

BAIL- NOT A BOON FOR MANY TRAVELLERS

Isha Bajaj

Symbiosis Law School, Noida

In this research paper the author talks about how the bail system in India is anti-poor as it takes money to apply for bail it also requires money to hire a lawyer for bail due to which people having lack of resources are not able to acquire bail. The author focuses more on anti-poor system as the country of India has around 70% of population living below the poverty line. It includes a comparative study between America and India regarding bail and how the bail system in India is different from America. The paper also deals with the various provisions of bail and judicial trend; also various case laws will be cited.

INTRODUCTION

“Bail not a boon for many travellers” directly signifies about the anti-poor bail system in India, not all the prisoners are able to enjoy this legal right because of the lack of resources.

Anti-poor bail¹ system means that the people below the poverty line who cannot pay the amount for their bail do not get bail in India. Therefore, it is unfair on their part and the rich enjoys the provisions of bail. It sometimes gets to this level that the poor gets fed up of the system of trial in the lower court that they do not stand for their legal right of bail in higher or subsequent court. The system is considered to be very harsh and poor. In India most of the population does not have money for their basic needs such as food, shelter and clothing, but they are considered to pay for their legal right i.e. bail. This situation leads them to languish behind the bars for years even after completing their duration of punishment, fundamental right of the accused is infringed. The poor people when comes to the law have always remained on its wrong side. The law has never given them anything instead always taken away.

Let us talk about celebrities like Salman Khan, a very famous Bollywood actor gets bail in seconds after such a big crime in comparison to a poor fellow who has to languish in jails for years. This VIP culture is followed in our judicial system; some big questions are raised

¹ Bail means release of the criminal from prison awaiting for the trial by depositing a certain amount of monetary value as a security.

when such situations are taken into consideration. Can justice be bought through money? Is money everything?

“Don’t deny accused basic right to bail”² According to Rajiv Dhavan the courts of India deny bail only on the basis of money, according to the law whenever a bail is denied by the judge he is supposed to mention the reasons for the denial. According to the Indian constitution every person is given liberty and when the liberty is taken away, it is court’s duty to mention the reasons for it. Justice Krishna Iyer said “Impoverished brevity draped as discretion” this means the way the judges in India deny bail in just one single sentence. Well, from such a situation three things are clear –

- Bail is fundamental right of every citizen.
- The norm is bail and not jail.
- Reasons must be given by the judges during the denial of the bail.

The saddening truth is that only money is taken into consideration for granting bail, the provisions of law are neglected. Rajiv Dhavan calls it as “judicial amnesia”

THE ANTI-POOR BAIL SYSTEM IN INDIA

The system of bail in India is becoming worse day by day, the poor are not able to enjoy this legal right. This is violation of Right to life and liberty³ under the Indian Constitution as the constitutional right of every poor prisoner is violated.

A very famous case *Hussainara khatoon and others v. Home secretary*⁴ an alarmingly large number of men and women, children including, were behind prison bars for years awaiting trial in courts of law. The offences with which some of them were charged were trivial, which even if proved, would not warrant punishment for more than a few months, perhaps a year or two, and yet they remained in jail, deprived of their freedom, for periods ranging from three to ten years without even as much as their trial having commenced. The Court ordered immediate release of these under trials many of whom were kept in jail without trial or even without a charge.

Article 21 was violated in the above mentioned case as law does not provide speedy trial of the accused, pre-trial release on bail is not provided due to lack of resources. It was held that the procedure under which a person is deprived of his should be fair, and just procedure. Free legal services to the poor and the needy is an essential element of any fair

² Rajiv Dhavan, columnist, India Today Magazine (2011)

³ Article 21 of the Indian Constitution

⁴ AIR 1979 SC 1369

and just procedure. It was later on held that if the accused is behind the bars for a longer period than the period of his sentence then he should be released.

Free legal services is an inalienable element fair and just procedure for without it a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice. The right to free legal services is therefore, clearly an essential ingredient of fair and just procedure for a person accused.⁵ Recalling the words by Leeman Abott “*If ever a time shall come when in this city only rich can enjoy law as a doubtful luxury, when the poor who need it the most cannot have it, when only a golden key will unlock the door to the courtroom, the seeds of revolution will be sown, the fire-brand of revolution will be and put into the hands of men and they will almost be justified in the revolution which will follow.*”

Bail is not defined under criminal procedure code, 1973, the amount to be paid as a security for bail is also not mentioned. The amount that is to be paid as bail is under the discretion of the Indian courts but they are highly insensitive towards the poor as they demand high rates for bail which is unreasonable and the poor suffer. The economic situation is ignored. This leads them to stay behind the bars for long periods. Although, they are innocent they go through this harsh reality of bail system, they are under-trial, the entire family gets ruined and a large number of population is affected.

In *Maneka Gandhi v. Union of India*⁶ Article 21 states that no person will be deprived of his life and liberty except in accordance with the procedure established by law and the procedure should be fair and just. The procedure that does not provide free legal services to the poor to afford a lawyer for themselves, they have to go through the trial without any assistance leading them behind the bars for longer periods, it is not fair and just.

In *Moti ram and others v. State of M.P*⁷ Justice Krishna Iyer states “Personal liberty is deprived when bail is refused, is too precious a value of our constitutional system that the crucial power to negate it is a great trust exercisable not casually but judicially with lively concern for the cost to the individual and the community”

Right to bail is not added under the article 21 of the Indian constitution but it is quite implied that it falls under the right to life and personal liberty

THE VIP CULTURE IN INDIAN JUDICIAL SYSTEM

⁵ Article 39A of the Indian Constitution.

⁶ AIR 1978 SC 597

⁷ AIR 1978 SC 1594

“No one commits a worst injustice than it is committed in the name of justice”⁸. When one looks deep into the judicial system one can easily realise that how biased it is. Justice is delivered on the basis of the class of the person. Talking about celebrities such as Salman Khan, Navjot Singh Sidhu or Sanjay Dutt are roaming freely even after committing heinous crimes, whereas majority of the poor population is still under trials due to lack of sufficient resources. Well, the entire story gets completed here, if you are rich and living a luxurious life, you bank account if full you can easily get away with any kind of grave crime you commit.

Coming to a very famous case of Salman Khan, he was sentenced to 5 years in jail, just after this his lawyers started to file appeal, later on his plea was heard by Justice Abhay Thipsay, the order was passes that the accused has been released on bail. All this happened in a matter of only 5-6 hours. It is known to all that the process of filing a case is so long in itself that filing an appeal can be so hectic, also getting it numbered. If in place of Salman Khan it was some other common man it would have taken him a month or more for the same procedure. Such kind injustice is done by Indian Judicial System itself.

Not only the VIP treatment takes place during the court proceedings but also continued during the punishment, and it can be seen very well behind the bars. So the justice that is served actually is only in the form of legal books not in reality. The punishment given to these celebrities is also luxurious, let us take an example of Mr Laloo Yadav he was sentenced for 5 years in 1992, he was treated in a very luxurious manner, a separate room with a television, 2 chefs, all kinds of food such as rice, chicken was served.⁹

A public interest litigation has been filed against the VIP treatment of Laloo Prasad behind the bars in 2013 by Adv. Rajiv Kumar, the PIL demanded action against the jail authorities, and the PIL still remains pending in the Jharkhand high court.¹⁰

Sadly, the justice is only provided on the basis of money.

THE NON-VIP UNDER TRIALS

According to a national crime research bureau (NCRB) in India during the year 2002 220000 cases took at least 3 years to reach the court and 25600 got exhausted. A large

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⁹ Vijay Murty/Bedanti Saran-VIP treatment for Lalu Prasad in Prison, Hindustan Times, Ranchi, 03/10/2013

¹⁰ Fodder scam: PIL filed against Lalu Prasad's durbar, jail comforts-India Today, IANS Ranchi-04/10/2013

number of prisoners after completing the duration of their punishment were languishing in jail without trials.¹¹ 68% of the prisoners in India were under-trials.¹²

As per the NCRB reports of 2014 total of 2,31,962 prisoners were under trial who were charged under IPC. Uttar Pradesh was on the top of the list 3471 under trial prisoners. Followed by Bihar the number was 1198, Rajasthan- 1088, Punjab- 1038, and Jharkhand- 839 and so on so forth.

This overpopulated status of under-trials is a stressing sign since when we take a gander at the pace at which a big name is conceded safeguard or is listened, there cannot be any shortcoming all the while. It is only the approach which must be addressed. Bragging of correspondence and chipping away at need is what the Equity apportioning framework has transformed into. The impacts of this are grave as the issues for these poor under-trials are restricted to imprisonment, as well as remorseless and frightful treatment in jails, something which they are not entitled as well. It appears that they have submitted a grave wrongdoing for being standard or destitute individuals than the wrongdoing which brought them behind the bars. Abhijnan Basu, who was serving his jail sentence at the Presidency Jail, West Bengal, was somebody who paid the cost for raising his voice against such treatment as he was killed by the officers at the jail in 2004 on the grounds that he set out to grumble about the brutal conditions and the low quality of food¹³. These occurrences are extremely regular, however lamentably are constrained to a typical man as it were.

BAIL SYSTEM IN AMERICA

The bail is provided to the accused if there is no sufficient reason to deny it. The bail can be refused due to the following grounds that defendant-

- Will Abscond
- Will commit more offences after bail gets approved
- May interfere with the witnesses

Therefore, there are a certain conditions applied while the bail is granted such as directing the defendant to live at a particular address, paying an amount in the courts or keep one as a surety.¹³ This release on bail is called the police bail, instead the bail is not approved by the police but by the court of law. The amount of bail is not excessive, it is calculated on the past records and the type of crime done by the defendant. If the amount of bail is in excessive it is not considered to be fair and just and not termed as a reasonable bail.

¹¹ Hussainara khaton v. union of India (1979)

¹² NCRB Report on Prisoners, 2014

¹³ A person who takes responsibility for another's performance of an undertaking.

The bail reform act of 1966 lays down that the defendant is released upon the amount stated by the judicial officer in the bond. President Johnson laid down the bail reforms Act, he laid down certain factors that should be taken into consideration while giving bail to the prisoner. They are as follows-

- The nature of the offence committed by the accused
- Health of the accused is taken into consideration
- Evidence is checked on the basis of its strength
- Character of accused taken into consideration

In the landmark case *Gideon v. wainwright*¹⁴ Gideon the plaintiff appeared in the court as he was too poor to afford a counsel for himself, but the court denied his request of the counsel to defend him in the case. Justice Hugo Black held-

"Not only those precedents but also reason and reflection require us to recognise that in our adversary system of criminal justice, any person hauled into court, who is too poor to hire a lawyer cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both State and Federal quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime who fail to hire the best lawyers they can get to prepare and present their defences. That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble idea cannot be realised if the poor man charged with crime has to face his accusers without a lawyer to assist him."

In *Spector v. United States*¹⁵ appellants filed an appeal who are behind the bars and waiting for their trial from long denying the amount of \$50000 of bail. The court held that the accused behind the bars have the right to start a motion against the excessive amount of bail demanded from them.

It was later on held that providing free legal services to the poor people is a constitutional right under the American constitution and it is very important for the fair and just trial.

¹⁴ 372 U.S. 335

¹⁵ (CA9 Cal) 193 F2d 1002

Therefore, the current legal situation of America in relation to bail is far better than the position in India.

THE LEGAL POSITION OF BAIL IN INDIA

Bail is not defined in the criminal procedure code, 1973 but the terms bailable and non-bailable offence are mentioned under section 2(a) of Cr.P.C.

BAILABLE OFFENCE- A bailable offence is when the accused is arrested without a warrant and is brought before the court and while in custody is prepared to give bail, the accused can be released.

NON-BAILABLE OFFENCE- When a person is arrested under non-bailable offence he can be only released by bail on the discretion of the courts, and the application for bail is given to the court of law.

Sections 436-450 of criminal procedure code lay down provisions for bail and bonds under criminal cases. There exists a maximum period of the detention of the under-trial prisoner.¹⁶ The provision is that when the accused has undergone the detention period extending up to one half of the maximum period of detention, he shall be released from detention by the court with or without any surety. As seen over a long period of time the Indian courts have been demanding a huge and unreasonable amount for granting bail which is not justified, the poor suffer a lot. The amount of the bond and its reduction has also been mentioned in the Cr.P.C.¹⁷ it lays down that the amount of bail shall be fixed with respect to the nature of the offence committed by the accused and it shall not be excessive. The amount of bail can be reduced on the orders of the high court or by the court of sessions. The provisions under Cr.P.C. also lay down bond of accused and sureties¹⁸ it states that the accused can only be released on his own bond when the amount as the police officer thinks it to be sufficient is paid, and after getting released by bail one or more sureties should be present at the time and date mentioned in the bond, and should keep on attending on the directions of the police officer. The accused released by bail can also be directed by the courts to appear when called as per the bond. The sufficiency of the sureties can be tested by proper investigation subordinate magistrate of the court, the court can also demand for the affidavits to check for the sufficiency of the sureties.

A very famous case *state of Rajasthan v, Balchand*¹⁹ the accused was convicted by trial court, then the accused went for appeal to the high court, he got acquitted. Later on the case went

¹⁶ Section 436(A) of the criminal procedure code.

¹⁷ Section 440 of the criminal procedure code.

¹⁸ Section 441 of the criminal procedure code.

¹⁹ AIR 1977 SC 2447

to the apex court through special leave petition²⁰, where he filed for bail. It was held by Justice Krishna Iyer that they are trying to be exhaustive not illustrative by delivering the decision of granting bail to the accused, the reason stated by him was that other troubles may come in while the bail is not granted that the accused may commit more offences by repeating them or intimidating the witnesses, he was a young man of just 27 years and had a family to maintain. The bail was granted to the accused.

CONCLUSION

Even the common thought of detention creates fear in the mind of a common man, but for such rich people who are famous politically or in whatsoever form jail is nothing but a temporary place for them to live in where all their basic as well as luxurious needs gets fulfilled. And such a situation is seen when one comes out of the books and theories of law. Well, this is the harsh reality of Indian Judicial system. And India being the world's largest democracy is actually making the gap between poor and rich larger and larger.

After researching well on the above mentioned cases, the anti-poor bail system of India is clearly shown. As it is seen that the Indian courts have given judgements on the basis of bail and regarded the bail system in India to be poor by giving various reasons, unfortunately no step has been taken further in regard to this issue. As the economic condition of the majority of the population in India is below the poverty line, the need for better provisions keeps on arising. The economic state of the accused should be taken into the consideration while providing the bail, as per the study and research the courts can use these facts before providing bail to the accused-

- The kind of the offence committed by the accused
- His family background
- All criminal records must be taken into consideration
- His character is very important and knowing about the monetary condition is of an equal importance.
- His financial condition should be taken into the consideration.

A very common saying "A poor man's life is cheaper than a rich man's car" is something that defines the bail system of India. This gap needs to be removed. The justice should be delivered with fair speed as it is commonly said that "The justice delayed is the justice denied" For the equal justice the punishment should be decided fairly not merely on the basis of money, speedy-trials are necessary, there are so many cases that are pending and are ignored, nobody looks into them, bail to the poor is neglected. Such conditions in the legal system needs to be improved for equality and justice for all.

²⁰ Article 136 of the Indian Constitution.