Arrest, Detention and Judicial Safeguards

Arrest and detention represent the most direct forms of State interference with personal liberty. Under Article 21, such interference is constitutionally valid only when it follows a just, fair, and reasonable procedure. Judicial safeguards therefore act as essential checks to prevent abuse of arrest power. Arrest as an Exception, Not Routine: Although arrest is a lawful tool of investigation, the Supreme Court has consistently emphasized that it should not be exercised mechanically. In *Joginder Kumar v. State of Uttar Pradesh*, the Court held that arrest must be justified and not made routinely, stressing that mere suspicion is not enough. Pre-trial detention directly implicates personal liberty. Therefore, denial of bail must be justified by compelling reasons and cannot be mechanical or punitive. The Supreme Court, beginning with *Maneka Gandhi v. Union of India*¹⁹, transformed Article 21 into a substantive guarantee against arbitrary state action, thereby

¹⁵Magna Carta, ch. 39 (1215); see also Y.P. Singh, *Bancusprudence*, J. Indian L. Inst., 2021,

<https://www.jstor.org/stable/27248396>.

¹⁶J.P. Dubey, *BAIL: Law and Procedure with Tips to Avoid Police Harassment*, J. Indian L. Inst., 2011,

<https://www.jstor.org/stable/45148571>.

¹⁷*Sanjay Chandra v. CBI*, (2012) 1 SCC 40.

¹⁸*Hussainara Khatoon v. State of Bihar*, (1979) AIR 1369 (SC).

¹⁹*Maneka Gandhi v. Union of India*

placing bail decisions within the broader framework of constitutional due process. However, criticisms persist regarding inconsistent application, especially when economic or political status influences bail decisions²⁰. One of the earliest and most influential cases is **Gudikanti Narasimhulu v. Public Prosecutor**,²¹ where Justice V.R. Krishna Iyer famously observed that bail is the rule, jail is the exception, marking a turning point in the court's understanding of pre-trial detention. In **Hussainara Khatoon v. State of Bihar**,²² the Supreme Court condemned the prolonged incarceration of undertrial prisoners solely due to poverty and inability to furnish bail bonds. Similarly, in **Arnesh Kumar v. State of Bihar**, guidelines were issued to prevent unnecessary arrests, particularly in offences punishable with less than seven years of imprisonment. Despite these safeguards, arrest often functions as the default response rather than a last resort. This reflects a systemic tendency to prioritize control over liberty. Judicial Safeguards Against Arbitrary Detention: The Constitution and judicial decisions provide key protections production before Magistrate within 24 hours, right to legal counsel and protection against illegal detention. In **D.K. Basu v. State of West Bengal**, the Court laid down detailed guidelines to prevent custodial abuse, including arrest memo, informing relatives and medical examination. These safeguards aim to ensure transparency and accountability in police action. In **Hussainara Khatoon v. State of Bihar**, the Court highlighted that prolonged detention without trial violates Article 21.

7. Constitutional Limits on Bail Restrictions

Bail restrictions represent the point where the State's interest in maintaining order intersects with the individual's right to liberty. However, under Article 21, any limitation on bail must satisfy the test of fairness, reasonableness, and proportionality. This ensures that denial of bail does not become a disguised form of punishment before conviction. In **Sanjay Chandra v. CBI**,²³ the Court stressed the importance of the presumption of innocence and remarked that bail should not be denied merely because of the seriousness of the accusation. Another watershed judgment is **Arnesh Kumar v. State of Bihar**²⁴, where the Court criticized the mechanical arrests made by police in cases under Section 498A of the Indian Penal Code. Bail is a fundamental aspect of criminal procedure that ensures a balance between the liberty of an accused person and the interest of justice. The concept of bail is closely linked with the right to life and personal liberty guaranteed under Article 21 of the Constitution of India. The newly enacted Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) has replaced the Code of Criminal Procedure, 1973 and introduced several reforms in criminal procedure, including provisions governing bail. Finally, in **Satender Kumar Antil v. CBI**,²⁵ the Court laid down comprehensive guidelines for bail in cases where chargesheets are not filed on time.

i. Liberty Cannot Be Subordinate to Severity: The Supreme Court has consistently held that the seriousness of an offence alone cannot justify denial of bail. In **Sanjay Chandra v. CBI**, the Court emphasized that pre-trial detention must not be punitive, even in serious economic offences. Similarly, in **P. Chidambaram v. Directorate of Enforcement**, it was held that gravity of offence cannot override the fundamental right to liberty without additional compelling factors. Indian courts often give disproportionate weight to the nature of the offence, which risks converting bail decisions into moral judgments rather than legal determinations.

ii. Doctrine of Proportionality: Restrictions on bail must pass the test of proportionality i.e., they must serve a legitimate objective, be necessary and be the least restrictive option. In **Nikesh Tarachand Shah v. Union of India**, the Supreme Court struck down stringent bail conditions under special legislation as unconstitutional for violating Article 21. This case demonstrates that excessive or unreasonable bail conditions are subject to constitutional invalidation, reinforcing that liberty cannot be curtailed arbitrarily.

iii. Balancing Test between Liberty and State Interests: Courts generally consider risk of absconding, possibility of tampering with evidence and threat to public order. While these are legitimate concerns, they must be based on evidence, not assumptions. In practice, courts often presume these risks rather than substantiate them, leading to overuse of detention. This undermines the presumption of innocence and dilutes Article 21 protections. Constitutional limits on bail restrictions ensure that denial of bail remains an exception justified by necessity, not a routine response. The true challenge lies not in

²⁰Y. Singh, Evolution of Bail Jurisprudence: In the Prospect of the Constitution and New Criminal Laws, SSRN (2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5012961.

²¹**Gudikanti Narasimhulu v. Public Prosecutor**, (1978) 1 SCC 240.

²²**Hussainara Khatoon v. State of Bihar**, AIR 1979 SC 1369.

²³**Sanjay Chandra v. CBI**, (2012) 1 SCC 40.

²⁴**Arnesh Kumar v. State of Bihar**, (2014) 8 SCC 273.

²⁵**Satender Kumar Antil v. CBI**, (2022) 10 SCC 51.

defining these limits, but in consistently applying them. Without judicial discipline, even well-established constitutional safeguards risk being reduced to formal principles without real impact. The Court, in a five-judge constitutional bench, held that anticipatory bail is a statutory right intended to safeguard the individual from the possibility of harassment and unjustified arrest, especially in politically motivated or fabricated cases²⁶. This provision promotes fairness and ensures that poverty does not become a reason for unnecessary detention. Later judgments such as **Siddharam Satlingappa Mhetre v. State of Maharashtra**²⁷, reaffirmed Sibbia, underscoring that liberty should not be sacrificed at the altar of procedural formalism. A bailable offence is one in which the accused possesses a statutory right to be released on bail upon furnishing the prescribed bond or sureties. In such cases, neither the police officer nor the Magistrate has authority to refuse release once the accused is prepared to comply with the legal requirements. The role of the authority is therefore administrative rather than adjudicatory. This reflects the legislative understanding that detention for minor offences is disproportionate and inconsistent with the guarantee of personal liberty under Article 21 of the Constitution. Indian courts have reiterated that this discretion must be exercised judiciously and not arbitrarily, guided by constitutional values and evolving jurisprudence²⁸. While in bailable offences (Section 436 CrPC), bail is a right, in non-bailable cases (Section 437), the decision rests on the judge's assessment of various factors: the nature of the offence, the possibility of the accused fleeing justice, tampering with evidence, or influencing witnesses²⁹.

8. Critical Analysis of BNSS

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) seeks to modernize India's criminal procedure, yet its true constitutional value must be assessed in terms of how effectively it protects personal liberty under Article 21. While the statute largely retains the structure of the CrPC, its impact lies in implementation and balance between State power and individual freedom.

i. Continuity Over Transformation:

BNSS does not radically alter bail jurisprudence but largely reproduces existing provisions. This suggests continuity rather than reform. The principle that "bail is the rule and jail is the exception" from *State of Rajasthan v. Balchand* remains judicially recognized but is not codified explicitly in BNSS. This omission reflects a missed opportunity to convert a constitutional principle into a statutory mandate. The provision thus prevents the incarceration of indigent accused persons solely due to poverty. In **Gudikanti Narasimhulu v. Public Prosecutor**,³⁰ the Court famously held that bail should not be denied merely because the charge is serious; rather, it must be based on real risk and not abstract fears. In the case of **Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav**³¹, the Supreme Court held that a person accused of a non-bailable offence can apply for bail either to the Magistrate or the Court of Session, depending on the stage of the proceedings. A non-bailable offence requires a judicial determination. Bail is not denied as a matter of principle but is granted after an evaluation of relevant factors such as the seriousness of the accusation, the possibility of absconding, the likelihood of tampering with evidence, and the interests of justice. The court's discretion is thus structured and guided, not absolute. The classification therefore regulates the extent to which liberty may be curtailed before conviction. In the case of **Gurbaksh Singh Sibbia v. State of Punjab**³², the Supreme Court held that anticipatory bail is a pre-arrest bail and can be granted under certain circumstances, such as when there is a likelihood of the person being falsely implicated or when there is a possibility of harassment.

ii. Strengths of BNSS

Retention of Established Safeguards, default bail framework continues and judicial discretion in bail preserved. Alignment with Constitutional Jurisprudence and courts can still apply Article 21 principles from *Maneka Gandhi v. Union of India*. These strengths ensure that BNSS does not dilute existing protections but they also indicate a lack of innovation.

iii. Expanded State and Police Powers

Greater investigative authority may increase arrests and custodial detention. This raises concerns in light of *Armesh Kumar v. State of Bihar*, which warned against unnecessary arrests. While serious offences may justify stricter scrutiny, the gravity

²⁶ *Gurbaksh Singh Sibbia v. State of Punjab*, (1980) 2 SCC 565

²⁷ *Siddharam Satlingappa Mhetre v. State of Maharashtra*, (2011) 1 SCC 694.

²⁸ *Dataram Singh v. State of Uttar Pradesh*, (2018) 3 SCC 22.

²⁹ Criminal Procedure Code, §§ 436–439, No. 2 of 1974 (India).

³⁰ *Gudikanti Narasimhulu v. Public Prosecutor*, (1978) 1 SCC 240.

³¹ *Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav* (2004) 7 SCC 528

³² *Gurbaksh Singh Sibbia v. State of Punjab* (1980) 2 SCC 565

of the charge alone cannot automatically justify prolonged incarceration. In **Sanjay Chandra v. CBI**³³, the Supreme Court observed that detention pending trial should not be used as a measure of punishment and that the object of bail is merely to secure the attendance of the accused at trial.

iv. Excessive Judicial Discretion

Bail decisions remain highly discretionary, leading to inconsistent outcomes, Socio-economic bias and Liberty should not depend on the subjective satisfaction of individual judges. In **Moti Ram and Ors. v. State of M.P**³⁴, the poor mason accused was found guilty. Without providing any details on sureties, bonds, or other conditions, the Chief Judicial Magistrate was directed to grant him a larger bail amount by the Supreme Court. Justice Krishna Iyer once more came up against the unjust bail system that was in place in India in **Maneka Gandhi v. Union of India**³⁵, Although the offenses are divided among those that are and are not subject to bail, there is no definition of bail in the legislation.

v. Undertrial Detention Crisis

The persistence of prolonged detention contradicts principles laid down in **Hussainara Khatoon v. State of Bihar**. BNSS does not introduce strong mechanisms to reduce undertrial populations. In the case of **Arnesh Kumar v. State of Bihar**³⁶, the Supreme Court made the observation that police should only detain an accused person if it is absolutely necessary to do so and only after putting the detainment's justifications in writing.

vi. Weak Enforcement of Default Bail

Despite recognition as a fundamental right in **Bikramjit Singh v. State of Punjab**, procedural hurdles continue to dilute its application. Laws must be just, fair and reasonable and restrictions must be proportionate. As held in **Nikesh Tarachand Shah v. Union of India**, excessive restrictions on bail are unconstitutional. BNSS risks being constitutionally compliant in form but deficient in substance if liberty is not effectively protected. BNSS represents evolution, not transformation. While it preserves existing bail principles, it does not significantly strengthen safeguards for personal liberty. The success of BNSS will ultimately depend not on its text, but on its interpretation and implementation. Without a liberty-centric approach, even a well-drafted law may fail to uphold the constitutional promise of freedom.

9. Suggestions and Reforms

The effectiveness of bail jurisprudence under the BNSS must ultimately be judged by its ability to protect personal liberty in practice, not merely in theory. While constitutional principles are well-established, systemic shortcomings necessitate targeted reforms to bridge the gap between law and reality. Further, the court established in **Hussainara Khatoon and Others v. Home Sec, State of Bihar**³⁷, that a man shall be released from custody if he has been imprisoned for a period of time that exceeds the term to which he is entitled. In **State of U.P. vs. Deoman Upadhyaya**³⁸, where it was held that the burden of proving the guilt of an accused lies solely with the prosecution, and until the prosecution proves the guilt beyond reasonable doubt, the accused is entitled to the benefit of doubt. It was recently reiterated by the apex court in **Sanjay Thakur v. Government of India** that an accused is presumed innocent until proven guilty in a court of law.

- i. Codify the principle of “bail is the rule and jail is the exception” as laid down in **State of Rajasthan v. Balchand** to make liberty the default rule. Introduce uniform bail guidelines to reduce judicial inconsistency in line with **Dataram Singh v. State of Uttar Pradesh**.
- ii. Strengthen enforcement of default bail by ensuring automatic release after statutory period, as recognized in **Bikramjit Singh v. State of Punjab**. To limit arbitrary arrests through strict compliance with safeguards laid down in **Arnesh Kumar v. State of Bihar**.
- iii. Reduce undertrial detention by ensuring speedy trials and periodic review, as emphasized in **Hussainara Khatoon v. State of Bihar**. To promote non-custodial alternatives such as personal bonds and monitoring to ensure detention remains a last resort.

³³Sanjay Chandra v. CBI, (2012) 1 SCC 40

³⁴MOTI RAM AND ORS. V. STATE OF M.P,1978 AIR 1594, 1979 SCR (1) 335

³⁵MANEKA GANDHI V. UNION OF INDIA,1978 AIR 597, 1978 SCR (2) 621

³⁶ARNESH KUMAR V. STATE OF BIHAR, 8 SCC 273

³⁷HUSSAINARA KHATOON AND OTHERS V. HOME SEC, STATE OF BIHAR, 1979 AIR 1369, 1979 SCR (3) 532

³⁸State Of U. P vs Deoman Upadhyaya on 6 May, 1960, 1960 AIR 1125.-

Enhance legal aid and awareness so that accused persons can effectively exercise their right to bail. To ensure proportional and reasonable bail conditions in line with constitutional principles from *Nikesh Tarachand Shah v. Union of India*. To provide judicial training and sensitization to ensure consistent, liberty-oriented interpretation of bail laws.

CONCLUSION

The right to personal liberty under Article 21 remains the foundation of bail jurisprudence. The principle of fairness established in *Maneka Gandhi v. Union of India* and the doctrine of “bail is the rule” in *State of Rajasthan v. Balchand* continue to guide the law. While BNSS retains these principles, their real effectiveness depends on implementation. The gap between law and practice still persists, as highlighted in *Hussainara Khatoon v. State of Bihar*. Thus, the true test of BNSS lies in ensuring that personal liberty is protected in reality, not just in theory. The BNSS framework therefore obliges courts to balance two competing concerns: the protection of individual liberty and the protection of societal interests.

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