



The Disparity In Bail Matters, A Critical Analysis Of Approach Adopted By Courts In Dealing With Bail Matters

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ABSTRACT

Bail constitutes a vital safeguard within the criminal justice system, embodying both the presumption of innocence and the protection of personal liberty. In India, however, the bail framework displays pronounced inconsistencies, heavy dependence on subjective judicial discretion, and structural inequalities that disproportionately burden economically and socially vulnerable groups. This study critically evaluates the statutory foundation, judicial trends, and persistent challenges in India's bail regime, demonstrating how the existing legal architecture frequently struggles to balance individual freedoms with legitimate concerns of public interest.¹

The paper analyzes key constitutional and judicial interventions—particularly those of the Supreme Court—that aim to curb arbitrary arrests and promote a liberty-centric approach to bail.² It also examines recent legislative proposals, such as the *Bharatiya Nagarik Suraksha Sanhita, 2023* (BNSS) and suggestions for a dedicated Bail Act, to assess their potential contribution toward modernizing and rationalizing bail jurisprudence.³ By identifying systemic shortcomings—including prolonged pre-trial detention, inadequate access to legal aid, procedural delays, and the restrictive bail conditions embedded in certain special statutes—the research highlights the urgent need for comprehensive reform.⁴

The study proposes a multidimensional strategy for strengthening bail processes: legislative codification, wider adoption of non-custodial alternatives, more robust legal aid mechanisms, enhanced judicial accountability, and greater public awareness. It concludes that substantive reform of bail laws is indispensable for upholding constitutional guarantees, minimizing unnecessary incarceration, and creating a more just and efficient criminal justice system in India.⁵

KEYWORDS: Bail Law, Criminal Justice, Personal Liberty, Undertrial Prisoners, Judicial Discretion, Criminal Procedure Code, Bail Reform, Constitutional Rights, Pre-trial Detention, Legal Aid, Public Interest.

INTRODUCTION

Bail occupies a central position within India's criminal justice system as it mediates between the individual's fundamental right to liberty and the State's obligation to ensure effective law enforcement, public safety, and the integrity of judicial proceedings. While bail is rooted in the constitutional presumption that every accused person is innocent until proven guilty, its implementation in India has often been criticized for inconsistency, arbitrariness, and unequal impact on disadvantaged communities.⁶

A substantial portion of India's prison population comprises undertrial prisoners—many accused of minor offences and incarcerated solely because they cannot secure bail or afford legal representation. Chronic delays in investigation, infrequent bail hearings, and congested prison conditions raise serious questions about fairness, access to justice, and the rationale behind pre-trial detention.⁷

The absence of a uniform bail statute, combined with broad judicial discretion and stringent bail requirements contained in special legislations such as the *Unlawful Activities (Prevention) Act* (UAPA) and the *Narcotic Drugs and Psychotropic Substances Act* (NDPS Act), has further complicated the landscape.⁸ Although judicial interventions—most notably in *Hussainara Khatoon*,⁹ *Satender Kumar Antil v. CBI*,¹⁰ and other landmark decisions—have sought to mitigate these issues, systemic reform remains overdue.

This paper provides an analytical overview of India's bail laws, their implications for undertrial detention, and recent judicial and legislative developments. It also explores comparative perspectives and proposes reforms aimed at building a more transparent, rights-oriented, and efficient bail system capable of striking an appropriate balance between personal liberty and societal interests.¹¹

Disparity in Bail Matters.

The Supreme Court has repeatedly reaffirmed the principle that bail is the rule and imprisonment is the exception, grounding this doctrine in constitutional commitments to personal liberty. A foundational articulation of this idea appears in *State of Rajasthan v. Balchand*, where Justice Krishna Iyer famously underscored that detention must remain strictly a measure of last resort.¹² This decision has since become a cornerstone of bail jurisprudence.

A similar emphasis on liberty emerged in *Hussain Ara Khatoon v. State of Bihar*, where the Court expressed deep concern over the plight of undertrial prisoners who had remained incarcerated for years without adjudication. The ruling catalysed the release of numerous detainees and highlighted the systemic failures that lead to prolonged pre-trial detention.

In *Sanjay Chandra v. CBI*, the Court further clarified that even economic offences do not justify routine incarceration.¹³ The judgment stressed that the gravity of the allegation cannot, by itself, override the constitutional value placed on freedom, especially when the accused poses no demonstrable risk of absconding or obstructing justice.

Likewise, the Court's decision in *Arnesh Kumar v. State of Bihar*¹⁴ sought to curb the widespread misuse of arrest powers. The judgment directed the police to avoid unnecessary arrests and instructed magistrates to examine whether custodial detention was indeed warranted—an approach that remains relevant under the newer provisions of the *Bharatiya Nyaya Sanhita* (BNS). Courts are thus expected to carefully evaluate the necessity of detention before depriving any individual of liberty.

Recent high-profile matters involving political figures have brought renewed public attention to the uneven application of bail principles. For example, Arvind Kejriwal's arrest in 2014 in a defamation case, followed by his subsequent arrest in the Delhi Excise Policy matter, raised questions regarding the interplay between political narratives and judicial discretion.¹⁵ While he ultimately secured bail in the excise policy case, the litigation spotlighted the growing trend of criminal law being drawn into political controversies.

Similarly, Manish Sisodia's bail plea in the same excise policy investigation was rejected, with courts expressing concern that his stature could enable interference with witnesses or destruction of evidence.¹⁶ The decision triggered widespread debate on whether the presumption that bail should be the norm is applied differently in politically sensitive contexts.

In another related instance, K. Kavitha's attempt to seek anticipatory bail under the erstwhile Section 438 CrPC reflected the broader pattern wherein politically exposed individuals seek protection from arrest, particularly when allegations appear intertwined with political rivalry.¹⁷ The court, however, refused to extend the benefit of ordinary exceptions applicable to women in bail matters, emphasizing that such relief cannot be claimed mechanically.

Parallel controversies have surrounded Satyendra Jain, whose bail applications in a money-laundering case were repeatedly rejected because courts feared that his influence could compromise the investigation. The Supreme Court eventually granted him limited relief, but only after prolonged litigation, noting that personal liberty cannot be curtailed indefinitely absent substantive justification.

DK Shivakumar's case reflects a similar trajectory. Arrested in 2019 on money-laundering allegations, he was denied bail multiple times and remained in custody for over 50 days before the High Court released him, reiterating that pre-trial detention must not serve punitive purposes.¹⁸

Humanitarian considerations have also shaped recent bail decisions. *P. Varavara Rao v. NIA* involved an elderly activist imprisoned under the UAPA in the Bhima Koregaon case.¹⁹ After more than two years in custody, the Bombay High Court granted him bail on medical grounds, recognising that personal liberty and human dignity must remain central even in cases involving stringent special statutes.

The arrest of journalist Prabir Purkayastha under the UAPA, allegedly for receiving foreign funds to propagate pro-China narratives, reignited debates on the use of severe laws to curb dissent. His repeated bail denials prompted concerns about the suppression of press freedom.²⁰ Similarly, Sanjay Raut's eventual release in a money-laundering case affirmed judicial recognition that prolonged incarceration without trial is fundamentally incompatible with constitutional guarantees.

Perhaps no recent case drew as much public scrutiny as the arrest of Aryan Khan. Despite the absence of any recovery of narcotics and no evidence linking him to drug consumption or trafficking, his bail was repeatedly refused, raising serious questions about the arbitrary exercise of judicial discretion.²¹ The Bombay High Court's eventual grant of bail underscored the imperative of ensuring that accusations unsupported by material evidence must not justify continued detention.

The experience of Rhea Chakraborty, who endured multiple bail rejections in a drug-related matter linked to the death of actor Sushant Singh Rajput, further illustrates how media-driven public opinion can influence legal processes.²² Her eventual release by the Bombay High Court reaffirmed that bail cannot be denied on speculative or insufficient grounds.

Disparities in the bail system become even more evident when comparing such cases with instances like Arnab Goswami's, where the Supreme Court convened a special sitting on a non-working day to urgently

hear and grant his bail petition.²³ This expedited treatment contrasts sharply with cases such as that of Umar Khalid, whose bail plea—despite being grounded in constitutional rights—was adjourned repeatedly, ultimately prompting him to withdraw the application after more than a dozen delays.²⁴ Such inconsistencies have fueled growing demands for a comprehensive and uniform bail legislation to ensure equal protection of personal liberty.

Courts, however, also face legitimate concerns regarding the possibility of an accused absconding, influencing witnesses, or tampering with evidence. This tension was evident in the case of former Union Minister P. Chidambaram, where the Delhi High Court refused bail based on apprehensions that his position might enable interference in the investigative process. Although the prosecution could not substantiate these concerns convincingly, the court nonetheless prioritized the perceived risks.²⁵

At the same time, the Supreme Court's remarks in the Arnab Goswami case show the judicial commitment to ensuring that liberty is not unjustifiably curtailed. The broader debate, however, remains unresolved: although the doctrine that bail is the rule is doctrinally well-established, its practical application varies widely, influenced by the nature of the offence, the profile of the accused, and public sentiment.

The underlying legal foundation for bail stems from the Constitution itself. Article 21 guarantees that no person shall be deprived of life or personal liberty except through procedures established by law—a safeguard that prohibits indefinite detention and mandates a speedy trial. Article 22(1) further ensures that every arrested individual has the right to consult and be defended by a legal practitioner of their choice.

Statutorily, bail in India is governed by Chapter XXXIII of the Code of Criminal Procedure, 1973 (Sections 436–450), which delineates the procedures for granting bail and executing bonds. Offences are classified into bailable and non-bailable categories: the former empowers police authorities to release the accused upon furnishing a bond, whereas the latter vests the discretion exclusively in the courts.

LEGAL FRAMEWORK

India's bail structure is primarily governed by the Code of Criminal Procedure, 1973 (CrPC), supported by constitutional protections and shaped extensively through judicial interpretation. Although intended to safeguard liberty while maintaining orderly criminal proceedings, the framework often raises concerns relating to inconsistency, over-breadth, and structural bias, especially in the context of prolonged undertrial detention.

1. Classification of Offences: Bailable vs. Non-Bailable

The CrPC categorizes offences into bailable and non-bailable, determining the degree of entitlement to bail. Under Section 436 CrPC, bail in bailable offences is a legal right, requiring the police or the magistrate to release the accused upon furnishing appropriate sureties. These offences typically involve minor infractions such as simple hurt or nuisance.

In contrast, Section 437 CrPC governs non-bailable offences, where the right to bail is not automatic. Judicial discretion plays a decisive role, and courts must consider factors such as the seriousness of allegations, the accused's antecedents, risk of flight, and the likelihood of influencing witnesses or tampering with evidence.

2. Powers of Higher Courts under Sections 438 and 439 CrPC

Sections 438 and 439 of the CrPC vest significant bail-related powers in the Sessions Courts and High Courts. Section 439 authorizes higher courts to grant, modify, or cancel bail, with a wider scope of discretion compared to magistrates.

Section 438 introduces anticipatory bail, enabling individuals to seek protection from arrest when they reasonably apprehend being accused of a non-bailable offence. When deciding such pleas, courts must ensure that the remedy is not misused to obstruct investigation yet remains available to prevent arbitrary arrest.

3. Default Bail under Section 167(2)

Section 167(2) CrPC provides an important procedural safeguard—default bail—wherein an accused becomes entitled to bail if the police fail to file the charge sheet within 60 or 90 days (depending on the seriousness of the offence). This provision acts as a constitutional check on prolonged, unjustified detention and reinforces the principle that liberty cannot be curtailed without timely prosecution.

4. Stringent Bail Provisions under Special Statutes

Several special legislations significantly curtail ordinary bail rights. Under Section 43D(5) UAPA, bail may be denied if the court perceives *prima facie* material against the accused. Section 37 of the NDPS Act imposes similarly restrictive conditions, requiring courts to be satisfied that the accused is not guilty and unlikely to commit future offences. The Prevention of Money Laundering Act (PMLA) introduces “twin conditions,” making bail even harder to obtain.

These provisions depart sharply from the presumption of innocence and have often led to prolonged incarceration in politically sensitive and high-profile cases.

5. Constitutional Principles and Their Judicial Application

Article 21 of the Constitution forms the bedrock of bail jurisprudence by guaranteeing the right to life and personal liberty. The Supreme Court emphasized in *Hussainara Khatoon v. State of Bihar* that delayed trials and unnecessary detention violate Article 21. More recently, in *Satender Kumar Antil v. CBI* (2022), the

Court issued comprehensive guidelines aimed at preventing mechanical arrests and promoting uniformity in bail decisions, reiterating that arrest should not be the default response to the filing of a criminal case.

6. Shortcomings in the Current Structure

Despite constitutional protections, the bail system faces persistent challenges: broad judicial discretion often leads to inconsistent decisions; socio-economic inequalities continue to disadvantage the poor; and stringent provisions in special statutes erode the presumption of innocence. The absence of a dedicated bail code contributes to regional disparities and unpredictable outcomes.

JUDICIAL APPROACH

The judiciary has been instrumental in shaping India's bail jurisprudence, particularly through expansive interpretation of Article 21. While statutes lay down procedural rules, judicial decisions supply the normative framework for balancing liberty with the needs of criminal justice.

1. Liberty as the Norm and the Presumption of Innocence

Indian courts have long held that bail should be the rule and incarceration the exception. This principle was clearly articulated in *State of Rajasthan v. Balchand* (1977), where Justice Krishna Iyer emphasized that denial of bail must be justified by compelling circumstances. The Supreme Court's intervention in *Hussainara Khatoon* (1979) further reinforced that unnecessary detention and delays violate the right to a speedy trial.

2. Expansion of Bail Jurisprudence in Modern Cases

In recent times, the judiciary has responded to growing concerns about arbitrary arrests and over-reliance on pre-trial detention. In *Arnesh Kumar v. State of Bihar* (2014), the Court insisted that arrests under Section 498A IPC should not be automatic and mandated compliance with the necessity test in Section 41 CrPC.

The decision in *Satender Kumar Antil v. CBI* (2022) marked another major step, providing detailed guidelines for reducing unnecessary arrests and ensuring a consistent, rights-oriented approach to bail.

3. Deference to Restrictive Bail Clauses in Special Laws

Despite its liberal stance in general bail matters, the judiciary has often adopted a restrained approach in cases under special statutes. In *NIA v. Zahoor Ahmad Shah Watali* (2019), the Supreme Court upheld stringent UAPA bail standards, requiring courts to form a *prima facie* view of guilt. Similar judicial reluctance is evident in NDPS and PMLA cases, where statutory presumptions and "twin conditions" significantly raise the threshold for bail.²⁶

4. Delays in Bail Adjudication

Judicial delays constitute a major obstacle to accessing bail. In *Supreme Court Legal Aid Committee v. Union of India* (1994), the Court acknowledged that procedural backlog often results in prolonged incarceration of undertrials. The Supreme Court has since stressed the need for timely hearings and, in some cases, has suggested that bail should follow automatically when maximum permissible detention under Section 167(2) is reached.²⁷

5. Socio-Economic Disparities in Bail Decisions

Courts have recognized that socio-economic factors influence bail outcomes, with the indigent often unable to furnish surety bonds or engage competent legal representation. Although some judicial pronouncements have attempted to relax surety requirements for the poor, such measures are inconsistent and depend heavily on individual judicial discretion.

6. Judicial Endorsement of Systemic Bail Reform

Over the years, courts have repeatedly called for comprehensive bail reform, recommending a separate Bail Act, wider use of non-custodial alternatives, and technological improvements to streamline processes. The judiciary has emphasized that arrest should not serve as a punitive measure and must be justified by objective criteria.

CRITICAL ISSUES

Despite the evolution of legal principles and judicial efforts, India's bail system continues to grapple with deep-rooted structural, procedural, and socio-economic challenges. These issues disproportionately harm vulnerable populations and undermine the promise of equal access to justice. The most urgent concerns requiring reform include—

1. Prolonged Undertrial Detention

A persistent flaw in India's criminal justice mechanism is the overwhelming number of individuals awaiting trial. NCRB statistics indicate that more than three-fourths of inmates are undertrials, many accused of petty offences and held for long durations due to procedural inefficiencies or inability to furnish bail. Such detention not only infringes the fundamental right to personal liberty under Article 21 but also intensifies prison overcrowding, compromising dignity and basic human rights.

2. Socio-Economic Disparities and Unequal Impact

Bail decisions frequently mirror socio-economic and caste-based inequities. Persons from marginalized backgrounds—particularly Dalits, Adivasis, and the economically weak—encounter systemic challenges in meeting bail prerequisites. Requirements such as financial sureties or personal bonds disproportionately

burden individuals without stable income, formal documentation, or supportive networks. This entrenches a dual system wherein affluent accused secure release with ease, while indigent persons face prolonged incarceration prior to conviction.

3. Excessive Judicial Discretion and Inconsistent Outcomes

The absence of a unified statutory framework on bail has resulted in wide variations in judicial reasoning across courts. While discretion is indispensable, its unregulated use often yields unpredictable and inconsistent decisions. Cases with similar facts may culminate in sharply divergent results depending on the concerned judge, jurisdiction, or quality of legal counsel, thereby eroding public trust in the credibility and uniformity of the justice system.

4. Misuse of Arrest Powers by Police Authorities

Arrests, particularly in non-bailable or politically sensitive matters, are often executed mechanically rather than based on necessity. Despite the Supreme Court's directions in *Arnesh Kumar v. State of Bihar*, police officers frequently fail to justify the grounds for arrest, and magistrates do not always scrutinize these justifications rigorously. This contributes to needless pre-trial detention, judicial backlog, and violations of individual freedom. The continued use of arrest as an instrument of coercion remains a troubling reality.

5. Stringent Bail Barriers Under Special Laws

Special legislations such as the UAPA, NDPS Act, and PMLA impose onerous bail thresholds. Provisions involving "twin conditions" and presumptions of guilt at the bail stage effectively shift the burden onto the accused, compelling them to demonstrate innocence even before trial. These stringent conditions have been criticized for enabling prolonged detention, particularly affecting activists, minorities, and political dissenters.

6. Delay in Hearing Bail Applications

The excessive workload of courts, especially at the district and sessions levels, often delays the adjudication of bail pleas. Instances where undertrials spend more time in custody than the maximum statutory punishment for their alleged offence are not uncommon. Such delays undermine the essential purpose of bail and disproportionately harm those lacking competent legal assistance.

7. Lack of a Comprehensive Bail Legislation

Unlike jurisdictions such as the United Kingdom, India does not possess a standalone Bail Act. Reliance on dispersed provisions within the CrPC, combined with intersecting special statutes, creates ambiguity and procedural inconsistency. A dedicated bail statute would help standardize criteria, curtail arbitrary exercises of discretion, and offer clarity to courts, police, and litigants.

8. Limited Use of Non-Custodial Alternatives

Mechanisms such as personal bonds, community supervision, electronic monitoring, and conditional bail remain underutilized in India. These alternatives could protect individual liberty while addressing societal interests, especially in cases involving low-risk or first-time offenders. However, inadequate infrastructure, minimal policy guidance, and limited awareness have constrained their practical adoption.

9. Weak Enforcement of Judicial Guidelines

Although higher courts have framed progressive directives safeguarding personal liberty, implementation at the grassroots level continues to fall short. Lack of adequate training and resources for magistrates and police officers widens the gap between legal doctrine and actual practice, impeding meaningful bail reform.

RECENT DEVELOPMENTS AND PROPOSED REFORMS

Growing concern over access to justice and undertrial rights has prompted both judicial and legislative actors to re-evaluate India's bail architecture. The past few years have seen significant interventions, committee recommendations, and reform proposals recognizing that an effective bail system is vital to preventing arbitrary deprivation of liberty.

1. Supreme Court's Liberty-Oriented Interventions

In *Satender Kumar Antil v. CBI* (2022), the Supreme Court advanced a crucial shift in bail jurisprudence by elaborating guidelines aimed at reducing unnecessary arrests and ensuring principled bail decisions. The Court stressed strict adherence to Sections 41 and 41A CrPC and called for rigorous judicial scrutiny of remand requests. It also urged the government to consider enacting a dedicated bail law to address inconsistencies inherent in the current CrPC scheme.

2. Law Commission's Draft Bail Act (2023)

The Law Commission's 2023 recommendations propose a structured and comprehensive Bail Act modelled partly on the UK's Bail Act, 1976. The draft seeks to minimize discretion, introduce risk-based assessment, mandate speedy bail hearings, encourage non-monetary bail options, and guard against discrimination based on socio-economic status.

3. Criminal Law Reforms under the BNSS, 2023

The *Bharatiya Nagarik Suraksha Sanhita* (BNSS), enacted to replace the CrPC, incorporates certain procedural simplifications, including reduced reliance on arrest for minor offences and greater use of

summons. However, scholars argue that it still falls short of establishing bail as an enforceable right or rectifying deep-rooted inequalities within the system.

4. Technological and Digital Court Innovations

Initiatives such as video-conferencing, e-courts, and digital bail applications in select states have expedited hearings and improved accessibility. Coupled with administrative reforms like dedicated fast-track bail courts, these innovations hold potential for reducing delays and assisting undertrial inmates.

5. Growing Judicial Preference for Non-Custodial Measures

Courts are increasingly considering alternatives such as recognizance bonds, electronic monitoring, periodic reporting to police stations, and conditional supervision for minor or first-time offenders. Although permissible under law, these options have historically been underused; recent discourse reflects a renewed commitment to leveraging them.

6. NALSA's Legal Aid Interventions

NALSA has expanded its support for undertrials through prison legal aid clinics and special bail camps, aiming to ensure that individuals from weaker socio-economic backgrounds are not denied liberty due to lack of representation or awareness.

7. Civil Society's Push for Structural Reform

Civil society groups and legal academics have consistently advocated decriminalization of minor offences, capacity building for police and judiciary, standardized bail documentation, and the establishment of dedicated bail benches.

8. Critical Appraisal of Recent Changes

Despite these promising developments, significant challenges persist. Implementation gaps, limited empirical evaluation, and lack of transformative legislative action—particularly within the BNSS—continue to restrict meaningful progress.

RECOMMENDATIONS

A holistic reform strategy is essential to create a fair and predictable bail system.

A standalone Bail Act is imperative to consolidate existing principles, reduce arbitrary discretion, and clearly articulate grounds for granting or denying bail. Drawing on global models, such legislation should enshrine the presumption of innocence and make bail the default for non-serious offences, unless concrete risks—such as flight or interference with evidence—are established.

The adoption of non-custodial alternatives must be prioritized. Personal bonds, electronic monitoring, conditional release, and supervised programs can significantly ease prison congestion while preserving public safety. Such approaches are especially critical for vulnerable categories like first-time offenders, women, juveniles, and those charged with non-violent offences.

Arrest procedures need urgent rationalization. Routine or punitive arrests, despite judicial safeguards under Sections 41 and 41A CrPC, continue to be prevalent. Strengthening training programs for police personnel and ensuring vigilant judicial oversight of remand requests are essential steps.

Enhanced legal aid mechanisms—including prison legal clinics, simplified bail forms, multilingual resources, and fast-track bail courts—are crucial to empowering marginalized undertrials. Equally, specialized bail courts or designated bail benches can mitigate delays.

Special statutes such as the UAPA, NDPS Act, and PMLA require legislative reconsideration to restore judicial discretion and align bail practices with constitutional guarantees.

Uniform bail guidelines across jurisdictions, systematic judicial training on constitutional values, and greater data transparency—through a centralized digital tracking system for bail decisions—are critical for accountability.

Public awareness campaigns and police sensitization programs can shift entrenched attitudes treating bail as a privilege rather than a right. Bail orders must be reasoned, reviewable, and subject to automatic higher-level scrutiny in cases of prolonged detention.

Overall, reforming India's bail regime is an urgent constitutional obligation aimed at ensuring that detention remains an exception rather than the norm.

CONCLUSION

India's bail system is undergoing an important moment of introspection. Despite constitutional promises of liberty and the presumption of innocence, the lived reality of thousands of undertrials reflects a profound disconnect between principle and practice. Overcrowded prisons, prolonged pre-trial detention, and inequitable access to justice have eroded public faith in the system.

The current bail framework, shaped by scattered CrPC provisions and uneven judicial interpretations, is marked by inconsistency and socio-economic bias. Although recent judicial interventions, policy recommendations, and proposed legislative reforms acknowledge these structural shortcomings, meaningful change depends on sustained legislative action and implementation.

A reimagined bail system must be grounded in fairness, equality, and proportionality. Ensuring access to non-custodial alternatives, enforcing accountability in police and judicial decision-making, strengthening legal aid, and instituting a comprehensive Bail Act are crucial components of this transformation. Ultimately, the credibility of the justice system is measured by how it treats the most vulnerable. A humane and transparent bail regime that places liberty at its core will not only reduce unnecessary incarceration but also reaffirm India's foundational commitment to justice and the rule of law.

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