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## Exploring Bail Jurisprudence - Facing the Challenges of Pre-trial Detention

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*In the coming days, the trend of Bail Jurisprudence has evolved. Certain challenges came up over time and the rights of under-trial prisoners are still a question to be determined whether they are protected or not. Under trial prisoners are the individuals undergoing legal proceedings in a court, lacking the means to provide bail, and to get proper legal aid. They are detained in correctional facilities for extended periods, which constitutes a severe infringement of their right to life and personal liberty as guaranteed by Article 21 of the Constitution. The right of prisoners to get bail is their fundamental right and access to justice and lack of speedy trial has become a major challenge to it. In this paper, we went through a detailed analysis of the issues that are major challenges to a speedy trial and are leading to delayed justice. We have also tried to analyze the recent NCRB data and the PSR data to uncover trends and patterns and for a better understanding of the conditions of under-trial prisoners in India.*

**Keywords:** *bail, undertrial, prisoners, justice.*

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### INTRODUCTION

*“The issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process.”*

Justice V R Krishna Iyer in *Gudikanti Narasimhulu* case (1977)<sup>1</sup>.

In Black's Law Dictionary, bail has been defined as 'a security such as cash or bond, especially security required by a court for the release of a prisoner who must appear at a future date.'

In the realm of criminal justice, the concept of bail holds a significant and complex position. The practice of releasing an accused person from detention before trial while ensuring their participation in court is a crucial feature of modern legal systems around the world as the principle of 'Bail is a right and Jail is an exception' is followed. However, this seemingly simple concept conceals a complicated network of legal foundations, social considerations, and ethical dilemmas. Pre-trial detention's main goal is to make sure the defendant shows up to the trial. However, it is also crucial that at this point, routine interference with citizens' liberties be avoided. This is also one of the main reasons that the law discourages police custody over the Code of Criminal Procedure<sup>2</sup> and the Constitution<sup>3</sup>. In this paper, we'll be also discussing a landmark judgment that precisely and effectively discusses the legal dilemmas and the broad notion of bail under The Code of Criminal Procedure, 1973. In this paper, we'll be framing the background of the case i.e. the Facts, Issues framed by the court of law, Judgement and the final order passed by the court over this matter. The present matter of *Moti Ram v State of MP* was referred to the division bench of the Supreme Court of India back in 1978 led by Justice V.R. Krishna Iyer and Justice D.A. Desai JJ to mark a decision on the ground of discharging a convict by the court of appeal on its bond without sureties by the code, and how the sureties be quantified and whether the court can make a denial on acceptance of sureties.<sup>4</sup>

## **BACKGROUND OF UNDER-TRIAL PRISONERS (NATIONAL CRIME RECORDS BUREAU DATA + PRISON STATISTICS REPORT)**

For a better understanding of insights into the process of making bail decisions in trial courts, it is essential to begin by establishing a more thorough overview of crime rates, arrests, and

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<sup>1</sup> *Gudikanti Narasimhulu v Public Prosecutor, High Court of Andhra Pradesh* (1978) SCR 2 371

<sup>2</sup> Code of Criminal Procedure 1973

<sup>3</sup> Constitution of India 1950, art 22(2)

<sup>4</sup> *Moti Ram v State of Madhya Pradesh* (1979) SCR 1 335

instances of incarceration without the requirement of bail in India. In this paper, we'll be briefly reviewing the public's worry over incarceration while awaiting trial in India. To provide a contextual backdrop for the research on how bail decisions are made within the nation, we evaluate data on crime, arrests, and pending trials. Moving ahead with the prospectus, the NCRB publishes two yearly reports titled 'Crime in India' and 'Prison Statistics'. The main source of information about the criminal justice and prison systems on a national level is these reports. According to the 2015 jail statistics, just 4,19,623 people were imprisoned after the year, even though 84,93,826 people were detained for violating the Indian Penal Code (IPC) and Special and Local Laws (SLLs)<sup>5</sup>. 2,82,076 of those detained or 67.2% of the entire jail population – were considered "under-trial" inmates.<sup>6</sup> Even though there were fewer arrests made in 2016 than in 2015, the percentage of convicts awaiting trial remained the same. In 2016, among the 61,30,507 individuals who were arrested, 4,18,536 of them remained incarcerated by the year's end.<sup>7</sup> To put it another way, two out of every three individuals who were held in detention in India had not been convicted of any offences by the end of 2016. In many cases, the trial has not even started yet for these individuals. The NCRB Report does not, however, list the number of inmates whose trials have not yet begun individually. In India, the general imprisonment rate is 33 per 100,000 people, which is not particularly high, but the 'under-trial' incarceration rate is significant and needs more attention at 22 per 100,000 people.<sup>8</sup>

As per the recent Prison Statistics Report i.e. Prison Statistics India 2021, the following data comes to our attention:

YEAR	No. of Prisoners	Actual capacity of Prisoners	No. of Prisoners at the end of the year	Occupancy Rate at the end of the year

<sup>5</sup> National Crime Records Bureau, *Prison Statistics India 2015* (2015)

<sup>6</sup> *Ibid*

<sup>7</sup> National Crime Records Bureau, *Crime in India 2017* (2017)

<sup>8</sup> *Ibid*

2019	1351	4,00,934	4,81,387	120.1%
2020	1306	4,14,033	4,88,511	118.0%
2021	1319	4,25,609	5,54,034	130.2%

Fig. 1: Prisons - Types & Occupancy<sup>9</sup>

YEAR	No. of Convicts	No. of undertrial prisoners	No. of Deteneus	No. of other inmates	Total no. of Prisoners
2019	1,44,567	332916	3223	681	481387
2020	1,12,589	371848	3590	484	488511
2021	1,22,852	427165	3470	547	554034

Fig. 2: Prisoners - Types and Demography.<sup>10</sup>

YEAR	No. of Prisoners at the End of the Year	No. of Foreign Prisoners	Share of Foreign Prisoners
2019	4,81,387	5203	1.1 %
2020	4,88,511	4926	1.0 %

<sup>9</sup> National Crime Records Bureau, *Prison Statistics India 2021* (2021)

<sup>10</sup> *Ibid*

2021	5,54,034	5565	1.0 %
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Fig. 3: Foreign Prisoners.<sup>11</sup>

## ISSUES ABOUT VIOLATION OF PRISONER'S RIGHTS

The major issue of human rights for the under-trial prisoners is the delay in trials. Article 21 of the Constitution guarantees the Right to life and personal liberty, and speedy trial is one of the rights enshrined under it as it ensures fair and reasonable procedure. Some of the major issues that are faced by under-trial prisoners are:

- Despite being granted bail, prisoners are not set free.
- Inadequate supply of medical aid to incarcerated individuals.
- Courts impose excessive surety amounts that financially backward prisoners can't afford.
- Denial of surety bonds because of either insufficient funds or the inability to verify addresses, as indigent prisoners lack permanent residences.
- Harsh mental and physical torture.

The Division Bench of the Supreme Court on the issues: The Supreme Court directed the magistrate to grant bail to the petitioner under a surety of a sum of Rs. 1000 on his bond.

The Court held that The Code of Criminal Procedure doesn't define bail, although offences are classified as bailable and non-bailable. The provisions of bail under the code are of unclear language and the court of law has to ensure 'fair procedure'. However, after the Maneka Gandhi case, it was concluded that there must be a prohibition on judicial arbitrariness which deprives liberty and ensures fair procedure.<sup>12</sup> As coated in the Gandian talisman "Whenever you are in a doubt... apply the following test. Recall the face of the poorest and the weakest man whom you may have seen and ask yourself if the steps you contemplate are going to be of any use to him". As law must respond interpretively to raw realities and be made for liberties.

<sup>11</sup> *Ibid*

<sup>12</sup> *Maneka Gandhi v Union of India* (1978) 1 SCC 248

The court at its discretion under the Code of Criminal Procedure can issue a bail bond to an individual under trial or convicted of a non-bailable offence without sureties. In Continuation, the court on its interpretation explained that Section 436 speaks about the bail but leaves behind a contradiction between bail and own bond without surety and Section 436(2)<sup>13</sup> speaks about people who can be bailed. Whereas section 445<sup>14</sup> when read with a marginal note suggests that the deposit of money will do the duty of bond with or without sureties. The term ‘bail’ as used in Section 441(2)<sup>15</sup> is interpreted broadly to mean any one or both of the two types of bonds. Furthermore, nothing in section 441(1)<sup>16</sup> requires a different interpretation; the court may release an accused person who is in judicial custody to serve the interests of justice.

In the code, the word ‘bail’ has been generically explained under sections 441(2)<sup>17</sup> and 441(3) but when we comprehend the code, section 389(1)<sup>18</sup> states that the appellate court has the discretion to release a convict on his sureties. It cannot be the case that a defendant who is being tried has a worse situation than a convicted criminal or that the court has more discretion to grant release when guilt is proven. Even the Juveniles, Females, and infirm accused individuals are obligated to sureties if found guilty, or if the matter is under trial an accused must purchase release with the sureties. Here it is also explained the discretion of the Supreme Court is very wide, and has powers under Order 21 Rule 27<sup>19</sup> of the Supreme Court Rules to enlarge an individual during the pendency of a Special Leave Petition (SLP).

In Compliance with the valuation of sureties to be imposed on a convict under trial, it’s essential to know about the class and financial standing of that individual on whom sureties have been imposed as monetary terms cannot be the same in all classes. When sureties should be demanded and what sum should be insisted on are dependent on variables. And the courts shall be liberal in realizing a category in their recognizance.

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<sup>13</sup> Code of Criminal Procedure 1973, s 436(2)

<sup>14</sup> Code of Criminal Procedure 1973, s 445

<sup>15</sup> Code of Criminal Procedure 1973, s 441(2)

<sup>16</sup> Code of Criminal Procedure 1973, s 441(1)

<sup>17</sup> Code of Criminal Procedure 1973, s 441(3)

<sup>18</sup> Code of Criminal Procedure 1973, s 389(1)

<sup>19</sup> Supreme Court Rules 2013, Or XXI r 27

In Addition to the valuation of sureties, the geographical discrimination in this certain aspect was also highlighted by the court of law. Article 14 of the Indian constitution protects the rights of all individuals within the territory of India and the interests of the individuals.<sup>20</sup> Here it is a clear ground of judicial disruption on the unity of India. Article 350 forbids the representation of grievances to any authority, including a court, in any language spoken on Indian land<sup>21</sup> and after all the court mandated the magistrate to release the petitioner on his bond on a sum of Rs. 1000.

### CONDITIONS OF BAIL

A stunning two-thirds of Indian convicts are still awaiting trial.<sup>22</sup> The Supreme Court of India, which has been concerned with the incarceration of suspects awaiting trial since the late 1970s, has not overlooked the seriousness of this situation.<sup>23</sup> The Court's primary concerns revolve around three topics. First, determine whether lower courts have needlessly imprisoned defendants awaiting trial who ought to have been released on bail. Second, whether the inhumane and unsafe incarceration conditions in Indian prisons. Third, incarceration until trial has increased recidivism and criminalization of pending cases. Under-trial detention rates have maintained at 70%, a critical and urgent issue that requires our collective attention, notwithstanding the regular intervention of higher courts.

The Law Commission of India underlined the Supreme Court's worries in its 268th Report. It emphasized the need for quick action to shorten detention times and concluded that the law governing bail has to be amended to do so.<sup>24</sup> The Law Commission's studies highlight the strain that a significant pre-trial population is placing on an already overburdened system. Numerous jails are operating at 150% of their capacity, which raises issues with sanitation and supervision. Furthermore, the demographics of individuals who are likely to be imprisoned are important because, as of this point in India's prison population, 70.6% are uneducated or only partially

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<sup>20</sup> Constitution of India 1950, art 14

<sup>21</sup> Constitution of India 1950, art 350

<sup>22</sup> National Crime Records Bureau, *Crime in India 2017* (2017)

<sup>23</sup> *Re Inhuman Conditions in 1382 Prisons* WP No 406/2013

<sup>24</sup> Law Commission, *Report on Provisions Relating to Bail* (Law Com No 268, 2017)

educated<sup>25</sup>. This demonstrates that those from socio-religious minority populations and those who are economically poor have a higher likelihood of ending up in Indian prisons.<sup>26</sup> However, these figures don't provide much information about the causes of India's high rates of incarceration pending trial. The trial court has thus further been disregarded, despite being the major location of decisions regarding bail and the detention of detainees awaiting trial. Indian legal criticism on bail often confines itself to a legal and doctrinal assessment of the statute and relevant court rulings, such as those addressing the constitutional right to legal representation.<sup>27</sup> For instance, while we may all agree that bail at the pre-trial stage should impose the least onerous terms to ensure appearance in court, academic literature on bail and under-trial imprisonment in India does not offer any normative opinion on the process of bail decision-making by courts.

This case of *Moti Ram & Ors v State of MP* is considered to be a landmark judgment on the enlargement of bail with or without sureties.<sup>28</sup> The legal aspects and interpretations stated in this case play a vital role in pulling up multiple perspectives of the Code of Criminal Procedure (CRPC) and help to ensure the rights of an accused are safeguarded during the stage of the investigation and under the trial. In this Judgment, the Hon'ble bench of Justice Krishna Iyer and Justice D.A. Desai JJ pointed out provisions as we have discussed above in the issues framed which were not clear and provisions which were silent on several factual aspects and which could have resulted in sheer injustice towards a class of people. All the citizens in this nation abide by all the laws it must be the responsibility of the court to treat each person equally and distribute justice equally even to a millionaire or a mason as well. However, implementing the same level of surety without determining the class or financial standing of an individual cannot be considered the delivery of equal justice and violates Article 14 of the Indian Constitution. And the judgment also pointed out the geographical discrimination marked by the magistrate which has no legal compliance.

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<sup>25</sup> National Crime Records Bureau, *Crime in India 2017* (2017)

<sup>26</sup> *Ibid*

<sup>27</sup> SC Sarkar, *Commentary on the Code of Criminal Procedure, 1973* (Skyline Publications 2007)

<sup>28</sup> National Crime Records Bureau, *Prison Statistics India 2015* (2015)



The Hon'ble bench of the court talked about the definition clause of the bail where the code is silent although the offences are classified as bailable and non-bailable. This interpretation of the court plays a major role in this case where the court of law has to ensure fair procedure. Then the court clearly stated grounds under sections 441(2) and 441(3) which generally explains the language of the code in terms of bail on conditional bond. But the interpretation got clearer with the scope of section 389 when it was comprehended by the court which talks about the release of an appellant by the appellate court. And the discretion of the Supreme Court is also well-versed and explained under Order 21 Rule 27 of the Supreme Court Rules. These rules, which are followed by the Supreme Court when suspending a sentence, must, generally speaking, be relevant to what the code says unless there are exceptional circumstances that require a different course of action. Overall, the case of *Moti Ram & Ors v State of MP* has set an important precedent for the admissibility of evidence in criminal trials and has emphasized the importance of protecting the rights of the accused during the investigation stage.

## CONCLUSION

There are no statistics on bail decision-making in India in the NCRB Reports on Crime in India and Prison Statistics. Consequently, in this paper, we provide a quantitative baseline about the quantity and kind of arrests as well as the levels of detention in India. As all the citizens in this nation abide by all the laws then it must be the responsibility of the court to treat each person equally and distribute justice equally even to a millionaire or a mason as well. It does not have any right to compel any person who does not have the means to cover up the bond, it must be the duty of the court to look upon the matter accordingly. Therefore the Supreme Court had to make sure that the amount was charged in such a manner that the poor could also be able to pay the amount and ensure this freedom of bail. Through this judgment, the Supreme Court also clarified the suretyship that any person or any assets belonging to that person is at any part of India must be accepted and the court also states that the best guarantee of presence in court is the reach to the law and not the money tag.