



The role of judiciary in protecting personal liberty through bail mechanisms

Dr. Kiran Chouhan¹, Meena Rathore²

¹ Assistant Professor Faculty of Law, Bhupal Nobles' University, Udaipur, Rajasthan, India

² Research Scholar, Bhupal Nobles' University, Udaipur, Rajasthan, India

Abstract

Personal liberty is one of the most fundamental values in a constitutional democracy. In criminal justice systems, this liberty is often tested at the stage of arrest and pre-trial detention. Bail, as a judicial mechanism, acts as a crucial safeguard against arbitrary deprivation of freedom. It ensures that incarceration before conviction remains an exception rather than the rule. This research paper examines the role of the judiciary in protecting personal liberty through the effective application of bail principles, with special reference to Indian constitutional jurisprudence.

The study highlights how courts have interpreted Article 21 of the Constitution of India to strengthen the presumption of innocence and prevent unnecessary detention. It also explores how judicial discretion in bail matters balances individual rights with societal interests such as fair investigation, prevention of witness tampering, and ensuring the accused's presence at trial. Landmark judgments of the Supreme Court of India have expanded the scope of personal liberty by discouraging mechanical denial of bail and emphasizing reasoned judicial orders.

The paper further discusses the challenges faced in bail administration, including delays in trials, overcrowded prisons, and inconsistent judicial practices. It argues that while bail is a procedural aspect of criminal law, it has evolved into a substantive tool for protecting fundamental rights.

Ultimately, the paper concludes that the judiciary plays a decisive role in maintaining constitutional balance by ensuring that bail operates as a rule of liberty and not a privilege of exception.

Keywords: Personal liberty, bail, judiciary, Article 21, undertrial prisoners, presumption of innocence, judicial discretion

Introduction

Article 21 of the Indian Constitution protects something very basic and deeply important: a person's right to live freely and not be deprived of life or personal liberty except through a fair and just legal procedure. In real life, this becomes especially important in criminal cases, where a person may be arrested but is not yet proven guilty. This is where bail comes in. Bail simply means that instead of keeping someone in jail until the trial ends, the court allows temporary release with the assurance that the accused will appear for hearings whenever required. This becomes crucial because criminal trials in India often take a long time, and prolonged detention can seriously affect a person's job, family life, and dignity, even if they are later acquitted.

That is why courts treat bail as a balance between two competing interests: the State's responsibility to investigate and prosecute crime, and the individual's fundamental right to personal liberty. While deciding bail, courts generally consider factors such as the possibility of absconding, influencing witnesses, or tampering with evidence. If these risks are not strong, bail is usually granted, as pre-trial detention is not meant to be a form of punishment. In this sense, bail reflects the constitutional principle that liberty is the rule and detention is the exception.

The importance of bail becomes even clearer when viewed in the context of the criminal justice system's scale. According to the NCRB Crime in India Report, arrests increased to 68.15 lakh in 2020 from 52.13 lakh in 2019, marking a significant rise. Earlier years showed a declining trend, with arrests falling from 61.3 lakh in 2016 to 52.13 lakh in 2019. These figures highlight the large number of individuals entering the criminal justice system each year,

reinforcing the need for effective bail principles to prevent unnecessary pre-trial incarceration and to safeguard personal liberty under Article 21.^[1]

Research Questions: The research questions for this study are as follows:

1. How does the judiciary protect personal liberty through bail?
2. What constitutional principles guide bail decisions?
3. How has Article 21 influenced bail jurisprudence?
4. What challenges exist in bail implementation?
5. Does judicial discretion ensure fairness?

Research Methodology

This study is doctrinal in nature and is based on analysis of constitutional provisions, statutory laws, judicial decisions, research articles, books, and legal commentaries relating to bail jurisprudence in India. The research primarily focuses on judicial interpretation of Article 21 and the role of courts in protecting personal liberty through bail mechanisms.

Literature Review

Somoshri Banerjee, *Liberty Under Law: The Significance of Bail as a Fundamental Right* (2025),^[2] explains that bail is closely linked to the presumption of innocence and fair trial rights. The paper states that pre-trial detention should not become punishment and that denial of bail must be based on strong reasons like risk of absconding or tampering with evidence. It also highlights how economic inequality affects access to bail and suggests reforms for a fairer system.

Overall, the work shows that bail is an essential safeguard of personal liberty under Article 21, ensuring balance between individual rights and justice.

Rudraksh Jain, *Safeguarding Liberty: A Constitutional Analysis of Bail Jurisprudence in India* (2025) ^[3], published in the *International Journal of Law Management & Humanities* (Vol. 8, Issue 3, pp. 2437–2452), explains bail as more than just a procedural step in criminal law. The paper presents it as a reflection of personal liberty under the Constitution, especially under Articles 14, 19, 21, and 22. It shows how courts in India constantly try to balance two important concerns: the freedom of the accused and the need to ensure justice is not disturbed during trial. The study also points out that the main purpose of bail is simply to secure the presence of the accused in court, and once that is achieved, keeping a person in custody should not be routine. At the same time, it acknowledges that courts cannot ignore risks like absconding or interference in the trial. Overall, the work highlights bail as a careful balancing act where liberty matters deeply, but it must exist within the boundaries of law and public interest.

In *A.K. Gopalan*, ^[4] the Supreme Court took a narrow view of Article 21 and held that personal liberty could be restricted as long as there was a valid law enacted by a competent legislature, even if the procedure was not necessarily fair or reasonable. The Court treated Articles 14, 19, and 21 as separate and independent, meaning that each operated in its own field without affecting the others. Under this approach, Article 21 was seen mainly as a “procedure established by law” provision, giving wide power to the State to restrict liberty.

His position was later changed in *Maneka Gandhi v. Union of India* (1978) 1 SCC 248, ^[5] where the Supreme Court rejected the earlier restrictive interpretation. The Court held that any law affecting personal liberty must be just, fair, and reasonable, and cannot be arbitrary.

It further linked Articles 14, 19, and 21 together, forming what is known as the “Golden Triangle” of the Constitution. This means that any restriction on personal liberty must satisfy the tests of equality, freedom, and fairness at the same time, ensuring stronger protection of fundamental rights and preventing arbitrary State action. ^[6]

Judicial Role in Bail

1. Constitutional Basis

The constitutional foundation of bail in India is deeply rooted in Article 21 of the Constitution, which guarantees the right to life and personal liberty. The Supreme Court has consistently expanded the scope of this right to ensure that it includes fair procedure, protection against arbitrary detention, and the guarantee of a speedy trial.

In *A.R. Antulay v. R.S. Nayak*, ^[7] the Supreme Court held that the right to a speedy trial is an essential part of Article 21 and applies at every stage of criminal proceedings, including investigation, inquiry, trial, appeal, and revision. This judgment established that delay in criminal proceedings directly impacts personal liberty and cannot be ignored.

This principle was further strengthened in *Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India*, ^[8] where the Court observed that prolonged undertrial detention violates Articles 14 and 21 of the Constitution. The Court took a progressive step by directing that an undertrial prisoner who has undergone detention for half of the maximum sentence prescribed for the offence should ordinarily be released on bail, subject to appropriate conditions.

This judicial standard was later incorporated into statutory law through Section 436A of the Code of Criminal Procedure, 1973 (inserted by the 2005 amendment). ^[9] This reflects how judicial interpretation has directly shaped bail law in India and strengthened constitutional protection against excessive pre-trial detention.

In *Husain and Anr. v. Union of India*, ^[10] the Supreme Court took a practical approach to ensure that bail and custody matters do not get stuck in unnecessary delays. The Court stressed that delay in deciding bail applications directly affects a person’s right to liberty under Article 21.

It directed Magistrates to try and decide bail applications within about one week, so that accused persons are not left waiting in custody for long periods without a decision. The High Courts were also asked to ensure that bail matters before them are disposed of within one month.

For cases where undertrial prisoners have already spent more than five years in custody, the Court said that their appeals should be taken up and decided as quickly as possible. It also advised High Courts to prepare yearly plans for lower courts, setting expected timelines for criminal trials and checking whether those timelines are actually being followed.

Overall, the judgment reflects a simple idea: bail should not become meaningless because of delay, and the justice system must act quickly where a person’s liberty is at stake. In *Mohd. Ajmal Amir Kasab v. State of Maharashtra*, ^[11] the Supreme Court made it clear that the right to a lawyer, including free legal aid, starts from the very first time an accused is brought before the court.

The Court pointed out that legal help is not just needed during the final trial, but right at the beginning when important decisions are being made. At this stage, a lawyer helps the accused argue against police or judicial custody and also apply for bail. Legal assistance is also important to make sure the accused understands the serious consequences of giving a confession under Section 164 of the CrPC.

The Court further noted that a lawyer’s role continues when the charge-sheet is reviewed and when the court decides how the case will move forward, including the framing of charges. Overall, the judgment highlights that early access to legal aid is essential to protect fairness and ensure that an accused person’s liberty is properly safeguarded.

2. Presumption of Innocence

One of the basic principles of criminal law is that every person accused of a crime is considered innocent until proven guilty in a court of law. This idea is extremely important because an accusation alone cannot be treated as proof of guilt. Bail supports this principle by ensuring that a person is not unnecessarily kept in prison before conviction. If courts routinely deny bail, then pre-trial detention itself starts looking like punishment, which goes against the idea of fairness and justice.

The Supreme Court has repeatedly emphasized that personal liberty cannot be taken away casually. In *State of Rajasthan v. Balchand*, ^[12] the Court famously stated that “bail is the rule and jail is the exception.” This simple observation became one of the most important principles of Indian bail jurisprudence. It reflects the idea that imprisonment before conviction should happen only when absolutely necessary, such as where there is a real danger of the accused fleeing from justice or interfering with the investigation.

Similarly, in *Gudikanti Narasimhulu v. Public Prosecutor*,^[13] Justice V.R. Krishna Iyer highlighted the human side of bail law. The Court observed that judges must not treat liberty lightly because every accused person still carries the protection of the presumption of innocence. The judgment recognized that imprisonment affects not only the accused but also families, livelihoods, and social dignity.

The Supreme Court again reinforced this thinking in *Sanjay Chandra v. CBI*,^[14] where it held that the purpose of bail is only to ensure the presence of the accused during trial and not to punish them before guilt is established. The Court warned against prolonged pre-trial detention, especially when trials take years to conclude.

Thus, through these decisions, the judiciary has consistently protected the principle that liberty should not be denied merely because a person has been accused of an offence.

3. Judicial Discretion

Bail decisions are not automatic. Courts exercise judicial discretion while deciding whether a person should be released or kept in custody. This discretion is important because every criminal case is different, and judges must carefully balance the rights of the accused with the interests of society.

While deciding bail, courts usually look at factors such as the seriousness of the offence, the strength of the evidence, the possibility of the accused absconding, and the risk of influencing witnesses or tampering with evidence. The aim is to ensure that justice is protected without unnecessarily restricting personal liberty.

In *State of U.P. v. Amarmani Tripathi*,^[15] the Supreme Court clearly explained the factors that courts should consider in bail matters. The Court stated that the nature of accusation, severity of punishment, likelihood of the accused fleeing, and chances of witness intimidation are all relevant considerations. This judgment helped bring greater clarity and consistency to bail decisions.

At the same time, the judiciary has also warned that judicial discretion should not become arbitrary. In *Prahlad Singh Bhati v. NCT of Delhi*,^[16] the Court observed that discretion must be exercised carefully, reasonably, and according to established legal principles. A judge cannot refuse or grant bail simply on personal opinion or public pressure.

More recently, in *Mahipal v. Rajesh Kumar*,^[17] the Supreme Court stressed that bail orders must contain proper reasons. The Court noted that a mechanical or poorly reasoned order weakens public confidence in the justice system. By insisting on transparency and proper reasoning, the judiciary ensures fairness both to the accused and to society.

Therefore, judicial discretion acts as a safeguard that allows courts to respond to the facts of each case while still respecting constitutional values of liberty and fairness.

4. Delay in Trials

One of the biggest problems in the Indian criminal justice system is delay in trials. Criminal cases often continue for many years, and during this period, accused persons may remain in jail as undertrial prisoners even though their guilt has not yet been proven. This creates a serious threat to personal liberty because a person may spend years in prison before the court finally decides the case.

Recognizing this issue, the Supreme Court has repeatedly held that speedy trial is an essential part of Article 21. In *Hussainara Khatoon v. State of Bihar*,^[18] the Court exposed the shocking condition of undertrial prisoners who had remained in jail for periods longer than the punishment prescribed for their alleged offences. The judgment became a landmark in protecting the rights of undertrial prisoners and established that delay in trial directly violates personal liberty.

Similarly, in *Kadra Pahadiya v. State of Bihar*,^[19] the Supreme Court strongly criticized prolonged detention caused by judicial delay. The Court emphasized that the State cannot deny liberty merely because the legal system is slow.

The judiciary has also extended this protection to cases under special laws. In *Union of India v. K.A. Najeeb*,^[20] the Supreme Court granted bail under the UAPA because the accused had already spent a long time in custody and the trial was unlikely to conclude soon. The Court held that constitutional courts must intervene when prolonged incarceration becomes unfair and oppressive.

These judgments reflect a humane understanding that justice delayed can become justice denied, especially for under trial prisoners whose lives remain suspended while waiting for trial.

5. Special Laws and bail

The role of the judiciary becomes even more significant when bail is considered under special laws such as the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) and the Unlawful Activities (Prevention) Act, 1967 (UAPA). These laws were enacted to deal with serious offences relating to drug trafficking, organized crime, and terrorism, and therefore contain stricter bail provisions than ordinary criminal laws. While such statutes aim to protect public order and national security, they also create a serious challenge for courts in safeguarding the constitutional right to personal liberty under Article 21.

Under Section 37 of the NDPS Act, courts cannot easily grant bail in cases involving commercial quantities of narcotic substances unless they are satisfied that there are reasonable grounds to believe that the accused is not guilty and is unlikely to commit any offence while on bail. Similarly, Section 43D^[5] of the UAPA places severe restrictions on bail by allowing courts to refuse bail where the allegations appear to be *prima facie* true. These provisions significantly reduce judicial discretion and often result in long periods of pre-trial detention.

In such situations, the judiciary plays a crucial constitutional role by balancing the interests of society with the fundamental rights of the accused. The Supreme Court in *Union of India v. Ram Samujh*^[21] observed that offences under the NDPS Act are serious in nature because drug trafficking affects society at large. Therefore, courts must exercise caution while granting bail in such cases. Likewise, in *National Investigation Agency v. Zahoor Ahmad Shah Watali*,^[22] the Supreme Court adopted a strict interpretation of bail provisions under the UAPA and held that courts should not conduct a detailed examination of evidence at the bail stage. These decisions reflect the judiciary's concern for public safety and national security.

However, the judiciary has also repeatedly emphasized that statutory restrictions cannot completely override constitutional protections. Courts have recognized that

prolonged detention without conclusion of trial may violate Article 21. In *Union of India v. K.A. Najeed*,^[23] the Supreme Court granted bail to a UAPA accused on the ground of excessive delay in trial and held that constitutional courts have the power to protect personal liberty even where special statutes impose stringent bail conditions. The Court made it clear that the right to speedy trial forms an essential part of Article 21 and that an accused cannot be kept in custody for an indefinite period merely because the law is strict.

Similarly, in *Tofan Singh v. State of Tamil Nadu*,^[24] the Supreme Court stressed the importance of procedural safeguards and fairness in investigations under the NDPS Act. The judgment reflected the principle that even under special laws, constitutional guarantees and fair procedure must be preserved.

The practical reality, however, shows that many undertrial prisoners under NDPS and UAPA remain in jail for years before their trials are completed. Delays in hearings, strict statutory conditions, and socio-economic disadvantages often make access to bail difficult. In many cases, poor accused persons are unable to obtain effective legal representation or furnish sureties, which further weakens their ability to secure liberty.

Thus, under special laws, the judiciary performs a delicate but essential function. While respecting legislative intent and concerns of national security, courts also act as constitutional guardians by ensuring that bail provisions do not become instruments of arbitrary or excessive detention. Through judicial interpretation and constitutional oversight, the judiciary seeks to maintain a balance between collective security and the protection of individual liberty.

6. Challenges

Even though courts have developed strong principles protecting personal liberty, the practical implementation of bail law in India still faces serious challenges. Overcrowded prisons, delayed trials, lack of legal awareness, poverty, and inconsistency in judicial decisions continue to affect the fairness of the system.

A large number of prisoners in India are undertrials who have not yet been convicted. Many remain in jail simply because they cannot afford bail bonds or provide sureties. In reality, poverty often becomes a barrier to liberty. Recognizing this problem, the Supreme Court in *Moti Ram v. State of Madhya Pradesh*^[25] observed that bail conditions should not be so harsh that poor people are unable to benefit from them. Justice Krishna Iyer emphasized that the justice system must remain humane and accessible to ordinary citizens.

Another major issue is unnecessary arrest. In *Arnesh Kumar v. State of Bihar*,^[26] the Supreme Court warned against routine arrests and directed police officers to follow strict safeguards before taking a person into custody. The Court recognized that unnecessary arrests not only violate liberty but also contribute to overcrowded prisons.

Inconsistent bail decisions also remain a challenge. Sometimes similar cases receive very different outcomes, creating uncertainty and reducing public confidence in the justice system. To address this issue, the Supreme Court in *Satender Kumar Antil v. CBI*^[27] issued comprehensive guidelines to streamline arrest and bail procedures and reduce unnecessary detention.

Therefore, although the judiciary has played a transformative role in protecting personal liberty, the effectiveness of bail law still depends upon consistent implementation, judicial sensitivity, and reforms aimed at making justice more accessible and humane.

Conclusion

The judiciary plays a central and indispensable role in protecting personal liberty through the mechanism of bail. In a constitutional democracy like India, where Article 21 guarantees the right to life and personal liberty, courts act as the primary safeguard against arbitrary arrest and unnecessary detention. Bail is not merely a procedural formality under criminal law; it is an important constitutional tool that ensures that a person is not punished before being proven guilty.

Through various landmark judgments, the Supreme Court and High Courts have consistently emphasized that “bail is the rule and jail is the exception.” This principle reflects the broader idea that the criminal justice system must respect the presumption of innocence and protect human dignity at every stage of the legal process. Judicial decisions in cases such as *Maneka Gandhi v. Union of India*, *Hussainara Khatoon v. State of Bihar*, and *Gudikanti Narasimhulu v. Public Prosecutor* expanded the scope of Article 21 and reinforced the idea that liberty cannot be denied without fair, just, and reasonable procedure.

The judiciary also performs the difficult task of balancing two competing interests: the individual’s right to freedom and the State’s duty to maintain law and order. While granting bail, courts carefully consider factors such as the seriousness of the offence, the possibility of absconding, the likelihood of tampering with evidence, and the protection of witnesses. This exercise of judicial discretion is essential because every criminal case presents different social and legal circumstances. At the same time, courts have repeatedly warned against mechanical denial of bail, especially where prolonged detention serves no meaningful purpose.

The importance of judicial intervention becomes even more visible in cases involving delay in trials and overcrowded prisons. A large number of under trial prisoners in India remain in custody for years without conviction, which directly affects their dignity, livelihood, family life, and mental well-being. Through decisions promoting speedy trials and liberal bail approaches in appropriate cases, the judiciary has attempted to reduce the misuse of pre-trial detention and uphold constitutional morality.

At the same time, the paper also shows that serious challenges continue to exist. Special laws such as the NDPS Act and UAPA impose stringent bail conditions that significantly restrict judicial discretion and often result in long periods of incarceration before trial. Socio-economic inequalities further affect access to justice, as poor and marginalized individuals frequently struggle to secure legal representation or furnish bail conditions. Inconsistent judicial practices and procedural delays also weaken the practical realization of liberty.

Despite these challenges, the judiciary remains the strongest constitutional institution for protecting personal liberty within the criminal justice system. By interpreting bail laws in the light of constitutional values, courts ensure that the power of the State is exercised within the limits of fairness, reasonableness, and justice. Ultimately, the effectiveness of

bail jurisprudence depends not only on statutory provisions but also on a sensitive and rights-oriented judicial approach. Therefore, the role of the judiciary is not simply to decide bail applications, but to preserve the constitutional promise that no individual shall be deprived of liberty except according to a fair, just, and humane procedure.

References

1. (PDF) Bail: a matter of right or discretion in the criminal justice system in India.
2. Banerjee S. Liberty Under Law: The Significance of Bail as a Fundamental Right. *Indian Journal of Legal Review (IJLR)*, APIS: 3920-0001, ISSN: 2583-2344, 2025:5(1):507-513.
3. Safeguarding-Liberty.pdf.
4. A.K. Gopalan v. State of Madras. AIR SC, 1950, 27.
5. SCC, 1978:1:248.
6. Safeguarding-Liberty.pdf.
7. A.R. Antulay v. R.S. Nayak. AIR SC, 1992, 170.
8. Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India and Anr. SCC, JT, 1994:6(6):731, 544.
9. Code of Criminal Procedure (Amendment) Act, 2005, (25).
10. AIR SC, SCR (SC), 1979:3:1369, 532.
11. Mohd. Ajmal Amir Kasab v. State of Maharashtra. SCC, 2012:9:1.
12. State of Rajasthan v. Balchand. SCC, 1977:4:308.
13. Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh. SCC, 1978:1:240.
14. Sanjay Chandra v. Central Bureau of Investigation. SCC, 2012:1:40.
15. State of U.P. v. Amarmani Tripathi. SCC, 2005:8:21.
16. Prahlad Singh Bhati v. NCT of Delhi. SCC, 2001:4:280.
17. Mahipal v. Rajesh Kumar. SCC, 2020:2:118.
18. Hussainara Khatoon v. State of Bihar. SCC, 1980:1:81.
19. Kadra Pahadiya v. State of Bihar. SCC, 1981:3:671.
20. Union of India v. K.A. Najeeb. SCC, 2021:3:713.
21. Union of India v. Ram Samujh. SCC, 1999:9:429.
22. National Investigation Agency v. Zahoor Ahmad Shah Watali. SCC, 2019:5:1.
23. Union of India v. K.A. Najeeb. SCC, 2021:3:713.
24. Tofan Singh v. State of Tamil Nadu. SCC, 2021:4:1.
25. Moti Ram v. State of Madhya Pradesh. SCC, 1978:4:47.
26. Armesh Kumar v. State of Bihar. SCC, 2014:8:273.
27. Satender Kumar Antil v. Central Bureau of Investigation. SCC, 2022:10:51.