

Right to Bail and Reform (a Mockery of the System) who gets Bail and who are Deprived



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Abstract

This review paper investigates the prevailing and the past conditions of Indian under trial prisoners, and tries to understand the statistics of crime with prison provided by the Crime Records National Bureau. Despite several reforms and interventions progressively initiated by the judiciary and the legislature, the duration and extent of incarceration of the under-trial prisoners is consistently growing, and produced inconsistent, unbalanced impact, influencing the most vulnerable section of social and economic aspects of society. We continued to provide reasons that legislative and judicial reforms have stopped working due to lack of systematic and sustained institutionalized reform measures. We also deduce that a systemic bail law reformation and better fabrication are required for a true and proper ameliorative impact on the under-trial state prisoners in India. In this regards, we hear about the Child Sexual Ill-treatment and Abuse, while the committee observation and statements in the report after the women shelter home visit in Rohtak, Haryana, that girl children were compelled and forced to carry out unpaid demanding work and strenuous tasks, denied basic clothing and food, and they were subjected to sexual and physical cruelty and violence by the family members and director of the shelter home. The committee observation and statements emphasized a close link between the local police officials and the shelter home managing personnel. In theory, nothing wrong was done in this case by the courts, where the accused was granted and allowed bail.

Introduction

‘Crime’, is explained as an Act, covered by numerous Penal Code specification performed offenses like, murder, voluntarily causing harm, attempted murder, waging a war like situation against the Indian Government, robbery, kidnapping for money and ransom, robbery and banditry" in the Indian subcontinent., forgery, eve teasing, extortion, cheating, counterfeiting money and currency, criminal trust breach and so on. There are highly organized crimes, and unlawful activities of the shelter home members and disciplined association, where they were engaged in criminal activities against women (Ajit Kumar & Purnima, 2017). There is a specific provision of the Foreign Exchange Regulation Act of 1973; NDPS Act, 1985; Corruption Act Prevention, 1988; and the Customs Act, 1962. Thus, all types of ‘crimes’ are defined properly and comprehensively in such Acts (Majibur Rehman, 2017). The gain of money created through such ‘crimes’ is liable to and legal responsibility of the state government to be confiscated (Chandra & Keerthana, 2017).

While, Eve teasing is a specific social crime. It operates as a **molestation of women and sexual harassment by men**, prevalent at every place in India, specifically in the main cities (Mukund Sharda, 2012). There is no such woman, who was not yet become a victim of **sexual harassment** at some moment in her life, while its severity ranges

from sexual evocative comments, to complete and out-and-out physical touch and groping. When they are caught doing so, is it necessary to grant them the bail so that they can be reformed, is a major question, because they are bound to perform similar acts in the future, and may not get caught (Renu Dhawan, 2017).

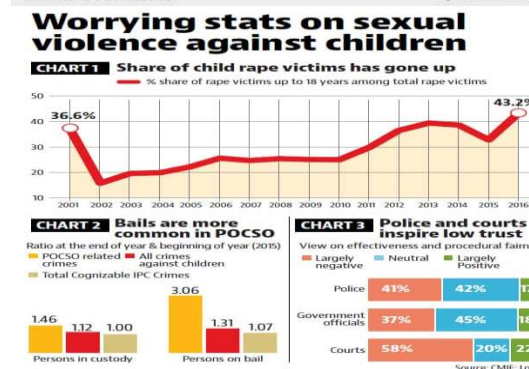
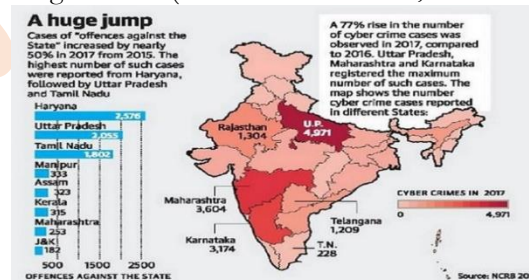


Figure 1: The crime rate in India, in 2017. The report, published by NCRB- the National Crime Record Bureau (Vajiram, & Ravi, 2019).

Figure 2: Worrying condition of sexual violence (Roshan Kishore, 2019).

As per figure 1, there were, in all, IPC- Indian penal code, 50,08,045 cognizable criminal activities and SLL- Special and Local Laws, 19,45,565 crimes registered in the year 2017, which is a 3.75% increase over 2016 (Vajiram, & Ravi, 2019).

As per figure 2, it is not wrong of grants bail to an accused by the courts. But, in the incidents like Aligarh, the perpetrator went free after the bail, to involve in similar crimes, which emphasize the likely hazards to other women when the trial is pending against them (Roshan Kishore, 2019).

Worrying condition of sexual violence

In the case of Aligarh episode, the perpetrators had proved by the history of performing similar crimes, which underlines the impending hazards of this kind of criminals moving freely and committing additional such criminal activities, while the court trials were awaiting. This has shown a complete failure in the management of the local police officials and the government action as a part women safety norms in India and their related agencies, in their outsourcing belief of fundamental obligation to bring justice to protect the poor. Therefore, it is advisable and prudent measures such safety care homes should be taken away from the control and management of such private groups or organizations and must be placed under the High Court's supervision (Brian Johnson & Stevens, 2013). This Muzaffarpur shelter kind of the home case, where the private group was operating a shelter home functions, were indulged in poor children abuse in connivance and support of the local apparatus of state law-and-order authorities, and the consequences and such occurrences came to light, years after the recommendations of Justice Verma Committee, which is a clear testimony to the events and facts that the government also failed to provide justice in time and their observations were entirely neglected further stringent actions in these matters. This review paper tries to understand whether the bail should be granted to such criminals and further their reform measures should be undertaken by the government, and if so, what is the purpose, intention and modus operandi (Agrawal, 2016).

The Indian Criminal justice practice

The Indian System of Criminal Justice is a **longstanding** practice for the most part derived from the Penal legal approach recognized in India during the British Rule. R.K. Raghavan, the IPS officer, in his *Criminal Justice System, World Factbook said*: "In totality, the System of criminal Justice in India is the British system legacy." The system yet to undergo significant changes not implemented

for the past 70 years after Independence. The application of the initial correct step, fearlessness and power at the correct place is the legal laws and systems lack. The Indian government appears to be operating simply to appear good and appropriate in the media. We now hear from the newspaper headlines that "the Hardcore Gangster Shot Dead, Eight Policemen, and He Was Killed in an Encounter." We also see the photos of people praising the encounter specialists, what appears to be fascinating the government. They do not consider to probe the people linked with the Hardcore Gangster, and, in fact, who consistently supporting him, and who were regularly funding him? (Bhadra, Sinha, 2020).

Some observed facts made in 1993 are still applicable, without making any changes. We are aware of the Vikas Dubey, who administrated and controlled the criminal activities with a "Parallel Government" for many years. Yet, people suppose that his death is an "encounter" and it was due to his criminal network link with the government officials that yet exists behind the excessive pride, unnecessary black curtness and overreactions (Cunneen, 2007).

Such incidences are repeating, not observed for the first instance. Many such cases are hidden from the public notice, and it is sure that many occasions, police operate situations like this arrogantly and domineeringly. We are aware of numerous "Encounter Specialists" in the police department, and their work is decorated, while their encounters, on many cases, get blamed as fake encounters. However, obviously, such occurrences get published after the episode gets over, and thereafter, people forget, while the government and the police department manage to dig the issue by putting sand on it (India Legal Bureau, 2020).

Bail, to refrain from arrest and detention

The word like 'Bail' is not yet defined in the Indian Code Statement of Criminal Procedure. The bail system ascertains a clear adjustment performed as the state's official duty to safeguard and protect the Indian citizens from the criminal's onslaught. The prime criminal law principle is that not any person can be penalized or convicted unless found and proved guilty. The purpose of obtaining the surety bond considered in the bail form is to obtain surety of the accused to make himself available to face trial. The court also needs to perform their regular duty to notice that when providing permission for the bail, the accused should be made available to deal with the court trial, and not interfering in the criminal justice process. The court also needs to manage the accused and will not flout any terms and conditions of bail. In reality, the bail is the right

concomitant of the Indian accusatorial system, which provides a special treatment to a system of bail that normally permits a person to remain out of the jail so far as the court finds her/him guilty. The bail in India, or discharge on individual recognizance is provided as a right subject in bailable type offense not punishable with life imprisonment or death only to children and women in non-bailable offense cases punishable with life imprisonment or death (Bhadra, Sinha, 2020).

The 'bail' concept denotes a pre-trial form of removal or release of punitive and restrictive pre-trial detention consequences of an accused. The "Second Body of the Law" called Corpus Juris Secundum explains bail as a method to bring the arrested person to his indemnity and surety, by providing security for his arrival to appear at the place and time designated, to present to the judgment and jurisdiction of the hearing the case by the court (Budhwar & Baruch, 2003).

Constitutional and legal provisions concerning bail, as judicial trends

In its essence, Bail brings a fine balancing link between the freedom to liberty of an accused person and the societal interest at large related to the Indian context. Therefore, the task in the future to involve stricter and stringent bail legislations most favorable to deal with the increasing crime rates, but simultaneously creating them equitable. Such move will harmonize and synchronize the legislation of the bail with the prevailing social-legal issues to make sure that the indigent, under-trial persons are given access to proper justice not considering their status or any difference as a person (Agarwal, 2012).

The Constitutional article 21 invokes the scope of the Supreme Court to observe that they, as per the Constitution, safeguard and protect the offenders, provided there is a proper law sanction concerning the matter related to the petitioners in remand.

The basic question relates to whether he should be given Bail or jail? Every Indian citizen is considered to be a law abiding citizen and also innocent. However, the court presumes the innocence of an accused, which means to imply that they have the burden to prove the guilt and it lies mainly on the hearing and prosecution, that strictly provides with proof provided to the court for holding the accused as guilty. It applies to the every citizen principle that entitles him/het to live with freedom and liberty until he commits any further offense; And no one, that includes the state, can take away such liberty without truthfully establishing the facts before the court of law of any committed offense that render him not qualified to enjoy his liberty as a free citizen (Samuels, 2007).

To grant bail, his offenses must be classified as Bailable or non-bailable, under the Criminal Procedure Code, Section 2. The basic difference in such offenses is regarding the bailable offense or not. Thereafter, Bail can be asserted as his right, while in the case of non-bailable offense, the Court has the discretion whether to provide bail or not. Granting bail regarding the non-bailable offense, there are several factors to be considered by the Court. Nowadays, the Human Right scope is enlarging, while the crime rates are gradually increasing. Considering this, the Supreme Court holds that the urgent action is needed to bring a suitable balance between Police investigative powers and the personal liberty (Tinjan, & Ashu Sanjeev, 2013).

Offense Classification and bail mechanism

Non-bailable and Bailable: The classification of law and crime mechanism is subjected on the gravity of crime basis, like The Cr. P.C. Categorize offenses in two sections of offenses and the related punishment awarded for specific kind of offense. Normally speaking, the bailable type offense is known to be less intense, serious and grave than those of non-bailable type offense. These Non-Bailable and Bailable offenses can be explained by using the Cr. P.C, S. 2, type clause (a), in which: "(a) 'the bailable offense' indicates a particular offense, which falls in the category of bailable measure, falling in the 1st Schedule, or that is turned bailable by any different law for given condition, when it is in force; While the 'non-bailable offense' indicates any other severe offense;" pertinent to more grave and points towards any individual under IPC offense, specially confirmed, as non-bailable or bailable in the primary section of the 1st Schedule to Cr. P.C. So as to uncover whether that specific offense is non-bailable or bailable; yet, without any this kind of declaration under the parent Act, while the usual rules specified in the subsequent part of the 1st Schedule of Cr. P.C., must be referred to, so as to decide whether that particular offense is non-bailable or bailable. It is based on the stipulated law sections and normally, the judge abides by such laws. Hence, the law concerning implementation of bail application to reform the criminal must further impose with additional, suitable law amendments.

While the Bailable offense is defined under specific Section 2, clause (a) of Cr. P.C., and it means the offense which is already falling under the bailable category in the 1st Schedule, and it is made to be bailable by any different law, while providing the bail situation remains in force. It remains as "non-bailable offense" indicates that is any other offense. The first Schedule of Cr. P.C., consists of two sections, the first section concerns

with the offenses under the I.P.C., sections and the subsequent section is concerned with offenses done against other various laws. The subsequent section second portion specifies whether the offense is carrying a punishment of imprisonment below three years with fine, provided it remains in force as bailable and hence, can be undertaken by any other Magistrate (Kali Dass, 1979).

Inadequate Legal Structure and Causes of Delay in Trial

There are many hurdles while combatting organized crimes. Basically, India lacks a distinctive law to suppress and control organized crimes. There are ongoing and enduring conspiracies, the incidents and occurrences of organized and well thought-out crimes are transacted under the general category of conspiracy laws and relevant specific Acts. The prevailing laws are actually inadequate, because they target individuals, criminal enterprises, without holding any laws to hold the criminal group control and management. Therefore, the constant conspiracies are hatched and organized in darkness and when they emerge, proving their crimes in a court of law is an extraordinary task. Once a person becomes a gang member of any armed robber, thief or a criminal group, which are punishable under the specific Penal Code, they are a criminal gang member, there is no specific law related to such criminal groups. The main function in the majority cases of organized criminal activities is to grab money by using muscle power, in collusion with government officials operating and managing the major criminal justice system, and politicians in government functioning power (Roshan Kishore, 2019). Therefore, it is imperative that being a member or an accomplice of the criminal group, if criminalized, it becomes difficult to deprive them as a member of a criminal group to deprive them of their ill-acquired wealth. India has no consolidated law on this specific subject. The Indian procedural laws are grossly insufficient to deal and manage organized crimes. These Criminal Procedures fall Under section 167 of the Indian IPC Code, whereas, the police directives are mandated to impose the charge sheet against them within a period of 90 days from the arrest date, failing which, the accused is likely to be freed and gets bail. Obviously, when a member of an Organized crime group gets caught it naturally becomes very complicated to charge sheet the crime of this nature, has interstate connections and in many cases, also international ramifications. They all make the entire system very complicated to conduct after performing a meticulous and detailed study and investigation within the time frame of statutorily approved and prescribed time period. The situation normally

results in the half-baked investigation and hence, the charge-sheets become invalid. Such Organized crime group cases often conclude in acquittals. Apart from that, the bail system and related provisions are very liberal, falls under sections from CrPC 437 to 439.

In the year 1970, the Supreme Court formatted a new system of 'bail, not jail' as a basic rule. This emboldened and bolstered criminal activities and syndicates, which took a complete advantage of this judicial procedure and dispensation, to make the law-enforcer frustrating attempts in curbing crimes. Moreover, CrPC section 438 gives provision for anticipatory bail also to those, who conducted heinous offense. This provision was completely and wrongly used by rich people and politicians (Vajiram, & Ravi, 2019).

Analysis, Interpretation and Relevance of Bail and reform

The confessions made by a criminal before a police official or in police custody is not applicable under the Evidence Act, section 25, however, the confession made in front of an Income Tax or Custom Officer is valid and admissible. Therefore, it becomes difficult to obtain an eyewitness evidences in criminal conspiracy cases, that make the police task extremely difficult to manage. Moreover, the investigating section officers look for circumstantial, documentary and oral evidences during investigation in the court of law. Due to quick advances in technology, the forensic science has given sufficient prime role to play in solving criminal acts while investigating. But, the suspect or accused is not legally destined, bound to be responsible to provide his blood samples, photographs, fingerprints, handwriting, intimate and otherwise body samples like semen, hair, blood, saliva, and so on to the Investigating Officer, even after the Court order. The valuable evidence pieces, and instances are lost because of the legal lacunae.

The study indicates that the average time taken for court trials is very high compared with other countries like Korea, Japan, UK and USA, where the time taken is nearly three months. This is one main cause and contributory factors for the low rate of conviction (Vajiram, & Ravi, 2019).

The punishment Objective should be to provide Bail and Reform

The main purpose of this statement and debate is to specify that any form of **incarceration** is considered uncivilized in India, particularly when the judgment is extended to far and long-drawn-out. The main purpose of the **criminal** punishment must be to reform the criminals instead of wreaking vengeance on a crime perpetrator. It further remains as an unresolved attitude, conflict regarding incarceration,

penalty or reform and it clarifies the half way between jail and reform agenda as observed in several countries.

In its acknowledgment, India needs to transform the system, procedures and laws of more than a century-old directives, as they need urgent repairs (Roshan Kishore, 2019).

Right conditions for prison reforms

Crime, Punishment, Legal Backdrop of Indian Prison Reforms

Reforming the Indian prisoners

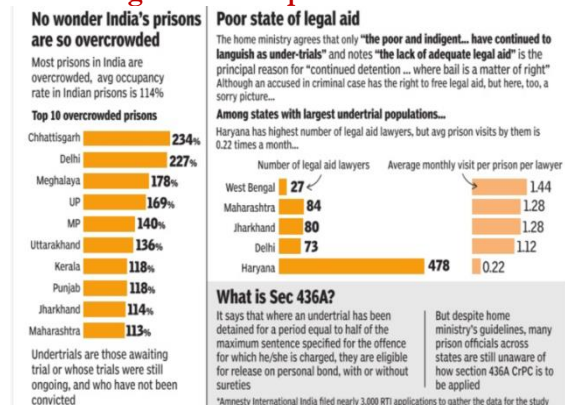


Figure: Condition is Ripe for prisoner and prison reforms (Insightias, 2017).

The under trial, criminal managing committee, excluded specific categories of prisoners from bail or discharge charged with Psychotropic Substances and Narcotic Drugs Act, rape, Prevention Act of Corruption, Act to Protect Children against Sexual Offense, Act to Prevent Money Laundering, and the Maharashtra Organized Crime Control Act (Varshaa, 2017).

However, they allowed an interim bail indicted for culpable homicide and spent years in jail, prisoners attempts murder and spent a year behind the bars, and also theft accused spent above 30 days in jail. The committee provided interim bail to prisoners above 65 years of age and females above 60 years of age, and spent minimum six months behind the bars (Mandhani, 2020).

Conclusion & Discussion

Right to Bail

The bail must be permitted to an accused when there is no sensible cause or worry regarding the accused, who may flee to evade the Court appearance. Bail can help the judicial apparatus to mingle with the detainee. The bail candidate should gain the ability to protect himself more productively than remaining in jail custody. The government spends an extensive cost to keep the under trial in police custody. He should be granted bail to reform when no unsettling influence, threat or vanishing on the criminal remains on the record (Rakshit, Das, 2016).

There is an urgent need to ensure security and safety of the prisoners in jail, enrich prisoner's living conditions and convert the prison to be a

better medium for reformation. In other words, this is not the mockery of the legal system. In fact, what it needs is reform, transformation, restructuring and refined amendments so that the innocent people will not be targeted and will not be deprived of the freedom they need (Pawan Kumar Mishra, 2017).

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