



Right To Bail-Judicial Trends

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Abstract

Indian Constitution is the lengthiest written constitution and is crystal clear about the human right's vision of right to life and liberty. The constitutional vision has given the courts to spread it wings to the need of the time and trend to impart justice. The right to life in article 21 has become a shielding sky to a criminal's personal liberty as fundamental right to the extent that he proved guilty. The constitutional vision of right to life and liberty and its applicational trend of the Indian Judiciary is visible in number of cases. The objective of the research is to elucidate vision and trend of human rights to of Indian judiciary to people. The research is a doctrinal work which has used primary as well as secondary materials for its findings.

Introduction

The concept of bail arises from a presumption of accusatorial system of 'innocent till proves guilty'. The presumption of innocence is a fundamental Principle of our criminal justice system. The system of burden of proof is in fact relevant to support the presumption of innocence. A person is presumed to be innocent, until proved to be guilty. Protection of the innocent is as much the duty of the society.

Protection Of Innocent: Constitutional Right

The protection of the innocent is the very basis of the Constitutional remedy under Articles 20 and 21; that is why the innocent is entitled to the highest normative consideration. The moment normative standards of proof are substituted by preponderance of probabilities there would be a violation of the basic human rights that have been embraced by our Constitution. As such an individual's right to life and personal liberty which is fundamental right under Article 21 cannot be compromised until he/she is connected and thus proved guilty. Thus, the accused is allowed to furnish security to secure the presence of accused for trial and to retain his personal liberty (Fox, 1979).

Right To Personal Liberty: Constitutional Right

According to article 21 of the Constitution no person shall be deprived of his or personal liberty except according to procedure established by law. The meaning and scope of Right to Bail gathered from the contours of Art -21. The court opened the dimensions of Article 21 not only against executive action supported by law but also a restriction on law making and thereby sowed the feed for future development of Law enlarging the most fundamental of the Fundamental rights (Gouda, n.d.).

Deprivation Of Personal Liberty: Must Be In Accordance With Law

The object of Article 21 is to prevent encroachment upon personal liberty by an appropriate authority, except in accordance with law and in conformity with the provisions thereof. The Apex Court has categorically maintained that before a person of his life or personal liberty, the procedure established by law must be strictly followed and must not be departed from to the disadvantage of the person affected."

In *G. Narasimhalu v. Public Prosecutor, Andhra Pradesh 1978*, it has been held by the Supreme Court as follows: "Personal liberty, deprived when bail is refused, is too precious a value in our constitutional system recognized under Article 21 of the constitution 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. The

significance and sweep of Article 21 of the constitution make the deprivation of liberty a matter of great concern and permissible only when the law authorizing it is reasonable even handed and geared to the goals of community good and state necessity spelt out in Art.19. The protection of Article 21 is available to all persons arrested or detained be a citizen or noncitizen. Such freedom also extends even to a person convicted subject only to the limitations imposed by his conviction under the Law”(v Krishnaiyer, 1977).

Protection Of Personal Liberty: Trends Of Courts

The Indian Judiciary had given different meanings in different occasions to the concept of Personal liberty. In A.K. Gopalan v. State of Madras, the concept of personal liberty was given a narrow meaning: liberty relating to, or concerning the person or body of the individual and in this sense it was antithesis to physical restraint coercion. But in Kharakh Singh v. State of UP it was held that personal liberty was not limited to bodily restraint only but was used as a compendious term to include within itself all the varieties of rights which go to make up the personal liberty of a man other than those dealt with in Article 19(Gopalan, 1950).

In Maneka Gandhi v. Union Bank of India 1978, Supreme Court widened the scope and meaning of personal liberty. It was said that personal liberty was use in article 21 to cover a variety of rights which go to constitute the personal liberty of a man and some of them were raised to distinct fundamental rights and additional protection under Article 19. With this decision, the concept and meaning of personal liberty acquired a new status. The expression ‘Personal liberty’ according to A.K. Gopalan’s case (1950) means freedom from physical restraint of person by incarceration or otherwise. But in the later decisions the Supreme court has abandoned the meaning of personal liberty as given in Gopalan’s case and in view of these later decisions the ‘Personal liberty includes all varieties of rights which go the make up a person’s personal liberty other than those which are already included in the several clauses of Art 19(Gopalan, 1950; Supreme Court of India Maneka Gandhi vs Union Of India On, n.d.).

Right To Bail Is A Part Of Processual Justice

Right to Bail is a part of processual justice and sensitized judicial system has granted it creating a new vista under article 21. In Kashmir Singh v. State of Punjab 1978, the Supreme Court held that the practice in this court had been not to release on bail a person who was sentenced to life imprisonment. And the question was whether this practice should be departed them? The court held that “no practice new so ever sanctified by usage and hallowed by time can be allowed to prevail if it operates to cause injustice”. In Babu Singh v. State of UP 1978, the Supreme court recognizing right to bail as a part of personal liberty under Article 21, held: Personal liberty deprived when bail is refused, is too previous a value of our constitutional system recognized under Art 21 became of which the power to negate it must be exercised not casually, but judicially with lively concern for the cost to the individual and the community. The court found that a man in bail had better chance to prepare or present his case than one remanded in custody. This was the demand of Public Justice. And if public justice was to be promoted mechanical detention should be denoted. Thus deprivation of liberty was validated only by “Social defense and individual correction”. The court felt that whatever resonations might be there under the bail law, they should be imposed to protect and not to cripple because such if the holistic jurisdiction and humanistic orientation involved by the judicial discretion correlated to the values of our constitution as well as the international human rights’ vision (Dorothy Weldon (2018).

“To open to glamorize impressionistic orders as discretionary may on occasions, make a litigative gamble decision of a fundamental right. After all personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of procedure established by law”. The judiciary has taken always sympathetic attitude towards poor, and has shown towards taking of favour heavy bail from poor. In Moti Ram vs. State of MP the court felt that when heavy sum was demanded by way of bail from weaker segments of the society and the court was powerless to dispense with surety the grant of bail would become stultified and impossibly convenient’. Money bail system is least promoted globally for the poor would become prey to it and may fail to get justice

(Arpit Gupta, Christopher Hansman and Ethan Frenchman (2016).

In *Husainra Khatoon v. State of Bihar 1979*, while dealing with under trial prisoners Justice Bhagavati held that the courts must abandon the antiquated concept that pretrial release would be ordered only against bail with sureties. This concept was out dated and it had done more harm than good. Therefore, the court held that if the court was satisfied on a consideration of the relevant factors that the accused had his ties in the community and there was no substantial risk of non - appearance, the accused might, as far as possible, be released on his personal bond. Justice Pathal also held that there was an urgent need for a clear provision enabling the release, in appropriate cases, of an under-trial prisoner on his bond without sureties and without any requirement of money obligation.

In another case of *Hussainara Khattoon*, the court again held that when an under-trial prisoner was produced before a magistrate and he had been in detention for 90 days or 60 days, as the case may be the magistrate must, before making an order of further remand to judicial custody point out to the under-trial prisoner that he was entitled to be released on bail. It was also held that the State Government must also provide as its own cost lawyer to the under-trial prisoner with a view to enable him to apply for bail.

The Supreme Court in many of its judgments observed that while utilizing the discretion for grant or refusal of bail, the courts must make their discretion in a judicious manner and not in a causal manner, as it involves the liberty of person accused of some offence under the law. In *Gurbaksh Singh v. State of Punjab* the Supreme Court dealt with the question of imposing some conditions while granting anticipatory bail under section 438 of the code of Criminal Procedure. The Court observed that in order to meet the challenge of Article 21 the procedure must be fair, just and reasonable.

Right to Bail: A Constitution Right

On the analysis of above said cases the judiciary had added another gem in the prisoner rights by recognizing their right to bail. In *State of Maharashtra V. Budhikita Subha Rao*, the Supreme Court pointed and that the personal liberty of an individual can be curbed by procedure established by law. Law permits the curtailment of liberty of

anti-social and anti-national elements. Thus, where successive application for bail were rejected by the High Court on merits in view of gravity of offence alleged to have been committed by the accused and if there was no substantial charge in fact situation there after necessitating the release of the accused the order granting bail thereafter by the High Court was illegal (Singh & Sharma, n.d.).

Police Bail Without Charge: Expansion of Right to Life

Police force has given the power to bail a person without charge if the investigational authority believe that is fit is a recent trend is originated from article 5 of the European Convention of Human Rights. Though it is a very recent origin it sprouted fast to the judiciary of all nations including India. The vision is an indicational trend of the judiciary that a person who is accused of guilty may be made free at the perusal of the police (Ed Cape and Richard A. Edwards – 2010).

Conclusion

Thus the principle aim of bail is removal of restrictive and punitive consequence of pretrial detention of an accused. This mechanism of providing bail to an arrested person is geared on the twin principle of securing the presence of any accused person in criminal trail as well as to place only a minimum of restraint on the freedom of the individual.

Bibliography

1. Arpit Gupta, Christopher Hansman and Ethan Frenchman (2016). *The heavy Costs of High Bail: Evidence from Judge Randomization*. The Journal of Legal Studies, Vol. 45, No. 2. Published by The University of Chicago Press for the University of Chicago Law School.
2. Dorothy Weldon (2018) *More Appealing: Reforming Bail Review in State Courts*. Columbia Law Review Vol. 118, No. 8. Published by Columbia Law Review Association, Inc.
3. Dr. Janak Raj Raj - Bail Law & P Criminal Procedure Code 1973 - Universal Publication 2009
4. Dr. N. Maheshwara Swamy (2013)- Criminology and Criminal Justice System, Published by Asia Law House
5. Dura Das Basu (1992) *Criminal Procedure Code 1973*. 2nd Edition. Lexis Nexis

6. Ed Cape and Richard A. Edwards (2010) Police Bail without Charge: The Human Rights Implications.
7. Fox, W. F. (1979). The "Presumption of Innocence" as Constitutional Doctrine. In *Catholic University Law Review* (Vol. 28). <https://scholarship.law.edu/lawreview/vol28/iss2/3>
8. Gopalan, A. K. (1950). *Supreme Court of India*. <http://indiankanoon.org/doc/1857950/>
9. Gouda, S. (n.d.). RIGHT TO LIFE AND PERSONAL LIBERTY UNDER THE PERSEPECTIVE OF INDIAN CONSTITIOUN: AN ANALYSIS OF JUDICIAL ACTIVISM. *JOURNAL ON CONTEMPORARY ISSUES OF*, 7(2).
10. Manohar & Chitaley (2010) *108 Years of Digest on Bail*. 1st Edition ,All India Reporter Nagpur
11. PK. Majumdar & R.P. Kataria (2003) - *Law of Bails Bonds and Arrest*. 1st Edition. Orient Publications
12. Singh, G., & Sharma, R. (n.d.). VOLUME 6 I ISSUE 1 I JAN IJRAR. *International Journal of Research and Analytical Reviews*. <http://ijrar.com/>
13. *Supreme Court of India Maneka Gandhi vs Union Of India on*. (n.d.). <http://indiankanoon.org/doc/1766147/>
14. The Cambridge Law Journal. Vol. 69, No. 3. Published by Cambridge University Press.
15. v Krishnaiyer. (1977). *Gudikanti Narasimhulu And Ors vs Public Prosecutor High Court Of on 6 Dec ember 1977*.