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Tiruchirappalli – 620102

Phone : +91 94896 71437 – [info@iledu.in](mailto:info@iledu.in) / [Chairman@iledu.in](mailto:Chairman@iledu.in)



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## AN ANALYSIS OF THE BAIL SYSTEM IN INDIA: CHALLENGES AND PROSPECTS

**Author** - Aadithya R Chandran, Student at Indian Institute of Management, Rohtak

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### ABSTRACT

The bail system is an important aspect of the criminal justice system in India as it allows individuals accused of a crime to be released from custody while they await trial. Yet, due to its inherent inadequacies and inefficiency, India's bail system has come under intense scrutiny and criticism. When considered objectively, the criminal jurisprudence that India has embraced is really a reflection of the Victorian legacy that the British left behind. Only a few amendments to appease interest groups and vote banks have been made over time. No consideration has been given to whether these laws, which have been in place for close to seven decades, have taken into account the misery and socioeconomic circumstances of the 70% of this country's population that is living in abject poverty. India, a developing nation plagued by poverty, required something other than a carbon duplicate of the laws in place in developed western nations.

The objective of this study is to thoroughly examine the bail system in India, including its historical evolution, legal foundation, and actual application. The article will also examine the drawbacks and issues with the bail system, such as the issue of undertrial prisoners, the function of bail in guaranteeing access to justice, and the effect of bail on the rights of the accused. This research study aims to contribute to the ongoing discussions and debates around criminal justice reform in the nation by giving a thorough review of the bail system in India.

**Keywords:** Fair trial, Reform, Justice, Bail bond, Legislation

### I. HISTORY OF BAIL

India's bail system has experienced a great amount of historical evolution and has been influenced by numerous legal systems over time. The concept of bail can be traced back to ancient Hindu law, where it was referred to as "*nantana*," which means "*taking security*." Islamic law, which was brought to India by the Mughal Empire, accepted the idea of bail as well.

The **Code of Criminal Procedure, 1861**, which was later revised in 1898, served as the primary legal framework for the bail system during the British colonial era. The first law introduced to address the bail system in India was the **Bail Act of 1899**. It outlined the guidelines for granting bail, including the right to be released on bond, the presumption of innocence, and the court's ability to deny bail if required. In accordance with this legislative structure, the courts had the considerable authority to grant or deny bail depending on the unique facts of each case. The main considerations in deciding whether to grant bail were the nature of the crime, the character of the accused, and the risk that the accused would elude justice or tamper with the evidence. However, during this time, the majority of decisions on bail were left up to the judge or magistrate's discretion, which frequently led to abuses of authority and arbitrary rulings.

The Code of Criminal Process had two additional revisions after India attained independence in 1947, in 1955, and in 1973. The term "*personal bond*" was first used in the *1973 amendment*, which permitted the release of suspects on their own recognizance without the need for any kind of security or surety. The idea

of "default bail," which allows for the automatic release of suspects on a bond if the investigation or trial is not concluded within a certain amount of time, was introduced to the **Code of Criminal Procedure in 2005**. This clause forbids accusers from being held without charge or trial for an extended period of time.

Presently, the Code of Criminal Procedure, 1973, as amended, serves as the primary legal framework for India's bail system. With the exception of heinous felonies like murder, rape, and terrorism, most crimes are exempt from the requirement of bail under this judicial system. Bail in these situations is optional and can only be approved by a higher court. The seriousness of the crime, the probability that the accused may flee or tamper with evidence, and the accused's prior criminal history are all issues that the courts take into account when deciding whether to grant bail.

Finally, the Code of Criminal Procedure, 1973, as amended, governs the bail system in India, which has developed over time. The current legal framework recognizes the concept of a personal bond, which permits the release of accused persons on their own recognizance without the need for them to provide any security or surety and provides for the automatic release of accused persons on bail if the investigation or trial is not finished within a certain amount of time.

## II. THE LEGAL POSITION IN INDIA

The terms "bailable offense" and "non-bailable offense" have the following definitions in **section 2(a)**<sup>37</sup> of the **Criminal Procedure Code of 1973** (hereinafter referred to as the "Cr.P.C. "), respectively: "Bailable offense means an offense which is shown as bailable in the First Schedule or which is made bailable by any other law for the time being enforced, and non-bailable offense means any other offense." Additionally, **Sections 436**<sup>38</sup> **to 450**<sup>39</sup> outline the guidelines for

the granting of bonds and bail in criminal proceedings. The Cr.P.C. does not specify how much security the accused must provide to obtain his release. Therefore, the decision to cap the bond's value is up to the judge.

Unfortunately, it has been seen that courts have not shown much consideration for the poorer socioeconomic groups. The courts' outrageous and ridiculous demands for bail bonds amply demonstrate their callous attitude towards the impoverished.

According to the *Law Commission's 78th report*, as of April 1, 1977, 1,01,083 inmates—or nearly 55%—of the 1,84,169 total prisoners—were awaiting trial. According to other sources, there are 80% uncompleted trials in Secunderabad Central Jail, 78% uncompleted trials at Surat, and 66% uncompleted trials in Assam, Tripura, and Meghalaya.

As was already noted above, the widespread poverty that affects the majority of the population in our nation is one of the causes of this. In rural India, the fragmentation of land holdings is a frequent occurrence. A family of eight to ten people depends on a small plot of land for their survival, which also contributes to covert unemployment. When a member of such a family is accused of a crime, the only way they can pay the bail and ensure his release is by either selling the land or mortgaging it. They would be deeper entrenched in poverty as a result of this. This is the specific reason why the majority of those facing trials remain behind bars rather than being released on bail.

## III. JUDICIAL TREND

An examination of the ensuing instances demonstrates how the poor are negatively impacted by India's unjust bail system. In the *State of Rajasthan v. Balchand*<sup>40</sup>, the trial court found the defendant guilty. The High Court upheld his acquittal after he filed an appeal. In accordance with **Article 136**<sup>41</sup> of the

<sup>37</sup> CODE OF CRIMINAL PROCEDURE, 1973, §.2(A), No.2, ACTS OF PARLIAMENT, 1973 (INDIA).

<sup>38</sup> CODE OF CRIMINAL PROCEDURE, 1973, §.436, No.2, ACTS OF PARLIAMENT, 1973 (INDIA).

<sup>39</sup> CODE OF CRIMINAL PROCEDURE, 1973, §.450, No.2, ACTS OF PARLIAMENT, 1973 (INDIA).

<sup>40</sup> STATE OF RAJASTHAN V. BALCHAND, 1977 AIR 2447, 1978 SCR (1) 535

<sup>41</sup> INDIA CONST. ART. 136.



Constitution, the State filed a special leave petition to appeal to the Honourable Supreme Court. The judge ordered the accused to show up. Then he made a bail request. *Justice Krishna Iyer* spoke out against this unjust bail management system at that point for the first time. Although the practice of financial bail has a long history, he claimed that it is time to reconsider. It's possible that an endeavor would be useful in most situations.

In *Moti Ram and Ors. v. State of M.P.*<sup>42</sup>, the poor mason accused was found guilty. Without providing any details on sureties, bonds, or other conditions, the Chief Judicial Magistrate was directed to grant him a larger bail amount by the Supreme Court. The CJM claimed full responsibility for the situation, set a surety and bond amount of Rs. 10,000, and further refused to allow his brother to serve as a surety because of the location of his property in the neighboring hamlet. The Supreme Court heard MR's petition once more, and *Justice Krishna Iyer* criticized the CJM's actions and urged judges to be more inclined towards granting bail than imprisoning people.

*Justice Krishna Iyer* once more came up against the unjust bail system that was in place in India in *Maneka Gandhi v. Union of India*<sup>43</sup>. Although the offenses are divided among those that are and are not subject to bail, there is no definition of bail in the legislation. Further, *Justice P.N. Bhagwati* discussed how the bail system is unfair and discriminatory when viewed from a person's economic perspective. This discrimination occurs even if the amount of bail set by the magistrates isn't high for some, but the vast majority of those who are brought before the courts in criminal cases are so impoverished that they would find it difficult to provide bail even if it's a small amount.

Further, the court established in *Hussainara Khatoon and Others v. Home Sec, State of*

*Bihar*<sup>44</sup>, that a man shall be released from custody if he has been imprisoned for a period of time that exceeds the term to which he is entitled.

*Gudikanti Narasimhulu vs. Public Prosecutor, High Court of AP*<sup>45</sup> (1977) is one of the most significant rulings on India's bail system may be found in this case. In this decision, the Supreme Court ruled that granting bail is the rule and denying it is the exception. The court also established a set of rules that judges must follow when deciding whether to approve or deny bail requests.

The Supreme Court ruled in *Sanjay Chandra v. CBI*<sup>46</sup> that economic offenses fell under the category of "grave offenses" and that an accused person cannot be granted bail based only on the fact that he is unlikely to hide from the law.

In the landmark case of *Siddharam Satlingappa Mhetre v. State of Maharashtra*<sup>47</sup>, the Supreme Court ruled that when deciding whether to grant bail, the court should consider the accused's background, the nature of the offense, the likelihood that the accused will tamper with the evidence or influence witnesses, the possibility that the accused will flee, and the need to ensure that the accused will appear at the trial. The court further stated that conditions placed on granting bail should be reasonable and not overly strict.

In the case of *Arnesh Kumar v. State of Bihar*<sup>48</sup>, the Supreme Court made the observation that police should only detain an accused person if it is absolutely necessary to do so and only after putting the detainment's justifications in writing. In addition, the court instructed the police to notify the defendants in accordance with

<sup>44</sup> HUSSAINARA KHATOON AND OTHERS V. HOME SEC, STATE OF BIHAR, 1979 AIR 1369, 1979 SCR (3) 532

<sup>45</sup> GUDIKANTI NARASIMHULU VS. PUBLIC PROSECUTOR, HIGH COURT OF AP 1978 AIR 429, 1978 SCR (2) 371

<sup>46</sup> SANJAY CHANDRA V. CBI, 1 SCC 40; (2011) 6 UJ 4077

<sup>47</sup> SIDDHARAM SATLINGAPPA MHETRE V. STATE OF MAHARASHTRA, 1 SCC 694

<sup>48</sup> ARNESH KUMAR V. STATE OF BIHAR, 8 SCC 273

<sup>42</sup> MOTI RAM AND ORS. V. STATE OF M.P., 1978 AIR 1594, 1979 SCR (1) 335

<sup>43</sup> MANEKA GANDHI V. UNION OF INDIA, 1978 AIR 597, 1978 SCR (2) 621

**Section 41A<sup>49</sup>** of the **Code of Criminal Procedure** rather than arrest them. The court further ordered that the accused must appear before a magistrate within **24 hours** of the arrest and that the police officer must note the reasons for the arrest.

#### V. FUNCTIONING OF BAIL SYSTEM

The criminal justice system in India must include the bail system if it is to ensure that the accused receives a fair and impartial trial. Bail is the temporary release of an accused person while they are awaiting trial, usually with some restrictions that guarantee their appearance in court when needed. The legal system is designed to find a balance between the rights of the accused and society's need to see that the victim is given justice. Nonetheless, there have been complaints over the years about how the bail system in India operates.

#### A. EFFECTIVENESS

The effectiveness of the Indian bail system in ensuring that the accused appears in court and stops subsequent crimes from being committed can be used to assess its efficacy. The presumption of innocence until proven guilty, which states that an accused individual is presumed innocent unless proven guilty in court, is the basis on which bail is given. Bail is not meant to punish an accused person before they are found guilty; rather, it is meant to give them time to prepare their case.

Yet, it is debatable if the Indian bail system is functional. One of the main issues is the protracted imprisonment of the accused as a result of the trial process's delays. Several things, such as the backlog of cases, poor infrastructure, and a lack of skilled employees, can be blamed for this delay. Under trials—those who are being held in custody for longer than the maximum sentence allowed for the crime they are accused of—have become a big problem as a result of the trial process's delay.

This circumstance has caused jail overcrowding and a violation of the accused's human rights.

#### B. EFFICIENCY

In India, the efficiency of the bail system can be measured by how quickly and transparently bail applications are handled. Bail should be granted or denied based on the facts and circumstances of the case, and the procedure should be easy and uncomplicated. The effectiveness of the bail system in India has, however, come under fire for a number of reasons.

The shortage of skilled employees to handle bail applications is one of the main worries. In India, a number of organizations are involved in the bail procedure, including the police, courts, and jail officials. Each of these organisations has a part to play in the bail process, and the lack of cooperation between them is to blame for the time it takes to process bail applications. Also, India's complex and intricate bail procedures cause delays in the processing of bail applications.

#### C. FAIRNESS

When it comes to treating all accused people equally and without bias, the Indian bail system might be judged to be fair. The bail system ought to prevent discrimination against the accused on the grounds of their race, gender, religion, or socioeconomic background. The fairness of the bail system in India has, however, been criticized.

One of the main issues is how the bail system frequently targets vulnerable communities for discrimination. For instance, Muslims and Dalits frequently receive bail denials or bail restrictions that are more stringent than those imposed on others. Furthermore, political activists and dissidents are frequently harassed using the bail system as a tool. The values of justice and fairness are compromised when the bail system is used to target particular populations or individuals.

<sup>49</sup> CODE OF CRIMINAL PROCEDURE, 1973, §.41 A, NO.2, ACTS OF PARLIAMENT, 1973 (INDIA).

There have been complaints about how the bail system in India operates, specifically regarding its effectiveness, efficiency, and fairness. Although the bail system is designed to safeguard the rights of the accused, it frequently results in lengthy detention and human rights violations. Furthermore, India's bail system is sometimes ineffective and convoluted, which causes delays in the processing of bail applications. Finally, the bail system frequently targets political dissidents and members of underprivileged populations with discrimination.

## **VI. FACTORS THAT INFLUENCE BAIL DECISION**

In India, bail decisions are influenced by various factors, including the nature of the offense, the accused's background, and the court's discretion.

### **A. NATURE OF OFFENCE**

One of the key elements affecting bail judgments in India is the nature of the offense. Bail may be challenging for the accused in the circumstances involving serious felonies like murder, terrorism, or financial crimes. This is because to the possibility that the accused could flee, as well as the possibility that they could tamper with witnesses or evidence. Under such circumstances, the court may impose harsher terms, a higher amount of bond, or even refuse to grant bail.

### **B. ACCUSE BACKGROUND**

In India, a significant aspect that may affect bail judgments is the background of the accused. The court may examine the accused's criminal background, past behavior, and the possibility of reoffending while determining bail judgments. The court might be less likely to release the accused on a bond if they have a violent past or a history of similar crimes. Yet, the court might be more likely to release the accused on a bond if they have a clean record or are first-time offenders.

### **C. COURTS DISCRETION**

Another significant aspect that can affect bail judgments in India is the court's discretion.

Depending on its evaluation of the relevant facts and circumstances, the court has the authority to grant or deny bail. The weight of the evidence against the accused, the gravity of the crime, the accused's ties to the community, and the accused's propensity to appear at trial are some of the variables that the court may take into account.

Together with the aforementioned reasons, the court may also take the accused's age, familial relationships, and overall health into account while determining the bond. The quality of the bail application and the representation can also have an impact on the court's judgment. In conclusion, several elements, such as the nature of the offence, the background of the accused, and the court's discretion, affect bail judgements in India. The court's decision is based on a detailed analysis of the facts and circumstances of the case and seeks to strike a balance between the rights of the accused and the objectives of justice.

## **VII. IMPACT OF THE BAIL SYSTEM IN THE CRIMINAL JUDICIAL SYSTEM**

There has been controversy and disagreement concerning the effect of the bail system on the criminal justice system in India, with many contending that it has both favourable and unfavourable consequences on the rights of the accused, the victims, and society at large. The rights of the accused are one of the main effects of the bail system. According to the Indian Constitution, which upholds the presumption of innocence unless proven guilty, the right to bail is seen as a fundamental right. The bail system protects an accused person's right to liberty by preventing their indefinite detention without charge or trial. The bail system has been accused of discriminating in practice, however, since it frequently benefits the powerful and wealthy who can afford to post large bail amounts and retain costly attorneys to obtain their release. Due to this, impoverished and underprivileged people are sometimes wrongfully denied bail and detained

for a long time while having inadequate or insufficient evidence to support their claims.

The bail system significantly affects crime victims as well. If the accused has a history of violence or harassment, the victim may feel scared or intimidated when the accused is released on bond. Once the accused was released on bail, there have been instances where victims experienced additional injury or vengeance from the accused. As a result of their possible concern for their safety and that justice would not be served, victims may be less inclined to come forward and report crimes.

Beyond specific instances, the bail system may have broader societal effects. People may believe that those with power and money can use the system to their advantage, which can lead to a mistrust of the criminal justice system. A key tenet of any democratic society, faith in the judiciary's justice and impartiality can be damaged as a result of this. Also, the extended imprisonment of people awaiting trial can result in jail overpopulation and a drain on the criminal justice system's resources.

To address these problems, there have been several recent attempts to alter India's bail system. One such initiative is the implementation of a risk assessment framework, where judges consider various aspects when determining whether to grant bail, including the seriousness of the crime, the accused's criminal history, and the likelihood that they will flee the scene of the crime or tamper with evidence. With this strategy, it is hoped that the bail system would be just and equitable and that choices will be made based on facts, rather than values, such as wealth or social standing.

The rights of the accused, the victims, and society at large are impacted by the bail system, which has a substantial impact on India's criminal justice system. While it is a vital instrument to guarantee that the presumption of innocence is respected, it can also be discriminatory and unfair. To guarantee that the

bail system is just, impartial, and serves the interests of justice for all, it is essential to keep reviewing and reforming it.

### VIII. SUGGESTIONS

The fairness, effectiveness, and effect on the rights of the accused of the Indian bail system have long been a source of controversy. Here are some of the measures that could be implemented to reform the bail system in India:

- **LEGISLATIVE CHANGES:** To enhance the bail system, the Indian government may consider passing new legislation or changing current ones. Reduce the number of offenses that are not subject to bail so that more people can post bail as one potential change. In order to speed the hearing and decision-making process for those who are detained, the government should also think about creating measures for accelerated bail hearings.
- **PROCEDURAL REFORMS:** In order to speed up the bail process, the Indian judiciary may take procedural amendments into consideration. Standardizing the bail application form could be one way to ensure that all relevant information is provided and that the procedure is uniform across courts. Another change would be the implementation of a tool that courts can use to assess the risk of an accused individual showing up for their court date, allowing judges to base their choices on that information when setting bail.
- **TRAINING PROGRAM FOR JUDICIAL OFFICER:** The Indian judicial system should think about offering training courses on how to use bail properly to magistrates and judges. These workshops could go through subjects, including what to take into account when determining whether to give bail, how to create bail terms, and how to check that the requirements are being



followed. The bail system could be made more equitable and effective by enhancing the knowledge and abilities of judicial officials.

- **TECHNOLOGY-BASED SOLUTIONS:** The Indian bail system could be made better with the help of technology. For instance, the introduction of online bail applications could lessen the requirement for suspects to physically appear in court. Moreover, electronic monitoring devices might be utilized to track adherence to bail requirements, eliminating the need for physical checks by police authorities.
- **COMMUNITY-BASED SOLUTIONS:** The Indian bail system could be improved by looking into community-based options. For instance, bail funds could be formed to offer financial aid to defendants who are unable to pay bail. Programs for community supervision might be introduced as well, offering assistance and oversight to those out on bail and lowering their chance of reoffending.

Overall, a variety of actions, from modifications to the law to community-based remedies, might be taken to reform the bail system in India. The Indian government and judiciary could enhance the fairness, effectiveness, and impact of the bail system in India by adopting a multifaceted strategy.

#### IX. CONCLUSION

A review of the aforementioned examples demonstrates the Indian criminal court system's substantial anti-poor bias. Even though the courts have attempted to interfere in some cases and have also established specific rules to be followed, sadly, nothing has been done about it. A thorough examination of the bail system is also urgently needed, bearing in mind the socioeconomic circumstances of the vast majority of our population. When deciding whether to issue bail, the court must also consider the accused's socioeconomic situation and show compassion for them.

It is possible to thoroughly investigate the accused to see if his ties to the community would prevent him from escaping the court. Before granting bail to the accused, the court may consider the following information about him:

- (1) The nature of the offense committed by the accused.
- (2) The length of his residence in the community.
- (3) His employment status history and his financial condition.
- (4) His family ties and relationships.
- (5) His reputation, character, and monetary conditions.
- (6) His prior criminal records, including any record or prior release on recognizance or on bail.
- (7) Identity of responsible members of the community who would vouch for his reliability.
- (8) The nature of the offense charged and the apparent probability of conviction and the likely sentence in so far as these factors are relevant to the risk of non-appearance.
- (9) Any other factors indicating the ties of the accused to the community or barring on the risk of wilful failure to appear.

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