



International Journal of Research Publication and Reviews

Journal homepage: www.ijrpr.com ISSN 2582-7421

Bail A Right of Accuseae on the Discretion of the Court: A Study Within the Ambit of Indian Criminal Justic System

Utkarsh Nishad

¹ Student B.BA LLB 10th semester, Law College Dehradun, Uttaranchal University, RK medicos, Opp. PNB Bank ,Bithmara, Hisar , Haryana ,Pin code - 125113 , India.

ABSTRACT

Bail is the right to liberty in the criminal jurisprudence. It connotes the right to freedom of each and every person which is also a fundamental right under article 19 and article 21 of the Indian Constitution, in a true sense. Right to bail seeks to provide relaxation of the person accused of any offence to carry on with the daily task of life by getting release from the custody. Though there are several conditions requisite for claiming right to bail but in the criminal jurisprudence a person is presumed innocent unless proven guilty, the courts and constitution have taken a liberal approach in this individual's right.

Keywords: Bail, Indian constitution, security, Investigation

INTRODUCTION

'Tasting prison' before sentencing is undoubtedly a violation of human rights as a fundamental right. The concept of bail is based on the right to freedom, the element of human freedom. When a bail application is made, it is for the enjoyment of this important right where the defendant has been charged and remanded in custody seeking release in Court. If bail is denied a man is deprived of his freedom protected by Articles 19 and 21 of the Indian Constitution. Personal freedom can only be removed through a "legal process". This reduction is permitted only if the law and due process allow for the benefit of the State.¹. Therefore, the court in dismissing the bail application must consider two conflicting interests: on the one hand, the public interest must be protected from the risks of misrepresentation of the alleged perpetrator; on the other hand, the basic human right to freedom.

PLEA BARGAINING IN US AND INDIAN CRIMINAL LAW CONFESSIONS FOR CONCESSIONS

It is worthwhile to start this paper with the famous Indian Jurist scale and lead lawyer Nani Palkhivala: the biggest disruption in the administration of

¹ Ratan Singh Nihal Singh v. State, A.I.R. 1959 M.P. 216; Kashi Ram v. State, A.I.R. 1960 M.P. 312.

justice in India today is due to delays in crime... The law may or may not be the same, but in India, it certainly is. Justice should be blind but I don't see why it should continue. Here it just meets, it can work. India's 'performance' in criminal investigations, prosecutions and prosecutions is under suspicion and mistrust because more than seven percent of the suspects are found. When it is difficult or impossible to find criminal evidence in an investigation you know, what are some ways to send criminals to prison? One limited response is _plea bargaining 'in which the confession will be reconciled with the offender under the guidance of the law which may lead to a speedy trial and sentencing. This document aims to explore the use of conversations. In India the sentencing rate dropped dramatically, indicating a lack of order and 'lack of order'.

EXERCISE OF DISCRETION IN CRIMINAL PROCEEDINGS

Discretion of court in Sentencing

Sentencing is a very important part of the justice system that goes hand in hand with the independence of the public and the defendants. The sentencing of any case has a public purpose. The main purpose of sentencing is based on the principle that the defendant must realize that the crimes committed by him not only save his life but also have a clear meaning in the public sphere. The purpose of fair punishment is to act as a protection for the individual and the public should not suffer repeated crimes.

Punishment laws in India often provide the maximum penalty that can be imposed by a criminal court and in very few cases when a lesser sentence is imposed. In the past the court had the power to impose a sentence but while the first court had to base its understanding on the principle of equality in granting credit for each type of criminal conduct as set by the Hon'ble Supreme Court the problem of the State Parliament v. Munna Chaubey. This policy allows for a particular understanding of the Judge in the sentencing process in each case, which will allow for judgments that reflect criminal convictions raised by certain facts in each case. The judges actually affirmed that punishment should always be in line with the case; however sentence performance is highly dependent on other considerations. Sometimes there is a need for disciplinary action for the offender so that he or she can be forgiven.²

Sometimes the desire to silence him and sometimes the painful consequences of his crimes. Inevitably, these protests lead to desertification as a basis for punishment and create more and more unjust crimes. It is appropriate to mention section 354 (4) of the Criminal Procedure Code, 1973 which stipulates that conviction is punishable by imprisonment for a period of one year or more, but the court imposes a random sentence of imprisonment for a period not exceeding three months. . . , unless the case is summarized. This clause limits the judicial power to impose a sentence of at least three months in cases where the case is punishable by one year or more.

THE LEGAL POSITION IN INDIA

There is no bail definition in the criminal code, 1973 although the available and non-recoverable policies are defined under section 2 (a) of the criminal code, 1973. The existing cases are those mentioned in the original case found in any other law, and lost cases refer to other cases.³

- Section 436 and section 450 do not include the granting of bail and bonds in criminal cases.
- In the criminal code the amount of security paid for the suspect to ensure his release is mentioned. The court has its own idea of investing in bail.
- According to the 78th law commission report as of April 1 1977, the number of 1,84,164 prisoners is 1,01,083 (about 55%).
- One reason for this is the extreme poverty among many Indians.
- This is the real reason why many prosecutors are depressed in prison instead of being released from prison.

JUDICIAL TREND:

An overview of the following cases highlights the negative aspects of the india bail system in india. In the case of Rajasthan v. Balchand defendant was convicted by the original court. When he applied to the Supreme Court, he was released. The state has referred the case to the Honorable High Court under art. 136 of the constitution by special request for leave. Defendant was ordered to surrender to the court. He then applied for bail. It was the first time that Judge Krishna Iyer raised his voice against the abuse of bail. He said although the cultural bail system had a tradition behind it, the time for rethinking had come. In many cases the bond will serve a purpose.⁴

In this case Maneka Gandhi and the Union of India Justice Iyer also spoke out against the unfair bail system prevalent in India.No definition of bail is

² AIR 2005 SC 682

³ Prahlad Singh Bhati v. NCT, Delhi, AIR 2001 SC 1444 at p. 1446

⁴ 1979 AIR 1369,1979 SCR (3) 532.

provided in this code, even if the cases are considered identified and not available. Continuation of Justice P.N. Bhagwati also pointed out that the injustice and discrimination of the bail system was rooted in the human economy. This discrimination arises even though the number of bail granted by the magistrate is not higher than others, but most of those brought to court on criminal charges are too bad to grant bail.

CRITICAL APPRAISAL OF MEDIA TRIAL UNDER ARTICLE 19(1)(A) OF THE INDIA CONSTITUTION

The media plays an important role in society and is known as the “watchdog”, playing a vital role in shaping public sentiment. Freedom of the press is the flexibility of people to be educated about what is happening. Contrary to the U.S. Constitution, Article 19 (1) (a) does not explicitly state freedom of the press, which is the freedom to print and publish your interests without permission. ⁵

In the case of *Keshavananda Bharati v. Union of India*, the Supreme Court confirmed that the freedom granted by Article 19 of the Constitution is part of the evil that governs Indian society. [4] It is a legal obligation that the right to freedom of expression and expression in Article 19 (1) (a) includes freedom of the press and Article 19 (2) provides reasonable restrictions that may be imposed by law for various purposes including but not limited to contempt of court. Lord Mansfield, in early 1784, described freedom of the press as a right to print without a license, subject to legal consequences.

“The free press is a democracy and the maintenance of it is essential for the survival of the powerful. Any intervention to protect the constitution of the free newspaper could undermine people's freedom to print and learn the truth.”

Right to a fair trial

Balancing one's right to speak and speak is a human right to live with dignity. The right to a fair trial is protected by Article 21 of the Constitution of India and Article 14 of the Constitution of India.

In *Zahira Habibullah Sheikh V. State of Gujarat and Ors*, the Supreme Court held that the concept of equal justice teaches and empowers some of the things of the law. This is true of various laws and customs. A fair trial is held to mean the trial of an impartial judge, a fair and just prosecutor. The relevant case requires that discrimination or discrimination be removed or transferred to the defendant, witnesses or prosecutors. ⁶

Interference in court proceedings

There is no doubt that media trials have revealed many cases in prominent cases such as the Jessica Lal Murder Case, the Bijal Joshi Rape Case, the Nitish Katara case but the strongest issue to protect innocent people who are unnecessarily dragged into such shameful places. An example of media propaganda that has had a profound effect on the outcome of the case is the Aarushi Talwar Murder Case. We have seen that headlines go up and down where parents are being prosecuted prematurely on murder charges. This has had a profound effect on the case, which lacked evidence support, and the Supreme Court has continued to remind the media of their commitment to educating the masses.

According to the 200th Report of the Law Commission of India, the media uses unlimited, or otherwise controlled, privacy in publishing information on criminal cases and discriminating against public opinion and those responsible for prosecuting suspects. In fact, even if the person is eventually convicted by a judge, it is unlikely that the defendant will choose to appeal. Strong and extreme media coverage will mislead the fair trial and lead to the accused being portrayed as a criminal.

In the event that the media details of the defendant or perpetrator violate the court process, that leads to unnecessary disruption of the "justice system" which ultimately leads the media to ignore the courts. Regulations designed to regulate journalism are sadly insufficient to prevent violations of human rights and freedoms. ⁷

Freedom of Speech & Expression v. Freedom of Media.

The controversy between the courts and the media is based on two concerns - firstly that there should be no "media trial" and secondly that it is not for the media or anyone else to end the case. Justice demands that people be prosecuted by the courts of law and that no action is taken by the media. ”

The Constitution of India protects the freedom of speech and expression and the right to a fair trial under Article 19 and Article 21 respectively. *Kishori Mohan v. The West Bengal government* has caught that

“This is the only right that enables aam janta to participate in public affairs; one can freely comment on the functioning of Indian democracy without fear of reprisals; Everyone has the right to equal access to public service in his country. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations. dictatorial governments, oppressive organizations, and corrupt organizations must be under pressure; Not just international unity, but there is something far greater and deeper than the human

⁵ Kanchi, *Constitutionality of Media Trial in India*, Retrieved on 01-03-2020

⁶ Prachi Darji, *Media Trials the Escalating Influence on Judiciary*, Retrieved on 03-03-2020

⁷ A Gowri Nair, *Fair Trial, Judiciary and Media: Need a Balance*, Retrieved on 03-03-2020

conscience among them. "

In *R. In Jayarajan*, the Supreme Court ruled that the media were in an undisclosed location because the media were the eyes and ears of the general public. Freedom of the press is part of the freedom of speech and expression set forth in Article 19 of the Constitution. Therefore, the media is also subject to all restrictions imposed by private individuals. The Universal Declaration of Human Rights states: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. "Similarly, the term media freedom is not used in terms of Article 19, but freedom of speech and expression includes freedom of the press."

International Perspective

What the United States, England and India have in common is that like ordinary legal countries, they highly value freedom of speech and speech. Various international documents or authorities have highlighted the importance of the right to a fair trial and have tried to strike a balance between freedom of the press and the right to a fair trial.

According to the UN Basic Principles of Independence of Judiciary, Article 6, "Judges have the right and the need to ensure that legal proceedings are carried out in a manner consistent with the rights of the parties." The International Covenant on Human and Political Rights means impartiality in deciding criminal cases or persecution.⁸

Media Trial Is Contempt of Court.

The preamble of our Constitution includes the concept of freedom of thought and expression as well as various other freedoms such as freedom of religion, religion and worship. The third part of our Constitution, which is a fundamental right, also provides for freedom of speech and expression as contained in Article 19 (1) (a).

In *Romesh Thapar v. State of Madras*, it was held that freedom includes freedom of speech, publication and distribution. The same is true of *Hamdard Dawakhana v. Union of India* where it was stated that the right includes the right to receive and impart ideas and information on matters of public interest. In *Life Insurance Corporation of India v. Manubhai D. Shah* is considered to have the freedom of speech and expression in Article 19 (1) (a) to express his right to freedom of speech and expression, in writing, in photography, or in technology. "

ADVANTAGES OF "PLEA BARGAINING"

Time-saving: Examining potential points related to Plea negotiations in India, will help reduce delays, backlogs and early dismissal of criminal cases, save court time, which can be used to hear serious criminal cases, and eliminate criminal life uncertainty to help victims. with criminal evidence, saving a lot of time, money and energy for the defendant and the state, reduces overcrowding in prisons, raises the risk of conviction from a very low level to the right level to create some kind of loyalty to the system, making crime easier by allowing innocent or innocent suspects.⁹

Compensation for victims: Crime victims can benefit as they can get compensation. They do not have to participate or participate as witnesses or seek correction or justice for longer than is required to accept interviews. Whether they earn money or not their time can be saved.

Disadvantages

The downside: The system will have more respect for the suspects and will allow them to have non-existent ways to escape from an unscrupulous society in India. It is a different form of criminal authorization to some extent which is why it is not the right thing to do. It creates the impression that Justice no longer sees, but has one eye open to the right offer. Prosecutors and police, foreseeing the negotiation process, will charge the defendant excessive amounts of money, as the union may demand higher salaries. It is a natural error, it is thought that he has two defendants behaving in the same way in the same situation, treating the other badly because he represents his constitutional right.

Why Do We Need Pretrial Improvements?

If we can agree on why we need early development in America, we are in the process of implementing that development. As recently as 2007, one of the most common controversies regarding bail change was the ubiquitous saying, "If we don't break it, don't fix it." That has changed. While various documents over the past 90 years have repeatedly emphasized the need to improve the management of bail, letters from the current generation of pre-trial reforms provide powerful new information on why we must change, change and establish our right to a fair trial. that's really broken. Knowing that our understanding of pre-trial risk is flawed, we can begin to teach judges and others how to accept risk first and reduce risk a second time so that our basic American equality law remains strong. Given that a fund-based bail system that leads to fundraising leads to unnecessary arrests of low-risk cases and unreasonable release of many high-risk individuals, we can begin to use procedures designed to address this unreasonable inequality. Knowing and

⁸ *Life Insurance Corporation of India v. Manubhai D. Shah*, (1992) 3 SCC 637

⁹ *H W R Wade and C F Forsyth, Administrative Law (8th ed 2000) pp 918-919*

agreeing on each pre-trial matter, from risk-taking to police positions and initial advice on the need for risk-based bail laws and the constitutional language of bail rights, allows us to look at each country (or even all countries in the province) with a smart solution.¹⁰

THE LEGAL POSITION IN INDIA

The Criminal Procedure Code, 1973 (Cr.P.C. thereafter), does not specify bail, although the terms of the case found and the case not found are specified in section 2 (a) Cr.P.C. the following: "An acquired case means a case shown to be in Schedule 1 or made to be found by another law at that time, and a case not found means any other case". In addition, ss. 436 to 450 set the conditions for the granting of bail and bonds in criminal cases. The amount of security that a defendant will have to pay for his or her release is not stated in Cr.P.C. Therefore, the court's understanding is to put a cap on security. Unfortunately, it has become clear that the courts were not sensitive to the economic hardships of vulnerable sections of society. The number of absurd and almost impossible courts as bail bonds clearly shows their indifference to the poor.

CONCLUSION

The controversial concept of Plea Bargaining is a simpler way to engage and benefit collectively than the issue of ethics, legitimacy or constitutionality. There is an inevitable need for radical change in the law of justice. It would be an acceptable change but only if there was a chance for a speedy and cost-effective resolution of cases. If the only purpose of the criminal justice system is to rehabilitate criminals, by making them receive certain prison sentences, soliciting negotiations loses a great deal of charm. Whether it is known or not, the negotiation of the applications is conducted by various stakeholders of the 'criminal' system and the justice system. Keeping this process under control opens up opportunities for fair transactions in these negotiations. In the current context of employment it is an inevitable part of the negotiation process.

However, to use the existing process and to reap the benefits of these changes, the negotiation process can be put to good use, which the police, lawyers and lawyers need to understand first, and then try to accept. Defendants should encourage attorneys to choose to negotiate complaints rather than treat existing negotiations as a threat to their work. It is clear that the capacity building of police and judges should be a priority and a priority before negotiation efforts. It can be given a chance to survive. From experience in the US it can be said that negotiating grievances is always controversial and is a questionable practice. Since overcrowding in criminal courts threatens the foundations of the system, the negotiation of complaints can be accepted as one of the necessary steps to speed up the sentencing process. After providing a rigorous analysis of this method, a thorough study should be conducted on its effectiveness, its impact on the level of crime, abandonment, and ultimately the legal impact.

REFERENCES

1. Sean Doran and John Jackson (ed) (2000), *The Judicial Role in Criminal Proceedings*, Hart Publishing, UK.
2. Stephanos Bibas (2012), *The Machinery of Criminal Justice*, Oxford University Press, Oxford.
3. Wing-Cheong Chan, Barry Wright and Stanley Yeo (ed) (2011), *Codification, Macau and Indian Penal Code - The Legacies and Modern challenges of Criminal Law Reform*, 10th Ed., Ashgate Publishing.
4. Richard J. Terrill (2013), *World Criminal Justice Systems - Comparative Research*, Edition 8, Anderson Publishing, UK.
5. Aya Gruber, Vicente de Palacios, Piet Hein van Kempen (2012), *Practical Global Criminal Procedure: United States, Argentina, and the Netherlands*, Carolina Academic Press, US.
6. Delmas-Marty, Mireille and Spencer, JR (2005), *European Criminal Procedure*, Cambridge University Press, Cambridge.
7. Henry Arthur Deuteronomyos Phillips (2012), *Cururprudence of Comparative Law.:* Criminal Procedure, Code of Criminal Procedure in India, Forgotten Books, London.
8. Ronald Jay Allen, William J. Stuntz, Joseph L. Hoffman and Debra A. Livingston (2001), *Comprehensive Criminal Procedure*, 3rd Edition, Aspen Law & Business, Germany.
9. Craig M. Bradley (2007), *Criminal Procedure: A World Wide Study*, 2nd Edition, Carolina Academic Press, North Carolina.
- Charu WaliKhanna and Jyotika Kalra (2016), *Sexual Harassment and Harassment: Violence against Women in the Workplace (Protection, Prevention and Control Act)*, 2013

¹⁰ *Delaney v Shobe, 218 (inability to give bond in the amount set is not sufficient reason for holding the amount excessive)*