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# Bail Reform — Jail Is the Exception, Not the Norm

INDIAN EXPRESS

26 March 2026

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# Bail Reform — Jail Is the Exception, Not the Norm

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## INTERVIEW ANGLE

"Over 75% of India's prison population comprises undertrials. What reforms are needed to make the principle of 'bail, not jail' a reality?"

## WHY IN NEWS

The Supreme Court reiterated that "bail is the rule, jail is the exception" in a recent ruling, highlighting the persistent gap between judicial pronouncements on personal liberty and ground-level practice in Indian courts, where undertrials constitute over 75% of the prison population.

## The Editorial Argument

The Indian Express editorial argues that despite a long line of Supreme Court judgments affirming the primacy of bail — from **State of Rajasthan v. Balchand (1977)** to **Satender Kumar Antil v. CBI (2022)** — India's criminal justice system continues to treat incarceration as the default and bail as the exception. The editorial calls for structural reforms in bail law, not just judicial exhortation.

## The Undertrial Crisis — Numbers

METRIC	DATA
Total prison population (2024)	~5.73 lakh
Undertrials	~4.34 lakh (~75.8%)
Prison occupancy rate (national average)	~130% (severe overcrowding)
Average time spent as undertrial	1.5–3 years
Undertrials in jail for over 5 years	~22,000
States with highest undertrial %	UP (~76%), Bihar (~82%), MP (~74%)

## Landmark Bail Jurisprudence

CASE	YEAR	PRINCIPLE
State of Rajasthan v. Balchand	1977	“Bail is the rule, jail is the exception” (Justice V.R. Krishna Iyer)
Hussainara Khatoon v. State of Bihar	1979	Right to speedy trial; undertrials held longer than maximum sentence must be released
Arnesh Kumar v. State of Bihar	2014	Arrest not mandatory for offences with <7 years imprisonment; police must record reasons
Nikesh Tarachand Shah v. UOI	2018	Struck down twin bail conditions under PMLA as unconstitutional
Satender Kumar Antil v. CBI	2022	Comprehensive bail reform directions; police must follow Arnesh Kumar; standing orders on bail

## Why Bail Remains Elusive

Despite clear judicial direction, bail is routinely denied due to:

- ❶ **Magisterial reluctance:** Lower court judges fear adverse media coverage or departmental scrutiny if a bailed accused commits another offence
- ❷ **Police opposition:** Investigating officers routinely oppose bail citing “ongoing investigation” — sometimes for years
- ❸ **Special statutes:** UAPA, PMLA, NDPS Act, and NSA have stringent bail conditions that reverse the presumption of innocence
- ❹ **Surety requirements:** Many undertrials cannot furnish surety bonds or property guarantees — effectively making bail available only to those with resources
- ❺ **Legal aid gaps:** Over 80% of undertrials cannot afford private lawyers; NALSA-appointed legal aid lawyers handle excessive caseloads

## Section 479 of BNSS — The New Provision

The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 introduced **Section 479** — a provision for mandatory bail for undertrials who have served one-third (for offences with less than 7 years) or one-half (for other offences) of the maximum sentence:

CATEGORY	BAIL ELIGIBILITY
First-time offenders (offence <7 years)	After serving 1/3 of maximum sentence
First-time offenders (offence 7+ years)	After serving 1/2 of maximum sentence
Excluded	Death sentence, life imprisonment offences

However, Section 479 excludes persons charged under **multiple offences** – a loophole that police exploit by adding multiple sections to charge sheets to deny automatic bail.

## The Ethics Dimension

The editorial raises a GS-4 question: Is it ethical for the state to incarcerate citizens for years without conviction, particularly when:

- The presumption of innocence is a constitutional principle
- Undertrial incarceration disproportionately affects the poor, marginalised, and minorities
- The state has the resources and responsibility to ensure speedy trials
- Prison conditions in India violate basic human dignity standards

The editorial quotes Justice Krishna Iyer: *“The basic rule may perhaps be tersely put as bail, not jail.”*

### UPSC RELEVANCE

Balchand case (1977), Hussainara Khatoon (1979), Arnesh Kumar guidelines, Section 479 BNSS, undertrial percentage

*Criminal justice reform; rights of prisoners and undertrials; judicial reforms — bail jurisprudence; legal aid*

*Liberty vs security; ethics of preventive detention; state’s duty to ensure speedy trial*

## ★ FACTS CORNER — KNOWLEDGEPEDIA

### UNDERTRIAL CRISIS:

Prison population: ~5.73 lakh (2024); undertrials: ~75.8%

Prison occupancy: ~130% (national average)

Undertrials >5 years: ~22,000

NCRB Prison Statistics 2024: Primary data source

### KEY BAIL CASES:

Balchand (1977): “Bail is the rule, jail is the exception” — Justice V.R. Krishna Iyer

Hussainara Khatoon (1979): Right to speedy trial; release undertrials held beyond maximum sentence

Arnesh Kumar (2014): No mandatory arrest for <7 year offences; police must record reasons

Satender Kumar Antil (2022): Comprehensive bail reform directions

### BNSS SECTION 479:

Mandatory bail for undertrials serving 1/3 (offence <7 years) or 1/2 (7+ years) of maximum sentence

Excludes: Death/life imprisonment offences; multiple-charge cases

Replaced: Section 436A of CrPC

### OTHER RELEVANT FACTS:

NALSA: National Legal Services Authority (Article 39A — free legal aid)

Legal aid lawyers per 1 lakh population: ~0.5 (vs requirement of ~5)

UAPA bail condition: Court must be satisfied prima facie that accusation is not true

PMLA bail condition: Twin conditions struck down in Nikesh Tarachand Shah (2018)

Model Prison Manual (2016): Bureau of Police Research and Development; recommends humane conditions

Sources: [Indian Express](#), [NCRB](#), [Supreme Court of India](#)



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