



INDIAN JOURNAL OF LEGAL AFFAIRS AND RESEARCH

VOLUME 3 ISSUE 1

Peer-reviewed, open-access, refereed journal

IJLAR

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www.ijlar.com

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BAIL AND ACCUSED JURISPRUDENCE IN INDIA: IMPACT POST THE ANTIL TRILOGY

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ABSTRACT

This paper provides an overview of the changes made to the Indian criminal justice system since the landmark Supreme Court ruling of Satender Kumar Antil vs. CBI, which has led to significant improvements in India's bail reforms and upcoming modifications to current practices and procedures related to making arrests and managing accused before trial. Despite the Court's clear statement regarding the principle that individual liberty cannot be subordinated to routine or prophylactic incarceration, the continued predominance of pretrial detainees results in their existence as a disproportionately large percentage of the prison population. This disparity between the principles outlined in case law and actual practices can be attributed to many factors including the way trial courts currently operate and the current state of how policing occurs in the U.S. With this as our premise, we analyze and summarize how individual courts have operated after the Satender Kumar Antil decision, reference empirical data from the National Crime Records Bureau regarding how policing has changed since the beginning of 2023, and evaluate how police agencies across the country have changed due to the COVID-19 pandemic. Through systematic analysis of case law regarding bail, empirical data on policing, and changes in policing since the pandemic, it has been determined that the prevalent practice has severely weakened the potential for bail reform. To view bail reform simply through the lens of access to justice, the reality of the pervasiveness of extreme Pre-Trial Detention has transitioned into a de facto form of punitive incarceration before conviction. Therefore, unless comprehensive reforms to the structures and processes themselves are implemented, the goals of bail reform will ultimately remain unattainable, implying that for bail reform to be effective, it must implement comprehensive

structural and process-oriented reforms that provide for the realisation of a person's right to be free from deprivation of liberty.

KEYWORDS

Accused Rights, Bail rights, Criminal Jurisprudence, Liberty, *Satender Kumar Antil*, Undertrial prisoners.

LITERATURE REVIEW

The evolution of bail laws as conceptualised through time has evolved from being mostly the discretion of judges to being viewed as an individual's constitutionally protected liberty that must be guaranteed through the provisions of law. Accordingly, the Supreme Court of India has indicated how it views bail, stating that "Bail is the rule and jail is the exception." However, many experts believe that the actual application of bail fails to match the intention of the authors of the Constitution.

There has been a considerable amount of literature written primarily addressing how bail's constitutional foundation exists from nation to nation. Examples include Freed & Wald (1964)¹ who found that pre-trial detainees should not be kept in custody unless there are extraordinary circumstances, and that pretrial detention violates the presumption of innocence, thus violating the presumption of innocence and pre-trial due process about bail. Similarly, Verrilli (1982)² reviewed the history of bail and opined that excessive restrictions on a person's freedom pre-conviction violate the Constitution's guarantee of due process.

A.N. Rao (2019)³ provides a considerable amount of jurisprudential literature regarding bail jurisprudence in India, claiming that the courts that grant bail exercise or implement judicial

¹ Daniel J Freed and Patricia M Wald, *Bail in the United States: 1964* (US Department of Justice 1964).

² Donald B Verrilli Jr, 'The Eighth Amendment and the Right to Bail: Historical Perspectives' (1982) 82(2) *Columbia Law Review* 328.

³ A N Rao, *Bail or Jail: A Balance of Absolute and Limited Judicial Discretion* (Prowess Publishing 2019).

discretion in applying bail jurisprudence differently due to inconsistencies in the judicial application of discretion to various cases involving bail. For example, according to A. N. Rao's research, most courts utilise statutory criteria for granting or denying bail rather than constitutional criteria when making bail determinations. Consequentially, there are many inconsistent outcomes among the different trial courts in granting or denying bail.

The issues of prison overcrowding and bail have been well-documented as existing issues in prisons and jails across the country. According to the National Crime Records Bureau's Prison Statistics India (2021), of the total prison population in India, 75% are people who have yet to be trialled, they are people waiting in jails for a trial, and this percentage is indicative of the pre-trial detention being used at an abundance in prisons and jails across the country, as also demonstrated with the data shared by Abhinav K. (2021),⁴ which clearly states that the temporary relief of covid-19 has removed some of the stress or pressure for the overcrowding of prisons and has allowed enough room to have a loosening of bail and monitored release without any safety hazards to the public for any of the institutions involved in the bail process in India to implement any permanent structural changes to allow for earlier releases than are currently available before being trialled. Further, there have been some changes in how members of academia have collectively shifted focus from primarily punishing people before they are given a trial to arbitrarily arresting them. For instance, Kritika Kalra (2021)⁵ notes that pre-trial punishment is a viable way for courts to use judicial interpretation to legitimate pre-trial punishment of people whose guaranteed liberties have been taken away from them in a continuous manner due to this status. N.K. Sasan (2024)⁶ claims that even though new procedures were created in both the cases of *Arnesh Kumar* and *Satinder Kumar Antil* to protect people from an arbitrary arrest and have created many new procedural safeguards for arrest procedures prior to an arrest or being put on trial, enforcement of those procedures and safeguards from one trial court to another varies significantly.

Despite the increasing number of scholarly articles outlining these issues, there is a small amount

⁴ Abhinav K, *COVID-19 Lockdown: A Juncture to Re-think on Undertrials, Overcrowded Prisons and Utilisation of Probation of Offenders Act, 1958* (Notion Press 2021).

⁵ Kritika Kalra, 'The Unfulfilled Promise of Default Bail—On the Judicial Commitment to Pre-Trial Punishment in India' (2024) 6 *National Law University Delhi Student Law Journal*.

⁶ N K Sasan, *Judicial Approach Towards Safeguarding the Rights of Arrested Persons* (2024).

of empirical research that critically analyses how the *Satender Kumar Antil* trilogy has been applied in practice. Most studies examine only the important legal principles put forth by the Supreme Court but do not provide an analysis as to whether or not those principles have had a positive effect on the way law enforcement agencies conduct their arrests, on the methods of remanding defendants to jail prior to trial, or on how trial courts conduct their proceedings in relation to arrests. This study aims to fill this gap in the existing literature by analysing bail jurisprudence following Antil, along with empirical data related to undertrial incarceration.

INTRODUCTION

Striving to understand the rights of the accused undergoing trial has often been held at par with the concept of liberty as envisaged in the Constitution. Personal liberty holds a central place within the Constitution of India and is considered a right that must be respected and protected at all times. The Constitution guarantees the entitlement of all persons to due process. Through its broad interpretation of Article 21, the Supreme Court ensures that persons are not only protected from being held unlawfully but, instead, are given the right to live their lives with dignity, equality, fairness and due process. One of the ways to fulfil this constitutional promise is through bail, which allows individuals accused of a crime to remain free pending trial.⁷ Over the years, however, bail jurisprudence in India has been shaped by many contradictions- on one hand, there exists a great deal of rhetoric regarding the constitutional right of bail, and on the other, the vast majority of people accused of a crime are detained pre-trial.

The presumption of innocence, which serves as the foundation upon which the entire criminal justice system operates, is jeopardised when the practice of holding persons in jail before their trial becomes commonplace. Concept of Bail has also been given apt international recognition, at several human rights conventions and treaties, including the International Covenant on Civil and

⁷ Singh, N., A STUDY OF CONSTITUTIONAL PROVISIONS PERTAINING TO THE RIGHTS OF AN ACCUSED SEEKING BAIL.

Political Rights (ICCPR)⁸ and the Universal Declaration of Human Rights⁹ (UDHR).¹⁰ The prolonged detention of an individual before conviction of a crime not only destroys the presumption of innocence but also inflicts irreversible social, economic and psychological damage on the accused and his family. The magnitude of this crisis is clearly illustrated in the prison statistics, which indicate that more than two-thirds of the total prison population consists of undertrial prisoners. Thus, the ability of bail to serve as a constitutional safeguard is severely compromised.

The judicial recognition of this crisis, the Supreme Court has stated many times that “Bail is the general rule and jail is the exception.”¹¹ While the early decisions of the Supreme Court focused on the importance of judicial discretion, the recent decisions have looked to address arbitrary arrests. The Supreme Court has also worked to bring criminal procedure in line with constitutional principles.¹² Despite the Supreme Court's efforts, many of the Supreme Court's interventions have been unsuccessful in changing the actual practices on ground. The continuing prevalence of arrest-first policing, automatic remand orders, and excessive bail conditions has mitigated the effect of progressive jurisprudence.¹³

Satender Kumar Antil v. CBI¹⁴ is an important case because it was decided during a period when chronic prison overcrowding and systemic failure to follow previously established criteria for arrests were constant. The court's decision was designed to create a framework for how to properly govern arrest and bail, as well as provide a clear structure for categorising the types of offences and establishing arrest not as the default but rather as an exception. By establishing these categories and establishing arrest as an exception rather than the default, the court was able to create a written

⁸ International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc.A/6316 (1966).

⁹ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc A/810 (1948).

¹⁰ *Id* at note 1.

¹¹ TRIPATHI, M., RIGHT TO BAIL IN INDIA.

¹² *Hussainara Khatoon & Ors v. Home Secretary, State Of Bihar, Patna* 1979 AIR 1369.

¹³ Abhinav, K., 2021. *Covid-19 Lockdown: A Juncture to Re-think on Undertrials, Overcrowded Prisons and Utilisation of Probation of Offenders Act, 1958*. Notion Press.

¹⁴ *Satender Kumar Antil vs Central Bureau Of Investigation* (2022) 10 SCC 51.

framework that would guide the way in which these principles are applied. The decision has been widely viewed as the beginning of a new era for bail reform.

The paper describes the changing reality of under-trial detainees since the decision in *Satender Kumar Antil*. Specifically, highlighting how Bail has been arbitrarily denied, Remands are routinely granted without proper analysis, and the lack of effective monitoring of remand orders by the courts, further investigating why the continued detention of detainees is still occurring when there have been clear and repeated instructions given by the Courts, and why the original procedures in *Satender Kumar Antil* have not translated into meaningful change in the way trial courts function.

The bail reforms have failed because of the structural problems rather than doctrinal issues. The primary problem within the structural environment is not in the content of bail jurisprudence but rather in its application within an institutional structure that favours the risk-averse, arrest-oriented police force, the socio- economic divide, and the lack of accountability in the Criminal Justice system. A constitutional foundation for bail, the doctrinal evolution of which has been highlighted in *Satender Kumar Antil*, making a significant contribution to the development of trial court functioning through the Supreme Court, and ultimately, the continuing practice of detention in India is primarily due to the lack of real systemic reform that would turn judicial procedures into enforceable guidelines.

[A] JURISDICTIONAL FOUNDATIONS OF BAIL

Post- independence period bail jurisprudence in India remained formalist and a statute-centric approach, with the court treating bail as a judicial discretion instead of a constitutional mandate.¹⁵ The primitive approach was restrictive and devoid of personal liberty as a substantive right, and instead emphasised the seriousness of the offence and the discretion of the court. The law regarding bail in India is, to a greater extent, defined by how it has been interpreted under statutes, with more weight placed on what judges see fit under those same statutes, rather than being based on the

¹⁵ Rao, A.N., 2019. *Bail or Jail: A Balance of Absolute and Limited Judicial Discretion*. Prowess Publishing.

principles contained in the Constitution.¹⁶ During this era, the courts focused their view of bail primarily on procedural matters defined by the Criminal Procedure Code, paying less attention to other factors, such as the nature of the offence and the level of risk presented by the accused. In ***State v. Captain Jagjit Singh***,¹⁷ the Supreme Court stated that bail decisions would be determined primarily by the discretion of the judges and would not reflect the broad consequences for an individual under Article 21. Therefore, during this time period, personal liberty was often compromised in favour of protecting citizens from crime and maintaining public order. The emergence of this newly defined ethos created an environment for the evolution of the law regarding bail to follow suit.

Justice Krishna Iyer, in ***Gudikanti Narasimhulu v. Public Prosecutor***,¹⁸ forged a vital connection between the right to bail and the right to personal liberty by indicating that there must be compelling reasons for any individual to be deprived of his or her freedom. As seen in ***Hussainara Khatoon v. State of Bihar***,¹⁹ the courts highlighted the problems faced by a large number of people held in custody while awaiting their day in court, and asserted that due process was a critical aspect of Article 21.²⁰

The constitutionalisation of bail was further established in ***Moti Ram v. State of Madhya Pradesh***,²¹ when the Court ruled that monetary bail did not always provide a neutral condition because surety requirements placed an excessive burden on the poor.

Over the next several decades, the Supreme Court addressed issues relating to proportionality and abuse of detention through its evolution of bail jurisprudence. For example, in ***Sanjay Chandra v. CBI***,²² the Court stated that pre-trial confinement cannot be used as a punishment and emphasised that, while the seriousness of the case could justify a denial of bail, it could not be the sole basis

¹⁶ Verrilli, D. B. (1982). The Eighth Amendment and the Right to Bail: Historical Perspectives. *Columbia Law Review*, 82(2), 328–362. <https://doi.org/10.2307/1122277>.

¹⁷ *State v. Captain Jagjit Singh* 1962 AIR 253.

¹⁸ *Gudikanti Narasimhulu v. Public Prosecutor* 1978 AIR 429.

¹⁹ *Hussainara Khatoon & Ors v. Home Secretary, State Of Bihar, Patna* 1979 AIR 1369.

²⁰ INDIAN CONSTI art.21.

²¹ *Moti Ram v. State of Madhya Pradesh* 1978 AIR 1594.

²² *Sanjay Chandra v. CBI* AIR 2012 SC 830.

for such a denial. In *State of Kerala v. Raneef*,²³ the Court reiterated the presumption of innocence and warned against guilt by association. Collectively, these cases illustrate an increasing awareness of the structural damage that may be done to certain groups through the use of detention as a routine practice.

With the doctrinal development of bail law came a corresponding disparity in the experiences of indeterminate people and defendants. Higher Courts had a growing ability to articulate the constitutional principles governing bail. However, the implementation of these principles in practice at the trial level was still not uniform, leading to a crisis that *Satender Kumar Antil* would later address.

[B] STRUCTURAL TURN POINT AT SATENDER KUMAR ANTIL

As of the mid-2010s, it became clear that a primary cause of undertrial imprisonment was not necessarily that bail was being denied, but rather that there were high levels of indiscriminate arrests being made by law enforcement.²⁴ The *Prison Statistics India Report, 2015*, indicated that 67% of the prison population of the country was undertrial prisoners.²⁵ This brought to light a major crisis of prison overflow, and despite the SC's implication of speedy trial being "just, fair and reasonable", the figures of undertrial prisoners posed a different picture. Mass indiscriminate arrests were under the ambit of *Section 41 of the CrPC*, owing to the broad wordings and minimal requirements posed on police authorities in relation to effecting an arrest.²⁶ As a result, the Supreme Court of India provided a set of instructions to law enforcement on when an arrest should be justified after issuing a criminal charge. Furthermore, the instructions required that justifications for arrests were to be scrutinised by the judiciary. Notably, despite these instructions being issued by the Supreme Court of India, a large amount of empirical evidence obtained through subsequent

²³ *State of Kerala v. Raneef* (2011) 1 SCC 784.

²⁴ Chandra Aparna & Medarametla Keerthana, *Bail and Incarceration: The State of Untertrial Prisoners in India*, (18th January, 2026, 8.30PM), https://www.dakshindia.org/Daksh_Justice_in_India/16_chapter_06.xhtml.

²⁵ NCRB. 2015. *Prison Statistics India 2015*. Available online at <http://ncrb.nic.in/StatPublications/PSI/Prison2015/PrisonStat2015.htm> (accessed on 29 September 2017).

²⁶ Sections 41(1) and 41(2) of the CrPC.

legal challenges found considerable violations of the guidelines that were set in place, as law enforcement continued to use arrest as a frequent investigative tool.

It is in the context of this background that the Supreme Court's decision in *Satender Kumar Antil v. CBI*²⁷ demonstrates the high rates of incarceration of undertrials in modern prisons and warns of India's ability to operate as a police state in the future.²⁸ To address this, Antil-1 attempts to create a working framework of bail law through a set of structured guidelines for law enforcement and the judiciary. These guidelines were developed by categorising offences into four distinct categories, ranging from Category A, Category B/D, to Category C, and allowed for an opportunity for differentiated treatment concerning bail and arrest.²⁹ The judgment also differentiates between the arrest of an accused during the investigation stage as opposed to the prosecution stage. Furthermore, Antil stated that an accused who cooperates with law enforcement during the investigation should not be routinely arrested at the time of the filing of the chargesheet and that custody should not be a requisite for being granted bail.³⁰

The case marked a change from a rights-based approach to providing procedural rules to guide decision-making. This approach has been confirmed by subsequent court rulings. In *Siddharth v State of Uttar Pradesh*,³¹ the Court again confirmed that arrest is not required when a chargesheet is filed against an individual. Furthermore, in *Mohd. Muslim v State (NCT of Delhi)*,³² the Court held that an individual being held in pre-trial detention for an extended period, regardless of whether that individual was charged with a crime under Special Statutes, is a violation of Article 21 of the Constitution.

Since Antil, the Supreme Court continues to create guidelines to assist in the implementation of the law. In hearings related to Antil that occurred in 2024-2025, the Supreme Court indicated that

²⁷ *Satender Kumar Antil v. CBI* (2022) 10 SCC 51.

²⁸ METALEGAL ADVOCATES, <https://www.metalegal.in/articles/antil-trilogy%3A-3-decisions-of-the-supreme-court>, (18th January, 2026 at 5.30 PM).

²⁹ Singh, P., 2025. CASE SUMMARY: SATENDER KUMAR ANTIL V. CBI & ORS. AND SUBSEQUENT ORDERS (2022–2025).

³⁰ *Sharif Ahmad vs The State of Uttar Pradesh* 2024 INSC 363.

³¹ *Siddharth v State of Uttar Pradesh* 1 SCC 676.

³² *Mohd. Muslim v State (NCT of Delhi)* (1999) 9 SCC 252.

it had determined that there should not be an electronic service of notices issued under the Bank IN Bank Amnesty Scheme and that the Supreme Court supported the use of Aadhaar-verified Personal Bonds for indigent accused persons.³³ Additionally, the Supreme Court directed High Courts to develop institutional committees tasked with monitoring adherence to Supreme Court guidelines. As a result of these developments, the Supreme Court continues to express frustration that many court orders have not been followed and has made an effort to transform bail reform from a purely judicial initiative to an administrative initiative enforceable by various government agencies.³⁴

The use of judicial guidelines alone to achieve systemic change was always going to prove difficult. However, after taking steps to implement Antil's guidance in July 2020, there is currently very little effect on the practice of both lower courts and police. This raises serious concerns about whether other similar measures, such as judicial guidelines, have sufficient power to effect systemic change.

[C] GROUND REALITIES IN IMPLEMENTATION FAILURE AND STRUCTURAL TRENDS IN RECENT TIMES

Empirical data have demonstrated that the failure of bail reform has, at the trial level, been the most significant.³⁵ Research conducted by Project 39A, together with observations made in ongoing mandamus matters, has demonstrated that judges have been known to issue "mechanical remand" orders authorising the detention of individuals without providing a written explanation or objectively considering whether an arrest is even necessary.³⁶ Bail hearings are frequently treated

³³ THE TELEGRAPH INDIA, <https://www.telegraphindia.com/india/supreme-court-to-keep-off-amnesty-bank-freeze/cid/1894615>, (18th January, 2026 at 7.30 PM).

³⁴ Shrivastava Amisha, *Supreme Court Flags reluctance of Trial Judges to Grant Bail Due to Fear of Dsicplinary Action*, <https://www.livelaw.in/top-stories/supreme-court-disciplinary-action-against-trial-court-judges-bail-orders-516885> (18th January, 2026 at 4.30 PM).

³⁵ Kalra, K., 2024. The Unfulfilled Promise of Default Bail-On the Judicial Commitment to Pre-Trial Punishment in India. *Nat'l LU Delhi Stud. LJ*, 6, p.34.

³⁶ Project 39A, National Law University Delhi, *India Report*.

as a mere formality, where lack of liberty is superseded by the need for administrative ease and fears of seeing someone accountable.

The complications tied to the delivery of bail continue to grow due to the fallout from the *Arnesh Kumar* and *Antil* decisions. Police agencies are treating the arrest as a planned preventive safety measure as well as a way to maintain their ability to control individuals, instead of viewing it as necessary for making an arrest. While trial courts serve as a safeguard under constitutional authority, judges routinely agree with and validate these types of arrests when they routinely remand an individual into custody, therefore violating their constitutional authority.³⁷

The socio-economic divide creates additional stressors on the existing framework for criminal justice in India. As noted in the report of the Law Commission of India, the 268th Report of the Law Commission of India indicates that an inability to provide bail bonds is one of the leading causes of pre-trial detention.³⁸ While courts have consistently supported the use of non-monetary bail, they have continued to perpetuate the prevailing practice of requiring sureties as a prerequisite for release on bail.³⁹

Despite the implementation of Government Schemes aimed at assisting low-income defendants, such as the "Support to Poor Prisoners" scheme, these initiatives remain largely untapped, and, therefore, highlight the breakdown in communication between jail authorities, legal services, and the courts.⁴⁰

The COVID-19 pandemic provided an opportunity to demonstrate that decongesting prisons could take place on a massive scale without endangering the public, as evidenced by the proceedings. However, the reversal of this trend following the end of the pandemic illustrates the reluctance organisations have to accept the use of liberal forms of release from prison on bail.⁴¹

³⁷ Sasan, N.K., 2024. Judicial Approach Towards Safeguarding the Rights of Arrested Persons.

³⁸ Law Commission of India, *268th Report on the Code of Criminal Procedure*, 1973.

³⁹ MODERN CRIMINAL LAW REVIEW, <https://crimlrev.net/2025/12/06/retaining-the-premium-on-poverty-indias-perplexing-persistence-with-a-monetary-bail-regime-abhinav-sekhri/>, (20th January, 2026 at 8.50 PM).

⁴⁰ IJR 2025 REPORT, <https://www.scribd.com/document/851791244/IJR-2025-Full-report-English>, (20th January, 2026 at 6.30 PM).

⁴¹ *Suo Motu Writ Petition(C) No.1/2020, Re: Contagion of COVID 19 VIRUS IN PRISONERS*.

CONCLUSION

In India, bail jurisprudence has evolved from a discretionary system to a constitutional right, culminating in the established structured interventions of *Satender Kumar Antil*. However, in contrast to this evolution in jurisdictional practices, there have been no significant changes in the institutional framework supporting these changes. The continued prevalence of pre-trial detention demonstrates that the problem with bail arises from an inability to implement legal procedures rather than an uncertainty regarding the law. The manner in which trial courts operate, the methods used by law enforcement agencies, and the lack of sufficient legal aid for defendants fail to meet constitutional standards and have resulted in denying individuals their right to liberty based on the exercise of unqualified discretion or their wealth or income level. Firsthand experience of trial court systems has highlighted the failed implementation of the judicial guidelines, especially in trial courts.

If bail reform can move beyond mere appearance, then it needs to be supported by enforceable accountability, as well as statutory codification, and continued institutional oversight. Otherwise, the hopes created in *Antil* will continue to go unfulfilled, and the rights afforded to a person will continue to be compromised at the very first point of their involvement with the criminal justice system. Recent judicial developments,⁴² however, show hopes on demarcating clear grounds for arrest and ruling the grammar of due process.⁴³ The implementation at ground level may still be a long shot if devoid of urgent legal intervention and due diligence in procedural follow-through.

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⁴³ THE LEAFLET, <https://theleaflet.in/life-and-liberty/the-supreme-courts-grounds-of-arrest-ruling-and-the-grammar-of-due-process>, (21st January, 2026 at 8.00 PM).

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