



ANALYTICAL VIEW ON PROVISIONS OF BAIL BOND IN PRESENT SYSTEM

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CHANPREET KAUR, DR. BHAWNA ARORA*

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Abstract

This case studies looks at how the regulations around bail bonds have been modified, who develops them and how well they address community needs. It looks into aspects, for example, whether the bail bond system is fair for the people who are usually unprivileged and ponders on how vice-versa the judges should wield their swords. Moreover, we go through the current developments and offer some hints as how to improve the bail bonds system so as to make it more democratic and easier to understand for any citizen in the country. The research paper focuses on working with what bail is and obtains its equality and effectiveness in freeing detainees from arrest before hearing. The bails bonds play an important role in legal system in the sense that they help people to be out of the jail, until their trial. Despite this, rules in different places vary so some people aren't okay with this because they feel so-called problems emerge from the cultural values and biases the judge can have that can destroy the system. This short essay about current system of bonds gravity describes what the bail bonds are. Here it states that something thing has changed, the process that they go through and the implications for the man as well as for his society and the economy. Additionally, it tests whether they have the ability to complete the work and their efforts to improve their job performances. The current research project, as part of the bail bond reform, investigates how the rules for bail bonds can be fair so that they will be the same for everyone. It provides the basics on how to change pro-bono defense's bail system.

Keywords: Bail, Justice, Right, Criminal, Bond

1. INTRODUCTION

Bail bonds facilitate the smooth of operation of the legal system. They offer people a way out from jail awaiting their respective date in court. The issue of bail address two main issues which are ensuring that the accused person shows up in court and creating public safety. Bail bond is the most common way to secure one's release. Here, however, there are concerns on how bail bonds are used. This research has examined the operation of the bail bonds process and the way that the system is currently working for those who cannot afford to post bail bonds. By understanding the specifics, the effects, and the efficacy of bail bonds, Bail Reform becomes its objective. The nature or form of bail bonds have evolved in the last centuries in accordance with the change of the laws as well as social constructs. With knowledge of the past be able to comprehend why do bail bonds originate in our present. Moreover, it enables insight into the factor which is used at present to pave the way for the present conditions of bail system. The judicial legislature governs the processes related to bail bonds. This research every detail of the law that decides the bail that one individual needs to pay as well as the constraints they will face. We would like to learn about the occupation of the bail bond service and how it affects people in areas of being involved in the criminal justice system. Under the law, offenders in bail are allowed to go free, but a scarcity of social

consequences might arise. The level of bails obtained by how much money you have as well as the legal representative representing you is common knowledge. This leads to a dilemma that fairness is being compromised. The purpose of the research is to comprehend how the wallet rules are related to the currency circulation and thereafter to introduce solutions that could make the situation more equitable. Assessing how accepted the bail bond rules are marks the crucial point. Efficiency and their work resilience are crucial to monitoring. Bail has two jobs: eliminating the risk to the public, while ensuring the defendant comes to court. But people still think that it is impossible for the liquid to be divided into a number of totally separated drops.

Judicial discretion constitutes the essence of bail permissions as judges possess ultimate power over the Asian amount a certain accused is obliged to pay and the conditions. This study has taken the judicial discretion topic as a focus point, discussing the determinants of the bail decisions and the possibility of institutional injustice or biases. Furthermore, it deals with the accountability and fairness designing mechanisms of the bail in order to guarantee the justice secrecy of the process. The point is that a good number of issues have recently emerged and

[Law College Dehradun, Uttaranchal University, Premnagar Arcadia Grant, P.O. Chandanwari, Dehradun, Uttarakhand 248007, India](#)

***Corresponding Author Email:**

bhawnaarora@uttaranchaluniversity.ac.in

there are claims for correcting the bail bond specifications. As a result, this study will review the latest developmental attempts regarding revamping the existing principles of the UKs current bail bonds. Through the study of effective reform models and offering feasible solutions for change, we aim at setting getting a road map that entails fairer, streamlined and just bail system.

The CrPC 1973 fails to define the word "bail," though the term bailable offense and non-bailable offense has been defined under Section 2(a) CrPC. 'On the one hand', in the first, pre-trial detention is authorized by law, while 'on the other hand' in the second, it depends on the judge's discretion.

In *Govind Prasad v. State of West Bengal*, The Supreme Court correctly ruled that the grant of bail is actually a judicial action and not a legislative one. The discretion should not be misused.

In *Harnairain Singh v. The State* the Supreme Court itself gave the direction that this power shall be judicially exercised, within the mentioned limitations as in Section 437 of the CrPC and having regard to the character of the offence, the nature of allegation, severity of punishment, the possibility of accused absconding if released on bail, evidence tampering, health, age and sex of the accused etc. The court also can impose such terms.

2. MEANING OF BAIL BOND

Bail refers to the point where a person who has been arrested with bail deposition with security to make sure his appearance in a suitable time to legal authority. The amount of the monetary security (the bail bond) is determined by the court that possesses the jurisdiction over that the prisoner.

Bail is one of the bail methods by which an accused person to take the liberty/freedom through security offering the appearance on a day and at a place named.

In India, a bail bond refers to a legal document or agreement executed by an accused person or their surety (a person who takes responsibility for the accused) as a condition for the accused's release from custody pending trial. The bond acts as the collateral that may be forfeited or collected in the circumstance that the defendant skips court hearings or does not comply with any other conditions set by the court beyond the scheduled court appearances. The basic idea behind bail bond is to involve the accused or their surety referring either to money or property or assets of equivalent value as security with the court as decent compensation or guarantee that the accused person will indeed attend the trial upon the assignment of their next hearing date. If the defendant does not show up in the court when the court requires or violates any conditions that come with the bail order, the court has the authority or power to forfeit the bail bond, which may result in the deposit money or assets being lost.

A duty of a bail bond in India, like in a legal system of any country, is to equitize the rights of an accused to be free with the interests of justice and public safety. It gives to those, who are charged but still lagging their sentences, opportunity to be released for custody, if they meet some conditions. The purpose is to avoid unnecessary pretrial detention and let accused persons to prepare their defense

while in-between the trial sessions for them to go free. The reserved powers concerning bail bond provisions and procedures in India are laid out in the Code of Criminal Procedure, 1973 (CrPC) and it contains the circumstances wherein bail can be granted, factors that the courts can utilize in deciding it and conditions that can be imposed on the accused as part of the bail order. Moreover, there could also be jurisdiction specific bail provisions, foundation of the offense charged and the locale where the flash caught.

3. HISTORICAL PERSPECTIVE

The bail process in India has come a long way in the form of several evolutions and witnessed the impact of many legal regimes. The trust worthy idea of bail can be traced to ancient Hindu law, where it was called "nantana" that means "taking security" and Islamic law, which was adopted from the Moguls Empire does not decline the bail concept too.

The Code of Criminal Procedure, 1861 revised in 1898, is the primary provision in the law during the British colonialism where the bail was handled through the system. The initial law that was implemented in India to correct bail system was Bail Act which came into being in 1899. It determined whether the confirmation should be granted or not, including the right amount of bond, the presumption of innocence, as well as jailing the defendant as a measure to prevent them from violating the court if there was the case of such. In this mode, judges and courts have been given discretion as to whether to grant bail or deny it based on the varying circumstances in each case. The key factors that informed the decision to grant the accused bail included the nature of the offense, the accused person's character and the probability that the defendant would avoid justice or taint the evidence. Nevertheless, up to that point, the largest part of bail resolution depended on a judge or magistrate's discretion what resulted in unfair and precipitate decisions.

The Code of Criminal Process received two further revisions during the time period when India was gaining its independence in 1947 (amendments made through the acts of 1955 and 1973). The phrase "personal bond" was for the first time in the 1973 amendment, which introduced the release of suspects under their own recognizance without any provision of court to surety or security. "Default bail," that is, a bond issued automatically, allows suspects whose trial has not been completed within this period to become free in the year 2005, Definite time for investigation given to the police, as provided in the Code of Criminal Procedure. This clause forbids accusers from being unable to end their incarceration phase without bringing charges against them or having a trial for a longer period, each of these separately. The current law on this matter follows the aforementioned Criminal Procedure (Code) Act, 1973, and its amendments. While most serious crimes like murder, rape, and terrorism are excluded from the provisions of 'bail for most' scheme, this system of remanding suspects is one when they are not guilty one way or the other. The courts seal the case if the bail is not needed in this situation, and only the superior courts are authorized to approve bail approval. The severity of the crime, the risk of the accused escape or alteration of

evidences, and the criminal history of the accused are the matters that judge carefully when they are going to decide whether to grant bail to the accused. Whether the third tier or the highest, Criminal Procedure Code, 1973, goes through the amendment that brings the bail theory in India into effect. The compendium of our legal system acknowledges the aspect of personal bond as this permit accused persons to be released on their own recognizance without any need to provide any security and provides for automatic release of accused persons on bail when the investigation or trial is not concluded within a fixed period of time.

4. LEGAL FRAMEWORK FOR BAIL BOND

Bail is very important part of criminal justice system as its meaning is concerned that is acquisition of a release from a prison of a person who is awaiting trial. Whether or not to grant bail involves questions regarding the nature of the person to be released and the individual liberty as stipulated under Article 21 of the Constitution. Additionally, bail involves two interests: individual liberty and social interest. A person on bail is at better odds of preparing or presenting his case than being remanded in custody. Humanize sentence: And if the injection of public justice is to be done mechanically, then the use of detention should be removed. Clearly, it is the great expenditure of the public funds in places where there is the risk of disappearance. In cases of bail in non-bailable cases the judicial discretion to be exercise on just and human grounds and on some codified provision.

5. IMPACT OF BAIL SYSTEM ON CRIMINAL JUSTICE SYSTEM

The bail system plays a significant role in the Indian criminal justice system, impacting various aspects of the process. Following are the main points -

- The courts use the bails process to let people who undergo an arrest to walk free before the trial. This is realized via the assumption that everybody is deemed innocent until one is proved guilty. It is crucial to keep the rights of the accused secure and thus they do not need to stay in prison before their court hearing is over, unnecessarily.
- Since bail can only be hardly afforded, therefore only those who can do so are not jailed causing the prison to be too full. This way by using the court system the cases may be resolved faster and they may be able to solve more cases than leaving it alone in the system.
- Surety allows the poor who are otherwise cash-strapped to afford a legal counsel and have their cases heard in a court of law. Being behind the bar for too long should not happen since it would deprive a person of the opportunity to prepare thoroughly for their trial and for them to have a lawyer's assistance.
- When a person is charged with a crime, in order to first be released from jail it must be possible to bail out. This is possible if the defendant is able to pay money as bail. This gets them able to hold their job, stay at their homes, and be with

their beloved ones. This mitigates the problems which might come if an individual is kept incarcerated before they receive trial.

- Among concerns of the public on bail is that the accused might cause more danger to the society even if they are free to wait for the judgment while they are out of the court. It is a crucial matter that courts need to be sure of both the protection of public and the individual rights of the accused at the same time when they talk about bail and rules that the suspect must follow while awaiting trial.
- Bail impact brings about differential behaviors both on the police in how they arrest as well as the jailing period of the arrestees. It shouldn't be open ears for police just because they assume that the person doesn't have the right to move on. Moreover, they can opt for bail to facilitate the free movement of the accused.
- The bail system is constructive because the fact that it forces courts to look at bail requests without lag and make judgments based on the law and existing circumstances. It amounts to that the judicature needs to access money and training to be able to manage the hearings well.
- The weak points of the Indian criminal justice system must be fixed in the setting of a bail hearing schedule, being fair in bail decision making in different places and eliminating the brutal and impermissible actions that can happen when individuals are out on bail.

This indicates that the primary recourse of Indian judiciary system is preferable on pre-trial legality, which ensures a fine line between justice, personal liberty, and public safety. Improving the status quo is of utmost importance and all the steps are to be taken to effectively resolve the problems and upgrade the procedures toward justice and correctness. These kinds of trials play an invaluable role in preserving public trust in the integrity of the justice system.

6. JUDICIAL APPROACH

In the State of Rajasthan v. Balchand, the trial judge rendered the verdict in favor of the prosecution. The High Court affirmed the annulment of the conviction upon his issuing an appeal. The State took up the matter by filing a special leave petition under Article 136 which is a power conferred to the Supreme Court. The judge instructed the person in question to show up. When he filed for bail. Justice Krishna Iyer for the first time from the beginning confronted an unjusticial system of remand of bail at that time. Though the bail system is the one with a big history, he said that the time for reckoning has come. It might be that this course is appropriate for the majority of the occasions.

In Moti Ram and Ors. v. State of M. P, first appearance in the court, the accused mason was found guilty. The bail amount is not given any details on sureties, bonds, or other conditions, which means the Chief Judicial Magistrate was commanded by the Supreme Court to award him a higher battery. The CJM stated that there would be no

liability on that matter, and set the surety and bond amount at rupees. A court adds another 10,000 days and makes the brother stand for the surety because his property is located in the neighboring village. The Supreme Court heard MR's plea again but this time Justice Krishna Iyer effectively condemned the CJM's decision and emphasized judges to be more inclined to granting bail than be caught up on imprisoning the wrongfully accused.

Justice Krishna Iyer in case of *Maneka Gandhi v. Union of India*. However, there is lack of clear definition of bail in the law, which led to division of offenses into two categories of those which are subject to bail and those that are not. In addition, Justice P.N. Bhagwati wrote about how, in terms of the economic point of view, the system of bail is not fair to all and it discriminates among people. Discrimination is perpetrated in this manner well even if the magistrates don't set high levels of bail where it's a minority, but on the other hand, the majority of those who are brought to the courts in matters of criminal cases are too poor to afford even a small bail amount.

The Supreme Court ruled in *Sanjay Chandra v. CBI* that any economic crime be classified as one of the "grave offenses" and that a right to be released was excluded from persons face the charge when the suspect already evaded from the justice.

7. CONCLUSION

Judicial discretion is not to be used in any way they want. By law, the sound discretion is supposed to be guided by the rule of law: it should be clear and not be fictitious. Lord Camden held forth that the discretion of judge is an infamously fact as belongs to tyrants. It is random and ever-changing; it is personal and depends on the several aspects of a character. In judging, I verily aver, it is either oftentimes caprice—and even sometimes the worst that we poor humans can be—to wit, every vice, folly, and passion, which human nature is comprised.

This study of the given cases makes it abundantly clear that there is a strong strand that biased against the poor in the Indian criminal justice system. Biggest problem is that though in some cases the Court has made the effort of intervening and guiding the concerned authorities there has been no action undertaken. Along with this there is a demand arise for a grand thatcher view of the bail system having in mind the social-economic state of very many of our citizens. A question that is not a point of argument but a fundamental inquisition is that even after making all the efforts and with due consideration to the law of the land and also selecting the appropriate guidelines and mechanisms for its exercise, the Indian criminal justice system remains flawed. The courts ought always to take into account the economic background of the accused, approach the issue compassionately and conduct background checks to hinder his disappearance from the justice system, the ensuing unconstitutional of the basic and other citizens' rights.

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