



Bail system and its impact on pre-trial justice in criminal Law

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DOI: <https://doi.org/10.5281/zenodo.14210728>

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Abstract

The right to liberty is the legal term for bail in criminal law. Articles 19 and 21 of the Indian Constitution provide the essential right to liberty, and this is related to that, which is universally recognized. The right to bail allows the accused to be freed from prison, enabling individuals to go about their everyday lives. When facing accusations for a particular crime, a person may seek bond prior to their arrest under an advance bail provision. This authority is strengthened by classifying charges as either bailable or non-bailable. When it comes to bailable offenses, the right to bail is usually granted; on the other hand, when it comes to non-bailable offenses, it's possible to request bail in good faith, and the courts usually grant it, which shows how important this right is in individual cases.

Keywords: Arrest, Bail, Judicial Discretion, Right, Accused

Introduction

An individual's financial capabilities should never dictate their incarceration status. Regrettably, this is precisely what is occurring in our state. Individuals are often detained before to trial due to their inability to get bail funds.

In Washington counties with accessible statistics, over 60 percent of those in county prisons at any moment amounting to thousands have not been convicted of a crime.¹ They are incarcerated only due to their inability to pay the bail sum established by the court. The elevated percentage of pretrial detention persists notwithstanding the stipulation in Washington court rules that typically require the release of those accused of crimes prior to trial.

Current procedures that compel individuals to remain incarcerated prior to their trial violate the foundational American concept of presumption of innocence unless proved guilty. Individuals accused of crimes who lack the financial means to post bail are effectively regarded as if they had already undergone trial and been found guilty.

Judges in Washington often set bail at levels much above the financial capabilities of many individuals, without regard for their unique financial situations and resources. This practice starkly illustrates the existence of two distinct systems for individuals facing criminal accusations in our state: one for the affluent and another for the impoverished. This dual-layered strategy obstructs justice for people,

compromises the integrity of the judicial system, and imposes excessively burdensome expenses on the accused, their families, and our communities. This stands in sharp contrast to the practices of federal courts, which changed the inequitable use of monetary bail 50 years before.

Literature Review

Yang, C.S. (2017) ^[5]. Since judges nowadays depend on their personal biases and heuristics when deciding whether or not to grant bail, I provide new empirical evidence suggesting that a cost-benefit framework may improve fairness and precision in this area. I find that there are significant differences among judges in terms of racial disparities in release rates, monetary bail imposed, and pre-trial release rates using data on criminal defendants and bail judges from two urban jurisdictions, as well as using the random assignment of cases to judges. While there are a number of possible explanations for why courts in the same jurisdiction might reach different bail decisions, our data implies that judges might not be setting bail at the most socially optimal level. The conceptual approach of this article explains how the new bail laws might improve society. While there is a lack of concrete evidence, electronic monitoring shows promise as an alternative to pretrial detention that improves wellbeing. One potential consequence of relying too much on risk assessment tools is

the warning that the conceptual framework provides. In their support of incarcerating high-risk offenders, these tools fail to take into account the possibility that these same persons may also be "high-harm," and therefore be subject to the worst consequences of incarceration. I believe that nations should develop "net benefit" evaluation techniques to consider the potential risks and harms to each defendant, with the goal of improving a bail system that prioritizes the well-being of society.

Sacks (2012) ^[4] past studies on judicial decision-making indicate that legal criteria, like crime severity and past criminal history, significantly influence sentence outcomes. Furthermore, research has shown that demographic variables, including race and gender, affect sentence outcomes. With a focus on the role of pretrial release status, this study examined the factors that influence sentencing decisions using data from 975 cases tracked by the Criminal Disposition Commission in New Jersey from the time of arrest all the way through to disposition. However, in cases when incarceration is the outcome of the punishment, the authors found that pretrial detention significantly and negatively affects the length of the term.

Menefee, Michael. (2018) ^[2] Few studies have examined the function of bail systems in the United States from a sociological perspective on punishment. Financial bail has led to an increase in the number of individuals incarcerated in American prisons before trial. The increasing number of people held before trial is responsible for 95% of the growth in prison populations since the year 2000. Pretrial detainees also disproportionately come from minority racial and ethnic groups. custody results are substantially impacted by racial and socioeconomic disparities, according to this study's summary of the empirical data on racial and economic disparities in bail and pretrial custody. In addition, I highlight the research on the knock-on consequences of pretrial incarceration and the abundance of recent studies showing that this kind of confinement increases the likelihood of a conviction. Second, I look at how pretrial processes, discrepancies in police and arrests, and other factors all add up to disadvantages. Lastly, I want to talk about how people are still arguing over whether pretrial risk assessment methods help or hurt efforts to combat racism in the criminal justice system.

Kazemian (2013) ^[1] The 'unruly classes' are being gradually incarcerated by governments in an effort to regulate, rather than punish, individuals, according to the New Penology worldview. Post-industrial society increasingly employs criminal sanctions to suppress the impoverished, urban jobless, and minority groups compared to prior decades. This research examines the variables influencing bail choices and results in New Jersey, using a sample of 975 criminal cases, in a state that prohibits preventative detention and where the Constitution advocates for bond release. Based on our findings, bail procedures in New Jersey do not adhere to the principles of the New Penology. Judges do not intend to disproportionately imprison the "urban underclass," according to the results, and a person's criminal record often seen as a sign of danger-does not consistently influence bail decisions. Race continues to be a significant determinant of bail decisions, aligning with, but not exclusively confined to, the tenets of the New Penology. These findings challenge the inevitability of postmodern

development and prompt an inquiry into whether legal frameworks might impede it.

Bail as matter of right

According to the Code of 1973, judges possess the unequivocal authority to determine bail. When determining bail, the court must prioritize the wider community interest above the preservation of the accused's liberty. In accordance with Article 21 of the Indian Constitution, every individual is guaranteed the right to a prompt trial. The Code of 1973 primarily aims to facilitate a rapid trial. The urgency of the trial and the need of a fair, rational, and unbiased procedure are violated by the postponement of its completion. The Court and, in some offenses, the police have been endowed with the authority to give bail. In instances of bailable crimes, bail may be sought as an entitlement.

In this regard, both the police and the judge possess no discretion. Nonetheless, due to the public's ignorance of the statutory constraints, law enforcement exercises discretion in granting bail. It is important to enhance understanding in this domain to prevent police from misusing their power for illicit ends.

The fact that bail may be granted by entities other than the court implies that the officer does not possess the authority to deny release under Section 436. It is up to the officer's judgment whether or not to post bail. If the accused is willing to post bond, the police officer does not have the jurisdiction to grant bail for bailable crimes under Section 436. If the accused posts bail, the Investigating Officer is required to release them. When a person is taken into custody for a crime that has a set bond, the officer in charge is supposed to post the bond. If, for whatever reason, he doesn't, the court will step in and pay the amount.

Although the court had previously granted bail to the appellant and his sister in the case of *Dharmu Naik v. Rabindranath Acharya* (1978), the answering police officer nonetheless held them. The honourable High Court found that the responding officer unlawfully detained the appellant and his brother notwithstanding their earlier release on bond, which had been provided to him. After appearing in court under dread of arrest, the appellant and his brother were granted a release order, would not remain silent, neglect to provide the bail order, and acquiesce to police detention. The respondent police officer was required to release the appellant on bail because, even though he did not have a bail order, evidence showed that surety had been supplied when he was detained. As long as they are willing to post bail, police officers do not have the power to refuse bail in cases where the accused is eligible for it. The investigating authorities determined that the respondent police officer violated Section 342 of the Indian Penal Code (IPC) of 1860.

Judges have discretion over whether to grant or deny bail, according to a landmark 2011 decision by the Hon'ble Supreme Court. The bail application should be evaluated based on the case's facts and circumstances. Bail should not be rejected on account of popular sentiment and pressure. Whether set before or after a conviction, the fundamental goal of bail is the same: to release the accused from jail while reducing the monetary strain on the state.

The right to a speedy and fair trial

According to Article 21 of the Indian Constitution, any person facing criminal charges has an inherent right to a speedy trial. This right is an expansion of the safeguards against wrongful confinement provided by Articles 21 and 22. This is an inherent right that the accused need not pursue or use. An accused individual has the right to a prompt court appearance to determine the need of detention and the appropriateness of bail (Bare Acts Live, n.d.)

As a remedy for delays in adjudication of allegations, the release of an accused on reasonable bail is provided for under the ICCPR, OUNHCHR, 2013, and ECHR, 1950. In addition, the International Covenant on Civil and Political Rights states in article 9 (3) that every person apprehended by the police shall be brought before a court without excessive delay. With the right to a speedy trial upheld by the US Supreme Court, the prosecution has the option to drop all charges and dismiss the case altogether if the trial is purposefully prolonged. The release of inmates whose detention length exceeds their sentence, regardless of whether their trials have been completed, was decreed by the Hon'ble Supreme Court in a historic ruling. Judgment delays have kept these people behind bars, and the court pointed out that they are often on the outside looking in, with no means to help them understand or take advantage of the legal system's protections.

Bail to be non-arbitrary

Judicial discretion, the court's best judgment, is the primary factor that determines whether an offender is eligible for bail or imprisonment prior to, during, or after a trial. The deprivation of personal liberty due to the denial of bail is a critical concern within our constitutional framework; it represents a significant responsibility that requires careful consideration of its ramifications for both the individual and society. The Constitution's welfare goals must be the determining element in any decision to impose limitations on individual freedom, whether such limitations are temporary or permanent.

In addition to ensuring that the defendant abides by the court's jurisdiction and punishments, bail is used to force their appearance for trial or any other occasion that is legally necessary. A person facing criminal charges will never have their bail refused as a form of punishment. The primary objective of bail is to secure a defendant's release from pretrial confinement, therefore avoiding the associated restrictions and legal repercussions. Bail should not be denied only on the basis that the defendant seeks release and has a significant likelihood of achieving it. Bail may be denied if there is a risk that the defendant might undertake actions that threaten the integrity of the judicial process if granted freedom.

Bail and judicial discretion

A case may be classified into two categories to ascertain its bail ability: bailable and non-bailable. A judge must use judicial discretion while evaluating a bail application according to established rules and standards. Substantive evidence based on the case's facts and circumstances is required for all bail petitions. In accordance with the 1973 Code of Criminal Procedure, the accused may be released on bond. For crimes that qualify for bond, release is possible

under Section 436 of the Code.

According to Section 436 (1) of the Code, which governs bail, The power to issue bail for offenses that satisfy its criteria does not rest with any individual in charge of a police station or court. The Criminal Procedure Code of 1973 For crimes that do not qualify for bail, release on bond is permitted under Section 437 of the Code. A first-come, first-served policy may not always apply to security deposits. It is up to the court to decide whether or not to grant bail. 'Judicial discretion' cannot be used to incorporate conditions that are unrelated to the bond's purpose and aim, since they are more likely to violate an individual's constitutional and legal rights or amount to harassment. When deciding whether or not to grant bail, the court must avoid placing any restrictions that might cast doubt on the accused's innocence. In deciding whether to set bail for a non-bailable offense, the court must weigh individual rights against the general good. The following factors must be taken into account when deciding whether to grant bail for a nonbailable offense: the possibility of the offender's reoffending, the danger of intimidating witnesses, the possibility of evidence tampering, the defendant's seniority, the probable punishment upon conviction, the weight of the evidence against them, and the likelihood of a witness's presence.

Courts should use prudence instead of arbitrary authority while determining whether to issue bail, according to the 2005 Supreme Court ruling in the case of Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav. Although it is not required to conduct a thorough evaluation of the evidence and record the merits of the case in order to give bail, it is crucial to explain why the defendant was granted release, especially when they are facing criminal accusations. The absence of such explanations would leave any organization cognitively unengaged. While deciding whether or not to issue bail, the Hon'ble Supreme Court ruled in the Amarmani Tripathi case that the defendant's "character, behavior, means, status, and position" must be considered. A defendant is presumed innocent until proven guilty according to the presumption of innocence. But when a bail order calls for the defendant to put up a certain sum of money that was supposedly stolen, the trial court loses some of its objectivity. It seems that the defendant's innocence is unfairly presumed. According to the 2005 State case of C.B.I. v. Amaramani Tripathi.

The Legislature modified the phrase "reasonable grounds to believe" to "the evidence" to stipulate that the Court's role is to determine the existence of a legitimate case against the defendant, necessitating the prosecution to provide prima facie evidence to substantiate the charges. Whether the defendant is guilty beyond a reasonable doubt cannot be determined at this time.

A punishment action prior to a conviction should not be the denial of bail. Keep in mind that unless proven guilty, the presumption of innocence applies in criminal law. A presumption of guilt on the part of the defendant cannot suffice. Furthermore, in a limited context, the defendant's right to a fair trial is violated when bail is denied, he has limited contact with his attorney.

The court has decided to remain silent on this matter because to the ambiguity of the Code, which applies regardless of whether the order is custodial or not. This

problem necessitates a socially aware legal framework that encompasses bail jurisprudence since it affects freedom, justice, public safety, and economic hardship. Andhra Pradesh High Court case between Gudikanti Narasimhulu and the Public Prosecutor A court's decision on a bail application is based on its own judgment, taking into account the standards and criteria indicated above. A convincing piece of evidence pertaining to the particulars of the case must substantiate each bail request.

Recent development regarding bail orders

This scheme was initiated by the current Chief Justice of India, NV Ramana, to facilitate the secure and expedited transmission of bail decisions from the Supreme Court or any lower court to the jail authorities. "Secure and Rapid Transfer of Electronic Records" is the name of the software'. The Supreme Court took Suo Moto note of a news story that said a person who had been granted bail by the Hon'ble Supreme Court still hadn't been released three days after the ruling was made. In response, this program was put in place. The delay in communicating bail rulings was a matter of worry for the Chief Justice of India in July 2021, stating, "Even in the era of the internet and Information Technology boom, it seems jail authorities are relying on an archaic mode of communication through pigeons."

Interrogation in advance of trial in light of the new Hungarian criminal procedure code

The legislation of the new Code, initiated in 2015, was completed in 2017. The Hungarian lawmaker recognized the need of enacting a new law. The Government approved the idea of the new Code on 11 February 2015. The principles of the design were as follows: efficiency, speed, simplicity, modernity, coherence, and expediency. The newly enacted Code on 13 June 2017 includes substantial enhancements in several areas, however it retains the current norms in many legal institutions. Although it is impossible to standardize criminal procedural law inside the European Union, legislators must take European tradition into account when codifying. Both the defendant's and defense counsel's rights have been severely curtailed by a plethora of new regulations that limit the application of the fair trial principle. On the other hand, if these changes might affect the fundamental human right to a fair trial, then they are quite interesting. The coercive measures are very important in this regard. This research examines the traditional form of coercive tactics, including pre-trial imprisonment.

Table 1: Number of the defendants held in pre-trial detention

Date	Number of the defendants held in pre-trial detention
31 December 2009	4502
31 December 2010	4803
31 December 2011	4875
31 December 2012	4888
31 December 2013	5053
31 December 2014	4400
31 December 2015	3978
30 June 2016	3803
31 December 2016	3577

Consequently, the article focuses on pre-trial detention and

will adopt a comparative perspective. The paper may also discuss the language of the new Code, as codification is finished this year. The article does not go into detail about the so-called particular criminal procedural standards; rather, it focuses on the core concepts of pre-trial detention as revised in the new Code.

Conclusion

A judge's discretion characterizes the law of tyrants; it is subjective, unknowable, and dependent on factors like as a person's personality, emotional state, and genetic makeup. At its best, it represents the height of irrationality; at its worst, it personifies every vice, foolishness, and emotion that is inherent in the human condition. "The Lord Camden". The courts must consider the accused's socioeconomic status, adopt a compassionate stance, and do background investigations to ensure accountability within the legal system, therefore restoring citizens' fundamental rights and others.

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