

# CONCEPT OF BAILABLE AND NON-BAILABLE OFFENCES UNDER BNS & BNSS

Anis Sirajbhai Vahora  
Research Scholar, Faculty of Law  
Monark University, Vahelal, Ahmedabad, Gujarat, India

Dr. Kinjal Patel  
Assistant Professor, Faculty of Law  
Monark University, Vahelal, Ahmedabad, Gujarat, India

## ABSTRACT

The concept of bail is a fundamental aspect of criminal jurisprudence, ensuring a balance between individual liberty and societal interests. With the introduction of the Bharatiya Nyaya Sanhita, 2023 (BNS) and Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), India has restructured its criminal law framework, replacing the Indian Penal Code, 1860 and Code of Criminal Procedure, 1973. This paper critically examines the concept of bailable and non-bailable offences under the new legal regime. It explores statutory provisions, judicial interpretations, and the impact of these classifications on the rights of the accused. The study aims to analyze whether the new laws strengthen procedural fairness and ensure timely justice.

**Keywords:** Bail, Bailable Offences, Non-Bailable Offences, BNSS, BNS, Criminal Justice System, Personal Liberty

## 1. INTRODUCTION

Bail serves as a mechanism to secure the release of an accused person awaiting trial, ensuring their presence in court without unnecessary detention. The principle is deeply rooted in the presumption of innocence until proven guilty. The classification of offences into bailable and non-bailable plays a crucial role in determining the rights of the accused and the powers of law enforcement agencies.

With the enactment of the Bharatiya Nyaya Sanhita (BNS) and Bharatiya Nagarik Suraksha Sanhita (BNSS), significant procedural reforms have been introduced. These laws aim to modernize the criminal justice system while retaining core principles such as fairness, justice, and protection of individual rights.

## 2. MEANING OF BAIL

Bail refers to the temporary release of an accused person from custody, subject to certain conditions, ensuring their appearance before the court. It reflects the legal philosophy that detention should not be punitive before conviction.

## 3. BAILABLE OFFENCES UNDER BNSS

Bailable offences are those in which bail is granted as a matter of right. Under BNSS, if a person is accused of a bailable offence, the police officer or the court is bound to release the accused upon furnishing bail.

### 3.1 Features of Bailable Offences:

- Bail is a matter of right
- Police officer can grant bail
- Generally involves less serious crimes
- No extensive judicial discretion required

### **3.2 Examples under BNS:**

- Minor theft
- Simple hurt
- Defamation

These offences typically involve lesser punishment and do not pose a serious threat to society.

### **4. NON-BAILABLE OFFENCES UNDER BNSS**

Non-bailable offences are more serious in nature, and bail is not granted as a matter of right. Instead, it is subject to the discretion of the court.

#### **4.1 Features of Non-Bailable Offences:**

- Bail is not a right but a privilege
- Only courts can grant bail
- Involves serious crimes
- Judicial discretion plays a crucial role

#### **4.2 Examples under BNS:**

- Murder
- Rape
- Kidnapping
- Dowry death

In such cases, courts consider factors such as gravity of offence, evidence, and likelihood of the accused absconding.

### **5. LEGAL PROVISIONS UNDER BNSS**

The BNSS provides detailed provisions regarding bail:

- **Right to bail in bailable offences**
- **Discretionary bail in non-bailable offences**
- **Anticipatory bail provisions**
- **Conditions for granting bail**
- **Cancellation of bail**

The law ensures that procedural safeguards are maintained while dealing with the liberty of individuals.

### **6. JUDICIAL APPROACH TO BAIL**

Indian judiciary has consistently emphasized that “bail is the rule and jail is the exception.”

Courts have highlighted the importance of personal liberty under Article 21 of the Constitution.

Key considerations include:

- Nature and gravity of offence
- Severity of punishment
- Possibility of tampering with evidence
- Risk of fleeing from justice

### **7. COMPARATIVE ANALYSIS: BNSS VS CrPC**

The BNSS largely retains the structure of the CrPC but introduces reforms such as:

- Streamlined procedures
- Increased use of technology
- Faster processing of bail applications
- Emphasis on victim rights

However, the core distinction between bailable and non-bailable offences remains unchanged.

## 8. ISSUES AND CHALLENGES

- Delay in disposal of bail applications
- Misuse of discretion in non-bailable offences
- Overcrowding of prisons due to undertrial prisoners
- Lack of awareness among accused persons

## 9. FINDINGS

- The classification of offences is essential for maintaining judicial balance
- BNSS retains traditional principles but improves procedural efficiency
- Judicial discretion remains a critical factor in non-bailable cases
- Need for uniform guidelines in granting bail

## 10. SUGGESTIONS

- Speedy disposal of bail applications
- Legal awareness programs for citizens
- Use of digital platforms for bail procedures
- Clear judicial guidelines to avoid arbitrariness

## 11. CONCLUSION

The concept of bailable and non-bailable offences continues to play a vital role in the Indian criminal justice system under the new framework of BNS and BNSS. While the reforms aim to enhance efficiency and transparency, the success of these provisions depends largely on their implementation. Ensuring a balance between individual liberty and societal security remains the cornerstone of bail jurisprudence.

## REFERENCES

1. Bharatiya Nagarik Suraksha Sanhita, 2023
2. Bharatiya Nyaya Sanhita, 2023
3. Constitution of India, Article 21
4. Law Commission of India Reports on Bail Reforms
5. K.N. Chandrasekharan Pillai, *Criminal Procedure*, Eastern Book Company