

# What is bail law in India?

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## Manifest Pedagogy:

Stressing a pressing need for reform, the Supreme Court has called on the government to consider a special legislation on bail. 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 offenses up to seven year.

In News: 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.

Placing it in Syllabus: Polity

## Static Dimensions

- About Bail
- What is the law on bail in India?

## Current Dimensions

- What is the ruling about?
- Bail law in UK
- What has the Supreme Court held on reforms?
- Law Commission Observations

## Content

### About Bail-

- **Meaning of Bail**-The setting free of the defendant by releasing him from the custody of law and entrusting him to the custody of his sureties who are liable to produce him to appear for his trial at a specific date and time
- **Types of Bail**

- **Regular bail:** It is generally granted to a person who has been arrested or is in police custody.
- **Interim bail:** This type of bail is granted for a short period of time and it is granted before the hearing for the grant of regular bail.
- **Anticipatory bail:** An application for the grant of anticipatory bail can be filed by the person who discerns that he may be arrested by the police for a non-bailable offense.

### **What is the ruling about?**

A two-judge Bench comprising 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.
- Of this category of prisoners, the majority may not even be required to be arrested despite registration of a cognizable offense, being charged with offenses punishable for seven years or less.
  - They are not only poor and illiterate but also would include women. Thus, there is a culture of offense being inherited by many of them,
- 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.
- Code as it exists today is a continuation of the pre-Independence one with its modifications hence outdated in some aspects.

- The Supreme Court had noticed in the past and said that poverty appears to be the main reason for the incarceration of many prisoners, as they are unable to afford bail bonds.

### What is the law on bail?

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

### Bail law in UK-

- 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 offense 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.

### ***What has the Supreme Court held on reforms?***

- 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.
- **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 Code does not account for arrest as a fundamental liberty issue in itself.
  - The court 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 either by the same court or by the same or different courts.
  - Such an action though by an exercise of discretion despite being a judicial one, would be a grave affront to Articles 14 and 15 of the Constitution of India. The court's solution on this is the 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 offenses, is unwarranted.
- It emphasized that even for cognisable offenses, arrest is not mandatory and must be “necessitated”.

- **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.

- **Directions 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.

### **Law Commission Observations-**

- The Law Commission, in its **268th Report**, highlights the problem where it has become the norm for the rich and powerful to get bail with ease, while others languish in prison.
- Recommend making it easier for all those awaiting trial to obtain bail.
- The commission said that one of the first duties of

those administering criminal justice must be that bail practices are “fair and evidence-based”.

- “Decisions about custody or release should not be influenced by factors such as gender, race, ethnicity, financial conditions or social status,”
- The main reason that 67% of the current prison population is made up of undertrials is the great inconsistency in the grant of bail.
- Even when given bail, most are unable to meet the onerous financial conditions to avail it.

### **Way Forward**

- A separate law on bail should be drafted for effective management of under trial cases in the country.
- Need of an illustrative list of conditions that could be imposed in lieu of sureties or financial bonds.
- Focus should also be on the rights of the victims.
- Caution the police against needless arrests and magistrates against mechanical remand orders.
- Incorporating social workers and psychologists into the criminal justice system,
- Raising police officers’ awareness of the law, and increasing the number of officers and stations in relation to the volume of complaints in a given area.

### **Mould your thoughts**

1. “There is a pressing need for reform in the law related to bail”. In light of the statement, discuss the challenges with the Bail system in India and how to resolve the problem. (250 words)

### **Approach to the answer.**

- Introduce about what is a bail
- Bail system in India
- Issues associated with it
- Ways to improve ( SC suggestions)

- Conclusion.