

A Review of Studies on Need of Bail System Reform in India

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Abstract: The Indian legal system aim to balance individual liberty with the social needs of peace and order. Bail laws protecting the constitutional rights of convicted persons play an important role in this balancing act. The Code of Criminal Procedure (CrPC) were introduced in 1898, empirical research and comparative methods help to understand the challenges and advantages of the current bail system This study survey literature existing bail laws in India and emphasizes the need for reforms to ensure access to justice and an equitable environment for the administration of justice. The author highlights the importance of establishing a clearly defined bail policy in the judicial system to address the increasing incarceration of socioeconomically disadvantaged individuals.

Keywords: Bail System in Indi, Bail Laws, Code of Criminal Procedure (CrPC), Justice Administration, Judicial Reform.

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1. INTRODUCTION

The concept of justice in the Indian legal system are influenced by the delicate balance between protecting individual liberties and maintaining social needs for the maintenance of peace and order (Grover, 2021). Bail, a legal mechanism designed to protect the constitutional right of those convicted of crimes to personal liberty, is considered an important element of balancing (Kumar, 2020). An examination of Indian bail law reveals a complex system that requires a thorough study of history, law and practical matters, as the relationship between freedom and policy continues.

2. Origin of the Bail Laws in India

The bail law in India can be traced back to the colonial period, ie. 1898 Code of Criminal Procedure (CrPC) bail jurisprudence. Understanding this historical development is essential to explaining the complex aspects of India's current bail law.

The Criminal Procedure Code, 1973, is one of the most important documents defining the legal rules governing the granting of bail in India. This applies to criminal cases across the country. Sections 436 to 450 of the CRPC define the rules of bail, covering bailable and non-bailable offenses Furthermore, by virtue of important decisions of the Supreme Court of India, such as *Gudikantinarasimhulu v. Govt. Public Prosecutor*, (1978) 1 SCC 240, and *State of*

Rajasthan v. State of Rajasthan. Balchand, AIR 1977 SC 2447, has broadened the interpretation and application of bail law (Kumar et al., 2020; Vaghela, 2003).

3. Empirical research

Empirical research is primarily concerned with the actual circumstances and systemic challenges associated with the granting of bail. A recent empirical study by Dubey et al. (2021) provide valuable insights into the effectiveness of bail laws in India. This comprehensive study provides valuable insights into a number of issues including the socio-economic status of the accused persons, the alleged offenses committed and the effectiveness of bail procedures in the Delhi Court The Supreme Court and the District Court.

4. A challenge to the existing bail laws

The challenges of the existing bail system are evident from the academic analysis, legal arguments and detailed analysis of important court decisions in the paper "Law on Bail in India: A Critical Analysis" by Das and in the writings of his colleagues. Al. (2021) provide a comprehensive analysis of the many legal features and institutional complexities that accompany the bail system. Das's study and other scholarly contributions provide valuable insights into understanding the nuanced and multifaceted characteristics of bail law in India.

In the present study, it is necessary to use a comparative approach to understand the advantages and disadvantages of the Indian bailment law. Mack's 2017 book, "Comparative Criminal Procedure: History, Procedures, and Case Studies," provides a comprehensive review of foreign procedures, provides a global framework for evaluating and evaluating the effectiveness of bail systems new ways to improve it

This paper is a review of literature in an attempt to shed light on the existing bail laws in India and the need for reform. The subsequent sections will provide an in-depth review of the relevant literature on bail law in India.

5. Review of Bail-Related Studies

There are several studies which have been focused on bail as an important instrument of judiciary which are as follows -

5.1. *Malik et. al. (2020)*

The study of Malik et al.(2020) provides a comprehensive and interesting survey of reference codes, with important legal requirements discussed in a concise, comprehensive, and structured manner. This well-researched study seeks to accurately describe the current state of the law on bail in the country by looking at recent developments in judicial and civil law. In this collection, the authors have carefully examined many important aspects of bail, including police bail, judge bail, regular bail, bail a anticipated, transit bail, revocation of bail, default of bail, and constitutional principles of bail Books by Malik et al. (2020) is recognized and widely regarded as a reliable and influential resource for judges, lawyers, In house Counsels,

Law companies, students, legal educators, researchers and scholars.

5.2. Sharma (1980)

Sharma (1980) is an initial study that explores the many aspects of the bail system in India. According to the author, Judge IYER said that the topic of granting bail to Narasimhulu is a complicated problem within the criminal justice system and is mostly dependent on the judge's intuition, often referred to as judicial discretion. The Code is ambiguous on this issue and the court opts for silence, irrespective of whether the order is custodial or not. Nevertheless, the focus is on the principles of liberty, equity, public safety, and fiscal accountability. These issues highlight the need of implementing a well defined bail system within a judicial process that is responsive to the requirements of society. One "Consequently, the denial of bail results in the deprivation of an individual's personal liberty, a matter of great importance within our constitutional structure, as recognized by articles 19, 21, and 22." Engaging in this activity requires a substantial amount of trust and should be done intentionally and with sincere concern for the welfare of both the person involved and the larger group. Article 21 establishes that the legal restriction of an accused or convicted individual's personal freedom can only be done through a process established by law, ensuring their essential personal freedom. The author states that Cardozo has noticed that judges, albeit having some flexibility, are not completely unrestrained when it comes to 'judicial discretion'...He is anticipated to draw his inspiration from established concepts. He must avoid giving way to unpredictable emotions and misplaced selflessness. He must use his discernment guided by established customs, structured by comparison, regulated by a framework, and obedient to the essential requirement for societal organization. The author noted that Lord Mansfield has defined discretion, in the context of a court of justice, as the use of prudent judgment informed by legal principles. The author asserts that regulation should be guided by established principles rather than personal preferences. It should not be arbitrary, ambiguous, or speculative, but rather lawful and consistent.

5.3. Das (2019)

Das (2019) provides a comprehensive examination of bail within the legal context of India. This text comprehensively examines all aspects of bail, encompassing the legislative

framework pertaining to bail in India, with a specific focus on women and children. The essay explores the complexities of bail regulations, the distinction betweenailable and non-ailable offenses as specified in the Criminal Procedure Code, and maybe examines recent amendments or developments in bail legislation.

5.4. Dubeyet. al. (2021)

The Bail system is a crucial and essential component of the criminal justice system (Dubey et. al., 2021). The objective of bail is to alleviate the restrictive and punitive outcomes of pre-trial imprisonment for the accused. This is achieved by transferring the legal liability of the accused to a third party, such as a guarantor, through the provision of surety bonds. Alternatively, the defendant may be released on their own recognizance by signing a personal bond. Dubeyet. al. (2021) performed study to explore the complex elements of the bail concept and evaluate the concrete impacts of bail and its regulations on society as a whole. The essay seeks to achieve two goals: firstly, to conduct doctrinal research on the matter, and secondly, to offer a complete case study that illustrates the actual application of the principles in society. The society's reactions and the actuality they confront are crucial factors that necessitates contemplation. The sample analysis uncovers concerning elements that highlight the necessity for reform in the existing bail regulations. The Ministry of Home Affairs has stated that a total of 2,31,340 individuals who were awaiting trial for offenses under the Indian Penal Code (IPC) and 50,457 individuals who were awaiting trial for offenses under special laws such as the Customs Act of 1962, Narcotic Drugs and Psychotropic Substances Act of 1985, and Excise Act of 1944, were detained in prisons across different States and Union Territories. The numerical value is 8. In 2015, a substantial cohort of 12, 92, 357 persons who were awaiting trial were granted freedom, with 11, 57, 581 of them being released on bail. The objective of Dubey et al. (2021) is to present a precise representation of the present situation while elucidating the historical backdrop of bail regulations.

5.5. Kumar (2020)

Kumar (2020) states that bail is a crucial components of the legal system, referring to the release of an accused person after providing a personal bond or promise to adhere to court-imposed terms and attend court proceedings. The

author asserted that it is imperative to highlight that the mere allegation of a crime should not result in prolonged incarceration. In the case of Babua Tazmul Hossain V. State of Orissa[1], the author highlights that the Supreme Court of India emphasized that pre-trial imprisonment should not be used as a form of punishment. Given that bail is a legal right, the accused should be granted the opportunity to post bail in order to enhance their legal defense. Incarceration should be considered as a rare occurrence, unless the courts have strong reasons to believe that the accused would flee from trial or that granting bail would go against the interests of society (Kumar, 2020). Significant disparities arise in decisions made by trial courts and High Courts, sometimes leading to the High Court granting bail in instances that were previously denied by trial courts, without offering a legal justification. According to the author, there is an urgent want for a thorough examination of the bail system, taking into account the socio-economic situations that are widespread among the majority of the people. Courts should thoroughly examine the socio-economic background of the accused while evaluating bail, with a focus on adopting a humane approach.

5.6. Sagaret. al. (2022)

Sagaret. al. (2022) examine whether the bail system in India's criminal court system is determined by a legal entitlement or the judgment of the court. In the realm of criminal law, bail is commonly defined as the entitlement to individual freedom. This pertains to the entitlement of all individuals to liberty, which is also a fundamental right as outlined in Articles 19 and 21 of the Indian Constitution. The right to bail grants citizens the freedom to maintain their daily activities by allowing the release of a person accused of a crime from custody. In criminal law, a person is presumed innocent till proven guilty, yet there are several prerequisites for gaining bail. The courts and the constitution have embraced a lenient stance towards this right. Advance bail is the provision that allows individuals to secure their release by posting bail prior to being legally arrested, especially when they are accused of a particular offense. The categorization of offenses as eitherailable or non-ailable serves to broaden this entitlement. If the charge is qualified for bail, it is legally acceptable to request bail, and it is quite unlikely for such requests to be denied. However, in cases when offenders are not eligible for bail, it is possible to present a bail application in a sincere manner, and the courts' inclination to grant bail in the majority of

situations emphasizes the significance of this privilege on an individual level. The objective of this article is to determine whether bail is a legal entitlement or subject to the discretion of the judiciary.

5.7. Singh (2020)

Singh (2020) raises a significant concern over the bail system in India. Social reputation and personal freedom are two essential elements in human life that are much valued and respected (Singh, 2020). When someone harbors anger against another person, they want to damage the other person's reputation and autonomy, sometimes by manipulating the criminal justice system. Individuals with personal agendas submit unfounded allegations, resulting in the possible apprehension and confinement of the accused. This can lead to harm to the accused individual's reputation and violation of their personal liberty. There is a notable prevalence of abuse throughout the criminal justice system. Therefore, it is the responsibility of the criminal justice system to protect those who have been falsely accused in a criminal case. The Indian criminal court system has implemented the concept of anticipatory bail to protect those who have been falsely charged. This article will analyze the legal framework that governs anticipatory bail in the Indian criminal court system.

5.8. Chandra et. al. (2017)

The study conducted by Chandra et. al. (2017) reveals the issue of individuals awaiting trial in relation to the bail system. The author examines the situation of jailed persons who are awaiting trial in India, using data acquired from crime and imprisonment statistics released by the National Crime Records Bureau. It has been found that despite the enactment of various interventions and reforms by the legislative and judicial branches, the number and duration of incarcerations for individuals awaiting trial are not only rising, but also disproportionately impacting the most socio-economically disadvantaged segments of society. The authors argue that the lack of consistent and systematic institutionalization may be the reason for the ineffectiveness of judicial and legislative initiatives. They conclude that a thorough reform of bail legislation is necessary to really enhance the circumstances of jailed persons awaiting trial in India. As per the authors, the data cited in the paper collectively paint a grim picture of the state of pretrial imprisonment in India. The picture portrays

densely populated correctional institutions primarily accommodating those in pretrial detention, a significant number of whom originate from disadvantaged and marginalized backgrounds. Nevertheless, a considerable proportion of these individuals, after undergoing extended periods of pretrial incarceration, will ultimately be acquitted of the accusations leveled against them. According to the writers, individuals are enduring prolonged durations of imprisonment. Roughly 25% of those who are not otherwise given release will eventually be acquitted of the offense for which they are incarcerated. The incarceration has a disproportionate impact on the most susceptible sectors of the population. Furthermore, the incarceration rate exceeds the capacity of correctional institutions to house this population, leading to challenging jail conditions. This data emphasizes the need for an ongoing and methodical overhaul of bail legislation in India to ensure that individuals who have been found guilty are not unfairly incarcerated. The revisions that set restrictions on the power to detain persons for cognisable offenses with a potential punishment of seven years or less, together with the structural changes made by the judiciary in arrest procedures, appear to be producing favorable outcomes. Similar efforts are required in the field of bail law to address the issue of pretrial imprisonment in India. Possible measures to effectively decrease undertrial incarceration in India include: enforcing a mandate for well-reasoned explanations and justifications for denying bail, requiring judges to evaluate the necessity of continued custody or release on bail at each hearing without the prisoner having to request it, reevaluating the current dependence on monetary penalties as the primary bail condition, and rigorously upholding the Supreme Court's guidelines on inhumane prison conditions.

5.9. Bansal et. al. (2021)

Bansal et. al. (2021) investigates the implementation of bail rights for jailed persons during the COVID-19 epidemic. The study investigates lawyers' perspectives on the bail system within the epidemic by analyzing data from a sample of 50 attorneys acquired through an in-person questionnaire. The study evaluates the efficacy of measures adopted to mitigate prison congestion by closely analyzing the criteria set by the High-Powered Committees of States for the release of prisoners. Ultimately, the text emphasizes the urgent need to acknowledge and rectify the deficiencies in the criminal justice system, while also providing recommendations for a

comprehensive reform that safeguards the rights of incarcerated individuals to life and well-being.

6. CONCLUSION

The primary objective of India's legal system is to strike a balance between safeguarding individual freedoms and meeting societal needs for maintaining peace and order. Bail rules, which protect the constitutional rights of those convicted of crimes, play a crucial role in preserving balance. The inception of bail legislation in India may be traced back to the enactment of the Code of Criminal Procedure (CrPC) in 1898. Empirical research and comparative methodologies facilitate comprehension of the difficulties and benefits associated with the existing bail system. This study examines the existing literature on bail legislation in India and highlights the necessity for change in order to provide a fair and accurate environment for the administration of justice.

Sharma (1980) examines the bail system in India, specifically addressing the intricacies of giving bail and the significance of individual freedom, fairness, public security, and financial responsibility. **Das** (2019) conducts a thorough analysis of bail in the legal framework of India, with a specific emphasis on women and children. **Dubey et al.** (2021) examine the intricacies of bail legislation and assess the tangible effects of bail on society. **Kumar** (2020) highlights the fact that bail is a lawful entitlement and should not lead to extended imprisonment. **Sagar et al.** (2022) stress the importance of conducting a comprehensive evaluation of the bail system, taking into account socio-economic circumstances and embracing a compassionate approach. The writers highlight the necessity of establishing a clearly defined bail system within a judicial procedure that is adaptable to the demands of society.

Sagaret. al. (2022) examine whether the determination of bail in India's criminal court system is based on legal entitlement or judicial decision. Bail is an inherent entitlement enshrined in Articles 19 and 21 of the Indian Constitution, granting individuals the freedom to continue their regular routines by freeing accused individuals from detention. **Singh** (2020) expresses apprehensions over the bail system, emphasizing the significance of social standing and individual liberty. In this study, **Chandra et. al.** (2017) investigate the circumstances of persons who are awaiting trial in India. They discover that, despite several interventions and reforms, there is a growing trend in both the number and length of incarcerations for these individuals. Furthermore, this trend is having

a disproportionate impact on socio-economically disadvantaged parts of the population. Bansal et. al. (2021) examine the execution of bail rights for incarcerated individuals within the COVID-19 pandemic, assessing the effectiveness of steps implemented to alleviate prison overcrowding. The writers highlight the pressing necessity for a thorough overhaul to protect the rights of jailed persons to life and well-being.

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