



## POSITION OF INDIGENT PEOPLE UNDER CRIMINAL JUSTICE SYSTEM OF INDIA

*By Fahad Bashir Khan  
From Jamia Millia Islamia*

### **Abstract:**

An indigent individual is characterized in explanation one to Rule 1 of Order XXXIII of The Code of Civil Procedure, 1908, according to which, an individual is deemed to be as an indigent, if he isn't outfitted with sufficient methods other than the property exempted in association with the execution of degree, to entitle him to submit the endorsed fees. An application must be filled along with the lawsuit for agreeing to permit the possibility to record the proceedings in the category of an indigent individual. After due solicitation, the court in any case may excuse the application for approval to record the suit as an indigent individual on the ground referred in Rule 5 of the same order. An individual having been declared as indigent, can be faded on the ground given in Order XXXIII Rule 9 of The Code of Civil Procedure, 1908. Under Rule 18, state government can offer free legal help to indigent individual. This paper deals with how the poor and downtrodden people, who also happen to be the vital part of the society, do not get the justice as is given to the well to-do class. This paper also highlights the dire need to change, amend and make the new laws, which would take the two antagonistic groups of the society hand in hand and thereby ensure the similar type of justice to the indigent people as is given to the engrossing and affluent people.

### **Introduction:**

Indigenous people additionally have legal requirements that aren't being met by the present arrangement of our country. To practice the equivalent rights, people approach the official courtrooms and equal rights are futile on the off chance that they couldn't be worked out. The rich and influential can move toward the courts since they are well cognizant about the methods, however, the poor need to confront injustice basically in light of the fact that they possess no cash to enlist a way to get justice. The possibility of legal aid to the poor is, in this manner a stage toward this path yet this privilege isn't supreme, the framework is still profoundly tilted towards the rich and engrossing people and the impoverished people are in a hindered position. Generally, influenced by this excruciating segregation, the most hapless are the needs of the needy people. They are most overpoliced and destined to be denied bail and are to be exposed to meddling legal intricacy. The standard of law can't exist without a powerful legal framework, which is fit for implementing rights in a proportionate way that moves open trust in the administration of justice to the downtrodden people.

### **The Anti-Poor Bail system:**

The idea of bail, which is a vital aspect of the criminal justice framework and the criminal jurisprudence, is considered to have many drawbacks. Bail is extensively referred as the release of an individual accused of an offense, on his giving of a security that will guarantee his presence under the watchful eye of the court or some other authority at whatever point required. Bail essentially implies the acquirement of delivery from detainment of an individual anticipating an appeal or a trail, by the deposit of security to guarantee his presence at the required time to



the legal authority. The money-related value of the security, referred to likewise as the bail, or, more precisely the bail bond, which may be cash, the papers offering title to property, or the bond of private people of means or of an expert bondsman or bonding organization. Failure of an individual who is released on bail to give up himself at the designated time, brings about the ceasing of his security.

After a person gets arrested, he must be entitled of his right to apply for bail but the entire bail system is anti-poor since it isn't possible for an indigent person to furnish monetary bail because of his poverty. Even in the cases of bailable offences, where the accused person has a right to secure bail but it is not granted by the court because unless the defendant is able to secure a surety so the whole system again leaves poor at a disadvantaged position. Bail system as prevalent, is repressive and discriminator for the poor. What usually is regarded by the term 'bail' is to "get an individual out of the legal detention, by agreeing that he/she will show up at that point and spot assigned and submit her/himself to the purview and verdict of the court." But just because the party to the case is indigent, the principle of natural justice cannot be let to go off. The sum of the bond should, obviously, be adequate to guarantee the presence of the defendant before the judge whenever the need is felt. The bond ought to be fixed in such sum that will exact vigilance with respect to the sureties to see that the defendant shows up before the judge in court whenever called.

In few cases, the indigent person has remained in detention for even longer tenure than the maximum term of imprisonment. The inference can be taken from the following cases. As in the case of *Hussain Ara Khatoon v. Home Secretary, State of Bihar*<sup>1</sup>, the Supreme Court directed immediate release of the persons whose imprisonment period got extended up to 14 years.

The anti-poor bail system was recognized as a major drawback of the prevalent system in case of *State of Rajasthan v Balchand*<sup>2</sup>, the accused was indicted by the lower court. Afterward, when he went for appeal in the High Court, he got acquitted. Later, the State went for appeal to the Supreme Court by the special leave petition. Then, the accused was ordered to give up by the apex court. He then, at that point petitioned for bail. It was then unexpectedly that Justice Krishna Iyer raised voice against the unjustifiable arrangement of bail administration. He quoted that, "though the system of pecuniary bail had convention behind it, a period for reevaluating has come. It likely could be that most of the time, an undertaking would fill the purpose"<sup>3</sup>.

Also, In *Moti Ram and Ors. v State of M.P.*<sup>4</sup>, the mason, who was the accused was sentenced. The judge fixed an extremely high value of surety and further did not permit his brother to turn into a surety as the property belonging to the latter was in the bordering village. Justice Krishna Iyer denounced the demonstration of the CJM, and told that, the jury ought to be more disposed towards bail and not prison.

<sup>1</sup> (1980) 1 SCC 98

<sup>2</sup> 1978 SCR (1) 535

<sup>3</sup> <http://www.sacw.net>: India: Revisiting Krishna Iyer's Treatise on Bail in the Context of Tejjal's Case. Last visited on 27-09-2020

<sup>4</sup> AIR 1978 SC 1594



In *Maneka Gandhi v. Union of India*<sup>5</sup>, Justice Krishna Iyer, again criticized the unjust system of bail that was existing in India. No lucid meaning of bail had been given in The Code of Criminal Procedure, 1973, in spite of the fact that the offenses are named bailable and non-bailable. Also, Justice P. N. Bhagwati, additionally expressed his sentiments about how unreasonable and unfair the bail framework is when a look is taken at it from the economic standards of an individual. This segregation emerges because of the fact that the amount for the bail is scanty for the few, however, a vast larger part of the individuals who are alleged under the steady gaze of the courts in criminal cases are poor to that extent, that they would think that it's hard to outfit bail regardless even if it was a petty amount.

#### **The idea of Legal Aid:**

The idea of legal aid is a step towards social justice. The importance of legal justice lies in the fact that without adequate access to legal aid, those living in poverty or facing mental or intellectual difficulties can face the threat of exclusion from the rights guaranteed by law and by Indian Constitution. Facilitating access to essential legal and social services for the needy citizens would reduce the likelihood that they become, or remain, webbed in a cycle of poverty.

In the case of *Khatri v. State of Bihar*<sup>6</sup>, the Apex Court held, if the accused was incapable to afford himself with the services of a lawyer because of poverty, then he is eligible for get free legal services at the expense of the state.

In *Sukhdas v. Union Territory of Andhra Pradesh*<sup>7</sup>, the Hon'ble Supreme Court ruled, that the right to legal aid was a Fundamental Right under Article 21 of the Constitution.

Though, the Criminal Procedural Code, 1973, makes specific provision for extending the benefit of legal justice to those who are poor and incapable to engage the services of counsel and unable to pay court fees, which makes the procurement of right more difficult for the poorest of the poor in a society. The section 304 of Code of Criminal Procedure, 1973, deals with legal aid to the accused at state expenses. But this legal aid is available only to the person facing trial in session's Court and not in any other higher court for which the party to the case have to look upon the schemes of government, if any. Also, the accused does not get a choice of lawyers and under any circumstances there is not any chance to change the lawyer. Moreover, the right under section 304<sup>8</sup> is not absolute. It is neither available in the case of offences related to money nor in respect of offence under section 228<sup>9</sup>. Hence, the whole justice system again leaves the poor at a disadvantaged position.

#### **The Judiciary losing its credibility:**

Miscarriages of justice run the entire system of the criminal justice in Indian which might include the police, investigators, advocates, media, even the judiciary. Due to which the weak and powerless find the system stacked against them. Consider the Ryan International School murder case. The Haryana Police wasted no time in arresting the poor school bus conductor, Ashok. Just relying upon the confession from him and no other evidence. The Gurgaon District and Bar

<sup>5</sup> AIR 1978 SC 571

<sup>6</sup> 1979 3 SCR 532

<sup>7</sup> 1981 SCC 228

<sup>8</sup> The Code of Criminal Procedure, 1973

<sup>9</sup> Indian Penal Code, 1860.



Associations passed resolutions and also refused to defend him. He was demonized as a barbaric murderer. After a long passage of time, a student of the same school was arrested in relation to the same crime. The conductor was released, but his reputation was tarnished.

Also, in the recent *Aarushi Talwar murder case*<sup>10</sup>, again, the foremost blame was on no one but the poor servant serving the Talwar family. Even though he too got murdered, but his reputation was totally destroyed. The Allahabad High Court making criticizing remarks against the CBI, the High Court judge said, "The learned trial judge has presumed things in his own fashion, drawn crux by embarking on erroneous analogy conjecturing to the brim on apparent facts telling altogether a different story propelled by vitriolic reasoning, the trial judge was unmindful of the basic tenets of law".

The judiciary is losing credibility, mainly because of its delay in concluding justice. As by the time acquittal of the innocent targeted persons occurs, many years have already passed, and an innocent person's life and status are already ruined for no reason. This raises a question about the credibility and accountability of the criminal justice delivery framework in India.

### Conclusion:

Indian criminal justice system, as seen above, is harsh and unfair to the impoverished people. For example, well off business people effectively pay fines for offenses that jeopardize the lives of their laborers while transients are detained for taking a bottle of liquor. There is no proof that people from poor families carry out a bigger number of violations or more genuine offenses than the

compelling and the rich people, the facts confirm that poverty is one reason to perpetrate wrongdoing. Still most of people who are captured and whose lives are harmed by contacts with the criminal justice system are from low-pay foundations in light of the fact that eventually the criminal justice system of our nation leaves the poverty-stricken segment of the general public at the stifled and burdened position. Generally, the influenced by this deplorable separation is the poor segment of the general public. They are most overpoliced and well on the way to be denied bail and to be exposed to meddlesome judicial orders, on the grounds that the gathering to the case is destitute, the standards of regular justice can't be left. In this way, it very well may be inferred that the criminal justice system of India experiences many significant downsides and at last the penniless and poor areas of the general public turns into the objective.

\*\*\*\*\*

<sup>10</sup> 2013 (82) ACC 303