



Reform in Bail Law

For Prelims: Types of Offences, Power to grant bail, CrPC, IPC, Supreme Court Judgements

For Mains: Effects of indiscriminate arrests on society, Challenges of overcrowded jails in Governance, Reforms in Policing and related judgements, Constitutional Protection

Why in News?

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 Kingdom**.

What is the Ruling About?

- A **two-judge Bench** issued certain clarifications to an **older judgment delivered in July 2021 on bail reform** (Satender Kumar Antil vs CBI).
 - The ruling is essentially a **reiteration of several crucial principles of criminal procedure**.
- Referring to the [state of jails in the country](#), where over **two-thirds lodged are undertrials**, the Supreme Court underlined that arrest is a draconian measure that needs to be used sparingly.
- Theoretically, the court also linked the idea of indiscriminate arrests to **magistrates ignoring the rule of “bail, not jail” to a colonial mindset**.
 - **The Code of Criminal Procedure (CrPC)** was first drafted in **1882** and continues to be in use with amendments from time to time.

What is India’s Law on Bail?

- **The CrPC does not define the word bail** but only categories offences under the Indian Penal Code as **‘bailable’ and ‘non-bailable’**.
- The CrPC empowers **magistrates to grant bail for bailable offences as a matter of right**.
 - This would involve release on furnishing a bail bond, without or without security.
- In case of Non-bailable offences, a **magistrate would determine if the accused is fit to be released on bail**.
 - Non-bailable offences are **cognisable**, which enables the police officer to arrest without a warrant.
- **Section 436 of the Code of Criminal Procedure, 1973**, lays down that a person accused of a **bailable offence under I.P.C. can be granted bail**. On the other hand, **Section 437 of the Code of Criminal Procedure, 1973** lays down that the accused **does not have the right to bail in non-bailable offences**. It is the discretion of the court to grant bail in case of non-bailable offences.

What is Bail Law in the United Kingdom?

- **The Bail Act of the United Kingdom, 1976**, prescribes the procedure for granting bail.

- A key feature is that one of the aims of the legislation is **“reducing the size of the inmate population”**.
- The law also has provisions for **ensuring [legal aid](#) for defendants**.
- The Act recognises a **“general right”** to be granted bail.
 - Its **Section 4(1)** raises the presumption of bail by stating that the law applies to a person who shall be granted bail except as provided in **Schedule 1 to the Act**.
- For rejecting bail, the **prosecution must show that grounds exist** for believing the defendant on bail would not surrender to custody, would commit an offence while on bail, or would interfere with witnesses or otherwise obstruct the course of justice; unless the defendant must be detained for his own welfare or protection; or in other circumstances.

How has the Supreme Court rules on Reforms?

- **Separate Law for Bail:**
 - The court underlined that the CrPC, **despite amendments since Independence**, largely retains its original structure as drafted by a **colonial power** over its subjects.
 - The court made this point to signal that despite its rulings, structurally, the **Code does not account for arrest as a fundamental liberty issue in itself**.
 - It also highlighted that **magistrates do not necessarily exercise their discretionary powers uniformly**.
 - **Uniformity and certainty in the decisions of the court are the foundations of judicial dispensation.**
 - Persons accused with the same offense shall never be treated differently by the same court different courts.
 - Such an action would be a grave affront to [Articles 14](#) and [15](#) of the Constitution of India.
 - The court advocates for framing of a separate law that deals with the grant of bail.
- **Indiscriminate Arrests:**
 - The court noted that the culture of too many arrests, especially for non-cognisable offences, is unwarranted.
 - It emphasised that even for cognisable offences, **arrest is not mandatory and must be “necessitated”**.
 - **Such necessity is drawn** to prevent the committing of any further offense, for a proper investigation, and to prevent him/her from either disappearing or tampering with the evidence.
 - **He/she can also be arrested to prevent such person** from making any inducement, threat, or promise to any person according to the facts, so as to dissuade him from disclosing said facts either to the court or to the police officer.
 - One more ground on which an arrest may be necessary is when **his/her presence is required after arrest for production before the Court** and the same cannot be assured.”
 - It held that **lower courts must satisfy that these conditions are met** and “Any non-compliance would entitle the accused for grant of bail”.
- **Bail Application:**
 - There need not be any insistence of a bail application while considering the application under **Section 88, 170, 204 and 209 of the Code**.
 - These sections relate to various stages of a trial where a **magistrate can decide on release of an accused**.
 - These range from power of the magistrate to take bond for appearance (Section 88) to **power to issue summons** (Section 204).
 - The Supreme Court held that in these circumstances, **magistrates must routinely consider granting bail, without insisting on a separate bail application**.
- **Direction to States:**
 - The SC also directed all **State governments and Union Territories to facilitate standing orders to comply with the orders and avoid indiscriminate arrests**.
 - The [CBI](#) has already communicated earlier orders of the Court to special judges under its jurisdiction.

- This would certainly take care of not only the unwarranted arrests, but also the clogging of bail applications before various Courts as they may not even be required for the offences up to seven years.

Legal Framework for Criminal Jurisprudence in India

- **The Indian Penal Code (IPC)** is the official criminal code of India drafted in 1860 on the recommendations of the first law commission of India established in 1834 under the Charter Act of 1833 under the Chairmanship of Lord Thomas Babington Macaulay.
- **The Code of Criminal Procedure (CrPC)** is the main legislation on procedure for administration of substantive criminal law in India. It was enacted in 1973 and came into force on 1st April 1974.

What Protection does the Constitution provide against Indiscriminate Arrest?

- **Article 20:**
 - **Article 20 provides Protection against indiscriminate arrest by stating that** “No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.”
- **Article 21:**
 - **Article 21** provides Protection of Life and Personal Liberty
 - Detention of an individual infringes the Right to Life and Liberty guaranteed under Article 21 of Constitution of India.
- **Article 22:**
 - **Article 22 provides Protection Against Arrest and Detention.**
 - The first part of Article 22 deals with the ordinary law and includes:
 - Right to be informed of the grounds of arrest.
 - Right to consult and be defended by a legal practitioner.
 - Right to be produced before a magistrate within 24 hours, excluding the journey time.
 - Right to be released after 24 hours unless the magistrate authorises further detention.

Way Forward

- **Increasing awareness of laws** among police personnel, **increasing the number** of police personnel and stations in proportion to the number of complaints in an area, and including **social workers and psychologists** in the criminal justice system.
- The focus also needs to be on the **victim's rights** and **smart policing**. There is a need to study the **rate of conviction of police officials and their non-compliance of law**.
- As highlighted by the Supreme Court, a **separate law on bail should be drafted** for effective management of under trial cases in the country.
- Increase the **inclusiveness in the police force** from the different section of the society, so as to provide with **balanced mindset to avoid indiscriminately arrests** against any caste/class/community.

UPSC Civil Services Examination, Previous Year Questions (PYQs)

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

1. Judicial custody means an accused is in the custody of the concerned magistrate and such accused is locked up in a police station, not in jail.
2. During judicial custody, the police officer in charge of the case is not allowed to interrogate the suspect without the approval of the court.

Which of the statements given above is/are correct?

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

Ans: (b)

Explanation:

- In Judicial custody, an accused is in the custody of the concerned Magistrate and lodged in jail. While in the case of police custody, an accused is locked up in a police station. **Hence, statement 1 is not correct.**
- During judicial custody, the police officer in charge of the case may interrogate the suspect but with prior permission from the magistrate. In the case of police custody, the police officer can interrogate the suspect but must produce him before the court within 24 hours. **Hence, statement 2 is correct.**
- **Therefore, option (b) is the correct answer.**

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