



An Analytical Study of Bail Jurisprudence and the Discretionary Power of Court Relating To Bail in India

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ABSTRACT

The concept of bail in India has evolved through judicial interpretations and legislative enactments, leading to a complex jurisprudence surrounding its application and the discretionary powers vested in courts. This analytical study delves into the intricacies of bail jurisprudence, examining the factors influencing the grant or denial of bail, the role of judicial discretion, and the impact of statutory provisions on bail decisions.

The study employs a comparative approach, analyzing landmark judgments and statutory provisions to identify trends, inconsistencies, and areas of improvement in bail jurisprudence. It explores the balance between individual liberty and societal interests, considering factors such as the nature of the offense, the likelihood of tampering with evidence or witnesses, and the principles of presumption of innocence and fair trial.

Furthermore, the study investigates the challenges faced by courts in exercising discretionary powers related to bail, including judicial activism, judicial restraint, and the need for consistency in bail orders. It also examines the role of bail jurisprudence in ensuring access to justice, particularly for marginalized and vulnerable populations. Through critical analysis and case studies, this study aims to contribute to the discourse on bail jurisprudence in India, offering insights and recommendations for enhancing transparency, fairness, and consistency in bail decisions while upholding constitutional principles and human rights.

The study investigates the principles and criteria considered by courts when exercising their discretion in bail matters, including factors such as the nature and severity of the alleged offense, the likelihood of the accused absconding or tampering with evidence, and the interests of justice. It delves into the constitutional and legal framework governing bail provisions, assessing the balance between the rights of the accused and societal

interests in ensuring law enforcement and public safety.

Through a comparative analysis of bail practices across different jurisdictions within India, the thesis aims to identify trends, challenges, and potential reforms in bail jurisprudence. It critically evaluates the effectiveness of bail conditions, pretrial detention practices, and the role of judicial discretion in promoting fairness, equity, and the rule of law.

I. INTRODUCTION

Bail jurisprudence forms a crucial aspect of the Indian legal system, embodying principles that balance the rights of the accused with the interests of justice and society. This introduction aims to define bail jurisprudence, highlight its significance in India's legal framework, and provide a brief explanation of the discretionary power of courts in granting bail.

Definition of Bail Jurisprudence

Bail jurisprudence refers to the body of legal principles, rules, and precedents governing the release of an accused person from custody pending trial or investigation. It encompasses the rights of the accused to liberty, presumption of innocence, and fair trial, while also considering the state's interest in ensuring the administration of justice and preventing potential harm to society.

In India, bail jurisprudence is primarily governed by the Code of Criminal Procedure, 1973 (CrPC), which lays down procedures and conditions for granting bail. The legal landscape surrounding bail is shaped by judicial interpretations, landmark judgments, and legislative amendments, reflecting a dynamic and evolving approach towards the grant or denial of bail.



Significance of Bail Jurisprudence in the Indian Legal System

The significance of bail jurisprudence in India cannot be overstated, as it serves multiple purposes within the legal framework:

1. **Presumption of Innocence:** Bail jurisprudence upholds the fundamental principle that every person is presumed innocent until proven guilty. Granting bail allows the accused to await trial without undue deprivation of liberty, reinforcing the presumption of innocence until guilt is established beyond a reasonable doubt.

2. **Protection of Rights:** Bail jurisprudence safeguards the constitutional rights of individuals, including the right to liberty and due process. It ensures that pre-trial detention is not arbitrary or disproportionate to the alleged offense, promoting fairness and justice in the legal process.

3. **Judicial Discretion:** The discretionary power of courts in granting bail reflects the judiciary's role as a guardian of constitutional values. Courts exercise this discretion based on various factors such as the nature of the offense, the likelihood of absconding, the accused's criminal record, and the interests of victims and society.

4. **Prevention of Unnecessary Incarceration:** Bail jurisprudence prevents the unnecessary incarceration of individuals who pose no flight risk or danger to society pending trial. It strikes a balance between protecting public safety and ensuring that the accused's rights are respected, thus avoiding undue hardship and disruption to their lives.

5. **Efficient Legal Process:** By allowing the accused to be released on bail, bail jurisprudence contributes to the efficient functioning of the legal system. It reduces overcrowding in prisons, minimizes delays in trial proceedings, and enables defendants to participate effectively in their defense.

Discretionary Power of Courts in Granting Bail

The discretionary power of courts in granting bail is a core aspect of bail jurisprudence. This power enables judges to assess each case individually and make informed decisions based on the specific circumstances and merits of the case. The discretion is exercised judiciously, taking into account various factors such as:

1. **Nature and Gravity of the Offense:** Courts consider the seriousness of the alleged offense, including whether it is non-bailable, cognizable, or compoundable. Offenses involving violence, economic crimes, or threats to national security may warrant stricter scrutiny.

2. **Evidence and Prima Facie Case:** The strength of the evidence against the accused, along with the existence of a prima facie case, influences the grant of bail. Courts may assess the likelihood of conviction based on the available evidence before deciding on bail.

3. **Flight Risk and Absconding:** The likelihood of the accused fleeing from justice or tampering with evidence is a crucial factor. Courts may impose conditions such as surrendering passports, providing sureties, or reporting to authorities regularly to mitigate flight risks.

4. **Criminal History and Recidivism:** The accused's past criminal record, including previous convictions or pending cases, may impact bail decisions. Repeat offenders or those with a history of absconding may face stricter bail conditions or denial of bail.

5. **Victim's Rights and Public Safety:** Courts also consider the rights of victims, especially in cases involving serious offenses or violence. Protecting public safety and preventing potential harm to society are paramount considerations in bail decisions.

6. **Special Circumstances:** Circumstances such as medical conditions, age, family responsibilities, and cooperation with law enforcement may be taken into account as mitigating factors.

This classification is based on the seriousness of the offence as well as the severity of the penalty. In most cases, a bailable offence is considered less serious and grave than a non-bailable offence.¹ Offences are defined in the clause (a) of S. 2 of the Cr. P.C. as:

"The terms "bailable offence" and "non-bailable offence" refer to offences that are listed as bailable in the First Schedule or that are rendered bailable by any other legislation in effect at the time; and "non-bailable offence" refers to any other offence.;"

It's worth noting that every offence under the Indian Penal Code has been classified as bailable or non-bailable in the first portion of the first Schedule to the Cr.P.C. to determine which offences are bailable and which are not. In the absence of such a statement under the parent Act, the basic guidelines set forth in the second part of the first Schedule of the Cr. P.C. must be used to determine whether the crime falls into the appropriate category.²

¹ Asim Pandey, Law of Practice and Procedure, Second Edition, 2015, Lexis Nexis.

² United States of America 1789 (rev. 1992)". www.constituteproject.org. Retrieved 25 August 2018.



PRINCIPLES GOVERNING BAIL

The following principles emerge for grant or refusal of bail under section 437, CR.P.C.

1. Bail should not be denied unless the offence accused is of the most serious kind and the punishment imposed by the law is severe.
2. Bail shall be denied where the Court has reasonable grounds to believe that no amount of bail will insure the convict's presence at the time of judgement.
3. Bail shall be rejected if the person seeking the Court's benign authority to be freed for the time being will obstruct the process of justice.
4. Bail should be denied if there is a risk that the applicant may interfere with prosecution witnesses or otherwise taint the legal system.
5. Bail should be denied if a man's antecedents reveal a criminal past, particularly one that indicates he is likely to commit significant crimes while on bail.

STATUTORY PROVISIONS REGARDING 'BAIL' AND JUDICIAL INTERPRETATIONS

1. Code of Criminal Procedure, 1861: Sections 216 and 258 and sections 156 and 212 of the Code of Criminal Procedure of 1861 were the first to include bail provisions.
2. Code of Criminal Procedure, 1872: Sections 128, 194, 204, 388, and 393 and sections 128 and 389 were included in this code.
3. Code of Criminal Procedure, 1898: The difference between bailable and non-bailable situations was likewise preserved by this legislation. This code's section 496 dealt with bail in bailable cases, whereas section 497 dealt with bail in non-bailable cases.³ In a number of circumstances, the provisions sections 496 and 497 of the 1898 law were interpreted. The following are the principles that determine the granting of bail: Except for those accused with non-bailable offences, anybody can request bail as a matter of right.

The courts had to consider the following factors when exercising their "discretionary power" to admit a person to bail: (i) the seriousness of the charge; (ii) the nature of the evidence; and (iii) the severity of the punishment prescribed for the

³ Helland, Eric; Tabarrok, Alexander (2004). "The Fugitive: Evidence on Public versus Private Law Enforcement from Bail Jumping". *The Journal of Law and Economics*. 47 (1): pp. 93–122. doi:10.1086/378694. S2CID 10321131. Archived from the original on 9 October 2007.

offence; and the character, means, and standing of the accused⁴

EXERCISE OF DISCRETION IN CRIMINAL PROCEEDINGS

In India, most penal laws provide for the highest sentence that a criminal court may impose, with just a few offences allowing for a minimum punishment. In the former cases, the court has broad discretion to impose punishment, but when it comes to sentencing, the court must apply the principle of proportionality in prescribing liability based on the culpability of each type of criminal conduct, as laid down by the Supreme Court in the case of *State of M.P. v. Munna Chaubey*. This approach gives the Judge considerable leeway in determining a sentence in each instance, presumably to enable for sentences that reflect more complex concerns of responsibility prompted by the facts of each case. In essence, judges declare that the penalty should always be proportional to the offence.⁵

To be clear, Section 354(4) of the Criminal Procedure Code of 1973 says a court must record the reason for awarding an imprisonment sentence less than three months if the conviction is for an offence punishable by imprisonment for one year or more, unless the sentence is for imprisonment until the court rises or under the provisos of the code's summary trial. In circumstances where the offence is punished by a period of one year or more, this sub-section limits the court's discretionary jurisdiction to impose a sentence of at least three months. The reasoning for this is because short-term detention does not always serve a constructive function.⁶

JUDICIAL DISCRETION

The court power to grant or deny bail is to be based on well-established criteria. In the 2G case, the prosecution did not object to the issuance of release to five defendants, presumably because there was no fear that they might sway witnesses, tamper with evidence, or flee the country - the three scenarios I described previously. In fact, the prosecution should not have objected to any of those

⁴ "Pre-trial Court Appearances in a Criminal Case". American Bar Association. Retrieved 18 July 2017.

⁵ Shalom, Alexander. "Bail Reform as a Mass Incarceration Reduction Technique". *Rutgers Law Review* 4 (2014): 921. InfoTrac LegalTrac. Web. 15 March 2016.

⁶ Park, Madison (29 August 2018). "California eliminates cash bail". CNN. Retrieved 1 January 2020.



who applied for bail being granted: the distinction it sought to make between five-year and seven-year terms, as well as between those charged in the main chargesheet and those charged in the supplementary chargesheet, is artificial and illogical. While the trial judge is not obligated to give bail just because the prosecution does not oppose it and must apply its mind independently, such discretion must be utilised with caution. In my opinion, the trial judge made a significant error in refusing bail. The trial court's decision to deny bail in the interest of providing a secure atmosphere for the witnesses to testify is unjustified. There should be a genuine fear of witnesses being intimidated. We must remember that imprisoning someone takes away his liberty, and there is no sufficient reward for the time spent in prison if he is eventually exonerated.⁷

Bail denial should not be used as a form of punishment prior to conviction. Let us not forget that unless guilt is proven, there remains a presumption of innocent under criminal law. That guilt must be established beyond a reasonable doubt. Denial of bail also affects the right to a fair trial since the accused has very limited contact with his attorneys, and that too in a tightly restricted environment.

As a result, adequate defence planning is hampered. Justice Krishna Iyer put it this way: "...It's reasonable to believe that a guy on bail has a greater opportunity of preparing or presenting his case than one who is detained. Mechanical detention should be reduced if public justice is to be promoted." It appears that Indian courts have just recently grown more cautious in granting bail in general, and notably in situations of white-collar crime. This is unfortunate, because the legal criteria for granting bail remain unchanged.⁸

STATEMENT OF PROBLEM

An Analytical Study Of Bill Jurisprudence And The Discretionary Power Of Court Relating To Bail In India

OBJECTIVES OF STUDY

1. To analyze the evolution of bail jurisprudence in India, focusing on key legal provisions and landmark judicial decisions.

⁷ Du kan løslades mod kaution". www.bt.dk (in Danish). 1 February 2006. Retrieved 19 October 2021

⁸ Corpus Juris Secundum, Vol. 27, p. 289 as referred in Aero Trader [p] Ltd. V. Ravinder Kumar Suri, (2004) 8 SCC 307

2. To examine the factors influencing the discretionary power of courts in granting or denying bail, including the nature of the offense, the accused's background, and public interest considerations.

3. To assess the impact of bail decisions on the administration of justice, including case backlog, trial delays, and the rights of the accused and victims.

4. To compare the bail practices and procedures in India with international standards and best practices, identifying areas for improvement.

5. To propose recommendations for enhancing transparency, fairness, and efficiency in the bail process, balancing the interests of justice and individual rights.

HYPOTHESES:

1. H1: The discretionary power of courts in granting bail is influenced by factors such as the seriousness of the offense, the accused's criminal history, and the likelihood of flight.

2. H2: There is a correlation between the type of offense (e.g., non-bailable vs. bailable) and the likelihood of bail being granted by the courts.

3. H3: The interpretation and application of bail provisions vary among different High Courts in India, leading to inconsistencies in bail outcomes.

4. H4: Public perception and media scrutiny play a significant role in shaping bail decisions, particularly in high-profile cases.

5. H5: Reforms aimed at streamlining the bail process, such as electronic monitoring and pre-trial services, can lead to improved outcomes in terms of trial efficiency and fairness.

RESEARCH METHODOLOGY TO BE OPTED

The present research work requires theoretical study of the topic. The theoretical work will deal with judicial decisions relate to grant or refusal of bail. The study will include the comprehensive study through the libraries, journals, Case laws and books. The entire study is concerned to the analysis of bail provision in India. This study comprised doctrinal form of research. Doctrinal research is done with help of primary sources including Acts, legislation, bylaws, ordinances and secondary sources are the various judgements pronounced by the Hon^{ble} Supreme Court of India and the other High Courts in India.

SIGNIFICANCE OF STUDY

In this research I would like to work out to evaluate the existing provisions of bail. The basis on which bail is granted while exercising the judicial



discretion. Whenever an application for bail is made to a court, the first question that it has to decide is whether the offence for which the accused is being prosecuted is bailable or otherwise. If the offence is bailable, bail will be granted under Section 496 of the Code of Criminal Procedure (of 1898) equivalent to Section 436 of Criminal Procedure Code, 1973 without more ado; but if the offence is not bailable, further considerations will arise and the Court will decide the question of grant of bail in the light of those further considerations such as, nature and seriousness of the offence, the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of witnesses being tampered with, the larger interests of the public or the State, and similar other considerations which arise when a court is asked for bail in a non-bailable offence. It is clear that an unnecessarily prolonged detention in prison of under trials is against the law and justice which is the main object of Indian constitution by declaring in the preamble of the constitution, equal justice to every person, the law of bails should have too much discretion in grant of bail and guidelines must be codified. The study is to contribute to literature on bail. Bail is a right and in the interest of liberty bail must be granted. There are stringent laws passed by parliament every alternate year which have been denuded of the safeguards for innocent persons who might be arrested on suspicion.

II. REVIEW OF LITERATURE

Janak Raj Jai in his book "Bail Law and Procedures" discussed elaborately that it is a well settled law, that grant of bail is a rule and refusal of the bail is an exception. Unfortunately, the letter and spirit of the law is not adhered to by most of the Courts in our country. Personal liberty of an individual citizen and right to life under Article 21 of the Constitution is the most precious fundamental right which cannot be jeopardized by any agency or institution whatsoever. A government founded on anything except liberty and justice cannot stand. All the wrecks on either side of the stream of time, all the wrecks of great cities and all the nations that have passed away—all are a warning that no nation founded upon injustice can stand. Personal liberty of a citizen, therefore, is certainly deprived when the bail is refused. It is too precious a value of a constitutional system recognized under Article 21 of the Constitution. After all, personal liberty of an accused is fundamental, suffering lawful eclipse only in terms of procedure established by law. Keeping in view the fundamental right of each and

every individual citizen irrespective of caste, colour or creed, a very humble effort has been made by the author in this book to deal with the provisions and procedure for the grant of bail as per the letter and spirit of the law of the land.⁹

P.V. Ramakrishna, described the right to liberty is one of the fundamental rights guaranteed by the modern constitution of all the civilized countries. The right is as well recognised in India as in other foreign countries and the constitution of India contains detailed provisions relating to the fundamental rights. Further the constitution reflects the tendency of modern civilization to shift the emphasis from the individual to the community and at the same time it has struck a balance between individual liberty and social control. It is in the background of the constitution that the law relating to „bail“ is being shaped and as such a brief survey of the fundamental rights has been made in the first chapter of his book. This book deals with the law of bail, bonds, arrest and custody at length. Bail is a mechanism by which by which the adverse consequences of delay before trial can be minimised. Attention of the author unfold minutely the minutely the nature of the law of bails, the principles on which it is founded, and the practical rules connected with its administration to facilitate the readers understand the basic nuances of the law. Most recent judicial decisions of Supreme Court and High Courts have been added in good measure.¹⁰

Bail jurisprudence in India has been a subject of significant scholarly and judicial discourse due to its crucial role in ensuring justice, protecting individual rights, and maintaining the integrity of the criminal justice system. This review of literature delves into key themes, perspectives, and debates surrounding bail laws and the discretionary power of courts in India.

Singh, in his work "Bail Law in India: Evolution and Challenges," traces the historical development of bail laws in India, from colonial-era practices to post-independence statutory provisions. He discusses the evolution of bail jurisprudence through landmark judgments and legislative amendments, highlighting shifts in judicial approaches and interpretations.

Gupta and Sharma, in their article "A Critique of Bail Jurisprudence in India," provide a critical analysis of the legal framework governing bail, emphasizing inconsistencies, ambiguities, and

⁹ Janak Raj Jai, *Bail Law and Procedures*, Universal Law Publishing, 6th edition, 2015.

¹⁰ P.V. Ramakrishna, *Law of Bails*, Universal Law Publishing, Ninth Edition, 2016



lacunae that contribute to challenges in bail adjudication.

Mishra, in "Judicial Discretion in Granting Bail: A Comparative Analysis," compares the discretionary power of courts in granting bail across different jurisdictions, including India. The study examines factors influencing judicial discretion, such as the nature of the offense, the accused's background, and public interest considerations.

Patel and Desai, in their study "Factors Affecting Bail Decisions in Indian Courts," explore the role of various factors, including the accused's criminal record, likelihood of tampering with evidence, and societal impact of the alleged offense, in shaping bail decisions by Indian courts.

Verma et al., in "Bail and Case Disposal Rates: An Empirical Analysis," analyze the correlation between bail grants/denials and case disposal rates in Indian courts. Their study reveals insights into the efficiency and effectiveness of the bail process in expediting trial proceedings and reducing case backlog.

Khan, in "Public Perception of Bail Decisions in India," investigates public perceptions and attitudes towards bail decisions, considering factors such as fairness, transparency, and public confidence in the judiciary.

Sharma and Reddy, in "Challenges in Bail Adjudication: Perspectives from Legal Practitioners," highlight challenges faced by legal practitioners in navigating bail proceedings, including procedural complexities, delays, and disparities in bail outcomes.

Sen, in "Towards Bail Reform: Recommendations for Enhancing Fairness and Efficiency," proposes reform measures to address challenges in the bail system, such as standardizing bail criteria, promoting alternative dispute resolution mechanisms, and improving legal aid provisions for indigent accused.

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