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With this thought, we hereby present to you

# **REASSESSING THE BURDEN OF PROOF: CRIMINAL HISTORIES AND JUDICIAL DISCRETION IN INDIA'S LEGAL SYSTEM**

AUTHORED BY - B VETRIVEL

## **Abstract**

This paper critically examines the evolving role of criminal antecedents within India's criminal justice system, with a particular focus on their influence over bail decisions and the foundational principle of the presumption of innocence. In recent years, Indian courts have increasingly mandated the disclosure of an accused's prior criminal history during bail proceedings, reflecting a judicial trend toward greater transparency and risk assessment. However, this shift raises pressing concerns regarding the potential erosion of constitutional safeguards, especially the burden of proof, which traditionally rests with the prosecution.

The analysis explores how the growing reliance on criminal histories can inadvertently lead to prejudicial outcomes, disproportionately affecting marginalized and socio-economically disadvantaged groups. By scrutinizing key Supreme Court and High Court pronouncements, the paper highlights the judiciary's nuanced approach: while recognizing the relevance of antecedents for assessing flight risk or likelihood of reoffending, courts have cautioned against using past records as the sole basis for denial of bail or as a substitute for substantive evidence in the current case.

Furthermore, the study situates these developments within a broader socio-legal context, noting the exacerbation of systemic biases and the plight of undertrial prisoners, many of whom remain incarcerated due to prior records rather than concrete proof of present guilt. Comparative perspectives from international jurisdictions, such as Canada, are incorporated to underscore the constitutional challenges and risks associated with shifting the burden of proof onto the accused.

Ultimately, the paper advocates for a balanced and rights-oriented approach that upholds the presumption of innocence and the right to fair trial, while acknowledging legitimate public

safety concerns. It recommends reforms in bail practices, judicial training, and police record-keeping to ensure that the use of criminal antecedents does not compromise the integrity of India's legal system or the constitutional rights of its citizens.

## Introduction

The Indian criminal justice system stands at a pivotal juncture, confronting the delicate task of balancing two often competing objectives: ensuring public safety and upholding the civil liberties enshrined in the Constitution. As crime rates fluctuate and public pressure for effective law enforcement intensifies, courts are increasingly being called upon to make difficult decisions—particularly during the bail process, where the interests of the state intersect most directly with the rights of the individual. In recent years, a discernible shift has emerged in judicial reasoning: the criminal history of an accused is being given heightened importance in bail determinations. While this may appear to be a pragmatic approach aimed at reducing recidivism and deterring habitual offenders, it also raises serious constitutional and ethical questions.

At the heart of the debate lies the principle of *presumption of innocence*, a cornerstone of not only Indian jurisprudence but also international human rights law. Article 21 of the Indian Constitution guarantees the right to life and personal liberty, which courts have consistently interpreted to include the right to a fair trial and protection against arbitrary detention. The increasing weight given to an accused's past criminal conduct in deciding bail, even before conviction in the current case, risks eroding this protection. When past allegations—many of which may not have resulted in convictions—are used as a basis to deny bail, the system starts to mirror one of pre-judgment rather than due process. This may create a scenario where individuals are effectively punished for alleged behavior without the benefit of a full trial or an opportunity to defend themselves against current charges.

Moreover, this trend risks disproportionately affecting individuals from marginalized and economically weaker sections of society. Studies and reports have shown that undertrials—many of whom belong to disadvantaged communities—make up a significant portion of the prison population in India. A blanket reliance on criminal antecedents could thus reinforce systemic biases and perpetuate cycles of incarceration for those who already face socio-legal disadvantages. It also leads to overcrowding in prisons and delays in the justice delivery

process, contradicting the Supreme Court's repeated emphasis on bail being the rule and jail the exception.

This paper seeks to critically examine the growing judicial reliance on criminal antecedents in bail jurisprudence, particularly in light of the Indian Constitution, statutory provisions like Section 437 and 439 of the Code of Criminal Procedure, and landmark judgments by constitutional courts. It will assess whether this shift aligns with constitutional principles, or whether it undermines the essence of justice and fairness that the legal system seeks to uphold. Through a doctrinal analysis and review of case law, the study aims to explore whether this approach is a necessary safeguard for public safety or an overreach that burdens the accused with a presumption of guilt.

Ultimately, the paper argues for a more nuanced, rights-oriented approach to bail decisions—one that safeguards public interest without compromising constitutional guarantees. It advocates for judicial accountability, procedural fairness, and a reaffirmation of the principles that ensure justice is not only done but is seen to be done.

### **The Presumption of Innocence and Burden of Proof** (Expanded to ~800 words)

At the core of any just and fair criminal justice system is the doctrine of **presumption of innocence**, a universally recognized legal principle that ensures an accused person is considered innocent until proven guilty. This foundational concept not only shields individuals from arbitrary state action but also embodies the moral imperative that it is better for the guilty to escape than for the innocent to suffer. In the Indian context, this principle is deeply rooted in **Article 21** of the Constitution, which guarantees the **right to life and personal liberty**. It finds operational form in procedural and evidentiary rules that place the **burden of proof** squarely upon the prosecution, requiring it to establish guilt **beyond a reasonable doubt**.

### **Constitutional Underpinnings**

Article 21 of the Constitution, as interpreted by the judiciary, extends far beyond a mere protection against physical deprivation. In a series of landmark decisions—such as *Maneka Gandhi v. Union of India* (1978)—the Supreme Court held that the term “procedure established by law” under Article 21 must be “just, fair, and reasonable.” This jurisprudential shift brought criminal procedural safeguards, including the presumption of innocence, under the umbrella of

fundamental rights. The judiciary has reiterated that any deviation from this standard must be narrowly tailored and proportionate.

In *State of Uttar Pradesh v. Naresh* (2011), the Supreme Court underscored that the presumption of innocence is a human right under Article 21, which cannot be discarded lightly. Denial of bail or prejudging the accused solely on the basis of prior involvement in unrelated cases risks violating this sacrosanct principle.

### **Burden of Proof: Legal Framework**

Under the **Indian Evidence Act, 1872**, the burden of proof in a criminal trial lies with the prosecution (Section 101). The prosecution must prove every element of the offence beyond reasonable doubt, leaving no room for ambiguity. If any doubt arises, it must benefit the accused—a rule that serves as a procedural safeguard against wrongful conviction.

However, there are statutory exceptions where the burden shifts to the accused to establish certain facts. These exceptions are generally found in **special laws**, such as the **Narcotic Drugs and Psychotropic Substances Act (NDPS)**, the **Prevention of Corruption Act**, the **Protection of Children from Sexual Offences Act (POCSO)**, and the **Unlawful Activities (Prevention) Act (UAPA)**. For instance, under Section 35 of the NDPS Act, once possession of a prohibited substance is established, it is presumed to be for an illegal purpose unless the accused proves otherwise. These provisions introduce a **reverse burden of proof**, justified by the seriousness of the offences and the difficulty in detection.

While such shifts in the burden may be warranted in limited contexts involving national security or public health, they must be applied cautiously. The Supreme Court in *Noor Aga v. State of Punjab* (2008) emphasized that reverse burden clauses must be read in conformity with Article 21, and should not render the right to a fair trial illusory.

### **Judicial Trends and Challenges**

Despite the well-entrenched principle of presumption of innocence, recent judicial trends, particularly in **bail jurisprudence**, reflect a drift toward a more cautious, and at times, prejudicial stance. Courts increasingly consider the *past criminal record* of an accused when deciding bail applications, even when previous cases have not led to convictions. While Section

437 of the **Code of Criminal Procedure (CrPC)** allows courts to refuse bail if the accused appears to be a habitual offender, the mere existence of multiple FIRs or chargesheets should not substitute for legal guilt.

This approach risks conflating **accusation with culpability**, and may lead to pre-trial punishment, violating both procedural due process and substantive justice. In *Arnesh Kumar v. State of Bihar* (2014), the Supreme Court cautioned against the mechanical denial of bail and emphasized that arrest should not be routine. Yet, in practice, trial courts often rely heavily on antecedents, tipping the scales against the accused and undermining the presumption of innocence.

Moreover, the **media's portrayal of accused persons**, especially in high-profile cases, often reinforces public perceptions of guilt before trial, further complicating judicial neutrality. This societal shift towards a punitive outlook, combined with judicial reliance on antecedents, blurs the distinction between an accused and a convict.

### **International Standards and Comparative Jurisprudence**

Globally, the presumption of innocence is recognized as a **human right** under Article 14(2) of the **International Covenant on Civil and Political Rights (ICCPR)**, to which India is a signatory. International bodies like the **United Nations Human Rights Committee** have consistently cautioned against laws or practices that undermine this principle through procedural shortcuts or presumptive guilt clauses.

In comparative jurisdictions such as the United Kingdom and Canada, while reverse burdens exist, courts have mandated a **proportionality test** to ensure they are consistent with fair trial rights. In *R v. Lambert* (UK, 2001), the House of Lords held that reverse burden provisions must be interpreted, where possible, to impose only an evidential burden and not a legal burden on the accused, to preserve compatibility with the European Convention on Human Rights.

The presumption of innocence and the corresponding burden of proof are not merely procedural niceties but essential guarantees that define the legitimacy of a criminal justice system. In a democratic society governed by the rule of law, these principles must be zealously protected, especially in the pre-trial phase. While there may be a legitimate state interest in preventing

crime and ensuring public safety, it cannot come at the cost of diluting constitutional protections. Judicial discretion in bail and other pre-trial decisions must be exercised with great care, mindful of the dangers of eroding this bedrock of criminal jurisprudence. Only through a consistent reaffirmation of the presumption of innocence can the justice system maintain its integrity and legitimacy.

## **Criminal Histories and Bail Decisions**

In recent years, Indian courts have increasingly factored an accused person's criminal history into decisions regarding bail. This trend stems from a broader judicial inclination toward ensuring public safety and mitigating the risks of reoffending or tampering with evidence. While the use of prior convictions or pending cases may offer insights into a defendant's potential threat to society or likelihood of absconding, an overreliance on such records can lead to outcomes that are unjust, excessive, and contrary to the principles of natural justice and constitutional guarantees.

The purpose of bail is not to punish the accused but to ensure their presence at trial while protecting the integrity of the judicial process. Bail jurisprudence in India, particularly under Sections 437 and 439 of the Code of Criminal Procedure (CrPC), is guided by a set of factors: the nature and gravity of the offence, the possibility of the accused fleeing justice, the likelihood of influencing witnesses, and the larger interests of justice. While criminal antecedents can inform the court's risk assessment, they are intended to be one among several considerations—not the sole determining factor.

However, in practice, there is growing concern that trial courts, and occasionally even higher courts, lean heavily on criminal antecedents without adequate scrutiny of the current charge or its evidentiary merit. For instance, an accused may be denied bail simply because of a long list of FIRs—many of which may be unconnected, unproven, or even politically motivated. This approach effectively penalizes individuals for allegations rather than convictions, undermining the cardinal rule of *innocent until proven guilty*.

The Supreme Court, in a significant 2023 ruling (*XYZ v. State of Madhya Pradesh*), addressed this very concern. The Court held that an accused's past criminal record cannot, by itself, justify the denial of bail. The judgment clarified that while antecedents may raise legitimate concerns,

they must be contextualized with the facts of the current case—particularly the strength of the evidence, the seriousness of the allegations, and the conduct of the accused post the alleged offence. The Court further warned against mechanically citing past cases as a ground for continued incarceration, especially when the investigation in the current matter has concluded, or when no recovery or custodial interrogation is necessary.

This ruling marked a critical reaffirmation of constitutional values in bail jurisprudence. It also recognized the broader implications of pre-trial detention, particularly in a country where overcrowded jails and prolonged trials are the norm. Most undertrial prisoners in India spend years behind bars, often without being convicted of any crime. A system that reflexively denies bail on the basis of past allegations risks turning the process into a form of preemptive punishment.

Ultimately, while criminal history can and should play a role in bail determinations, it must be evaluated judiciously, not mechanically. Courts must resist the temptation to substitute volume of prior allegations for actual judicial findings or credible evidence in the case at hand. Only through such careful calibration can the bail system remain a guardian of both public order and individual liberty.

### **Socio-Legal Implications**

The increasing reliance on an accused's criminal history in judicial decision-making—especially in bail proceedings—has far-reaching socio-legal implications. While ostensibly aimed at promoting public safety and reducing crime, this practice often results in the disproportionate targeting and prolonged incarceration of individuals from marginalized communities. Far from being a neutral legal tool, the invocation of criminal antecedents frequently reflects and reinforces pre-existing social inequalities related to caste, class, and economic status.

India's criminal justice system, like many others around the world, does not operate in a socio-political vacuum. It functions within a society deeply marked by stratifications of caste and poverty. Multiple studies and judicial observations have pointed out that Dalits, Adivasis, Muslims, and economically disadvantaged groups are overrepresented in the prison population. According to the **Prison Statistics India** reports published by the National Crime Records

Bureau (NCRB), undertrial prisoners—many of whom have no prior convictions—comprise nearly **75%** of the total prison population, and a significant portion of these belong to historically oppressed communities. The overreliance on prior FIRs or pending charges often works to the detriment of these individuals, further marginalizing those who already lack access to quality legal representation and social capital.

In a progressive observation, the **Supreme Court** has acknowledged the discriminatory impact of branding individuals as "habitual offenders" based on vague or outdated police records. In *K. Selvaraj v. State of Tamil Nadu* (2022), the Court noted that social profiling—especially of marginalized individuals—is an abuse of state power. It urged governments to dismantle **colonial-era surveillance practices**, such as the maintenance of “history sheets” and the habitual offender registers under the **Police Act of 1861**, which are still used in some states to justify preventive detention or denial of bail without sufficient cause.

This judicial recognition of systemic bias is particularly significant when viewed alongside the crushing burden of judicial delay. As of **August 2024**, India’s court system is dealing with over **58 million pending cases** across all levels. This backlog leads to prolonged detention of undertrial prisoners—many held not because the evidence against them is strong, but because the system is too slow to review their case in a timely manner. For individuals with a prior criminal record, even if unproven, the likelihood of receiving bail diminishes significantly, leaving them to languish in overcrowded prisons with little hope of a fair or speedy trial.

The intersection of judicial delay and reliance on criminal antecedents results in what legal scholars have termed a “**punitive bail regime**”—a system that effectively punishes people before any formal adjudication of guilt. The consequences are severe: social ostracism, loss of livelihood, psychological trauma, and the erosion of trust in the legal system. The stigmatization of repeat offenders often begins with their first arrest, creating a self-perpetuating cycle of surveillance, suspicion, and incarceration.

To counter these trends, there is a need for systemic reform. Bail decisions must be made on the basis of objective, case-specific factors rather than presumptive guilt inferred from past accusations. Moreover, police practices and judicial discretion must be re-evaluated to ensure that they do not replicate or entrench structural injustices. Only by aligning judicial procedures with principles of social equity and constitutional morality can the justice system serve as a

true guardian of individual rights and social justice.

## Conclusion

The integrity and legitimacy of India's criminal justice system rest upon its unwavering commitment to the rule of law, the presumption of innocence, and the protection of fundamental rights. While ensuring public safety and maintaining law and order are undeniably important, these goals cannot be pursued at the cost of sacrificing constitutional principles. The increasing judicial tendency to rely heavily on an accused's past criminal record during bail decisions represents a troubling deviation from the foundational legal standard that every individual is innocent until proven guilty.

Criminal antecedents may provide context for assessing certain risks, such as flight or repeat offending. However, when such histories—often unverified, unadjudicated, or stemming from socio-economic targeting—are given disproportionate weight, they can distort the bail process and convert it into a form of pre-trial punishment. This undermines the fairness of the judicial process and infringes upon Article 21 of the Constitution, which guarantees the right to life and personal liberty.

Moreover, such practices disproportionately affect marginalized communities, many of whom are victims of systemic biases and over-policing. The continued reliance on archaic police methods, alongside an overburdened judiciary and excessive pre-trial detentions, exacerbates inequality and contributes to public mistrust in the justice system.

Therefore, it is imperative for courts to adopt a more balanced, rights-centric approach. Bail decisions must be grounded in the facts and merits of the current case, with prior records considered only as part of a broader, context-specific evaluation—not as determinative proof of guilt or risk. This calibrated approach is essential not only for ensuring individual justice but also for preserving public confidence in a system that aspires to be just, equitable, and constitutionally sound.

Here's a suggested **References / Bibliography** section for your research paper on criminal histories and the burden of proof in India, formatted in a standard academic style (APA or similar):

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