



“The Law Governing Bail in India and Need of Changing Dimension under Criminal Procedure Code: A Critical Study.”

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Abstract

Under the Code of Criminal Procedure, we have certain provisions that are referred to as bail in one way or another. The fundamental provisions for awarding bail and bonds in criminal cases are sections 436 and 450 of the Code of Criminal Procedure.¹ Along with all of these sections, the Cr. PC also specifies a number of circumstances in which release on bail is permitted, including, among other things, the right to release on bond if the investigation is not completed in the designated number of days. Following the idea that every accused person is innocent before he or she is proven guilty, bail is one of the prized rights, claims, or advantages of an accused person.

The High Courts and the trial court reached very different conclusions about bail. In the majority of circumstances, the High Court will accept bail after the trial court denies the defendant's request for bail. The court's worries about prison crowding were not unfounded – the latest (2021) occupancy rates stand at 130.2%, up from 118% in the previous year². India currently has the sixth highest share of pre-trial detainees in the world, according to data collated by the World Prison Brief³. There is a strong need felt for a complete review of the bail system keeping in mind the socio-economic condition of the majority of our population⁴. The Law Commission made Recommendations to reform thirteen different areas of bail jurisprudence⁵. The present cruel bail system in India is inhuman where grant of police custody remand appears to be cruel, outdated and is a real hell of a situation⁶. It is urgently necessary to comprehensively rejuvenate India's bail jurisprudence also.

¹ Available at: <https://www.legalserviceindia.com/legal/article-4726-bail-and-its-processing-under-crpc-a-critical-study.html> last seen on 21/4/2023.

² Available at: <https://www.thequint.com/news/law/indias-undertrial-prisoners-why-are-66-percent-from-marginalised-castes#:~:text=70.9%25%20of%20the%20undertrial%20prisoners,jail%20for%20over%205%20years> last seen on 24/4/2023.

³ Available at <https://thewire.in/rights/indian-jails-undertrial-prisoners> last seen on 24/4/2023.

⁴ Available at: file:///D:/4085-Article%20Text-7832-1-10-20201226.pdf last seen on 21/4/2023.

⁵ Available at: <https://timesofindia.indiatimes.com/blogs/straight-candid/part-7-indias-bail-jurisprudence-need-for-urgent-comprehensive-revamp/> last seen on 24/4/2023.

⁶ Available at: <https://www.jetir.org/view?paper=JETIR1903592> last seen on 25/4/2023.

Keywords: Bail, arrest, Rights to Life, Human Rights, Prison, Criminal Justice System, interim Bail, Anticipatory Bail, Liberty, Criminal Jurisprudence, Reform, Indian Penal Code, Code of Criminal Procedure, Law Commission Report, National Crime Record Bureau.

Introduction:

Criminal Justice system aims to maintain law and order in the society⁷. “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)*⁸. Obtaining bail is an extremely important step for an accused in the criminal justice system and has to be approached with utmost care⁹.

The foundation of a safe state lies in the fact that how efficiently the situation of “Law & Order” is maintained in it¹⁰. The bail is effective the moment a person is arrested¹¹. Punishing a criminal is one technique to make sure that law and order are effectively maintained in the state. However, the accused cannot be punished unless the court has treated his trial fairly and justly. The object of arrest and detention of the accused person is primarily to secure his appearance at the time of trial and to ensure that in case he is found guilty he is available to receive sentence¹². The accused is also deemed innocent until after a trial until he is proved guilty, which is one of the fundamental foundations of criminal law. Any individual, who violates the law of the land, is bound to face consequences as per law and in such a case his freedom may be restricted depending upon the gravity of offence as such committed¹³.

Legal Framework for Criminal Jurisprudence in India:

There is no definition of bail in the Criminal Procedure Code, although the terms ‘bailable offence’ and ‘non-bailable offence’ have been defined in section 2(a) Cr. P.C. Bail has been

⁷ Available at: <https://articles.manupatra.com/article-details/Right-to-life-And-Custodial-Deaths> last seen on 25/4/2023.

⁸ <https://districts.ecourts.gov.in/sites/default/files/6-Bail%20Anticipatory%20Bails%20-%20Sri%20M%20Sreenu.pdf> last seen on 22/4/2023.

⁹ Available at: <https://lawrato.com/indian-kanoon/criminal-law/how-to-get-bail-in-india-bail-procedure-1792>

¹⁰ Available at: <https://juriscentre.com/2022/08/30/bail-laws-of-india/>

¹¹ Available at: <https://www.indiatoday.in/information/story/what-is-bail-law-in-india-1929099-2022-03-24>

¹² R.V. Kelkar’s, “Criminal Procedure”, Sixth Edition 2014. Eastern Book Publication, p. 289.

¹³ Available at: <https://tripakshalitigation.com/conditions-for-bail-in-india/> last seen on 22/4/2023.

defined in the law lexicon as security for the appearance of the accused person on giving which he is released pending trial or investigation¹⁴.

As a matter of right, the Cr. PC gives magistrates the authority to issue bail for offences that qualify. The Indian Penal Code offences are merely divided into "bailable" and "non-bailable" categories in the Cr. P C, which does not define the term "bail."

The term 'bail' refers to the procedure of obtaining the release of an accused person charged with a crime by securing his future appearance in court for trial and requiring him to remain within the court's jurisdiction¹⁵.

According to Law Lexicon, “Bail as the security for the appearance of the accused person on which he is released pending trial or investigation¹⁶.”

According to Cambridge Dictionary “an arrangement in which money is paid to a court so that someone can be released from prison until their trial: He was released on bail. She was granted bail¹⁷.”

In India, Bail is devised as a technique for affecting a synthesis of two basic concepts of human rights of the accused person - to enjoy his freedom and public interest and to produce the accused person in Court to stand trial¹⁸.

CRIMINAL JUSTICE system in any country is generally gigantic and complex bestowed with multifarious goals, amongst which the safety and society of its citizens is primary¹⁹.

Bail is a post arrest remedy aimed at the release of the arrested suspect till the date of his trial. Bail vindicates the traditional right to freedom before the guilt is proved. Bail is allowed to prevent confinement of innocent persons which would otherwise result into a pre-trial punishment and to enable an accused person to prepare his defense to the charges against him

¹⁴ Available at: <http://www.goforthelaw.com/articles/fromlawstu/article10.htm>

¹⁵ Available at <https://www.legalserviceindia.com/legal/article-8674-bail-under-criminal-procedure-code.html> last seen on 21/4/2023.

¹⁶ The Law Lexicon, Ramnath Iyer, 3rd Edition.

¹⁷ Available at: <https://dictionary.cambridge.org/dictionary/learner-english/bail> last seen on 22/4/2023.

¹⁸ Available at: <https://restthecase.com/knowledge-bank/what-is-bail-in-india>

¹⁹ Available at: <https://ili.ac.in/pdf/uga.pdf>

which is the common law principle, presumption of innocence²⁰. Indian law stresses the principles of presumption of innocence. The principle embodies freedom from arbitrary detention and serves as a bulwark against punishment before conviction²¹. Bail as to procure the release of a person from legal custody, by undertaking that he/she shall appear at the time and place designated and submit him/ herself to the jurisdiction and judgment of the court²². According to criminal law, Article 21 of the Constitution enshrined the most significant human rights. The Supreme Court had held for over 27 years after the Constitution's ratification that this Article merely represented a Diceyan principle of the rule of law, according to which no one can be denied his right to life and personal liberty by an executive action that is not authorized by the law. A person's life and personal freedom could be taken away simply by following a law's specified method.

In the case of *Kamlapati v. State of West Bengal*²³, the Supreme Court defined bail as 'a technique that is evolved for effecting the synthesis of two basic concepts of human value, viz., the right of an accused to enjoy his personal freedom and the public's interest on which a person's release is conditioned on the surety to produce the accused person in the Court to stand the trial.

“Society has a vital interest in grant or refusal of bail because every criminal offence is an offence against the state. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of the society”. –Justice Dalveer Bhandari in *S.S. Mhetre vs. State of Maharashtra*.

Bail is a familiar term in the field of criminal law, which refers to the discharge of a person from legal accusations under the condition that they will attend court hearings as required²⁴. Bail is an important aspect in the Criminal Justice System to make sure that no innocent person is convicted until proven guilty²⁵. However, the country frequently fails to recognize the intricacy of the bail idea because granting or rejecting release depends on a number of criteria that have little to do with the strength of the case. For our criminal justice system to continue to operate

²⁰ Asim Pandey, “Law of Bail Practice and Procedure”, Second Edition, 2015, Lexis Nexis. p. 8

²¹ Available at: <https://en.wikipedia.org/wiki/Bail>

²² Black's Law Dictionary, 177, 4th Edition.

²³ AIR 1979 SC 777

²⁴ Available at: <https://sahodar.in/navigating-the-legal-waters-of-transit-anticipatory-bail-in-india-precedents-and-procedures/>

²⁵ Available at: <https://strictlylegal.in/types-of-bail-under-the-code-of-criminal-procedure/>

with a fair and open bail system, the Law Commission's recommendations from its 268th Report are required and ought to be put into practice.

The Adversary Justice System in India and Beyond

The criminal justice system in India has always been a hot topic to debate.²⁶ India has a very highly developed Criminal Jurisprudence and Judicial Administration System [JAS] to deal with the offences and the offenders on its soil. The vital organs of the JAS- the Investigating Agencies, the Courts, the Prosecutors & the Defence Counsel- have proved, time and again, to be vibrant, competent, vigilant, just and fair²⁷. The key aim of the adversary system is to ensure fairness between both the Defence and the Prosecution throughout the trial process²⁸.

According to Black's Law Dictionary, Adversary system is the court system where a judge decides on a case argued by a prosecutor who is suing the plaintiff and the defense attorney who defends their plaintiff. A jury has also been used to decide such cases.²⁹ Adversarial systems are considered to have three basic features. The first is a neutral decision-maker such as a judge or jury. The second is presentation of evidence in support of each party's case, usually by lawyers. The third is a highly structured procedure.³⁰ Sometimes the phrase "adversarial system" refers to the entire legal system, and other times it simply refers to criminal procedure. In the latter situation, the terms "accusatorial procedure" and "non-adversary procedure" are frequently used interchangeably. There is no precise understanding, however, of the institutions and arrangements denoted by these expressions.³¹

Under the adversary system, each side is responsible for conducting its own investigation. In criminal proceedings, the prosecution represents the people at large and has at its disposal the

²⁶ Pallathadka Harikumar, "Role Of The Magistrate In Criminal Proceedings". Available at: https://ejmcm.com/article_11785_4b70a5b3112c516b0a12e8db875a8022.pdf

²⁷ "Criminal Law", Available on: <https://www.hellocounsel.com/criminal-law/> last seen on 30/5/2023.

²⁸ "Adversary System", <https://www.ruleoflaw.org.au/crime/criminal-trial-processes/adversary-system/> last seen on 29/5/2023.

²⁹ [Nishka Prajapati](https://www.legalserviceindia.com/legal/article-5114-inquisitorial-and-accusatory-system-of-trial-in-india-england-and-france.html) "Inquisitorial and Accusatory System of Trial in India, England and France", <https://www.legalserviceindia.com/legal/article-5114-inquisitorial-and-accusatory-system-of-trial-in-india-england-and-france.html> last seen on 30/5/2023.

³⁰ "Adversarial System", Available at: https://en.wikipedia.org/wiki/Adversarial_system#:~:text=The%20adversarial%20system%20or%20adversary,truth%20and%20pass%20judgment%20accordingly. Last seen on 29/5/2023.

³¹ <https://www.encyclopedia.com/social-sciences-and-law/law/law/adversary-system>

police department with its investigators and laboratories, while the defense must find its own investigative resources and finances.³²

One of the main criticisms of the adversarial system is that it favors winning over seeking the truth. When each side must compete and the stakes are high, the truth can sometimes be intentionally ignored in favor of winning the case. Lawyers in such a system will often use any tactic to achieve this end, such as in the O.J. Simpson case.³³

The adversarial system of justice establishes that each side in a court proceeding should endeavor to win the proceeding within the limits of the law and rules of the court.³⁴

Court proceedings in countries that have a common law system (such as the UK, USA and Australia) are adversarial in nature.³⁵ While the American adversarial system is rooted in English common law, its development was influenced by differing colonial needs (Nelson 2008–2018). Common law has a deep developmental history.³⁶ Both these systems have variations around the world, as different countries have modified their criminal procedure in various ways over the years in balancing the interests of the State in apprehending and adjudicating offenders with the interests of individual citizens who may be caught up in the legal process.³⁷

Many cases in an adversarial system, particularly in the US, are really settled or handled through a plea agreement, according to critics. This prevents cases from going to trial, which can result in injustice, particularly when the accused is represented by an under qualified or overworked attorney. Also, they argue that this type of system causes the participants to act in perverse ways,

³² “Adversary procedure”, Available at: <https://www.britannica.com/topic/adversary-procedure>. Last seen on 29/05/2023.

³³ “Adversarial System of Justice”, <https://study.com/learn/lesson/adversarial-system-of-justice-overview-benefits.html> last seen on 29/5/2023.

³⁴ “Adversarial system of Justice: Definitions and Advantages”, <https://study.com/academy/lesson/adversarial-system-of-justice-definition-advantages.html>

³⁵ Adversarial System”, <https://legalanswers.sl.nsw.gov.au/hot-topics-courts-and-tribunals/adversarial-system>

³⁶ Benefiel Roger, “Adversarial system”, <https://www.oxfordbibliographies.com/display/document/obo-9780195396607/obo-9780195396607-0320.xml> last seen on 29/5/2023.

³⁷ “Adversarial versus inquisitorial legal systems” <https://www.unodc.org/e4j/en/organized-crime/module-9/key-issues/adversarial-vs-inquisitorial-legal-systems.html#:~:text=Common%20law%20countries%20use%20an,legal%20rules%20criminal%20procedure%20follwed>.

encouraging defendants to plead guilty even when they think otherwise and prosecutors to bring charges far beyond what is warranted.³⁸

In its most basic form, an adversarial system settles disputes by presenting opposing points of fact and law to a neutral, often uninvolved arbiter, who then chooses which side prevails. However, in the United States, the term "adversary system" is used to refer to the American system of administering justice, which was established by the Framers and has undergone two centuries of development by the Supreme Court. As a result, the adversarial system is much more complex than a straightforward dispute-resolution paradigm. Instead, it consists of a core set of fundamental freedoms that uphold and defend each person's dignity in a democratic society. Under the American adversary system, a trial is not "conflict less," because the lawyer is not the agent or servant of the state. Rather, the lawyer is the client's "champion against a hostile world"³⁹.

The Malimath committee³ felt that the pendency of the cases coupled with the delay in the administration and disposal of such cases were the necessary implications of the flawed procedure of administration of criminal justice in India, which is time taking and inundated with unnecessary procedure.⁴⁰

The Criminal Procedure Code specifies the adversarial system, which is based on the accusatorial approach, for the criminal justice process. The party seeking to prove guilt is required to present evidence, and the judge serves as a neutral arbitrator between the competing parties. Both parties are permitted to present evidence and cross-examine witnesses.

However, there is a bigger flaw in this criminal justice system because, according to the aforementioned paradigm, the court is not required to find the truth. In contrast to the inquisitorial system, which focuses on finding the truth, this system largely focuses on the truth being discovered through respective versions of the facts presented by the prosecution and the defence before a neutral judge.

³⁸ Advantages and disadvantages of Adversarial System”, Available at: <https://connectusfund.org/11-advantages-and-disadvantages-of-adversarial-system>

³⁹ Freedman Monroe, “our Constitutionalized Adversary System”https://www.chapman.edu/law/_files/publications/CLR-1-monroe-freedman.pdf last seen on 29/5/2023.

⁴⁰ “The power of judge to put questions: An Exception to the Adversarial Justice System?” <https://www.indialawjournal.org/the-power-of-judge-to-put-questions-an-exception-to-adversarial-justice-system.php>

The judge acts as an umpire to see whether the prosecution has been able to prove the case beyond a reasonable doubt and grants the benefit of the doubt to the accused. Since the judge is merely acting as an umpire and is constrained by the law, he or she is unable to actively participate in the trial and is only interested in the evidence that each side offers to support their claims rather than the actual truth because it is thought that the truth will be revealed through the contest between the two parties.

This reduces the effectiveness of the criminal justice system since the trial becomes essentially a fight between the prosecution and the defence, and the main goal of learning the truth usually gets lost among the many facts that are provided to support each side's position. Additionally, because India's adversarial system is predicated on the "innocence of the accused," it is the prosecution's responsibility to prove its case.

This further undermines the effectiveness of the criminal justice system because both sides' solicitors can manipulate their versions of events, and the impartial judge will ultimately render a decision based on the evidence presented. If the accused was the offender but was not found guilty based on the available facts and evidence, this could lead to a loss of confidence in the system as a whole. This is further explained in terms of how this system does not allow for direct participation of the victim in the trial process and how the interests of the offender are given a priority.⁴¹

The adversarial criminal justice system was used by the inquisitorial system, which was mostly used in common law nations like India, the United Kingdom, and the United States as well as civil law nations like France, Germany, New Zealand, Italy, and Austria. This system followed in all those countries that follow common law inherited from the British Colonial Rulers. The countries like United Kingdom, United State of America and India follow this model.⁴²

There are opposing viewpoints on this model in India, and the country's high courts have voiced their opinions on the current criminal justice system.

⁴¹ The Indian Adversarial System of Criminal Justice”, Available at: <https://www.ijlmh.com/paper/the-indian-adversarial-system-of-criminal-justice/> last seen on 29/5/2023.

⁴² Dr. Deshmukh Anand, “Adversarial and Inquisitorial Models of Criminal Justice System: A Comparative Analysis Available at: <https://www.ijlsi.com/wp-content/uploads/Adversarial-and-Inquisitorial-Models-of-Criminal-Justice-System-A-Comparative-Analysis.pdf> last seen on 29/5/2023.

The vast majority of High Courts place emphasis on the need to alter the current criminal justice system. Dr. R. Venkataraman, a former president of India, also observed about the current system, saying, "The Adversarial System is the reverse of our Ancient Ethos. They were searching for the truth in panchayat justice, but in adversarial procedure, the judge just decides whether the accusation has been proven by the prosecution.

The judge just cares about the evidence and is unconcerned with the truth. People who learn that the acquitted defendant committed the crime lose faith in the justice system. The flaw in our system was correctly pointed out by Dr. R. Venkataraman, the former president of India. It is crucial that the judge take an active role in uncovering the truth, but in practice, he is only interested in the proof since he bases his decision on the evidence that is presented to him. Despite acting impartially to decide the case, the judge had no part in the investigation.

In various cases, the Supreme Court has criticized the justices' deferential behaviour and emphasized the significance of getting to the truth. A court's responsibility includes both carrying out justice and ensuring that it is carried out. Although there are two different criminal justice system models, they cannot be distinguished by a watertight compartment. The fundamental distinction between the two systems is how they view justice or the veracity of a claim. India uses the adversarial paradigm to resolve criminal cases, but in practice, it also incorporates some aspects of the inquisitorial model. No model is perfect on its own; each has some benefits and drawbacks.

When we consider the situation from an Indian perspective, we see that various committees and High Courts have expressed the opinion that it is time to adopt elements of the inquisitorial model in order to strike a balance between the rights of both the accused and the accused's victims and, ultimately, to further the ends of justice. There are two modes of judicial process – adversarial and inquisitorial. India largely follows the adversarial system. However, in some circumstances, India has adopted elements of the inquisitorial system, with an aim of ensuring justice.⁴³

⁴³ “Judicial Process and Administration”, http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S000020LA/P001369/M010311/ET/1513750093JPLAW-04-Q-I.pdf

In several adversarial legislative systems, the court may infer information about an accused individual based on their unwillingness to testify under oath or to answer a certain question. The defense's capacity to employ quiet as a tactic is unquestionably diminished by this. In the United States, the Fifth Amendment has been interpreted to prohibit a jury from drawing a negative inference based on the defendant's invocation of his or her right not to testify, and the jury must be so instructed if the defendant requests.⁴⁴

Role of Adversarial system in Criminal Justice System in India:

In this system, the lawyer has a responsibility to represent the client diligently and faithfully. The duty to seek out all beneficial evidence, seek, neutralize, or eliminate all adverse evidence, and push for the most favourable interpretation of the law for his client are all examples of zealous, devoted advocacy. Sometimes protection of individual rights and a presumption of innocence and benefit of doubt lead to the release of a criminal.

1. Party's present evidence, and occasionally parties purposefully delay presenting it for a lengthy time. Because gathering and presenting evidence is entirely under the control of the parties, the decision-maker will only hear the evidence that they want to present.
2. To skew the truth, parties could present phony witnesses.
3. Rules demand advocacy and customer loyalty, which stifles the pursuit of truth.
4. There are times when the police may not be able to find enough evidence to convict the defendant. The accused cannot be relied upon to assist him. This causes the case to drop out.

Criticism of inquisitorial system:

Judge and examining magistrate both have unrestricted authority to conduct investigations and render decisions in the case. It uses a tedious process.

The adversarial systems often create two categories in the justice systems, one for the rich and the other for the poor. Most of the people in the prisons are poor, with the vast majority of them coming from families living below the poverty line.⁴⁵ This happens because, under an adversarial

⁴⁴ “Adversarial System”, Available at: https://en.wikipedia.org/wiki/Adversarial_system last seen on 30/5/2023.

⁴⁵ Edeh Samuel Chukwuemeka, “Advantages and Disadvantages of Adversarial System”, Available at: <https://bscholarly.com/advantages-and-disadvantages-of-adversarial-system/> last seen on 30/5/2023.

system, a person's ability to hire a qualified lawyer to represent them and fight for their rights depends heavily on their financial situation. However, the inquisitorial system avoids this scenario since it allows judges to conduct their own inquiries and investigations; everything is not left up to the attorney alone.

When the court is involved in the interrogation, there may be prejudice present. It has issues with accessibility. The accused person's privacy is violated. It might lead to injustice. Because both have distinct laws to address their behaviour, the prosecutor and the police overstep or abuse their authority. Prosecutor and police exceed or misuse their power because both are having separate law to deal with their conduct.⁴⁶ It obliges each side to contest with each other.

Parties aren't permitted to use their own expert. This system of justice delivery has been criticized for its value of winning over truth, but studies show it is a system that looks to protect the rights of individuals on trial.⁴⁷

In this case the SC criticized the prevalent criminal justice system in India and put emphasis on the importance of witnesses in the adversarial system. The SC held that in an adversarial system, which is prevalent by India, the court is supposed to decide the cases on the basis of evidence produced before it. This evidence can be in the form of documents. It can be oral evidence as well, i.e., the deposition of witnesses.⁴⁸

The witnesses, thus, play a vital role in facilitating the court to arrive at correct findings on disputed questions of facts and to find out where the truth lies. They are, therefore, backbone in decision making process. Whenever, in a dispute, the two sides come out with conflicting version, the witnesses become important tool to arrive at right conclusions, thereby advancing justice in a matter.

The hallmark of American adjudication is the adversary system. The virtues of the adversary system are so deeply engrained in the American legal psyche that most lawyers do not question

⁴⁶ Solanki Madhubala, “Comparison Of Trial Procedure Between Indian Courts And French Courts”, <https://www.lawctopus.com/academike/comparison-trial-procedure-indian-courts-franch-courts/> last seen on 30/5/2023.

⁴⁷ Ikenga K.E.Oraegbunam , “THE JURISPRUDENCE OF ADVERSARIAL JUSTICE”
file:///E:/187809-Article%20Text-477263-1-10-20190701.pdf

⁴⁸ Mahender Chawla v. Union Of India Ministry Of Home Affairs (2018)

it. The majority of the world, however, uses some version of the inquisitorial system that evolved primarily in continental Europe.

Furthermore; some chinks in the adversarial armor have recently begun to appear: There is considerable debate over the adversary. System in the literature in recent years, and many non-adversarial elements have become important parts of the American adjudicatory system under the Federal Rules of Civil Procedure.⁴⁹

We adopted adversary model of justice placing the court in a neutral position at the same time increasing the important of lawyers during the trial. Due process of law can be up held by a practical approach to attend justice. Let us identify the problem in its right perspective and evolve a solution that is practical to suit the condition of this country.⁵⁰

In India, we follow the adversarial system where Due process is the center. The legal guilty doctrine is the basis of the due process model. It indicates that a person is only guilty if their factual guilt is proven through legal procedure and by authorities operating within their scope of authority.

In this model, there are several huddles and roadblocks at each stage of the criminal justice system to make sure that no innocent person is unjustly accused of a crime. Packer contrasted this model with the industrial system, which uses numerous quality checks to ensure that the final product is less defective. For instance, the Indian Constitution and the Code of Criminal Procedure, respectively, have numerous safeguards at the time of an arrest, such as Article 22(1) and (2) and Sections 55A, 57, and 46. All of these protections are in place to guarantee that innocent people are not unjustly accused of a crime. Because the state, which is strong, has the ability to wrongfully detain innocent people and deny them their right to personal liberty to move wherever they wish. The Madras High Court talked about legality of arrest and held that⁵¹: “A valid arrest requires

⁴⁹ ELLEN E. SWARD, “Values, Ideology, and the Evolution of the Adversary System”. Available at: https://www.google.com/search?q=role+of+adversary+system&ei=TXt1ZJPJbUmUseMPiYWz2AY&start=10&sa=N&ved=2ahUKEwjTo9CFmpz_AhU5SmwGHYnCDGsQ8NMDegQIBRAW&biw=1024&bih=580&dpr=1

⁵⁰ Prof. Acharya Madhav Prasad, “The Adversarial v. Inquisitorial Models of Justice”. Available at: <http://www.asianlii.org/np/journals/KathSLRS/2003/4.pdf> last seen on 30/5/2023.

⁵¹ Roshan Beevi v. Joint Secretary to government

that the person making the arrest have the legal right to do so. In that case, the person who is being detained has the right to a private defence and may resist the arrest even with physical force under the provisions of Section 99 of the I.P.C. Otherwise; his action will be completely without jurisdiction. Therefore, in order to have the action of the arrester to be in conformity with the legal and constitutional provisions, it must be an arrest properly and lawfully made in terms of the specified provisions of the Criminal Procedure Code"⁵².

Bail law and Supreme Court:

The Supreme Court has ruled that bail remains the rule and jail is the exception, and has called for a separate bail law to prevent "unnecessary arrests." In the words of former Supreme Court Justice VR Krishna Iyer, "the basic rule may perhaps be tersely stated as bail, not jail."⁵³ The personal liberty is a priceless treasure for a human being⁵⁴. It is a hardship to detain parties under trial in prison an hour longer than the law requires⁵⁵

Bail is a mechanism that secures liberty to the accused without providing any unjustified benefit to them. However, it has been scrutinized that the practice of granting bail is quite irregular and unclear⁵⁶. The Supreme Court has noted in a number of rulings that each case needs to be assessed for its unique facts and circumstances before granting bail. The justification for granting or rejecting bail requests must be to strike a balance between personal freedoms and societal interests.

According to the Supreme Court of India, Bail is a measure to balance the personal freedom of the accused and the public interest. Therefore the release is conditional⁵⁷. On the contrary, an ultimate acquittal with continued custody would be a case of grave injustice⁵⁸. There is an urgent

⁵² Urstruly sameer, "Bail Crisis In India: Is Incarceration A True Way To Justice?"

<https://legalserviceindia.com/legal/article-9599-bail-crisis-in-india-is-incarceration-a-true-way-to-justice-.html>

⁵³ <https://www.indiatoday.in/law/story/why-supreme-court-put-emphasis-on-separate-bail-law-1979246-2022-07-24> last seen on 25/4/2023.

⁵⁴ https://lawhelpline.in/PDFs/CRIMINAL_LAWS/BAILS.pdf last seen on 25/4/2023.

⁵⁵ https://highcourtchd.gov.in/sub_pages/left_menu/Rules_orders/high_court_rules/vol-III-pdf/chap10.pdf last seen on 25/4/2023.

⁵⁶ <https://www.iasgyan.in/daily-current-affairs/bail-provisions-in-india> last seen on 22/4/2023.

⁵⁷ <https://www.iasgyan.in/daily-current-affairs/bail-reforms-in-india> last seen on 24/4/2023.

⁵⁸ <https://www.ndtv.com/india-news/consider-framing-act-supreme-court-to-centre-on-bail-pleas-bail-act-supreme-court-on-bail-pleas-3148352>

need to create a balance between personal liberty and investigational powers of Police and freedom of an individual must assist to the security of the state⁵⁹

In its ruling in the Satender Kumar Antil v. Central Bureau of Investigation (CBI) case, the Supreme Court remarked that “jails in India are swamped with under trials⁶⁰.”

The following prerequisites must be met in order for these instructions to be applicable:

1. Throughout the investigation, the accused is not detained.
2. Accused has cooperated throughout the investigation including appearing before the Investigating Officer whenever called⁶¹.

The fact that bail is granted fairly late in the proceedings is another grey area in the application of bail⁶². The oversupply of cases and the overburdened legal system are the cause of this. If there is no prima facie evidence against the accused at the beginning of the case, the court should release them even when there is no chance for a bail hearing. It's vital to remember that in this case, justice delayed is justice denied.

Therefore, keeping those who are awaiting trial in jail longer than required violates both their constitutional rights and human rights. Prolonged delay in disposal of the trials and thereafter appeals in criminal cases, for no fault of the accused, confers a right upon him to apply for bail⁶³. Therefore Court has often reminded the executive of their duty to appoint the necessary number of judges in order to handle the mounting burden on the current judicial system.

Types of Bail:

Regular Bail: Regular bail is the release of a person on bail by filling the security and bail bond. There should be two sureties in the bail bond. The police have the right to arrest the person if he commits a cognizable offence⁶⁴. The accused who has been detained for both bailable and non-bailable offences may request standard bail. When an offence qualifies for bail, the police

⁵⁹ <https://www.jetir.org/view?paper=JETIR1903592> last seen on 25/4/2023.

⁶⁰ <https://www.clearias.com/bail/> last seen on 25/4/2023.

⁶¹ <https://www.mondaq.com/india/corporate-and-company-law/1226020/supreme-courts-guidelines-on-grant-of-bail-after-charge-sheet-is-filed> last seen on 25/4/2023.

⁶² <https://www.lawyersclubindia.com/articles/bail-jurisprudence-of-india-15563.asp>

⁶³ <https://www.legalservicesindia.com/article/2451/Bail-conditions.html>

⁶⁴ <https://legalstudymaterial.com/what-is-bail-types-of-bails-in-india/>

department or the magistrate's court may grant bail to the accused. A non-bailable offence, however, requires the accused to submit an application to the session court or high court.

Interim Bail:

Interim bail does not have a specific section but conditions that are specified apply in this case as well⁶⁵. This lack of express provisions often leads to people misusing the power of interim bail. It may include the accused escaping from justice, violating the bail conditions or tampering of evidence etc⁶⁶ bail refers to bail granted under the Cr. PC for a brief period of time. Before the hearing for the grant of regular or anticipatory bail, a short-term bail is given to the accused. Such short-term bail is called ‘interim bail’⁶⁷.

Interim bail is granted to an accused before the hearing for the grant of normal bail or anticipatory bail⁶⁸. The court may grant temporary bail to an accused person before deciding on their bail petition, and has the authority to either validate or cancel the temporary bail. Section 438 of the Cr. P.C provides provisions for the High Court and Sessions Court to grant anticipatory bail. Interim bail was granted in many cases, taking into consideration the impact of the COVID-19 pandemic.

The Supreme Court has taken purposeful measures to alleviate jail overcrowding as a response to the COVID-19 pandemic. With the emergence of a severe second wave resulting in numerous fatalities, the Court displayed a compassionate approach towards around 400,000 inmates who were living in prisons that were overcrowded. When it comes to the COVID-19 Contagion vs. In Re:, for example. In order to reduce prison overcrowding brought on by the corona virus pandemic, the Delhi High Court extended the interim bail of about 3,499 prisoners awaiting trial by 45 days in 2020. The High Court's judgment heavily relied on the committee's suggestion, which had a significant impact. Natasha Narwal, who was arrested in February 2020 under the

⁶⁵ <https://www.lawinsider.in/columns/what-is-interim-bail> last seen on 24/4/2023.

⁶⁶ <https://juriscentre.com/2021/06/22/what-is-interim-bail/> last seen on 24/4/2023.

⁶⁷ <https://blog.iplayers.in/interim-bail/#:~:text=Detailed%20overview%20of%20interim%20bail,Section%20438%20of%20the%20CrPC>. Last seen on 24/4/2023.

⁶⁸ <https://taxguru.in/corporate-law/conditions-regular-bail-interim-bail-anticipatory-bail.html> last seen on 24/4/2023.

Unlawful Activities and (Prevention) Act, 1967 was granted a temporary release from prison on compassionate grounds after her father died due to COVID-19. This event occurred during her hearing in the case of *Natasha Narwal v. State of Delhi NCT* (2021). Thus main goal of interim bail is to give people a way to protect their liberty and reputation by preventing any kind of illegal detention or arrest.

Anticipatory Bail:

Provision for anticipatory bail was made for the first time in the Code of Criminal Procedure, 1973⁶⁹. Anticipatory bail was originally intended to serve as a remedy for baseless accusations and malicious prosecution. However, over time, through subsequent Law Commission Reports and Supreme Court’s expansive interpretation, anticipatory bail was granted wider scope⁷⁰.

It is based on the recommendation of the Law Commission of India, which in its 41st report recommended the incorporation of a provision of anticipatory bail⁷¹. Anticipatory bail can be granted under Section 438, when “any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence”⁷². It is the pre-arrest bail. Any person who apprehends his/her arrest regarding a non-bailable offence can apply for anticipatory bail. Anticipatory bail has not been defined anywhere in the code⁷³.

The Supreme Court defined anticipatory bail as bail that is granted before a person's arrest in the case of *Balchand Jain vs State of MP*. The Supreme Court, in the case of *Siddharam Satlingappa Mhetre vs State of Maharashtra*, highlighted that anticipatory bail aims to protect an individual's freedom and is not a license for engaging in criminal activities or a defense against accusations, whether plausible or not.

⁶⁹ Criminal Law Journal, 2012(1), Vol. XLvi “Anticipatory Bail - A Critical Study In The Light Of Supreme Court's Decision In Siddharam Satlingappa Mhetre's Case' By Prof. (Dr.) Mukund Sarda'

⁷⁰ <https://criminallawstudiesnluj.wordpress.com/2022/12/04/restricting-anticipatory-bail-under-the-atrocities-act/>
last seen on 24/4/2023.

⁷¹ <https://www.nextias.com/current-affairs/30-08-2022/the-jurisprudence-of-bail> last seen on 24/4/2023.

⁷² <https://journalsofindia.com/what-is-pre-arrest-bail/> last seen on 21/4/2023.

⁷³ <https://www.writinglaw.com/bail-under-crpc/> last seen on 21/4/2023.

According to the section 438 of The Code of Criminal Procedure (Cr. P C), the Court of Session and the High Court are authorized to entertain the Anticipatory bail applications⁷⁴. Just like most things, this provision in the code also has a downside. The law was originally created with the intention of protecting the innocent from being ensnared, but now individuals accused of grave crimes are frequently utilizing the law, contrary to its intended purpose, which is a major issue of concern.

Anticipatory bail is defined in Section 438 of the Cr. PC, which states that when the court believes that the accused is falsely involved in the case and that arrest would jeopardize his honour and dignity, the court may grant anticipatory or pre-arrest bail to the accused under certain conditions⁷⁵. The concept of anticipatory bail comes into place when the accused may rightfully fear arrest in cases of cognizable offences⁷⁶. However, a delicate balance is required to be established between the right of personal liberty of an individual apprehending his arrest and the societal interest⁷⁷. Recently, an MLA has been granted pre-arrest bail or Anticipatory bail by the High Court; a decision challenged in Supreme Court by the state Lokayukta.⁷⁸ Lokayukta is a state body empowered to deal with corruption complaints against public servants⁷⁹.

Bail Procedures and the Police System:

The Law Commission severely criticized the police of our country for arbitrary use of power to arrest⁸⁰. But as explained, what exactly constitutes a “misuse of law”, and what considerations courts must undertake to grant anticipatory bail is an area that needs clarification⁸¹. Stressing a ‘pressing need’ for reform, the Supreme Court has called on the government to consider a special legislation on bail. What are the bail provisions in the Cr. P C, and what reforms have the court suggested?⁸². “The existing system of bail in India is inadequate and inefficient to accomplish its

⁷⁴ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1476730 last seen on 24/4/2023.

⁷⁵ <https://www.lawyersclubindia.com/articles/bail-under-crpc-15349.asp> last seen on 24/4/2023.

⁷⁶ <https://tripakshalitigation.com/condition-for-anticipatory-bail-in-india/> last seen on 21/4/2023.

⁷⁷ https://lawhelpline.in/PDFs/CRIMINAL_LAWS/Anticipatory%20Bail.pdf last seen on 24/4/2023.

⁷⁸ <https://www.drishtias.com/daily-updates/daily-news-analysis/anticipatory-bail-2> last seen on 21/4/2023.

⁷⁹ <https://www.prepladder.com/upsc-study-material/polity-and-constitution/all-about-the-pre-arrest-bail> last seen on 21/4/2023.

⁸⁰ <https://www.aaptaxlaw.com/CRPC/anticipatory-bail-section-438-crpc-direction-for-grant-of-bail-to-person-apprehending-arrest.html> last seen on 24/4/2023.

⁸¹ <https://criminallawstudiesnluj.wordpress.com/2022/12/04/restricting-anticipatory-bail-under-the-atrocities-act/> last seen on 24/4/2023.

⁸² <https://indianexpress.com/article/explained/bail-law-and-sc-call-for-reform-8025618/> last seen on 24/4/2023.

purpose," said a Law Commission of India report in May 2017⁸³. The Supreme Court of India recently acknowledged, in *Satender Kumar Antil vs CBI*⁸⁴, the ineffectiveness of India's bail system and its contribution to this crisis. The Court noted that despite repeated guidelines on bail law, things have not changed much on the ground.

The court's ruling is in the form of guidelines, and it also draws the line on certain procedural issues for the police and judiciary:⁸⁵ The court emphasized that although the Cr. P C has been amended since Independence, it still retains the same basic structure created by a colonial power over its subjects. It also emphasized that the use of discretionary power is not necessarily favored by magistrates. And also the Supreme Court has instructed state governments and Union Territories to ensure that standing orders are put in place in order to comply with the orders and prevent arbitrary arrests. Due to the lack of bail bonds and efficient criminal justice administration, many people are forced to remain in jail, which is extremely worrying for the creation of a welfare state. Noting the high number of under trials in Indian prisons, the Supreme Court recently observed in a democracy, there can never be an impression that it is a police state⁸⁶. The Malimath Committee Report was submitted to the Government of India in April 2003⁸⁷. According to the Committee, the current system "weighed in favour of the guilty" and "failed to adequately focus on justice for crime victims."⁸⁸. Reports gave police a wide range of bail-granting authority. The widespread perception is that cops know nothing about the law and simply possess knowledge of authority. Combinations like this should not be used.

The interests of the accused may not be protected while exerting such total power. In order to prevent the police from abusing their authority while issuing bail, it is necessary to think carefully about this issue. An effective bail law must be based on the correlation of these answers with variables such as the demographics of undertrials, category of offences and

⁸³ <https://www.indiaspend.com/police-judicial-reforms/a-separate-bail-law-can-help-decongest-indias-jails-experts-832178> last seen on 24/4/2023.

⁸⁴ Miscellaneous Application No.1849 Of 2021 In Special Leave Petition (Cr.L.) No.5191 Of 2021 With Miscellaneous Application Diary No.29164 Of 2021 In Special Leave Petition (Cr.L.) No.5191 Of 2021.

⁸⁵ <https://www.civildaily.com/news/jurisprudence/> last seen on 24/4/2023.

⁸⁶ <https://www.outlookindia.com/national/bail-not-jail-why-supreme-courts-has-urged-govt-to-frame-new-bail-act-news-208916>

⁸⁷ <https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1026&context=nlsir> last seen on 25/4/2023.

⁸⁸ <https://prepp.in/news/e-492-malimath-committee-indian-polity-notes>

timelines for bail, and also address socio-economic and structural barriers⁸⁹. The existing bail regulations have roots that make it discriminatory towards poorer individuals and cause undue difficulties for those who come from disadvantaged communities. In order to generate effective solutions, we must possess a thorough and accurate comprehension of the problem at hand.

The apex court has time and again criticized the impractical bail system by stating that ‘It’s a travesty of justice that many poor accused are forced into long cellular servitude for little offences because bail procedure is beyond their meager means⁹⁰. It’s high time that bail reforms in India are undertaken as an urgent desideratum to make it more realistic, practical, reasonable and to synchronize it with the objectives of criminal justice system⁹¹. Rules and regulations should be tailor-made to suit the needs of those who rely on them, in a similar manner to how clothes are tailored to fit the individual. The Indian Constitution declares that India is specifically a socialist country. Social, economic, and political justice as well as equal opportunities and status are essential pillars of the concept.

Conclusion and Suggestion and Findings:

Overall Crime in India – 2019 - 2021

The Bureau has been gathering information on different facets of crime from States and UTs and compiling it into a report. The report has established itself as a reference work for the development of evidence-based policy over time. The data is also used by researchers for in-depth analysis of the subject for developing theories for better understanding of criminogenic factors.⁹²

A total of 1, 74,013 instances related to economic violations were reported, which is a 19.4% increase in registration from 2020 (1,45,754 cases). Criminal breach of trust, FCF (forgery, cheating, and fraud), and counterfeiting are the three categories of economic crimes that have been specifically mentioned. In 2021, FCF accounted for the most of these crimes, with 1, 52,073 cases, followed by criminal breach of trust (21,241 cases), and counterfeiting (699 cases).

⁸⁹ <https://www.thehindu.com/opinion/op-ed/reform-bail-law-but-make-the-right-diagnosis-first/article65682565.ece> last seen on 24/4/2023.

⁹⁰ <https://theguardian.com/bail-reforms-in-india-a-clarion-call/> last seen on 24/4/2023.

⁹¹ <https://theguardian.com/bail-reforms-in-india-a-clarion-call/> last seen on 24/4/2023.

⁹² https://ncrb.gov.in/sites/default/files/CII-2021/CII_2021Volume%201.pdf

State Anti-Corruption Bureau (ACBs) have recorded 3,745 cases overall in 2021, up from 3,123 cases in 2020, a 19.9% rise. Out of 3,745 cases, the bulk, or 67.6% of them, were trap cases (2,532), which were followed by criminal misconduct (511 cases), at 13.6%. A total of 4,420 people were detained, 482 of them were found guilty, and 303 of them faced departmental repercussions.

According to Section 2(c) of the Criminal Procedure Code, these offences are those for which a police officer may initiate an inquiry without the magistrate's consent and may make an arrest without a warrant. The information regarding the commission of these offences is recorded by the police officer under section 154 of Cr. P.C. which is commonly known as FIR.⁹³

Total of 60,96,310 cognizable crimes comprising 36,63,360 Indian Penal Code (IPC) crimes and 24,32,950 Special & Local Laws (SLL) crimes were registered in 2021. It shows a decline of 5,04,975 (7.6%) in registration of cases over 2020 (66,01,285 cases).

Crime rate registered per lakh population has declined from 487.8 in 2020 to 445.9 in 2021. During 2021, registration of cases under IPC has declined by 13.9% whereas SLL crimes have increased by 3.7% over 2020. Percentage share of IPC was 60.1% while percentage share of SLL cases was 39.9% of total cognizable crimes during 2021.

Major decline was seen in the cases registered under Disobedience to order duly promulgated by Public Servant⁹⁴ from 6,12,179 cases in 2020 to 3,22,115 cases in 2021 and under ‘Other IPC Crimes’ from 10,62,399 cases in 2020 to 4,96,535 cases in 2021. Similarly under SLL category, major increase was under cases registered under Prohibition Act (State)’ from 5,62,215 cases in 2020 to 6,78,998 cases in 2021. This has resulted in an increase of 1,16,783 cases in SLL during 2021 as compared to 2020.

During 2021, total of 58,10,088 IPC cases (21,42,907 cases pending from previous year 36,63,360 reported during the year, 3,821 cases re-opened for investigation) were under investigation, out of which total of 37,64,632 cases were disposed of by police including 27,20,265 cases which were charge sheeted, resulting in the charge sheeting rate of 72.3%. AA)

⁹³ <https://elearning.sbssmahavidyalaya.ac.in/files/766CFAA115875284943.pdf>

⁹⁴ Section 188 of Indian Penal Code, 1860.

Arrests, Convictions & Acquittals A total of 58,09,380 persons were arrested under IPC & SLL cases combined, as follows:

A total of 34,92,436 persons were arrested under 36,63,360 cases of IPC crimes. A total of 44,18,024 persons were charge-sheeted, 8,85,842 persons were convicted, 7,30,778 persons were acquitted and 1,12,009 persons were discharged.

A total of 23,17,005 persons were arrested under 24,32,950 cases of SLL crimes. A total of 27,91,827 persons were charge-sheeted, 13,28,465 persons were convicted, 3,16,578 persons were acquitted and 54,694 persons were discharged.⁹⁵

Judges have a great deal of discretion when determining bail applications. Non-uniformity is the outcome of this latitude. There is space for anarchy since every judge uses a different set of standards in every case. The concept of bail is not sufficiently addressed by current Indian law, and there are no set rules that courts must follow when granting release. Since the colonial era, these clauses have been part of the statute, and little has changed significantly. The legislation governing bail has to be changed urgently so that it can better respond to the problems of the modern world. The backlog of bail applications has proven to be an insurmountable obstacle for the already overburdened justice system in recent years, which has led to the violation of thousands of impoverished people's fundamental right to liberty.

Crime statistics are a significant and necessary input for evaluating societal human rights conditions and overall quality of life. The state of a country's criminal justice system's operations is generally reflected in crime statistics. Statistics on crime contain information on offences and legal violations. People who commit crimes are called offenders. Victims are those who have been wronged. Within India under India's federative system, crime statistics are created based on crime records kept by various law enforcement organizations like the Police and Judiciary at various levels of administrative/legal jurisdiction. However, these statistics are based on those cases which are typically reported to law enforcement agencies and recorded through all stages of action on the cases reported. These statistics are typically easily accessible and are typically used to assess how crime is being dealt with by law enforcement organizations. 'Crime Statistics'

⁹⁵ Available at: <https://ncrb.gov.in/sites/default/files/CII-2021/CII%202021%20SNAPSHOTS%20STATES.pdf> last seen on 1/6/2023.

in India gives an incomplete picture of crime situations in the country. The deficiency is not particular to India, as some studies have shown that even data collected by British Crime Statistics provides a picture of 30% of the actual crime in the country.⁹⁶

According to cases filed last year under the Narcotics, Drugs, and Psychotropic Substances (NDPS) Act, Punjab once again ranked first in terms of crime rate (per lakh of the population). The research also revealed that Himachal Pradesh, which according to NCRB has a population of 74.06 lakh, came in second place in the same category.

814 cases were registered under the Unlawful Activities Prevention Act (UAPA) as compared to 796 cases in 2020 while 76 cases of sedition were registered in 2021 as compared to 73 in 2020.⁹⁷ 427,165 or 77% of the 554,034 convicts, according to the National Crime Record Bureau (NCRB), were awaiting trial in 2021. The number of undertrials has increased from 371,848 in 2020 by 14.9%. In 2021, 40.2% of convicts had not finished high school, and 25.2% were illiterate. Scheduled Castes comprised 21.7% of prisoners and 16.6% of convicts in 2019 (16.6% of the population according to the 2011 Census). 8.6% of the population, or tribal members, made up 10.5% of all defendants awaiting trial and 13.6% of all prisoners (2011 Census). 29.1% of those awaiting trial in 2021 had already served more than a year behind bars.

The majority of undertrials—51.4% of the total—were housed in district jails, followed by central jails (36.2%) and sub-jails (10.4%). Over 4.7 crore cases were still pending as of May 2022 in courts at all levels of the legal system. 87.4% of them are still pending in lower courts.

The most undertrials were reported in Uttar Pradesh, followed by Bihar and Maharashtra. Bihar had the greatest percentage of convicts who were awaiting trials—89.1%—followed by West Bengal (87.6%) and Odisha (87.3%).

The prison occupancy rate is 130.2%. Uttarakhand had the highest prison occupancy rate at 185%, followed by Uttar Pradesh (184.8%) and Sikkim (166.9%).⁹⁸

⁹⁶ Available at: https://www.mospi.gov.in/sites/default/files/Statistical_year_book_india_chapters/Crime-write%20up_0.pdf last seen on 31/5/2023.

⁹⁷ Available at: <https://iasbaba.com/2022/08/national-crime-records-bureau-ncrb-report/> last seen on 31/5/2023.

⁹⁸ Available at: <https://blog.forumias.com/issue-of-undertrials-in-india-explained-pointwise/> last seen on 31/5/2023.

Every year, the National Crime Records Bureau (NCRB) in India publishes a report titled "Crime in India" that contains in-depth information on a variety of offences. The most recent report available for the year 2019 indicates that India's overall crime rate (per lakh of population) was 385.5.⁹⁹

The NCRB study classifies crimes into a number of groups. Some of the most common types of crime include the following: In 2019, there were claimed to be 5,21,395 thefts, 65,277 recorded robberies, 32,033 rape cases, and 45,935 murder cases.¹⁰⁰

India has a problem with crimes against women include dowry murders, domestic violence, molestation, and kidnapping. The NCRB report for 2019 highlighted a total of 4,05,861 documented cases of crimes against women.¹⁰¹

The legal system in India has faced challenges due to the large number of convicts still awaiting trial. According to several surveys, a significant number of inmates in India's prison system are still incarcerated while awaiting trial. According to some estimates, it may possibly be more than 70%. According to these statistics, a large fraction of those who are imprisoned in India are either awaiting trial or have not yet been found guilty of a crime.¹⁰²

In 2020, Karnataka claimed that 41 sub prisons under the supervision of the Revenue Department are not included because of a lack of information from them, according to data provided by States/UTs. Additionally, the Prison Department's six sub-jails have been permanently shut down. Note: Figures as on 31st December of the respective year¹⁰³. Of the total 554,034 prison inmates in the country in 2021, 373,337 or 67.5% belonged to Scheduled Castes, Scheduled Tribes and other backward classes (OBCs), according to the latest prison statistics of the National Crime Records Bureau (NCRB)¹⁰⁴.

⁹⁹ Available at: <https://ncrb.gov.in/> National Crime Records Bureau (NCRB) last seen on 30/5/2023.

¹⁰⁰ Available at: <https://www.mha.gov.in/> Ministry of Home Affairs (MHA) last seen on 30/5/2023.

¹⁰¹ Available at: Their website is: <https://pib.gov.in/> Press Information Bureau (PIB) last seen on 30/5/2023.

¹⁰² Available at: <https://www.tatatrusters.org/> India Justice Report,, website at <https://prisonstatisticsindia.nic.in/>., JSTOR (<https://www.jstor.org/>), Google Scholar (<https://scholar.google.com/>), or the Social Science Research Network (SSRN) (<https://www.ssrn.com/>) last seen on 30/5/2023.

¹⁰³ Available at: https://ncrb.gov.in/sites/default/files/PSI-2021/PSI_2021_as_on_31-12-2021.pdf last seen on 30/5/2023.

¹⁰⁴ Tripathi Rahul, "Majority undertrials from poorer sections, shows NCRB data", Available at: <https://economictimes.indiatimes.com/news/india/majority-undertrials-from-poorer-sections-shows-ncrb-> last seen on 30/5/2023.

The word trial literally means "test." Trial refers to a legal proceeding when evidence is presented, witnesses are questioned, and cases are decided. However, in law, a trial is a procedure in which competing parties to dispute present evidence to the court in order to settle it. But regrettably, nowhere in the code is the word "trial" defined. Trial is conducted by the court to adjudicate the real issue in controversy on the basis of material produced before it. Investigation is conducted by the police, and trial is conducted by the court.¹⁰⁵ More than three-fourths of India's jail inmates are undertrial prisoners, according to data released by the National Crime Records Bureau (NCRB). Of the 554,034 prisoners, 427,165, or 77 percent, were undertrials in 2021. This was a 14.9 percent increase from 371,848 undertrials in prison in 2020.¹⁰⁶

Key conclusions of the study:

The legislature must repeal the outdated laws that conflict with the system of constitutional rights. Therefore, it is necessary to change or modify the ill-defined laws that allow for the arbitrary use of power. The criminal laws must be adaptable enough to include new provisions to address novel or evolving crime modes. The judiciary is supposed to balance the constitutional function of the legislature in a similar way by justly interpreting, adequately explaining, and even repealing any out-of-date criminal code provision.

By interpreting the criminal statutes in a way that complements the constitutional principles and norms, the Indian court has played a crucial role. The executive agencies must follow constitutional restraints when implementing or carrying out national criminal laws. When carrying out the criminal procedures, they must not go beyond the limitations of the rule of law, their constitutional authority, or the principles of natural justice. An efficiently functioning criminal justice system is the need of the hour when India is facing daunting challenges like corruption, poverty, and ignorance in its march towards development.¹⁰⁷

¹⁰⁵ Ch. Kishore Kumar, Paper Presentation On Topic: Investigation To Trial” Available at: <https://districts.ecourts.gov.in/sites/default/files/INVESTIGATION%20TO%20TRIAL%20-%20Ch%20Kishore%20Kumar.pdf> last seen on 31/5/2023.

¹⁰⁶ “77% of India's Prisoners are Undertrials: NCRB”, Available at: <https://www.moneycontrol.com/news/india/77-percent-of-indias-prisoners-are-undertrials-ncrb-9142041.html> last seen on 30/5/2023.

¹⁰⁷ “The scope of changes in the criminal law system in India: To eradicate the non-effective provision in statue”. file:///D:/sem%20ii%20-%20consti/bail/2029-Production-841-1-10-20211222.pdf last seen on 30/5/2023.

HYPOTHESIS is proved to be that there is development in present criminal law. Amendments should not encode —mere social policies but should expand individual rights or improve government structure the conclusion is that the criminal laws have effectively improvised but the fact is that the execution of punishments regarding the criminal have not reached its efficiency.¹⁰⁸

In India only about 16 out of 100 people arrested for criminal offences are finally convicted. Low rate of conviction points to the inability of the Criminal Justice System of India which includes the police, prosecutors, and the judiciary.¹⁰⁹ The judicial system currently has over 3.5 crore cases waiting, primarily in district and lower courts, which demonstrates the adage "Justice delayed is justice denied." The legal processes have grown complicated and expensive.

In reality, the criminal justice system serves as a societal control mechanism. Criminals have profited from the shortcomings of the adversarial justice system, which is based on the testimony of witnesses. Our nation's unequal economic and social structure provides a suitable foundation for the continuation of the brutality of the police force. There has been no sincere attempt to make the functioning criminal justice system, notably the police system, adhere to the fundamental human rights.

Even in circumstances of serious crimes, the powerful and wealthy rarely face conviction. The growing relationship between politics and crime has given the criminal situation a new dimension. Due to technology advances, crime has rapidly expanded and its nature is getting more and more sophisticated. Investigations caused crimes to be delayed, which significantly added to the delay in swiftly administering justice. India has a responsibility to advance human rights through enhancing its domestic criminal justice system and law enforcement apparatus. India must create a clear policy that should alert the public to any changes to the IPC or Cr. P. C. If the criminal justice system, including the police, prosecution, and courts, doesn't also improve at the same time, all adjustments will be for naught. In a vast proportion of situations, the guilty

¹⁰⁸ “Development of Criminal law in India“, <https://acadpubl.eu/hub/2018-120-5/5/424.pdf> last seen on 16/5/2023.

¹⁰⁹ “Criminal Justice System In India Present Scenario”, <https://lordsoflaw.com/wp-content/uploads/2021/09/CRIMINAL-JUSTICE-SYSTEM-IN-INDIA-PRESENT-SCENARIO-converted.pdf> last seen on 16/5/2023.

receive little to no punishment. However, a lot of innocent people continue to be detained as suspects.

“Injustice anywhere is a threat to justice everywhere” – Martin Luther King, Jr.¹¹⁰

Overcrowded prisons are over 130% full, undertrials are 77%, and more than 67% of inmates come from SC, ST, or OBC communities. Maximum number of pending cases: Uttar Pradesh, Most jails, including those in Delhi, lack facilities specifically for transgender inmates.¹¹¹ Nearly eight out of every 10 prisoners in Indian jails are awaiting trial even as the occupancy rate rose from 118 percent to 130 percent in 2021, according to the latest prison statistics published by the National Crime Records Bureau (NCRB)¹¹².

According to Section 2(h) of the Code, an investigation is a process of collecting evidence by either a police officer or any other person that is authorized by a Magistrate to do so.¹¹³

The criminal procedure code provides a mechanism for conducting trials in a criminal case. It gives the procedure for registering a complaint, conducting a trial and passing an order, and filing an appeal against any order.¹¹⁴

A notable development this month was the Supreme Court of India's appeal for change of the nation's bail regulations. Recently, the Supreme Court underlined that “there is a pressing need” for reform in the law related to bail and called on the government to consider framing a special legislation on the lines of the law in the United Kingdom¹¹⁵. The CJI also stressed the significance of creating a thorough action plan to boost criminal justice administration effectiveness.

¹¹⁰ <https://www.worldwidejournals.com/indian-journal-of-applied-research-> last seen on 16/5/2023.

¹¹¹ “NCRB Releases Prison Statistics In India Report, 2021”, Available at: <https://crackittoday.com/current-affairs/ncrb-releases-prison-statistics-in-india-report-2021/> last seen on 30/5/2023.

¹¹² Gaur Viraj, “8 in 10 Prisoners Await Trial as India's Inmate Population Grows: Govt. Data”, <https://www.thequint.com/news/india/indias-inmate-population-grows-govt-data-ncrb> last seen on 30/5/2023.

¹¹³ <https://byjus.com/free-ias-prep/code-of-criminal-procedure-crpc/>

¹¹⁴ Glmain, “Criminal Procedure Code (Cr. P. C.) Complying Principles of Natural Justice”, Available at: <https://getlegalindia.com/crpc-bare-act/> last seen on 30/5/2023.

¹¹⁵ Available at <https://www.drishtiiias.com/daily-updates/daily-news-analysis/reform-in-bail-law> last seen on 21/4/2023.

Bail is a rule and jail is an exception. Supreme Court of India will allow bail as long as it is possible/ unless the offence is serious or there are threats regarding the safety of witnesses or the presence of the accused in the court bail will be granted¹¹⁶. Earlier, bail pleas were typically denied, but this is rapidly changing. Bail pleas used to typically be rejected in lower courts like the trial court, session courts, and magistrate levels. But things are changing, and more and more judges are willing to give bail. Grant of anticipatory bail under Section 438 Cr. PC is however a matter of a judicial discretion¹¹⁷.

The Criminal Procedure Code gives only an outline of the provisions of bail, but most of the work is done by the courts themselves¹¹⁸. The courts have the authority to modify the judicial standards that they have established. Generally speaking, judges have the ability to set bail. Conflicting arguments for the accuser’s liberty and the broader interests of society must be considered while deciding whether or not to grant bail.

The criminal justice system is steeped in policy ambiguity. India must create a clear policy that will guide the amendments that will be made to the IPC or Cr. P C. All reforms will be in vain unless improvements are implemented in the police, prosecution, judiciary, and prisons at the same time¹¹⁹. In 2020, the Ministry of Home Affairs constituted the National Level Committee for Reforms in Criminal Laws to undertake a review of criminal laws—the IPC, 1860, the Cr. PC, 1973 and the Indian Evidence Act, 1872 (IEA)¹²⁰. A serious effort of securing public support and participation in the administration of criminal justice, coupled with necessary legislative, judicial powers to act effectively are most warrant. Such an effort alone can help in fulfilling the pre-conditions required for smooth operation of the bail system¹²¹.

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¹¹⁷ <https://www.hellocounsel.com/anticipatory-bail/> last seen on 24/4/2023.

¹¹⁸ https://www.iilsindia.com/study-material/320679_1601207180.pdf

¹¹⁹ <https://prepp.in/news/e-492-malimath-committee-indian-polity-notes> last seen on 25/4/2023.

¹²⁰ <https://www.indiaspend.com/police-judicial-reforms/court-orders-and-government-decisions-a-look-back-at-criminal-justice-in-2022-847019> last seen on 24/4/2023.

¹²¹ http://14.139.116.20:8080/jspui/bitstream/10603/269393/13/13_chapter%207.pdf last seen on 25/4/2023.

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