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Bail is the Rule, Jail is the Exception": A Comparative Analysis of Pre-Trial Detention Frameworks in India and the UK

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Abstract: *The principle that a person is innocent until proven guilty is an important part of criminal law. Therefore, keeping an accused person in prison before the trial should be an exception, not a normal practice. However, following this principle in reality is still a major challenge in many countries.*

This paper examines the laws and practices relating to bail and pre-trial detention in India and the United Kingdom. Both countries follow the common law system, but their legal practices are different. In India, courts follow the principle that "bail is the rule and jail is the exception." However, problems such as delays in court proceedings, strict bail conditions, and a large number of undertrial prisoners make it difficult to follow this principle. As a result, many accused persons remain in prison even before they are found guilty.

In comparison, the United Kingdom follows the Bail Act 1976, which provides clear rules for granting bail. These rules aim to protect individual freedom while also considering public safety. This study compares the laws, court decisions, and practical problems relating to bail in both countries. It also identifies the problems in India's bail system and suggests improvements, such as introducing clear legal guidelines and providing more options for bail without monetary conditions. These changes can help protect the constitutional rights of accused persons..

Keywords: Pre-trial Detention, Bail, Rights of the Accused, Comparative Study, Article 21, Bail Act 1976, Undertrial Prisoners.

1. INTRODUCTION

Every criminal justice system must balance two important things: the personal freedom of an accused person and the safety of society. Under the principle of presumption of innocence, every person is considered innocent until proven guilty by a court of law1. Therefore, an accused person should not normally be kept in prison before the completion of the trial. Pre-trial detention should be used only when it is necessary, such as when there is a risk that the accused may escape, influence witnesses, or interfere with the investigation. This principle was clearly explained by the Supreme Court of India in State of Rajasthan v. Balchand (1977), where Justice V.R. Krishna Iyer stated that "bail is the rule, jail is the exception."

However, following this principle in practice is not always easy. In India, the right to personal liberty is protected under Article 21 of the Constitution.2 When bail is refused without proper reasons or when an accused person cannot fulfil difficult bail conditions, they may remain in prison for a long time before their trial begins. In such situations, pre-trial detention may become a form of punishment even before the person is found guilty.

India and the United Kingdom have a common law background. Both countries recognise personal liberty, fair trial, and the principle that an accused person is innocent until proven guilty. However, their approaches to bail and pre-trial

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detention are different. In India, bail is governed3 by the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which replaced the Code of Criminal Procedure, 1973. Even with legal provisions for granting bail, India continues to face problems such as overcrowded prisons, delays in court proceedings, difficulties in meeting bail conditions, and differences in judicial decisions.

In comparison, the United Kingdom follows the Bail Act 1976, which provides rules for deciding whether an accused person should be released4 on bail or kept in custody. The Act aims to protect the liberty of the accused while also considering the safety of the public and the proper conduct of criminal proceedings.

This research compares the bail and pre-trial detention systems in India and the United Kingdom. It examines the relevant legal provisions, important court decisions, and practical difficulties faced by both countries. The main aim of this study is to understand how far these two legal systems protect the personal liberty of accused persons while ensuring public safety and the proper administration of criminal justice.

THE INDIAN FRAMEWORK: STATUTORY FOUNDATIONS AND SYSTEMIC REALITIES

In India, there is a significant gap between what the law states regarding pre-trial detention and what actually happens in practice. Article 21 of the Indian Constitution5 protects the right to life and personal liberty, establishing that no person can be deprived of their liberty except by following a fair and just procedure established by law. This means that an accused person should not normally be kept in prison before trial unless strictly necessary. However, in practice, procedural complexities, judicial delays, and massive case backlogs often result in accused persons remaining in prison for extended periods before guilt is established.

To understand how bail works in India, it is essential to look at the classification of offences under the historical Code of Criminal Procedure, 1973 (CrPC) and the current Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). Offences are broadly divided into bailable and non-bailable6 categories. In bailable offences, obtaining bail is a matter of statutory right for the accused. Once the accused agrees to execute the required personal bond or surety, the police officer or court is legally bound to grant bail. However, in non-bailable offences, bail is left to judicial discretion. While exercising this discretion, courts weigh factors such as the gravity of the offence, the likelihood of the accused absconding, and the risk of witness tampering or evidence destruction.

The law also provides specific safeguards for undertrial prisoners who face prolonged detention. Section 479 of the BNSS addresses the maximum period an undertrial can be detained, mandating release on bond once a prisoner has served half of the maximum imprisonment period for the charged offence (excluding offences punishable by death or life imprisonment). Notably, for first-time offenders who have never been previously convicted, release can be considered after serving just one-third of the maximum period.7

Indian courts have continually stepped in to curb arbitrary arrests and unwarranted detention. In the landmark decision of State of Rajasthan v. Balchand (1977), Justice V.R. Krishna Iyer laid down the foundational rule that "bail is the rule, jail is the exception." This principle has been consistently reiterated by the Supreme Court. In Arnesh Kumar v. State of Bihar (2014), the Court issued binding directions to prevent routine arrests in offences punishable by up to seven years. Similarly, in Satender Kumar Antil v. CBI (2022), the Supreme Court addressed systemic delays in bail hearings and urged Parliament to consider enacting a standalone "Bail Act" to simplify procedures.8

Despite these progressive judicial declarations, the condition of Indian prisons remains critical. Undertrial prisoners make up roughly three-fourths of the total prison population.9 A major contributor to this crisis is economic hardship; lower courts frequently insist on heavy monetary bonds or local landowning sureties. Poor and marginalized defendants are often unable to fulfill these conditions, remaining trapped in jail long after bail has been formally granted.

Furthermore, lower courts frequently show hesitation in granting bail in non-bailable matters due to the gravity of charges or fear of institutional scrutiny. This forces accused individuals to move higher courts, significantly increasing the time, financial cost, and complexity of securing release. Finally, under special statutes like the Unlawful Activities (Prevention) Act (UAPA) and the Prevention of Money Laundering Act (PMLA)10, strict statutory "twin conditions" make pre-trial release exceptionally difficult to obtain.

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THE UNITED KINGDOM FRAMEWORK: A STRUCTURED STATUTORY APPROACH

In India, courts exercise considerable discretion when deciding whether bail should be granted, and the country faces a severe crisis regarding undertrial prisoners. In comparison, the United Kingdom follows a more structured legal framework for dealing with bail and pre-trial detention. While both India and the UK share common law roots and recognize that an accused person is presumed innocent until proven guilty, their statutory approaches differ. In India, bail provisions are primarily governed by the BNSS (and the CrPC) along with evolving judicial precedents. In the UK, the core framework is codified under the Bail Act 1976, which provides clear rules for granting or refusing bail.

The Right to Bail

A key feature of the UK bail system is its default presumption in favor of releasing an accused person before trial. Section 4 of the Bail Act 1976 establishes a general statutory right to bail, subject to specific legal exceptions.11 This means that an accused person must normally be released unless the prosecution proves valid legal grounds for keeping them in custody.

Unlike India, where offences are categorized as bailable or non-bailable—leaving non-bailable offences largely to judicial discretion—the UK system starts with a general presumption to grant bail. The court may only refuse bail if there are reasonable grounds to believe that the accused person will:12

1. Fail to surrender to custody for their trial;
2. Commit further offences while released on bail; or
3. Interfere with witnesses or obstruct the course of justice.

When making this assessment, UK courts examine set statutory factors, including the gravity of the offence, the defendant's previous criminal record, their family and social ties, and their compliance record with past bail conditions.

Conditional Release Without Money Bonds

Another significant distinction lies in how bail conditions are imposed. Under Section 3 of the Bail Act 1976, UK courts can attach non-monetary conditions to a bail order to minimize risks while keeping the accused out of prison.13

For example, courts routinely order the accused to reside at a specified address, report regularly to a local police station, observe an electronic curfew, or surrender their travel documents.

Crucially, the UK system does not rely on routine cash deposits or land-owning sureties, which are standard in Indian practice. Because financial security is rarely required, an accused person's economic status does not become a barrier to release, ensuring that poor defendants are not left trapped in prison after bail has been granted.

Custody Limits and Human Rights Safeguards

Although the UK framework generally favors granting bail, stricter rules apply to severe crimes. Under Section 115 of the Coroners and Justice Act 2009, bail applications in murder cases cannot be heard by magistrates and must be decided by a Crown Court judge.14 Stricter standards also apply to individuals accused of serious violent or sexual offences, particularly if they have prior convictions for similar crimes.

To protect defendants from indefinite pre-trial detention, the UK enforces strict statutory custody time limits under the Prosecution of Offences Act 1985. In Magistrates' Courts, the maximum period for pre-trial custody is generally 56 days,15 while in the Crown Court, it is capped at 182 days. If the prosecution fails to bring the case to trial within these permitted limits, the court is obligated to release the accused on bail unless a formal extension is granted for exceptional reasons.

Finally, pre-trial detention in the UK is governed by Article 5 of the European Convention on Human Rights (incorporated into domestic law through the Human Rights Act 1998). Article 5 guarantees the right to liberty and mandates that anyone held in custody before trial must be brought to trial within a reasonable time or released pending trial, acting as a crucial constitutional safeguard against arbitrary detention.16

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JUDICIAL APPROACH TOWARDS BAIL AND PRE-TRAIL DETENTION IN INDIA AND THE UK

Even when laws provide rules for granting bail, the final decision depends on how courts understand and apply those laws. The way judges deal with bail cases plays an important role in deciding whether an accused person is released or remains in prison before trial. A comparison of India and the UK shows notable differences in how courts make bail decisions and assess the risks involved in releasing an accused person.

The Judicial Approach in India: Strong High-Court Principles vs. Cautious Trial Courts

The Supreme Court of India has delivered several landmark judgments to protect the personal liberty of accused persons, consistently holding that keeping a person in prison before the completion of their trial should not be treated as a form of punishment.

Bail as a Constitutional Right: In the landmark case of State of Rajasthan v. Balchand (1977), Justice V.R. Krishna Iyer declared that bail should be the general rule and jail the exception.17 Higher courts have continuously linked bail decisions to Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty.

Preventing Unnecessary Arrests: In Arnesh Kumar v. State of Bihar (2014), the Supreme Court observed that police officers frequently make routine arrests without proper justification.18 The Court issued mandatory directions requiring police officers and magistrates to follow strict statutory checks before remanding accused individuals in offences punishable with up to seven years of imprisonment.

Guidelines for Timely Bail Hearings: In Satender Kumar Antil v. CBI (2022), the Supreme Court issued exhaustive directions to ensure bail applications are decided without unreasonable delay and urged courts to avoid imposing financial or surety conditions that poor accused persons cannot fulfill.19

The Reality in Lower Courts:

Although the Supreme Court has given strong judgments protecting personal liberty, the situation in trial courts is often different. Lower court judges frequently hesitate to grant bail in non-bailable offences out of concern over public criticism, media pressure, or administrative scrutiny from higher courts if an accused person absconds or reoffends.

Because of these concerns, lower courts frequently reject bail applications even when release under reasonable conditions would be appropriate. Consequently, accused individuals are forced to approach the High Courts or Supreme Court for routine bail, adding significant time, financial expense, and prolonged imprisonment to their pre-trial period.

The Judicial Approach in the UK: Risk Assessment and Consistency

In the United Kingdom, courts handle bail applications primarily through the codified structure of the Bail Act 1976 alongside the human rights guarantees in the Human Rights Act 1998.20

Evaluating Specific Risks Before Refusal: When a judge or magistrate in the UK considers bail, the decision centers on evaluating specific statutory risks. Bail may only be refused if there are reasonable grounds to believe the accused will fail to attend court, commit further offences, or interfere with witnesses. If these specific grounds cannot be established by the prosecution, the court is legally bound to grant release.

Enforcing Custody Time Limits: The UK strictly enforces statutory custody time limits—generally 56 days in Magistrates' Courts and 182 days in Crown Courts—under the Prosecution of Offences Act 1985.21 If the prosecution fails to begin the trial within these permitted windows, the court must release the defendant on bail unless a formal extension is legally justified.

Consistency via Non-Monetary Conditions: The statutory guidelines under the Bail Act 1976 allow UK courts to manage risks through non-monetary restrictions, such as electronic tagging, curfews, police station reporting, or passport surrender. Because UK courts do not routinely require monetary bail bonds, decisions are more uniform and economic standing does not determine whether an accused person remains in custody.

Comparison of Judicial Attitudes

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The practical working of both judiciaries illustrates a clear contrast:

India: The Supreme Court maintains a progressive constitutional philosophy that "bail is the rule and jail is the exception." However, lower trial courts often fail to apply this principle consistently due to procedural delays, cautious judicial attitudes, and an over-reliance on heavy financial sureties.

United Kingdom: Courts at all levels follow a standardized risk-assessment routine under the Bail Act 1976. By pairing non-monetary conditions with strict trial custody time limits, the UK judiciary maintains a more consistent and predictable approach to pre-trial release.

COMPARATIVE ANALYSIS: KEY DISTINCTIONS AND POINTS OF CONTRAST

India and the United Kingdom share a historical common law foundation, and both legal systems recognize the core constitutional principle that an accused person is presumed innocent until proven guilty. However, their statutory frameworks and practical methods of dealing with bail and pre-trial detention diverge significantly.

One major distinction lies in how their bail laws are structured. In India, bail provisions are distributed across general procedural statutes—historically the CrPC and now the Bharatiya Nagarik Suraksha Sanhita (BNSS)—along with specialized legislation and evolving judicial precedents. In bailable offences, bail remains an absolute statutory right. In non-bailable offences, however, release is subject to judicial discretion, leaving lower court judges to weigh the specific facts and risks of each case. In contrast, the United Kingdom governs bail primarily through a single unified statute: the Bail Act 1976.22 Under Section 4 of this Act, there is a clear statutory presumption in favor of bail, meaning an accused person must normally be released unless the prosecution proves specific statutory exceptions, such as a concrete risk of absconding, reoffending, or interfering with witnesses.

Another crucial difference centers on the role of financial security in securing release. In India, trial courts routinely depend on monetary bail bonds and local land-owning sureties. Although the Supreme Court has repeatedly cautioned against imposing onerous financial terms, poor and marginalized accused persons frequently face severe difficulty in arranging required cash or property sureties. Consequently, many individuals remain incarcerated long after a court has formally granted them bail. The UK framework addresses this issue by relying primarily on non-financial conditions under Section 3 of the Bail Act 1976. UK courts routinely utilize measures such as electronic curfew monitoring, designated residence requirements, passport surrenders, and regular police station reporting. Because financial security is rarely demanded, an accused person’s economic standing is far less likely to determine whether they remain in pre-trial custody.

The two jurisdictions also handle pre-trial detention limits differently. In India, Section 479 of the BNSS offers statutory relief to undertrial prisoners who have undergone prolonged detention, allowing release on bond once a prisoner completes half of the maximum imprisonment period for the charged offence (or one-third for first-time offenders who have no prior convictions). However, this protection excludes offences punishable by death or life imprisonment, and it only provides relief after an accused has already served a substantial period in custody waiting for trial. Conversely, the UK enforces strict statutory custody time limits prior to trial under the Prosecution of Offences Act 1985. The standard limit is 56 days in Magistrates' Courts and 182 days in the Crown Court. While these limits can be extended by a judge upon application by the prosecution, extensions require proof that the delay is necessary for a good cause and that the prosecution has acted with all due diligence. If no lawful extension is granted, the court must release the accused on bail.23

Finally, both jurisdictions apply specialized rules to serious or national security offences, but under different statutory checks. In India, statutes such as the Unlawful Activities (Prevention) Act (UAPA) and the Prevention of Money Laundering Act (PMLA) impose strict statutory "twin conditions" for granting bail. Under these conditions, a court must be satisfied on available material that there are reasonable grounds to believe the accused is not guilty before granting release, making pre-trial bail exceptionally difficult to secure in practice. In the UK, while heightened statutory restrictions apply to grave offences such as murder (governed by the Coroners and Justice Act 2009), all pre-

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trial detention decisions remain subject to Article 5 of the European Convention on Human Rights, enacted domestically through the Human Rights Act 1998. This constitutional oversight requires courts to ensure that pre-trial incarceration remains proportionate and does not continue for an unreasonable duration.24

CHALLENGES IN PROTECTING THE RIGHTS OF UNDERTRAIL PRISONERS

Looking only at statutory provisions and court judgments does not provide a complete picture. It is equally necessary to examine how individuals are treated when they are detained in prison before their trials begin. Both India and the United Kingdom recognize the core principle that a person is presumed innocent until proven guilty. However, both nations face distinct challenges in protecting the rights of undertrial prisoners.

In India, protecting the rights of undertrial prisoners remains a deep structural challenge. A primary driver of this crisis is economic inequality. Indian prisons suffer from severe overcrowding, with undertrial prisoners making up nearly three-fourths of the total prison population.25 Lower courts routinely require monetary bonds or local land-owning sureties as a condition for release. Poor and marginalized defendants are frequently unable to arrange the required cash or find property-owning guarantors. Consequently, many individuals remain incarcerated for weeks, months, or even years after a court has formally granted them bail. Another major obstacle is systemic delay in court proceedings; due to massive case backlogs, criminal trials often drag on for years. Although Section 479 of the BNSS provides a mechanism for release after completing half (or one-third) of the maximum imprisonment period, it excludes offences carrying death or life sentences and only offers relief after a defendant has already spent significant time in custody. As a result, pre-trial detention frequently operates as a form of punishment inflicted before guilt is ever established.

The United Kingdom encounters a different set of challenges in managing pre-trial detention. The system enforces strict statutory custody time limits—generally 56 days in Magistrates' Courts and 182 days in Crown Courts—which prevent accused persons from being held indefinitely while awaiting trial. However, the UK system faces pressures stemming from judicial backlogs, reduced funding for public legal aid, and the delicate balance between public safety and personal liberty when trials are delayed. When courts experience scheduling delays, judges must determine whether to grant prosecutorial extensions or release defendants under conditional bail. Furthermore, cuts to legal aid funding can make it difficult for lower-income defendants to effectively challenge restrictive bail conditions, such as electronic tagging, travel restrictions, and house curfews.26

The challenges in the two jurisdictions reflect different underlying realities. In the UK, the primary difficulties revolve around court delays, legal aid funding constraints, and managing cases within statutory time limits. In India, the crisis is more acute, driven by overcrowded facilities, pervasive poverty, burdensome financial conditions for bail, and prolonged trial delays. The central challenge in India remains the stark disconnect between the personal liberty guaranteed by the Constitution and the practical difficulties ordinary people face in securing bail in lower courts.

II. CONCLUSION AND RECOMMENDATION

The comparison between India and the United Kingdom shows that having a common law background does not mean that both countries follow the same approach to bail and pre-trial detention. Both countries accept the basic principle that a person is innocent until proven guilty. However, the way this principle is followed by courts in practice is different in both countries.

The UK has a more organized system for granting bail. The Bail Act 1976 provides a general rule in favor of granting bail, and courts can impose non-monetary conditions such as curfews, regular reporting to the police, and residence restrictions to reduce risks. The law also sets statutory custody time limits—such as 56 days in Magistrates' Courts and 182 days in Crown Courts—to prevent people from remaining in prison indefinitely while waiting for trial. Although the UK faces problems such as delays in court proceedings and funding cuts in legal aid, its legal framework provides a clear and structured procedure for dealing with bail.

In India, there is a noticeable difference between the principles declared by the Supreme Court and the actual practice in lower courts. The Supreme Court has repeatedly stated that "bail is the rule and jail is the exception." However,

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obtaining bail from lower courts remains difficult for many accused persons. Courts routinely require cash bonds and property documents as security for bail. Poor individuals who cannot arrange these requirements often remain in prison for weeks or months after bail is granted. This has created a serious crisis in Indian prisons, where nearly three out of every four inmates are undertrial prisoners. Although Section 479 of the BNSS provides relief to undertrial prisoners who have served half or one-third of their maximum sentence, this provision excludes offences carrying death or life imprisonment and only applies after a person has already spent a significant period in custody.27

Practical Recommendations for India

1. Prioritize Non-Monetary Bail: Lower courts should replace routine monetary bonds and property sureties with non-financial restrictions—such as regular police reporting or passport surrender—ensuring poverty does not prevent pre-trial release.
2. Institute Strict Trial Deadlines: Similar to the UK's 56-day and 182-day limits, India should enact fixed statutory deadlines for commencing trials, granting bail automatically if the prosecution fails to meet these limits without legal cause.
3. Empower the Lower Judiciary: Magistrates require clear administrative backing to apply Supreme Court bail precedents fearlessly, reducing unnecessary appeals to High Courts.
4. Deploy Early Legal Assistance: Free legal aid counsel should be assigned immediately upon arrest to secure timely bail and challenge onerous conditions before long-term incarceration occurs.

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