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## **SOCIO-ECONOMIC BIAS IN BAIL JURISPRUDENCE: REVISITING THE EQUALITY PRINCIPLE IN INDIA**

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### **ABSTRACT**

Bail is an important protection of individual freedom in Indian criminal justice system and it has a close connection with constitutional guarantees of Articles 14 and 21 of the Constitution of India. Although the judicial principle of bail being the rule and not the exception has been adopted, the reality of how the principle of bail is applied in practice is often found to portray great socio-economic variations. People who belong to the economically disadvantaged groups often languish in pre-trial custody as they are unable to provide bail bonds or hire a lawyer. This paper critically evaluates the socio-economic biasness imbedded in the decision on bails and proposes reforms to make the principle of equality relevant to bail jurisprudence.

**Keywords:** Bail Jurisprudence, Socio-Economic Inequality, Equality before Law, Pre-Trial Detention, Criminal Justice System.

## 1. Introduction

Bail is a significant process in the criminal justice system, which fulfills the interests of the individual freedom and the necessity to provide the accused person to stay during the process of the criminal proceedings. In a simplistic manner, the term bail is used to mean the conditional release of an individual suspected of an offence in custody under the condition that the individual will appear in court whenever he is needed to do so. The idea is strongly entrenched in the principle of presumption of innocence, which states that an individual charged with a crime must not be considered guilty before being proved guilty on the basis of a just trial.<sup>1</sup> The institution of bail is thus a protection against the arbitrary arrest, and a guarantee that the criminal process is not made punitive in advance of a guilty verdict. The issue of providing or withholding bail in the contemporary constitutional democracies has ceased to be a matter of pure procedure and become a major concern in the protection of fundamental rights as well as the fairness in the delivery of criminal justice.

The value of bail in India is directly related to the constitutional right of personal liberty in Article 21 of the Constitution of India. Article 21 stipulates that no individual should be denied the right to life or personal liberty without due process which is defined by law.<sup>2</sup> This has always been taken by the Supreme Court of India in a broad sense, as the process of taking away the liberty of a person should be fair, just and reasonable. In this constitutional framework, the issue of bail has been considered as one of the necessary means to discourage needless imprisonment of people who have not been yet convicted of any crime. Courts have made several statements that pre-trial detention is not to be used as punishment and that individual freedom must be upheld unless there are any extraordinary reasons that may have caused one to be held in custody. As a result, the courts have developed the concept that bail is the rule and jail is the exception thus enhancing the essence of liberty in criminal determination.<sup>3</sup>

Article 14 of the Constitution of India has provided the principle of equality before law and equal protection of laws alongside the assurance of individual liberty.<sup>4</sup> The legal system requires all people to be treated as equals irrespective of their social and economic status in

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<sup>1</sup> ANDREW ASHWORTH & LUCIA ZEDNER, PREVENTIVE JUSTICE (Oxford University Press 2014)

<sup>2</sup> INDIA CONST. art. 21

<sup>3</sup> *State of Rajasthan v. Balchand*, (1977) 4 SCC 308 (IND)

<sup>4</sup> INDIA CONST. art. 14

accordance with this principle. The concept of equality is specifically applicable to the criminal procedure since the outcomes of unequal treatment may directly influence the freedom of a person. Theoretically, the decision to set the bail should hence be guided by only the aspects of the law like the nature of the offence, probability of the accused to abscond, or the probability of tampering with the evidence. But the real operation of the bail jurisprudence in practice frequently casts doubt as to whether these constitutional ideals are always fulfilled in practice.

In spite of the existence of good constitutional provisions and judicial statements regarding individual liberty, the issue of bail management in India depicts that there are essential structural disparities. Among the most urgent issues, it is possible to refer to the socio-economic bias that seems to be working in the system of bails. Financial conditions may often be imposed by the courts as a condition to release e.g. bail bonds or sureties. Although these conditions might seem impartial at face value, they usually affect people with a relatively poorer economic standing disproportionately because they do not have the means of fulfilling such demands.<sup>5</sup> Consequently, individuals with underprivileged socio-economic statuses have the possibility of staying longer in custody despite committing a comparatively minor crime. This puts the criminal justice system in a paradox because those who are assumed innocent still remain in prison simply because they are economically unable.

The issue is especially clear when the number of the under-trial inmates in the Indian jails is considered. In India, a large percentage of the prison population is comprised of under trial inmates who have not been convicted of any crime yet.<sup>6</sup> Most of these people are locked up not due to the requirement of the law but simply because they cannot meet the bail requirements that are set by the courts. Failure to provide sureties, ignorance of legal rights, and access to good legal representation is another problem that creates more problems. As a result, the practice of bail actually tends to mirror the existence of more wide-ranging socio-economic inequalities in society, which in turn puts the actuality of the Constitution promise of equality before law in serious doubt.

With this in mind, the Supreme Court of India has in various occasions realised the necessity of dealing with the discriminatory impacts of economic conditions during bail decisions. In some landmark cases, the Court has stressed that poverty cannot be used as a reason to keep

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<sup>5</sup> K. N. CHANDRASEKHARAN PILLAI, R. V. KELKAR'S CRIMINAL PROCEDURE 100 (7th ed. 2016).

<sup>6</sup> NATIONAL CRIME RECORDS BUREAU, PRISON STATISTICS INDIA 2022 (2023), <https://ncrb.gov.in/uploads/files/Prison-Statistics-India-2022.pdf>

one in custody and bail terms have to be reasonable and proportional<sup>7</sup>. However, the fact that they remain high in undertrial detention implies that there are structural issues that still linger on the application of such judicial principles. The problem thus demands further exploration of the connection that exists between the bail jurisprudence and the socio-economic disparity in the Indian criminal justice system.

It is against this background that the current article attempts to critically analyze the existence of socio-economic bias in the bail jurisprudence in India. The research question is whether the existing legal system about bail is the system that supports the constitutional principles of equality and individual freedom. Through this, the article evaluates both the statutory rules regarding the issue of bail in criminal procedure law and how the judiciary has come up with an interpretation in this area. Moreover, it explores how economic inequalities affect the feasibility of bail to various members of society. By making these structural issues, the article tries to evaluate the extent to which the current bail system is a competent expression of the egalitarian dream of the Constitution.

The article also aims at making a contribution to the general discussion on criminal justice reform by offering the solution that may decrease the socio-economic inequality in bail determinations. Such can be enhanced application of non-monetary bail bonds, empowering of legal aid services, and coming up with clearer judicial principles of bail granting. In this analysis, the article concludes by suggesting that the concept of socio-economic equality must be revisited in the context of the jurisprudence of bail in order to hold the constitutional promise of equal justice to have any meaningful realisation in the Indian legal system.

## **2. Constitutional and Legal Framework of Bail in India**

The Indian legal system of bail is based on the cross of the criminal procedural law and the constitutional rights of fundamental rights provision. Bail is not a procedural gimmick in the criminal justice system but a vital protection mechanism aimed at safeguarding the individual liberty in the system and also to promote the administration of justice in a proper manner. The criminal justice process frequently includes arrest and detention of an accused individual in the course of investigation and trial but the legal system acknowledges that this should not be arbitrary and excessive. Bail is hence a tool that ensures that courts strike a balance concerning

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<sup>7</sup> *Moti Ram v. State of Madhya Pradesh*, (1978) 4 SCC 47 (IND)

the interests of the State in prosecuting crimes and the basic rights of individuals who are accused of crimes.<sup>8</sup>

The statutory law concerning bail is mainly regulated by the *Bhartiya Nyaya Sakshaya Sanhita* (BNSS) that defines the procedure of arrest, detention, and release of the accused persons. Nevertheless, the functioning of these provisions is highly predetermined by constitutional provisions especially the right to personal liberty and the equality before the law. This has led to the interpretation of the bail provisions by the Indian courts to have always stressed the necessity of harmonizing criminal procedure with the larger constitutional values of fairness, liberty and justice.<sup>9</sup>

One of the focal constitutional provisions that affect the bail jurisprudence is the Article 21 of the constitution of India that provides that no individual should be deprived of life or personal liberty without following the due process as laid down by the law.<sup>10</sup> This has been construed broadly by the Supreme Court which has found that the process envisaged in Article 21 should be fair, reasonable and just. Here, the authority of the State to detain an accused individual prior to conviction should be used with a lot of care and only in cases where it is essential to investigate or put the accused on trial. Pre-trial detention thus cannot be substantiated as a common practice but must have valid reasons such as the chances of the accused absconding, tampering with evidence or engaging in other crimes.<sup>11</sup>

Intertwined with the constitutional right to personal liberty is the right to equality before the law and equal protection of the law contained in Article 14. This is a provision that the criminal justice system should run in a way that all people are treated equally and no discriminatory treatment against individuals is provided arbitrarily.<sup>12</sup> When applied to the issue of bail, the principle of equality is that the issue of granting or refusing bail must not be determined by extraneous factors like the social or economic standing of the accused. Rather, judicial rulings have to be founded on objective legal standards in connection with the character of the crime, as well as the case circumstances. Article 14 is especially relevant when the author considers the socio-economic differences, which affect bail decisions in reality. The constitutional

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<sup>8</sup> ASHWORTH & ZEDNER, *supra* note 1, at 2

<sup>9</sup> PILLAI, *supra* note 5, at 3

<sup>10</sup> INDIA CONST. art. 21

<sup>11</sup> *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248. (IND)

<sup>12</sup> INDIA CONST. art. 14

commitment to equality can be compromised where financial conditions that are conditional to bail have a disproportionately greater impact on economically disadvantaged persons.<sup>13</sup>

The legal clauses that regulate the bail are found in various parts of the *Bhartiya Nyaya Sakshaya Sanhita* (BNSS). Section 478 addresses the issue of bail in the cases of bailable offences and stipulates that an individual charged with a bailable offence must be entitled to be bailed under the condition of posting the necessary bond. This clause is an indication of the law appreciating that some crimes are not serious and that the detention in this scenario should be avoided in most situations. Section 479 on the other hand regulates bail in non-bailable offences and gives courts discretive authority to grant or deny bail at their own will based on the seriousness of the offence and other applicable factors. Some of the factors that the courts have to put into consideration when awarding bail on this provision include seriousness of the crime, chances of the accused evading justice and chances of destroying evidence before the accused is given bail on this provision.

Section 482 of the BNSS is also another key provision of the statutory system that offers anticipatory bail. This clause permits an individual who is arrested on a non-bailable offence to request a court direction that on the occurrence of arrest, the individual will be put on bail. The presence of anticipatory bail is based on the fact that the legislature acknowledges that one might at times be falsely or maliciously accused of a crime and the law needs to protect an innocent person even before the actual arrest occurs. Also, Section 481 empowers the High Courts and Sessions Courts with special powers to grant bail on non-bailable offences and to give relevant conditions to make sure the accused appear before court during the trial process. All these provisions are the statutory basis of bail in India.

Judicial interpretation has also played a key role in the development of bail jurisprudence in India that has a series of landmark decisions by the Supreme Court. *State of Rajasthan v. Balchand* is one of the most significant and the oldest decisions to the same effect in which the Supreme Court stated the principle guiding the practice; bail is the rule, jail is the exception.<sup>14</sup> This was observed to mean that a pre-trial detention should not be a run-of-the-mill practice as a court should tend to grant bail unless there are any compelling reasons as to why it should not grant bail. The ruling was a significant move towards the rationalization of the

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<sup>13</sup> UPENDRA BAXI, *THE CRISIS OF THE INDIAN LEGAL SYSTEM* (1982).

<sup>14</sup> *State of Rajasthan v. Balchand*, (1977) 4 SCC 308 (IND)

bail jurisprudence with the constitutional focus on individual liberty.

*Gudikanti Narasimhulu v. Public Prosecutor*, The Supreme Court also added to the principles of bail, Justice V. R. Krishna Iyer in this case stated that the decisions on bail should be made based on the cautious approach to the liberty of each person and the interests of justice in general. The Court noted that the right to personal freedom, when deprived, must be based on significant reasons and judicial discretion when setting bails should be done with sensitivity to the rights of the accused.<sup>15</sup> This ruling had a great role in the development of a rights-based perspective on bail jurisprudence in India.

The other case that influenced the constitutional interpretation of bail is *Hussainara Khatoon v. State of Bihar*, where the court dealt with the problem of the long haul detention of the undertrial prisoners in Indian jails. The Court determined that a right to a speedy trial was a constituent of right to life and personal liberty provided by Article 21.<sup>16</sup> The case made the country aware of the situation of thousands of untried prisoners who have been kept in jails too long because of the slowness of the criminal justice system. The decision further emphasized the role of the bail as a means of safeguarding individual freedom by highlighting the systemic injustices related to the pre-trial detention.

These judicial interventions have allowed the Supreme Court to consistently underscore the view that the main aim of bail is not to punish the accused but to guarantee that he/she attends trial without prejudice of his/her fundamental rights. The court has over and over again cautioned on overuse of pre-trial detention and emphasized the need to prioritize liberty unless there are extenuating circumstances to support continued custody.<sup>17</sup> Consequently, the Indian bail jurisprudence has progressively become a constitutional doctrine aiming at achieving a balance between the goal of criminal justice and the inherent rights of a person.

However, even though there is a robust constitutional and legislative framework in favor of the safeguarding of personal liberty, there are still issues on how to adequately and fairly enforce the principles of bail in all criminal justice system. The fact remains that the prevalence of the large pool of undertrial prisoners and the socio-economic factors which influence the accessibility to bail raises the question of the practicality of the constitutional guarantees. The

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<sup>15</sup> *Gudikanti Narasimhulu v. Public Prosecutor*, (1978) 1 SCC 240 (IND)

<sup>16</sup> *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81 (IND)

<sup>17</sup> *Sanjay Chandra v. Central Bureau of Investigation*, (2012) 1 SCC 40 (IND)

background of constitutional and legal grounds of bail is thus a critical ground on which the greater questions of inequality and socio-economic prejudice that affect bail determination in India can be analyzed.

### 3. Socio-Economic Inequality and the Reality of Bail in India

Although the constitutional and statutory system of bail in India is based on the principles of liberty and equality, the practical operation of the bail mechanism is a manifestation of far-reaching socio-economic disparities. Monetary measures like bail bonds, sureties, which are not illegal, but create a disproportionate effect on the economically disadvantaged parts of the population. Often the accused are asked to provide sureties or financial guarantees to be released on bail by the courts and this, in a real sense, is a huge impediment to the accused who may not have the means of providing such guarantees.<sup>18</sup> Despite the fact that such conditions are meant to ensure that the accused is present in the trial, in most cases, they do not take into consideration the economic realities of the marginalized individuals, and thus, turn a procedural protection into an exclusionary tool.

The issue of bail disparity is economically unequal most evidently shown in the structure of the Indian prison population. A very high percentage of the inmates in India are undertrials who are yet to be found guilty of any crime.<sup>19</sup> Most of them are of low-income backgrounds and are left in custody not due to their crimes, which make them be detained, but rather due to their inability to meet the bail terms set by the courts. The phenomenon is of great concern to the justice of criminal justice system since it practically leads to imprisonment of people who are not guilty but rather poor. The case compromises the very core of the presumption of innocence and raises the question of fair bail legislations.

The existing structural barriers of the marginalized populations also contribute to the problem in disproportionate access to bail. The failure to offer sureties, which in most cases is a condition on obtaining bail in non-bailable offences, is one of the main challenges. Persons in the less economically endowed groups, migrant workers, or those lacking solid social connections often find it difficult to come up with appropriate sureties that can assure them in the courtroom in their place.<sup>20</sup> In most instances, the necessity of local surety adds extra hurdles

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<sup>18</sup> PILLAI, *supra* note 5, at 3

<sup>19</sup> NATIONAL CRIME RECORDS BUREAU, *supra* note 6, at 3

<sup>20</sup> *Moti Ram v. State of Madhya Pradesh*, (1978) 4 SCC 47 (IND)

to those people who are not permanent residents of the jurisdiction in which they are arrested. Consequently, in most cases where courts would otherwise want to grant bail, the terms that come with the bail can make the bail meaningless to the poor.

The second major obstacle is the legal illiteracy of the marginalized groups. Most of the accused individuals do not know their rights under the law such as their right to request bail or seek legal representation. Such ignorance usually leads to long detention as people do not act early enough when they should get their release.<sup>21</sup> This issue is further increased by the complexity of the legal processes and the lack of available information on the legal system, especially among people with low education or who have no experience in dealing with the legal system. As a result, the legal provision of bail as a means of access is not always a transfer to effective access by all social groups.

Lack of access to qualified legal counsel is also an important factor in the continuance of socio-economic disparities in the setting of bails. Although the Constitution of India in Article 39A provides free legal aid as a way of providing equal access to justice, provision of legal aid services has been inconsistent and inadequate in most cases<sup>22</sup>. The legal aid attorneys and public defenders are often overworked and may not have the time or money to adequately defend their clients. Conversely, those who have sufficient funds can hire professional lawyers who can argue more effectively on their favor to be released on bail, fight against unfavorable terms and conditions, and speed up the judicial procedures. This inequality in the representation of the law has a great impact on the result of the bail application and strengthens the existing inequalities in the criminal justice system.

The socio-economic factors also indirectly influence the perception of the judges in terms of risk and credibility of the accused. Some of the factors that are often considered by courts when ruling on bail applications include the chances of the accused escaping, their connection with the community and their general trustworthiness. Nonetheless, people with stable economic backgrounds are normally considered to have better social networks and more responsibility, and those who are economically disadvantaged can be considered as having more chances of absconding or not adhering to the conditions of the bails as well.<sup>23</sup> Nevertheless, economically prosperous people are also perceived to possess superior social networks and responsibility,

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<sup>21</sup> UPENDRA BAXI, *supra* note 13, at 6

<sup>22</sup> INDIA CONST. art. 39A

<sup>23</sup> Satish Chandra, *Bail and Social Justice in India*, 27 J. INDIAN L. INST. 112 (1985)

and economically disadvantaged ones may be regarded as having more possibilities of absconding or not meeting the conditions of the bails. These perceptions, though not stated explicitly, may affect judicial discretion and lead to a differentiation on the basis of a socio-economic status. This brings up the issue of objectivity of decisions on bail and how they comply with the constitutional requirement of equality before the law.

The net result of these is that poverty tends to result in extended pre-trial detention. Those who fail to pay bail are kept in prisons longer than the recommended period of jail time to commit the alleged crime.<sup>24</sup> This situation is further compounded by delays in the criminal justice process such as slow investigation and long trials. Consequently, the poor are punished by being put under pre-trial detention even without a conviction. This is not only against the principle of presumption of innocence but also against the legitimacy of the criminal justice system.

The existence of these systematic inequalities has sometimes been recognized in judicial pronouncements and care is taken against the imposition of high or unrealistic bail terms. The Supreme Court has highlighted that mere economic inability should not be used as a justification to deny bail and that the courts should put into consideration the economic ability of the accused to afford the bail with conditions attached to it.<sup>25</sup> Nevertheless, even with such observations, the continued existence of socio-economic disparities in the practices of bails suggests that structural changes are required to deal with the underlying aspects of inequality.

Essentially, the truth of bail in India shows that the constitutional ideals of equality and liberty and their real application have a wide disparity. The dependency on the financial circumstances, paired with structural obstacles and socio-economic differences, leads to the system, in which the right to bail is frequently dependent on the financial standing, but not on the legal competence. It is therefore necessary to address these inequalities to help the criminal justice system to be conducted in a way that is consistent with the constitutional vision of equal justice to all.

#### **4. Judicial Responses to Socio-Economic Bias**

The Indian judiciary and especially the Supreme Court have been in the forefront in identifying

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<sup>24</sup> LAW COMMISSION OF INDIA, 268TH REPORT ON AMENDMENTS TO CRIMINAL PROCEDURE CODE PROVISIONS RELATING TO BAIL (2017), <https://lawcommissionofindia.nic.in/reports/Report268.pdf>

<sup>25</sup> *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81 (IND)

and trying to alleviate the socio-economic disparities inherent in the bail jurisprudence. The courts have attempted to bring the practices of bail in line with the constitutional provisions of individual liberty and equality through a series of progressive determinations. Through these judicial interventions, it has been highlighted that bail administration should not be based on the economic level of the accused individual and poverty should not serve as a kind of barricade to gaining freedom. Nevertheless, even with such interventions, the success of such interventions is limited by structural and institutional constraints of the criminal justice system.

*Moti Ram v. State of Madhya Pradesh* is one of the biggest judicial statements on the socio-economic prejudice in the process of making bails. The Supreme Court in this case highly condemned the enforcement of excessive surety that virtually denied bail to the poor. Justice V. R. Krishna Iyer noted that bail conditions should be adjusted related to the financial ability of the accused and that the heavy sureties demand is an inhumane and robotic mode of justice. The Court emphasized that the point of bail is not to put financial strains on people but rather to assure that the accused appear during the trial. The judgment was a major move towards the reduction of socio-economic inequality in the bail jurisprudence by acknowledging that the poor are disproportionately impacted by the strict financial conditions.

*The Hussainara Khatoon v. State of Bihar* is another legal case that highlighted the conditions of the economically disadvantaged undertrial inmates in the country.<sup>26</sup> This case revealed the shocking truth of thousands of untrial prisoners lingering in jails over a long time because of the delays in the criminal justice system and their inability to post bail. The Supreme Court ruled that the right to speedy trial is a necessary part of right to life and personal liberty provision of the Article 21 of the Constitution. Another point that the Court made is that the State is constitutionally obligated to see that people are not held indefinitely simply because they are poor. The fact that the systemic injustice of the undertrial prisoners was acknowledged as well as the fact that the idea that financial inability should lead to deprivation of basic rights was strengthened.

In *Sanjay Chandra v. Central Bureau of Investigation*, The Supreme Court went further to expand the principles that guide the bail by stating the significance of presumption of innocence and the necessity to safeguard individual liberty at the pre-trial period.<sup>27</sup> The Court noted that

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<sup>26</sup> *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81 (IND)

<sup>27</sup> *Sanjay Chandra v. Central Bureau of Investigation*, (2012) 1 SCC 40 (IND)

the aim of bail was not punitive or preventive, but it was to ensure that the accused appeared to have the trial. It warned of the propensity to refuse bail based on the severity of the charges, especially where there is no significant possibility that the accused will abscond or tamper with the investigation. In this case, socio-economic inequality was not in the spotlight, but its focus on liberty and non-punitive character of pre-trial detention has noteworthy implications on the matter of reducing inequality in making bail determinations.

These and other rulings have continually made the judiciary realise that poverty is not a determinant of access to liberty. It has been stressed on numerous occasions that the terms of bail should be reasonable, fair, and proportional to the situation of the accused. The Supreme Court has also noted that a more humane approach is needed in the issue of bails especially concerning those who belong to a marginalized background. These observations indicate a changing judicial interpretation of the fact that the formal equality assured by the Constitution needs to be converted into substantive equality in the delivery of criminal justice.

Nevertheless, even with these liberal court declarations, the reality effect of these interventions is not much. This is one of the main issues because of the broad discretionary authority that the courts have when they determine bail applications. Judicial discretion though required to reflect the specifics of a case is usually inconsistent in its results. Courts might take different approaches to similar cases, and thus, they will not be able to provide the same treatment of bail cases.<sup>28</sup> Such inconsistency can enhance socio-economic inequalities since the result of bail applications might be based on the subjective judicial determinations, but not on the objective law standards.

Moreover, the lack of detailed and authoritative rules regulating the setting of bail serves to help create an unequal distribution of justice principles in the court. As much as the progressive standards have been expressed by higher courts, their application at the subordinate court level is not consistent. Most of the bail applications are done in trial courts, which might still apply the traditional practice which involves imposing financial conditions without properly considering the social-economic situation of the accused person.<sup>29</sup> Such ideals of judicial practices and practicalities on the ground restrict the transformative power of judicial interventions.

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<sup>28</sup> LAW COMMISSION OF INDIA, *supra* note 24, at 10

<sup>29</sup> PILLAI, *supra* note 5, at 3

The second limitation is a result of systemic issues on the criminal justice system, such as delays in the court proceedings, prison overcrowding, and poor services of legal aid. These structural issues might still prevent economically disadvantaged individuals to enjoy access to justice even when the courts have a liberal bail approach. Consequently, the attempts of the judiciary to deal with socio-economic bias in setting bails, however important, cannot be effective by itself in mitigating the problems.

Simply put, the judiciary reaction in socio-economic prejudice in the bail judicial approach demonstrates a clear understanding of the issue and a determination to adhere to constitutional principles of liberty and equality. Nevertheless, the fact that the difference in the outcomes of bails remains shows that these measures should be supplemented with institutional and legislative changes. The consistency in the setting of the bails, the minimisation of the dependence on the financial status, and the enhancement of the access to the legal assistance are the measures that should be taken towards the fulfillment of the constitutional promise according to which access to the liberty should not be determined by the economical status.

### **5. Need for Reform: Towards an Egalitarian Bail System**

The above discussion shows that even with a strong constitutional and legislative framework, the working of the bail jurisprudence in India is still influenced by structural inequalities. The fact that the socio-economic bias still exists in the process of making the bails indicates that it is high time to implement the changes that will help to change the system and make it more equitable, accessible, and consistent with the values of the Constitution. The system of egalitarian bail should go beyond the formal legal guarantees and tackle the practical obstacles that do not allow some people, especially the ones belonging to the less strong economic layers, to get their freedom at the pre-trial stage.

Over dependency on financial statuses like bail bonds and sureties is one of the greatest issues in the existing bail system. In as much as the stated conditions are supposed to guarantee the attendance of the accused in the trial, they usually act as a tool that leaves economically set-back people out of the bail facility. Courts often place financial conditions without properly evaluating how the accused one can afford them and so in cases where one cannot afford the conditions, he or she may end up in jail just because of failure to meet the conditions. The practice is useful to transform economic incapacity into a detention criterion, thus contradicting the constitutional ideology that liberty is not dependant on wealth. The change in this direction

needs to be based on a reconsideration of how the financial situation should be taken into account when deciding on bail.

The other issue of concern is that there are no unified and comprehensive rules that regulate how judicial discretion can be applied in the case of bail. Although the Supreme Court has established broad principles about the importance of liberty and fairness, there has been inconsistency in how bails are decided in various courts since there are no clear and binding principles. Although judicial discretion is required, it usually leads to the subjective and different interpretations of the similar factual circumstances that may perpetuate inequality.<sup>30</sup> The elaboration of more specific and rational rules of providing bail would assist in making them more consistent and limit the possibilities of arbitrary decisions making. These guidelines are to be definite that the courts have to treat the socio-economic conditions of the accused, and they should not impose disproportionate and unrealistic conditions.

The problem of overcrowding of Indian prisons also highlights the necessity of bail reform. A large percentage of the prison population comprises of the undertrial and most of them tend to stay longer in prison because of the delay of the criminal justice system and the failure to afford bail. Overcrowding is not only an indicator of systemic inefficiencies but also a significant concern about the fact that the fundamental rights, such as the right to dignity and human treatment, are violated. Limiting the use of pre-trial detention by making bail practices more liberal and equal is thus crucial to not only protecting the liberty of every individual but also to dealing with the bigger crisis of the prison system.

To address these issues, one can suggest a number of reforms that would allow building a more egalitarian bail system. The enhanced application of personal bonds and non-monetary forms of bail is one of them. Courts may provide the release of accused individuals on their personal recognizance, as opposed to the provision of financial sureties, under conditions to periodically appear before the authorities or travel restrictions. These would make sure that bail is available to people regardless of their economic background and at the same time, it would still play the role of guaranteeing their attendance on the trial day.<sup>31</sup> Implementation of non-monetary bail systems would be a change towards a more inclusive and rights-based pre-trial release system.

The other important reform is developing clearer legal principles in which the judges should

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<sup>30</sup> LAW COMMISSION OF INDIA, *supra* note 24, at 10

<sup>31</sup> *Sanjay Chandra v. Central Bureau of Investigation*, (2012) 1 SCC 40 (IND)

decide on bail. These should be rules that normalise the criteria that the courts are to take into consideration such as the nature of the crime, chances of absconding, and the socio-economic status of the suspect. Such guidelines would enhance more equity and predictability in the outcomes of bails, by lessening the variability in decision making by judges. Moreover, the judicial officers should also be trained and sensitised on the issue of social-economic biases and this will also aid in making a fairer decision on bail cases.

The provision of legal aid services is also important in the provision of equal access to bail. Despite the fact that Article 39A of the Constitution requires the free legal aid to be provided, there is still a low efficiency of the legal aid mechanism because of the lack of resources and insufficient implementation.<sup>32</sup> This would help impoverished people to get through the legal system in a more efficient way, submit bail requests promptly, and appeal against unfair conditions by enhancing the quality and accessibility of legal assistance. Law enforcement in the criminal justice system entails an important aspect of ensuring substantive equality through proper legal representation.

Regular inspection of under trial detention also comes out as a significant reform agenda. The detention of the untrial prisoners should also be reevaluated by the courts and the concerned authorities regularly, especially in cases involving minor crimes or extended delays in the hearing. The mechanisms like undertrial review committees may be useful in determining instances in which the detention should not be carried out and releasing qualified persons. These periodic reviews would not only stop the indefinite incarceration of the not yet convicted persons but also make sure that detention does not take the place of punishment.

Finally, the necessity of the bail jurisprudence reform should be interpreted within the framework of the wider constitutional vision of justice. The Articles 14 and 21 principles of equality and personal liberty demand that the legal system must be designed in a manner that is just, non-discriminatory and accessible to everyone. The practice of bailing that is disproportionately unfair to the poor is not in respect to these constitutional values and contradicts the legitimacy of the criminal justice system. An egalitarian system of bails therefore needs to put substantive equality first so that liberty is not conditioned on the basis of economic conditions but rather on objective legal terms.

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<sup>32</sup> INDIA CONST. art. 39A

To sum up, the bail system in India has to be reformed to ensure that the gap between the constitutional principles and reality is closed. The criminal justice system can shift to a more fair and more humane way of bail by decreasing the use of financial conditions, equalising judicial discretion, empowering legal assistance, and enforcing periodic review of detention. Such reforms would not only safeguard the individual rights but they would also strengthen the principles of equality and liberty that form the cornerstone of the Indian Constitution.

## **6. Conclusion**

The discussion conducted in this paper shows that there exists a chronic and drastic discrepancy between constitutional principles of equality and personal liberty and the manner in which bail works in India. Although equality before law is ensured in the Constitution of India in Article 14 and personal liberty in Article 21, the working jurisprudence of bail does not in many ways capture these values in a practical way. The same dependency on financial terms like sureties and bail bonds, along with structural obstacles within the criminal justice system, has led to the current state where the ability to get bail is more often than not, based on the economic means of the defendant instead of the case itself. This is the subversion of the very promise of equal justice through this difference between constitutional guarantees and ground realities.

The existence of socio-economic prejudice in the bail system is a grave threat to the validity and justice in the criminal justice system. The overrepresentation of economically disadvantaged people in the number of undertrial prisoners proves that the formal access to bail does not inevitably imply the substantive access to freedom. The presumption of innocence is literally undermined when the person is kept in custody only due to the inability to pay the money or to find good lawyers. These not only amount to infringement of the rights of the accused, but also contributions to the larger trends of social inequality, undermining social trust in the justice system.

The judicial statements reviewed in this paper are a clear indication that the upper court has been aware of such concerns and has been trying all along to make the practice of bail more humane and fair. The focus on the principles, like the rule of bail, the acknowledgment of the right to speedy trial, and the insistence on the idea that poverty cannot be a reason to keep a person under arrest is all indicative of an ongoing effort to bring the bail jurisprudence in line with constitutional values. Nevertheless, the fact that differences in the results of bails remain implies that judicial interventions, as important as they are, cannot be applied alone. Lacking a

consistent set of guidelines, the broad freedom of discretion granted to the courts and the inherent inefficiencies within the systems still restrict the successful implementation of these principles on the ground level.

In this regard, there is an urgent necessity to shift bail jurisprudence out of implicitly conditioned by financial capacity system to a well-established system that is based on rights approach. This change is necessitated by the need to reconsider the role of monetary conditions in the making of bail and advocating in favor of alternatives that make accessibility to all people regardless of their economic status. It also requires the elaboration of more coherent and transparent judicial criteria, enhancing the legal assistance procedures, and making institutional changes to minimize unwarranted pre-trial incarceration. These reforms will be able to fill the gap between the ideals provided in the constitution and realities by providing a solution both at the legal and structural level.

Finally, the question of bail is not only a procedural matter, but also an indication of values in which the criminal justice system is based. An economic status should not be used as a determinant in the pursuit of liberty since this will encourage inequality and erosion of the rule of law. Equality in making bail decision is thus critical in achieving the larger constitutional vision of justice in India. This will involve a long term effort by the judiciary, legislature and executive to establish a system where liberty is secured, equality maintained and justice actually affordable to everyone. Only at that point will the constitutional promise of equal justice and personal liberty shift off the formal promise to a reality in the Indian criminal justice system.