AN ANALYSIS ON THE BAIL SYSTEM IN INDIA AND ITS IMPACT ON UNDER-TRIAL PRISONERS AND THE CONSTITUTIONAL MANDATES

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I. INTRODUCTION

The bail system is one of the most important factors in the Indian criminal justice system since it directly impacts individual freedom of a person accused. Bail is a temporary release on investigations or trial on the condition that the accused will report before the court when its services are needed. Despite the fact that bail has been accepted as a right of law in bailable offenses and discretion in non-bailable offenses, the application of these bails usually favors the under-trial prisoners who represent the less privileged groups due to their economic backgrounds. Research and statistics indicate that a high percentage of under-trial prisoners are languishing in jails not because of the severity of the crime being committed, but because of their inefficiency to meet the bail requirements like providing sureties or money bonds.[1]

The Supreme Court has stressed again and again that the rule is bail and exception is jail, which is connected to the right to personal liberty by Article 21 of the Constitution.[2] But, the difference between judicial ideals and practice on the ground has led to extended imprisonment of poor under-trial offenders. This assignment looks at the India bail system, and how it negatively affects poorer under-trial inmates.

II. Objectives of the Study

This research paper aims to study the legal system of bail in India, to trace the status of under-trial inmates in the bail system, to learn how poverty influences the right to bail, to research how the judiciary regards the bail system, and to assess whether the bail system is capable of fulfilling the constitutional right to personal liberty.

[1] Indian Law Institute, *Bail Study Report 2023: An Analysis of Under-Trial Detention and Bail Practices in India* (Indian Law Institute, New Delhi, 2023).
[2] *State of Rajasthan v. Balchand*, (1977) 4 SCC 308 (Supreme Court of India).

III. The Bail History and Evolution.

The idea of bail originates in the ancient times. Among the earliest sources is it has been stated in 399 BC when Plato is thought to have offered a bond to allow the temporary release of Socrates. The simple definition of bail saw in this early concept is the need to ensure that the accused shows up without illogical arrest. This idea over time evolved into an organized legal process which sought to provide balance between individual freedom and the principles of righteousness.[3]

To a large extent, the contemporary bail system was designed in medieval England. Judges during this time period were within the country where they toured the country by circuit court conducting regular trials referred to as Sessions and Quarter Sessions. Prison conditions were so unhygienic and inhuman that the accused persons who were awaiting to be taken to court contracted diseases. To avoid riots and epidemics, the administrations started releasing the under-trial prisoners under the promise to come back to trial under the guarantee of sureties. In case the accused was not available, the surety was used. This procedure eventually led to the idea of monetary bail, in which a financial bail was pledged so as to guarantee attendance at court.[4]

One of the most significant developments in the history of bail was the Magna Carta of 1215 which acknowledged that no man should be imprisoned without the law of the land or the verdict of the peers. This was the original restriction on arbitrary detention by the State.[5] The Statute of Westminster, 1275, later elaborated the system of bails by providing a classification of offences into bailable and non-bailable and by stating those who had the power to grant bail.[6]

Under the Habeas Corpus Act of 1679, individuals were enhanced with their freedom of person as those imprisoned were given the right to learn what they were charged with and whether or not the offences were bailable. It also obliged the magistrates to bail the prisoners on recognisance with sureties unless the crime was legally non-bailable.[7] The English Bill of Rights, 1689, was another Act that defended the liberty by outlawing the imposing of exorbitant

[3] Plato, *Crito*, translated by Benjamin Jowett (Oxford University Press, Oxford) (reference to bond offered for Socrates' release).
[4] International Journal of Criminal Science and Penology, *Bail and the Criminal Justice System in India* (2013).
[5] Magna Carta, 1215 (England).
[6] Statute of Westminster, 1275 (England).
[7] Habeas Corpus Act, 1679 (England).

bail but it is very clear that no measure should be applied as a weapon of annihilating personal liberty.[8]

The law of bail in modern England is covered under the Bail Act, 1976. It is a broad right to bail with certain exceptions, and such courts must state a reason why they refuse to grant bail. But research indicates that explanations provided are usually short and generic raising a question of mechanical decision making. English system emphasises on the use of reasoned bail orders in order to prevent arbitrary detention.[9]

In the US, the bail system developed in a different manner. The Eighth Amendment to the US constitution prohibits excessive bail, but does not entitle an absolute right to bail. The Bail Reform Act of 1966 was one of the major changes as it encouraged the release on personal recognizance and the courts needed to take into account such factors as the nature of the offence, the likelihood of appearing, and the financial status of the accused. This was an emerging realization that poverty was no longer to be followed by automatic imprisonment.[10]

The bail was borrowed by the English law onto the Criminal Procedure Code, 1973 in India. The Code does not establish bail but categorizes the offences as bailable and non-bailable and leaves the courts with a lot of discretionary decisions on how much to set as bail. This discretion has however, always been given without the consideration of the economic status of the accused. Prison statistics as well as Law Commission Reports have indicated that most of the under-trial prisoners come of weaker economic background and are not set free as they are unable to provide bail.[11]

Therefore, the development of the historical processes of bail indicates that though the initial idea of bail was created to secure personal freedom, the financial version has frequently been used against the poor. In India, the bail practice has been unable to respond to the changing socio-economic realities and as such, under-trial prisoners have been kept in custody long and thus bail is not available to those who require it the most.

[8] English Bill of Rights, 1689 (England).
[9] Bail Act, 1976 (UK); Stone, *Stone's Justices' Manual* (LexisNexis, London).
[10] Bail Reform Act, 1966 (United States of America); U.S. Constitution, amend. VIII..
[11] Law Commission of India, *78th Report on Under-Trial Prisoners* (Government of India); National Crime Records Bureau, *Prison Statistics India*.

IV. Types of Bail in India

1. Regular Bail

The most ordinary type of bail is the regular bail that is given to an individual who already has been arrested and has to be in either police or judicial custody. Depending on the kind of the offence, an accused may request regular bail before a Magistrate or a Sessions Court. Regular bails are mainly meant to make sure that the accused is released under bail pending the trial process, although there is no danger of absconding or destroying evidence. Some of the conditions that the courts typically require include appearing in the court hearings and cooperating with the investigation.[12]

2. Anticipatory Bail

Anticipatory bail is provided to an individual, who fears being arrested in relation to a non-bailable crime. It is a pre-arrest law that prevents unwarranted arrest. False or motivated complaints are feared; such a bail is particularly relevant in such cases. The court can put such conditions like participation in the investigation, staying in the country, and not affecting witnesses. Anticipatory bail is the expression of the idea that individual liberty cannot be restricted because of the allegation.[13]

3. Interim Bail

Interim bail is a temporary bail where a short-term bail is given. It is normally issued and a regular or anticipatory bail application is pending in court. Interim bail is aimed at getting immediate release of arrest or detention until the court has decided on the primary bail application. It is frequently awarded during emergencies like medical ones or humanitarian reasons.[14]

4. Bail in Bailable Offences

In bailable offences, the issue of bail is rightful. The accused is legally required to be set free by the police or the court as long as the bail is provided. The accused can be bonded or put on

[12] Admin, *Types of Bail in India and Their Conditions* (16 August 2024).
[13] Admin, *Intricacies of Bail in India: Unveiling Different Categories and Impacts* (16 August 2024).
[14] Ibid.

sureties. Such cases are illegal where one is denied bail. Such bail prevents unnecessary imprisonment and also safeguards the freedom of an offender especially in minor offences.[15]

5. Bail in Non-Bailable Offences.

In non-bailable crimes, the presence of bail is not an issue of right and it is awarded at the will of the court. The elements taken into consideration by the court include the severity of the crime committed, the chances of absconding by the accused person, criminal background, and chances of witness influence. But these judgments should be judiciously used by the courts and not arbitrarily particularly on an accused who is of a weaker economic background.[16]

6. Default Bail

Under default bail, the investigating agency is unable to finish the investigation and present a charge-sheet within the stipulated statutory period. It is a legislative right that serves to ensure that the accused are not detained indefinitely because of delay during investigations. The right to personal liberty is reinforced by default bail in the fourth article 21 of the Constitution.

7. Bail on Personal Bond

Bail on personal bond Bail on personal bond permits the accused to be released without the provision of surety or cash. The accused simply makes an undertaking to appear in court when the need arises. Such a bail is especially significant to the poor and economically disadvantaged accused individuals who cannot secure sureties. The courts have been urged to favour personal relationships so that poverty is not the cause of deprivation of freedom.[17]

V. Implication of Non-Grant of Bail on Under-Trial Prisoners.

The denial of bail is an acute and sustained effect on the under-trial inmates in India. A Prison Statistics of 2014 and 2015 have revealed that out of the high number of under-trial prisoners who are ultimately released, there is still a large percentage of those who serve in prison. By the year ending 2015, over 2.8 lakh under-trial prisoners were still in prison. This is a clear indication that denial or delay in providing bail is a known cause of lengthy pre-trial detention

[15] Bhartiya Nagarik Suraksha Sanhita, 2023, s. 478.
[16] Bhartiya Nagarik Suraksha Sanhita, 2023, s. 480.
[17] *Moti Ram v. State of Madhya Pradesh*, (1978) 4 SCC 47 (Supreme Court of India).

despite the fact that the accused has not been found guilty of any crime.[18]

Among the most damaging consequences of the failure to allow bail, there should be the rising period of detention of inmates under trial. Statistics show that the percentage of prisoners who are held by not more than one year is also on the downward trend, but the percentage of less than one-year detainees of the under-trial population, which serve incarceration periods of over five years, is steadily increasing. This is an indication of a grave breakdown of the bail system since the granting of bail is not timely. The situation of the under-trial prisoners is deteriorating and more people are spending more time in custody before being tried.

The other serious impact of denial of bail is that there are a high number of under-trial prisoners who end up being set free after spending time in prisons. Statistical evidence indicates that out of people who were not released on bail, almost every four under-trial prisoners were found not guilty at the end of trial. This implies that there were a lot of people who were languishing long in prison even when they were not guilty. This kind of detention is synonymous with punishing an individual prior to conviction and is a contravention of the inherent principle that an individual is innocent until proven guilty.[19]

The further incarceration of under-trial prisoners despite the statutory protection is yet another emphasis on the effects of the non-granting of the bail. This is as per section 479 of the Bhartiya Nagarik Suraksha Sanhita 2023 , which entails the release of under-trial prisoners, people who have served half of the term prescribed by law on the offence. In like manner, the Section 436 requires release of indigent persons in bailable offences on personal bonds. Nevertheless, the lack of good execution of these provisions has led to a lot of under-trial prisoners serving their days in prison even when they are supposed to enjoy the right to bail.[20]

The judicial interventions have served to deal with the negative impact of denial of bail on a temporary basis. There are cases where the Supreme Court and other High Courts have given instructions on a single occasion to release the under-trial prisoners who had been kept in custody for a long period like the Supreme Court Legal Aid Committee v. Shaheen Welfare Association v. union of India. Union of India. Although these instructions relieved the situation in the short term, they did not use systemic reforms to bail, as the issue of an extended under-

[18] National Crime Records Bureau, *Prison Statistics India 2015* (Government of India).
[19] *Ibid.*, data relating to acquittal of under-trial prisoners.
[20] Bhartiya Nagarik Suraksha Sanhita, 2023, s. 479.

trial detention remained.[21]

In Bhim Singh v. The Supreme Court, Union of India, conceded that there had been a failure in the facet of the implementation of Section 436-A and ordered magistrates to actively keep a check on under-trial inmates who could be given bail. On the same note, the Inhuman Conditions in 1382 Prisons the Court provided detailed instructions in order to curb overpopulation and provide effective bail provisions. Nonetheless, these judicial guidelines have not produced long term effects without a sustained monitoring and enforcement.[22]

On the whole, the non-grant of bail leads to the extreme violation of the right to life and personal liberty provided by Article 21 of the Constitution. Under-trial inmates are to be held on excessive durations of time as the only reason why they cannot find bail, and it becomes arbitrary and unconstitutional. The impact of failure to grant bail is thus more than just procedural but it gets right into the core of constitutional justice and presumption of innocence.[23]

VI. Under-Trial Prisoners and the Bail System.

As per section 479 of the Bhartiya Nagarik Suraksha Sanhita, 2023 it explains,

(1) In the event whereby an under-trial prisoner is charged with a crime that does not attract the death or life imprisonment and has already served a half of the maximum term of imprisonment in jail during the time of investigation, inquiry or trial, such a prisoner must be released on a bail by the court. When the accused is a first time offender, he has to be placed on bond having served a third of the maximum punishment. Nevertheless, the court can detain him beyond half of the term or put him on bail bond instead of personal bond but after listening to the Public Prosecutor and providing written reasons. Anyway, the accused can not be detained in jail longer than the maximum punishment is prescribed, and any time that will be wasted by the accused himself will not be counted.

[21] *Supreme Court Legal Aid Committee v. Union of India*, (1994) 6 SCC 731; *Shaheen Welfare Association v. Union of India*, (1996) 2 SCC 616 (Supreme Court of India).
[22] *Bhim Singh v. Union of India*, (2015) 13 SCC 605; *Inhuman Conditions in 1382 Prisons, In re*, (2016) 3 SCC 700 (Supreme Court of India).
[23] *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81 (Supreme Court of India).

(2) When the individual has several outstanding cases or offences against him at a stretch, that individual will not automatically be granted bail under sub-section (1), but with a limit that he may not be kept longer than the maximum time imprisonment.

(3) Having served half or one-third of the time the prisoner is supposed to be in detention an under-trial prisoner is then obliged to apply in writing to the court immediately upon which the court is to hear the request of the jail superintendent to allow the set-free of the prisoner on bail in terms of sub-section (1).

Under-trial prisoners are individuals, who have been suspected to have been involved in an offence but are still waiting to be proven guilty by the court of law. Indian criminal justice system presumes that the perpetrator is innocent until proven guilty. Nonetheless, the under-trial inmates constitute the biggest proportion of the prison population in India. Most of them get caught with petty or bailable crimes but they end up staying longer in jail because of refusal or postponement of bails. This state of affairs underscores the existence of a great distance between the postulates of criminal law and their day-to-day application.[24]

A poor performance of the bail system is one of the leading causes of the fact that the number of under-trial prisoners is so high. In spite of the fact that bail serves to guarantee release pending trial, in reality, a significant proportion of under-trial prisoners can not afford bail either because of financial limitations, absence of a lawyer, or delays in the process. I can give an example whereby an individual, who is accused of a small theft is allowed to bond on bail by the court but due to inability to provide surety or cash bond, he or she remains in jail until months or even years. This is counterproductive to bail and leads to unwarranted imprisonment.[25]

The issue is even more severe when under-trial prisoners serve the time on the offences that may be punished by imprisonment of a short term. Mostly, those who have under-trials end up spending longer in jail awaiting trial than the time the offence warranted. As an example, a defendant who is accused of committing a crime that is punishable by one year of imprisonment can end up serving two or three years of prison because of trial delays. This kind of detention does not only contravene the law, but it also inflicts permanent damage to the personal and

[24] National Crime Records Bureau, *Prison Statistics India* (Government of India).
[25] Indian Law Institute, *Bail Study Report 2023*; Code of Criminal Procedure, 1973, ss. 436–437.

social life of the defendant.[26]

Hussainara Khatoon v. Supreme Court. The plight of under-trial prisoners caught the attention of the whole country after the State of Bihar. The Court observed that there were thousands of under-trials languishing in jails due to years of lack of trial and ruled that years of detention was violating the right to life and personal liberty that is guaranteed under Article 21 of the Constitution. The Court also acknowledged the right to speedy trial as one of the rights and ordered the release of under-trial prisoners that had served longer than reasonable terms in custody.[27]

This historic ruling notwithstanding, the under-trial detention issue still exists. The problem of delays in bail hearings, clogged courts, inadequate number of judges, and inefficient execution of the bail-friendly measures still denies the under-trial prisoners their timely releases. To this day, administrative inefficiencies result in under-trial prisoners being held in custody even though there is no legal requirement to keep them in custody. This demonstrates that the mere acknowledgement of rights by the courts are not enough without effective application in the ground.[28]

There are also extreme social and economic implications associated with the continued imprisonment of the under-trial prisoners. Several cases of under-trial are sole breadwinners of their families and thus their extended jail term causes them to lose their jobs and as a result they become economically unstable and stigmatized by the society. These consequences are not fair and unproportional as they have not been convicted. The bail system rather than being a protection of freedom, is in most cases a tool of further inequality and distress.[29]

Conclusively, as the correlation between the under-trial prisoners and the bail system shows, there is a structural flaw in the provision of justice and freedom. Although the situation of the Constitution is the liberty of a person and the presumption of innocence, the weak functioning of a bond of bail leads to extended imprisonment of un-trial detainees. The practice of strengthening bails, ensuring prompt trials, and becoming more humane is all needed to safeguard the rights of under-trial inmates, as well as maintain constitutional values.

[26] Law Commission of India, *78th Report on Under-Trial Prisoners* (Government of India).
[27] *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81 (Supreme Court of India).
[28] *Bhim Singh v. Union of India*, (2015) 13 SCC 605 (Supreme Court of India).
[29] I*nhuman Conditions in 1382 Prisons, In re*, (2016) 3 SCC 700 (Supreme Court of India).

VII. The Constitution of India provides the right to Bail.

1. Article 21.

The Indian Constitution does not in express terms state that there is a right to bail. The Supreme Court has however taken the right to personal liberty under Article 21 to be inclusive of the right to bail under relevant conditions. Article 21 states that: No human being will be denied his life or his personal freedom without the due process provided by law.

This is a guarantee that any form of detention should be legal, reasonable, and it should not be arbitrary. Refusal to be bailed without adequate reasons may amount to infringement of this constitutional right because an accused is denied personal freedom during a long period before he or she is tried. It has always been stressed by courts that bail should be taken into account to avoid detaining freedom until it becomes arbitrary.[30]

2. Safeguards under Article 22

Article 22 offers procedural rights of persons arrested. It dictates that an individual being arrested should be told about the cause of arrest and has a right to refer and defend himself/herself with a legal practitioner.[31] Although Article 22 does not explicitly give the right to bail, it provides the right of the accused to meaningfully seek the bail in court. The right to seek bail requires the access to counsel and the proper notice of being arrested as the necessary preconditions.[32]

3. Jail as the Exception, Bail as the Rule.

According to the Supreme Court, bail is a rule and jail is an exception; this has always been the case in which the detention of the accused should be an exception and supported by significant reasons. Courts have to strike a balance between the state interest and the ultimate right of the accused to the liberty of the accused even in severe crimes as mandated in Article 21. Denying bail arbitrarily or unreasonably can be a violation of the constitutional rights.[33]

[30] Chahal Academy, *Interpretation of Article 21 and Personal Liberty in the Context of Bail and Detention.*
[31] Chahal Academy, *Procedural Safeguards under Article 22: Right to Legal Counsel and Information of Arrest.*
[32] Go For The Law, *Relationship between Article 22 and Bail Advocacy*.
[33] Times of India, report on Supreme Court principle: "Bail is the rule, jail is the exception".

4. Presumption of Innocence

The constitutional system supports the rule of presumption of innocence, which denies the accused a chance to be sentenced to prison prior to being convicted.5 Bail is among the guarantees that the accused can defend themselves without being deprived of individual freedom. Judicial bodies have understood that the right to bail is inseparable to the stance of innocence and the safeguarding of individual freedom that is assured under Article 21.[34]

5. Legal and constitutional harmonization.

The Bhartiya Nagarik Suraksha Sanhita, 2023, Sections 478, 479, 480, and 482, are the major provisions that govern bail procedures, as they differentiate between bailable and non-bailable offences. Bail in the context of bailable offence is a right whereas in an offence that is non-bailable, bail is discretionary and should be well considered by the court.[35]

The statutory provisions should however be construed against a constitutional protection. The courts can also furnish the bail even in those situations where statutes are restrictive, provided that the continuation of the detention would constitute the violation of Article 21 or would lead to the unreasonable loss of the liberty.[36]

VIII. Findings of the Study

Therefore, the study indicates that, contrary to the idea that the bail system in India is supposedly linked to our constitutional liberty right, it actually serves to detriment of the most vulnerable of all people; the under-trial inmates that belong to weaker backgrounds. Although the right to bail under a bailable crime and the discretion required in a non-bailable crime apply to both, in fact, the issue of bail depends much on the amount of money that one can bury. That is why so many poor defendants end up in jail not due to their guiltiness, but they are unable to provide sureties or money bonds. It was a shot right at the concept of the idea that bail is merely about the need to ensure that people turn up to court and not to put people into penalty.

The paper also notes that the system is a mess that results in long detention of these under-trial

[34] International Journal of Law Management & Humanities (IJLMH), *Presumption of Innocence and Constitutional Protection of Personal Liberty*.
[35] Bhartiya Nagarik Suraksha Sanhita, 2023, provisions relating to bailable and non-bailable offences.
[36] Statutory provisions on bail interpreted in light of constitutional guarantees under Articles 21 and 22 of the Constitution of India.

prisoners. Statistics indicate that most of them end up serving years in prison despite being later acquitted. This clearly contravenes the presumption of innocence and the right to life and liberty, in Article 21 of the Constitution.

The other important argument is that legislative and judicial protections, such as the presence of the provisions of Section (478) and 479 of the BNSS and all the directions issued by the Supreme Court have not been realized practically. These were to ensure that the poor are not kept pending indefinitely yet this is impossible without actual scrutiny and frontline application and implementation of these rules. Due to this, bail has now become a right of the rich as opposed to a right of all people.

IX. Suggestions

This paper recommends that courts need to rely more on bail on the personal bonds particularly of the poor and under-trial inmates. Cash bonds and big sureties, should be the last option as they are required. In such a manner, poverty will not be a pretext to deny freedom.

It further advises the judges to be faithful to Sections 478 and 479 of the BNSS. To ensure that there is a check on things, magistrates ought to sit in jails on a regular basis rather than only once. Empowering Legal Services Authorities may assist in identifying the under-trial prisoners who are eligible to bail but are kept behind bars due to lack of access to legal assistance.

In addition, the bail orders are to be justified and personalized. Normal rejection of bail must not be encouraged. The difference between what the law states on constitutional rights, particularly Article 21, presumption of innocence, could be bridged through training sessions on rights.

X. Outcome of the Study

The conclusion is essentially that the existing bail system is discriminatory to undermine the trial prisoners with lower economic status and undermines the constitutional rights. It is revealed in the research that bail refusal or bail postponement results in overcrowding, innocent persons languishing behind bars, and cynicism towards the justice system.

It is also indicated in the study that bail is not only a procedural aspect of the criminal law, but

it is a constitutional requirement that is associated with dignity, freedom, and justice. It makes preventive detention punitive when they deny bail simply because of poverty- unconstitutional. The results demand immediate change in order to ensure that freedom is not pegged on the amount of money you possess.

XI. Conclusion

In a few words, the Indian bail regime has been founded on liberty and justice but it failed to deliver on the constitutional promise in actual sense. Article 21 and the presumption of innocence are grossly infringed by detaining under-trial prisoners since they are unable to post bail. Bail, ordinarily supposed to be the norm, has since become an exception to the poor.

According to the study, unless the laws on bail are applied in a humane, just and informed manner which is informed by the constitution, under-trial imprisonment will continue undermining the dignity of the judicial system. Reform is not merely a procedure of law creation, judicial rulings, but adherence to them in a consistent and humane manner. The bail system should also be reinforced with the aim of supporting individual freedom and human rights as well as the constitutional right to justice to everyone.