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Research Article

BAIL AND ITS REFORM: A STUDY

"A jury consists of twelve persons chosen to decide who has the better lawyer."

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ABSTRACT

this paper deals with the monetary value of the security, known also as the bail, or, more accurately, the bail bond, is set by the court having jurisdiction over the prisoner. The security may be cash, the papers giving title to property, or the bond of private persons of means or of a professional bondsman or bonding company. Failure of the person released on bail to surrender himself at the appointed time results in forfeiture of the security. One of the reasons for this is, as already mentioned above, and is the large scale poverty amongst the majority of the population in our country. This is the precise reason why most of the under trials languish in jail instead of being out on bail. The under trials who are charged with petty crimes will more be place in reformatory homes instead and asked to try and do community service until the time they're free on bail. Instruction facilities should be granted to those under trials area unit uneducated and illiterate. Thus, it is felt that the advantage of bail mustn't solely be within the hands of a couple of, but, ought to be on the market to the lots together with those that don't have the money capability to afford it.

INTRODUCTION

Bail, in law, means procurement of release from prison of a person awaiting trial or an appeal, by the deposit of security to ensure his submission at the required time to legal authority. The monetary value of the security, known also as the bail, or, more accurately, the bail bond, is set by the court having jurisdiction over the prisoner. The security may be cash, the papers giving title to property, or the bond of private persons of means or of a professional bondsman or bonding company. Failure of the person released on bail to surrender himself at the appointed time results in forfeiture of the security. The law lexicon defines bail as the security for the appearance of the accused person on which he is released pending trial or investigation.

The Criminal Procedure Code, 1973 (Cr.P.C. Hereinafter), does not define bail, although the terms bailable offence and non-bailable offence have been defined in section 2(a) Cr.P.C. as follows: " Bailable offence means an offence which is shown as bailable in the First Schedule or which is made bailable by any other law for the time being enforce, and non-bailable offence means any other offence". Further, ss. 436 to 450 set out the provisions for the grant of bail and bonds in criminal cases. The amount of security that is to be paid by the accused to secure his release has not been mentioned in the Cr.P.C. Thus, it's the discretion of the court to place a financial cap on the bond. Sadly, it's been seen that courts haven't been sensitive to the economic plight of the weaker sections of society. The unreasonable and immoderate amounts demanded by the courts as bail bonds clearly show their callous angle towards the poor.

According to the 78th report of the Law Commission as on April 1, 1977, of a total prison population of 1,84,169, as many as 1,01,083 (roughly 55%) were under-trials. For specific jails, some other reports show: Secunderabad Central Jail- 80 per cent under-trials; Surat-78 per cent under-trials; Assam, Tripura and Meghalaya-66 per cent under-trials.

One of the reasons for this is, as already mentioned above, and is the large scale poverty amongst the majority of the population in our country. Fragmentation of land holdings is a common phenomenon in rural India. A family consisting of around 8 or 10 members depends on a small piece of land for their subsistence, which also is a reason for disguised

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unemployment. When one of the members of such a family gets charged with an offence, the only way they can secure his release and paying the bail is by either selling off the land or giving it on mortgage. This would further push them more into the jaws of poverty. This is the precise reason why most of the under trials languish in jail instead of being out on bail.

OBJECTIVE

- To know about bail and its reform.
- To analyse the reforms and its nature.
- To study the improvements that can be made in regard with the reforms.

HISTORY OF BAIL

The concept of bail can trace back to 399 BC, when Plato tried to create a bond for the release of Socrates. The modern bail system evolved from a series of laws originating in the middle ages in England.

Evolution in England

There existed a thought of circuit courts throughout the medieval times in Britain. Judges wont to sporadically visit varied elements of the country to choose cases. The terms Sessions and tribunal area unit so derived from the intervals at that such court were command. Within the meantime, the beneath trials were unbroken in jail awaiting their trials. These prisoners were unbroken in terribly insanitary and cruel conditions this was caused the unfold of plenty of diseases. This agitated the undertrials, which were thence separated from the suspect. This crystal rectifier to their unharness on their securing a surety, in order that it absolutely was ensured that the person would seem on the appointed date for hearing. If he didn't seem then his surety was command liable and was created to face trial. Slowly the construct of financial bail came into existence and therefore the aforementioned undertrial was asked to provide a financial bond, which was prone to get forfeit on non-appearance. In The Magna Carta, in 1215, the first step was taken in granting rights to citizens. It said that no man could be taken or imprisoned without being judged by his peers or the law of the land.

Then in 1275, the Statute of Westminster was enacted which divided crimes as bailable and non bailable. It also determined which judges and officials could make decisions on bail.
In 1677, the Habeas Corpus Act was added to the Right Of Petition of 1628, which gave the right to the defendant the right to be told of the charges against him, the right to know if the charges against him were bailable or not. The Habeas Corpus Act, 1679 states, "A Magistrate shall discharge prisoners from their Imprisonment taking their Recognizance, with one or more Surety or Sureties, in any Sum according to the Magistrate's discretion, unless it shall appear that the Party is committed for such Matter offenses for which by law the Prisoner is not bailable."1 In 1689 came The English Bill Of Rights, which provided safeguards against judges setting bail too high. It stated that "excessive bail hath been required of persons committed in criminal cases, to elude the benefit of the laws made for the liberty of the subjects. Excessive bail ought not to be required." In 1976 the Bail Act 1976 came into force. It sets out the current and the basic legal position of bail prevailing in England. It lays out that there is a general right to bail, except as provided for under the First Schedule of the Act. While there are different grounds for refusing the right to bail depending on the type of offence, for all imprison able offences the two basic grounds are as set out by the O'Callaghan decision. But there is also the additional ground that if the court is satisfied that there are "substantial grounds for believing" that the defendant if released on bail will commit an offence while on bail may be refuse.

Under section 5(3) of the Bail Act 1976 the court which withholds bail is required to give reasons, so that the defendant can consider making an application. In practice, however, the reasons given by English courts on a variety of standard forms are frequently short and not explicitly based upon particular facts and factors. Stone's Justices' Manual suggests that magistrates announce any decision to refuse bail merely by relating the grounds and statutory reasons in short form. English administrative law also requires that, where there is an existing obligation to give reasons for a decision, the reasons given is clear and adequate, and deal with the substantial issues in the case.

The English courts use tick boxes for recording the grounds and the reasons for not granting bail. There is a use of a standard pattern that which lists out the various reasons for not granting the bail. These forms vary in their precise configuration, but in substance they are all the same as all of them set out the grounds for refusing bail in one column, and a number of possible reasons for the findings those grounds established in another column. The decision is recorded by ticking the relevant box in each column. But the decisions recorded on standard forms might be at risk of being characterized as "abstract" or "stereotyped", and therefore inadequate. The quality of the reasons given directly reflects the quality of the decision-making process.

However, bail is not rendered excessive by the mere inability of the accused to procure bail in the amount required. In other words, the extent of the pecuniary ability of the accused to furnish bail in not controlling, if it were, the fixing of any amount, no matter how small, where the accused had no means of his own and no friends who were able or willing to become sureties for him, would constitute a case of excessive bail, and would entitle him to got at large on his own recognizance. It is the incarceration of those individuals who cannot meet established money bail requirements, without meaningful consideration of other possible alternatives, which infringes on both due process and equal protection requirements.

BAIL MUST BE THE RULE

The Law Commission has done well to recommend a complete overhaul in the way courts grant bail. Bail must be the rule rather than the exception, given that every person charged with a crime is presumed innocent until proven guilty. Reform in bail jurisprudence that includes fast disposal of

1Last visited September 10,2017; http://www.legalserviceindia.com/articles/bail_poor.htm

bail applications, easier surety requirements and minimizing pretrial detention is overdue.

Inconsistency in the bail system is one of the main reasons for crowding of prisons-it is appalling that 67 per cent of the prison population is awaiting trial in India. Rightly, the Supreme Court has frowned upon the mechanical attitude towards detention.2

Courts must deny bail only under three conditions. One, the person charged with the crime is likely to flee. Two, the accused is likely to tamper with evidence or influence

witnesses. Three, the person is likely to repeat the same crime if granted bail. The need is to protect a citizen's right against arbitrary detention in sync with international norms. The Law Commission has proposed a strict approach towards economic offences, saying such offences hurt the economy, growth and global competitiveness of the country.

The Supreme Court had also said that the entire society is aggrieved if economic offenders are let off the hook. There are economic offences that merit only financial penalties but those that cause major harm to other people or to the state have to be treated with gravity. Cheating widows and orphans of their lives' savings and pushing them into penury must be treated as serious crime, for example. Ideally, the verdict on criminal and civil cases beyond final appeal should be delivered within two years. This calls for significant reform, quantitative and qualitative. India has just 13 judicial posts per million people, though the Law Commission had recommended 50 judges per million of the population, based on the ratio prevalent in the US in 1981. Surely, the need is to significantly increase the number of judges and courtrooms and deploy information technology-assisted, reformed procedure to deliver speedy justice.

BAIL AS A MATTER OF RIGHT

In legal matters, courts have a right to detain someone. This may ensue to non-compliance of court orders, risk of escape and disappearance, or the prospect that someone can tamper with proof or threaten witnesses. There are, indeed, some terribly serious crimes wherever bail will be justly refused by the courts.

The Supreme Court had reiterated that bail is a matter of right. That means that the balance of convenience must be in the favour of the person charged. In other words, it is better to grant bail rather than refuse it. Of course, as in all things legal, this comes with a rider. Bail usually entails a money deposit with the court and a surety, a person who is responsible for the accused turning up when asked to. Moreover, the court has asked the legal aid people to make sure that this ruling is implemented all over the country. The sad fact is that, as of last year, 278,000 persons were languishing in jails across the country. Of these, 67% are under-trials; more than 186,000 are awaiting trial. Considering that the conviction rate in India is abysmally low, why are jails so overcrowded?

Under-trials are unbroken in a very lock-up—a expression for a jail-for indefinite periods. The most business of the police is to quickly comprehend a case, a charge-sheet, and gift it to the court. The court then decides on the bail, or whether or not to unleash the person. In myriad cases, though, the person rots in jail for a amount longer than what he would have served, if he had been tried and condemned. For this, the cops are only responsible. Of course, if you're the high and mighty, you are doing not pay quite an evening in jail. The privileged category suddenly becomes at risk of 'heart attacks'. The poor guys ar rush to hospital wherever they keep in comfort, until the day of reckoning; that ne'er arrives until death or contacts solve the matter. Usually, by the latter.

One explanation for concern is public perception and pre-trial conviction by the sensationalizing media. Once one reads within the newspapers of associate degree arrest, at the side of juicy details, it's assumed that the person is as guilty as hell. This, often, interprets into a worry within the minds of the authorities against early bail. Additional usually than not, the bail plea is rejected. Higher to err on the aspect of caution. So, in spite of the hue-and-cry against the judges, there are some who uphold human dignity and act with mental health and fearlessness. We'd like our courts.

THE NECESSITY OF REFORMS

"Societal contexts, its relations, changing pattern of crimes, arbitrariness in exercising judicial discretion while granting bail are compelling reasons to examine the issue of bail and to chart a roadmap for further reform", observed commission. It indicated that overcrowding of prisons may be due to inconsistency in the bail system. 67% prison population is comprised of undertrials.3
Important proposed amendments are:4

- In Section 2(a) it proposes to do away with a very generic definition of bailable offence and non-bailable offence with the reference to indication to schedule 1 and substitute with a more articulate definition of bail.
- Since u/s 41 police officers enjoy the vast power to arrest a person. The commission in order to maintain a balance between an individual liberty and societal interests suggested that arrest without strict compliance to provision should entitle a person to get bail. Duty has been cast on the magistrate to ensure such compliance. Further, disciplinary enquiry against the erring officials has been proposed.
- The requirement of financial obligations, either through the execution of a personal monetary bond, or through sureties should be the last resort when no other method is likely to work. In determining the conditions of bail, the Court should take into account the financial status of the person accused of an offence, and shall ensure that the conditions of bail are not excessive or unduly onerous. Sureties should not be rejected solely on the ground that they are not locally situated.
- Amendment to schedule I – Recommendation has been

2 Last visited September 10,2017; https://blogs.economictimes.indiatimes.com/et-editorials/bail-must-be-the-rule-rather-than-the-exception

3 Last visited September 11,2017; https://lawlex.org/lex-pedia/revamping-bail-system-268th-report-law-commission-india-bail-reforms/13670

4 Last visited September 12,2017: https://lawlex.org/lex-pedia/revamping-bail-system-268th-report-law-commission-india-bail-reforms/13670

made that there should be consistency between the term of imprisonment for offences and their classification as Bailable or Non-Bailable.

- Amendment to S. 438 relating to anticipatory bail – It is recommended by the commission that the anticipatory bail must not only be granted with caution but must also be made operative for a limited period of time. Further, given the special position that s. 438 of Cr.P.C enjoys in the Code and the potential for misuse, any order passed under this section must be accompanied by reasons for rejecting or granting anticipatory bail.
- Bail in economic offences – All forms of economic offences which include tax evasion, customs offences or bank fraud should be dealt with strictly and provision for restricted bail in such offences should be incorporated in the Criminal Procedure code or appropriate special statutes for the purpose of granting or refusing bail.
- 7. v. Bail in Special laws – It has been suggested that in terrorism laws, NDPS law etc., there should be a stricter scrutiny in granting the bail and only in exceptional cases bail should be granted.
- The introduction of electronic monitoring system like electronic tagging. Such monitoring must be used only in the grave and heinous crimes, where the accused person has a prior conviction for similar offences.
- Victim-oriented approach – One of the principles that should govern bail is 'the treatment of victims' especially where a victim who is known to have expressed concern about the need for protection from an offender should be told about the offender's impending release from custody. Commission suggested that in certain heinous and grave offences the Prosecutor may be required, after consulting the victim, submit a 'Victim Impact Assessment' report wherein any concerns of the victim along with the information on physical, mental, social impact of the crime and the impact bail may have on the victim may be briefly stated. Checklist model as prevalent in UK is also advised to be adopted.
- Commission recommended that the risk assessment may be done by balancing the pros and cons of granting the bail.

THE LAW COMMISSION'S REPORT

That bail is the norm and jail the exception is a principle that is limited in its application to the affluent, the powerful and the influential. The Law Commission, in its 268th Report, highlights this problem once again by remarking that it has become the norm for the rich and powerful to get bail with ease, while others languish in prison. While making recommendations to make it easier for all those awaiting trial to obtain bail, the Commission, headed by former Supreme Court judge B.S. Chauhan, grimly observes that "the existing system of bail in India is inadequate and inefficient to accomplish its purpose."[5]

One of the first duties of those administering criminal justice must be that bail practices are "fair and evidence-based". "Decisions about custody or release should not be influenced to the detriment of the person accused of an offence by factors such as gender, race, ethnicity, financial conditions or social status," the report says. The main reason that 67% of the current prison population is made up of undertrials is the great inconsistency in the grant of bail. Even when given bail, most are unable to meet the onerous financial conditions to avail it. The Supreme Court had noticed this in the past, and bemoaned the fact that poverty appears to be the main reason for the incarceration of many prisoners, as they are unable to afford bail bonds or provide sureties. The Commission's report recommending a set of significant changes to the law on bail deserves urgent attention.

The Commission seeks to improve on a provision introduced in 2005 to grant relief to thousands of prisoners languishing without trial and to decongest India's overcrowded prisons. Section 436A of the Code of Criminal Procedure stipulates that a prisoner shall be released on bail on personal bond if he or she has undergone detention of half the maximum period of imprisonment specified for that offence.

The Law Commission recommends that those detained for an offence that will attract up to seven years' imprisonment be discharged on finishing tierce of that amount, and people

Charged with offences attracting a extended jail term, once they complete 1/2 that amount. For those that had spent the

Complete amount as under trials, the amount undergone is also thought of for remission. Generally terms, the Commission cautions the police against unneeded arrests and magistrates against mechanical remand orders. It provides an illustrative list of conditions that would be obligatory in place of sureties or monetary bonds.

It advocates the need to impose the "least restrictive conditions". However, as the report warns, bail law reform is not the panacea for all problems of the criminal justice system. Be it overcrowded prisons or unjust incarceration of the poor, the solution lies in expediting the trial process. For, in our justice system, delay remains the primary source of injustice.

JUDICIAL TREND

An overview of the following cases highlights the adverse condition of the poor with regard to the unjust bail system in India.

In State of Rajasthan v Balchand6, the accused was convicted by the trial court. When he went on appeal the High Court, it acquitted him. The State went on appeal to the Humble Supreme Court under Art. 136 of the Constitution through a special leave petition. The accused was directed to surrender by the court. He then filed for bail. It was then for the first time that Justice Krishna Iyer raised his voice against this unfair system of bail administration. He said that though while the system of pecuniary bail has a tradition behind it, a time for rethinking has come. It may well be that in most cases an undertaking would serve the purpose.

5 Last visited September 12,2017; http://www.thehindu.com/opinion/editorial/bail-or-jail/article18578574.ece

6 (1977) 4 SCC 308

In Moti Ram and Ors. v State of M.P7, the accused who was a poor mason was convicted. The apex court had passed a sketchy order, referring it to the Chief Judicial Magistrate to enlarge him on bail, without making any specifications as to sureties, bonds etc. The CJM assumed full authority on the matter and fixed Rs. 10,000 as surety and bond and further refused to allow his brother to become a surety as his property was in the adjoining village. MR went on appeal once more to the apex court and Justice Krishna Iyer condemned the act of the CJM, and said that the judges should be more inclined towards bail and not jail.

In Maneka Gandhi v Union of India,[8] Justice Krishna Iyer once again spoke against the unfair system of bail that was prevailing in India. No definition of bail has been given in the code, although the offences are classified as bailable and non-bailable. Further Justice P.N.Bhagwati also spoke about how unfair and discriminatory the bail system is when looked at from the economic criteria of a person this discrimination arises even if the amount of bail fixed by the magistrates isn't high for some, but a large majority of those who are brought before the courts in criminal cases are so poor that they would find it difficult to furnish bail even if it's a small amount.
Further in Hussainara Khatoon and others v. Home Sec,State of Bihar[9], the Court laid down the ratio that when the man is in jail for a period longer than the sentence he is liable for then he should be released.

CONCLUSION

In this paper it has been observed that the criminal jurisprudence adopted by India is a mere reflection of the Victorian legacy left behind by the Britishers. The passage of our time has solely seen a couple of amendments once during a while to satisfy pressure teams and vote banks. In all probability no thought has been given whether or not these legislations that have existed for nearly seven decades have taken under consideration the plight and also the socio-economic conditions of seventieth of the population of this country that lives in utter impoverishment. Asian country being an impoverishment stricken developing country required something however a blind copy of the legislations prevailing undeveloped western countries. The thought of bail, that is associate degree integral a part of the criminal jurisprudence, conjointly suffers from the on top of declared drawbacks. Bail is broadly speaking accustomed discuss with the discharge of an individual charged with associate degree offence, on his providing a security that may guarantee his presence before the court or the other authority whenever needed.

It is thought that from the assorted schemes the government operates for rural employment, loans to farmers etc, a little of the funds that it transfers to the council for organic process work of identical ought to be put aside and unbroken to satisfy the bail quantity for under trials happiness to the actual council / block. the employment of this fund would be within the hands of the electoral leaders of the society with the representative of district collector / district functionary being a section of the system. This would, go an extended method in securing freedom for a lot of under trials agency would then be ready to contribute to society thereby enjoying a crucial role and forming a part of the national thought. Such a situation can have the result of reducing the burden of crowding in jail. The putting in place of separate jails, or at any rate analytic undertrials from convicts, would forestall hardened criminals from sweat their hurtful influence over below trials. Such segregation would conjointly modification the perspective of jail authorities and society at massive towards below trials.

The under trials who are charged with petty crimes will more be place in reformatory homes instead and asked to try and do community service until the time they're free on bail. Instruction facilities should be granted to those under trials area unit uneducated and illiterate. Thus, it is felt that the advantage of bail mustn't solely be within the hands of a couple of, but, ought to be on the market to the lots together with those that don't have the money capability to afford it. Labo. Et faccullab is sit

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