



Reforming India's Undertrial Bail System

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

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

Source: TH

Why in News?

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

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

What are the Concerns Regarding India's Bail System?

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

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

Note

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

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BAIL AND RELATED PROVISIONS IN INDIA

"The issue of bail is one of liberty, justice, public safety, and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process."

—Justice V.R. Krishna Iyer

Constitutional Provision for Arrest - Article 22:

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

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

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

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

Bail vs Parole vs Probation

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

Types of Bails in India

Regular Bail: Court's order to release person under arrest in police custody

Interim Bail: Court grants temporary relief until application for Anticipatory Bail or Regular Bail is decided

Anticipatory Bail: Bail granted preemptively to prevent arrest

Default Bail: When police fail to complete investigation within specified period

Medical Bail: Solely on medical grounds

Cancellation of Bail - Certain Grounds

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



Police Custody And Judicial Custody

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

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

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

Way Forward

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

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

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

PDF Reference URL: <https://www.drishtias.com/printpdf/reforming-india-s-undertrial-bail-system>