



Bail Conditions in India

[Source: IE](#)

Why in News?

The US President Donald Trump signed an executive order cutting federal funds to jurisdictions that allow **cashless bail**. The move has sparked renewed discussions on [bail reforms](#) in India.

- Cashless bail allows release in **minor offences without monetary deposit**, subject to conditions for court appearance, unlike traditional bail which **requires cash or property surety**.

What are the Bail Conditions in India?

- **Bail in India:** Bail is the conditional release of an accused before trial, based on the presumption of innocence. It ensures the person does not abscond, tamper with evidence, or influence witnesses.
 - Chapter 35 of the [Bhartiya Nagarik Suraksha Sanhita \(BNSS\), 2023](#), which replaced the Code of Criminal Procedure (CrPC) 1973, lays down the bail process.
- **Bond:** A written promise by the accused to appear for trial and follow bail conditions. It usually requires a cash deposit (amount based on crime and economic condition).
 - Cash deposit can be forfeited if bail conditions are broken. It is refundable at the end of the trial, regardless of the outcome.
 - If the accused cannot pay immediately, the court may allow release on a Personal Recognisance (PR) Bond, with time given to arrange the cash.
- **Bail Bond:** A bail bond is a guarantee from a third party (family, friend, or employer) ensuring the accused complies with bail conditions and appears for trial.
 - The surety may deposit a sum forfeitable if the accused absconds. Courts verify the surety's documents, finances, and residence, with some requiring a solvency certificate.

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
■ Defined under CrPC as:	An offence mentioned in Schedule 1, or An offence made bailable by any other law	Any offence other than bailable
■ Power to Grant Bail	Bail as a right	Court/Police discretion based on the facts

Bail vs Parole vs Probation

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



What is the Need for Bail Reforms in India?

- **Financial Inequality and Discrimination**: Cash and surety-based bail disproportionately affects poor and marginalized groups. Many undertrials cannot arrange money, property, or local sureties, even for minor offences.
 - Law Commission (268th report) notes this violates constitutional principles of equality and fair trial.
 - Flawed assumptions that all accused have access to financial or social resources render the "bail, not jail" principle ineffective.
 - **Weak Procedural Safeguards**: Courts often fail to follow guidelines for timely bail or to record reasons for denial. Lack of standardized procedures creates arbitrariness in granting or denying bail.

- **Delays in Judicial Processes:** Backlog of cases and overburdened courts cause prolonged pre-trial detention. Delays result in undertrials being jailed longer than the potential sentence for their alleged offence.
 - Nearly 70% of India's prison population are undertrials, many of whom remain incarcerated for months or years before trial.
- **Constitutional and Human Rights Violation: Bail practices must align with [Articles 21 \(Right to Life and Liberty\)](#) and [14 \(Equality before Law\)](#).**
 - Excessive pre-trial detention violates the principle of presumption of innocence.

What Measures can Strengthen India's Bail System?

- **Timely Disposal of Bail Applications: Implement strict timelines for granting bail to prevent unnecessary pre-trial detention.**
 - In the case of *Satender Kumar Antil v. CBI (2022)* SC emphasized that "bail not jail" should be the norm and highlighted the need for timely processing.
 - Incentivize non-custodial measures such as reporting conditions or monitoring mechanisms. It helps decongest prisons and prevents repeat criminalization.
- **Financial Assistance for Underprivileged Accused:** Expand schemes like Support to Poor Prisoners (2023) to provide funds for those unable to furnish bail.
 - Reduces disproportionate incarceration of the poor, aligning with Article 21.
- **Expand Use of Personal Recognisance:** Encourage PR bonds or non-monetary conditions for minor and non-violent offences. It ensures liberty without financial barriers while maintaining accountability.
- **Strengthening Legal Aid and Procedural Safeguards:** Streamlined bail processes can reduce overcrowding, uphold constitutional rights, and prevent the criminalization of poverty.
 - Deploy para-legal volunteers and lawyers to assist undertrials in navigating bail processes.
 - In *Madhav Hayawadanrao Hoskot v. State of Maharashtra (1978)*, the SC held that the right to counsel is a fundamental right under Article 21. Providing legal aid is the State's duty, not an act of charity.
- **Digital and Administrative Reforms:** Maintain centralized digital records of bail, sureties, and undertrials. Facilitate quick verification of bonds or sureties to avoid delays like those in Mumbai courts due to solvency certificates.

Drishti Mains Question:

Q. "Bail, not jail": Discuss the constitutional and human rights implications of India's current bail system.

UPSC Civil Services Examination, Previous Year Question (PYQ)

Prelims

Q. With reference to India, consider the following statements: (2021)

1. When a prisoner makes out a sufficient case, parole cannot be denied to such prisoner because it becomes a matter of his/her right.
2. State Governments have their own Prisoners Release on Parole Rules.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

Ans: (b)

PDF Refernece URL: <https://www.drishtias.com/printpdf/bail-conditions-in-india>

