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## BAIL IS THE RULE, JAIL IS THE EXCEPTION – A CONSTITUTIONAL IMPERATIVE EVEN UNDER SPECIAL LAWS LIKE UAPA

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### ABSTRACT

The principle of "bail is the rule, jail is the exception" lies at the heart of India's criminal jurisprudence, reinforcing the presumption of innocence and the fundamental right to personal liberty guaranteed under Article 21 of the Constitution. Rooted in the landmark judgment of *State of Rajasthan v. Balchand* (1977), this doctrine has shaped the legal understanding of pre-trial detention. However, its practical enforcement remains inconsistent and often exclusionary, especially for economically and socially marginalized individuals. This research paper explores the evolution and current state of bail jurisprudence in India, highlighting the growing divergence between normative principles and ground realities. It critically analyses the systemic challenges—such as judicial delay, harsh bail conditions, and lack of legal aid—that disproportionately affect undertrial prisoners. Special emphasis is placed on the Unlawful Activities (Prevention) Act (UAPA), where the application of the bail doctrine is markedly restricted, creating a parallel regime that undermines constitutional safeguards. By comparing general criminal law with the bail regime under special statutes, the paper illustrates the erosion of liberty through legislative overreach and judicial reticence. The study calls for urgent reforms—both judicial and legislative—to ensure a uniform, rights-based approach to bail that aligns with the constitutional vision of justice, liberty, and dignity.

**Keywords:** Criminal Jurisprudence, UAPA, Constitutional Law, Presumption of Innocence.

## Research Objectives

The main aim of this research paper is:

1. To trace the evolution of the principle "bail is the rule, jail is the exception" in Indian jurisprudence.
2. To examine the legal and constitutional foundations of the right to bail, particularly under Article 21 of the Constitution of India.
3. To identify and analyze the socio-economic and structural barriers faced by undertrial prisoners in securing bail.
4. To assess the impact of special laws such as the Unlawful Activities (Prevention) Act (UAPA) on the right to bail.

## Research Questions

The research paper answers question in relation to the topic of paper such as- How has the principle of "bail is the rule, jail is the exception" evolved in Indian criminal jurisprudence? What are the constitutional and legal dimensions of the right to bail, especially under Article 21 of the Constitution? What practical barriers prevent the effective implementation of the bail principle for undertrial prisoners? How does the bail regime under special statutes like the UAPA deviate from general bail jurisprudence? And What reforms are necessary to ensure that bail laws and practices uphold constitutional values and ensure access to justice?

## Research Methodology

This research adopts a **doctrinal and analytical approach**:

- **Primary Sources:** Examination of constitutional provisions (especially Article 21), landmark Supreme Court and High Court judgments (e.g., *State of Rajasthan v. Balchand*, *Gudikanti Narasimhulu v. P.P.*, *NIA v. Zahoor Ahmad Shah Watali*).
- **Secondary Sources:** Scholarly articles, legal commentaries, reports from legal aid organizations (e.g., PUCL, Amnesty International), and data from NCRB and government publications.

- **Comparative Analysis:** Contrast between bail jurisprudence under general criminal law (IPC and CrPC) and under special statutes like UAPA and PMLA.
- **Socio-legal Perspective:** Incorporates empirical insights into the lived realities of undertrial prisoners through case studies and available public reports.

## I. Introduction

The principle of "bail is the rule, jail is the exception" is a foundational tenet of India's criminal justice system, emphasizing the presumption of innocence and the safeguarding of personal liberty. This doctrine was firmly established in the landmark 1977 Supreme Court case, *State of Rajasthan v. Balchand*<sup>1</sup>, where Justice V.R. Krishna Iyer articulated that bail should be the norm, and incarceration the exception, unless compelling reasons suggest otherwise, such as the risk of the accused fleeing justice or tampering with evidence.

Despite this guiding principle, the current state of India's criminal justice system reveals a disconcerting reality. A significant number of undertrial prisoners, many of whom are economically disadvantaged, remain incarcerated for extended periods due to systemic delays and stringent bail conditions. Challenges such as the inability to furnish sureties, lack of proper identification documents, limited access to legal representation, and minimal family support exacerbate their plight.

Article 21 of the Indian Constitution guarantees the right to life and personal liberty, asserting that no person shall be deprived of these rights except according to a procedure established by law.<sup>2</sup> This provision has been expansively interpreted to encompass the right to a fair and speedy trial, and by extension, the right to bail. The Supreme Court has reiterated that prolonged pre-trial detention without just cause infringes upon this fundamental right.

This research paper aims to delve into the evolution and current state of bail jurisprudence in India, with particular emphasis on the principle that "bail is the rule, jail is the exception." It critically examines the dissonance between this well-established legal doctrine and its inconsistent practical application across the legal system. While the principle has been reaffirmed repeatedly by constitutional courts to uphold the right to personal liberty under

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<sup>1</sup> *State of Rajasthan v. Balchand*, AIR 1977 SC 2447.

<sup>2</sup> Constitution of India, art. 21.

Article 21 of the Constitution, its application becomes increasingly selective and restrictive under special statutes such as the Unlawful Activities (Prevention) Act (UAPA). The paper explores how this doctrine, foundational to criminal jurisprudence, is often diluted in the name of national security and public order, thereby creating a dual standard in bail jurisprudence. By contrasting the application of the “bail, not jail” principle in general criminal law with its constrained application under UAPA, this study investigates the socio-economic and systemic barriers that obstruct access to bail, particularly for marginalized and undertrial prisoners. Through this analysis, the paper underscores the urgent need for legislative and judicial reforms to restore coherence in bail jurisprudence and realign the criminal justice system with its constitutional mandate of safeguarding personal liberty and ensuring justice.

## II. Conceptual Framework of Bail in India

‘Bail’ connotes the process of procuring the release of an accused charged with certain offences by ensuring his future attendance in the court for trial and compelling him to remain within the jurisdiction of the court<sup>3</sup>. A definition of same notion has been inculcated in the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter as BNSS) which exhaustively defines bail “*as release of person accused or suspected of commission of an offence from the custody of law upon certain conditions imposed by an officer or court on execution by such person of a bond or a bail bond*”. The old Code that is to say the Criminal Procedure Code, 1973 (hereinafter as the CrPC) did not explicitly define bail rather it used to define the nature of the offences as ‘bailable offence’ and ‘non-bailable offence’, its meaning and scope has been derived by the courts in various judicial precedents<sup>4</sup>. the motive behind arrest or detention is to deliver justice to individual or society, if motive can be fulfilled without arrest then bail can be granted to the accused person.

The concept of bail can be traced from old criminal law that is Cr. P.C., 1973, which provides information on the requirements and processes for granting bail. Judicial modifications have acknowledged and developed the legal gesture of bail, representing enormous and changing values regarding the granting or refusing of bail. The idea of bail was initially introduced in Sections 216 and 258, as well as Sections 156 and 212 of the Code Criminal Procedure of 1861.

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<sup>3</sup> SSRN Article, Yashasvi Singh, *Evolution of Bail Jurisprudence: In the Prospect of the Constitution and New Criminal Laws*, SSRN (Nov. 7, 2024), <https://ssrn.com/abstract>

<sup>4</sup> The Amikus Qriac Article, *Bail Jurisprudence in India: Recent Trends and Challenges*, The Amikus Qriac, <https://theamikusqriac.com/bail-jurisprudence-india-recent-trends-challenges/> (last visited June 6, 2025).

Additional parts were added in 1872. Sections 496 and 497 of the 1898 law addressed bail in instances that were subject to bail and non-bailable cases, respectively. Additional parts and revisions were added in 1973. Lastly, it has been one of the important part of new criminal law (of Bhartiya Nyaya Sanhita) too which provided justification for the criminal justice system's use of bail jurisprudence. It improved the provision's effectiveness and benefited the accused.

The idea of bail is also incorporated under Article 21 of the Constitution of India which talk about and right to personal liberty, so Bail is protection of fundamental right which is right to life and liberty for the person found accused. Bail is a right and delay in bail is violation of fundamental right of an individual. In *P Chidambaram v. Directorate of Enforcement (2020)*<sup>5</sup>, the court refused bail because the accusations were economic about corruption. However, in the appeal matter, the Hon'ble Supreme Court granted bail and rejected all other contentions. Therefore, Bail is a kind of procedure in which the Court sets a freedom to arrested person upon security. Delay in Bail sometimes violates of fundamental rights of the individual. Bail is a rule and jail is an exception is a true principle that needs to be followed. Reasons for delay in granting bail are: - Case complexity, pending investigation, opposition by prosecution, and some other legal formalities. In many cases, you may see that police fail to establish the cases and in other situations, police fail to ensure that prosecution witnesses turn up in time.<sup>6</sup>

### III. The Doctrine: “Bail is the Rule, Jail is the Exception”

In the year 1977 “Bail, not Jail was the rule”. The doctrine of presumption of innocence was applied before accusing a person. The above-mentioned doctrine is genesis in the Universal Declaration of Human Right<sup>7</sup>, and the defendant is more appropriate than using prisoner or convict or accuse, which will indicate innocence<sup>8</sup>.

The constitutional doctrine that “bail is the rule and jail is the exception,” famously articulated by Justice V.R. Krishna Iyer in *State of Rajasthan v. Balchand* (1977), the respondent Balchand was convicted by the trial court under Section 452 of the Indian Penal Code (house trespass after preparation for hurt, assault, or wrongful restraint) and Section 323 (voluntarily causing hurt). Upon conviction, he filed an appeal before the High Court, which granted him bail. The State of Rajasthan challenged this order before the Supreme Court, arguing that since the

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<sup>5</sup> *P. Chidambaram v. Directorate of Enforcement*, (2020) 13 SCC 791.

<sup>6</sup> Supra note 3

<sup>7</sup> UDHR

<sup>8</sup> Black's Law Dictionary

accused had already been found guilty, bail should not be granted so readily, as individual liberty must give way to public interest in such circumstances. Justice V.R. Krishna Iyer, delivering the judgment, laid down a crucial principle in Indian bail jurisprudence **bail is the rule and jail is the exception.**” He emphasized that the mere fact of conviction by the trial court does not automatically justify the denial of bail during the pendency of an appeal, especially when the sentence is not of a severe nature. This principle continues to hold relevance and is consistently echoed in contemporary judicial pronouncements, reaffirming the constitutional mandate to protect personal liberty under Article 21 of the Constitution of India. With the time has gradually lost its sheen over the decades. Despite this foundational principle in criminal jurisprudence, the prison population of undertrial inmates in India continues to escalate. This trend indicates a disconnect between legal theory and judicial practice. However, the higher judiciary has consistently strived to restore the sanctity of personal liberty and correct the growing misuse of pre-trial detention.

In *Dataram Singh v. State of Uttar Pradesh* [(2018) 3 SCC 22], the Supreme Court reinstated the principle of "bail, not jail," emphasizing that granting bail is a fundamental tenet of criminal law. The Court lamented that this elementary safeguard has been overshadowed by an overemphasis on incarceration, often leading to prolonged and unjustified detention.

The decision in *Uday Mohanlal Acharya v. State of Maharashtra* [(2001) 5 SCC 453] further reinforced the right to default bail. The Court held that once the stipulated 90-day period under Section 167(2) of the Criminal Procedure Code expires without the filing of a charge sheet, the accused acquires an absolute and infeasible right to be released on bail.

This interpretation has been reiterated in *Bikramjit Singh v. State of Punjab* [(2020) 10 SCC 616], where the Court clarified that the statutory right under Section 167(2) CrPC is intimately linked to Article 21 of the Constitution, which safeguards against arbitrary and illegal detention.

In *M. Ravindran v. The Intelligence Officer, Directorate of Revenue Intelligence* [(2021) 2 SCC 485], the apex court further examined this nexus between procedural safeguards and constitutional liberties. It emphasized that Article 21 must be read in a manner that advances the cause of liberty and prevents abuse of state power, especially in the context of custodial detention beyond permissible limits.

The jurisprudence on anticipatory bail was notably advanced in the landmark case of *Gurbaksh Singh Sibbia v. State of Punjab* [(1980) 2 SCC 565]. The Court asserted that the scope of Section 438 CrPC should not be curtailed by extraneous limitations or rigid preconditions, as doing so would defeat the object of protecting individuals from unjustified arrest.

In *Supreme Court Legal Aid Committee v. Union of India* [(1994) 6 SCC 731], the Court addressed the plight of undertrial prisoners directly. Representing the interests of incarcerated individuals awaiting trial, the Supreme Court emphasized that no one should be detained indefinitely merely due to systemic delays. The judgment underscored that if the trial cannot be concluded within a reasonable timeframe, the accused should not be compelled to remain behind bars.

The decisions in *Arnesh Kumar v. State of Bihar* [(2014) 8 SCC 273] and *Satender Kumar Antil v. Central Bureau of Investigation* [(2022) 10 SCC 51] represent crucial milestones in bail jurisprudence. In *Arnesh Kumar*, the Court laid down specific directives for law enforcement agencies to follow during and post-arrest, thereby seeking to curtail unnecessary detention. *Satender Kumar Antil* further expanded upon these guidelines and categorized offences to streamline bail processes and minimize judicial burden. These directions aim to reduce excessive bail applications and improve the conditions of undertrial prisoners significantly.

Collectively, these decisions reflect the judiciary's determined effort to realign criminal justice administration with the constitutional ethos of liberty and dignity. Through a series of progressive pronouncements, the Supreme Court continues to uphold the inviolability of personal freedom enshrined in Article 21, while attempting to mitigate the suffering endured by those languishing in pre-trial custody.

#### **IV. UAPA and Its Impact on Bail Jurisprudence**

We know that the principle of “bail is the rule and jail is the exception” is a cornerstone of criminal jurisprudence in India, rooted in the broader constitutional guarantee of personal liberty under Article 21 of the Constitution. This principle is widely applied across general criminal laws, particularly under the Code of Criminal Procedure (CrPC), wherein bail is considered a right unless compelling reasons dictate otherwise. However, the application of this principle takes a significantly restrictive turn in the context of special statutes such as the Unlawful Activities (Prevention) Act, 1967 (UAPA). Unlike the general provisions of bail

under CrPC, UAPA imposes stringent conditions under Section 43D (5), making the grant of bail considerably more difficult. This creates a sharp contrast between the treatment of accused persons under regular criminal law and those charged under special legislations like UAPA. While the former leans heavily towards safeguarding liberty, the latter often prioritizes national security and public order, thereby diluting the presumption of innocence and tipping the scales towards prolonged detention. This divergence raises critical concerns regarding the balance between state interest and individual freedoms, making it a vital area of legal scrutiny and reform.

In *State of Rajasthan v. Balchand*, where Justice V.R. Krishna Iyer emphasized the importance of personal liberty and the presumption of innocence pending trial.<sup>9</sup> This principle is applied liberally under general criminal law governed by the Code of Criminal Procedure, 1973 (CrPC), where courts are generally inclined to grant bail unless specific risks—such as the likelihood of absconding, tampering with evidence, or threats to witnesses—justify denial. However, this liberal approach is significantly diluted under Unlawful Activities (Prevention) Act, 1967 (UAPA). Section 43D (5) of the UAPA creates a formidable threshold by mandating that bail shall not be granted if the court finds the accusations to be prima facie true, thus virtually reversing the presumption of innocence and placing a heavy burden on the accused to prove otherwise.<sup>10</sup>

In contrast, even special statutes like the Prevention of Corruption Act or the Narcotic Drugs and Psychotropic Substances Act (NDPS)—though also imposing certain bail limitations—have seen courts carve out interpretative safeguards to uphold the balance between security concerns and fundamental rights.<sup>11</sup> UAPA, on the other hand, leaves little room for judicial discretion, resulting in prolonged incarceration of undertrial prisoners, often without the commencement or conclusion of trial for years. The Supreme Court in *National Investigation Agency v. Zahoor Ahmad Shah Watali* upheld this restrictive bail provision, reinforcing the statutory intent of prioritizing national security over personal liberty in UAPA cases.<sup>12</sup>

This disparity in the application of bail jurisprudence—between general criminal law and anti-terrorism legislation—raises pressing constitutional concerns under Article 21 of the Constitution,

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<sup>9</sup> *State of Rajasthan v. Balchand*, (1977) AIR 2447 (SC).

<sup>10</sup> Unlawful Activities (Prevention) Act, 1967, § 43D(5).

<sup>11</sup> See, *Union of India v. Shiv Shanker Kesari*, (2007) 7 SCC 798; *State of Kerala v. Rajesh*, (2020) 12 SCC 122 (NDPS Act – judicial scrutiny for bail despite statutory restrictions).

<sup>12</sup> *National Investigation Agency v. Zahoor Ahmad Shah Watali*, (2019) 5 SCC



which guarantees the right to life and personal liberty. The conflict between safeguarding public order and preserving civil liberties makes it imperative to re-evaluate the rigid bail framework under UAPA to prevent miscarriage of justice and uphold the foundational values of a democratic legal system.

### **Presumption of Innocence vs. Presumption of Guilt under UAPA**

One of the biggest difference in application of the principal bail is rule and jail is exception between common laws and UAPA is the presumption of innocence which is a core principle of criminal jurisprudence and is intrinsically linked to Article 21 of the Constitution, which guarantees the right to life and personal liberty. However, under UAPA, particularly Section 43D(5), this presumption is overturned. This provision stipulates that bail shall not be granted if, upon perusal of the case diary or the report made under Section 173 of the Code of Criminal Procedure, there are reasonable grounds for believing that the accusation is *prima facie* true.<sup>13</sup> Such a statutory scheme imposes a reverse burden on the accused and discourages courts from granting bail even before any trial has begun, often resulting in years of incarceration without conviction.

In the landmark case of *National Investigation Agency v. Zahoor Ahmad Shah Watali*,<sup>14</sup> the Supreme Court held that at the bail stage under UAPA, the court is not required to meticulously evaluate evidence but must be satisfied that the case appears *prima facie* true. This interpretation has led to a situation where bail is almost routinely denied, irrespective of the strength or weakness of the evidence. This goes against the Supreme Court's earlier ruling in *State of Rajasthan v. Balchand*,<sup>15</sup> where Justice V.R. Krishna Iyer famously stated, "*The basic rule is bail, not jail*," unless circumstances justify denial.

Over the past decade, there has been growing concern about the misuse of UAPA to curb dissent and stifle freedom of expression. The definitions of "unlawful activity" and "terrorist act" under Sections 2(o) and 15 of UAPA are vague and overly broad, allowing for expansive interpretation by the authorities. Numerous cases reveal a pattern of targeting dissenting voices, including:

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<sup>13</sup> *Supra* note 10.

<sup>14</sup> *Supra* note 12.

<sup>15</sup> *Supra* note 9.

- Dr. G.N. Saibaba, a disabled professor, who was convicted under UAPA for alleged Maoist links and has been denied proper medical treatment in custody.<sup>16</sup>
- Father Stan Swamy, an 84-year-old tribal rights activist, arrested under UAPA in the Bhima Koregaon case, died in custody after multiple bail denials despite his fragile health.<sup>17</sup>
- Umar Khalid, a former JNU student leader, remains incarcerated for over three years under UAPA, with bail rejected despite lack of direct evidence.<sup>18</sup>

These instances illustrate how UAPA is used to punish before trial, exploiting its harsh bail conditions to keep accused persons in prolonged custody without adjudication.

### **Conflict with the Principle: “Bail is the Rule, Jail is the Exception”**

The principle of “bail not jail” has been reiterated by Indian courts as a measure to protect individual liberty, especially in cases involving undertrials. In *Gudikanti Narasimhulu v. Public Prosecutor*,<sup>19</sup> Justice Krishna Iyer underscored the importance of bail as a means to uphold the presumption of innocence. However, the UAPA framework runs contrary to this principle, making it nearly impossible for the accused to secure bail due to:

- The high threshold of showing that the case is *not* prima facie true.
- Delays in framing charges or starting trial.
- Courts’ reluctance to evaluate evidence beyond the prosecution's allegations at the bail stage.

Thus, the law effectively creates a regime where pre-trial incarceration becomes the default, undermining constitutional safeguards.

The enactment and application of statutes like the Prevention of Money Laundering Act

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<sup>16</sup> *G.N. Saibaba v. State of Maharashtra*, Criminal Appeal No. 680/2017, Bombay High Court.

<sup>17</sup> Scroll.in. (2021). "Stan Swamy, accused in Bhima Koregaon case, dies in Mumbai hospital". Available at: <https://scroll.in/latest/999575>

<sup>18</sup> The Wire. (2023). "Three Years of Incarceration: Umar Khalid Still Awaits Trial in Delhi Riots Case." <https://thewire.in/rights/umar-khalid-bail-delhi-riots-case>

<sup>19</sup> *Gudikanti Narasimhulu & Ors. v. Public Prosecutor, High Court of Andhra Pradesh*, (1978) 1 SCC 240.

(PMLA) and the Unlawful Activities (Prevention) Act (UAPA) have significantly disrupted the delicate balance traditionally maintained in bail jurisprudence. These laws have made the grant of bail exceptionally difficult and procedurally stringent. Under the UAPA, the provision for anticipatory bail is expressly barred, compelling an accused to seek only regular bail after arrest. Moreover, the trial court, while considering bail, primarily relies on the prosecution's chargesheet without delving into the defence's merits at that stage. This framework effectively shifts the burden of proof onto the accused—a stark deviation from the general criminal law principle wherein the prosecution bears the burden of establishing guilt and rebutting any presumption of innocence. Consequently, the UAPA regime stands as an exception to the normative principle of "bail is the rule, jail is the exception," thereby raising serious concerns regarding the erosion of personal liberty and fair trial guarantees.

## V. Constitutional Challenge and Judicial Scrutiny

The Unlawful Activities (Prevention) Act (UAPA), though enacted to safeguard national security, has come under significant constitutional scrutiny for its impact on personal liberty as guaranteed under Article 21 of the Constitution of India. Article 21, being a non-derogable right, guarantees that no person shall be deprived of life or personal liberty except according to the procedure established by law—this forms the bedrock for the principle that bail is the rule and jail is the exception. However, the stringent bail provisions under Section 43D(5) of the UAPA invert this principle by imposing near-impossible conditions for release, thereby creating a presumption of guilt before conviction. In *National Investigation Agency v. Zahoor Ahmad Shah Watali*, the Supreme Court held that courts must only consider the prima facie veracity of allegations as presented in the chargesheet, and that bail must be denied if the accusations appear credible on record, significantly curtailing the accused's ability to seek release.<sup>20</sup> However, a more rights-conscious approach was adopted in *Union of India v. K.A. Najeeb*, where the Supreme Court recognized that constitutional courts retain the power to grant bail even in cases covered by UAPA, particularly when there is prolonged incarceration and trial is unlikely to conclude within a reasonable time.<sup>21</sup> The Court emphasized that statutory embargoes on bail cannot override constitutional guarantees under Article 21. This marked a crucial judicial attempt to balance the competing interests of individual liberty and collective security. While the Court did not strike down the statutory restriction, it reaffirmed that courts

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<sup>20</sup> *National Investigation Agency v. Zahoor Ahmad Shah Watali*, (2019) 5 SCC 1.

<sup>21</sup> *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713

must intervene when procedural safeguards are rendered illusory due to excessive pre-trial detention. These judgments reflect the ongoing tension between the imperatives of national security and the foundational principle that liberty must not be sacrificed at the altar of unproven allegations.

## VI. Comparative Jurisprudence

In contrast to the stringent bail regime under India's Unlawful Activities (Prevention) Act (UAPA), many democratic jurisdictions such as the United Kingdom, United States, and Canada have incorporated stronger due process and proportionality safeguards within their anti-terror frameworks. In the United Kingdom, while the Terrorism Act 2000 allows for pre-charge detention up to 14 days, extended detention requires judicial authorization and must comply with the principles of necessity and proportionality.<sup>22</sup> Similarly, in the United States, under the USA PATRIOT Act, pre-trial detention in terrorism-related cases must still satisfy the Bail Reform Act of 1984, which mandates an individualized judicial determination based on risk of flight and danger to the community.<sup>23</sup> Canadian law under the Anti-terrorism Act 2001 also permits preventive detention, but includes constitutional review under the Canadian Charter of Rights and Freedoms, especially Section 7, which guarantees the right to life, liberty, and security of the person, subject only to principles of fundamental justice.<sup>24</sup> These jurisdictions, despite adopting stringent security measures, preserve the core judicial function of balancing state interest with civil liberties through procedural safeguards. In contrast, India's UAPA, particularly Section 43D(5), imposes a near-absolute bar on bail based merely on the prosecution's version, thereby reversing the presumption of innocence and restricting judicial discretion. India can draw important lessons from international best practices by embedding proportionality as a guiding standard in bail adjudication under special laws, ensuring that national security objectives do not override the fundamental guarantees of personal liberty and fair trial enshrined under Article 21 of the Constitution.

## VII. Misuse and Consequences of Denial of Bail under UAPA

The denial of bail under the Unlawful Activities (Prevention) Act (UAPA) has led to widespread misuse, resulting in grave violations of individual rights and a chilling effect on

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<sup>22</sup> Terrorism Act 2000, c.11 (UK), §§ 23–25.

<sup>23</sup> Bail Reform Act of 1984, 18 U.S.C. §§ 3141–3156; see also USA PATRIOT Act, Pub. L. No. 107-56 (2001).

<sup>24</sup> Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982, c.11 (UK), § 7

civil liberties. Numerous reports by civil society organizations such as the People's Union for Civil Liberties (PUCL) and Amnesty International have highlighted the disproportionate use of UAPA against marginalized communities, activists, and journalists, often leading to prolonged pre-trial detention without conviction.<sup>25</sup> According to data from the National Crime Records Bureau (NCRB), over 4,000 individuals were arrested under UAPA between 2016 and 2020, but only a small fraction—less than 3%—were convicted, underscoring a troubling trend of excessive pre-trial incarceration.<sup>26</sup> A stark example is the case of *G.N. Saibaba*, a wheelchair-bound professor who was incarcerated under UAPA and denied bail despite his deteriorating health, with trial proceedings stretched over years.<sup>27</sup> Similarly, the case of *Sudha Bharadwaj*, a trade unionist and lawyer held for over three years under UAPA without trial, illustrates how the Act is weaponized to silence dissent.<sup>28</sup> These instances reflect a systemic pattern where the UAPA's stringent bail provisions, particularly Section 43D(5), are used not merely as a legal mechanism but as a punitive tool, disproportionately affecting Dalits, Muslims, Adivasis, and those critical of the state. The refusal to grant bail even in the absence of trial progression results in an erosion of the constitutional presumption of innocence and effectively converts pre-trial detention into a form of punishment. This raises serious concerns under Article 21, where personal liberty is meant to be protected except by a fair, just, and reasonable procedure.

### VIII. Reimagining Bail under Special Statutes

Reimagining the bail framework under special statutes like the Unlawful Activities (Prevention) Act (UAPA) necessitates a shift towards a rights-based approach in statutory interpretation, one that harmonizes legislative objectives with constitutional mandates. The current regime under Section 43D(5) of the UAPA imposes extraordinary limitations on the grant of bail, often resulting in prolonged incarceration without trial. This runs contrary to the constitutional guarantee of personal liberty under Article 21 and the foundational criminal law principle that one is presumed innocent until proven guilty. Constitutional courts, especially the High Courts and the Supreme Court, have a crucial role in safeguarding civil liberties by

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<sup>25</sup> PUCL, *UAPA – Criminalising Dissent and State Terror* (2021); Amnesty International, *Weaponizing the Law: Attacks on Civil Society and Dissent in India* (2020).

<sup>26</sup> National Crime Records Bureau (NCRB), *Crime in India Reports*, 2016–2020

<sup>27</sup> *G.N. Saibaba v. State of Maharashtra*, Criminal Appeal No. 1124 of 2017 (Bombay HC); see also reports by Scroll.in and The Wire on health conditions and trial delay.

<sup>28</sup> *Sudha Bharadwaj v. NIA*, Bail Application No. 4534/2021, Bombay HC (granted bail after 3 years); see also LiveLaw and Bar & Bench reports.

reading down statutory provisions that disproportionately infringe upon fundamental rights. In *Union of India v. K.A. Najeed*, the Supreme Court reaffirmed that the rigours of statutory bail conditions cannot override the courts' constitutional duty to protect personal liberty in cases of unjustified detention.<sup>29</sup> It is thus imperative to adopt a more balanced jurisprudence wherein security concerns are addressed without compromising due process. Several reformative steps are recommended: (i) amending Section 43D(5) to allow for greater judicial discretion in granting bail, particularly in cases involving non-violent offences; (ii) framing judicial guidelines to ensure consistent and fair application of bail provisions under special laws; and (iii) mandating time-bound trials to prevent indefinite pre-trial detention, thereby aligning procedural law with constitutional morality. Such reforms would not dilute national security efforts but would instead reinforce public faith in the justice system and uphold the constitutional ethos of fairness and liberty.

## IX. Conclusion

The principle that “bail is the rule, jail is the exception” is not merely a procedural norm but a constitutional guarantee rooted in the right to life and personal liberty under Article 21. While this doctrine has been reaffirmed time and again by the higher judiciary, its practical implementation reveals a troubling disparity between legal ideals and lived experiences, especially for the marginalized and underprivileged. The persistent challenges of judicial delay, inaccessibility to legal aid, and onerous bail conditions have rendered the bail system inequitable and, at times, arbitrary.

The situation becomes more concerning under special legislations like the Unlawful Activities (Prevention) Act (UAPA), where the threshold for bail is significantly heightened, and the presumption of innocence is effectively reversed. This deviation from constitutional norms creates a dual legal regime—one for ordinary crimes and another for special offences—thus eroding the universality of fundamental rights.

This paper underscores the urgent need to bridge the gap between constitutional promises and procedural practices. It calls for a comprehensive reimagining of bail jurisprudence through a rights-based lens—one that prioritizes personal liberty, ensures accountability in judicial discretion, and mandates legislative reforms to harmonize all bail laws with constitutional

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<sup>29</sup> *Union of India v. K.A. Najeed*, (2021) 3 SCC 713.

values. Only then can the criminal justice system uphold its duty as a protector of individual freedoms and democratic integrity.