

## Pre-Trial Liberty and Legal Safeguards: Rethinking Bail Practices in India, the UK, and the USA<sup>1</sup>

### Abstract:

*Pre-trial liberty represents a fundamental aspect of criminal jurisprudence that upholds the principle of presumption of innocence and protects individuals from arbitrary or excessive state control before conviction. The legal safeguards designed to ensure this liberty—such as the right to bail, protection against arbitrary detention, access to legal counsel, and the right to a speedy and fair trial—form the backbone of any democratic legal system. However, in practice, these safeguards are often undermined by systemic inequalities, procedural delays, and discretionary misuse of judicial powers.*

*This paper critically examines the concept of pre-trial liberty and its associated legal protections, with a comparative focus on India, the United Kingdom, and the United States. Each jurisdiction demonstrates varied approaches to balancing individual freedoms with public interest, yet all face challenges such as socio-economic disparity in bail access, overcrowded prisons due to under trial populations, and inconsistent application of legal standards.*

*Through this comparative lens, the paper highlights the urgent need for bail reform, structured judicial oversight, and equitable access to justice to prevent pre-trial detention from becoming a de facto punishment.*

*The analysis concludes that ensuring pre-trial liberty is not only a legal necessity but also a moral and constitutional obligation essential to preserving the integrity of the rule of law.*

**Keywords:** Bail, Pre-trial Detention, India, UK, USA, Legal Safeguards, Human Rights, Criminal Justice.

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## Chapter 1: Introduction

Pre-trial liberty stands at the intersection of constitutional rights and the functioning of the criminal justice system. It reflects a fundamental commitment to the **presumption of innocence**, a cornerstone of democratic legal traditions. In theory, individuals accused of crimes are presumed innocent until proven guilty. However, in practice, this presumption is often eroded through excessive reliance on **pre-trial detention**, disproportionately affecting those who are economically or socially disadvantaged.

The mechanism of **bail** serves as a critical legal tool that enables an accused person to remain free while awaiting trial. Ideally, it should balance two competing objectives: ensuring the accused presence at judicial proceedings and preserving their liberty. However, across jurisdictions, the administration of bail has revealed deep systemic flaws. The line between safeguarding public interest and violating personal liberty has become increasingly blurred.

In **India**, the bail system is codified under the Criminal Procedure Code, 1973, but is heavily influenced by judicial discretion. The distinction between bailable and non-bailable offences theoretically provides a clear framework; yet, the overwhelming number of undertrial prisoners in Indian jails indicates otherwise. Bureaucratic inertia, lack of legal aid, and socio-economic disparities create a reality where bail is neither timely nor accessible, especially to marginalized communities.

In **the United Kingdom**, bail law is governed primarily by the Bail Act 1976, which incorporates a strong statutory presumption in favor of bail. The Act establishes criteria for the denial of bail that must be narrowly interpreted, making the UK system appear rights-centric. Nevertheless, practical implementation raises concerns about increasing remand rates and racial disparities, which suggest systemic inconsistencies between law and practice.

**The United States**, despite being constitutionally bound by the Eighth Amendment's guarantee against excessive bail, relies heavily on **monetary bail** systems. This has led to widespread pre-trial incarceration of poor defendants who are unable to afford bail amounts—often set arbitrarily or influenced by prosecutorial discretion. Critics argue that this approach commodifies liberty and transforms bail into a penalty before conviction, exacerbating racial and class inequalities.

The comparative study of these three jurisdictions—each rooted in common law traditions but diverging in legal culture and social structure—offers valuable insights into how legal safeguards are either upheld or compromised in bail proceedings. The existing bail regimes raise critical questions:

- Are current bail practices compatible with constitutional guarantees of liberty and due process?
- How do systemic biases influence judicial discretion in bail decisions?
- What reforms are necessary to prevent pre-trial detention from becoming a punitive tool?

This paper argues that while each system purports to uphold legal safeguards in bail jurisprudence, the reality often falls short due to **over criminalization**, **judicial inconsistency**, and **institutional inertia**. There is a pressing need to rethink bail through a rights-based and evidence-driven lens—grounded in constitutional norms, comparative jurisprudence, and international human rights obligations. In doing so, bail can be restored to its rightful function: a safeguard, not a sentence.

## Chapter 2: Conceptual Foundations of Bail and Pre Trial Liberty

Bail is traditionally understood as a conditional release of an accused person pending trial. Its primary objective is to ensure the accused appearance in court without the necessity of detention. The principle of presumption of innocence underscores the importance of minimizing pre-trial detention<sup>2</sup>. Legal safeguards such as judicial oversight, right to counsel, and proportionality are central to this regime<sup>3</sup>.

### 3. Bail Law in India

#### 3.1 Statutory Framework

India's bail system is governed by the **Criminal Procedure Code, 1973**. Sections 436–439 of the CrPC categorize offences into **bailable** and **non-bailable**. In bailable offences, bail is a matter of right, whereas in non-bailable offences, it is subject to judicial discretion.

Despite this statutory protection, India's bail regime suffers from over-incarceration, delays, and arbitrary denial of bail. Approximately 75% of India's prison population comprises undertrial prisoners<sup>4</sup>.

#### 3.2 Judicial Discretion and Concerns

The Supreme Court in *Satender Kumar Antil v. CBI* (2022) underscored the need to curtail unnecessary arrests and directed courts to adhere strictly to procedural safeguards<sup>5</sup>. Yet, lower courts frequently deviate from guidelines, citing public sentiment or investigation needs.

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<sup>2</sup> Andrew Ashworth and Lucia Zedner, *Preventive Justice* (Oxford University Press 2014).

<sup>3</sup> United Nations, *Human Rights Committee, General Comment No. 35 on Article 9 (Liberty and Security of Person)*, CCPR/C/GC/35.

<sup>4</sup> National Crime Records Bureau, *Prison Statistics India 2022*, Ministry of Home Affairs, Government of India.

<sup>5</sup> *Satender Kumar Antil v. Central Bureau of Investigation*, (2022) 10 SCC 51

## 4. Bail in the United Kingdom

### 4.1 Legal Principles

The UK's bail laws are enshrined in the **Bail Act 1976**, which provides a **presumption in favour of bail**. Bail can only be refused if the court finds substantial grounds to believe that the accused would:

- Commit an offence while on bail
- Fail to appear
- Interfere with witnesses or obstruct justice

This structured approach aims to protect liberty while enabling judicial accountability.

### 4.2 Issues in Practice

Despite statutory safeguards, pre-trial remand rates have increased, particularly post-pandemic. There is evidence of **disproportionate remand of minority groups**, especially Black and minority ethnic (BAME) individuals<sup>6</sup>.

## 5. Bail in the United States

### 5.1 Constitutional Basis

The **Eighth Amendment** of the U.S. Constitution prohibits "excessive bail." However, bail practices vary widely across states, often relying on **monetary bail** systems that effectively criminalize poverty.

An estimated 450,000 people are held in U.S. jails on any given day **without conviction**, primarily due to inability to pay bail<sup>7</sup>.

### 5.2 Reform Movements

In recent years, states like New Jersey and Illinois have reformed or abolished cash bail, implementing **risk assessment tools** to guide pre-trial decisions. However, these tools raise concerns about algorithmic bias and lack of transparency<sup>8</sup>.

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<sup>6</sup> Lammy Review, *An Independent Review into the Treatment of, and Outcomes for Black, Asian and Minority Ethnic Individuals in the Criminal Justice System*, 2017

<sup>7</sup> Prison Policy Initiative, *"Mass Incarceration: The Whole Pie 2023"*

<sup>8</sup> Stevenson, Megan T., "Assessing Risk Assessment in Action," *Minnesota Law Review*, Vol. 103, 2019

## Chapter 6: Comparative Analysis

This section presents a comparative legal analysis of bail regimes in India, the United Kingdom, and the United States, focusing on key components such as legal foundations, use of monetary bail, access to legal representation, judicial discretion, and reform efforts.

### 6.1 Legal Presumptions and Statutory Basis

In **India**, the Criminal Procedure Code, 1973 (CrPC) distinguishes between *bailable* and *non-bailable* offences. For bailable offences, bail is a statutory right under Section 436 CrPC. For non-bailable offences, courts have discretion under Section 437–439 CrPC. However, this classification often leads to inconsistent interpretations and misuse of discretion, especially in politically sensitive or high-profile cases<sup>9</sup>.

In contrast, **UK law**, under the Bail Act 1976, begins with a *presumption in favor of bail* for all offences, unless specific statutory exceptions apply (e.g., risk of flight, reoffending, interference with witnesses). The UK system emphasizes proportionality and reasoned denial of bail, subject to appeal.

In the **United States**, the Eighth Amendment constitutionally prohibits "excessive bail," but there is no explicit federal presumption in favor of bail. Most jurisdictions default to **monetary bail**, placing the burden on the accused to prove they are worthy of release—an inversion of the presumption of innocence<sup>10</sup>.

### 6.2 Use of Monetary Bail

The **United States** is heavily dependent on cash bail, which effectively criminalizes poverty. Studies reveal that detained defendants are more likely to plead guilty, receive harsher sentences, and lose jobs or housing while awaiting trial<sup>11</sup>. Several jurisdictions (e.g., New Jersey, Illinois, California) have enacted or proposed bail reforms aimed at abolishing or limiting the use of cash bail.

In **India**, monetary bail is less institutionalized, but financial sureties and personal bonds are often imposed in ways that replicate wealth-based detention. Magistrates sometimes demand cash deposits even for bailable offences, violating established jurisprudence and undermining the principle of liberty<sup>12</sup>.

The **UK** system rarely uses cash bail; instead, it relies on conditional bail and sureties. The emphasis is on risk management through restrictions such as curfews, reporting obligations, or electronic monitoring.

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<sup>9</sup> Malimath Committee Report on Criminal Justice System Reforms, Ministry of Home Affairs, 2003.

<sup>10</sup> U.S. Constitution, Eighth Amendment.

<sup>11</sup> Stevenson, Megan T., "Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes," *Journal of Law, Economics & Organization*, 2018.

<sup>12</sup> *Moti Ram v. State of M.P.*, (1978) 4 SCC 47.

### 6.3 Access to Legal Representation and Due Process

In **India**, access to legal aid is constitutionally guaranteed (Article 39A) but practically limited. Undertrial prisoners often face prolonged detention due to lack of representation or awareness of their rights. The Supreme Court in *Hussainara Khatoon v. State of Bihar* (1979) emphasized speedy trials as a fundamental right, yet decades later, procedural delays remain endemic.

In the **UK**, legal aid is more structured and publicly funded. However, recent austerity measures and cuts to legal aid budgets have raised concerns about effective access to justice, especially for vulnerable defendants<sup>13</sup>.

The **USA** mandates legal counsel under the Sixth Amendment, but public defenders are often overburdened, under-resourced, and unable to provide effective advocacy. In many cases, defendants waive bail hearings or accept unfavorable plea deals due to inadequate counsel.

### 6.4 Judicial Discretion and Accountability

In **India**, judicial discretion in bail decisions remains broad and often lacks transparency. While the Supreme Court has issued guidelines (e.g., *Arnesh Kumar v. State of Bihar*, 2014) discouraging routine arrests for minor offences, lower courts frequently disregard these directives.

In the **UK**, judges are required to provide written reasons when denying bail. This promotes accountability and enables appellate review. However, remand decisions can still reflect implicit biases, particularly against racial minorities and foreign nationals<sup>14</sup>.

The **US bail system** often places enormous discretionary power in the hands of prosecutors, magistrates, or even algorithms (in jurisdictions using risk-assessment tools). These tools, meant to depoliticize decision-making, have been criticized for replicating historical biases and offering little transparency or due process safeguards.

### 6.5 Impact on Marginalized Communities

In **India**, undertrials from Dalit, Adivasi, and Muslim communities are overrepresented in detention statistics, revealing the intersection of caste, religion, and class discrimination in bail practices<sup>15</sup>.

The **UK** has faced similar criticism, particularly through the 2017 **Lammy Review**, which found that Black defendants are more likely to be remanded in custody than white defendants for similar charges.

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<sup>13</sup> House of Commons Justice Committee, *Impact of Legal Aid Changes*, UK Parliament Report, 2021.

<sup>14</sup> Lammy Review, 2017.

<sup>15</sup> People's Union for Civil Liberties, *Undertrials and the Denial of Justice in India*, 2016

In the USA, race and class strongly correlate with pre-trial detention outcomes. African American and Hispanic defendants face higher bail amounts, lower release rates, and more restrictive conditions than white defendants with similar charges and criminal histories<sup>16</sup>.

## 7. Challenges in Existing Bail Systems

Despite constitutional guarantees and statutory safeguards, the practical implementation of bail laws in India, the United Kingdom, and the United States reveals a spectrum of systemic challenges. These challenges hinder the realization of pre-trial liberty and disproportionately affect marginalized populations. This section explores the most pressing issues across the three jurisdictions, identifying both shared and unique problems in their respective bail systems.

### 7.1 India: Arbitrariness, Delay, and Discrimination

India's bail system is characterized by a paradox: while the legal framework ostensibly supports the protection of personal liberty, its enforcement is deeply flawed.

#### (a) Excessive Judicial Discretion and Lack of Uniform Standards

In non-bailable offences, the granting of bail is largely at the discretion of the judiciary. This discretion, although guided by precedents, often results in inconsistency, arbitrariness, and forum shopping. Lower courts, influenced by public opinion, media pressure, or perceived political ramifications, may deny bail mechanically, particularly in high-profile cases<sup>17</sup>.

#### (b) Delay in Bail Hearings and Overburdened Judiciary

Bail hearings in India are frequently delayed due to overburdened dockets and procedural bottlenecks. In rural and semi-urban areas, magistrates may adjourn bail applications multiple times, resulting in prolonged pre-trial detention. Undertrials often spend more time in jail than the maximum sentence prescribed for the offence.

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<sup>16</sup> Pretrial Justice Institute, *Race and Bail in America*, 2019.

<sup>17</sup> Law Commission of India, Report No. 268, *Amendments to Criminal Procedure Code – Provisions Relating to Bail*, 2017.

### (c) Socio-Economic Disparities and Caste Discrimination

Bail remains effectively inaccessible to the poor, illiterate, and socially disadvantaged. Studies have shown that Dalits, Adivasis, and Muslims are overrepresented in India's undertrial population, highlighting deep-seated systemic discrimination<sup>18</sup>.

### (d) Police Overreach and Non-Compliance with Judicial Guidelines

Despite clear Supreme Court directives in *Arnesh Kumar v. State of Bihar* (2014) and *Satender Kumar Antil v. CBI* (2022), police continue to arrest individuals for offences punishable by less than seven years without adequate justification. The absence of accountability mechanisms for wrongful or excessive detention exacerbates the problem.

## 7.2 United Kingdom: Disparities in Practice and Institutional Overreach

The UK's bail framework is structured and presumption-based, yet its application reveals significant disparities.

### (a) Overuse of Pre-Trial Detention

Despite the presumption in favor of bail, pre-trial remand figures have risen in recent years. The Prison Reform Trust noted a 16% increase in unconvicted prisoners between 2020 and 2022, suggesting growing caution among judges or prosecutorial overreach.

### (b) Racial and Ethnic Disparities

Black and Minority Ethnic (BAME) individuals are disproportionately held on remand, even for minor offences. The Lammy Review (2017) highlighted how systemic biases, cultural misunderstandings, and lack of trust in the justice system contribute to unequal bail decisions.

### (c) Inadequate Legal Support for Vulnerable Defendants

While legal aid is a statutory right in the UK, cuts to funding and staff shortages have reduced its effectiveness. Vulnerable defendants—such as migrants, juveniles, or mentally ill individuals—may fail to navigate the bail process or meet conditions imposed by courts.

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<sup>18</sup> People's Union for Civil Liberties, *Undertrials and the Denial of Justice in India*, 2016.



### 7.3 United States: Cash Bail, Inequality, and Algorithmic Injustice

The American bail system presents some of the most acute challenges, primarily due to its reliance on money bail.

#### (a) Criminalization of Poverty

Cash bail in the U.S. is a principal driver of pre-trial incarceration. Defendants who cannot afford bail remain detained, often for minor, non-violent offences. This creates a de facto two-tier justice system: one for the wealthy, and one for the poor<sup>19</sup>.

#### (b) Racial Inequities in Bail Decisions

African American and Latino defendants are more likely to be given higher bail amounts or denied bail outright compared to white defendants charged with similar crimes. These disparities reflect broader racial biases embedded in law enforcement and prosecutorial practices<sup>20</sup>.

#### (c) Risk Assessment Tools and Algorithmic Bias

Reform efforts have promoted the use of pre-trial risk assessment tools to guide bail decisions. However, critics argue that these algorithms perpetuate existing racial and socioeconomic biases, lack transparency, and are rarely subject to judicial scrutiny.

#### (d) Coercion into Plea Bargains

Pre-trial detention increases the likelihood of coerced guilty pleas, as detained individuals may accept unfavorable deals just to regain their freedom. The economic and psychological pressures of prolonged detention distort the adversarial process and compromise due process rights.

### 7.4 Common Systemic Failures Across Jurisdictions

While each country has unique legal constructs, several **cross-cutting challenges** undermine the effectiveness of bail as a safeguard of liberty:

- **Lack of Enforceable Accountability** for wrongful or excessive detention
- **Poor Legal Aid Infrastructure** and unequal access to representation
- **Inadequate Data Collection** and transparency in bail decisions

<sup>19</sup> Stevenson, Megan T., "Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes," *Journal of Law, Economics & Organization*, 2018.

<sup>20</sup> Pretrial Justice Institute, *Race and Bail in America*, 2019.

- **Overcriminalization and Delay in Judicial Processes**, leading to inflated undertrial populations.

## 8. Proposals for Reform

The bail systems in India, the United Kingdom, and the United States each exhibit systemic failures that undermine the principles of justice, liberty, and equality before law. Addressing these issues requires a combination of legislative reforms, institutional restructuring, judicial training, and community-based innovations. This section presents tailored recommendations for each jurisdiction, followed by broader, cross-jurisdictional proposals.

### 8.1 Reform Proposals for India

India's bail system suffers from delays, discretionary misuse, and socio-economic exclusion.

#### (a) Enforce Supreme Court Guidelines and Expand Statutory Protections

Supreme Court guidelines in *Arnesh Kumar v. State of Bihar* and *Satender Kumar Antil v. CBI* must be codified to ensure nationwide implementation, reducing unnecessary arrests and detentions<sup>21</sup>.

#### (b) Codify Bail Criteria and Limit Judicial Discretion

A uniform checklist of factors—nature of offence, risk of flight, socio-economic status—should be mandated to minimize inconsistent and arbitrary bail rulings<sup>22</sup>.

#### (c) Strengthen Legal Aid and Bail Representation

The Legal Services Authorities Act, 1987 provides a framework, but its practical implementation is weak. Legal aid must be expanded, particularly at the point of first production before a magistrate.

#### (d) Implement Bail Review Mechanisms

Introduce statutory provisions for mandatory bail review every 30–60 days to reduce undertrial overcrowding, in line with UK-style remand review procedures.

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<sup>21</sup> *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273; *Satender Kumar Antil v. CBI*, (2022) 10 SCC 51.

<sup>22</sup> *Law Commission of India, Report No. 268, Amendments to Criminal Procedure Code – Provisions Relating to Bail*, 2017.

## 8.2 Reform Proposals for the United Kingdom

Despite a structured legal framework, the UK needs targeted reforms to address disparities and inefficiencies.

### (a) Monitor and Reduce Discriminatory Bail Decisions

Findings from the Lammy Review highlight persistent racial disparities in bail outcomes, requiring monitoring mechanisms and judicial training on implicit bias.

### (b) Expand and Modernize Legal Aid Access

Legal aid cuts have adversely impacted vulnerable defendants, as noted by the House of Commons Justice Committee<sup>23</sup>. Funding must be restored, and technology used to improve access.

### (c) Prioritize Community-Based Bail Alternatives

Community supervision, electronic tagging, and curfews offer proportionate alternatives to custodial remand for low-risk offenders.

## 8.3 Reform Proposals for the United States

The U.S. must dismantle its wealth-based bail regime and address systemic inequality.

### (a) Abolish Cash Bail for Most Offences

States like Illinois have legislated the abolition of cash bail via the SAFE-T Act (2021), reflecting a national trend toward decarceration<sup>24</sup>. Such models should be expanded federally.

### (b) Regulate or Abandon Risk Assessment Tools

Risk tools such as COMPAS have shown racial bias and lack transparency.<sup>[9]</sup> States should subject them to regular auditing or phase them out in favor of human-guided decisions.

### (c) Enhance Public Defender Capacity

Public defenders handle hundreds of cases, undermining fair bail advocacy. Increased funding and mandatory representation at bail hearings are critical.

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<sup>23</sup> House of Commons Justice Committee, *Impact of Changes to Legal Aid*, UK Parliament, 2021.

<sup>24</sup> SAFE-T Act (Illinois), Public Act 101-0652 (2021); National Conference of State Legislatures, "Pretrial Release Laws," 2023.

#### **(d) Encourage Federal Guidelines and Oversight**

While bail is state-regulated, federal financial incentives (e.g., through DOJ grants) can promote model bail practices across jurisdictions<sup>25</sup>.

### **8.4 Cross-Jurisdictional Recommendations**

#### **(a) Treat Pre-Trial Detention as a Last Resort**

All jurisdictions should incorporate the ICCPR standard that detention must be “exceptional and necessary.

#### **(b) Mandate Timely Bail Hearings and Reviews**

Timeliness reduces wrongful detention. A 48-hour window for bail hearings aligns with international due process norms.

#### **(c) Develop Open-Access Bail Data Systems**

Publishing anonymized bail data increases transparency and public trust. The UK Ministry of Justice began this under the “Race and the Criminal Justice System” initiative.

#### **(d) Empower Civil Society and Judicial Training**

NGOs and law schools should participate in court monitoring. Judges and magistrates must be trained in rights-based, culturally sensitive bail practices<sup>26</sup>.

## **9. International Human Rights Standards**

The right to liberty and the presumption of innocence are enshrined in a range of international human rights instruments. These standards establish pre-trial detention as an exceptional measure and underscore the obligation of states to ensure fair, timely, and non-discriminatory access to bail. However, the gap between international norms and domestic implementation remains significant in many jurisdictions, including India, the United Kingdom, and the United States.

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<sup>25</sup> Bureau of Justice Assistance, “Pretrial Justice Reform Toolkit,” U.S. DOJ, 2022.

<sup>26</sup> International Commission of Jurists, *Judicial Training on Bail and Pretrial Rights*, 2019.

## 9.1 Core International Instruments

### (a) Universal Declaration of Human Rights (UDHR), 1948

Article 9 of the UDHR declares that "No one shall be subjected to arbitrary arrest, detention or exile," while Article 11(1) provides that "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty<sup>27</sup>. Although not legally binding, the UDHR serves as a foundational text for international legal development and national constitutions.

### (b) International Covenant on Civil and Political Rights (ICCPR), 1966

The ICCPR, a binding treaty ratified by both India and the UK (though only partially adopted by the U.S.), is the most authoritative legal framework on bail-related rights:

- **Article 9(3):** "It shall not be the general rule that persons awaiting trial shall be detained in custody."
- **Article 14(2):** Reinforces the presumption of innocence.

The UN Human Rights Committee (UNHRC) has emphasized in General Comment No. 35 that pre-trial detention must be an "exceptional measure" and only applied when strictly necessary to prevent flight, interference with evidence, or recurrence of crime<sup>28</sup>.

### (c) Convention Against Torture (CAT), 1984

Article 2(1) of the CAT obligates states to prevent acts of torture, including conditions of pre-trial detention that are cruel or degrading. Prolonged or arbitrary detention without trial can amount to psychological abuse, especially in overcrowded or inhumane prison systems.

## 9.2 Regional Human Rights Instruments

### (a) European Convention on Human Rights (ECHR), 1950

Under **Article 5(3)** of the ECHR, ratified by the UK:

"Everyone arrested or detained... shall be entitled to trial within a reasonable time or to release pending trial."

The European Court of Human Rights (ECtHR) has repeatedly held that pre-trial detention must be justified by concrete evidence and regularly reviewed by judicial authorities.<sup>4</sup> In *Letellier v. France*, the Court noted that preventive detention solely based on the gravity of charges violates Article 5<sup>29</sup>.

<sup>27</sup> Universal Declaration of Human Rights, 1948, Articles 9 and 11(1).

<sup>28</sup> UN Human Rights Committee, General Comment No. 35, CCPR/C/GC/35, December 2014.

## **(b) American Convention on Human Rights (ACHR), 1969**

Though not applicable to the U.S. due to its refusal to ratify, the ACHR reiterates that preventive detention should not be used as a punitive tool. The Inter-American Court of Human Rights has emphasized that pre-trial detention must be strictly necessary and proportionate.

## **9.3 International Guidelines and Soft Law**

Several international guidelines, while not legally binding, offer best practices on bail and pre-trial liberty:

### **(a) United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules, 1990)**

Rule 6.1 encourages the use of non-custodial measures “at pre-trial stages wherever appropriate.” Bail, supervision, and recognizance are all identified as preferred alternatives to custody<sup>30</sup>.

### **(b) United Nations Rules for the Treatment of Women Prisoners (Bangkok Rules, 2010)**

Recognizing the gendered impact of detention, Rule 57 calls for non-custodial measures for women wherever possible, especially those with dependents<sup>31</sup>. This is particularly relevant for bail policy affecting pregnant or single mothers.

### **(c) Mandela Rules (UN Standard Minimum Rules for the Treatment of Prisoners, 2015)**

While primarily focused on detention conditions, the Mandela Rules reinforce the principle that pre-trial detainees are *not* to be treated as convicted prisoners and must be held separately with full legal rights.

## **9.4 Compliance by India, UK, and USA**

Despite international commitments, all three countries fall short in key areas:

- **India** has ratified the ICCPR and CAT but has a persistently high number of undertrials (over 75% of total prisoners in 2023). Delays, lack of legal aid, and police non-compliance with guidelines violate Article 9 of the ICCPR<sup>32</sup>.

<sup>29</sup> *Letellier v. France*, App. No. 12369/86, ECHR Judgment, 1991.

<sup>30</sup> *United Nations, Standard Minimum Rules for Non-custodial Measures (Tokyo Rules)*, 1990.

<sup>31</sup> *United Nations, Bangkok Rules on Women Prisoners*, 2010, Rule 57.

<sup>32</sup> *National Crime Records Bureau (India), Prison Statistics India*, 2023.

- **The UK**, while largely compliant, has faced criticism for racial disparities in pre-trial detention and rising remand rates, which may contravene ECHR Article 5 obligations unless strictly justified.
- **The USA** has not ratified the ICCPR's Optional Protocol or the ACHR, and its cash bail system disproportionately affects racial minorities and low-income defendants. These practices raise serious concerns under Article 9 of the ICCPR and have been criticized in multiple UN Human Rights Council reviews.

### 9.5 Recommendations Based on International Standards

- **Codify Bail as a Right:** Domestic laws should affirm bail as the default, with detention as an exception, in line with ICCPR standards.
- **Periodic Review Mechanisms:** Every case of pre-trial detention should be reviewed regularly, as required under ECHR jurisprudence.
- **Data Transparency and Monitoring:** States should collect and publish data on pre-trial detention to assess compliance with equality and non-discrimination norms.
- **Training for Judges and Prosecutors:** Human rights-based training must be institutionalized to reduce unconscious bias and promote proportional decision-making.

## 10. Conclusion

Pre-trial liberty is not merely a procedural right but a substantive guarantee of justice and dignity. Across India, the UK, and the USA, bail systems need urgent recalibration to eliminate wealth-based, racial, and systemic discrimination. The need is for a **human rights-oriented, transparent, and equitable** bail mechanism that balances liberty with legitimate state interests.

Only then can the legal promise of “innocent until proven guilty” be genuinely upheld.