



Bail Jurisprudence Under Bnss: A Study Of Arunachal Pradesh¹

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Abstract

Bharatiya Nagarik Suraksha Sanhita, 2023 has reconstituted the procedure of bail law in India through a system that replaces the Code of Criminal Procedure, 1973 with a system that maintains tradition but implements reform towards alleviating undertrial detention. This paper discusses the structure of bail law as contained in Sections 478 to 483 of BNSS in relation to the constitutional provision of personal liberty guaranteed under Article 21. Then, the paper discusses the state of Arunachal Pradesh and the unique challenges associated with implementing the bail provisions in that particular socio-legal milieu, including remoteness, single-High Court jurisdiction, Inner Line Permit system, and competing dispute resolution processes. The paper suggests that BNSS bail law reform, especially Section 479, has immense potential for alleviating undertrials in the State but can only be realized through institutional capacity development peculiar to Arunachal Pradesh.

Keywords: Bail; Bharatiya Nagarik Suraksha Sanhita; Undertrial Prisoners; Arunachal Pradesh; Criminal Procedure Reform

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1. Introduction

The concept of bail is unique in criminal proceedings since it neither amounts to an acquittal nor a punishment, but rather a temporary measure that balances the freedom of the accused with the interests of the State in having them attend the proceedings.² This scenario had been handled under Indian law for more than 100 years in the Code of Criminal Procedure, 1973 and previous Codes. On 1 July 2024, this system was superseded by the Bharatiya Nagarik Suraksha Sanhita, 2023, one of the three criminal laws introduced to reform India's criminal justice system.³ The BNSS largely maintains the essential content of the prior bail statutes, but with alterations that were meant to solve issues such as overcrowding of prisons and long periods of detention without trial.

The objective of this paper is dual-fold. The first aim is doctrinal and involves an examination of the statutory structure of the bail procedure as well as its constitutional framework. The other objective is contextual in nature. It involves an analysis of the working of this scheme in the case of Arunachal Pradesh – a unique State which, because of its geographic and administrative uniqueness and customary practices, is distinct from the mainstream pattern of the Indian criminal procedure law which forms the basis for most analysis on this issue. Arunachal Pradesh has just one High Court Bench; it still continues some of the colonial-era frontier administration system; and it has institutions of village level dispute settlement in addition to the regular judiciary.

2. From CrPC to BNSS: The Legislative Transition

The BNSS was introduced in Parliament as one limb of a trio of Bills intended to replace the Indian Penal Code, 1860, the Indian Evidence Act, 1872, and the CrPC.⁴ The objective behind the reform was to bring modernization to criminal procedure, to include technology in investigation and trial process, and address the criticisms regarding the high number of undertrial prisoners in Indian prisons.⁵ It has been put up for consideration of the Parliamentary Standing Committee before being adopted in both Houses of Parliament in December 2023 and gaining the Presidential assent on 25 December 2023, with Sanhita becoming effective from 1 July 2024.⁶

²GudikantiNarasimhulu v. Public Prosecutor, AIR 1978 SC 429.

³The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act No. 46 of 2023), read with the Bharatiya Nyaya Sanhita, 2023 and the Bharatiya Sakshya Adhinyam, 2023.

⁴PRS Legislative Research, 'Bharatiya Nagarik Suraksha Sanhita, 2023: Bill Summary' (PRS Legislative Research, 2023).

⁵Statement of Objects and Reasons, The Bharatiya Nagarik Suraksha Sanhita, 2023.

⁶Bharatiya Nagarik Suraksha Sanhita, 2023, s. 1(2); notified with effect from 1 July 2024.



The provisions related to bail, which were earlier in Sections 436 to 450 of the CrPC, have been replaced by Sections 478 to 496 of the BNSS under Chapter XII of 'Provisions as to Bail and Bonds'.⁷ The renumbering is more than superficial. For the first time, the BNSS includes statutory definitions of the words 'bail', 'bail bond' and 'bond', all three having remained undefined in the CrPC until now.⁸ It is also adding a whole new section, Section 479, on the maximum time period during which an undertrial detainee can remain imprisoned, a matter that was dealt with solely by means of Section 436A, introduced by amendment in 2005, in the CrPC.⁹ The transition therefore preserves continuity in the general shape of bail law while grafting onto it provisions that respond specifically to documented deficiencies in the older regime.

3. Statutory Architecture of Bail under the BNSS

Bail in bailable offences is covered in Section 478 of the BNSS, which adopts the principle enshrined in Section 436 of the CrPC that a person charged with a bailable offence is entitled to be set at large on bail of right, whether there is an arrest warrant or not. This section gives little room for discretion by either the police officer or the court, except concerning the quantum and nature of the bail or bond. Section 479 is the most important amendment that has been made. Under this section, it is stated that an undertrial prisoner held in custody for half the maximum term of imprisonment applicable to that offense should be released on bail.

Moreover, a first-time offender held in detention for a third of that period should be released on bond. This provision does not apply to offenses which are punishable with death or imprisonment for life. The provision has a proviso which allows for the arrest of the accused if there are adequate reasons recorded by the court, after hearing the Public Prosecutor. In August 2024, the Supreme Court, while deciding on an old case regarding the conditions of jails, ordered that Section 479 would have retrospective effect.¹⁰ In this way, it has transformed what could be considered as a condition of active assertion by counsel of the defendant into an administrative requirement of the prison authorities themselves, and that has significant practical implications in regions where legal aid for undertrials is minimal.

Section 480 pertains to bails in cases of non-bailable offences and mirrors the provisions of Section 437 of the CrPC in its provisions for allowing the Magistrate to grant bail under certain conditions but

⁷Bharatiya Nagarik Suraksha Sanhita, 2023, Chapter XXXV, ss. 478-496.

⁸Bharatiya Nagarik Suraksha Sanhita, 2023, s. 2(1)(b), (d), (e).

⁹Code of Criminal Procedure, 1973, s. 436A, inserted by the Code of Criminal Procedure (Amendment) Act, 2005.

¹⁰In *Re: Inhuman Conditions in 1382 Prisons*, Supreme Court of India, order dated 23 August 2024 (Hima Kohli and Sandeep Mehta, JJ.).



excludes certain types of offences, namely offences where punishment involves death or imprisonment for life.¹¹ Bail during the process of appeal in an appellate court is discussed under Section 481, whereas anticipatory bail is mentioned in Section 482 which allows the Sessions Court or High Court to grant bail in case of apprehension of arrest of a person.¹² In addition to the relatively restricted authority granted to lower courts, Section 483 gives the High Court and Court of Session additional authority to issue or revoke bail. Together, these provisions retain the gradation which is present in the CrPC: a right in bailable offences, a discretion in non-bailable offences, and supervision by the superior courts.

4. Constitutional and Doctrinal Foundations

It is difficult to comprehend the statutory system without taking into account the underlying value of the Constitution. As per Article 21 of the Constitution, no one can be deprived of life or personal liberty except by due process of law, and the courts have constantly held that pre-trial detention, being prior to any decision of guilt, has always been considered as an exception and not the rule.¹³ In *State of Rajasthan v. Balchand*, J. Krishna Iyer set forth the principle that “bail is the rule and jail is the exception,” which has been followed ever since in the bail cases before the Supreme Court. Factors taken into account by the Court in exercising discretion in granting bail include the gravity of the charge, the gravity of the punishment and the possibility of the accused running away from justice.¹⁴

The issue of undertrial detention was given much judicial consideration from *Hussainara Khatoon versus State of Bihar* onwards, where it was ruled by the Court that the right to a fair and speedy trial was an implicit part of Article 21, and a denial thereof amounts to violation of this right.¹⁵ In more recent times, in *Sanjay Chandra v. CBI*, the Court warned that pre-trial detention should not be considered as anticipatory punishment, especially for economic offences when the accused is not a flight risk.¹⁶ This was the case of *Satender Kumar Antil v. Central Bureau of Investigation*, wherein the Court made its most systematic attempt at intervention by categorizing the offences and setting time limits within which the application for bail had to be disposed of, criticizing the tendency of mechanical refusal of bail.¹⁷ It is possible to interpret

¹¹Bharatiya Nagarik Suraksha Sanhita, 2023, s. 480; corresponding to the Code of Criminal Procedure, 1973, s. 437.

¹²Bharatiya Nagarik Suraksha Sanhita, 2023, ss. 481-482.

¹³Constitution of India, 1950, art. 21.

¹⁴*Gudikanti Narasimhulu v. Public Prosecutor*, AIR 1978 SC 429.

¹⁵*Hussainara Khatoon v. State of Bihar*, AIR 1979 SC 1369.

¹⁶*Sanjay Chandra v. Central Bureau of Investigation*, (2012) 1 SCC 40.

¹⁷*Satender Kumar Antil v. Central Bureau of Investigation*, (2022) 10 SCC 51.



the BNSS provisions—and Section 479 in particular—as a legislative reaction to this line of authority, converting judicially accepted concepts into a more definitive statutory directive.

5. Arunachal Pradesh: Institutional and Socio-Legal Context

This makes Arunachal Pradesh a unique case study environment where the working of such a system can be observed. The state has only one High Court, the Gauhati High Court, Itanagar Permanent Bench that operates from Naharlagun and which was set up in August 2000. Litigants from far-flung areas, a number of which do not have roads which are accessible through the year, have to travel great distances in order to reach subordinate courts, and farther in case the matter requires the involvement of the High Court, in bail cases of anticipatory bail or Section 483 bail cancellation. This geographical fact plays a very important role in the timeliness of the bail relief, apart from the generosity of the statute.

There are certain aspects of regulation in Arunachal Pradesh that remain a legacy of the administrative past of the State, having been the part of the North East Frontier Agency before. The Assam Frontier (Administration of Justice) Regulation, 1945 vested in administrative officials judicial and quasi-judicial powers, and also allowed the local customary bodies to adjudicate disputes arising amongst the tribes in the State.¹⁸ In addition, the State is also bound by the Inner Line Permit scheme under the Bengal Eastern Frontier Regulation Act of 1873, which imposes restrictions on the movement of non-resident individuals and creates another dimension in administration concerning issues of verifying sureties and addresses with regard to bail conditions. All these do not negate the operation of the BNSS, which is applicable in Arunachal Pradesh just as in other parts of India, but these factors influence the context in which the BNSS provisions for bail can be applied.

6. Section 479 and Undertrial Relief in Arunachal Pradesh

The relief provided for in Section 479 becomes particularly significant in a State having a relatively smaller number of people in custody, whose detention duration can be tracked in comparison to the sentencing norms. In view of the order issued by the Supreme Court in August 2024, the Ministry of Home Affairs has written to the Chief Secretaries and prison administrations of all States and Union Territories, including Arunachal Pradesh.¹⁹ Indeed, the forward-looking nature of Section 479, which first requires the Superintendent of Jail to ensure compliance with the conditions laid down in the provision and not the other

¹⁸The Assam Frontier (Administration of Justice) Regulation, 1945.

¹⁹Ministry of Home Affairs, Government of India, letter dated 1 January 2025 to Chief Secretaries of States and Union Territories on implementation of s. 479, BNSS.



way round, makes it appropriate to the needs of correctional institutions with small prisoner loads, which allow for individual monitoring of detention periods. However, the practicality of this provision hinges on the presence of legal aid personnel capable of verifying the eligibility of undertrial prisoners, preparing their applications, and appearing before the competent court, which is not available to all districts of the State.

Section 479's backward-looking approach, by including even those cases which were registered prior to the BNSS Act, is important for Arunachal Pradesh because there would be no way for those cases to evade the new dispensation. Whereas in a State where there is already the issue of case backlog because of the few number of judicial officers in relation to the number of cases in the State, the retrospective sweep provides an avenue for relief which is independent of the rate of disposal of trials.

7. Customary Law and the Bail Process

The relationship between statutory procedures for criminal matters and customary modes of conflict resolution within the tribal population of Arunachal Pradesh is a matter of additional significance. A number of disputes, which could otherwise have been dealt with in a criminal manner, are sorted out by village councils through customary law. This is not the case only with Arunachal Pradesh among the northeastern States; however, it has significance in relation to bail law in the sense that where the accused has already settled the matter through the customary process, the courts dealing with his/her bail under Section 480 and 483 can take into consideration the fact that he/she has done so along with the accused's connection to the village community. It is not a statutory requirement, but the principle followed is that of the case of *Gudikanti Narasimhulu*, which states that bail decisions are made taking into account the connection of the accused to the community. A more thorough empirical investigation would be beneficial as the relationship between formal bail processes and customary settlement is still not well documented in reported decisions.

8. Challenges and Recommendations

There are a few structural issues that will impact the implementation of bail reform measures in Arunachal Pradesh. Firstly, the jurisdiction for both the appeals and the special bail cases being vested with the same High Court bench, along with the hilly nature of the geography of the state, could make the deadlines suggested by Satender Kumar Antil for disposing of bail applications difficult to adhere to. Secondly, there is limited availability of legal aid lawyers in border areas, especially when compared to the administrative burden created by Section 479. Lastly, the data regarding the number of persons held in prison who have not



been tried as yet, reported by the National Crime Records Bureau every year in Prison Statistics India, should be disaggregated by district.²⁰

The way to overcome such problems can be through some specific measures which include: increasing legal aid clinics in circuit areas where the under-trials who are far away in different districts will not need to come to Itanagar or Naharlagun in order to obtain help; regular visits of prisoners in jails by District Legal Service Authorities especially to check the prisoners eligible for Section 479; and better cooperation between customary settlement agencies and the formal justice system so that the information about their involvement in the settlement of disputes could be presented to the court in an orderly manner when bail is being discussed. All these measures do not require any changes in laws.

9. Conclusion

The BNSS reorganises but does not radically depart from the bail jurisprudence developed under the CrPC, and its central innovation, Section 479, gives statutory teeth to principles the Supreme Court had already articulated in cases such as *Hussainara Khatoon* and *Satender Kumar Antil*. In Arunachal Pradesh, the promise of this reform meets a set of conditions, geographic remoteness, a single High Court bench, and coexisting customary institutions, that are not addressed by the statute itself but that will substantially determine whether its benefits reach those it is designed to protect. A legal reform of this kind achieves its constitutional purpose only to the extent that the institutions responsible for its implementation are equipped to carry it out, and the case of Arunachal Pradesh illustrates why bail jurisprudence must be studied not only as a matter of statutory text but as a matter of institutional capacity situated within specific socio-legal terrain.

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