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**THE CONSTITUTIONALIZATION OF BAIL JURISPRUDENCE IN  
INDIA: RECONCILING STATUTORY STRINGENCY IN SPECIAL LAWS  
WITH THE DOCTRINE OF LIBERTY UNDER ARTICLE 21**

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**Introduction**

Comparative analysis of bail systems across jurisdictions reveals significant variations in legal frameworks, procedures, and practices governing the release of individuals pending trial. While bail systems share common objectives such as ensuring the appearance of defendants in court and protecting public safety, differences in cultural, historical, and legal contexts contribute to diverse approaches to bail determination and administration<sup>2</sup>.

In India, bail procedures are primarily governed by the CrPC, 1973 which provides courts with discretion to grant bail, impose conditions, and consider various factors such as the nature of the offense, the accused's criminal record, and the likelihood of absconding or tampering with evidence. The bail system in India emphasizes judicial discretion and case-by-case assessments of bail eligibility, allowing courts to consider the specific circumstances and risks associated with each case<sup>3</sup>.

The BNSS brings about significant changes to various aspects of the criminal justice system, aiming to modernize procedures and address outdated terminology and practices. This comparative analysis highlights key amendments introduced by the BNSS in comparison to the provisions of the CrPC

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<sup>3</sup> Bail under the CrPC – is it a Matter of Right *available at*: <https://simplybiz.in/bail-under-the-code-of-criminal-procedure-is-it-a-matter-of-right/> (last visited on November 2024).

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### ***Bail Provisions***

In the CrPC, Section 437 delineates the conditions under which bail may be granted to individuals accused or suspected of committing non-bailable offenses. However, the BNSS expands upon this provision in Section 480 to include individuals beyond those accused or suspected of committing non-bailable offenses. This expansion broadens the scope of bail eligibility, potentially allowing for more individuals to seek bail under the new provisions of the BNSS.

- ***Alterations to Insensitive Terms***

The CrPC, in Section 198, employs archaic terminology such as 'lunatic' or 'person of unsound mind'. The BNSS, however, replaces such dated terminology with more contemporary language like 'having intellectual disability' or 'person with mental illness', as outlined in Section 201. This change reflects a more sensitive and respectful approach towards individuals with mental health conditions, aligning with modern principles of inclusivity and dignity<sup>4</sup>.

- ***Grant of Anticipatory Bail***

Under the CrPC, judges are required to consider several factors when evaluating anticipatory bail applications, as per Section 438(1). However, the BNSS, under Section 484(1), enhances the discretionary powers of judges by eliminating the specified factors. This amendment grants judges greater flexibility in assessing anticipatory bail applications, allowing for more individualized and context-specific decision-making<sup>5</sup>.

- ***Place of Trial for Certain Offenses***

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<sup>4</sup>CrPC:ProvisionsAsToAccusedPersonsOfUnsoundMind,"ALawyersReferenceavailableat:  
[https://devgan.in/crpc/chapter\\_25.php](https://devgan.in/crpc/chapter_25.php) (last visited on November 2024).

<sup>5</sup>"CrPCSection438-Directionforgrantofbailtopersonapprehendingarrest,"ALawyersReference available at:  
<https://devgan.in/crpc/section/438/> (last visited on November 2024).

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While the CrPC, in Section 181, determines jurisdiction based on the place of the offense's commission or where the accused is found, the BNSS, in Section 201, expands upon this criterion. In addition to the CrPC's provision, the BNSS includes factors such as the place where stolen property was possessed or where kidnapped/abducted individuals were conveyed, concealed, or detained. This broader scope ensures that jurisdictional determinations account for various relevant factors, thereby facilitating more effective and equitable trials.

- ***Service of Summons***

Under the CrPC, Section 64 specifies that summons may be served to an adult 'male' member of the family only. However, the BNSS, in Section 66, removes the specification of gender and allows summons to be served to any adult member of the family. This amendment promotes gender neutrality and inclusivity in legal procedures, ensuring equal treatment and access to justice for all individuals.

- ***Compulsion of Specimen Signatures or Handwriting***

Previously, under Section 311A of the CrPC, magistrates could only compel individuals with prior arrest records to provide samples such as fingerprints, voice recordings, or handwriting samples. However, the BNSS, in Section 349, grants magistrates the authority to compel individuals with no prior arrest records to provide such samples. This amendment enhances investigative capabilities by allowing for the collection of crucial forensic evidence from a broader range of individuals, regardless of their criminal history.

- ***Procedure for Investigation***

The CrPC, in Section 157, did not provide for the usage of electronic devices to streamline investigations. However, the BNSS, in Section 176, permits the legal recording of statements through electronic devices. This provision reflects a recognition of the importance of

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technological advancements in modern law enforcement practices, facilitating more efficient and accurate investigation procedures.

The comparative analysis of key changes introduced by the BNSS highlights its efforts to modernize and improve various aspects of the criminal justice system. By expanding bail provisions, addressing insensitive terminology, enhancing judicial discretion, and embracing technological advancements, the BNSS aims to promote fairness, efficiency, and inclusivity in the administration of justice.

In contrast, the American criminal justice system's complicated and multidimensional bail system aims to strike a balance between the accused's appearance at trial and the public's safety, while still respecting the presumption of innocence. The system, which is governed by a combination of federal and state regulations, permits different types of bail, contingent on the seriousness of the charge and the flight risk of the prisoner. These types of bail include cash bail, surety bonds, and personal recognizance. The federal bail system was profoundly altered by the Bail Reform Act of 1984, which allowed pretrial imprisonment for those judged to be excessively dangerous or likely to run while placing a strong emphasis on pretrial release under the least restrictive circumstances possible. Policies at the state level differ greatly; several use schedules for setting bail and have hearings to decide on suitable terms. Current discussions over justice and public safety in the system are brought to light by recent changes in certain states that attempt to lessen dependency on cash bail in order to remedy injustices and avoid criminalizing poverty.

In the U.K, the bail system is set up to allow accused individuals to be freed from custody pending trial while maintaining the protection of the public and guaranteeing their appearance in court. Under the Bail Act 1976 and its later changes, the system usually assumes that bail will be granted unless particular hazards are shown. A defendant may be granted bail subject to a number of restrictions, including living requirements, curfews, and routine police reporting, in order to reduce the possibility that they may flee, conduct new crimes, or tamper with witnesses. If the court determines that the offender presents a serious risk in these areas, it may refuse to grant bail. For some types of charges and the defendants such as minors and those accused of major crimes special rules are in place. Reducing needless pretrial imprisonment and making sure bail

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judgments are reasonable and fair have been the main topics of recent changes and talks, addressing worries about the effect on vulnerable populations and the values of justice.

In Australia, the bail system is designed to allow accused people to be freed from detention pending trial while maintaining the integrity of the legal system and the public's safety. Under state and territorial rules, the system usually assumes that bail will be granted for less serious offenses; but, for more serious crimes, this assumption is frequently reversed. To reduce dangers like absconding or interfering with witnesses, courts have the authority to put a variety of conditions on release, including curfews, non-association orders, and regular reporting to the police. Notwithstanding these steps, there are still issues with the system, most notably the disproportionate number of Indigenous Australians in pretrial detention. This has led to ongoing changes centered on equity and the application of non-custodial measures. With a focus on addressing systemic biases and ensuring fair and just bail decisions, these reforms reflect a larger commitment to preserving judicial system ideals while ensuring community safety

Overall, comparative analysis of bail systems across jurisdictions highlights the diversity of approaches to bail determination and administration, reflecting differences in legal traditions, cultural norms, and policy priorities. While common principles such as judicial discretion, presumption of innocence, and public safety underpin bail systems worldwide, variations in legal frameworks, procedures, and practices shape the implementation and outcomes of bail decisions.

- **Evaluation Of Bail Criteria and Decision-Making Processes**

Evaluation of bail criteria and decision-making processes involves assessing the factors considered by courts when determining bail eligibility and the procedures followed in making bail decisions. Bail criteria and decision-making processes vary across jurisdictions and legal systems, reflecting differences in legal frameworks, cultural norms, and policy priorities. A comparative analysis of bail criteria and decision-making processes can provide insights into the strengths, weaknesses, and challenges of different approaches to bail determination and administration.

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In India, bail criteria and decision-making processes are primarily governed by the CrPC, 1973 which provides courts with discretion to grant bail, impose conditions, and consider various factors such as the nature and gravity of the offense, the accused's criminal record, the likelihood of absconding or tampering with evidence, and the interests of justice. Bail decisions in India are guided by principles of fairness, equity, and individualized assessments of bail eligibility, allowing courts to tailor bail conditions to the specific circumstances of each case.

In the U.S, bail criteria and decision-making processes vary across states and jurisdictions, with factors such as the severity of the offense, the defendant's criminal history, and the risk of flight or danger to the community influencing bail decisions. Bail amounts may be determined based on standardized schedules or guidelines, which specify bail amounts for different types of offenses. Additionally, risk assessment tools and pretrial services are increasingly used to inform bail decisions and address concerns about fairness and equity.

Similarly, in the U.K, bail criteria and decision-making processes are guided by statutory provisions, judicial discretion, and risk assessment tools, with factors such as the seriousness of the offense, the defendant's criminal record, and the risk of reoffending or absconding considered in bail determinations. The Bail Act 1976 sets out the legal framework for bail in England and Wales, emphasizing the principle of presumption of innocence and the right to liberty while balancing public safety considerations.

- **Examination Of Pretrial Detention Rates and Practices**

Examination of pretrial detention rates and practices involves analyzing the prevalence, reasons, and consequences of detaining individuals pending trial, as well as evaluating the legal frameworks, procedures, and practices governing pretrial detention across jurisdictions. Pretrial detention rates and practices vary widely among countries, reflecting differences in legal traditions, cultural norms, and policy priorities. A comparative analysis of pretrial detention rates and practices can provide insights into the factors contributing to pretrial detention, the impact on

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individuals and the justice system, and strategies to address challenges and promote alternatives to detention<sup>6</sup>.

In India, pretrial detention rates and practices are influenced by factors such as the nature and severity of the offense, the accused's criminal record, the likelihood of absconding or tampering with evidence, and the availability of alternatives to detention. Pretrial detention is often used as a measure to ensure the appearance of defendants in court and to prevent potential risks to public safety and the administration of justice. However, concerns about the excessive use of pretrial detention, particularly for minor offenses or nonviolent offenders, have led to calls for reform to promote fairness, efficiency, and equity in the administration of justice.

The CrPC, 1973 governs pretrial detention procedures in India, providing courts with discretion to grant bail, impose conditions, and consider various factors in determining bail eligibility. Sections such as 436A, 437, and 439 of the CrPC outline the legal framework for bail determination, emphasizing principles of presumption of innocence, judicial discretion, and individualized assessments of bail eligibility. However, challenges such as delays in case processing, overcrowding in prisons, and disparities in access to legal aid and representation contribute to the prevalence of pretrial detention in India.

The prevalence of pretrial imprisonment in the US varies greatly throughout states and populations. Data from institutions like the Vera Institute of Justice and the Pretrial Justice Institute indicate that over two thirds of American inmates are awaiting trial, which means they have not yet been found guilty of a crime. A number of variables, including racial biases in the criminal justice system, legal frameworks, socioeconomic inequities, and bail policies, can have an impact on these statistics.

High pretrial detention rates have been mostly attributed to the usage of cash bail, in which defendants must post a set sum of money in order to be released pending trial. This is especially true for low-income individuals who may not be able to afford bail. In an attempt to address this

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<sup>6</sup>Mandeep K Dhani and Yannick N van den Brink, "A Multi-disciplinary and Comparative Approach to Evaluating Pre-trial Detention Decisions: Towards Evidence-Based Reform," *28 European Journal on Criminal Policy and Research* 381–95 (2022).

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problem, reform initiatives have recently pushed for non-financial conditions of release, community supervision programs, and risk assessment instruments as alternatives to cash bail.

Pretrial detention disproportionately affects vulnerable communities, especially Black and Hispanic people, although gaps still exist. Research and advocacy activities persist in bringing attention to these discrepancies and advocating for measures that will increase equity, decrease needless incarceration, and guarantee that choices about pretrial release are made based on risk assessment rather of race or financial status.

In comparison to certain other nations, such as the U.S, the UK has comparatively low rates of pre-trial imprisonment. Nonetheless, disparities exist among various locations and demographic cohorts in the U.K. Laws like the Criminal Justice Act of 2003 and the Bail Act of 1976 regulate the use of remand, or pre-trial custody. Presumption of innocence is a legal theory that is commonly applied in the UK judicial system. This means that people are presumed innocent until and until proven guilty, and pre-trial custody is usually only employed when it is absolutely essential to avoid flight risks, interfere with witnesses, or endanger the public.

There have been initiatives to promote alternatives to remand, such as electronic monitoring, community supervision programs, and bail, and to lessen needless pre-trial detention. Nonetheless, there are still issues to be resolved, such as worries regarding the disproportionate number of BAME people in pre-trial custody.

Overall, even while the UK may have lower rates of pre-trial detention than some other countries, continued efforts are directed toward making sure that detention decisions are reasonable, based on individual risk assessments, fair, and consistent with presumption of innocence and human rights values.

- **Assessment Of Bail Reform Initiatives and Outcomes**

Assessment of bail reform initiatives and outcomes involves evaluating the effectiveness, impact, and challenges of reforms aimed at improving the bail system, promoting fairness, efficiency, and equity in the administration of justice. Bail reform initiatives seek to address concerns such as excessive pretrial detention, disparities in bail outcomes, and inefficiencies in the bail process,

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while balancing the rights of defendants with public safety considerations. A comparative analysis of bail reform initiatives and outcomes can provide insights into the strategies adopted, the results achieved, and the lessons learned across jurisdictions.

Initiatives for bail reform have generated a lot of discussion and parliamentary scrutiny in India. CrPC, 1973 serves as the primary legislative framework that governs bail requirements. The complex processes and factors that are taken into account when deciding whether to issue bail are outlined in Sections 436, 437, and 439. These factors include the seriousness of the offense and the possibility that the accused may flee or tamper with the legal system. Furthermore, significant court rulings like those in the 2014 in *Arnesh Kumar*<sup>7</sup> case have emphasized how important it is to avoid arbitrary arrests and detentions, even when they involve minor infractions. In addition to legislative measures, the Law Commission of India has reported on efforts to reform bail. Notably, the 154th Report<sup>8</sup> called for a reduction in pretrial detention and the guarantee of fair access to bail, especially for those who are marginalized and economically disadvantaged. To preserve the values of justice and human rights, however, issues like the overworked legal system and differences in the enforcement of bail regulations must be continuously examined and changed.

In the U.S concerns about equity, public safety, and the injustices of the cash bail system have led to initiatives for bail reform in the U.S. The landmark Bail Reform Act of 1984 brought about significant federal reforms by allowing imprisonment for those judged dangerous or likely to escape while placing an emphasis on pretrial release under the least restrictive terms. State-level measures that have attempted to alleviate discrepancies include New York's bail reform laws (2020) and California's SB10 (2018), which prioritize risk assessment tools and non-monetary conditions of release over cash bail. These changes are a reflection of a wider understanding of the need to uphold the values of justice, accountability, and due process in the criminal justice system and to lessen the negative impacts of pretrial imprisonment, especially on marginalized and vulnerable groups.

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<sup>7</sup>AIR2014SC2756.

<sup>8</sup>LawCommissionofIndia,“152ReportonCodeofCriminalProcedure,1973”(1996).

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As far as the U.K is concerned, the Bail Act of 1976 and later legislative modifications formed the legal foundation that has impacted bail reform measures in the country. These clauses create the groundwork for measures intended to improve the fairness and effectiveness of the pretrial process by outlining criteria for granting bail and outlining reasons for refusing it. Pre-charge bail provisions and limitations on its application for minor offenses are just two of the notable modifications brought about by the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) of 2012. Furthermore, racial discrepancies within the criminal justice system have been brought to light by influential reviews such as the Lammy Review (2017), which has prompted calls for increased accountability and openness in bail determinations. These programs demonstrate a dedication to eliminating structural prejudices and advancing equality before the law, all the while making sure that bail decisions respect the fundamental rights and justice principles of all parties participating in the court system.

- **Identification Of Best Practices and Lessons Learned**

Identification of best practices and lessons learned in bail systems across jurisdictions involves analyzing successful approaches, innovative strategies, and key insights that can inform efforts to improve the administration of justice and promote fairness, efficiency, and equity in bail determination and administration. By examining international experiences and outcomes, policymakers, legal practitioners, and stakeholders can identify effective practices and lessons learned that can be adapted and implemented in their own jurisdictions<sup>9</sup>.

One best practice identified in bail systems across jurisdictions is the use of risk assessment tools to inform bail decisions and address concerns about fairness and equity. Risk assessment tools use objective criteria to assess the likelihood of a defendant failing to appear in court or committing new offenses while on bail. By providing judges with data-driven insights into defendants' risk levels, these tools help ensure that bail decisions are based on individualized assessments of risk and need, rather than subjective judgments or biases. Additionally, risk assessment tools can help identify defendants who are suitable candidates for pretrial release or

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<sup>9</sup>“Navigating Bail Reform in America: A State-by-State Overview,” R Street Institute, 2024 *available at*: <https://www.rstreet.org/research/navigating-bail-reform-in-america-a-state-by-state-overview/> (last visited November 2024).

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alternative forms of supervision, reducing reliance on pretrial detention and promoting alternatives that are less restrictive and more cost-effective.

Another best practice is the use of pretrial services and support programs to assist defendants in meeting bail conditions and addressing underlying issues that may contribute to criminal behavior. Pretrial services may include access to mental health treatment, substance abuse counseling, housing assistance, employment support, and other social services aimed at addressing defendants' needs and reducing the likelihood of reoffending. By providing defendants with the support and resources they need to comply with bail conditions and address underlying issues, pretrial services can help reduce recidivism, promote successful reintegration into the community, and improve outcomes for defendants and society as a whole.

Additionally, promoting transparency, accountability, and oversight in bail processes is essential for building public trust and confidence in the justice system. Courts, law enforcement agencies, and other justice system stakeholders should strive to ensure that bail decisions are made openly, fairly, and impartially, with clear guidelines, procedures, and criteria that are consistently applied and enforced. By fostering transparency and accountability in bail processes, jurisdictions can enhance public understanding of the factors influencing bail decisions, promote confidence in the fairness and integrity of the justice system, and reduce the likelihood of perceptions of bias or discrimination<sup>10</sup>.

Moreover, collaboration and coordination among justice system stakeholders are essential for addressing complex issues and promoting effective solutions to challenges in bail administration. Multidisciplinary approaches that involve courts, law enforcement agencies, prosecutors, defense attorneys, community organizations, and other stakeholders can help identify shared goals, develop comprehensive strategies, and implement coordinated responses to address systemic issues such as overcrowding in jails, disparities in bail outcomes, and barriers to access to justice. By working together, jurisdictions can leverage their respective strengths and resources to

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<sup>10</sup>Editorial Team, "Transparency & Accountability: Integrity in Law Enforcement" World Litigation Forum, 2023 available at: <https://worldlitigationforum.org/articles/transparency-and-accountability-ensuring-integrity-in-law-enforcement-practices/> (last visited on November 2024).

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develop innovative solutions and achieve meaningful improvements in bail administration and outcomes.

Furthermore, promoting access to legal representation and advocacy services is crucial for safeguarding defendants' rights and ensuring fair and equitable treatment in bail processes. Accused should have access to competent legal counsel who can provide guidance, advocacy, and representation throughout the bail process, from initial hearings to bail reviews and appeals. Additionally, legal aid programs, pro bono services, and community-based organizations play a vital role in ensuring that defendants, particularly those from marginalized or disadvantaged backgrounds, have access to the legal support and resources they need to navigate the complexities of the justice system and exercise their rights effectively.

- **Judicial Precedents**

Bail and jail are available options in the criminal justice system's administration from the outset. These options are accessible for both types of offenses i.e. bailable and non-bailable. Since the decision to set bail is based on the assumption that the accused would appear in court on the scheduled day for trial, the functional division of offenses into two categories has little effect on how the system functions in practice. Although the type of offense committed may be a significant consideration, the accused individual and not the charges against him are the main focus of the court's discretion when deciding whether to grant parole. All accusations are subject to the bail-jail options, and the judicial authority is always the last arbiter when it comes to deciding whether to grant or deny bail. This decision may be made at various points during the criminal prosecution.

An accused who is being released on bail must first be placed under state custody for allegedly breaking a legal prohibition. If the charge relates to an offense for which bail is required, he can be granted bail if he is willing to provide the required surety. Even if an accused person executes a bond with or without sureties they may be released from custody. He must show up before the court on the scheduled date in each of the aforementioned situations.

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The considerations should be made when evaluating a request for bail i.e the existence of any prima facie or reasonable suspicion that the accused committed the crime; the kind and extent of the risk that the accused will flee or abscond if released on bail; the possibility that the crime will be committed again; a reasonable fear that the witnesses will be persuaded; and, of course, the risk that the administration of justice will be obstructed by the granting of bail. The test of reasonable belief should be used for determining bail rather than the decision and conclusion that signal the end of the trial.

The charges presented, the supporting information such as the police report the facts included in the bail petition, and the arguments against its granting are all available to the court when it decides whether to grant bail. It is impossible to conclude that someone who has been arrested for a crime is not still an arrested person simply because they have been released on bond. Even after being granted bail, an individual remains under the court's virtual custody due to their surety. He must show up in court whenever it is asked of him. Thus, there is a limit on his freedom to that degree. He is still considered to be an arrested person since he is in the court's conceptual custody. Despite having been granted bail, the accused remains under arrest due to allegations that he committed an offense.

The Hon'ble courts have played a significant role in shaping the bail jurisprudence under the Indian legal system. Some notable cases in this regard are also discussed below. The Judiciary is presumed to be the protector of the individual liberties and through its decisions it has played a pivotal role in ensuring fairness against arbitrary arrests. Initially the decisions did not in its truest sense protected the fundamental freedoms of individual but over a period of time the judicial approach has widened so as to upheld the rule of law.

In *ADM Jabalpur v. Shiv Kant Shukla*<sup>11</sup> the ADM Jabalpur case, also known as the Habeas Corpus Case, is a landmark judgment in Indian constitutional law that dealt with issues related to the suspension of fundamental rights during the Emergency period (1975-1977). The SC, in a controversial decision, held that during a state of Emergency, individuals did not have the right to move the court for habeas corpus petitions to challenge their detention. The judgment has been

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<sup>11</sup>(1976)2SCC 521.

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widely criticized for its curtailment of civil liberties and has since been overruled by subsequent SC decisions, affirming the supremacy of fundamental rights even during emergencies.

In another case of *Ahmed Shah v. King Emperor*<sup>12</sup> the Calcutta HC considered the issue of circumstantial evidence and its sufficiency to establish guilt in a criminal trial. The court emphasized the importance of carefully evaluating circumstantial evidence and cautioned against relying solely on such evidence to convict an accused. The judgment laid down principles for the evaluation of circumstantial evidence, highlighting the need for a cogent and consistent chain of circumstances to establish guilt beyond a reasonable doubt.

Another important judicial decision was made in *Ajay Mitra v. The State of M.P*<sup>13</sup> wherein the SC of India dealt with the issue of anticipatory bail and its applicability in cases involving economic offenses. The court clarified the parameters for granting anticipatory bail in such cases, emphasizing the need to consider factors such as the severity of the offense, the likelihood of the accused tampering with evidence, and the impact on the economy. The judgment provided important guidance on the exercise of judicial discretion in granting anticipatory bail in economic offenses, striking a balance between the rights of the accused and the interests of society.

*Arnesh Kumar v. The State of Bihar*<sup>14</sup> is one of the landmark judgements of criminal jurisprudence. The case was decided by the SC in 2014 and addressed the issue of misuse of the dowry harassment laws (Section 498A of the IPC) and the arrest of accused persons without proper investigation. The court laid down guidelines to prevent the automatic arrest of the accused in such cases and emphasized the need for police officers to conduct a thorough investigation before making any arrests. The judgment aimed to prevent the misuse of legal provisions and protect the rights of the accused, while also ensuring justice for victims of dowry harassment.

In the case of *Babulal Parate v. The State of Maharashtra*<sup>15</sup> the SC considered the constitutionality of preventive detention laws under Article 22 of the Indian Constitution. The

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<sup>12</sup>AIR1945Cal266.

<sup>13</sup>(2003)12SCC401.

<sup>14</sup>(2014)8SCC273.

<sup>15</sup>(1961)3SCR423.

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court examined the scope of preventive detention and the safeguards provided to detained persons, including the right to be informed of the grounds of detention and the right to representation. The judgment affirmed the importance of procedural safeguards in preventive detention laws to prevent abuse of executive power and protect individual liberties.

In another case, the SC addressed the issue of anticipatory bail and the conditions for granting such relief which was the case of *Chaganti Satyanarayana v. A.P.*<sup>16</sup> The court emphasized that anticipatory bail should be granted sparingly and in exceptional cases where there is a reasonable apprehension of arrest. The judgment laid down guidelines for the exercise of judicial discretion in granting anticipatory bail, highlighting the need to balance the interests of the accused with the requirements of justice and the protection of societal interests.

The D.K. Basu<sup>17</sup> case is a landmark judgment that dealt with the issue of custodial violence and the rights of persons in police custody. The SC laid down guidelines to prevent custodial torture, abuse, and violations of human rights, emphasizing the importance of safeguarding the dignity and integrity of individuals in custody. The judgment mandated the presence of legal representatives during interrogation, the preparation of arrest memos, and the notification of next of kin, among other procedural safeguards, to prevent custodial abuses.

In the case of *Gudikanti Narasimhulu v. PP*<sup>18</sup>, the SC examined the principles governing the grant of bail pending trial. The court emphasized that bail should be granted as a matter of right in non-bailable offenses unless there are compelling reasons to deny bail, such as the likelihood of the accused absconding or tampering with evidence. The judgment reaffirmed the presumption of innocence and the importance of bail as a means to ensure the presence of the accused during trial while balancing the interests of justice and the rights of the accused.

The SC considered the issue of bail in cases involving organized crime and the applicability of stringent bail provisions under special laws in the case of *Hitendra Vishnu Thakur v. State of Maharashtra*<sup>19</sup> In this case, the SC considered the issue of bail in cases involving organized crime The court emphasized the need for a balanced approach in granting bail in such cases,

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<sup>16</sup>(1986)4SCC447.

<sup>17</sup>*D.K.Basuv.StateofWestBengal*,(1997)1SCC 416.

<sup>18</sup> AIR1978SC429.

<sup>19</sup>(1994)4SCC602.

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considering factors such as the nature of the offense, the role of the accused, and the likelihood of the accused tampering with witnesses or obstructing the trial. The judgment provided important guidance on the exercise of judicial discretion in bail matters involving serious and organized crimes.

### **Conclusion**

The landmark case of *Hussainara Khatoon v. Home Secretary, State of Bihar*<sup>20</sup> addressed the issue of prolonged pretrial detention and the right to speedy trial. The SC held that the right to speedy trial is a fundamental right implicit in the right to life and personal liberty guaranteed under Article 21 of the Constitution. The judgment emphasized the duty of the state to ensure expeditious trial and prevent the injustice of prolonged incarceration awaiting trial. This decision led to significant reforms in the criminal justice system, including the introduction of legal aid schemes and the establishment of fast-track courts to expedite trial proceedings. Hussainara Khatoon case stands as a testament to the judiciary's commitment to protecting fundamental rights and ensuring access to justice for all citizens.

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<sup>20</sup>(1980)1SCC 81.

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