



# Reforming India's Undertrial Bail System

**For Prelims:** [Supreme Court of India](#), [Bail](#), [Types of Bail](#)

**For Mains:** Protection of Fundamental Rights in Criminal Justice Process, Judiciary, Constitutional Protection, Types of Bail, Undertrial incarceration

**Source:** [TH](#)

## Why in News?

The [Supreme Court of India's](#) acknowledgement in the case of **Satender Kumar Antil vs Central Bureau Of Investigation, 2022**, highlights the **inefficacy of [India's bail system](#)** and its role in **exacerbating the crisis of [undertrial incarceration](#)**.

- This recognition underscores the pressing need for **reforming bail laws** to address systemic challenges within the [criminal justice system](#).

## What are the Concerns Regarding India's Bail System?

- **High Undertrial Population:**
  - Over **75% of India's prison population comprises undertrials**, indicating a significant problem with the bail system.
    - An undertrial prisoner is someone who is accused of a crime but has **not been convicted**. They are kept in judicial custody, while their **case is being heard in court**.
  - The **overcrowding rate** in Indian **prisons is at 118%**, reflecting systemic issues within the criminal justice system.
- **Bail Adjudication:**
  - Bail adjudication relies heavily on court discretion, considering the specifics of each case.
  - The Supreme Court provides guidelines for this discretion, emphasising the **need for granting bail but also allowing denial** based on factors like the gravity of the offence and the likelihood of absconding.
    - Courts often **lean towards denying bail or imposing strict conditions**, despite the guidelines advocating for bail release.
    - Courts frequently do **not provide reasons for denying bail**, leaving the rationale behind decisions unclear.
  - **Marginalised individuals** are disproportionately affected by these broad exceptions, facing either bail denial or stringent conditions.
- **Challenges in Bail Compliance:**
  - Many undertrials stay in prison even after receiving bail due to difficulties in meeting bail conditions.
    - **Lack of resources to arrange money or property** and find local sureties are major obstacles to compliance.
    - Other factors such as lacking residence and identity proof, being abandoned by

- family, and struggling to navigate the court system also hinder compliance.
- Supporting undertrials in meeting bail conditions and ensuring court appearances is crucial, especially for those facing structural disadvantages.
  - Existing bail laws fail to address these challenges adequately.
  - Data from the **Fair Trial Programme (FTP)** in Yerwada and Nagpur shows that Existing bail laws fail to address these challenges adequately.
    - In **14% of cases, undertrials couldn't comply with bail conditions**, resulting in continued imprisonment.
    - In almost 35% of cases, it took over a month after bail was granted for undertrials to meet bail conditions and secure release.
- **Lack of Safeguards:**
- The Supreme Court emphasises the **importance of safeguards against arbitrary arrest** to reduce the need for seeking bail.
    - Arbitrary arrest and detention is the arrest or detention of a person without evidence of a crime or proper due process.
  - However, these safeguards often exclude many individuals from **disadvantaged backgrounds**, who make up the **majority of undertrial prisoners**.
  - Data from the **FTP** highlights this issue: of the undertrials (2,313) represented by the FTP, **18.50% were migrants, 93.48% did not own any assets**, 62.22% did not have any contact with family, and 10% had a history of previous incarceration.
    - This data indicates a significant portion unjustifiably excluded from arrest protections, contributing to the high number of undertrials in prisons.
- **Flawed Assumptions:**
- Current bail system assumes **all arrested individuals can afford bail** or have influential social connections.
    - It believes financial risk is necessary to ensure the accused appears in court.
  - This contradicts the principle of "**bail not jail**," which aims to release individuals awaiting trial.
  - Thus there is a need for reforming the bail system, however, reforms should be based on understanding the problem through empirical evidence.

## Note

- The Fair Trial Programme (FTP) is a criminal justice initiative based at the **National Law University in Delhi**. The FTP's goal is to **ensure fair trials for undertrial prisoners**.
- The FTP trains and mentors young professionals, such as lawyers and social workers, to collaborate with the State Legal Services Authority.

# BAIL AND RELATED PROVISIONS IN INDIA

*"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 sensitised judicial process."*

—Justice V.R. Krishna Iyer

## Constitutional Provision for Arrest - Article 22:

Grants protection to individuals arrested or detained, with detention classified into two types:

- ➔ **Punitive detention:** To punish a person for an offence committed by him after trial and conviction in a court
- ➔ **Preventive detention:** Detention of a person without trial and conviction by a court

**Criminal Procedure Code, 1973:** Doesn't define bail, but defines bailable and non-bailable offences:

Type of Offence	Bailable	Non-Bailable
<b>Defined under CrPC as:</b>	An offence mentioned in Schedule 1, or An offence made bailable by any other law	Any offence other than bailable
<b>Power to Grant Bail</b>	Bail as a right	Court/Police discretion based on the facts

## Bail vs Parole vs Probation

Bail	Parole	Probation
<b>Temporary release</b> of defendant awaiting trial or appeal, secured by deposit to guarantee their appearance in court	When person gets <b>some time off from jail sentence</b> , for instance, to fulfil some requirements	<b>Suspension of sentence</b> of an offender, allowing to stay in community under supervision of an officer
<b>Granted by Judge</b>	By Parole Board	By Judge

## Types of Bails in India

- Regular Bail:** Court's order to release person under arrest in police custody
- Interim Bail:** Court grants temporary relief until application for Anticipatory Bail or Regular Bail is decided
- Anticipatory Bail:** Bail granted preemptively to prevent arrest
- Default Bail:** When police fail to complete investigation within specified period
- Medical Bail:** Solely on medical grounds

## Cancellation of Bail - Certain Grounds

- Misuses his liberty by indulging in criminal activity
- Interferes with course of investigation
- Tampering of evidence
- Threatens witnesses, etc



## Police Custody And Judicial Custody

- Police custody** means the accused is **held by the police in a lock-up** to prevent tampering with evidence or influencing witnesses after an FIR is filed for a cognizable offence.
- Judicial Custody** means an accused is in the **custody of the concerned Magistrate**. It is for **serious offences**, where the court may detain the accused to prevent tampering with evidence or witnesses after the police custody period ends.

Aspect	Police Custody	Judicial Custody
<b>Custody Location</b>	Lock-up of a police station or with investigating agency	Jail under custody of Magistrate
<b>Appearance before Court</b>	Within 24 hours before the concerned Magistrate	Until there is an order from the Court for bail
<b>Commencement</b>	At the time of arrest by a police officer after receiving a complaint or filing an FIR	After public prosecutor satisfies the court that the custody of the accused is necessary for investigation

<b>Maximum Duration</b>	24 hours (extendable to 15 days by the appropriate Magistrate)	90 days for offences punishable with life imprisonment, death, or imprisonment for not less than ten years; 60 days for other offences
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## Way Forward

- Revise bail laws to ensure they are **fair and equitable for all individuals, regardless of socio-economic status**. Consider amendments to address systemic issues contributing to the high undertrial population.
- The Supreme Court recommends the enactment of special **bail legislation akin to the Bail Act of the UK**.
  - This legislation would establish a general right to bail and define clear criteria for bail decisions. It aims to reduce reliance on monetary bonds and sureties.
- Legal aid and support should be provided to undertrial prisoners for bail compliance and court appearances.
- Ensure **safeguards against arbitrary arrest are inclusive** and accessible to all individuals, particularly those from disadvantaged backgrounds.
- Establish **support programs to assist undertrials** in meeting bail conditions, including access to legal aid, financial assistance, and social support services.
- Foster collaboration among government agencies, legal institutions, civil society organisations, and community groups to develop holistic approaches to bail reform.
- Establish mechanisms for ongoing monitoring and evaluation of bail reform initiatives to assess their effectiveness and identify areas for improvement.

**Legal Insights:** [Satender Kumar Antil Case](#)

<https://www.drishtijudiciary.com/en>

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