

Modified Final Report
(As on 26th December, 2017)

**A Study on Bail and Extent of Its Abuse including
Recidivism**



प्लैटिनम जयंती
PLATINUM JUBILEE
1936-2011

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CONTENTS

	List of Tables	Iii
	List of Figures	V
	Acknowledgment	vii
CHAPTERS		
Chapter – I	Introduction	1
Chapter – II	Recidivism in India: Issues & Concerns	23
Chapter – III	Methodology	37
Chapter – IV	Bailees’ Perspective on Bail System	52
Chapter – V	Bail Abusers’ Perspective on Bail System	77
Chapter – VI	Stakeholders’ Perspective on Bail System	92
Chapter – VII	Case Studies on Bail Abuse	130
Chapter – VIII	Major Findings and Recommendations	163
Annexure - (I to XVII)		
Annexure – I	Interview Schedule for Police Personnel	188
Annexure – II	Interviews Schedule for Public Prosecutors	192
Annexure – III	Interview Schedule for Lawyers	196
Annexure – IV	Interview Schedule for Bailees (accused)	200
Annexure - V	Interview Schedule for Bail Abusers	205
Annexure – VI	Interview Schedule for Prison Officials	210
Annexure-VII	Interview Schedule for Civil Society	212
Annexure-VIII	Interview Schedule for Media	215
Annexure-IX	Interview Schedule for NGOs	218
Annexure-X	Check List for Police Station	220

Annexure-XI	Guidelines for Focus Group Discussion (FGD)	222
Annexure-XII	Details of the FGD conducted in Zone-XI Mumbai Police Commissionerate	223
Annexure-XIII	Sources of the Case Studies	224
Annexure XIV	Response to NPA Comments	226
Annexure XV	Observations of the Research Committee of SVP NPA	236
Annexure XVI	MHA Advisory	238
Annexure XVII	Observation Lead by Mr. RC ARORA, Member Research Committee, SVPNPA	240

List of Tables

Table No.	Title of the Table	Page No.
Table: 2.1	Category of recidivists arrested during 2003-2015	28
Table: 2.2	Showing incidence of recidivism in India	29
Table: 2.3	Recidivism in some major countries	33
Table: 3.1	Sample distribution	40
Table: 3.2	Sample of focus group discussion (FGD) with police personnel at Mumbai	43
Table: 3.3	Sample of case studies	48
Table: 4.1	Status of crimes, Bails, absconding and re-arrest in eight police stations of Mumbai Police (Zone-XI)	53
Table:4.1(a)	Status of crime committed, bail granted, absconders and re-arrest in 12 Zones and all Regions of Mumbai Police Commissionerate for the year 2014-15	54
Table: 4.2	Sex of the respondents	57
Table: 4.3	Age of the respondents	58
Table: 4.4	Religion of the respondents	58
Table: 4.5	Caste of the respondents	59
Table: 4.6	Educational status of the respondents	60
Table: 4.7	Marital status of the respondents	61
Table: 4.8	Income of the respondents	62
Table: 4.9	Occupational status of the respondents	63
Table: 4.10	Crime committed by the respondents	64
Table: 4.11	Time spent in police custody before getting bail	65
Table: 4.12	Bail as a right inailable offences	67
Table: 4. 13	Nature of bail bond used for bail out	68
Table: 4.14	Availability of legal aid to the Bailees	69

Table: 4.15	Age and awareness of bail as a legal right	70
Table: 4.16	Education and awareness of bail as a legal right	71
Table: 4.17	Nature of offence and time taken to get bail	72
Table: 4.18	Age and time taken for bail	72
Table: 4.19	Caste and time taken to get bail	73
Table: 4.20	Support from Stakeholders	74
Table: 4.21	Non-appearance in court as bail abuse	75
Table: 4.22	Mean and standard deviation (SD) of bailees' perception	76
Table: 5.1	Age of the bail abusers	77
Table: 5.2	Religion of the bail abusers	78
Table: 5.3	Caste of the bail abusers	78
Table: 5.4	Educational status of the bail abusers	79
Table: 5.5	Marital Status of the bail abusers	79
Table: 5.6	Occupational status of bail abusers	80
Table: 5.7	Income wise distribution of the bail abusers	80
Table: 5.8	Nature of crime committed by the bail abusers	81
Table: 5.9	Association between nature of crime and income of the bail abusers	82
Table: 5.10	The nomenclature of bail abusers	83
Table: 5.11	Awareness of bail as a legal right	84
Table: 5.12	Association between nature of crime and bail duration	85
Table: 6.1	Police official's view point on bail as a legal duty	93
Table: 6.2	Police power to grant bail inailable offenses at Police station level	93
Table: 6.3	Trend in frequency of bail abuse	100
Table: 6.4	Nomenclature of bail abuse	101
Table: 6.5	Bail abuser's identity and data in the prisons	101
Table: 6.6	Separate cell for bail abusers in the prisons	102
Table: 6.7	Impact of absconding (non-appearance) on Justice delivery	105
Table: 6.8	Civil society view point on Causes of abuse of bail	114
Table: 6.9	State Prosecution System under Home Department	121
Table: 6.10	State Prosecution System under the Department of Law	122

List of Figures

Figure No.	Title of the Figure	Page No.
Figure: 4.1	Bail as a human right of Bailees	66
Figure: 4.2	Nature of bail bond on Bail	68
Figure: 4.3	The Time taken by court	70
Figure: 5.1	Meaning of bail	84
Figure: 5.2	Number of cases charged	85
Figure: 5.3	Impact on family	86
Figure: 5.4	Impact on Surety	87
Figure: 5.5	Impact on victims and witnesses	89
Figure: 6.1	Police view point on bail	94
Figure: 6.2	Police reluctance to grant bail at police station level	95
Figure: 6.3	The problems faced by police inailable cases	96
Figure: 6.4	Type of bail abusers	100
Figure: 6.5	Sharing of data on bail abusers	102
Figure: 6.6	Prison Officials perception on causes of bail abuse	103
Figure: 6.7	Bail Abusers' participation in correctional programmes	103
Figure: 6.8	Public prosecutors' perspective on causes of bail abuse	106
Figure: 6.9	Perception of Lawyers on 'Principle on Bail not Jail'	107
Figure: 6.10	Guiding principle for 'Bail not Jail'	107
Figure: 6.11	Political patronage for bail abusers/recidivists	108
Figure: 6.12	Adjournment of cases: pressure tactic played by bail abusers	109
Figure: 6.13	Police perception on impact of bail abuse	118
Figure: 6.14	Suggestions by Police officials	123
Figure: 6.15	Suggestions by Public prosecutor	124
Figure: 6.16	Suggestion by defense lawyers	125

"The bail system, as we see it administered in the criminal courts today, is extremely unsatisfactory and needs drastic change. In the first place it is virtually impossible to translate risk of non-appearance by the accused into precise monetary terms and even its basic premise that risk of financial loss is necessary to prevent the accused from fleeing is of doubtful validity. There are several considerations, which deter an accused from running away from justice, and risk of financial loss is only one of them and that too not a major one. The experience of enlightened Bail Projects in the United States such as Manhattan Bail Project and D. C. Bail Project shows that even without monetary bail it has been possible to secure the presence of the accused at the trial in quite a large number of cases. Moreover, the bail system causes discrimination against the poor since the poor would not be able to furnish bail on account of their poverty while the wealthier persons otherwise similarly situated would be able to secure their freedom because they can afford to furnish bail. This discrimination arises even if the amount of the bail is fixed by the Magistrate is not high, for a large majority of those who are brought before the Courts in criminal cases are so poor that they would find it difficult to furnish bail even in a small amount."

(The Legal Aid Committee appointed by the Government of Gujarat under the Chairmanship of Mr. Justice P.N. Bhagwati, Quoted from Hussainara Khatoon & others. vs. respondent: Home Secretary, State of Bihar, Govt. of Bihar, Patna, date of Judgment 12/02/1979)

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The modified draft report was further presented in the Research Committee meeting held on March 18, 2016 at SVP NPA, Hyderabad. The Committee suggested collecting and analyzing some secondary data from other Zones of Mumbai Police Commissionrate and submitting the Report. Accordingly, Table 4.1(a) (pg. 54) had been added to comply suggestions made by the Research Committee. The

observations made by The Research Committee vide SVP NPA letter no F.N. 27011/2/2011-Estt dated 6th February, 2017 have also been incorporated in this report. Further, comment given by Shri. R.C. Arora, IPS (Retd.), Member Research Committee, SVP NPA vide NPA letter dated June 3, 2017 has been fully complied in the modified report (Table 4.11, page 77). I sincerely thank Shri Arora for giving valuable suggestions to enrich the analysis in the report.

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Chapter I

Introduction

In this chapter an attempt is made to provide comprehensive historical, philosophical and legal background to the idea of bail and its roles in the criminal justice system. After discussing the context of criminal justice process, it deals with the models of justice and principles of presumption of innocence. It maps the historical perspective within which the different models of bails are created and their definitions and purposes. In order to arrive at the well-rounded understanding the chapter deals with the question in discussion from both the systems as well as human rights perspective. The study is also not immune to the various experiments made on bail system outside of India and discusses here various dimensions taken into account while operationalizing the idea of bail.

The crime has probably always been part of the human mankind from time immemorial in its various forms such as interpersonal, collective or societal crime or violence in all parts of the world. As long as there has been violence, there have also been systems such as religious, communal, philosophical and legal to prevent it.¹ There are as many legal systems in the world. The term legal system refers to attitudes, values and norms regarding the nature and rule of law, including rules and practices for processing and functioning. The values and norms that underlie a legal system are sometimes referred to as the legal tradition. It is a broad concept that implies a deeply and historically based heritage. Although several forms of legal system are prevalent across the countries such as, Civil Law, Common Law, Socialist Law and Islamic Law however, the cardinal principle of all legal systems is crime prevention and correction of offenders.

Context of Criminal Justice Process

The criminal justice process is to answer the how, why and when crimes are recorded and offenders identified and processed through the criminal justice system. It may depend in large part upon the processing strategy that attaches to the prevailing legal tradition or system in a country. These practices may or may not be related to the particular legal system. In general, the choice of processing strategies, which may be linked to the country's legal tradition, can be categorized as

¹ Etienne G. Grug et al, 2002 World Report on violence and health, Geneva, WHO

falling into the inquisitorial and adversarial criminal justice systems around the world. The element of administration of criminal justice systems such as police, prosecution, court and correction are found in most of the countries albeit their names are different.² The criminal justice process is to administer the crime and offenders, through different institutional mechanism. The criminal justice process may differ across the world, but the end result is same.

Crime Control Model vs. Due Process Model

The two different models used to process people through criminal justice systems are one that emphasizes either the *efficiency of action* or the *legitimacy of action* so called the former a *Crime Control Model* and the latter *Due Process Model*. In this context, the civil law tradition and its inquisitorial process seems to have a particular link to the Crime Control model, prevailing in France, Germany and the Latin American countries. This contrast, common law tradition and its adversarial process appear to follow the Due Process Model, prevailed in the U.K, U.S.A, Australia, India, and other counties³.

According to Cole (1989)⁴ Crime Control Model assumes that freedom is so important that every effort must be made to repress crime. The Due process Model, on the other hand, assumes that freedom is so important that every effort must be made to ensure that criminal justice decisions are based on reliable information. In this way, both models seek to guarantee social freedom. One does so by emphasizing efficient processing of wrongdoers (Crime Control Model), while the other emphasizes invasion in citizen's life (Due Process Model). The greater threat to freedom, says the Crime Control Model, is the criminal trying to harm us. For the Due Process Model, the greater threats to freedom of State agents like police officers who are trying to restrict our freedom of movement. Of course social freedom requires law abiding citizens to be free from unjustifiable intrusion by either criminals or by police. However, it seems that nation-states have a hard time achieving both goals simultaneously. One is emphasized at the expense of the other, but neither can be identified as qualitative better.

² Graeme R. Newman: Global Report on Crime and Justice, 1999; Oxford University Press.

³ Pawar, M.S. (1993) Justice Processing Sans Justice delay and Plight; Bombay: Tata Institute of Social Sciences

⁴ Cole, (1989) quoted in UN Global Report on Crime and Justice, 1999; Oxford University Press.

Principle on Presumption of Innocence

Every man is presumed to be innocent until he is proved guilty beyond reasonable doubt. This is the cardinal principle of criminal law. In recognition of this right of the accused the burden of establishing the charge against the accused is placed on the prosecution. The concept of burden of proof is one of the most important contributions of Roman law to the criminal law jurisprudence. This principle is based on fairness, good-sense and practical utility and accepted in the English Common Law⁵. Even this principle has been followed in India vide decision of the Supreme Court.⁶ This is a universally recognized right and Article 14(2) of the International Covenant on Civil and Political Rights, 1966 provides “Everyone charged with a criminal offence shall have the right to be presumed innocent until he is proved guilty according to law.” It is left to the law making authority to prescribe the requisite procedure for establishing the proof of guilt.

Presumption of innocence vs. Protection of Society

The crux of the problem revolves around the objective behind keeping an accused or suspect in pre-trial custody during the pendency of trial. The following are the major purposes, served by pre-trial detention .

- The accused must be present in person in the court during the trial.
- The accused must not tamper with the prosecution witnesses or otherwise misuse his liberty or thwart the procedure of court of justice.
- If the accused is ultimately found guilty, he must be available in person to receive the sentence or punishment.

The purposes of pre-trial detention relate to the ensuring of a trial to the accused in the court of justice. The question to be considered is whether these purposes cannot be served without the detention of the accused pending trial. If these purposes can be attained in a fair manner without subjecting the accused to the deleterious effects of jail life, then would it not be better that the jail custody pending trial should be avoided. The pre-trial detention involves the question of liberty, justice, public safety and burden on public treasury. Distributive justice insists that a thorough research should be undertaken of these various facts of individual liberty and societal ends. The problem of undertrials is plainly one human rights especially the freedom of the poor, the lowliest

⁵ Woolmington Vs. Director of Public Prison, 1935.

⁶ Dahyabhai Chhaganbhai Thakkar Vs. State of Gujarat AIR 1964 SC 1563.

and the lost. It is the poor who generally suffer the pre-trial incarceration because they are unable to purchase justice. Bail is denied to them because they cannot afford sureties or stand personal bonds. There are various compelling reasons, which call for avoiding of detention in custody pending trial. Such as the presumption of innocence in favour of the accused, the higher ratio of pleas of guilty, the effect of detention on the private life as well as morale of the accused, the effect on the prison population. Moreover, the pre-trial detention makes the chances of acquittal bleak, whereas chances of imprisonment are enhanced, etc.⁷

Similarly, emphasizing the consequences of pre-trial detention Hon'ble Supreme Court observed that the accused who are presumed innocent till proven guilty are subjected to the "stress and distress" of custodial life in prison. They feel psychologically, physically and morally more depressed than after conviction. The pre-trial detention in jails takes away the right to be presumed innocent.

1.1. The Bail System in India: A Historical Perspective

The ethos and injunctions of ancient *Hindu Jurisprudence* required *inter alia*, an expedient disposal of disputes by the functionaries responsible for administration of justice. No laxity could be afforded in the matter as it entailed penalties on the functionaries.⁸ Thus, a judicial interposition took care to ensure that an accused person was not unnecessarily detained or incarcerated. This indeed devised practical modes both for securing the presence of a wrongdoer, as well as to spare him of undue strains on his personal freedom.

During the *Moghul Rule*, the Indian legal system is recorded to have an institution of bail with the system of releasing an arrested person on his furnishing a surety. The use of this system finds reference in the seventeenth century travelogue of Italian traveller *Manucci*. He himself was restored to his freedom from imprisonment on false charge of theft. He was granted bail by then ruler of the Punjab, but the *Kotwal* released him on bail only after *Manucci* furnished a surety.⁹ Under *Moghul law*, an interim release could possibly, be actuated by the consideration that if

⁷ Rasiklal Vs. Kishore, AIR (2009) SCC (Criminal) 338.

⁸ Kautiliya Arthshastra, IV Ch. 9.

⁹ William Irvine, II *Moghul India* 198 (1907) quoted from Pandey D.C. 1986, p.3.

dispensation of justice got delayed in one's case then compensatory claims could be made on the judge for losses sustained by the aggrieved party.

According to Prof. Pandey the advents of British rule in India saw gradual adaptation of the principles and practices known to Britishers as prevalent in the common law. The gradual control of the East India Company's authority over *Nizamat Adalats* and other *Fauzdari Courts* in the *Mofussil* saw gradual inroads of English criminal law and procedure in the then Indian Legal System. At this juncture of history, criminal courts were using two well conceptualized and well defined forms of bail for release of a person held in custody. These were known as *Zamanat* and *Muchalka*. Respectively release could be affected on a solemn engagement or a declaration in writing. It was known as *Muchalka* which was an obligatory or penal bond generally taken from inferiors by an act of compulsion. In essence, it was a simple recognizance of the principle of bail. Another form of judicial release was a security with sureties known as *Zamant*, in which the *Zamin* (surety) became answerable for the accused on the basis of written deed deposited by him with the trial court. With discretionary powers vested in courts under the doctrine of *Tazeerin* Mohammedan criminal law, a decision on the issue of grant or refusal of bail or the mode of release, did not pose much difficulty. However, with the passing of Code of Criminal Procedure in 1861, followed by its re-enactment in 1872 and 1898 respectively, statutorily transposed the form and contents of the British institution of Bail in to the Indian Criminal Laws.¹⁰

1.2. Bail: Philosophy and Its Relevance

The law of bail, like any other branch of law, has its own philosophy, and occupies an important place in the administration of criminal justice system and the concept of bail emerges from conflict between the police power to restrict liberty of a man who is alleged to have committed a crime, and presumption of innocence in favour of the alleged criminal. An accused is not detained in custody with the object of punishing him on the assumption of his guilt.

'Bail not Jail' Hon'ble Supreme Court emphasized that philosophy propounded by law in the context of the celebrated liberty and freedom of the accused or suspect person until the guilt is proved beyond reasonable doubt. Thus, bail guarantees freedom of the accused that is supposed to help the system in criminal justice process without violating its conditions. Personal liberty is

¹⁰ Sarkar J.N. 1920: Mughal Administration in India 108

fundamental and can be circumscribed only by some process sanctioned by law. Liberty of a citizen is undoubtedly important but this is to balance with the security of the community. A balance is required to be maintained between the personal liberty of the accused and the investigation right of the police. It must result in minimum interference with the personal liberty of the accused and the right of the police to investigate the case. It has to dovetail two conflicting demands, namely, on one hand, the requirements of the society for being shielded from the hazards of being exposed to the dis-adventures of a person alleged to have committed a crime; and on the other, the fundamental canon of criminal jurisprudence, *visa ve*, the presumption of innocence of an accused till she/he is found guilty. Liberty exists in proportion to wholesome restraint, the more restraint on others to keep off from us, the more liberty we have reiterating the same philosophy.¹¹

Hon'ble Supreme Court further stated that, "The society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of the society."¹²

1.3. Bail: Definition

"Bail" remains an undefined term in the Cr.P.C. nowhere else the term has been statutorily defined. Conceptually, it continues to be understood as a right for assertion of freedom against the State imposing restraints since the U.N. Declaration of Human Rights of 1948, to which India is a signatory is, the concept of bail has found a place within the scope of human rights. The dictionary meaning of the expression 'bail' denotes a security for appearance of a prisoner for his release. Etymologically, the word is derived from an old French verb 'bailer' that means to 'give' or 'to deliver', although another view is that its derivation is from the Latin term *bailuare*, meaning 'to bear a burden.' Bail is a conditional liberty. Stroud's Judicial Dictionary (Fourth Edition 1971) spells out certain other details. It states: "When a man is taken or arrested for felony, suspicion of felony, indicated of felony, or any such case, so that he is restrained of his liberty – And being by law bailable, offence surety to those which have authority to bail him, which sureties are bound for him to the Kings use in a certain sums of money, or body for body, that he shall appear before the Justices of Goal delivery at the next sessions etc. Then upon the bonds of these sureties, as is

¹¹ A.K. Gopalan Vs. State of Madras AIR 1950 SC 1000).

¹² Siddharam Satlingappa Mhetre Vs.State of Maharashtra and Others CRIMINAL APPEAL NO. 2271 2010. (Arising out of SLP (Crl.) No.7615 of 2009)

aforesaid, he is bailed, that is to say, set at liberty until the day appointed for his appearance.” Bail may thus be regarded as a mechanism whereby the State devaluates upon the community, the function of securing the presence of the prisoners, and at the same time involves participation of the community in administration of justice.¹³

1.4. Bailable and Non-bailable Offences: Definition

Chapter XXXIII of Code of Criminal Procedure (Cr.P.C.) consists of Sections 436 to 450. Sections 436 and 437 provide for the granting of bail to accused persons before trial and conviction. For the purposes of bail, offences are classified into two categories, that is, (i) bailable, (ii) non-bailable. Section 436 provides for granting bail in bailable cases and Section 437 in non-bailable cases. A person accused of a bailable offence is entitled to be released on bail pending his trial. In case of such offences, a police officer has no discretion to refuse bail if the accused is prepared to furnish surety. The Magistrate gets jurisdiction to grant bail during the course of investigation when the accused is produced before him. In bailable offence there is no question of discretion for granting bail. The only choice for the Court is as between taking a simple recognizance of the principal offender or demanding security with surety. Persons contemplated by this Section cannot be taken in custody unless they are unable or unwilling to offer bail or to execute personal bonds. The Court has no discretion, when granting bail under this section, even to impose any condition except the demanding of security with sureties.¹⁴

Section 2 (a) Cr. P.C. defines bailable and non-bailable offences: “Bailable offence means an offence which is shown as bailable in the First Schedule or which is made bailable by any other law for the time being enforce, and non-bailable offence means any other offence.” That schedule refers to all the offences under the Indian Penal Code and puts them into bailable and non-bailable categories. The analysis of the relevant provisions of the schedule would show that the basis of this categorization rests on diverse consideration. However, it can be generally stated that all serious offences, i.e. offences punishable with imprisonment for three years or more have been considered as non-bailable offences.

¹³ Vaman Narain Ghiya Vs. State of Rajasthan, (2009) 2 SCC 281.

¹⁴ Vaman Narain Ghiya Vs. State of Rajasthan, (2009) 2 SCC 281

At present, there are total 511 offences in number defined in the Indian Penal Code, 1860, out of which 403 offences punishable under Indian Penal Code, 217 areailable and 186 are non-ailable offences. Out of 445 offences in the IPC 1860, 292 are cognizable and 131 are non-cognizable while 22 offences are both cognizable and non-cognizable depending upon the circumstance of these offences committed. Similarly, there are many offences constituted under Special and local Laws. Imprisonment is generally provided in these offences as punishment¹⁵.

Similarly, the Indian Penal Code, 1860 contains total 511 Sections, however, 108 Sections deal with Definitions and Concepts of Offences and only 403 Offences prescribe punishment. Thus, all 511 Sections of IPC do not denote one or other offence and essentially 403 Sections are used for the award of punishment.

1.5. Anticipatory Bail:

Section 438 of the Criminal Procedure Code 1973 has provision for anticipatory bail. This provision allows a person to seek bail in anticipation of an arrest on accusation of having committed non-ailable offences. On filling anticipatory bail, the opposite party is notified about the bail application and the opposition can then contest bail application in court (Public Prosecutor can also use to do this). An anticipatory bail is a direction to release a person on bail, issued even before arrest.

1.6. Purpose of Bail

The Hon'ble Supreme Court has laid down the following three propositions explaining the purpose, meaning and the provisions regarding bail¹⁶.

- Bail covers both release on one's own bond with or without surety;
- Fixing and excessively high amount bond, keeping in consideration the fact and circumstances of the case and economic condition of the accused, violates the Constitutional norms;
- Surety need not come from the District of the Court concerned. The law laid down in Moti Ram's case to be followed as precedent¹⁷.

¹⁵ Draft National Policy on Prison Reform and Correctional Administration, New Delhi; BPR&D; Part III, 244).

¹⁶ Moti Ram and others Vs. State of MP (AIR, 1978 SC 1594).

¹⁷ Hussainara Khaton Vs. Home Secretary, State of Bihar (AIR 1979 SCR 532).

1.7. Principles of Bail:

The principles which the Court must consider while granting or declining bail, have been spelt out by the Hon'ble Supreme Court as mentioned below: "The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of the evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."¹⁸

1.8. Bail is Discretion of Authority: System's Perspective

Bail is a matter of discretion of police and court not the right of accused or suspect if the offence is non-bailable. In all non-bailable offences bail cannot be claimed as of right by the accused person however the grant of bail to a person accused of a non-bailable offence is in the discretion of the officer-in-charge of a police station or the Magistrate under Section 437 of Code of Criminal Procedure, 1973. The officer-in-charge of police station when arresting a person without warrant cannot release an accused on bail if there appear reasonable grounds for believing that he has guilty of an offence punishable with death or imprisonment for life. However, sub-section (2) of Section 437 of Code provides "if it appears to the officers-in-charge of a police station at any stage of the investigation that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall be released on personal bond without demanding any sureties for his release. This is one of very few Sections in the Code of Criminal Procedure under which the police officer or the court has no power to demand furnishing sureties from the accused. However, in order to exercise this power, the officer in-charge of a police station has to make proper scrutiny of the evidence so far collected to be satisfied about it and while exercising the power under Section 437(2) Code of

¹⁸ Also refer State of U.P. Vs. Amarmani Tripathi, 2005 (8 SCC 21).

Criminal Procedure the police officer has to record sufficient reasons in the case diary. Therefore, the recording of reasons in writing is mandatory as it puts the history of the case on record for superior police officers and the court for review and for passing comments¹⁹.

1.9. Factors into Consideration while Granting Bail:

The courts have adopted liberal use of discretionary power of bail in order to avoid the long pre-trial incarceration and the court usually keeps the following factors into consideration while granting or rejection bail petitions:

- ❖ The nature of accusation.
- ❖ The nature of the evidence in support of the accusation.
- ❖ The severity of the punishment which conviction will entail
- ❖ Whether the sureties are independent or indemnified by the accused (RR).

On the other hand, if the crime charged is of the highest magnitude and the punishment for it, as assigned by law is of extreme severity, in such a case the court may reasonably presume that no amount of bail would secure the presence of accused at the stage of judgment. Regarding the monetary surety in furnishing the bail, the Hon'ble Supreme Court²⁰ made it clear that the Magistrate should abandon the antiquated concept under which pre-trial release could be ordered only against monetary bail. The court held that monetary concept is outdated and experience shows that it has done more harm than good. If a Magistrate is satisfied after making an inquiry into the condition and background of the accused that the accused has got these roots in the community and is not likely to abscond, he can safely be released on order to appear. Explaining the negative effects of monetary bail system, Justice Bhagwati cautioned that the poor find it difficult to furnish bail and highlighted that poverty itself has been transformed into crime and subordinate courts have forgotten that 22,000 persons whom they sent to jail were languishing in prisons not because they were guilty but because they were too poor to afford bail. Justice Bhagwati further laid down a test to determine "community roots in society." He emphasized upon the following factors to be kept into account:

- His residence in the society.
- His employment, status, family ties and relationships.

¹⁹ Quoted from Sharma, R. 2002: Human Rights and Bail, New Delhi: A.P.H. Publication.

²⁰ Moti Ram Vs. State of M.P. (AIR, 1978 SC 1594).

- His reputation, character and monetary position.
- His prior criminal record.
- The identity of responsible members of society who would vouch for his reliability.
- The nature of offence charged the apparent probability of conviction and the likely sentence.
- Any other factor indicating the ties of the community or bearing on the risk of wilful failure to appear.

The accused, therefore, in appropriate cases, after considering the above factors, should be released on his personal bond without monetary obligation.

1.10. Bail: A human rights perspective

Since the U.N. Declaration of Human Rights of 1948, to which Indian is a signatory, the concept of bail has found a place within the scope of human rights. Articulating human rights perspective of bail, the Hon'ble Supreme Court²¹ has stated that The significance and sweep of Article 21 make the deprivation of liberty a matter of grave 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 Article 19. Reasonableness postulates intelligent care and predicates that deprivation of freedom by refusal of bail is not for punitive purpose but for serving the bi-focal interests of justice to the individual involved and society affected. We must weigh the contrary factors to answer the test of reasonableness, subject to the need for securing the presence of the bail applicant. It makes sense to assume that a man on bail has a better chance to prepare or present his case than one remanded in custody and if public justice is to be promoted, mechanical detention should be demoted, also refer *Rashika vs Kithu*.²²

It is noteworthy to maintain that in the United States, which has a constitutional perspective close to ours, the function of bail is limited, "community roots" of the applicant are stressed and after the Vera Foundation's Manhattan Bail Project, monetary surety ship is losing ground. The considerable public expense in keeping in custody where no danger of disappearance or disturbance can arise is not a negligible consideration. Equally important is the deplorable condition, verging on the

²¹ Sanjay Chandra Vs. CBI (Cr. Appeal No. 2179 of 2011).

²² Rasik Lal Vs. Kishore (2009 2 SCC 338).

inhuman, of our sub-jails, that the unrewarding cruelty and expensive custody of avoidable incarceration makes refusal of bail unreasonable and a policy favouring release justly sensible.²³

With the incorporation of Section 167(2) Cr.P.C. the investigating agency is required to complete the job of investigation and file the charge sheet within the time limit of either 60 or 90 days as the case may be. In case the above is not completed within the definite period a most valuable right to the accused. The accused is, in that eventuality, entitled to be released on bail. It would be seen that the whole object of providing for a prescribed time limit under Section 167(2) Cr. P.C. to the investigation agency to complete the investigation was that the accused should receive expeditions treatments at the hands of the criminal justice system, as it is implicit in Article 21 that every accused has right to an expeditions disposable of his case. Section 167 has been criticized with respect to the fact that the prescribed time limit relates only to the investigation aspect and does not touch other segments of the criminal-justice-system, thus the object (of speedy trial), behind Section 167 stands frustrated. Moreover Section 167(2) is seen to paradoxically serve as a way of grant of liberty to some dangerous criminals who would otherwise not be able to get it under our system (for example they may not be otherwise entitled to bail by virtue of nature and gravity of offence). Thus the utility of Section 167 Cr. P.C. may be thus questioned in the light of above, as to whether it really serves the purpose enshrined in Article 21 of the Constitution.

In contrary to that in *Hussainara Khatoon*²⁴ case, Hon'ble Supreme Court, inter alia, observed that the under trials languishing in jail were in such a position presumably because no action application for bail had been made on their behalf either because they were not aware of their right to obtain release on bail or on account of their poverty they were unable to furnish bail. The present law of bail thus operates on what has been described as a property oriented approach. Thus, the need for a comprehensive and dynamic legal service program was left in order to revitalize the bail system and make it equitably responsive to needs of poor prisoners and not just the rich. Hence, the right to free legal assistance is an essential element of any reasonable, fair and just procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21. Thus the Supreme Court spelt out the right to legal aid in criminal proceeding within the language of Article 21.

²³ Vera Foundation, (1960) Manhattan Bail Project, Vera Institute of Justice (www.vera.org).

²⁴ *Hussainara Khatoon & Ors Vs. Home Secretary, State of Bihar* (AIR 1979 SCR 532).

Similarly, Hon'ble Supreme court recognized the inequitable operation of the law and condemned it, "The rule of law does not exist merely for those who have the means to fight for their rights and very often for perpetuation of status quo, but it exist also for the poor and the downtrodden and it is solemn duty of the court to protect and uphold the basic human rights of the weaker section of the society." Thus, having discussed various hardships of pre-trial detention caused, due to unaffordability of bail and unawareness of their right to bail, to under trials and as such violation of their right to personal liberty and speedy trial under Article 21 as well as the obligation of the court to ensure such right. It becomes imperative to discuss the right to bail and its nexus to the right of free legal aid to ensure the former under the Constitution-in order to sensitize the rule of law of bail to the demands of the majority of poor and to make human rights of the weaker sections a reality.²⁵

In addition to Constitutional and legal rights of Bailee, the United Nations has adopted various human rights instruments which promoting non-custodial measures and minimum safeguards for persons subject to alternatives to imprisonment are significant and applicable in India too. These include Universal Declaration of Human Rights (1948), International Covenant on Civil and Political Rights (1966) and United Nations Standard Minimum Rules for Non-custodial Measures.²⁶

1.11. Cancellation of bail on the grounds of its abuse

Bail once granted to an accused cannot be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during trial. Grounds for cancellation of bail may be based on satisfaction of court on:

- Chances of accused absconding.
- Interference or attempt to interfere with due course of administration of justice and
- Abuse in any manner of bail etc. When a person to whom bail has been granted either tries to interfere with the course of justice or attempts to tamper with evidence or witnesses or threatens witnesses or indulges in similar activities which would hamper smooth investigation or trial, bail granted can be cancelled²⁷.

²⁵ Veena Shahi Vs. State of Bihar (AIR 1982 2SSC 583) and Sandbars Vs. State of Bihar (AIR 1982SCC 131).

²⁶ The Tokyo Rules, 1990, Quoted from Sharma, R. 2002: Human Rights and Bail, New Delhi: A.P.H. Publication.

²⁷ Quoted from Sharma, R. 2002: Human Rights and Bail, New Delhi: A.P.H. Publication.

A person accused of a bailable offence is entitled to be released on bail pending his trial, but he forfeits his right to be released on bail if his conduct subsequent to his release is found to be prejudicial to a fair trial. And this forfeiture can be made effective by invoking the inherent powers of Hon'ble High Court under Section 482 Cr. P.C. Bail granted to an accused with reference to bailable offence can be cancelled only if the accused:

- Misuses his liberty by indulging in similar criminal activity,
- Interferes with the course of investigation,
- Attempts to tamper with evidence or witnesses,
- Threatens witnesses or indulges in similar activities which would hamper smooth investigation,
- Attempts to flee to another country,
- Absconding (attempts to make himself escape from clenching of law),
- Above mentioned these grounds are illustrative and not exhaustive²⁸.

The Hon'ble Madras High²⁹ Court has prescribed following requirements for bail cancellation:

- Where the person on bail during the period of bail commits the very same offence for which he is being tried or has been convicted, and thereby proves his utter unfitness to be on bail;
- If he hampers the investigations as will be the case if he, when on bail, forcibly prevents the search of places under his control for the corpus deictic or other incriminating things;
- If he tampers with the evidence, as by intimidating the prosecution witnesses, interfering with the scene of offence in order to remove traces or proofs of crime etc.
- If he runs away to a foreign country or goes underground, or beyond the control of his sureties; and
- If he commits acts of violence, in revenge against the police and the prosecution witnesses and those who have booked him or trying to book him.

²⁸ Hazari Lal Das Vs. State of W.B., 2009(6) Supreme 564; Panchanan Misra vs. Digambar Misra, AIR 2005 SC 1299; Mehboob Dawood Shaikh Vs. State of Maharashtra, AIR 2004 SC 2890; Union of India Vs. Subhash Chandra, 2002(2) JIC 314 (All); Subhendu Misra Vs. Subrat Kumar Mishra, 2000 SCC (Cri) 1508; Dolat Ram Vs. State of Haryana, 1995 SCC (Criminal) 237; Harold, 1935.

²⁹ Public Prosecutor Vs. George Williams alias Victor, 5. (1951 Mad 1042).

1.12. Abuse of bail on the ground of threat to witnesses

Bail granted to an accused under Sections 437/439 of Cr.P.C. can be cancelled if the accused threatens the witnesses to turn hostile or tampers in any other manner with the evidence of the prosecution. Relying upon the above noted Hon'ble Supreme Court ruling, a Division Bench judgment of Hon'ble Allahabad High Court³⁰ directed the judicial officers to initiate process for cancellation of bail of such accused who threaten the (Prosecution Witnesses) to turn hostile (C.L. No. 6561/2007 Dated: April 21, 2007).

1.13. Literature Review: International scenario

Manhattan Bail Project, USA

In 1961, Philanthropist Louis Schweitzer and Magazine Editor Herbert Sturz recognized the injustice of a bail system in New York City that granted liberty based on income. Working with criminal justice leaders, they studied the problem, developed a solution, and rigorously tested it. Within a short time, the Manhattan Bail Project had demonstrated that New Yorkers too poor to afford bail but with strong ties to their communities could be released and still show up in court. Evidence of a viable alternative to bail forever changed how judges make release decisions in criminal courts worldwide, while also reducing costs and minimizing disruption in the lives of many defendants, especially those who are innocent. The Vera Foundation (now the Vera Institute of Justice) launched the Manhattan Bail Project, in conjunction with the New York University School of Law and the Institute of Judicial Administration, to study the feasibility of release on recognizance (ROR) as an alternative to bail. The Manhattan Bail Project showed that defendants with strong ties to the community would usually return to court without bail, and as a result of that research Vera developed a recommendation system based on objective community-ties information obtained by interviewing defendants. This project over three years had demonstrated that about 3505 accused persons released without any requirement of bail as a result of Vera recommendations only 1.6 per cent of them failed to show up for their trials for reasons within their control. Data further showed that those released before trial were 250 per cent more likely to be acquitted in court. Since that time, the Vera recommendation system has served as a model for pre-trial services programs nationwide, and ROR has replaced bail as the dominant form of release New York³¹.

³⁰ Cr. Misc. Petition No. 5695/2006, Karan Singh Vs. State of U.P., decided on 12.4.2007.

³¹ Manhattan Bail Project, Vera Institute of Justice (www.vera.org).

Another early study found that when actual decisions were examined, bail was almost exclusively based on prosecutors' recommendations, but when presented with hypothetical cases, judges were strongly influenced by defendants' ties to the community. Frazier (1980) noted that attorney recommendations might explain some part of the large proportion left unexplained in statistical models from his own research on bail decisions in a South-eastern State. Observers for that research had not recorded attorney recommendations, but thought the defence attorney rather than the prosecutor had greater influence. This was the only study we found that suggested a stronger influence for defence attorneys than for prosecutors. Outside the United States, prosecutors' recommendations have recently been found to be important in bail decisions in Canada, England and Wales. In the Canadian research the prosecutor's recommendation was of overwhelming importance in Youth Court cases. The British study was a mail survey asking judges to decide hypothetical cases; the recommendations of prosecutor and defence attorney ranked third and fourth respectively, behind charge severity and criminal history but above other variables, including communities³². The National Institute of Corrections, USA has outlined six conditions for evidence-based practices when making bail decisions³³ Bail recommendations should be based on an explicit, objective, and consistent policy for identifying appropriate release conditions.

- Conditions of bail should be the least restrictive, reasonably calculated, to assure a defendant's court appearance and the community's safety.
- Financial terms of bail should only be recommended when no other term will reasonably assure a defendant's court appearance.
- Conditions of bail should be restricted to those related to the risk of failure to appear or danger to the community posed by the defendant.
- Defendants should be contacted frequently enough to monitor the conditions of their release.
- Defendants should be reminded of their court date(s).

The first step toward incorporating evidence-based practices in the bail decision process has been to cite factors to take into account when making a bail decision. Research shows that outcomes of these decisions are influenced by legal factors such as severity of the offense and prior record, and extra-legal characteristics such as income and social disadvantage of the defendant as well as his or her race, ethnicity, and gender. Pre-trial detention is being used increasingly, and those who are

³² Frazier et al. 1980: Pre-Trial Release and Bail decision, *Criminology*, Vol. 18, Issue 2, pp.162-181.

³³ Bail Decision making, Research Summary, Prepared by: Lindsey Devers, CSR, Incorporated (www.csrincorporated.com, Bureau Of Justice Assistance, US Department of Justice, January 24, 2011).

detained have harsher outcomes than those who are not. Most State courts have their own pre-trial release strategies geared to ensuring the return of the offender, maintaining public safety, and protecting individual liberty. An important aspect of bail decision making regards those legal characteristics of the offense that negatively influence pre-trial release goals. The extra-legal characteristics include income and social disadvantage, race and ethnicity, sex and gender, and age. To date, research suggests that some extra-legal characteristics are associated with the likelihood of not being released before trial, in addition to influencing the amount of bail set for bond. In particular, income and social disadvantage, race and ethnicity, and gender affect how likely it is that a defendant will be held in detention before trial.

Pre-trial detention rates have increased in both federal and state cases.

- Judges have great discretion in selecting and weighing which factors are the most important in a particular bail decision.
- The bail decision process has adverse effects for defendants who are not granted bail and/or whose bail is set too high for them.
- Research has shown that the decision to grant bail or detain suspects affects all stages of the criminal justice process.
- Most research in the area of legal characteristics finds that severity of an offense and prior criminal record are the strongest predictors of pre-trial release decisions
Income and social disadvantage have been correlated with pre-trial release.
- Both race and ethnicity affect the decision to grant bail and influence whether the suspect will be released before trial.
- Some evidence suggests that these factors are also influenced by gender.

An important research study “*Offending on Bail and Police use of Condition Bail*” carried out on behalf of the Home Office by David Brown (1998)³⁴ in the United Kingdom investigated how frequently those bailed by the police or courts commit further offences whilst on bail. Data suggests that adults offending on bail have been reduced however youth offending on bail (i.e. those aged 17 and under) appears to have escalated in recent years. Concern about levels of offending on bail has prompted initiatives to:

³⁴ Brown, D. (1998). *Offending on Bail and Police Use of Conditional Bail*. Home Office Research and Statistics Directorate Research Findings No.72. London: Home Office.

- Target bail more effectively.
- Improve bail decision-making process.
- Provide support and accommodation for those bailed.

Overview on Offending on Bail

Research shows that 12% of those bailed by police and 15% of those bailed by the court had committed at least one offence while on bail. Taking the police and court bail together, 24% of all defendants committed one or more offences:

- 15% had offended once.
- 5% had offended twice.
- 4% had offended three times or more.

Of those given bail, the offending rates were the highest among those given bail for vehicle crime (at 44%) and shoplifting (at 40%). Research has also found the longer the bail period; the more likely defendants were to re-offend.

Research on Police use of Bail Condition

- Research shows the most common type of bail conditions was the requirement not to contact a specified person typically a victim or a key witness. Residence and curfew conditions were widely used for those charged with night time burglaries or vehicle offences. The research provides little evidence that police-imposed conditions are curbing bail offending.
- Research indicates that custody officers have accepted bail conditions are a useful resource, although views vary about their efficacy and when to use them.

Research on Youth Offending and Bail

The research discovered that there is a statutory limitation on remanding those aged 16 and under in secure custody. For example males aged 14 and under cannot usually be remanded to secure accommodation at all. Of these 42% committed one or more offences whilst on bail with 14% offending three or more times. Offending was even higher among juveniles in local authority care: of those bailed, 58% committed one or more offences compared with 35% for other juveniles. There were large differences in patterns of offending by juveniles, compared with other age groups. Their rate of offending on bail was over twice that of adults at 38% compared to 18%.

1.14. Literature Review: Indian Scenario

Prof. D.C. Pandey (1986)³⁵ in an empirical study on “*Police Attitudes; Awareness and Understanding on Pre-Trial Release of Offenders*” found that the new law on bails worked smoothly in the initial stages, but at later stages the system began to be misused both by law enforcing agencies and habitual criminals. In practice the police does not administer the law according to “bailable” and “non-bailable” character of offences. It dispenses the law according to the status of the offender and not according to the nature and gravity of the offence. Misuse of the provision of bail has come to notice on account of an accused jumping bail. But an observable fact is that those who jump bail are persons who generally get release on bail through the court. A police officer that releases a person on bail has to incur responsibility of producing the person later in the court. Thus, there are less chances of jumping bail where the release has been obtained on police bail. The release on bail is abused for seeking adjournments in a trial obviously to delay disposal of cases in courts. The general practice of getting a date of hearing adjourned and getting it extended further and further is a common practice. The accused has a main interest in such adjournments. After being released on bail an accused tries to win over witnesses and tamper with evidence. Till then he manages to secure adjournments of hearing. Overall, criminals are dangerous the society. There is awareness that it is the duty of the law-enforcing agencies to maintain peace and security in the society against evil design of these persons. Accordingly, it is necessary to restrict the use of bail in cases of repeat offenders and hardened criminals, bail jumpers etc. even if they might be charged with bailable offenses.

Chockalingam (1983)³⁶ compared recidivists and non-recidivists adult male offenders in two central jails of Tamil Nadu. From his study it was evident that more recidivists than non- recidivists were subject to defective discipline, lacked parental supervision, and lack of interest in the right way of bringing up children. The presence of previous approved school experience among recidivists indicated that they started their criminal career quite early in life. Also the results show that more recidivists than non-recidivists had run-away experiences in childhood. Thus, it indicates that the persistent delinquency and the rewarding criminal experiences in early childhood might have settled as habit in the recidivists.

³⁵ Pandey, D.C. 1986: *Release on Bail: Law and Practice*, New Delhi: Indian Law Institute.

³⁶ Chokalingam. K. (1983) *Recidivism among Adult Offenders*, Indian Journal of Social Work Volume: 44 Issue: 1 (April 1983) p.81-86

Pillai T.V. in a paper entitled "*Recidivism and Recidivists*" (1991)³⁷ highlighted the extent of the incidence of recidivism, the careers of recidivists; and also to determine the type of these offenders. The study consists of two time periods, the first one undertaken during 1978-83 followed by the second during 1984-88. Each case was followed up first after five years of release and then again after next five years i.e. after 10 years of release. The researcher ensured that cases from all parts of Kerala State be represented in the follow up study, the Districts were first classified into three zones viz. northern, central and southern, corresponding to the three police ranges. The study covered 468 cases and as many as only 328 could be traced and out of it 20 had migrated to other States and 5 were reported as dead. Therefore 303 cases were successfully followed up. The study further highlighted that of the 303 cases followed up 231 or 76.2% had been convicted for the first time i.e. they were first offenders. The remaining 23.8% had been previously convicted. In the first follow up it was found that 63.0% cases from amongst the first offenders has no further conviction during the first five years after release. But the remaining cases had recidivists. From amongst the group of cases having previous conviction (N=49 or 16.2%) cases were not reconvicted but 23 (7.6%) cases persisted in criminality. Thus, 63 (20.8%) cases in all were found to have been reconvicted during the aforesaid period. Where the cases were followed up a second time-ten years after release from the correctional institutions, it was found that of the 191 (63%) cases who were first offenders, 188 (62%) were not re-convicted, but 3 (1%) cases who had not been reconvicted in the first five years after release has now re-convicted. Of the 49 (16.2%) cases who were prior recidivists and who has been re-convicted after release from the correctional institutions during the first five years after release, 43 (14.2%) had again no further conviction, but 6 (2%) cases now reverted to crime. Thus in all 9 (3%) cases had been re-convicted. This means that during the ten-year period after release from the institutions 72 or 23.8% cases in all had reverted to crime. Therefore, it calls for the attention of those responsible for treatment programmes in our Jails and after-care services to restructure the existing systems with scientific approach and resources. About one-fifth of the cases informed that their homes were not prepared to accept them when they returned after release. They were treated as inferior in comparison to other members in the family and very often stigmatized in their own homes. They were blamed and taunted for having brought disgrace to the family. Many ex-offenders thus victimized made their exit from their homes and settled elsewhere.

³⁷ Pillai, T. V. (1991) *Recidivism and Recidivists*, Indian Journal of Criminology & Criminalistics, Vol. XII, No. 3-4, July-Dec.1991, p. 28-41

Looking into the criminal background of the cases 235 were fully acceptable and as regards those who were partially acceptable, it was found that most of those who had committed offences against property were partially acceptable only. On the other hand ex-offenders who have been convicted for offences against person (accept those who had committed sex offences) and those who have committed offences against public tranquillity were fully acceptable. It has also found that one out of every two respondents had undergone imprisonment for less than six months as first experience. It further indicates that the institutional programmes if any meted out to them were of no avail or of no reformative value. In a way it can also be hypothesized that these offenders had a favourable atmosphere in prison to learn new tricks and techniques of criminality.

A study conducted by P.T. Uma Maheshwari (2002)³⁸ found that there exists an inverse relationship between adjustment after release, participation in correctional programs and recidivism. It was seen that adjustment scores of recidivists are comparatively low as compared to those of non-recidivists. Her study also established that participation in correctional programs reduces recidivism indirectly. Overall she concluded that since program participation and adjustment are positively related it can be inferred to some extent that program participation prevents reversion to crime. But once a woman is released and sent, she enters a family full of conflicts. The result is that the extent of re-socialization is hindered by non-acceptance of her family. In other words, her inner containment may be strengthened by imprisonment but her outer containment remains weakened due to family members and this may increase proneness to crime.

K. Radhakrishnan Murty (2008)³⁹ has stated, "In the absence of institutional care at least during the transitional stage, it is difficult to expect that the released prisoners lead a smooth, happy and comfortable life in the process of their re-integration and re-location. It is in this critical context, that the problem of recidivism comes in since it is the by-product of lack of any or inadequate or insufficient aftercare and rehabilitation programmes meant for the released prisoners. In such circumstances, the released prisoners cannot resist the temptation of committing another crime and thus prefer to go to jail again rather than be willing to adjust and compromise with adverse and embarrassing situations they are confronted with in their day to day living both in the family as well

³⁸ P.T. Uma Maheshwari (2002) Re socializing Female Offenders: Myth to Reality, Indian Journal of Criminology, Volume 30 (1&2), January and July p. 48-57

³⁹ P.T. Uma Maheshwari (2002) Re socializing Female Offenders: Myth to Reality, Indian Journal of Criminology, Volume 30 (1&2), January and July p. 48-57

as outside The transition experienced by the criminals as they leave prison and return home to their families and communities and again back to prison is a dynamic process. Hence on criminal careers provides insights into such transition and the individual level factors that influence it. Surprisingly, however, research on this has been limited and sporadic in India.

The literature review clearly demonstrates that most of the studies conducted on recidivism in the Indian context⁴⁰ are relating to the released prisoners and preventing them from further indulgence in crime cycle. Further, this clearly shows that there is a dearth of empirical and field based study on bail abuse and its impact on recidivism. Therefore, the present study is a modest attempt to explore the phenomenon of bail abuse and its impact on recidivism.

⁴⁰ Luthera, B.R. (1955): Personality study of recidivists in Uttar Pradesh. The Journal of Correctional Work. The Government Jail Training School, Lucknow, 2(2), pp.58-64. (ii) Mehendele, Y.S. (1956): Recidivism. The Indian Journal of Social Work, 17(2), pp.1-6. (iii) Tiwari S.C. (1962): Recidivism and Correctional Institutions. The Journal of Correctional Work. The Government Jail Training School, Lucknow, 8(1), pp.100-108. (iv) Siddiqi, M. Zakaria (1973): Legal and correctional aspects of recidivism in India. The Journal of Correctional Work. The Government Jail Training School, Lucknow, 18(2), pp. 24-37. (v) Maheshwari, C.L. (1983): The recidivist: A Sociological Analysis. Agra: Arvind Viveka Prakashan.

Chapter II

Recidivism in India: Issues & Concerns

This chapter surveys the thinking around idea of recidivism and the factors that influence it. It deals with the historical trends and incidence of recidivism, causes and measuring it and the ways of reducing it. The interface between the recidivism and bail system is discussed stressing the importance of bail in the restorative justice process. A comparative study of recidivism in different countries provides framework to understand the criminal justice system and the law and order in India.

2.1. Recidivism and Recidivists: Concept & Definition

The word “**Recidivism**” derived from the Latin word *recidere*, which means to fall back, the word recidivism was first used in a German publication called Pall Mall in 1886: “Recidivism is largely represented by low foreheads, the scowling brows and cunning eyes.” A forerunner of the word recidivism was used as far back as the 1600s. A form of the now obsolete word reside, which meant to fall back, appeared in 1609 version of the Bible: “Recidivating into sin make the former repentance frustrate.” It seems quite logical the word progressed from describing relapse into sin to referring to relapse into crime. After all, many people and many cultures have long equated crime with sin⁴¹.

Our society is in transit and it faces a lot of social problems: the age-old family traditions are disappearing, divorce and destitution are increasing, the neglected and delinquent children pose problems. The cities attract labour force from far-flung area that settle near and around the industries and thereby contribute in the development of slums. The people are transferred from a personal homogeneous atmosphere to the impersonal heterogeneous and competitive environment and in these circumstances the process of de-personalisation, de-humanisation and de-socialisation are generated. To worsen the situation, there is an inflation of violence and terrorism in the name of religious fundamentalism and secessionism. The bearing between all these socio-economic phenomena and criminality is obvious and beyond suspicion. This social climate is quite vulnerable to criminality and recidivistic tendency. In this context, we indented to draw attention to some issues relating to recidivism and recidivists. Recidivism has not only undesirable socio-economic

⁴¹ Resource Material Series No. 88, December 2012: UNAFEI, Fuchu, Tokyo, Japan, P -20

consequences, but also a challenge to correctional apparatus and to the social planning⁴². Recidivism is a serious problem to the peace and solidarity of our society, as hardened and incorrigible criminals or the so-called recidivists commit most of the violent crimes⁴³. Criminologists could not yet arrive at consensus on definitional problems of the concept 'recidivism.' They have defined recidivism in manifold ways to suit their specific contexts and requirements.

Defining Recidivism

The most common definition of recidivism is the percentage of released offenders readmitted to correctional custody for a new offence during a particular period of study. So what is the recidivism rate? Although it is a popular and valid question, it really is a difficult one to answer, and to emphasize any one answer can be misleading if we don't recognize its limitations (Motiuk, 2001)⁴⁴ Recidivism simply put is "an act of relapsing into crime". The word recidivism, in a criminological context, can be defined as the reversion of an individual to criminal behaviour after he or she has been convicted of a prior offense, sentenced, and (presumably) corrected⁴⁵ Criminologists could not yet arrive at consensus on definitional problems of the concept 'recidivism.' They have defined recidivism in manifold ways to suit their specific contexts and requirements. (Sellin, 1942-43; Rebinsol, 1958; Radzinowicz, 1969; Glaser, 1964; Rao. 1967; Harry, 1975; Walker, 1980; Pillai, 1983 etc, Quoted from Pillai (1991)⁴⁶.

Almost all countries across the world are under pressure to devise effective mechanisms to reduce recidivism. This thinking is emerging since last decade as prior to that performance and effectiveness of prison correctional programmes was measured by number of escapes and assaults on prison staff. These paradigm shifts in correctional approach indicate that prison departments now more focused to reduce recidivism through rehabilitation and reintegration of released prisoners.

⁴² Resource Material Series No. 88, December 2012: UNAFEI, Fuchu, Tokyo, Japan, P -20

⁴³ Resource Material Series No. 88, December 2012: UNAFEI, Fuchu, Tokyo, Japan, P -20

⁴⁴ Resource Material Series No. 88, December 2012: UNAFEI, Fuchu, Tokyo, Japan, P -20

⁴⁵ Resource Material Series No. 88, December 2012: UNAFEI, Fuchu, Tokyo, Japan, P -20

⁴⁶ (Maltz, [1984] 2001).Maltz, Michael D. ([1984] 2001).Recidivism. Retrieved on 17th November, 2012 from www.uic.edu/depts/lib/forr/pdf/crimjust/recidivism.pdf

According to Morgan Neil⁴⁷ in countries where the private sector is engaged to operate prisons, including the United Kingdom, New Zealand and parts of Australia, there is now sometimes even a ‘payment for results’ component to the contracts. This usually involves proving a reduction in recidivism or proving that the offender’s risks have been reduced (for example, by moving directly into employment on release). However, some complex issues underpin the proposition that the performance of correctional services departments should be measured by reduced recidivism. The issues include the following:

Factors influenced ‘Recidivism’

Different factors influence the reasons why people commit crime or desist from crime on release. Some may be influenced by correctional services (such as the completion of a particular psychological program) but others may be unrelated (such as maturity or forming a positive new personal relationship). It can therefore be difficult to determine exactly what it was that ‘worked’.

According to the Crime in India-2015⁴⁸, “The habit of relapsing into crimes by the criminals is known as Recidivism. A recidivist is a person who relapses into crime again and again.” This definition does not provide time-frame and what type of offending constitute recidivism?

Abuse of bail on the ground of re-offending (Recidivism)

The Madras High⁴⁹Court has prescribed following requirements for bail cancellation:

- Where the person on bail during the period of bail commits the very same offence for which he is being tried or has been convicted, and thereby proves his utter unfitness to be on bail.
- If he hampers the investigations as will be the case if he, when on bail, forcibly prevents the search of places under his control for the corpus deictic or other incriminating things.
- If he tampers with the evidence, as by intimidating the prosecution witnesses, interfering with the scene of offence in order to remove traces or proofs of crime etc.
- If he runs away to a foreign country or goes underground, or beyond the control of his sureties and

⁴⁷ (Maltz, [1984] 2001).Maltz, Michael D. ([1984] 2001).Recidivism. Retrieved on 17th November, 2012 from (www.uic.edu/depts/lib/forr/pdf/crimjust/recidivism.pdf)

⁴⁸ (Maltz, [1984] 2001).Maltz, Michael D. ([1984] 2001).Recidivism. Retrieved on 17th November, 2012 from (www.uic.edu/depts/lib/forr/pdf/crimjust/recidivism.pdf)

⁴⁹ (Maltz, [1984] 2001).Maltz, Michael D. ([1984] 2001).Recidivism. Retrieved on 17th November, 2012 from (www.uic.edu/depts/lib/forr/pdf/crimjust/recidivism.pdf)

- If he commits acts of violence, in revenge against the police and the prosecution witnesses and those who have booked him or trying to book him.

2.2. History of Recidivism in India

Historically in India, the colonial legislation known as the Criminal Tribes Act, 1871 can be said to be the forerunner of the state habitual offenders' laws. The repeal of the Criminal Tribes Act in 1952 simultaneously warranted the need and attention to think of newer models to tackle problem of professionalism in criminal behaviour. In Maharashtra, the Habitual Offenders Act, 1959 (Bombay Act of 1959) continues to be in force. The preventive power under section 110 of the Code of Criminal Procedure embraces not only (1) habitual offenders, but also (2) desperate and dangerous persons. These two categories of course, often overlap. A previous order passed by the magistrate under section 110 of the Code of Criminal Procedure is relevant for subsequent proceedings under the section and it is admissible as evidence. If a court once held that a person as a habitual thief there is some presumption that he was a habitual thief at the time the order was passed. This shows that the accused remains a habitual thief even after an interval of some years, since habits are not easily discarded. It has been held that police officials can be witnesses against the persons proceeded under section 110. The absence of efforts to register and notify an offender as a habitual offender, with the habitual ones, results in harassment of the suspects. The preventive powers seem to be used by the police for causing discomfort and uneasiness amongst all kinds of offenders from time to time, with a view to creating an impact amongst them to make the police presence felt as an alive and active force. Prof. D.C. Pandey highlighted that the working of the laws on habitual offenders portray a dim picture. It may not be an exaggeration to say that the law does not exist in reality. The habitual offenders as envisaged under the narrow definitional clause of the state form a very small part of the criminality in the society while measures to deal with them demand a higher percentage of time and resources of the police personnel.

2.3. Trends of Recidivism in India

More recently, Trivedi (2013)⁵⁰ has stated the following trends of recidivism in India

- Recidivism is found to be reduced with the advancement of the age.
- Most vulnerable age group for recidivism is 18 to 24 years followed by 25 to 44 years.
- Males are more vulnerable to recidivism than females due to their more exposure to the rapidly changing conditions of the outside world.
- Rate of recidivism is higher in offenders who have committed crimes against relating to public order, theft, drugs, sexual offences, etc.
- Alternatives to imprisonment are found to be more effective to check the recidivism.
- Interrogation of a person as suspect in a crude manner has a direct bearing in promoting recidivism.
- Surveillance by the police on the released offenders has a negative impact on recidivism.
- Ex-prisoners who spent their time constructively during their incarceration to make them skilled in various prison programmes to maintain their livelihood, are found to be less vulnerable to the recidivism.
- Long period of incarceration has a negative impact on recidivism due to the social stigma.
- Offenders who settle down after release have better family background than those who turn to be recidivists.
- Crimes committed in groups are more prone to re-offending than the individual offenders.
- Offenders, who committed crimes with less imprisonment or spent fewer periods in prisons due to their pre-mature release, are turned to be more recidivists (Trivedi, 2013).

A study conducted by Joshi and Arora (2005)⁵¹, highlighted that crime has definitely shown an increasing trend during four decades i.e. 1951-1992. This trend was also accompanied by considerable increase in violent crime. Most of which were committed with the help of firearms and explosives. This aside, a distinct spurt in organized violence, characterized by an increase in the incidence of communal riots and terrorists incidents, with the problem of insurgency/terrorism spreading its tentacles to new areas and with caste riots becoming wide-spread, was clearly discernible through the analysis of crime statistics. Another important characteristic of trend was the changing pattern of crime, with white-collar crime emerging more prominently than in the past.

⁵⁰ Trivedi, B.V. (2013): Measuring and Reducing Recidivism Rates: Assessing What works, Setting Targets and Implementing Evidence based program, Asia and Pacific Conference of Correctional Administrators, New Delhi, Vighyan Bhavan during September,2013

⁵¹ Joshi, G.P. & Arora, J.C. (1995): Crime in India-Some Major Trends (1988-1992), New Delhi: BPR&D.

Further, there was an increase in involvement of younger age group people in the commission of crime. While crime against women registered a rising trend, with significant increase in dowry deaths and rape cases, the data also show increasing involvement of women in various types of crime, and with female criminality rising at a much faster rate than male criminality. The analysis also indicates that the disposal of criminal cases, by the police as well as by the courts, was rather poor. Besides an increase in pendency of criminal cases under investigation as well as under trial, a large number of cases of crime remained undetected and the rate of conviction kept on consistently declining. This apart, a large number of persons, including those involved in heinous crime, was being released on bail and sooner or later becoming recidivists.

Table: 2.1 Category of Recidivists arrested during 2003-2015

Year	No. of Recidivists convicted in the past		
	Total no of recidivists arrested	Once	Twice
2003	1,94,430	1,38,596	41,133
2004	2,78,004	2,19,691	44,458
2005	2,34,219	1,67,389	50,306
2006	2,32,177	1,73,421	44,303
2007	2,39,108	1,74,008	49,647
2008	2,22,085	1,54,343	47,129
2009	2,56,049	1,79,384	51,349
2010	2,40,481	1,63,858	49,139
2011	2,16,189	1,58,605	41,791
2012	2,26,729	1,75,046	36,710
2013	2,53,498	1,95,183	44,171
2014	2,95,740	2,34,896	47,884
2015	2,96,156	2,44,364	37,649

(Source: Crime in India, NCRB, MHA, GOI)

The share of recidivists among all offenders increased to 8.1% during 2015 as compared to 7.8% in 2014. In absolute terms, the number of past offenders involved in repeating IPC crimes during the year 2015 was 2,96,156 in comparison 2,95,740 in 2014 with a marginal increase of 0.1% of such offenders in 2015 over 2014.

Table: 2.2 Showing incidence of recidivism in India

Year	No. of Recidivists convicted in the year from 2003 up to 2015		
	Number of convicts admitted during the year	No. of Habitual Offenders	% Share of Habitual Offenders to Convicts admitted
2003	2,28,693	16,798	7.3
2004	2,05,521	14,361	7.0
2005	2,03,610	10,653	5.2
2006	2,54,901	13,084	5.1
2007	2,98,815	13,904	4.7
2008	2,42,632	11,801	4.9
2009	2,12,785	11,118	5.2
2010	2,41,992	10,537	4.4
2011	2,22,391	10,542	4.7
2012	2,19,329	12,135	5.5
2013	1,91,144	6,636	3.5
2014	1,87,418	6,274	3.3
2015	1,86,566	5,576	3.0

(Source: Prison Statistics, NCRB, MHA, GOI)

The Above table shows that share of habitual offenders to convicts in the Indian prisons has drastically come down since last decade (2003-2015) from 7.3% to 3.0%. Another aspect is that National Crime Records Bureau's publications- *The Prison Statistics* and *Crime in India* depict variation in data recording of different nature of the act of recidivism as total number arrests made by police in particular year and total number of convicts admitted during that particular year. This variation could be visible because after an arrest is made, some of the arrested persons get bail from the court. For example, according to *Crime in India 2015*, 2, 96,156 people were arrested, however, only 1,86,566 persons were admitted in the Jails. It means the difference or variation of 1,09,590 persons is huge number for which no information is given in reports. It is worth mentioning that 2,44,364 persons out of total recidivists were those who had been convicted once and could have been released on bail.

In a dowry-death case, the Punjab and Haryana High Court cancelled the bail of the deceased's mother-in-law and sister-in-law, who were accused in the case, as they tried to win over witnesses, as apparent from the fact that the husband of the deceased retract from his earlier statement made under Section 161 of the Code of Criminal Procedure. The Court also refused to consider the validity of deceased's dying declaration. Where grievous injuries were caused by the accused to the informant of the First Information Report (F.I.R.), and the accused was granted bail by the Sessions Judge, the High Court cancelled his bail on the petition of the informant, as the accused started threatening the petitioner-informant and his family members openly to their lives. The power of cancellation of bail has to be exercised with case context and circumspection. The order of cancellation of bail should be passed when (a) the accused was found tampering with the evidence either during the investigation or during the trial; (b) when the person on bail committed similar or any heinous offence during the period of bail, (c) where the accused has absconded and the trial get delayed; (d) a serious law and order problem is noted to release of the accused on bail.⁵²

An interesting case of recidivist (bail abuser) reported from Mumbai has highlighted the unholy nexus of the accused/criminal, police and defence lawyers. Despite being convicted of double murder, Vijay Palande, 41, managed to get bail despite gruesome killings for money, property and fancy cars. This raises question about the police's ability to keep hardened criminals from repeating their crimes. Palande, a convict in the 1998 double murder case of Air India engineer Anup Das and

⁵² Panchanan Misra vs. Digambar Misra, AIR 2005 SC 1299; Mehboob Dawood Shaikh vs. State of Maharashtra.

his father Swaraj Ranjan was sentenced to life imprisonment later that year. However, in the year 2000, he jumped parole, and was re-arrested in 2006.

In 2009, he was released on bail after his lawyer argued that he had served nine years in prison, claim which the DN Nagar police station allegedly did not contest despite being aware of the details of the case. Out on bail, Palande first murdered aspiring producer Karan Kakkad in 2012 and threw his body down the Kumbharli valley. He then masterminds the plot to kill Delhi based businessman Arun Kumar, Tikku for his Rs. 50 crore property, following which he was arrested. All the victims are residents of Andheri (West). Palande's history of crime has brought into focus the Mumbai police's surveillance system to keep criminals convicted for grave offences under the law's scanner. "There is a loophole somewhere in the prevalent system. Palande, I suspect, must have bribed his way through it since he has been operating so openly, and was frequenting familiar destinations throughout. It is not possible to change one's identity to that extent," opined YP Singh, former IPS officer and now a lawyer.⁵³

2.4. Causes of Recidivism

- Social Stigma attached to incarceration
- Unemployment
- Drug abuse and alcoholism
- Mental and physical health
- Economically poor family background
- Poor social response from the society and the family for released prisoners

2.5. How is 'recidivism' defined and measured in different countries?

The way recidivism is defined and understood in different countries depends on the following broad parameters:

- Legal definition
- Type of offences
- Time frame
- Number of convictions

⁵³ Hindustan Times dated 22/04/2012, p.2.

In view of the above, there are two main variables to measure 'recidivism rates.' The first is to decide what constitutes 'recidivism' in terms of the nature of the further offending. The second is to decide on the time frame within which success is to be measured. Criminologists have long argued about the most appropriate measures and are unlikely ever to agree. This issue was taken up for discussion in the Asian and Pacific Conference of Correctional Administrators, organized by Ministry of Home Affairs, Government of India in Vigyan Bhavan, New Delhi from 22-27 September 2013. The presentations made by various countries indicated that there is no uniformity in defining variables, the term recidivism and timeframe. Different jurisdictions appear to use different time frames to measure recidivism. The most common period appears to be two years from release, but three and five years are also used. Different jurisdictions may also adopt different approaches to how the time period is counted. For example, an offender may commit an offence within a two-year follow up period but not be caught and convicted until three years after release. This should constitute recidivism as he/she actually offended during the two-year period.

No crime prevention strategy is complete without effective measures to address the problem of recidivism. A comprehensive strategy must obviously take into account the fact that public safety is affected by the large number of crimes committed by individuals who have already faced criminal sanctions but have not yet desisted from crime. Without effective interventions, reoffending remains likely. Many offenders, even after a term of imprisonment, fail to reintegrate into the community as law abiding citizens. This is why effective social integration or reintegration programmes are urgently required. They are essential means of preventing recidivism and increasing public safety, two very important social policy objectives in all countries⁵⁴. A perusal of the following Table depicts recidivism rate in some of the major countries across the world:

54 Introductory Handbook on the Prevention of Recidivism and the Social Reintegration of Offenders; CRIMINAL JUSTICE HANDBOOK SERIES, UNITED NATIONS, New York, 2012 © United Nations, December 2012.

Table 2.3 Recidivism in some major countries

Sr. No.	Country	Percentage
1.	United Kingdom	90.0
2.	United States	40.0
3.	Canada	48.6
4.	Ireland	37.2
5.	Sri Lanka	21.7
6.	China	8.0
7.	India	8.1*

Source: Trivedi (2013)⁵⁵ and *Crime in India – 2015 (NCRB)

2.6. Reducing Recidivism: A Restorative Justice Approach

Restorative justice is based on the principles that the most effective responses to crime are those, which hold offenders accountable for their behaviour in ways that reintegrate them into society rather than increase their sense of isolation and stigma. The objective is to help offenders understand the consequences of their actions and to make amends to the community. By showing offenders the full impact of their behaviour on all those around them, restorative justice can encourage real and lasting change. At the same time, the participation of victims of crime and community members may serve to strengthen ties in the community and to facilitate the development of community-based capacities to assist offenders (UNODC, 2012).

More recently, Prof. Madhav Menon in a seminal article published in *The Hindu* had stated that “Several countries across the world are now replacing the adversarial model of criminal justice partly or wholly with different models of restorative justice, yielding promising results in crime control. The process is more collaborative, consensual and inclusive, that is characteristic of indigenous systems of justice. The role of the state is reduced and the participation of communities encouraged. This is not to be confused with the khap panchayat model of arbitrary decision-making by a few elders of the locality. Due process requirements are followed in restorative justice while

⁵⁵ Trivedi. B.V. (2013): *Measuring and Reducing Recidivism Rates: Assessing What works, Setting Targets and Implementing Evidence based program*, Asia and Pacific Conference of Correctional Administrators, New Delhi, Vighyan Bhavan during September, 2013.

participation is enlarged and made transparent, inclusive and accountable. While doing so, the system respects diversity as a social fact, interrelatedness as a virtue and correcting or healing the harm as a major objective.”

Crime and violence constitute a major impediment for development and social integration for a plural society like India. He emphasised that “The way criminal justice is designed and administered today hardly serves any of the purpose for which it is set up: towards securing life and property. It does not deter criminals because of the delay and uncertainties involved in its processes and ridiculously ineffective punishments it imposes on those few who get convicted. It provides wide discretion to the police and the prosecution, rendering the system vulnerable to corruption and manipulation and endangering basic rights of innocent citizens. It ignores the real victim, often compelling him/her to find extra-legal methods of getting justice. Above all, it puts heavy economic costs on the state for its maintenance without commensurate benefits in return. With nearly 30 million criminal cases pending in the system (the annual capacity of which is only half that number), and with another 10 million or more cases being added every year, whatever is left of the system is bound to collapse completely unless some radical alternatives are adopted urgently. The adversarial model of criminal justice, with punishing the offender as its only aim, has proved costly and counterproductive. Communities have to be involved and victims given rights in finding ways to correct the wrong. While keeping the adversarial system for certain serious and complex offences, India needs to experiment with more democratic models aimed at reconciliation and restoration of relationships. Restorative justice is a welcome idea particularly in the matter of juvenile justice, property offences, communal conflicts, family disputes, etc. What is needed is a change of mind set, willingness to bring victims to the centre stage of criminal proceedings and to acknowledge that restoring relationships and correcting the harm are important elements of the criminal justice system.”

Differentiated penal codes

The Committee on Reforms of Criminal Justice System (2003), recommended a threefold strategy to arrest the drift and to prevent total disaster. First, the law, substantive and procedural, requires a fresh comprehensive look based on changes in society and economy as well as priorities in governance. The guiding principle in the reform process should be decriminalisation wherever possible and diversion, reserving the criminal justice system mainly to deal with real “hard” crimes. A suggestion was made to divide the Penal Code into four different codes — a “Social Offences

Code” consisting of matters which are essentially of a civil nature and can be settled or compounded through administrative processes without police intervention and prison terms; a “Correctional Offences Code” containing offences punishable up to three years’ imprisonment where parole, probation and conditional sentences can be imposed in lieu of prison terms and can be handled under summary/summons procedure where plea bargaining can be liberally invoked without the stigma of conviction; an “Economic Offences Code” where property offences which affect the financial stability of the country are dealt with by a combination of criminal and administrative strategies including plea bargaining (both on charge as well as on punishment) with a view to making crimes economically non-viable; and an “Indian Penal Code” which will have only major crimes which warrant 10 years’ imprisonment or more or death and deserve a full-fledged warrant trial with all safeguards of a criminal trial. The police and prosecution systems will accordingly be reorganised making them more specialised, efficient and accountable.

The second strategy proposed by the committee was institutional reform of police processes, including investigation of crimes, professionalization and rationalisation of court systems with induction of technology and limiting appeal procedures to the minimum required. It is here the committee sought to bring in a bigger and responsible role to victims of crime in the whole proceedings. The Code of Criminal Procedure (Amendment) Act of 2006 adopted a small part of the recommendation on victims and left the rest for future consideration. This did not help in changing the system to a victim-centric one; nor did it support a restorative approach necessary to make the system serve its reformatory and deterrent functions meaningfully.

Crime and violence constitute a major impediment for development and social integration for a plural society like India. The adversarial model of criminal justice, with punishing the offender as its only aim, has proved costly and counterproductive. Communities have to be involved and victims given rights in finding ways to correct the wrong. While keeping the adversarial system for certain serious and complex offences, India needs to experiment with more democratic models aimed at reconciliation and restoration of relationships. Restorative justice is a welcome idea particularly in the matter of juvenile justice, property offences, communal conflicts, family disputes, etc. What is needed is a change of mindset, willingness to bring victims to the centre stage

of criminal proceedings and to acknowledge that restoring relationships and correcting the harm are important elements of the criminal justice system.⁵⁶

In crux, restorative justice interventions can be particularly effective in the process of offenders' social integration by helping them to mend their relationships with others in the community, including their victims. Restorative justice approaches have proved highly successful at reducing recidivism by helping offenders to truly understand the consequences of their actions and to take responsibility for their behaviour.

⁵⁶ (www.thehindu.com/opinion/lead/towards-restorative-criminal-justice/article8433634.ece APRIL 05, 2016 01:32 is N.R. Madhava Menon UPDATED: SEPTEMBER 09, 2016 18:44 IST)

Chapter III

Methodology

This chapter tries to take into consideration all the factors necessary for completion of meaningful study. The chapter explains the rationale, objectives, methodologies used, tools designed, universe of the study and ethical considerations required in the study. The study also elaborates the assumptions made about the participants of the study and the conflicting realities faced in the process of undertaking the study.

3.1. Introduction:

Research methods are not just tools but it is a plan of the social scientist that wants to examine the social reality from different theoretical viewpoints (Bryman, 2008)⁵⁷. The research methodology is a decision taken by the researcher based on assumptions made about the problem (McNeill and Chapman 2005)⁵⁸.

The present study has adopted the mix method i.e. quantitative data would be integrated with qualitative data. This adaptation has been made because if quantitative is supporting with qualitative data than the outcome would be useful to develop insight about the issue. The mix method also leads to lot of scope for searching the impact of the various factors unwinding.

3.2. Rationale:

A close examination of the review of literature shows that there is a dearth of field based empirical study in the Indian context on the phenomenon of bail abuse and its impact on recidivism. There is also dearth of empirical studies on the consequences of bail abuse and recidivism on Bailees and their families, society at large and the criminal justice system. The earlier studies on recidivism, particularly in the Indian context validated the fact that some released prisoners repeat the crime due to non-availability of post release care known as after care and lack of support system for social reintegration and rehabilitation in the community. Unfortunately, no empirical study has been

⁵⁷ Bryman, A. (2008) Social research method,(3rd Edition): Oxford University Press.

⁵⁸ McNeil, P. and Chapman, S. (2005), Research Method (3rd Edition): Routledge, London.

reported so far which had examined the phenomenon of bail abuse and recidivism from Bailees and bail abusers' perspective.

It would be interesting to know that data reported in 'Crime in India-2015'⁵⁹ show that during last decade (2002-2015) share of recidivists among all offenders increased (7.2% during 2015 as compared to 6.9 % in 2014). In absolute terms, the number of past offenders involved in repeating IPC crimes during the year 2015 was 2, 53,498 as compared to 2,26,729 in 2014 accounting for an increase of 11.8% in 2013 over 2012, On the other hand, the number of habitual offenders convicted and sent to the prisons has drastically come down since last decade (2014-2015).

Further, a cursory look on the age profile of under trial prisoners languishing in Indian prisons shows that more than 40% of them belong to the age group of 18-30 years. It is also true that many of these under trial prisoners are released on bail within one year; however, some of them could not avail their legal right to bail and continue to languish in prisons because of excessive surety amount decided by the courts. Essentially, most of them belong to poor, vulnerable and disadvantaged sections of society, due to social stigma as 'alleged criminals' many of them also loose family and societal networks or community roots. On the other hand, influential and rich accused manage to get bail by hook and crook. Consequently, the mafia, habitual offenders, white collar, organized and career criminals often take advantage of loopholes of the bail system and indulge in further criminal activities (recidivism). Also such recidivists threaten the witnesses and victims and try to manipulate the criminal justice processes including delay in access to justice to the victims of crime.

According to a Newspaper report⁶⁰ that during last five years, 21,300 inmates across Maharashtra State have jumped bail, parole or furlough. Among them 13,000 are from Mumbai alone and 4,378 were involved in grave offences. The Hon'ble Bombay High Court has suggested to the State Government that it should consider getting tracking devices could be set as a condition for releasing a convict on parole. However, the State Government informed the Hon'ble Bombay High Court that installing tracking devices on prisoners out of bail, furlough or parole would be difficult, both

⁵⁹ Crime in India 2015, National Crime Records Bureau, Ministry of Home Affairs, Government of India

⁶⁰ The Hindustan Times, Mumbai dated 22/4/2012.

legally and in practice. It is interesting to note that Maharashtra State has dubious distinction of producing of the highest number of bail, parole and furlough jumpers in the country⁶¹.

The present study is a modest attempt to examine the phenomena of recidivism from the perspectives of both bail abusers and criminal justice functionaries. The findings of the study could be useful for policy makers, criminal justice administrators, academia, legal luminaries and civil society organizations. The study may also be useful for social scientists and social workers to intensify their efforts for further intervention in reforming the bail system and preventing its abuse.

3.3. Objective of the Study:

The present study aims to:

- Examine law, policy framework and functioning of bail system.
- Explore nature, extent, causes and consequences of bail abuse.
- Understand perception of criminal justice functionaries and other stakeholders on bail abuse.
- Suggest ways and means to combat recidivism in the context of bail abuse.

3.4. Research Questions:

- What is the law and policy framework for bail system in India?
- How the bail system is functioning in India?
- How far bail not jail principle has been resulted in restoring criminal justice system?
- What is the demographic profile of the offenders who abused the bail provisions?
- What is the nature and extent of bail abuse?
- What are the causative factors responsible for misuse of bail provisions?
- What are the consequences of misuse of bail provisions?
- What are the roadblocks in effective functioning of bail system in India?
- What is the perception of criminal justice functionaries and other stakeholders on bail abuse?
- What is the opinion of criminal justice functionaries and other stakeholders to strengthen bail system?

⁶¹ The Times of India, Mumbai dated 12/3/2013.

3.5. Research Design:

The present study has adopted an exploratory research design. Broadly, the study aims to explore the nature and extent of bail abuse including phenomena of recidivism in Indian context. Along with this approach an attempt is also made to understand the phenomena of recidivism in the diverse forms of bail abuse through statistical generalization by using the secondary data. Thus, the mixed method (a combination of quantitative and qualitative approaches) has been adopted for the present study.

Table 3.1: Sample distribution

Key Informants	Sample	Maharashtra	Uttar Pradesh	
		Mumbai	Thane	Lucknow
First phase data collection				
Bail Abusers	30	8	7	8
Suretias	20	5	5	5
Police Personnel	40	10	10	10
Prosecutors	30	8	7	8
Lawyers	30	8	7	8
Jail Officers	30	8	7	8
Civil Society	30	8	7	8
Case Studies	15	0	0	6
Second phase data collection				
Bailees	104	104	0	0
Bail Abusers	102	102	0	0
Sample from FGD	41	41*	0	0
Case Study	15	15	06	0
Grand Total	487	317	56	60

*(FGDs were conducted in Mumbai Police Commissionerate, Zone-XI-see detail Annexure-XII

3.6. Sampling:

In view of the feedback received from SVP National Police Academy, Hyderabad, the sample size was revised and accordingly additional data were collected from Mumbai city. By adopting purposive sampling method total 457 samples are collected. To gain insights on the nature of the phenomena with complexity 30 case studies are also prepared and presented along with their thematic analysis. The case studies are based on the information obtained from police, judicial & prison records followed by personal interview with various stakeholders. To validate and substantiate the quantitative data case studies of bail abusers and focus group discussion (FGD) with police personnel were also conducted.

3.7. Universe of the Study:

Initially, the study was conducted at two States (Uttar Pradesh and Maharashtra). Data were collected from four districts (Lucknow, Faizabad, Mumbai and Thane) of two States. Since data collected was not found adequate to conduct an in-depth study, the Research Committee of the National Police Academy in its meeting held on May 30, 2014 at Hyderabad advised that the study shall be additionally extended to one district in Maharashtra State to meet the adequacy of data. In view of this, the study was extended and re-conducted in zone-XI of Mumbai Police Commissionerate, Mumbai city. This selection was based on considering the feasibility of the study in terms of location, time and availability of financial and human resources. Further, the Research Committee of SVP NPA in its meeting held on March 18, 2016 suggested that some additional secondary data regarding total number of accused to be collected from all zones of Mumbai Police Commissionerate therefore universe of this study was extended to all zones of Mumbai Police Commissionerate.

3.8. Data Collection process:

A combination of primary and secondary data is used to meet objectives of the study and suitable research tools were developed for eliciting relevant information pertaining to the thrust area of the study.

3.9. Primary data:

The primary data have been collected from the Bailees, bail abusers and other stakeholders in Uttar Pradesh and Mumbai city. The data/information was collected through various research tools - Interview schedule, observation, case study and focus group discussion.

3.10. Secondary data:

The Secondary data were collected from the official records - police, prison and judicial in the sampled districts. The published data on recidivism in '*Crime in India,*' Prison Statistics India, books, journals, media clippings, NGOs' reports as well Internet resources were also used. Thus, both qualitative and quantitative data were collected through various research sources using appropriate tools.

The final report incorporated analysis of secondary data regarding total number of accused arrested and bail granted from all Zones of Mumbai Police Commissionerate .A new Table 4.1A (p.54) has been added to comply suggestions made by the Research Committee.

3.11. Research Strategy:

This study has been conducted in three different phases. The preliminary phase of the study began with conducting pilot study in Lucknow district of Uttar Pradesh. On the basis of observations and feedback received during the pilot study the tools and techniques were modified for data collection. During the pilot study, it was also realized that due to non-availability of data, time and constrains in resources the sample needs to be downsized for successful completion of the study. In the first phase of the study, the data were collected from Lucknow and Faizabad districts and the Mumbai and Thane districts. Subsequently, the data were analysed and draft report was submitted to SVP National Police Academy, Hyderabad. In view of the feedback received from SVPNPA during presentation made by the research team in June 2014, the sample has been enlarged for the current report. The present report was revised by incorporating data collected in the second phase of the study from Mumbai North region area of Mumbai Police Commissionerate during (July -December, 2014). Thus, the final report incorporates additional data regarding total number of accused arrested vis-a- vis bail granted from all Zones of Mumbai Police Commissionerate.

The final phase of data collection process was started in month of August 16, 2016 and ended up on December 03, 2016. The data was collected after several phone calls and personal visits to the police stations as well as concerned police officials.

3.12. Tools & techniques used for the study

- Interview schedule
- Case study
- Observation
- Focus Group Discussion

3.13. Interview Schedule and Observation:

The primary aim for applying different tools and techniques was to elicit information from Bailees (accused who sought bail from police and court as first time offenders) bail abusers (those who convicted or alleged criminal cases registered against them for once, twice and thrice and more times), sureties, witnesses & victims and other criminal justice functionaries as well as civil society members. In this process utmost attention has been paid to elicit perception of the criminal justice functionaries and community at large towards bail abusers. Accordingly, the data was collected through Interview schedules from various stakeholders such as Courts, Prosecutors, Police and Prison officials. Interactions were also held with civil society organizations, media professionals and community people to get an insight concerning the bail systems.

Table: 3.2: Sample of Focus Group Discussion (FGD) with Police Personnel at Mumbai

Group-1	Group-2	Group-3	Group-4	Total
12	10	09	10	41

(See detail in Annexure no. 12)

3.14. Focus Group Discussion:

The focus group discussion has been conducted as a tool of data collection. The usefulness of FGD in social science research has the following benefits:

- It is one of the best suited tools for this research study as it could help us to understand the impact and interaction of various people that effects bail abuse understanding of participants through the element of group dynamics and discussion among the participants. A small

number of individuals, brought together in a discussion or resource group, are more valuable than any representative sample. (Blumer 1969)⁶²

- It helped to in-depth understanding various variable affecting the bail abuse, as the group discussion stimulated a discussion among the participants and uses of its dynamic of developing conversation in the discussion as the central source of knowledge for study.
- It helped to understand the voter's attitude, opinion and practices while voting in election. Group discussion prefers over single interviews because "studying the attitude and opinion of human being in artificial isolation from the context in which way they occurs should be avoided" (Pollock 1955)⁶³. Group discussions on other hand correspond to the way in which opinion are produced, expressed and exchanged in everyday life.
- It also helped to validate statements and view of participants, as discussion on bail abuse with outsider is not very comfortable for most of the people. FGD also provides ample scope to study the non-verbal indicators of social relation and social realities, which add to the richness of the qualitative data collected and can help us analyse the depth of the interplay of various factor that affect their behaviour. It helped in the correction by the group concerning views that are not correct, not socially shared, or extreme are available as means for validating statements and views.
- It also helps to understand the relevance bail and extent of its abuse including recidivism, as it was not easy to analyse people's individual perception regarding different variables for making bail abuse. Thus, group discussion taken as better medium for analysing individual opinion, which goes beyond individuals.

Focus group discussion is organized to explore a specific set of issues. The group is 'focused' in the sense that it involves some kind of collective activity. Crucially, focus groups are distinguished from the broader category of group interviews by the explicit use of the group interaction as research data (Merton et al 1956 and Morgan 1988)⁶⁴.

⁶² Blumer, H. (1969) *The Dilemma of Qualitative Method*, Routledge, London.

⁶³ Pollock, F. (1955) *Group Experiments and Other Writings*, The Frankfurt School on Public Opinion in Postwar Germany, Harvard University Press.

⁶⁴ Merton, R.K. (1956) *The Focused Interview*, Free Press, Glencoe and Morgan, D.L. (1988), *Focus Group as Qualitative Research*, Newbury Park, Sage.

For the purposes of qualitative data collection focus group discussion was conducted with police officials. It was opted for the purpose of obtaining in-depth understanding of the issue. There are different types of focus group discussions. According to (Greenbaum 1998)⁶⁵ a Full Group consists of eight to ten persons while a Mini Group consists of four to six persons. Researchers tend to prefer the Mini Group because more in-depth information can be acquired during the time of the discussion. However, even though the focus groups for the purpose of this research consisted of eight to ten participants, and thus fall more under the category of Full Group than Mini Group, sufficient time was given for discussion, and participants had the opportunity to thoroughly voice their opinions and concerns.

Four focus group discussions were conducted. These groups consisted of eight to ten participants per group and the discussion was facilitated and recorded by the researcher. Focus group discussion were conducted with 41 police personnel in the North Zone area of Mumbai Police to elicit their views about the aspects of bail, abuse of bail by offenders leading the problems of absconders and recidivism. Around 50 police personnel were gathered at the Charkop Police Station of Zone-XI of Mumbai city. They were divided into four groups. Each group has around 8-10 police personnel excluding the facilitator. The average time taken by the groups to complete the FGDs was around 90 minutes to 120 minutes (from 11:00 am to 01:00 pm). A relaxed and comfortable atmosphere was created and participants were introduced to the research team. Further, they were also briefed on the purpose of the focus group discussions as well as that of the research project.

3.15. Focus Group Discussion Guide:

It was a semi-structured guide with a list of topics to be covered for discussion and where participant can give their opinions. The area focused during FGD was mainly on whether police has accepted bail at police station inailable cases? What are the problems faced by the police inailable cases? What are the causes behind abuse of bail by the offenders? Whether police is opposing bail for repeat offenders? How police department is monitoring and preventing action taken against abusers? What are the problems encounters by police in arresting abusers and suggestions to strengthen role of police in dealing with bailees, bail abusers and the recidivists.

⁶⁵ Greenbaum, T.L. (1998) *The Hand Book for Focus Group Research*. (2nd Edition), Thousand Oaks, Sage.

3.16. Interview Schedules:

For larger coverage of the sample and to support the interpretation of the focus group discussion and case studies, interview schedule had been used for data collection. In other words, the information gathered from the interview schedule was not analyzed in it, but rather played an important role in the interpretation and comprehension of answers provided by the respondents with triangulation of case studies and focus group discussion. A large number of samples are chosen through interview schedule to draw a meaningful and logical conclusion. The interview schedules, case studies and focus group discussions conducted during this study were each cross-sectional as they collected data at single point in time.

The interview schedule is probably the most suitable method available to the social researcher who wants to collect original data for the purposes of describing a population too large to observe directly. (Babbie 2005)⁶⁶. In this case interview schedules were useful in trying to determine the holistic perspective on bail abuse. By means of the interview schedules administered with the respondents, one could determine the opinions and views of most of the respondents. The Interview Schedule serves as an instrument specifically designed to elicit information that will be useful for analysis (Babbie 2005). Interview schedules can contain open-ended questions, closed-ended questions, or both. The interview schedule used in data collection is close-ended questions, the respondent is asked to provide his or her answer according the option given in particular question. However, these forms of research studies also have weaknesses, which include the following: interview schedules can seldom deal with the context of social life and are sometimes subject to artificiality (Babbie 2005). In order to strengthen the study and to gain insight into the answers provided during the interview schedule studies, further insight on bail abuse, attitudes, circumstances and experiences of respondents were acquired by means of the case studies, focus group discussions and observation.

The questions were asked in order to determine their demographic information and social affiliation; The interview schedule research seeks an understanding of what causes a certain phenomenon in terms of numbers (De Vaus 2002 and Guy et al 1978)⁶⁷, so the present study adopted this as a tool for seeking information and data to understand the nature and extent of bail

⁶⁶ Babbie, E. (2005), *Research Method for Social Work*, (5th Edition), Belmont, Brooks/Cole-Thomson Learning

⁶⁷ De Vaus, D. (2002): *Research Design in Social Research*, Sage Publication Ltd. and Guy et al 1978

abuse in the larger context of criminal justice process. In interview schedule we have also used Likert scale.

A Likert scale is simply a statement that the respondent is asked to evaluate by giving it a quantitative value on any kind of subjective or objective dimension, with level of agreement/disagreement being the dimension most commonly used. Well-designed Likert items exhibit the format of a typical five-level. Likert scaling is a bipolar scaling method, measuring either positive or negative response to a statement.

3.17. Case Studies:

Case study research excels at bringing us to an understanding of a complex issue or object and can extend experience or add strength to what is already known through previous research. Case studies emphasize detailed contextual analysis of a limited number of events or conditions and their relationships. Several social scientists /researchers had used the case study research method for many years across a variety of disciplines. Social scientists, in particular, have made wide use of this qualitative research method to examine contemporary real-life situations and provide the basis for the application of ideas and extension of methods. Researcher Robert K.Yin defines the case study method as an empirical inquiry that investigates a contemporary phenomenon within its real-life context; when the boundaries between phenomenon and context are not clearly evident; and in which multiple sources of evidence are used (Yin, 1984, p. 23)⁶⁸.

With this view, 30 cases of bail abusers/absconders were selected on the basis of court records pertaining to summons,ailable and non-ailable warrants, proclamation and dormant files as well as notices sent to surety (records maintained by concerning District Courts and Metropolitan Magistrate courts under provisions of Cr. P.C.) and in-depth interviews were conducted eliciting information and circumstances leading to absconding, its impact and consequences on their lives, livelihood and social relations . The distribution of sample of case studies is depicted in following Table:

68 Robert K Yin1984, p. 23, Case study research design and Methods.

Table: 3.3 Sample of case studies

Total	Mumbai	Thane	Lucknow	Faizabad
30	15	06	05	04

(See detail in Annexure no. 13)

3.18. Observation:

Observation is a systematic data collection approach. Researchers use all of their senses to examine people in natural settings or naturally occurring situations. Observation of a field setting involves: prolonged engagement in a setting or social situation, clearly expressed, self-conscious notations of how observing is done, methodical and tactical improvisation in order to develop a full understanding of the setting of interest, imparting attention in ways that is in some sense standardized recording one's observations. Participant observers may use multiple methods to gather data. One primary approach involves writing field notes. The benefits of observation are immersion and prolonged involvement in a setting can lead to the development of rapport and foster free and open speaking with members. Observation fosters an in depth and rich understanding of a phenomenon, situation and/or setting and the behaviour of the participants in that setting. Observation is an essential part of gaining an understanding of naturalistic settings and its members' ways of seeing. Observation can provide the foundation for theory and hypothesis development. (Denzin, Norman, Lincoln, Yvonna & Oaks, 1994)⁶⁹.

3.19. Data Analysis:

The primary data (quantitative) was analysed through SPSS package and presented in the form of tables and diagrams. The qualitative data was analysed through case studies and FGD. Thus, data was analysed through triangulation approach.

3.20. Ethical consideration:

In view of sensitivity of the research topic the following ethical concerns were taken care of. The ethical aspects such as voluntary participation, confidentiality and non-judgmental attitude were adopted during the data collection and report writing.

⁶⁹ Denzin, Norman K. (Ed); Lincoln, Yvonne S. (Ed) & Thousand Oaks, *Handbook of qualitative research* CA, US: Sage Publications, 1994, xii 643 p.

- **Informed consent** - All respondents were requested to participate in this study purely on voluntary basis and they were informed that they had a right to exit from the interview at any point of time.
- **Confidentiality** - The researcher assured the responded that the details of their information and official records will be kept confidential and no official documents would be published in the public domain.
- **Intrusion into privacy** - The researcher made sure that the respondents were not asked uncomfortable questions and was not coerced for personal information.
- **Voluntarism** – Although the study has adopted voluntary participation in data collection process however in some cases, it was observed that respondents were scared of authorities of police and criminal justice system consequently they left the interview or interactions with researcher or changed their statements in subsequent meetings.

3.21. Limitations and Challenges:

➤ Dynamics of Definitional and Conceptual Issue during Piloting the project

The purpose of pilot study was to understand the various concepts of the research study involved such as Bail, Bailable and non-Bailable offences as well as extent of abuse of bail including recidivism and their operationalization along with availability of data in the field. During piloting the project in Lucknow City, the Research Officer initially contacted Uttar Pradesh State Crime Records Bureau (hereafter referred SCRB) for getting secondary data on Misuse or Abuse of bail related crimes committed by offenders during bail period but SCRB could not furnish such data or information except statistics on data on recidivism. On the basis of this data, Lucknow District was identified as universe of the study.

This was followed by visits to criminal justice agencies to identify the available data relating to the research study as well as identification of key informants or stakeholders for the study. The discussions were held with academicians, legal experts, police, prosecutors, judges (Serving and retired both), defence lawyers and journalists etc. The outcome of the interactions with various agencies and experts has made us realized that no criminal justice agency has comprehensive data on bail abuse and its impact on recidivism.

For example, when Research Officer visited the office of DIG cum SSP of Lucknow City, it was suggested by them to go through the data/ information relating to NBW (Non-Bailable warrant

issued by Courts against offenders and notice to their sureties) who could not regularly attend the court hearing after getting bail etc. This has provided insights about domain knowledge and procedure of bail abuse such as non-attending court on the due date is also known as absconding because it is one of the forms of violation of bail condition. Further, a perusal of police records in Lucknow city has shown that data pertaining to abuse of bail system was not available; however, the police officials informed the researcher that those offenders who are booked under Gangster and Goonda Acts and violate bail conditions are known as recidivists.

➤ **Delay in granting permission by various authorities:**

The Additional Director General (Prisons), UP was requested to permit the research team for data collection - access the prison records and interviews with prisoners however, it was not granted on time due to State Assembly Election during that period. Similarly, written permission was sought from Hon'ble High Courts of Allahabad and Bombay to permit research team to access the case files and data available in various courts relating to misuse of bail including recidivism as this would provide qualitative and quantitative information relating to the profile of offenders, nature of bail & bond and profile of bondmen or surety men as well as role of public prosecutors, defence lawyers and judges/Magistrate etc. However, this was given after several months with lot of follow up. Consequently, data collection process also got delayed.

➤ **Denied permission by District Administration to Interact Officials:**

The non-cooperative attitude of administrative and judicial machinery had posed serious challenges in the completion of research study in Uttar Pradesh State hence alternative sources of information were advised. The District Government Council Office (DGC) did not allow research officer for data collection from Assistant District's Government Council (ADC).

➤ **Non-participation of judicial officers :**

The District Judges from Maharashtra and Uttar Pradesh have shown reluctance to participate in the research study and did not express their opinion on the relevant issue of bail abuse despite permission granted by the Hon'ble High Courts of Allahabad and Bombay.

➤ **Fake identity and addresses by accused and securities:**

Due to no availability of some of the bail abusers and sureties in their given addresses (sometimes their addresses were found fake) their family members, relatives and neighbours could not be

contacted for interaction. When local community people and neighbours were asked to tell about the bail absconders and sureties in many cases they were clueless about these persons as some of them had their short stay in the locality especially in slum areas of Mumbai city.

➤ **Alternate sources of data/ information for completion of work:**

In absence of relevant data in public domain on bail abusers in the context of recidivism, the research team experienced several difficulties in term of identification and access to official records/information and cooperation of criminal justice functionaries. Nonetheless, it was a good opportunity as well as a challenge for us to complete the research study. In the light of the pilot study conducted in Lucknow city of Uttar Pradesh, research tools were modified substantially re-modified after the feedback or comments received from SVPNPA. It was also decided that apart from quantitative data (through interview schedules etc.); qualitative data (through focus group discussion and case studies) of selected repeat offenders (30) would also be collected from both the States.

Chapter IV

Bailees' Perspective on Bail System

This chapter attempts to discuss and analyse the sociological and legal aspects of the bail system as it operates at the ground level in Mumbai city. The inter relationship between demographic profile of the bailees in terms of age, education, caste, religion, marital status, income and occupational status and their experiences at the court and police stations are analysed threadbare against the backdrop of popular perceptions among the police on the abuse of bail. It also unravels the legal awareness among the bailees and their implications for the right to bail. This complex analyses could break some of the popular assumptions as can be seen below.

4.1. Situational Analysis of Access to Bail in Mumbai Mega-city

Mumbai is the financial capital of India. The city of Mumbai has a long history of its heritage of architecture, railway, post and tele-communication infrastructure from colonial India. Mumbai, formerly called Bombay, is a sprawling, densely populated city on India's west coast. On the Mumbai Harbor waterfront stands the iconic Gateway of India stone arch, built by the British Raj in 1924. Offshore, nearby Elephanta Island holds ancient cave temples dedicated to Shiva. The city is also famous as the heart of the Hindi-language Bollywood film industry. Mumbai is also hub of many other industries and corporate bodies like Tata, Birla and Mahindra, Bajaj and other leading pharmaceutical industries. The geographical area covered by Mumbai city is 603 Kilometres. Generally whether around 29 degree Celsius, wind SW 21 km/h and 79 % humidity. The population of the city is around 12 million. Out of which 67% are Hindu, 19% Muslim, 5.22% Buddhists, 4.2 % Christian and others constitute 4.63%. The organisational structure of Mumbai Police is divided into four divisions, twelve zones and around hundred police stations⁷⁰.

Locating Zone-XI of Mumbai Police Commissionerate:

To understand the nature of crimes, bails granted and the problems of absconding, statistics from some selected police stations were collected from Zone-XI of Mumbai Police Commissionerate. The process was initiated with the collection of secondary data from 8 police stations to understand

⁷⁰ <https://en.wikipedia.org/wiki/Mumbai>

Status of Crimes, Bails, Absconders and Re- Arrest in eight police stations. This will help us to understand the problem faced by police as well as bailees pertaining to issue on bail.

Table 4.1 Status of crimes, Bails, absconding and re- arrest in eight police stations of Mumbai Police (Zone-XI)

Police Stations	No. of Crimes (2013 - 2014)	Cognizable crimes	Bail Granted	Absconders	Re-arrested
Borivali	4221	619	523	159	3
Goregoan	4073	471	-	-	-
Malad	4182	479	247	86	7
Malwani	7125	506	666	-	0
M.H.B	3160	399	245	8	1
Kandivalli	3559	397	209	240	12
Charkop	4371	361	410	-	-
Bangur Nagar	1894	338	210	-	-
TOTAL	25460	3064	1844	493	23

Source: Office Records of respective Police Stations for 2013 – 2014

To understand functioning of bail system, the information /data were gathered from eight police stations of zone -XI (Borivali, Goregon, Malad, Malwani, M.H.B, Kandivalli, Charkopand Bangur Nagar) in the Jurisdiction of North Region of Mumbai Police Commissionerate. The accused (first timer) and habitual offenders (recidivists) were interviewed along with focus group discussions with police personnel focused on bail, abuse of bail and its causes and consequences. Apart from this, the secondary data was also collected from the respective police station's record files and police officers as key informants were personally interviewed.

The data brings out that highest volume of crime was recorded at Malwani police station and least number of crimes was recorded at Bangur Nagar police station. Similarly, high numbers of bails were granted at Malwani police station and least by Bangur Nagar police station. This shows that police granted bail (bailable crime) in large number of cases at Malwani police station and in least number of such cases in Bangur Nagar police station. However, the absconders figure shows a different trend. A large number of absconders were reported from Kandivalli police station jurisdiction and a least number of absconders were reported from Malwani police station interestingly high number of crimes was reported and a high number of bails were also granted. Thus, the number of absconders is not related to number of bails granted.

It can be seen in above from Table 4.1 that around 60% accused were granted bail out of total number of cognizable crimes registered in 2013-14. Around 27% Bailees became absconders and abused bail conditions and only 4.7 % of them could be re-arrested by police across eight police stations under the jurisdiction of Zone-XI in Mumbai Police Commissionerate. It raises question on efficiency and effectiveness of the policing and governance.

Table 4.1(A) Status of crime committed, bail granted, absconders and re-arrest in 12 Zones and all Regions of Mumbai Police Commissionerate for the year 2014-15

Police Zone	No. of Cognizable Crime Reported	Bail Granted	Absconders	Re-arrested
2014				
I – South	1834	1448	0	0
II – South	2846	2602	7	29
III-Central	2483	1868	0	0
IV- Central	3630	2242	0	0
V- Central	3024	1716	3	0
VI -Eastern	3679	3242	5	1
VII-Eastern	3220	2969	26	19
VIII- Western	5479	3037	79	21
IX- Western	4667	3617	0	15
X - Western	3582	3148	678	16

XI – Northern	4456	1935	493	4
XII- Northern	3786	3576	0	0
Total	42686	31400	1291	105
2015				
I – South	2105	1591	0	0
II – South	3027	3845	5	35
III – Central	2505	1904	6	6
IV – Central	3559	2081	0	0
V- Central	3213	1907	0	0
VI – Eastern	3949	3196	3	1
VII- Eastern	3787	3588	71	27
VIII- Western*	-	-	-	-
IX –Western	2732	1588	1	10
X –Western	3612	3630	27	14
XI – Northern	4688	2407	492	4
XII- Northern **	4404	4172	0	0
Total	37581	29909	605	97

* Data not received for the year 2015.

** Data received on 15/12/2016 after several reminders, personal visits and telephonic talks.

Source: Official Records of the respective Zones

On the advice of Research Committee of Sardar Vallabhbhai Patel National Police Academy (SVP NPA), Hyderabad, some additional secondary data on the above variable (Table 4.1(A) was also collected from all 12 Zones of Mumbai Police Commissionerate jurisdiction. To substantiate the finding from micro- level perspective an attempt has been made to analyse two years data (2014 – 2015) collected from the respective Zonal office.

The data for the year 2014 shows that the highest numbers of cognizable crimes were reported in Zone VIII and the second largest were from Zone IX both from the Western Region of the Mumbai Police Commissionerate. Likewise the least number of crimes were reported at Zone I and Zone III.

Similarly, an analysis of the number of bails granted also shows that large number of bails was granted during the year 2014 at Zone IX and least number of bails at Zone I. The correlation analysis between number of cognizable crimes and number of bails granted during the year 2014 is positively related ($r= 0.58$). Similarly, data for the year 2015 further shows that large numbers of crimes were reported at Zone XI. However, highest number of bails were granted at Zone II. Indeed, further in-depth analysis has to be done in the context of demographic and other Sustainable Development Goals in the localities of this Zone.

However, correlation coefficient between reporting of cognizable crimes and grant of bail granting shows that in general that these two variables are positively related ($r= 0.57$), although the number of bail granted is always a direct function of rate of crime reported in the Zone. Data shows contrary result to the police argument that the bail is always misused. The data for 2014 shows that the number of bails granted in various Zones were not related to number of absconders (except in 2 Zones). For example, in Zone XI bail were granted to 1935 accused but only 493 had absconded, contrary to this, a large number of bails were granted by Zone IX but none of them absconded in that Zone. Thus, correlation between bail granted across Zones and bail absconders are very low ($r= 0.04$). Similar result is reported for the year 2015 as rate of bail granted and rate of absconders were not related ($r= -0.01$). Hence, rate of cognizable crimes reported at police stations under various Zones is positively associated with the rate of bail granted. Higher the crime reporting higher the bail granted. But to our surprise and contrary to police argument as bail is often misused, the data for both the years- 2014 and 2015 across 12 Zones of Mumbai Police Commissionerate shows that the bail granted is not at all related to number of absconders. This finding substantiates with the micro -level data collected from Police Stations under Zone XI (pl. see Table 4.1).

Further, an analysis of data regarding number of bail granted and number of absconders in various Zones shows that Zone XI has the singular distinction in this matter. Since this Zone constitutes higher percentage of minority population further in-depth analysis is required to understand nature and pattern of crime in relation with demographic and other related factors. While interviewing the recidivists from this area many accused told that they had committed some minor crimes but at the same time police had implicated them in many more false crimes those were never committed by

them. The community policing initiated by a former Additional Commissioner of Northern Region (Zone XI) Mr. Suresh Khopde known as New Mohalla Committees was found highly effective medium in crime reduction (49.5%), handling law and order situation (74.2%), strengthening information/Intelligence gathering through local networks (47 %) and reducing police corruption and increasing level of transparency in police system (58.31%). The majority of the respondents (64.7%) felt that due to involvement of the New Mohalla Committee Members a large number of civil cases or non-cognizable offenses were resolved amicably. Further, nine out of every ten respondents stated that local people often approached New Mohalla committees (NMCs) for grievance redressal through informal and dignified manner. A large number of local residents and community members (63.09%) felt that New Mohalla Committees rendered impartial and swift justice and their problems were resolved in the faster mode (92.9%) using Alternative Dispute Resolution (ADR) method. The New Mohalla Committees were also seen as a viable platform for delivering social service to the needy at the time of crisis (crisis response mechanism). This mechanism essentially had proved an effective tool for poor people and helped them in resolving various issues amicably. Similarly, religious tolerance and secular values had also been broadened among the police personnel at the cutting edge level (96.4%) through their participation in New Mohalla Committees. Interestingly, nine out of every ten respondents strongly suggested that NMCs to be institutionalized through amendment in the Police Act and Manual (Tiwari Arvind (2013) : Community Policing and its Impact on Public Order, TISS, Mumbai).

4.2. Demographic Profile of Bailees

It is important to understand the views and experiences of bailees related to bail process. For this purpose 104 bailees were personally interviewed through interview schedule and data is analyzed in the tables as follow:

Table 4.2: Sex of the respondents

Sex	Frequency(F)	Percentage	Adjusted Frequencies*
Male	101	97.1	15.7
Female	3	2.9	0.5
Total	104	100	16.2

Source: Field Work, *Adjusted frequencies = $F \times \text{Mumbai} / \text{Maharashtra Registered Crimes}$

The perusal of table 4.2 shows the sex wise distribution of respondents. The sex composition of the respondents clearly shows that men (97%) outnumber women (2.9%). It indicates that in Indian society crime is still a male dominated phenomenon. Further, table 4.3 indicates that majority of the Bailees were young people below 30 years (70.3%). It means that seven out of every ten respondents belonged to less than 30 years who spent only one third of their lives and moved into the wrong direction of crime. This is cause of concern for the country as young persons' involvement in the criminal activities is increasing. Sometime, in absence of skills for livelihood these youths are forced to criminogenic conditions and become repeat offenders or recidivists. Hence, it is imperative to find ways and means to involve youths in skill development activities to build a strong and skilled human capital. These youths in conflict with law should be rehabilitated through constructive programmes, which would keep them away from criminal activities.

Table 4.3: Age of the respondents

Age group (in years)	Frequency (F)	Percentage	Adjusted Frequencies*
Below 20	16	15.4	2
21-30	57	54.8	9
31-40	17	16.4	3
41-50	10	9.6	2
51 and above	04	3.8	1
Total	104	100	16

Source: Field Work, *Adjusted frequencies = $F \times \text{Mumbai} / \text{Maharashtra Registered Crimes}$

Table 4.4: Religion of the respondents

Religion	Frequency (F)	Percentage	Adjusted Frequencies*
Hinduism	69	66.3	11
Islam	29	27.9	4
Christianity	04	3.8	1
Buddhism	01	01	0
Jain	01	01	0
Total	104	100	16

Source: Field Work, *Adjusted frequencies = $F \times \text{Mumbai} / \text{Maharashtra Registered Crimes}$

Table 4.4 brings out that most of the Bailees are first time offenders and came in the crime cycle due to some criminogenic factors. Majority of them are Hindus (66.3%) followed by Muslims (27.9%) and Christians (3.8%). This can be said that two communities - Hindu or Muslim are major contributors for crime in the Mumbai city. Nevertheless, Hindu shares 67.39% of population and Muslim shares 18.56% of population of Mumbai. It shows that Muslim youths are over represented in the criminal activities.

Table 4.5: Caste of the respondents

Caste	Frequency (F)	Percentage	Adjusted Frequencies*
General	39	37.5	6
OBC	13	12.5	2
SC	11	10.6	2
ST	3	2.9	0
Other religions	38	36.5	6
Total	104	100	16

Source: Field Work, *Adjusted frequencies = $F \times \text{Mumbai} / \text{Maharashtra Registered Crimes}$

The caste distribution of the respondents may be looked into Table 4.5. The data indicates interesting findings within Hindu religion across castes 32.4 % of the offenders belonged to general category, 11.8 % of them were from OBC category, 12.7% comprised of SCs and only 2% of them are from STs category. The relationship between nature of offence and caste of the respondents as shown in data indicate that the claim or popular belief that petty or street offenders belong to a particular caste or social category could not be substantiated as the value has not meet the requisite level of significance ($\chi^2 = 21.967$, $df = 2$ and $p > .05$). Hence, caste and crime are not related to each other.

Table: 4.6: Educational status of the respondents

Education	Frequency (F)	Percentage	Adjusted Frequencies*
Illiterate	11	10.6	2
Up to 5th Std.	25	24.0	4
Up to 8th Std.	21	20.2	3
Up to 10 Std.	25	24.0	4
Up to 12th Std.	14	13.5	2
Graduate	4	3.8	1
Post-Graduation	3	2.9	0
Other	1	1.0	0
Total	104	100	16

(Source: Field Work, *Adjusted frequencies = F x Mumbai / Maharashtra Registered Crimes)

Table 4.6 reflects the relevant data related to educational status of the respondents. This could be another significant aspect to analyze about bailees beyond caste and religious factors. The data indicates that, even educated youths indulged in crimes. Data also revealed that majority of the respondents (89 %) were educated. The trend can be easily attributed to the present education system that it is not focusing on skill development among the youth and sometime this phenomenon is pushing youths in criminal activities.

Amongst there those who completed primary education were 24%, secondary education 24% middle education 20.2% respectively and a considerable number of them were illiterate (10.6%). Thus, it can be said that low education and school dropout appear to be another factors behind youth crime. Thus, it can be observed from Table 4.06 that those youths from Hindu and Muslim communities are more vulnerable to crime cycle and also low education level emerged as one of the factors for involvement of youth in criminal activities from these communities. It is noteworthy to mention that the communities with higher literacy rates are less involved in petty and street crimes. Further, literacy rate of various communities in Mumbai city shows that youth belong to communities with high education rate as Jain (94.1%), Christians 80.3%), Buddhists (72.7%) and Sikhs (69.4%) are less vulnerable as compared to Hindu (65.1) and Muslims (59.1) communities

(Census, 2011). This further indicates that communities with high educational attainment are less involved in petty or street crimes.

Table 4.7: Marital status of the respondents

Marital Status	Frequency (F)	Percentage	Adjusted Frequencies*
Married	57	54.8	9
Unmarried	43	41.3	7
Divorcee	1	1.0	0
NA/NR	3	2.9	0
Total	104	100	16

Source: Field Work, *Adjusted frequencies = $F \times \text{Mumbai} / \text{Maharashtra Registered Crimes}$

The marital status (Table 4.7) shows that more than half (54.8%) of the respondents were married and 41.3% unmarried. Divorcee constitute only one percent. The data indicates that half of the respondents have families and get some support from them.

Table 4.8: Income of the respondents

Income (in rupees per month)	Frequency (F)	Percentage	Adjusted Frequencies*
Up to -3000	1	1.0	0
3001-5,000	6	5.8	1
5001-7000	23	22.1	4
7001-10000	21	20.2	3
10,000 above	51	49.0	8
Not responded	2	1.9	0
Total	104	100	16

(Source: Field Work, * Adjusted frequencies = $F \times \text{Mumbai} / \text{Maharashtra Registered Crimes}$)

The relation between monthly income and the Bailees has been presented in the above table. It may be noted that most of the respondents are having monthly income more than Rs. 10,000 and 44 respondents were earning between Rs. 5000 to 10,000. The first time offenders mostly (49%) belonged to higher income group i.e., earning more than Rs. 10,000 and above per month as depicted in Table 4.08. About 22.1% belong to Rs. 5001 – 7000 income group and another 20.2% came from the income group of Rs.7, 001 – 10,000 per month. The higher income among the respondents may be attributed to the fact that they are skilled and semi-skilled workers (34.6%) and they were working as self-employed or in the private sector (52.9%).

Table 4.9: Occupational status of the respondents

Occupation	Frequencies (F)	Percentage	Adjusted Frequencies*
Unemployed	03	2.9	0
Self-employed	36	34.6	6
Private Service	55	52.9	8
Others	10	9.6	2
Total	104	100	16

(Source: Field Work, *Adjusted frequencies = $F \times \text{Mumbai} / \text{Maharashtra Registered Crimes}$)

As more than 87.5% of the Bailees were self-employed or working in private sector therefore they could be considered as affluent when comparing them with rural agrarian jobs. However, they are not habitual criminals because they do not have criminal history behind them. Interestingly, they were involved in petty crimes such as disputes over water, garbage and other public resources in their localities. Nevertheless, a question arises: Is income of the Bailees' related to their demographic profile? So far as association between occupation and Bailare concerned, the respondents' occupation is found to be significant (value = 80.51 and $df = 15$, $p < 001$). Further, it shows that the offenders with high income were essentially skilled workers and self-employed who came to vicious cycle of crime due to some socio- economic and ecological reasons.

Table 4.10: Crime committed by the Respondents

Crime committed by Bailees	Frequency	Percentage
Violent crime	25	24.0
Property crime	35	33.7
Crimes against women and children	10	9.6
SLL	16	15.4
Preventive detention	17	16.3
NA/NR	1	1.0
Total	104	100

Source: Field Work

The crime committed by bailees may be looked up in Table 4.10. The data shows that 24% of them have committed violent offences and 33.7% property related offences. Those who were arrested and got bail under preventive detention and crime under SLL are 16.3% and 15.4% respectively. 9.6% respondents committed crimes against women and children and received bails. A small number of offenders who got bails have not responded to this question.

4.3. Access to Bail at Police Station Level

Experience of Bailees with Police System

The administration of justice generally begins with the registration of a First Information Report(FIR) which sets into motion the process of investigation to collect evidence which connects an accused with the commission of the cognizable offence(s) alleged in the FIR. The availability of evidence against the accused warrants his arrest for custodial interrogation to work out the case in all its aspects. A police officer making an arrest without warrant shall, without unnecessary delay, subject to the provisions contained in the CrPC respecting admission of the arrestee on bail or to send the person arrested before a magistrate within twenty four hours from the time of arrest. A

police officer arresting a person cannot keep him in confinement in any place beyond the time limit laid in the law(Section 167 CrPC). If the accused in unable to furnish bail in aailable offence or in a non -ailable offence, the police officer has to send him before the nearest Magistrate within 24 hours of his arrest. The Magistrate may remand him to Police Custody or Judicial custody, or admit him to bail depending upon the merits of the case and the application submitted by the investigating officer(Section 167 read with sections 436, 436A and 437 CrPC).

Table 4.11: Time spent in police custody before getting bail

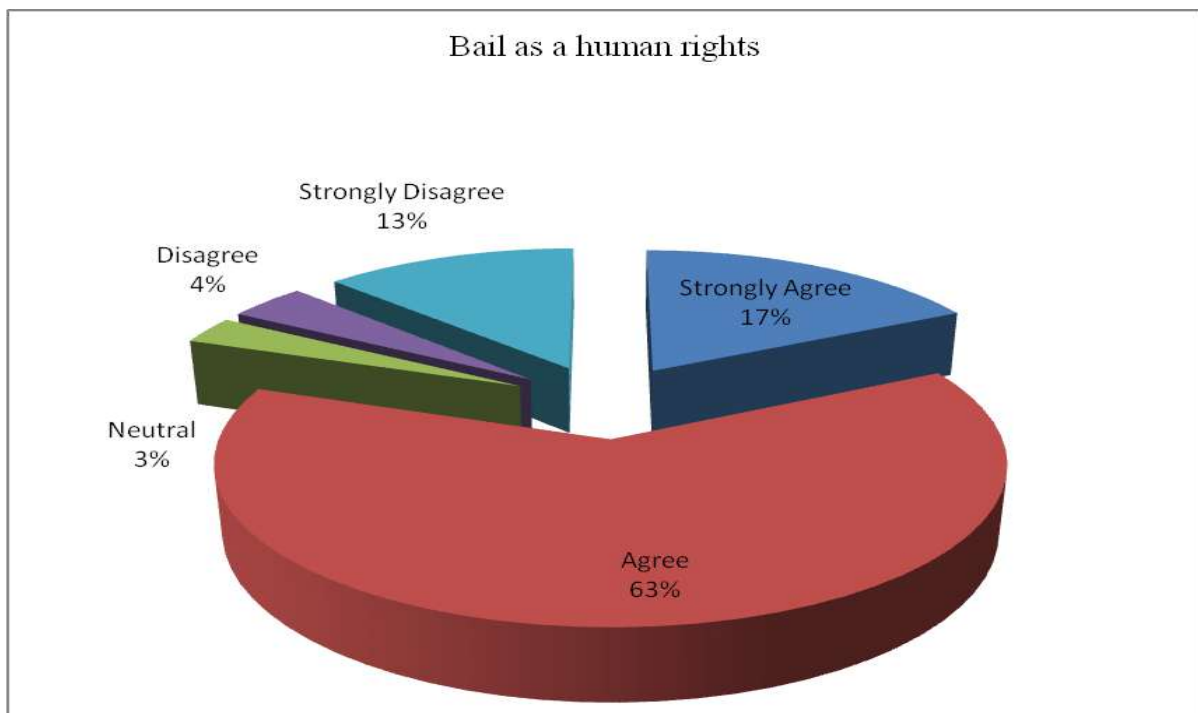
Time spent in custody	Frequency	Percentage
One day	59	56.7
Two days	14	13.5
Three days	8	7.7
Four days	3	2.9
More than 4 days	10	9.6
Not responded	10	9.6
Total	104	100

(Source: Field Work)

Now attention has been paid to know that how much time the bailees had spent in the police custody before getting bail. The data shows that majority of accused (Bailees) spent one day (56.7%) in police custody before getting bail or before being sent to judicial custody. According to some of the respondents (accused/bailees) the practice of illegal detention is also prevalent as 13.5% of them claimed to have spent two days in police custody, 7.7% three days, 2.9% four days respectively and 9.6% have spent more than four days in police custody before getting bail. This by itself it is an insinuation against the arresting police officers. Therefore a research study is required to be examined objectively and rigorously before arriving at any conclusion on these disclosures. It was found that if the version of illegal detention were to be accepted it is to be analysed with reference to their conduct around the time the individual had an opportunity to bring it to the notice of the Court which granted him bail through his advocate and filing complaint to the senior officers

soon thereafter. It has, however, been seen that neither any complaint was made by them to the Magistrate during their appearance before the Court or to any senior officer soon after release on bail. Taking a very objective view of the circumstances surrounding such claims, coupled with the conduct exhibited by them at the relevant time, it is not possible to derive any inference against the police on the one sided and uncorroborated assertion of the subjects interviewed. It is also viewed that in the light of absence of any record of their detention beyond one day from the time of arrest, and the denial of the police officers having resorted to such unauthorised detention beyond the statutory limit of one day (24 hours). Hence it can be reasonably concluded that the insinuation of unauthorised detention, as claimed by some interviewees, remains largely uncorroborated in the absence of any credible evidence, direct or circumstantial, in support thereof.

Figure 4.1: Bail as a human right of Bailees



The figure 4.1 shows that the majority of the respondents (63%) reiterated that bail is a right in bailable offences. According to a petition filed in Hon'ble Bombay High Court stated that during a *dahi handi* rally on August 2011, an Amol Patel overheard the four friends' conversation about their plan to play cards at their house. Police raided the house and seized Rs. 79000 in cash during a search. According to their Advocate "the police threatened that if they did not give up the cash they would be arrested under gambling charges." Upon refusal, they were arrested and released on bail

next day. The Hon'ble Bombay High Court while hearing the petition filed by 4 friends from Saki Naka, who were charged with running a gamble den at their house asked the police why the few men were put behind bars for a bailable offence (gambling). The bench observed "either they do not know the legal provisions or they are doing it for some other purpose. I don't think they are not aware of legal provisions." The bench further observed the situation seems to be getting out of hand. We are coming across such situations on regular bases.(DNA, Mumbai, February 9, 2012, p4)

Table 4.12: Bail as a right in bailable offences

Bail as a Right	Frequency	Percentage
Strongly Agree	18	17.3
Agree	62	59.6
Neutral	8	7.7
Disagree	8	7.7
Not responded	8	7.7
Total	104	100

Source: Field Work

Table 4.12 shows that a vast majority (76.9%) of the respondents opined that bail in bailable offences is their legal and human right to be realized through police stations or courts.

Nature of Bail Bond:

It is a legal right of every citizen to get bail in bailable offences either from police station or court, however, rhetoric does not always reflect in to reality. The following figure and tables highlight nature of bail bond, availability of legal aid during bail process, amount paid as surety by the bailees.

Figure 4.2: Nature of bail bond on bail

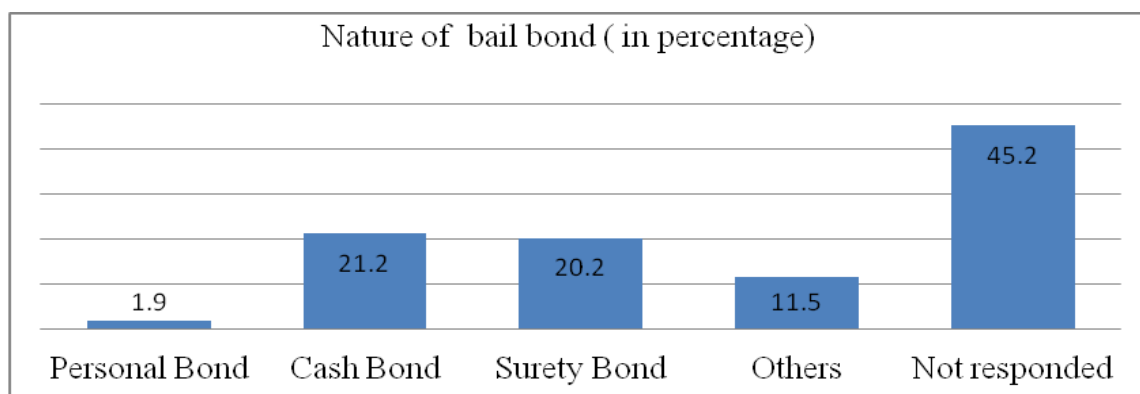


Table 4.13: Nature of bail bond used for bail out

Nature of Bail Bond	Frequency	Percentage
Cash Bond (in Rupees)		
5000	5	4.8
10000	5	4.8
20000	12	11.6
Not applicable	82	78.9
Total	104	100
Surety Bond		
One surety with moveable property	16	15.4
One surety with immovable property	1	1.0
Two surety with moveable property	4	3.8
Not applicable	83	79.8
Total	104	100

(Source: Field Work)

The table 4.13 shows that the Bailees got bail at court level by arranging personal bond (1.9%), cash bond (21.2%), surety bond (20.2%), and by other mode (11.5%). However, some of the responded (22.1%) did not respond to this question. It indicates that the cash and surety bonds still play an important role in getting bail. Further, those who were released on cash bonds have deposited between Rs. 5,000 to Rs. 20,000. This indicates clearly that 4.8% of the respondents have deposited Rs. 5,000, an equal number of Bailees have deposited Rs. 10,000 as a bail condition and 11.6% of them have deposited Rs. 20,000. Similarly, much emphasis is still given on one surety with movable property (15.4%).

Table 4.14: Availability of Legal Aid to the Bailees

Legal Aid	Frequency	Percentage
Yes	41	39.4
No	63	60.6
Total	104	100

(Source: Field Work)

Legal Aid:

Legal Aid is an important instrument of liberty for any individual come in conflict with law, however its effectiveness is questionable. In the following discussion an attempt is made to assess its efficiency in accessing bail by the Bailees. Table 4.14 clearly indicates that six out of every ten bailees (60.6%) did not receive legal aid during the process of getting bail.

Figure 4.3: The time taken by court

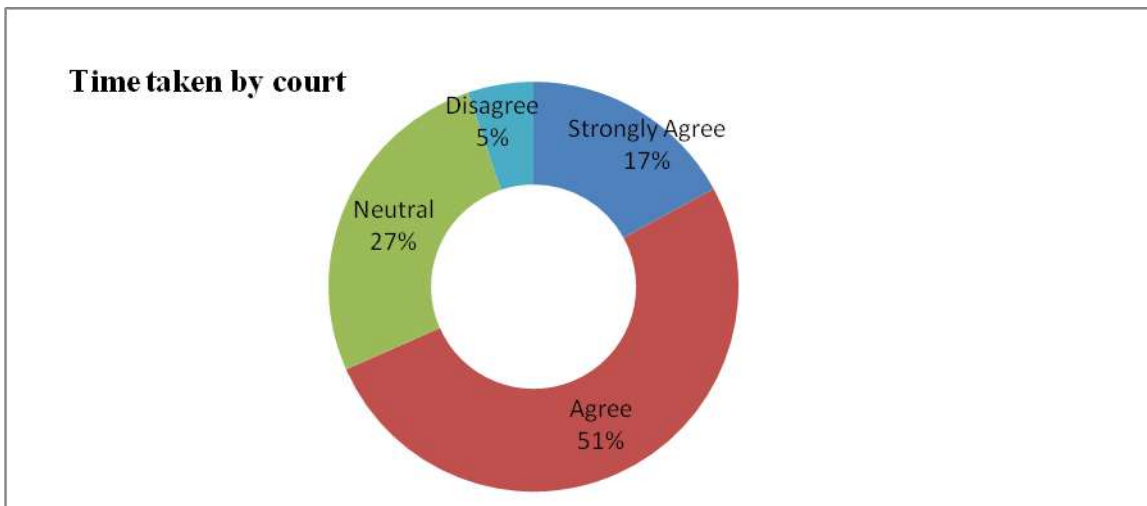


Figure 4.3 shows that the majority of the Bailees said that the time taken by the court for granting bail was reasonable. Those who disagree constitute only 5% and 27% of the Bailees were neutral. The data in the figure 4.4 demonstrates that a large number respondent (81.5%) opined that bail helped them to prepare their cases in a better manner. This indicates that bail has helped the bailees for strengthening their cases in the courts.

Table 4.15: Age and awareness of bail as a legal rights

Age (in years)	Bail as a Right			
	No response	Strongly Agree	Agree	Neutral
Below 20	0	5	5	3
21-30	5	6	40	3
31-40	2	4	8	1
41-50	1	2	7	0
51 above	0	1	2	1
Total =104	8	18	62	8

=19.653, df=16, p > .05

A reference to Table 4.15 would show that most of the young respondents (age group of 21 -30) were aware that getting bail in bailable offences is a right. Interestingly, majority of the respondents agreed to the statement that bail is a right in bailable offences. While these two variables -age of the respondents and their awareness about bail as a legal right were cross tabulated, these were not found significant.

Table 4.16: Education and awareness of bail as a legal rights

Education	Bail as a Legal Right			
	No Response	Strongly Agree	Agree	Neutral
Illiterate	1	2	6	0
Up to 5th Std.	0	6	15	4
Up to 8th Std.	1	4	13	1
Up to 10 Std.	4	4	14	2
Up to 12th Std.	2	0	9	1
Graduate	0	1	2	0
Post-Graduation	0	1	2	0
Other	0	0	1	0
Total = 104	8	18	62	8

=19.653, df = 16, p >. 05

Similarly, educated respondents mostly agreed to the statement that bail is their legal right. However, the variables- education and awareness about bail as a legal right are not associated with each other.

Table 4.17: Nature of offence and time taken to get bail

Nature of offence	Bail Time taken	
	No response	Within 3 months
Violent crime	11	14
Property crime	17	17
Crimes against women and children	8	2
SLL	12	4
Others	15	2
Total = 104	64	39

= 15.698, df =10, p> .05

Ongoing through Table 4.17, it would be noticed that majority of the respondents secured bail within three months. Further, nature of offence and time taken to get bail these two variables do not show any significant association ($p > .05$).

Table 4.18: Age and time taken for Bail

Age	Bail Time taken	
	No response	Within 3 months
Below 20	11	5
21-30	33	23
31-40	12	5
41-50	4	6
51 above	4	0
Total = 104	64	39

= 6.461, df=8, p > .05

It is observed (Table 4.18& 4.19) that, age or castes of the respondents do not play any significant role in getting bail.

Table 4.19: Caste and time taken to get bail

Caste	Bail Time taken	
	No response	Within 3 months
No response	26	10
General	20	16
OBC	8	5
SC	6	5
ST	1	2
Others	3	1
Total = 104	64	39

$$= 5.653, df = 10, p > .05$$

Generally, we assume that people belong to vulnerable sections of the society like SCs or STs become the victims of government mentality and systems including criminal justice system do not provide justice on time. To understand the fact on this line an analysis is made to understand whether caste of the respondents and time taken to get bail have any association, the Chi square value shows that time taken to get bail and caste are not statistically significant as p value is less than 0 .05 level.

4.5. Social Support System for Securing Bail

Social support system such as family, community and friends has played an important role in helping the accused in getting bail. The data presented in Table 4.20 may be looked into. It is found that majority of the bailees (57.7%) received support from the family members in securing bail. Further, it is also clear from the data that close family members such as mother, father, uncle, brother, sister and spouse had rendered timely help and support in securing bail by the bailees.

Besides family members, support was also extended from peer group (5.8%), neighbours and relatives (10.6%) and other stakeholders such as media, social workers and their employers etc.

Table 4.20: Support from Stakeholders

Social support	Frequency	Percentage
Family members	60	57.7
Neighbors	2	1.9
Relatives	2	1.9
Peers/groups	6	5.8
Others	11	10.6
Not responded	23	22.1
Total	104	100

(Source: Field Work)

4.6. Awareness about the Bail and non-compliance of its conditions

The respondents' awareness about the bail conditions are tabulated for clarity. Table 4.21 shows responses to the question asked with the bailees "whether non-appearance in court during bail is violation of the bail condition?" interestingly 32.7% of the respondents opined "not at all," and 15.4% viewed as "not really." Only 29.8% perceived it as "very much" a violation of bail condition and another 10.6% felt that is "somewhat" amount to violation of bail condition. It means that majority of the respondents were unaware about it and took lightly or casually for bail abuse. Therefore, legal literacy shall be imparted for common people in general and bailees in particular.

So far as sureties' role and obligation in production of bailees in the court or at police stations is concerned a large number of respondents (38.5%) stated that they were not aware that legal action may be taken against sureties if the Bailees do not appear in the court. Interestingly, some of the Bailees (25%) stated that generally action against sureties is not happening if one could manage the system. Further, it is apparent that many of the bailees do not take bail conditions seriously. It also

implicit an overall picture that awareness on bail conditions is very poor among the Bailees. This is a gray area, which needs to be plugged through justice education in all the colleges and senior secondary schools located in their respective area by the State and District Legal authorities in collaboration with National/State Law Universities and Law Colleges across the country.

Table 4.21: Non-appearance in court as bail abuse

Non-appearance in court during bail is violation of bail condition	Frequency	Percentage
Very much	31	29.8
Somewhat	11	10.6
Undecided	01	1.0
Not really	16	15.4
Not all	34	32.7
NR	11	10.6
Total	104	100
Whether Legal action might be initiated against Surety?		
Very Much	40	38.5
Some What	15	14.4
Undecided	01	1.0
Not really	15	14.4
Not at all	26	25.0
NR	07	6.7
Total	104	100

(Source: Field Work)

The mean and standard deviation analysis of the data shows that the mean score 2.06 (SD=0.77) received from Bailees as perception on Bail as the Legal Rights. It indicates that most of the respondents were are aware about right to bail as their legal right.

Table 4.22: Mean and standard deviation (SD) of bailees' perception

Bailees Perception on Bail Conditions	Mean*	SD
Bail as Right (n=96)	2.06	0.779
Reasonable time by court in award of bail (n=76)	2.20	0.783
Help in Case Preparation (n=92)	1.96	0.837
Non-appearance in court is violations of bails (n=93)	3.12	1.762
Possibility of legal action against surety (n=97)	2.71	1.726

*Lower the mean positive the answer

A perusal of table 4.22 would show that by most of the respondents stated that time taken by courts in granting bail was reasonable (Mean =2.20, SD=0.78). For the question “Whether the non-appearance in court as a violation of bail condition” has been answered in uncommitted manner as the response fall in the middle category.

Chapter V

Bail Abusers' Perspective on Bail System

The chapter deals with demographic profile of the bail abusers, nature of crime they involved, and the extent of bail abuse in view of increasing the rate of crime across various Indian cities. The increasing emphasis on conviction rate is also taken looked into. The perception of people on the concept of bail is narrated briefly. Finally, impact analyses of bail abuse on individuals, families & communities is also attempted briefly.

5.1. Demographic profile of bail abusers

Sex of the bail abusers

Sex wise distribution shows that all the respondents were males. Thus, it is homogenous study- which indicates that men are more vulnerable for bail abuse.

Table: 5.1: Age of the bail abusers

Age group (in years)	Frequency	Percentage
Below 20	10	9.8
21-30	53	52.0
31-40	30	29.4
41-50	7	6.9
Above 51	2	2.0
Total	102	100

(Source: Field Work)

A perusal of Table 5.1 would show that majority of bail abusers were young people. Age wise analysis shows that 90% of them were below 40 years in age. In other word, nine out of every ten bail abusers were youths or adults who knew the consequences of their action or behaviours which

affects society and the system. Age wise analysis would further show that 52% of the respondents belonged to the age group of 21 - 30 years and 29% were are in the age group of 31 – 40 years. The elderly people (51 years and above consisted of an insignificant number (2%) of bail abusers. This trends shows that mostly young people are involved in crime and bail abuse.

Table 5.2: Religion of the bail abusers

Religion	Frequency	Percentage
Hindu	66	64.7
Muslim	31	30.4
Christian	5	4.9
Total	102	100

(Source: Field Work)

Table 5.2 highlights religious profile of the bail abusers. The data reveal that majority of the bail abusers (64.7%) were Hindus, 30% Muslims and Christian bail abusers consisted of only 4.9% in the sample.

Table 5.3: Caste of the bail abusers

Caste	Frequency	Percentage
General	33	32.4
OBC	12	11.8
SCs	13	12.7
STs	3	2.9
Not responded	1	1.0
Not applicable	40	39.2
Total	102	100

(Source: Field Work)

Table 5.3 brings out the caste composition of the Bail abusers. The analysis shows that 32.4 % abusers belonged to General category, 12.7 % SCs, 11.8 % and 2.9% from STs categories.

Table 5.4: Educational status of the bail abusers

Educational Status	Frequency	Percentage
Illiterate	12	11.8
Up to 5th std.	30	29.4
Up to 8th std.	36	35.3
Up to 10th std.	12	11.8
Other	12	11.8
Total	102	100

(Source: Field Work)

The above table shows the educational status of bail abusers. Educational attainment of the abusers indicates that majority of the respondents studied up to 8th standards (35.3%), 29.4 % of them up to 5th standard and 11.8% attained education up to 10th standard. Thus, more than three-fourth abusers (76.5%) did some schooling. This pattern shows that most of the bail abusers had gained some formal education.

Table 5.5: Marital Status of the bail abusers

Marital Status	Frequency	Percentage
Married	58	56.9
Unmarried	42	41.2
Divorcee	1	1.0
Separated	1	1.0
Total	102	100

(Source: Field Work)

A reference to Table 5.5 would show that majority of bail abusers were married. To be specific, in our sample 56.9% of the respondents were married and 41.2% unmarried. However, divorcee and separated consisted of one percent each.

Table 5.6 Occupational status of bail abusers

Occupation	Frequency	Percentage
Unemployed	2	2.0
Self-employed	29	28.4
Private Sector	52	51.0
Government Service	2	2.0
Others	17	16.7
Total	102	100

(Source: Field Work)

The occupation wise distribution is given in Table 5.6. It would be seen that 28.4% respondents were self-employed and 51% working in the private sector. Eventually, the majority of the respondents were engaged in unorganized sector without social and job security that sometime creates criminogenic circumstances.

Table 5.7: Income wise distribution of the bail abusers

Monthly Income (in Rupees)	Frequency	Percentage
Upto-3000	4	3.9
3001-5000	5	4.9
5001-7000	24	23.5
7001-10000	17	16.7
10000 above	51	50.0
Not responded	1	1.0
Total	102	100

(Source: Field Work)

Data presented regarding income wise distribution in table 5.7 indicates that one in every two respondents (50%) were earning Rs. 10,000 per month. However, another half were earning less than ten thousand rupees per month.

5.8 Nature of crime committed by bail abusers

Table 5.8: Nature of crime committed by the bail abusers

Nature of Crime Committed by Abusers	Bail Abusers (n=102)	Percent
Violent Crime	54	52.9
Property Crime	31	30.4
Crimes against women	01	1.0
Others	11	10.8
Not responded	05	4.5

(Source: Field Work)

It is evident from the above table that most of the abusers (52.9%) had committed violent crimes, 30.4% of them were charged for property related crimes and 10.8% committed crimes under SSL categories. Only 1% abusers were charged under Crime against Women.

Table 5.9: Association between nature of crime and income of the bail abusers

Monthly Income in Rs.	Crime Committed by Bail Abusers				
	Not responded	Violent Offence	Property Offence	Offence against women and children	SLL offences
Upto-3000	0	1	1	1	1
3001-5000	1	1	1	0	2
5001-7000	2	11	7	0	4
7001-10000	1	9	5	0	2
10000 above	1	31	17	0	2
Not responded	0	1	0	0	0
TOTAL	5	54	31	1	11

$$= 39.949, df = 20, p < .005$$

The above table shows the relationship between nature of crime and income of the bail abusers. The majority (51%) of the respondents were working in the private sector, 28.4% were self-employed and 16.7% of them engaged in other type of employment. The income of the bail abusers plays a significant role. Further, statistical analysis shows that the association between income and nature of crime is significant ($= 39.949, df = 20$ and $p < .005$). It clearly indicates that persons with high-income group have committed more violent and property related crimes.

5.3. Extent of bail abuse

Data indicates that North Region (Zone-XI) of Mumbai has been critical due to its demographic profile. It is the home for a large number of migrated population and slum areas therefore this area is a social laboratory for violent and property related offences. According to National Crime Records Bureau (2013) Delhi, Mumbai, Bangalore and Kolkata have accounted for 13.0%, 6.3%,

5.6% and 4.7% respectively of the total IPC crimes reported. The NCRB data from 53 mega cities reported significant increase of IPC crimes during the year 2013 as compared to previous year (2012).

Nevertheless, the Mumbai police claim that conviction rate has reached an all-time high this year at 50.72% until November 30, 2014. The highest conviction rate in the past was 45.65% in 2005, while the conviction rate for crimes registered under Indian Penal Code (IPC) touched 38.27%, the conviction for special and local laws reached 86.47%. In 2013 the conviction for the same was 30.94% and 54.14% respectively, with another fortnight to go; the conviction rate might just go up slightly. The increase in conviction rates was among the many agendas of Mumbai Police⁷¹.

5.4. Awareness of bail as a legal right

It is noteworthy to mention that bail abusers are known differently by various CJS stakeholders. The present table shows nomenclature to address the bail abusers by CJS stakeholders :

Table 5.10: The nomenclature of bail abusers

Nomenclature of Bail Abusers	Recidivist	Bail abusers and Recidivist are different (absconders)	Habitual Offender
Police officials (N=21)	57%		
Prosecutor (N=09)		44%	
Prison officials (N=30)			80%

Source: Field Work

The above table 5.9 indicates that bail abusers are popularly known by different names in the local or regional languages in Maharashtra and Uttar Pradesh. Police officials usually call them recidivists, while prosecutors distinguish both categories- bail abusers and recidivists and prison officials term them as the habitual offenders. Sometime these terms are also used interchangeably.

⁷¹ The Free Press Journal, Mumbai, December.18, 2014, p.3.

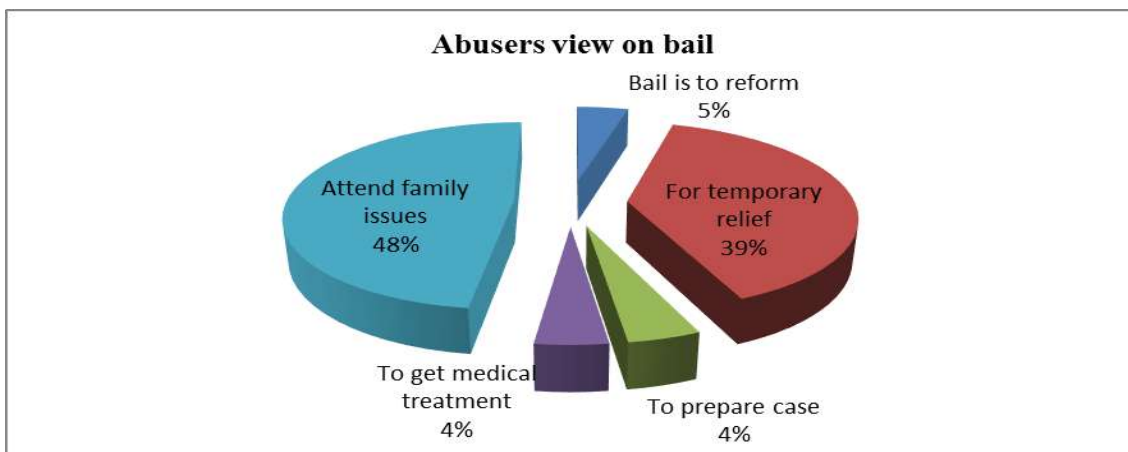
Table 5.11: Awareness of bail as a legal right

Bail as legal rights	Frequency	Percent
Strongly agree	18	17.6
Agree	64	62.7
Neutral	3	2.9
Disagree	4	3.9
Not responded	13	12.7
Total	102	100

Source: Field Work

The above table shows that eight out of every ten respondents (80.3%) were aware regarding bail as their legal right.

Figure 5.1: Meaning of bail



To understand the views of bail abusers on the concept of bail from their perspective, question was asked ‘what do you mean by bail.’ The content analysis of the responses reveals that 4.3% of the abusers felt bail is meant for reform of offenders, but a majority felt it is meant to attend family issues and 39.1% stated it is a temporary relief from police custody. However, those who stated that it is designed to prepare their case for court hearing in a better manner and to get medical treatment for the fracture if any due to torture in police custody constituted 4.3% each.

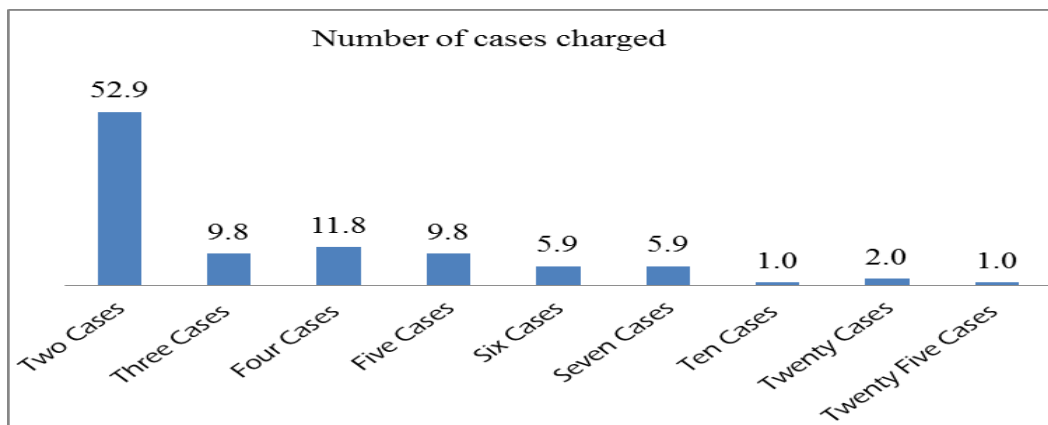
Table 5.12: Association between nature of crime and bail duration

Nature of crime	Within 3 months	3-6 months	6-9 months	9-12 months
Violent offence	39	3	1	1
Property offence	25	0	0	1
Offence against women and children	1	0	0	0
SLL offences	8	0	0	0

= 7.993, df = 16, p < .05

The analysis shows that the nature of crime and the bail duration from courts are related as value = 7.993, df = 16 and p < .05. Hence, it is significant; those involved in violent crimes and property related crimes have managed to get bail within three months. This fact can be explained with respect to the association between nature of crimes and income explained in table 4.08. High income groups proved to be involved in property related and violent crimes.

Figure 5.2: Number of cases charged



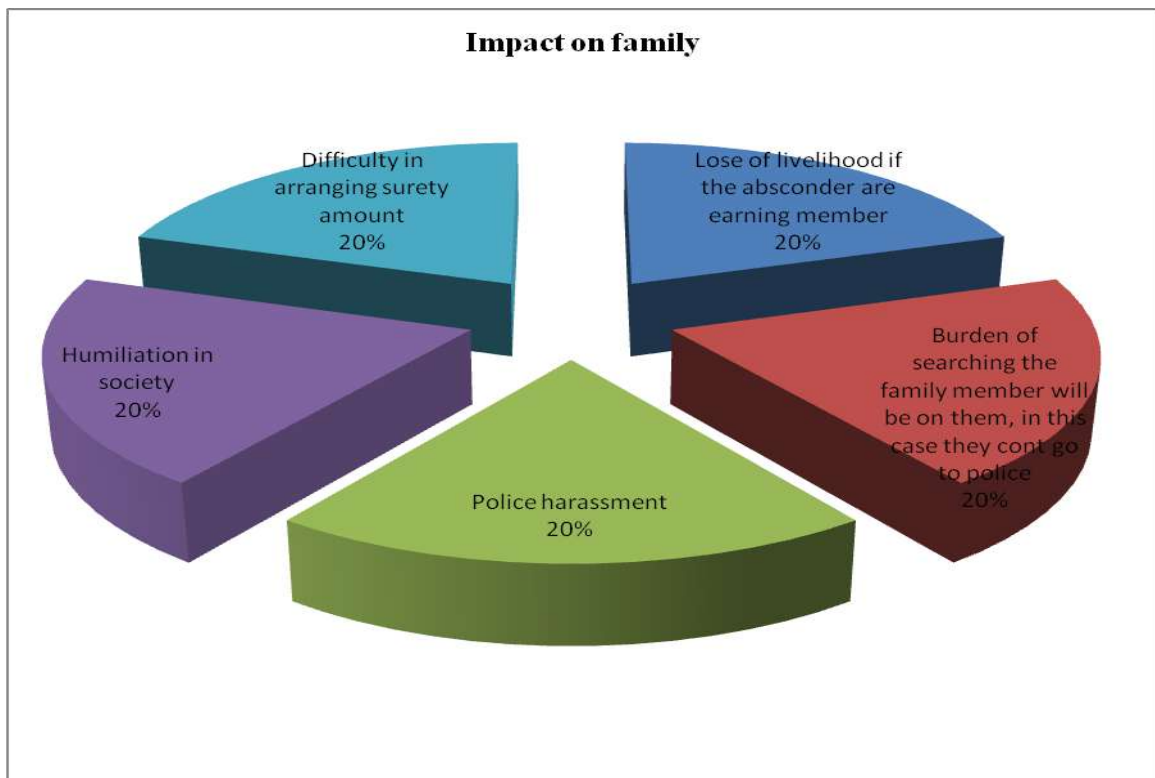
The above table reflects the relevant data, which shows the number of cases charged against the bail abusers. The extent of bail abuse can be gauge by analyzing the data on number of times bail was abused by the accused. Around 52% of the respondents stated that there were two cases registered against them, 9.8% reported three cases and 11.8% had four cases against them . Interestingly five

cases were registered against 9.8% abusers, six cases and seven cases registered against 5.9% abusers respectively. Those who had reported ten cases, twenty cases and twenty-five cases were 1%, 2% and another 1% respectively. Thus, data shows the trend regarding cases registered against bail abusers .

5.5. Impact of bail abuse on Individual, Family &Communities

A majority of the bail abusers i.e.(60%)in other word six out of every ten respondents opined that their absconding after securing bail had adversely affected them and their families. The major problem was police harassment to the family members and even relatives. Further, it had also impacted negatively on the livelihood of the family as well as social image of the family members.

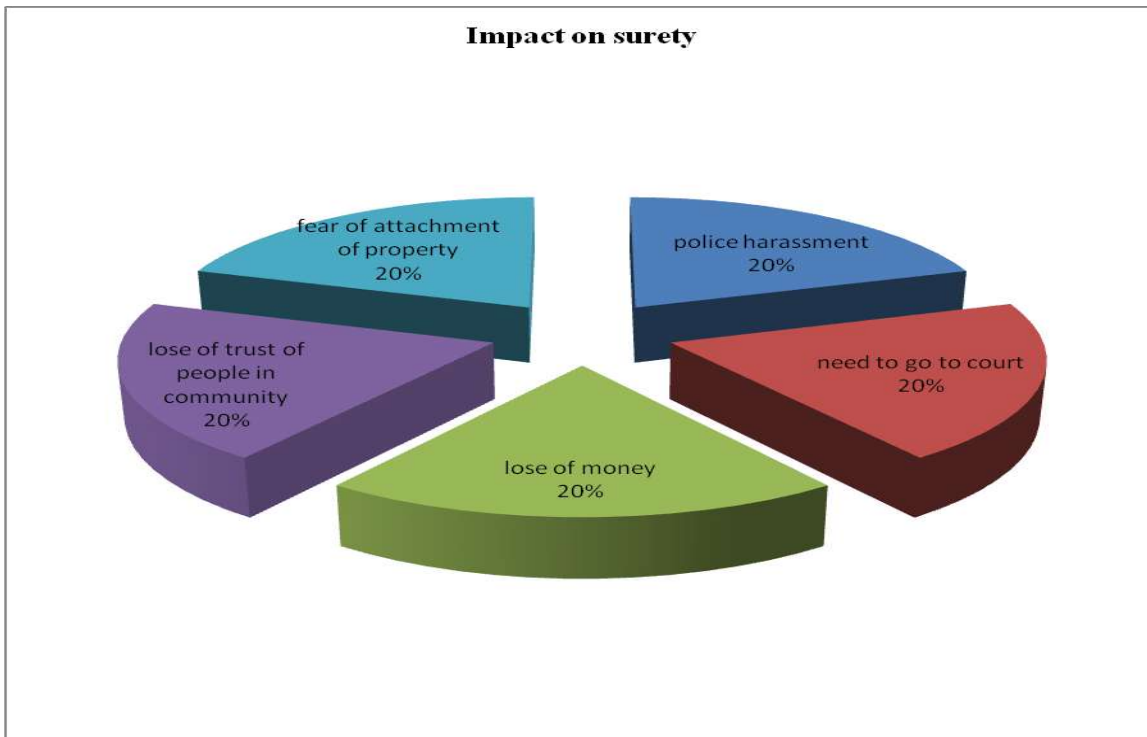
Figure 5.3: Impact on Family



Impact on Surety

Another perspective emerging through analysis is that due to absconding and repeat crimes by the accused, surety felt harassed, frustrated and vulnerable and decided not to assist accused and the criminal justice any more. The sureties also expressed that they gave surety due to the faith in the person and lack of awareness of the fact that violation of bail condition or abused of bail will leand them in trouble.

Figure 5.4: Impact on Surety



Further, above figure shows that the problems faced by them were fear of attachment of property, police harassment, frequently court visits, loss of money and increasing trust deficit in the neighbourhood and the community.

Impact on Victims

It is also emerged that the accused and co-accused after release on interim bail many times threaten the victim and their families so that victim will not pursue the case in the court. The responses are plotted in the figure.

Crime affects the individual victims and their families. Many crimes also cause significant financial loss to the victims. The impact of crime on the victims and their families ranges from serious physical and psychological injuries to mild disturbances. The Canadian Centre of Justice Statistics states that about one third of violent crimes resulted in victims having their day-to-day activities disrupted for a period of one day (31%), while in 27% of incidents; the disruption lasted for two to three days (Aucoin & Beauchamp, 2007).

According to a study conducted by Kumaravelu Chockalingam in 18% of cases, victims could not attend to their routine for more than two weeks. A majority of incidents caused emotional impact (78%). Irrespective of the type of victimization, one-fifth of the victims felt upset and expressed confusion and or frustration due to their victimization. Overall, victim's felt less safe than non-victims. For example, only a smaller proportion of violent crime victims (37%) reported feeling very safe walking alone after dark than non-victims (46%). Just less than one-fifth (18%) of women who had been victims of violence reported feeling very safe walking alone after dark when compared to their male counterparts. (Kumaravelu Chockalingam, Measures for crime victims in the Indian criminal justice system Resource material series no. 81, the 144th international senior seminar visiting experts papers). Similarly, Hon'ble Supreme Court of India in *Ankush Shivaji Gaikwad vs. State of Maharashtra* has highlighted that in India the principles of compensation to crime victims need to be reviewed and expanded to cover all cases. The compensation should not be limited only to fines, penalties and forfeitures realized. The State should accept the principle of providing assistance to victims out of its own funds.

The Law Commission, in its report entitled in 1996 had stated that, "The State should accept the principle of providing assistance to victims out of its own funds, (i) in cases of acquittals; or (ii) where the offender is not traceable, but the victim is identified; and (iii) in cases when the offence is proved.

The Justice V. S. Malimath Committee has made many recommendations of far-reaching significance to improve the position of victims of crime in the CJS, including the victim's right to participate in cases and to adequate compensation.

Accordingly, under Section 357 a Victim Compensation Scheme is inserted in the Criminal Procedure Code, which states that:

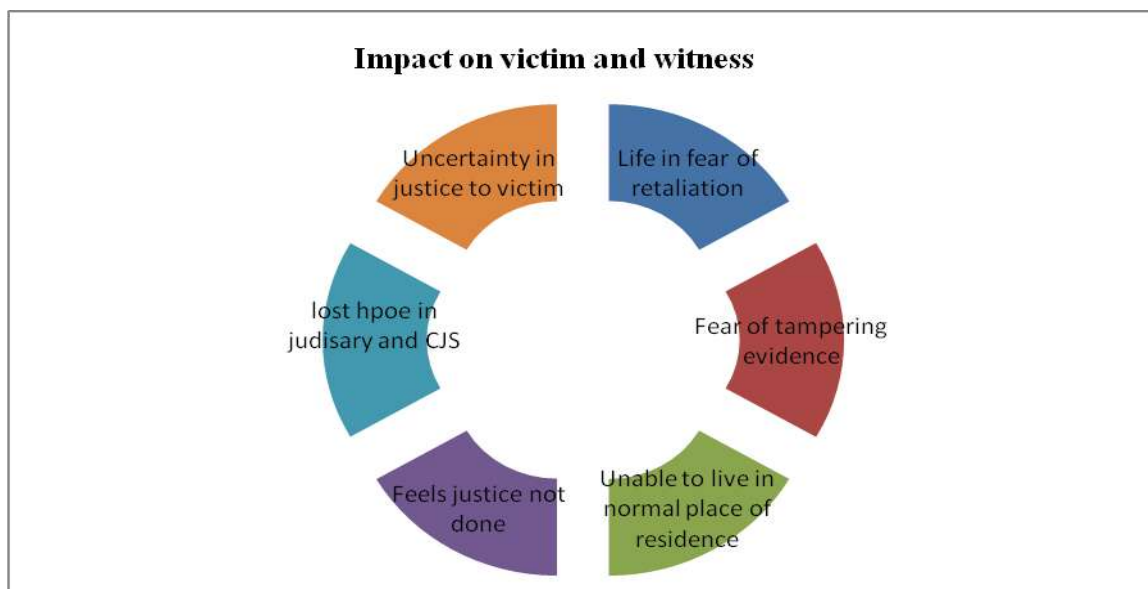
Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents, who have suffered loss or injury as a result of the crime and who, require rehabilitation.

- Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

- If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.
- Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.
- On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.
- The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit⁷².

Impact on Witnesses

Figure 5.5: Impact on Victim and Witness



The Hon'ble Supreme Court has depreciated the practice of courts adjourning cases without examination of witness. In *State of U.P. Vs. Shambu NathSingh*⁷³ the court declared:

⁷² Source: http://devgan.in/criminal_procedure_code/chapter_27.php#s357A

⁷³ *State of U.P. Vs. Shambu NathSingh, SC.*

“It is a sad plight in trial courts that witnesses who are called through summons or other processes stand at the doorstep from morning till evening only to be told at the end of the day that the case is adjourned to another day. This primitive practice must be reformed by presiding officers of the trial courts and it can be reformed by everyone provided the presiding officer concerned has a commitment to duty. No sadistic pleasure in seeing how other persons summoned by him as witness, are stranded on account of the dimension of his judicial powers can be persuading factor for granting such adjournments lavishly, that to in casual manner.”

In this landmark judgment, the Court put a stop to harassment caused to witnesses in *criminal cases* due to frequent adjournments and directed that “if a witness was present in trial court, he must be examined on that day itself.” This ruling has a number of positive features. *Firstly*, it stands to benefit thousands of harried witnesses who will now no longer have to face the daunting prospect of making countless trips to the courts to depose. Until now, when witnesses responded to summons and arrived at the courts to depose they would find that more often than not the hearing had been adjourned on some specious ground. Frequently defence lawyers took advantage of legal loopholes to force adjournments and delay trial proceedings by years together. This repeated adjournment caused some witness - great personal and occupational hardships by law’s endless delay to retract their statements and subsequently to turn hostile. This would jeopardize the prosecution’s case and often lead to a dubious convictions. *Secondly*, the ruling will also minimize the risk of witnesses being intimidated by criminals and their agents by reducing the possibilities for threats made available by repeated postponements. There have been a number of recent instances according to official dispositions made in court where in witnesses produced by the prosecution have been identified by agents working for the accused and have either been bribed, kidnapped or killed (Arvind Tiwari, 2001)⁷⁴.

The issues of ‘Witness Identity Protection and Witness Protection Programmes’ were taken up by the Law Commission suo motu in the light of the observations of the Hon’ble Supreme Court in *NHRC vs. State of Gujarat*, 2003(9) SCALE 329; *PUCL vs. Union of India*, 2003(10) SCALE 967; *Zahira Habibullah H Sheikh and Others vs. State of Gujarat*, 2004(4) SCC158 and *Shakshi vs. Union of India*, 2004, that a law in this behalf is necessary. More recently the same view was expressed by the Hon’ble Supreme Court in *Zahira Habibulla Sheikh vs. Gujarat*, 2006(3) SCALE,

⁷⁴ Arvind Tiwari, Crime prevention and criminal justice system, 2001.

104. The Court stated in all the above cases that having regard to what is happening in important cases on the criminal side in our Courts, it is time a legislation is brought forward on the subject of witness identity protection and witness protection programmes.

The Law Commission of India released a Consultation Paper on ‘Witness Identity Protection and Witness Protection Programmes’ in August 2004. After release of the Consultation Paper, the *Criminal Law Review*, a leading law journal published from the United Kingdom, in its issue of February 2005 (at page 167), reviewed the Consultation Paper under the heading of ‘Law Reform’ as follows:

“The Law Commission of India⁷⁵ has published a substantial Consultation Paper “*Witness Identity Protection and Witness Protection Programmes*” (August 2004). As its title suggests the paper covers two broad aspects of the need for witness protection. The first addresses the questions of whether and to what extent provision ought to be made for witnesses to give evidence anonymously during criminal trials. One of the remarkable features of the paper is the breadth of the research that has been undertaken. The paper comprises a comparative study of case law on witness protection and anonymity which, in addition to common law jurisdictions, encompasses the procedures adopted by the respective International Criminal Tribunals for Yugoslavia and Rwanda, and reviews the jurisprudence of the European Court of Human Rights.

The second aspect of witness protection covered by the paper concerns “the physical and mental vulnerability of witnesses” and the need to take care of various aspects of the welfare of witnesses which call for physical protection of witnesses at all stages of the criminal process.” The paper goes significantly beyond the traditional scope of comparative studies in criminal justice law reform documents, which is confined to practices in the more prominent common law jurisdictions. In addition to statutory schemes in Australia, South Africa, the United States, and Canada, those operating in continental jurisdictions, including France, the Netherlands, Germany, Portugal and Italy (The Law Commission of India, 2004)⁷⁶.

⁷⁵ The Law Commission of India “*Witness Identity Protection and Witness Protection Programmes*” (August 2004).

⁷⁶ Ibid.

Chapter VI

Stakeholders' Perspective on Bail System

In this chapter an attempt has been made to understand the bail system and the issues surrounding from the point of view of various stakeholders such as the police, defence lawyers, prosecutors, victims, community, surety and witness. It looks into causes and modus operandi of bail abuses, inter linkage between the same and political patronage and correlations if any between the level of income of the accused and phenomenon of bail abuse. It also examines the relation between the nature of crime and bail abuse as a response.

6.1. Stakeholders' Perspective on Bail System

As discussed in chapter 1 the law of bail has its own philosophy, and occupies a role in the administration of criminal justice. The practice of bail emerged out of conflict between the State power to restrict liberty of citizen and the will of individual to be free. To resolve this conflict judicial system has to presume innocence in favour of the alleged until he is proved guilty. An accused has not been detained in custody as punishment on the assumption of his or her guilt. Personal liberty is fundamental and can be circumscribed only by some process sanctioned by law. Citizen's liberty is undoubtedly important but this is to be balanced with the security of the community. A balance is required to be maintained between the personal liberty of the accused and the investigatory right of the police. It must result in minimum interference with the personal liberty of the accused and the right of the police to investigate the case. The required balance is assumed by carefully crafted bail system.

Police Perspective

Table 6.1 Police official's view point on bail as a legal duty

Response	Frequency	Percentage
Very True	07	17.5
True	29	72.5
Neutral	00	0
Not True	02	5
Not at all True	02	5
Total	40	100

(Source: Field Work)

Police is the primary agency of criminal justice system. The bail is legally available at the police station level for bailable offences. When police officers were asked about the fact that the granting bail in bailable offences is the duty of the police, 90% of them responded affirmatively.

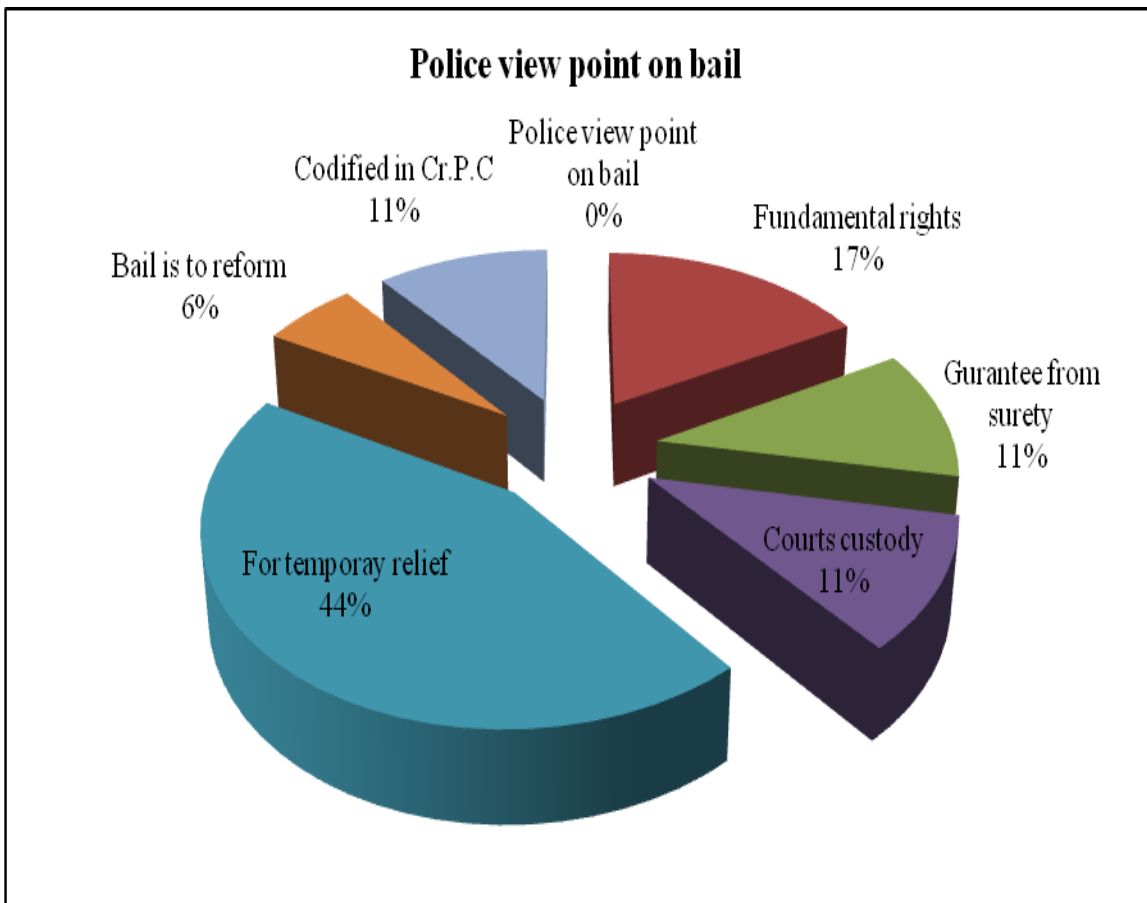
Table: 6.2: Police power to grant bail in bailable offences at Police station level

Response	Frequency	Percentage
Very True	10	25
True	26	65
Do not know	00	0
Not True	02	5
Not at all True	02	5
Total	40	100

(Source: Field Work)

The above table shows that nine out of every ten respondents (90%) stated that police have power to grant bail in bailable offences at police station level, however, 10 % of them did not agree to this view.

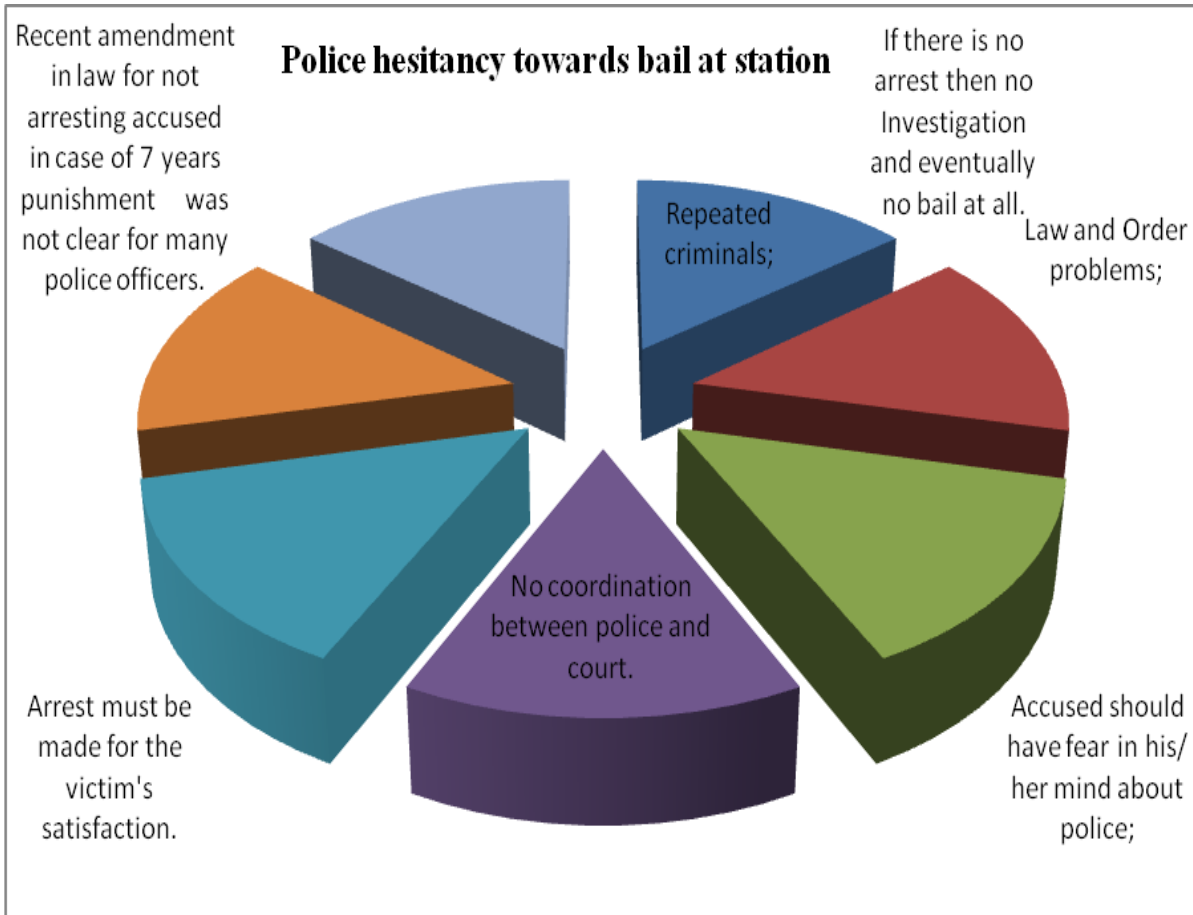
Figure 6.1 Police view point on bail



Similarly, police officers opinion about bail was also sought. The varying responses expressed by them are also tabulated through content analysis. Those who stated that bail is a tool to reform the accused constitutes 5.6%, a temporary relief 44.4% and 16.7% respondents stated that bail is a right of the accused in bailable cases.

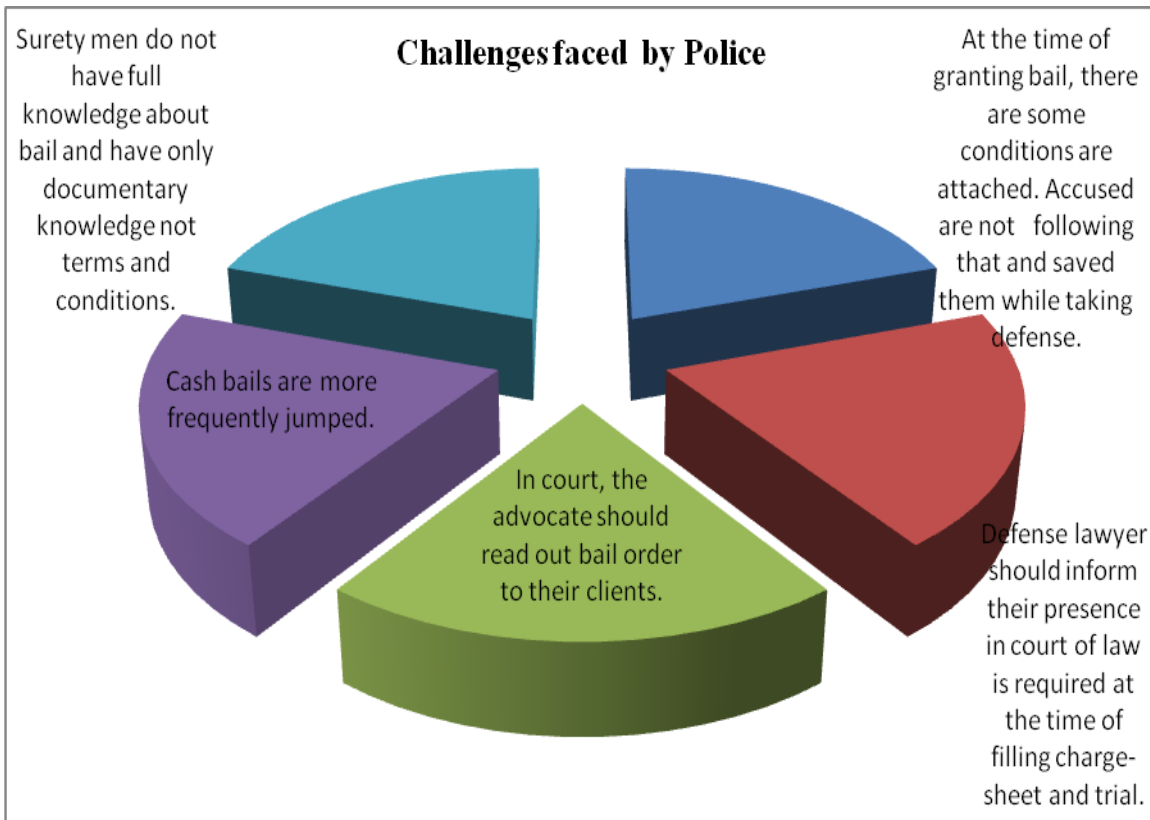
Police Reluctance to Grant Bail in bailable offences

Figure 6.2: Police reluctance to grant bail at police station level



The data presented in above Figure shows that Police officers are reluctant in granting bail in bailable offences if the bailee is a recidivist or if law and order problem would emerge in the area and victim's faith in justice delivery process would erode.

Figure 6.3: The problems faced by police in bailable cases



Some of the bail abusers have stated that they were not aware about these conditions although police officials have clearly stated that at the time of granting bail the bailee is briefed about the bail conditions. In fact, lawyers empanelled in legal service authority as well as defence lawyers should inform his or her client the bail conditions. Similarly, few surety men also did not have adequate understanding about bail conditions, particularly, if bailee is not appearing in the court on due date then he will have an obligation to produce him or her or deposit surety amount.

Further, some other problems faced by police officials in granting bail were also expressed in the FGD. They stated that many bail and parole absconders do not have permanent addresses which cause difficulty for police in execution of arrest warrant. Similarly, due to bad image of the police in society, public do not cooperate with police in discharging various statutory requirements. An overwhelming majority of the police officials suggested to minimize cases of bail abuse and bogus surety with the help of Court Karkoon which shall furnish detailed information about the surety (linked to ADHAR) before granting the bail to the Magistrate to avoid bail abuse and bogus surety.

Police Perspective on Bail System

The data shows that in some bailable offences such as - offence under Section 324 of Cr. P.C. etc. if there is serious bodily injury and heavy bleeding despite it being bailable offence police do not grant bail to install public trust in police otherwise people would feel that police have taken bribe and granted bail. The FGD further highlighted that if the accused is released on bail from Police Station then he would feel that the process is very simple and some of them could indulge in more heinous crimes. So usually in serious Body Offences (BO) police produces the accused before the court for bail decision. The police officials also suggested that in such cases the option of bail should not be given to the Police Station level.

The analysis further shows that if a women is accused the law mandates that they cannot be arrested between 8 pm to 8 am. For example, in hooch /liquor raids, the owners generally use women as a shield to avoid arrest. Therefore, women are generally arrested in the morning and then presented in the court even in bailable cases. Hence, to maintain public order in the society women are brought at Police Station and next morning they are shown as arrested and then produced before the court. The FGD further indicated that in the cases relating to drug abusers, it is difficult to keep them in Police Station because due to influence of drug they become violent and hit themselves to the extent of slashing their own skin and police is accused for third degree treatment, which is not true. So to avoid this situation drug abusers are given bail at Police Station or sent to court for bail immediately after their arrest.

Regarding recidivism data indicates that many offenders involved in petty crimes always get bail in several bailable cases (8-10 offences) and repeat crime as a professional criminal. Therefore, classification of bailable and non-bailable offences and procedure to grant bail shall be reviewed. They further suggested that while releasing on bail, the court should examine whether accused has potential to abuse bail the ?

The analysis shows that police department is monitoring and taking preventive action against abusers. In cases of repeat offenders or history sheeters especially regarding property offences, body offences and known *mawalis* are kept on surveillance . Periodic review is done for these repeat offenders. If the accused jumps bail then bail is cancelled and the accused is arrested and in some cases externment process is also initiated. Sometime petty offenders as chain snatchers are booked under stringent laws such as the Maharashtra Prevention Of Dangerous Activities Of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons And Video Pirates Act, 1981 and the Maharashtra Control of Organised Crime Act, 1999 so that they should not get bail and repeat

crimes. Police officials suggested if local self-bodies and Panchayati Raj Institutions collaborate with police for monitoring of bail abusers it would facilitate them in tracking bail abusers and recidivists.

The FGD revealed the challenges faced by police in bailable cases. At the time of granting bail some conditions are attached. However some accused do not observe these conditions and make an excuse that they did not know these conditions. The officials informed that the accused who furnish cash bail often violate bail conditions. This aside, majority of the surety men who stand surety do not have understanding on bail conditions. One of the major challenges to police is that due to workload and non-availability of Standard Operating Procedure (SOP) on bail system proper documentation is not done and that creates difficulties in tracking bail abusers and recidivists. Other challenges faced by police are frequent change of addresses particularly in slum areas of Mumbai, fake/false/bogus identities and addresses furnished by the sureties. An interesting suggestion emerged through FGD is that real Estate developers and Slum Rehabilitation Authority should be mandated to create data base of local residents of a particular locality developed by them so that can be used in such cases. The FGD analysis focalized that professional gangs, drug mafia, human traffickers; organized criminals etc. procure fake documents and use them for securing bail of their members so that they can repeat crimes. Increasing trend of chain snatching cases in Mumbai is one of the examples of such trend.

The separation of Prosecution from Police is also a contributing factor in bail abuse and recidivism. The Hon'ble Supreme Court in *Sarala Vs. Velu*, AIR 2000SC 1732⁷⁷ rendered the final push in tearing apart the two arms of the criminal justice system namely the prosecution and investigation. Firstly, the 1973 amendment to the Criminal Procedure Code extinguished police supervision over prosecution and later this judgement ended the practice of consultation and coordination between police and prosecutors during investigation and preparation of charge sheet or final report under 173(2) of Cr.P.C. Cases are today investigated by the police and subsequently prosecuted by the prosecution with hardly any cooperation between the two (The Malimath Committee Report on Reforms of the Criminal Justice System, 2003)⁷⁸.

⁷⁷ Sarala v. Velu AIR 2000 SC 1732

⁷⁸ The Malimath Committee Report on Reforms of the Criminal Justice System, 2003, MHA, New Delhi

With the two agencies of criminal justice having nothing to do with one another the quality of trials has deteriorated and hurt the administration of justice adversely. While conviction rates in countries like USA, UK, France and Japan are in range of over 85%, conviction rate in India is in the 40% range. For serious cases like murder (39.1%), dacoity (22.7%), robbery (30.9%) and rape (28%), it is even lower. An opportunity has now come up to correct this anomaly through the decision of the apex court in *State of Gujarat Vs. Kishan Bhai* (2014) 5 SC 108⁷⁹. In this case out of sheer frustration at the miserable investigation and prosecution in a case of a gruesome rape, mutilation and murder of a minor girl, the Hon'ble Supreme Court was forced to come out with a tough decision suggesting corrections in the work of these two agencies.

In *State of Gujarat Vs. KishanBhai*⁸⁰ the Hon'ble Supreme Court directed that the Home Department of every State Government, to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. "All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive." As directed by the Hon'ble Court if prosecutors and investigators are going to be penalized for their lapses (as should rightly be done as today there is simply no accountability on either the investigator or prosecutor if a case ends in acquittal) then it is important to create an enabling system whereby they can collaborate and consult and thus minimize lapses. Looking ahead, firstly, a system of collaboration must be established between the prosecuting officer and investigating officer to consult each other at both the juncture during investigation and formation of opinion at the end of investigation.

⁷⁹ Gujarat vs. Kishan Bhai (2014) 5 SC 108

⁸⁰ Ibid.

Figure 6.4: Type of bail abusers

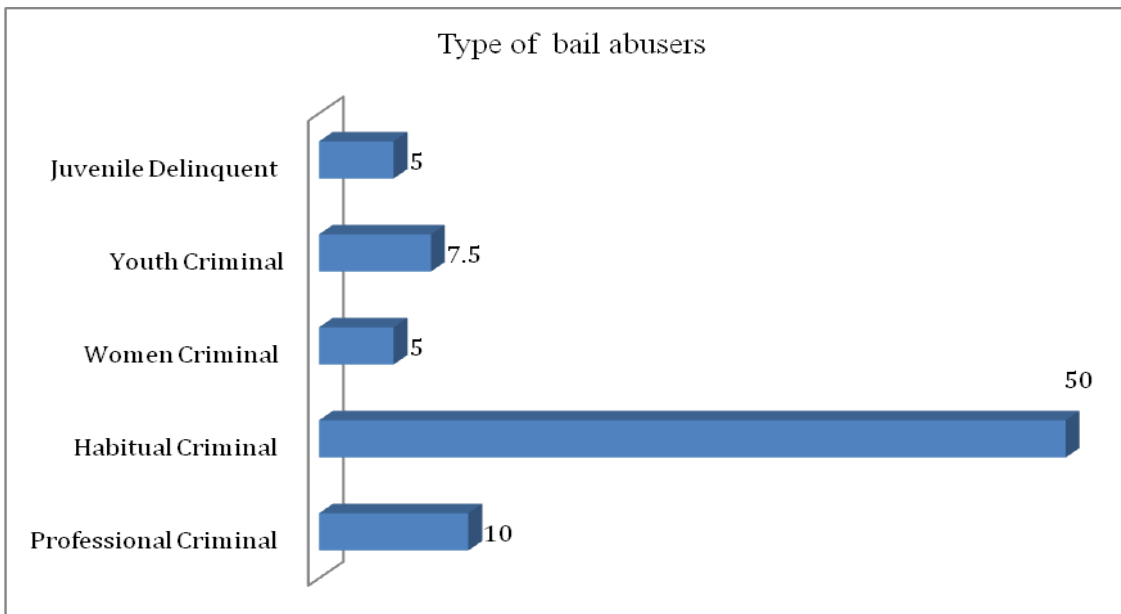


Figure 6.4 highlights that majority of the police officials opined that about a large number of bail abusers belong to habitual offender’s category.

Table 6.3: Trend in frequency of bail abuse

Response	Frequency	Percentage
Yes	15	37.5
No	09	22.5
NR	16	40.0
Total	40	100

(Source: Field Work)

When asked whether phenomenon of bail abuse is increasing 37.5% of the police officials agreed to this. However, 22.5% did not agree to this view.

Prison Officials Perspective on Bail System

Nomenclature of bail abuser

Table 6.4: Nomenclature of bail abuser

Response	Frequency	Percentage
Recidivist	01	03.3
Habitual Offender	24	80.0
Gangster	01	03.3
Other	01	03.3
NR	03	10.0
Total	30	100

(Source: Field Work)

It is important to mention that the nomenclature for bail abuser differ among criminal justice agencies. For example, eight out of every ten prison officials stated that they commonly call bail abuser as a habitual offender. Only a small number of prison officials call them as gangster and recidivist etc. However, the nomenclature differs from State to State.

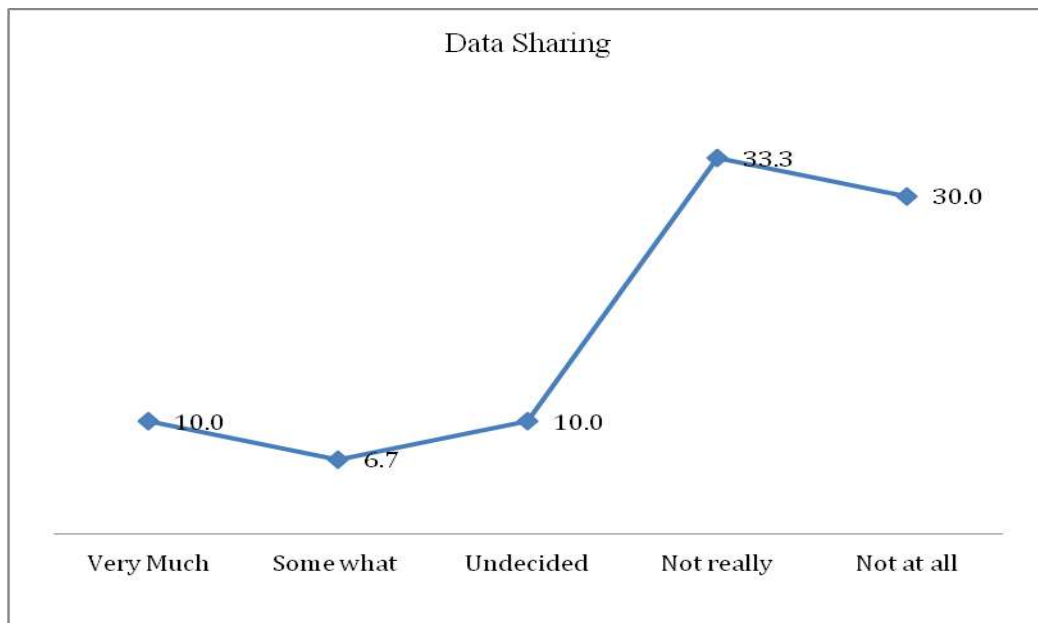
Table 6.5: Bail abuser's identity and data in the prisons

Response	Frequency	Percentage
Yes	08	26.7
No	16	53.3
NR	06	20.0
Total	30	100

(Source: Field Work)

It is evident from the earlier table that most of the prison official do not share data regarding bail abusers within CJS functionalities because such system does not exist in the Department. The Figure 6.5 further strengthens their claim and shows that little more than one -fourth (26.7%) of the officials stated that they do maintain such data .However, more than half of them (53.3%) stated that no such specific data is maintained in the prisons.

Figure 6.5: Sharing of data on Bail abusers



Most of the prison officials (60.3%) opined that we do not have SOP on this issue. However, they do it if are asked by other CJS functionalities, only 10% of them said that they are the sharing information about bail abusers with other CJS functionalities.

Table 6.6: Separate cell for bail abusers in the prisons

Response	Frequency	Percentage
Yes	04	13.3
No	23	76.7
NR	03	10.0
Total	30	100

(Source: Field Work)

The above table clearly shows that more than three- fourth of the prison officials (76.7%) stated that separate cells for bail abusers could not be available mainly due to overcrowding in the prisons.

Figure 6.6: Prison Officials perception on causes of bail abuse

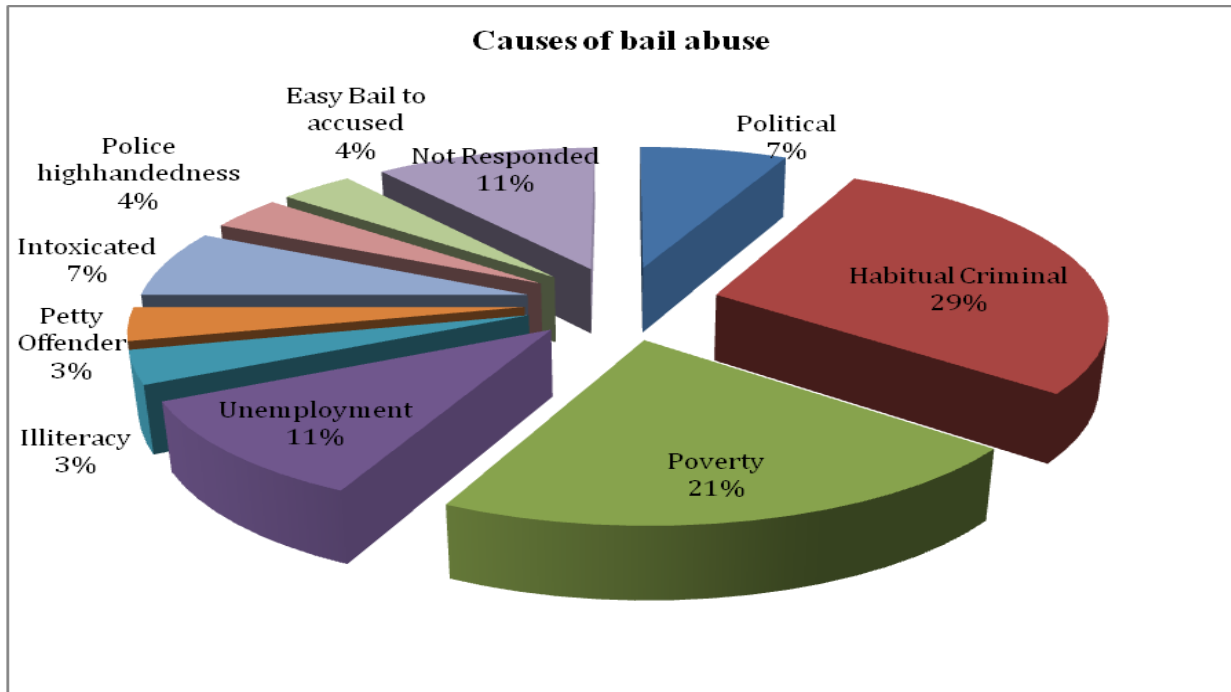
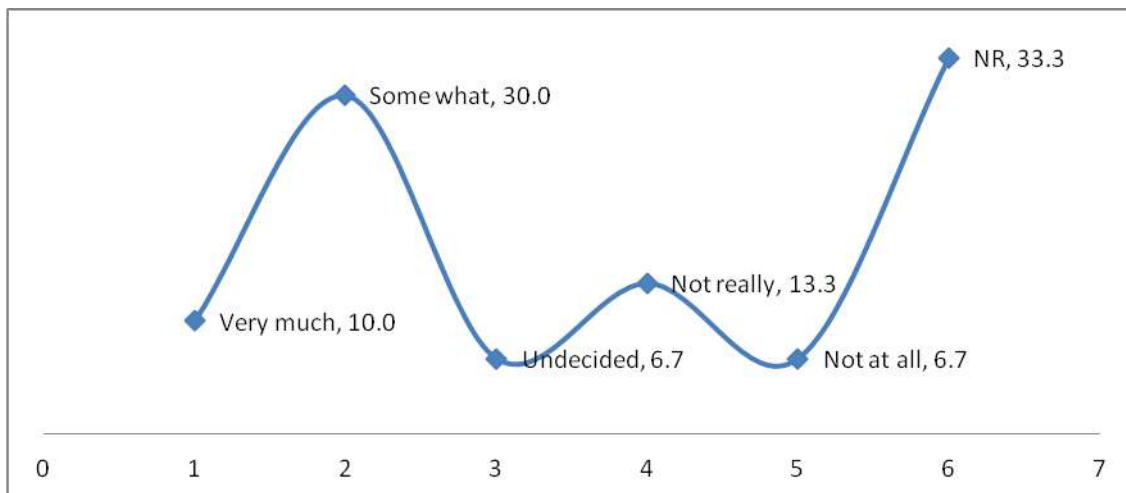


Figure 6.7: Bail Abusers’ participation in correctional programme



The handbook by UNODC⁸¹ stated that the number of prisoners grows and no additional space for their accommodation is provided, obviously overcrowding in prisons occurs. Building new capacity

⁸¹ Handbook on strategies to reduce overcrowding in prisons, Criminal justice handbook series in cooperation with the international committee of the Red Cross, UNODC.

can be necessary to replace aging infrastructure and provide adequate space and standards of living, in line with national and international law. Many prisons in use today are old, with inadequate facilities and services. As ICRC has noted some prisons have accommodation blocks with few buildings other than a kitchen and gate entry area, with no or limited visiting facilities, health clinics, workshops, classrooms and other necessary services. As prison populations continue to increase it is common to find classrooms, workshops and other buildings and outside space converted to provide additional accommodation. Facilities built as temporary structures often continue to be used years later. Some facilities, which are used as prisons, were built for quite different purposes or for very different categories of prisoners than those currently accommodated. In some, no modification will have been made and even where building alterations have been undertaken, many facilities will continue to present significant challenges for prison management (UNODC)⁸².

The government should look out the increase of crime in society and followed by appropriate action by police which many time requires judicial custody, as it requires more space in jails to accommodate under trials. Government should plan for long-term policy for infrastructural improvement in prison and creating new prison as per crime rate proportion with population of India (UNODC)⁸³.

Public Prosecutors' viewpoint

Table 6.7, highlights the impact of non-appearance of accused in the court of law during court hearing. We have interviewed 9 public prosecutors in Mumbai and Thane courts (with lot of persuasion and follow- up) and all of them stated that non-appearance of accused in the court constitutes bail abuse and abuse of bail conditions invites cancellation of bail itself. Further, they strongly felt that bail abuse is one of the reasons for delay in dispensation of justice.

⁸² Ibid.

⁸³ Ibid.

Table 6.7 Impact of absconding (non-appearance) on Justice delivery

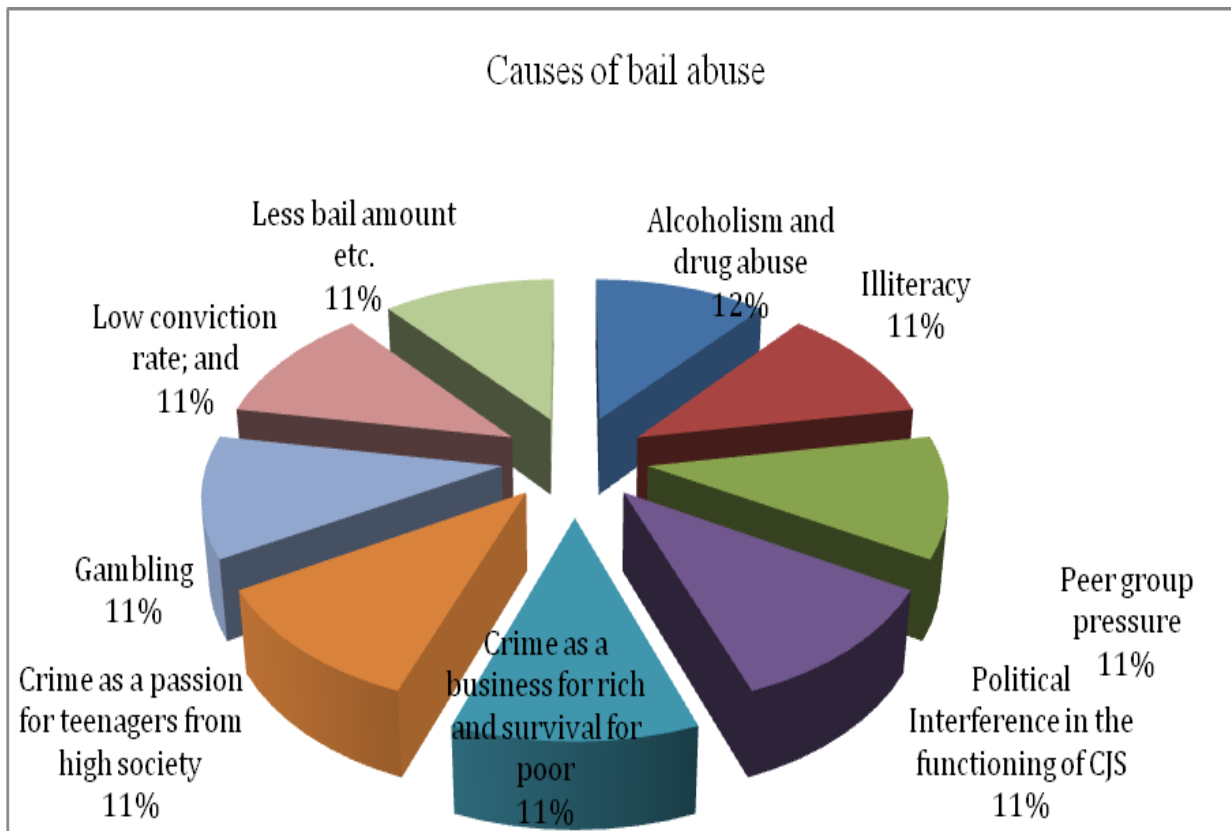
Particulars	Frequency	Percent
Whether non-appearance of accused in the court constitutes bail abuse?		
Yes	9	100
No	0	
Whether Abuse of Bail is a valid reason for Cancellation of bail?		
Yes	9	100
No	0	
Whether bail abuse is one of the causes for delay in dispensation justice?		
Yes	7	77.8
No	2	22.2
Total	9	100

(Source: Field Work)

6.2. Causes of Bail Abuse

Prosecution is the second agency of criminal justice system, which presents the charge sheet/ facts in court of law. Thus, while dealing with such cases in the court proceedings they experienced that phenomenon of bail abuse is increasing. Therefore, eliciting their opinion would provide useful insight about causes and consequences of bail abuse.

Figure 6.8: Public Prosecutors' Perspective on causes of bail abuse



Lawyers' perspective on bail system

As a stakeholder, in the present study, around 30 lawyers, practicing in different courts located in Maharashtra and Uttar Pradesh were interviewed through in-depth interview . Broadly they were asked about functioning of bail system in various courts across both the States in general and practice of “bail not jail” principle in particular.

Figure 6.9: Perception of Lawyers on Principle on Bail not Jail

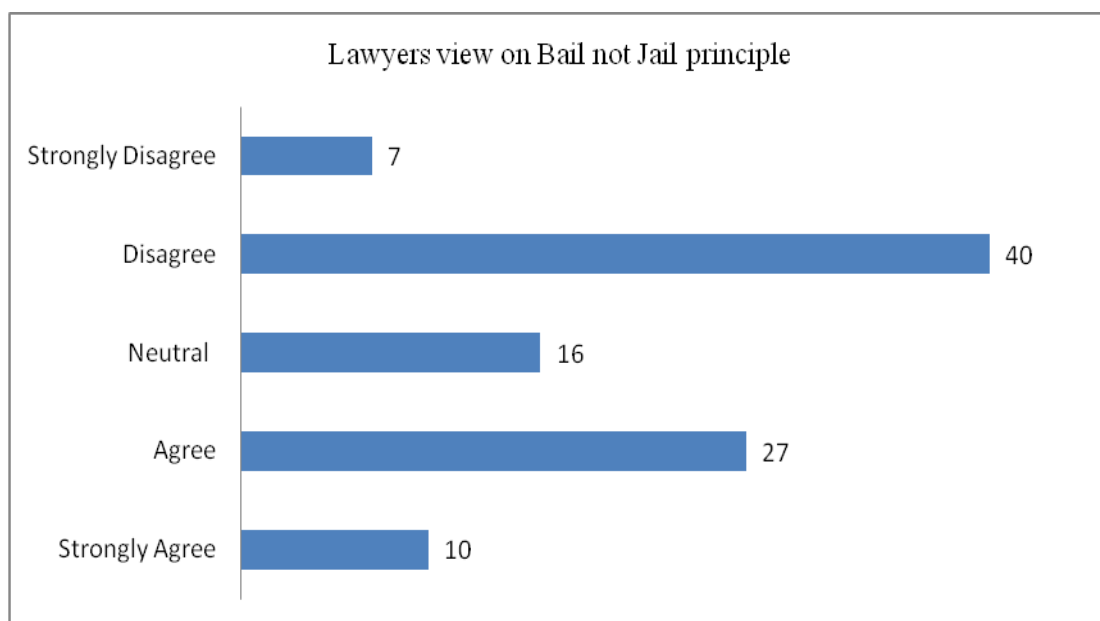
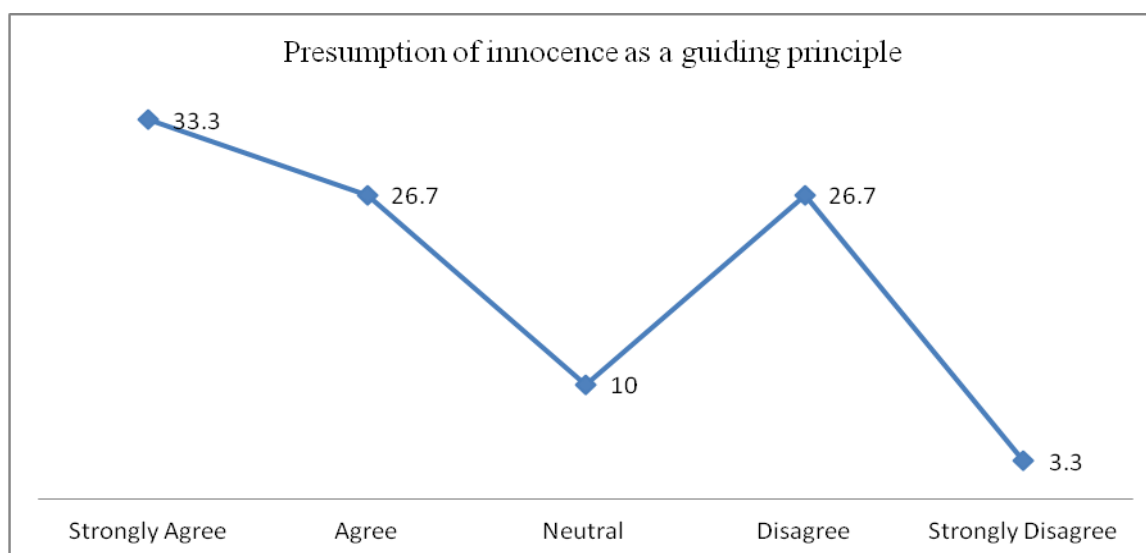


Figure 6.10 shows that 40% of the lawyers stated that in practice ‘bail not jail’ principle for accused particularly poor and marginalized sections of society who are involved in petty offences is not being realized.

Figure 6.10: Guiding principle for ‘Bail not Jail’

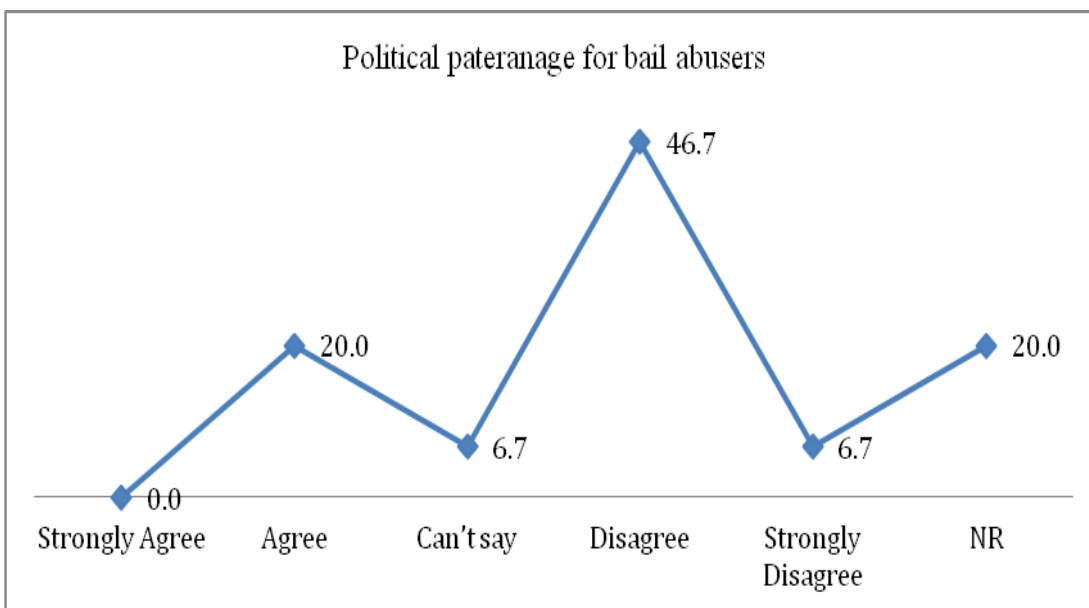


It is a well-known fact that presumption of innocence is the guiding principle for “Bail not Jail” policy for granting bail. To understand lawyer’s perception on this issue, 30 lawyers were interviewed in both the States. The responses are analysed and tabulated for clear understanding.

Above figure shows that the majority of the lawyers (60%) subscribe to the view that presumption of innocence is a guiding principle for “Bail not Jail.”

It is noteworthy to mention that the procedure shall also protect victim’s right to safety, security and fair trial. Since rights of victims are new concerns in criminal justice system, it seems useful to examine whether and how they conflict or interface with the older and more established rights of the offender (United Nation Congress, 2000)⁸⁴. The victim’s rights to be treated with respect seem to have little if any negative implication for the offenders. One argument used against instructions for a more respectful and considerate treatment of victims by police officials and prosecutors is that this might infringe on the assumption of innocence of the offenders (United Nation Congress, 2000)⁸⁵.

Figure 6.11: Political patronage for bail abusers/recidivists

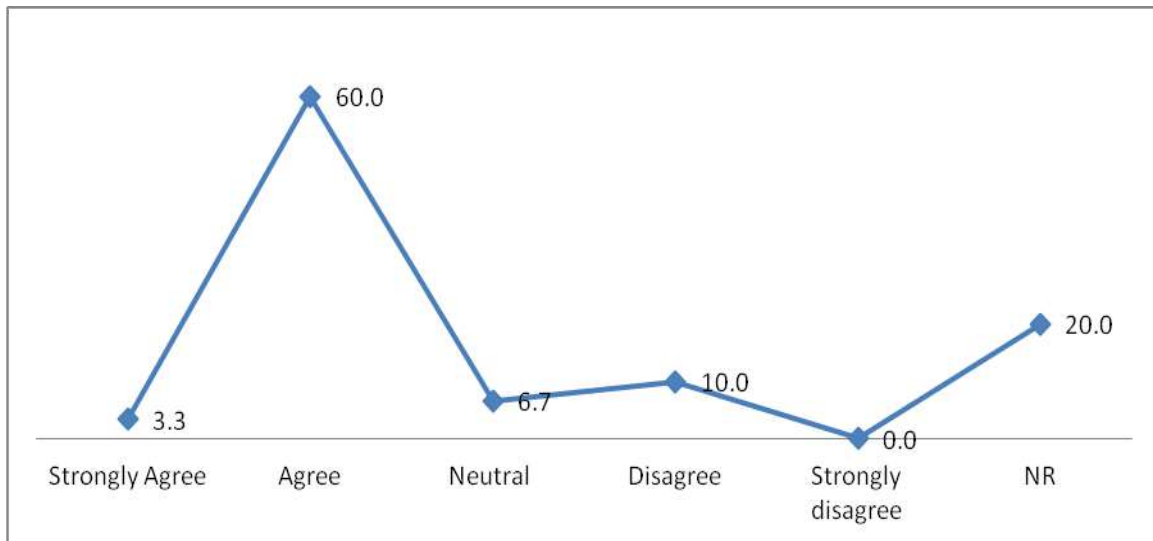


Interestingly, a large number of the lawyers (46.7%) disagree with the view that politicians and political parties patronize bail abusers.

⁸⁴ Tenth United Nation Congress on the prevention of crime and the treatment of offenders, Vienna, 10-17 April, 2000.

⁸⁵ Ibid.

Figure 6.12: Adjournment of cases: pressure tactic played by bail abusers



The above figure demonstrates that six out of every ten respondents (lawyers) agreed that bail abusers use tactics to adjourn the case.

6.3. Criminalization of Politics and its Impact on Bail system

It is noteworthy to mention that the respect for law expected from bailees has been declined as many political leaders contesting election after getting bail in serious crimes and these numbers are increasing in every election. The Hon'ble Supreme Court in Dinesh Trivedi, M.P. and others vs. Union of India and others observed that criminalization of politics is an anathema to the sacredness of democracy. Commenting on criminalization of politics, the Court, lamented the faults and imperfections, which have impeded the country in reaching the expectations, which heralded its conception. While identifying one of the primary causes, the Court referred to the report of N.N. Vohra Committee that was submitted on 5.10.1993. The Court noted that the growth and spread of crime syndicates in Indian society has been pervasive and the criminal elements have developed an extensive network of contacts at many a sphere. The Court, further referring to the report, found that the Report reveals several alarming and deeply disturbing trends that are prevalent in our present society. The Court further noticed that the nexus between politicians, bureaucrats and criminal elements in our society has been on the rise, the adverse effects of which are increasingly being felt on various aspects of social life in India. Indeed, the situation has worsened to such an extent that the President of our country felt constrained to make references to the phenomenon in his address to the Nation on the eve of the Republic Day in 1996 as well as in 1997 and hence, it required to be handled with extreme care and circumspection. It is worth saying that systemic

corruption and sponsored criminalization can corrode the fundamental core of elective democracy and, consequently, the constitutional governance. The agonized concern expressed by this Court on being moved by the conscious citizens, as is perceptible from the authorities referred to hereinabove, clearly shows that a democratic republic polity hopes and aspires to be governed by a Government which is run by the elected representatives who do not have any involvement in serious criminal offences or offences relating to corruption, casteism, societal problems, affecting the sovereignty of the nation and many other offences. There are recommendations given by different committees constituted by various Governments for electoral reforms. Some of the reports are (i) Goswami Committee on Electoral Reforms (1990), (ii) Vohra Committee Report (1993), (iii) Indrajit Gupta Committee on State Funding of Elections (1998), (iv) Law Commission Report on Reforms of the Electoral Laws (1999), (v) National Commission to Review the Working of the Constitution (2001), (vi) Election Commission of India – Proposed Electoral Reforms (2004), (vii) The Second Administrative Reforms Commission (2008), (viii) Justice J.S. Verma Committee Report on Amendments to Criminal Law (2013), and (ix) Law Commission Report (2014).

Vohra Committee Report and other Reports have been taken note of on various occasions by this Court. Justice J.S. Verma Committee Report on Amendments to Criminal Law has proposed insertion of Schedule 1 to the 1951 Act enumerating offences under IPC befitting the category of ‘heinous’ offences. It recommended that Section 8(1) of the 1951 Act should be amended to cover, inter alia, the offences listed in the proposed Schedule 1 and a provision should be en-grafted that a person in respect of whose acts or omissions a court of competent jurisdiction has taken cognizance under Section 190(1)(a), (b) or (c) of the Code of Criminal Procedure or who has been convicted by a court of competent jurisdiction with respect to the offences specified in the proposed expanded list of offences under Section 8(1) shall be disqualified from the date of taking cognizance or conviction, as the case may be. It further proposed that disqualification in case of conviction shall continue for a further period of six years from the date of release upon conviction and in case of acquittal, the disqualification shall operate from the date of taking cognizance till the date of acquittal.

The Law Commission in its 244th Report, 2014, has suggested amendment to the 1951 Act by insertion of Section 8B after Section 8A, after having numerous consultations and discussions, with the avowed purpose to prevent criminalization of politics. It proposes to provide for electoral reforms. Though it is a recommendation by the Law Commission, yet to understand the existing

scenario in which the criminalization of politics has the effect potentiality to create a concavity in the highly treasured values of democracy, we think it apt to reproduce the relevant part of the proposed amendment. (Manoj Narula vs. Union of India)⁸⁶

Association for Democratic Reforms (ADR), and National Election Watch has given some recommendation for stopping the criminalization of politics as, remove criminals from politics – for upholding the highest traditions of probity and morality in public life, any person against whom charges have been framed by a Court of Law of offences punishable for two years or more should not be allowed to contest elections. In particular, any candidate charged with serious charges like murder, attempt to murder, rape, kidnapping, extortion, etc. should be banned from contesting any elections. (Association for Democratic Reforms (ADR), and National Election Watch (NEW) April 2011)⁸⁷.

The issue of eligibility of candidates with criminal cases pending against them has been discussed for a long time. The Election Commission of India recommended, as far back as 1998, that candidates with pending criminal cases against them not be allowed to contest elections. It reiterated that recommendation in 2004.

The Law Commission of India, in their 170th report in 1999, proposed enactment of Section 8B of the Representation of the People Act, 1951, by which framing of charges by court in respect of any offence, electoral or others, would be a ground for disqualifying the candidate from contesting election. The National Commission to Review the Working of the Constitution (NCRWC) said, in their report in 2001, that —Any person convicted for any heinous crime like murder, rape, smuggling, dacoity, etc. should be *permanently debarred* from contesting for any political office. (Association for Democratic Reforms (ADR), and National Election Watch (NEW) April 2011)⁸⁸.

For compliance of Hon'ble Supreme Court order in Public Interest Foundation and Others Vs. Union of India and another dated 10th March 2014, WP(Civil) of no. 536 of 2011, the Union Ministry of Home Affairs had also issued an Advisory for fast tracking of cases against sitting

⁸⁶ Manoj Narula vs. Union of India, SC, 2013.

⁸⁷ ADR/NEW Recommendations for Electoral Reforms to Ministry of Law and Justice, Government of India and Election Commission of India. By Association for Democratic Reforms (ADR), and National Election Watch (NEW) April 2011.

⁸⁸ Ibid.

MLAs or MPs. As “We, accordingly, direct that in relation to sitting MPs and MLAs who have charges framed against them for the offences which are specified in Section 8(1), 8(2) and 8(3) of the RP Act, the trial shall be concluded as speedily and expeditiously as may be possible and in no case later than one year from the date of the framing of charge(s). In such cases, as far as possible, the trial shall be conducted on day to day basis. If for some extraordinary circumstances the concerned court is being not able to conclude the trial within one year from the date of framing of charge(s), such court would submit the report to the Chief Justice of the respective High Court indicating special reasons for not adhering to the above time limit and delay in conclusion of the trial. In such situation, the Chief Justice may issue appropriate directions to the concerned court extending the time for conclusion of the trial.” (Annexure XIII)

The ADR has published a detail report on criminalization of politics by analyzing declaration of criminal cases against themselves filed by candidates during past three Lok Sabha elections. ADR has also analysed the criminal cases against MPs in past three Lok Sabha elections. In 2014 Lok Sabha election, out of the 8205 candidates, 1404 (17%) candidates declared criminal cases against themselves and 908 (11%) candidates declared serious criminal cases including cases related to murder, attempt to murder, communal disharmony, kidnapping, crimes against women etc. Out of 7669 candidates during Lok Sabha 2009 elections, 1158 (15%) candidates had declared criminal cases against themselves and 608 (8%) candidates had declared serious criminal cases against themselves. In 2004 Lok Sabha election 14% candidates had declared criminal cases and 8% serious criminal cases against themselves. (Lok Sabha election watch 2014; a report by Association for Democratic Reforms, New Delhi)

Out of the 542 winners in 2014 Lok Sabha election, 185(34%) winners have declared criminal cases against themselves and 119(22%) winners have declared serious criminal cases including cases related to murder, attempt to murder, communal disharmony, kidnapping, crimes against women etc. Out of 520 winners during Lok Sabha 2009 elections, 158 (30%) winners had declared criminal cases against themselves and 78 (15%) winners had declared serious criminal cases against themselves. In 2004 Lok Sabha election 24% winners had declared criminal cases and 12% serious criminal cases against themselves. (Lok Sabha election watch 2014; a report by ^[11]_{SEP} Association for Democratic Reforms, New Delhi)

The ADR has analyzed the results during recent elections in five state elections. Out of 403 winners during UP 2017 election, 143 (36%) winners had declared criminal cases against themselves and 107 (27%) winners with serious declared criminal cases. Out of 117 winners during Punjab 2017 election, 16 (14%) winners had declared criminal cases against themselves and 11 (9%) winners with serious declared criminal cases. Out of 40 winners during Goa 2017 election, 9 (23%) winners had declared criminal cases against themselves and 6 (15%) winners with serious declared criminal cases. Out of 60 winners during Manipur 2017 election, 2 (3%) winners had declared criminal cases against themselves and 2 (3%) winners with serious declared criminal cases. Out of 70 winners during Uttarakhand 2017 election, 22 (31%) winners had declared criminal cases against themselves and 14 (20%) winners with serious declared criminal cases. (Association for Democratic Reforms, New Delhi).

More recently, in March, 2017 in a landmark judgment of the Hon'ble Supreme Court has referred the issue of criminalisation of politics to a Constitution Bench which will also decide whether a elected member can be disqualified after framing of charges in a criminal case. A bench of Justices A K Sikri and R K Aggrawal referred the case to the Constitution Bench while underscoring the need to bring to end the influence of money and muscle power in the electoral politics. It was examining an appeal filed by the Uttar Pradesh government challenging Hon'ble Allahabad High Court order for constituting a committee of eminent persons to suggest ways and means to check criminalization of politics⁸⁹.

⁸⁹ <http://timesofindia.indiatimes.com/india/How-to-stop-criminalisation-of-politics-SC-constitution-bench-to-decide/articleshow/51347568.cms>, Accessed on 22March, 2017.

Civil Society Perspective (NGO's, Media and Individual Citizenry)

Table 6.8 Civil societies view points on Causes of abuse of bail

Responses of individuals	Frequency	Percentage
Tendency of earn easy money	3	25.0
Unemployment among Youths	2	16.7
Police Corruption	2	16.7
Caste Violence	1	8.3
Financial Reason	1	8.3
Accused belief towards society	1	8.3
NR	2	16.7
Total	12	100

(Source: Field Work)

The above table shows that tendency to earn easy money is the main reason for bail abuse. Other reasons such as unemployment among youths, corruption in police system, emergence of a culture of violence in the society, financial reason such as poverty exclusion of some community in the development process are also responsible for increasing crime rate and bail abuse. Since data is not representative, we could not draw any inference as the present study is an exploratory in nature. A detailed study in future could overcome with this limitation.

6.4. Consequences of Bail Abuse

The present section attempts to analyse views of various stakeholders dealing with or experiencing consequences of bail abuse and recidivism. These stakeholders are;

- (1) Criminal Justice Functionaries (Police, Prosecution, Courts and Prison) & Lawyers
- (2) Civil Society groups (Individuals, Community, Media and NGOs).

Research team interacted with various stakeholders and interviewed them through in-depth interview method. Discussion and non-verbal communication-body language, tone and other meaningful gestures have also been collated. The experience with each stakeholder with respect to consequences of bail abuse and recidivism is summarized in the following context:

- Impact on Individual, Family and Communities.
- Impact on Surety.
- Impact on Victims and Witnesses.
- Impact on Police.
- Impact on Judicial system.

Impact of bail abuse on individual, family & communities

A majority of the bail abusers, six out of every ten, opined that their absconding after securing bail has adversely affected them and their families. The major problem was police harassment to the family members and even relatives. Further, it has also impacted negatively on the livelihood as well as social image of the family members.

Impact on Family: Vulnerability

The families of the absconders experienced harassment by the police and felt vulnerable and frustrated due to illegal pressure of their family members. An analysis of data reveals that absconding and bail abuse impacted their families adversely.

Impact on Surety

Further, the data on the impact on surety shows that the problems faced by them are fear of attachment of property, police harassment, need to go to court frequently, loss of money and loss of trust of people in community. Another perspective emerged through analysis is that due to absconding and repeat crimes by the accused, surety felt harassed, frustrated and vulnerable and decided not to assist accused and the criminal justice any more. They also expressed that they gave surety due to their trust in the person and non-awareness of the fact that violation of bail condition

or abused of bail will lend them in trouble. Further analyses shows that the problems faced by them are fear of attachment of property, police harassment, need to go to court frequently, loss of money and lose of trust of people in the community.

Impact on Victims

The impact on victim are listed as follows: uncertainty in justice to victim, life in fear of retaliation, fear of tampering evidence, unable to live in normal place of residence, feels justice not done, lost hope on judiciary and criminal justice delivery system. It is also emerged that the accused and co-accused after release on interim bail have threatened the victims and their families many times so that victims will not pursue the case in the court.

One of the problems is the hesitation of victims or witness to come forward to testify because of fear of retaliation. To remove that fear and to ensure the participation of victims and witnesses, Governments must establish effective witness protection programmes. Unfortunately no such proper provisions exist at present. Even if victims or witnesses are some sort of protection before and during trial, their safety in the long term remains a major concern. Special problems are caused by the long delays in the completion of trials: the longer a trial, the more opportunities offenders have to bribe or threaten witnesses or victims (Tenth United Nation Congress, 2000)⁹⁰.

International consensus has been reached on the basic principle of justice for victims of crime as embodied in the declaration of basic principles of justice for Victims of crime and abuse of power. Most governments have only recently begun to implement those rights. Exchange of information on best practices and cost-effective methods of implementation is urgently needed. Much progress can certainly be made in the improved treatment of victims of crime without negative implication for the offender. In some areas, however, rights for victims do interfere with the rights of offenders and difficult choices will have to be made. Many issues have yet to be solved. Opinion differs, in particular, about the extent of participation of victims in decision-making process. The restorative model may offer an alternative solution in some cases (Tenth United Nation Congress, 2000)⁹¹.

⁹⁰ Tenth United Nation Congress on the prevention of crime and the treatment of offenders, Vienna, 10-17 April, 2000.

⁹¹ Ibid.

Impact on witness

The Malimath Committee stated that witness is an important constituent of the administration of justice. By giving evidence relating to the commission of the offence he performs a sacred duty of assisting the court to discover truth. That is why before giving evidence he either takes oath in the name of God or makes a solemn affirmation that he will speak truth, the whole of truth and nothing but truth. The witness has no stake in the decision of the criminal court when he is neither the accused nor the victim. The witness performs an important public duty of assisting the court in deciding on the guilt or otherwise of the accused in the case. He sacrifices his time and takes the trouble to travel all the way to the court to give evidence. He submits himself to cross-examination and cannot refuse to answer questions on the ground that the answer will criminate him. He will incur the displeasure of persons against whom he gives evidence. He takes all this trouble and risk not for any personal benefit but to advance the cause of justice. (Malimath committee, 2003)⁹²

In many cases involving high profile personalities or heinous crime, the courts easily grant bail to the accused thereby making the witness vulnerable to threats and intimidation by the accused. No doubt Section 439(2) of the Code of Criminal Procedure provides for the arrest of a person who has been released on bail, it is seldom used by the State in cases where there exists a reasonable apprehension that the accused might try to influence the witness (Malimath Committee, 2003)⁹³.

In many cases the witnesses are bought off or “purchased” with the use of money. In such cases the victims/witnesses are mostly poor who are badly in need of money. The procedure is simple. The prime witnesses in a case are contacted either directly by the party or through the lawyers litigating that case and then offered a sum of money for not cooperating in the investigation and/or are told to take a pre decided stand at the trial. If, however, the trial has already started then he is told to turn away from what he had said earlier or to contradict his own statement (Malimath Committee, 2003)⁹⁴.

⁹² The Justice Malimath Committee on Reforms of Criminal Justice System (Government of India, 2003).

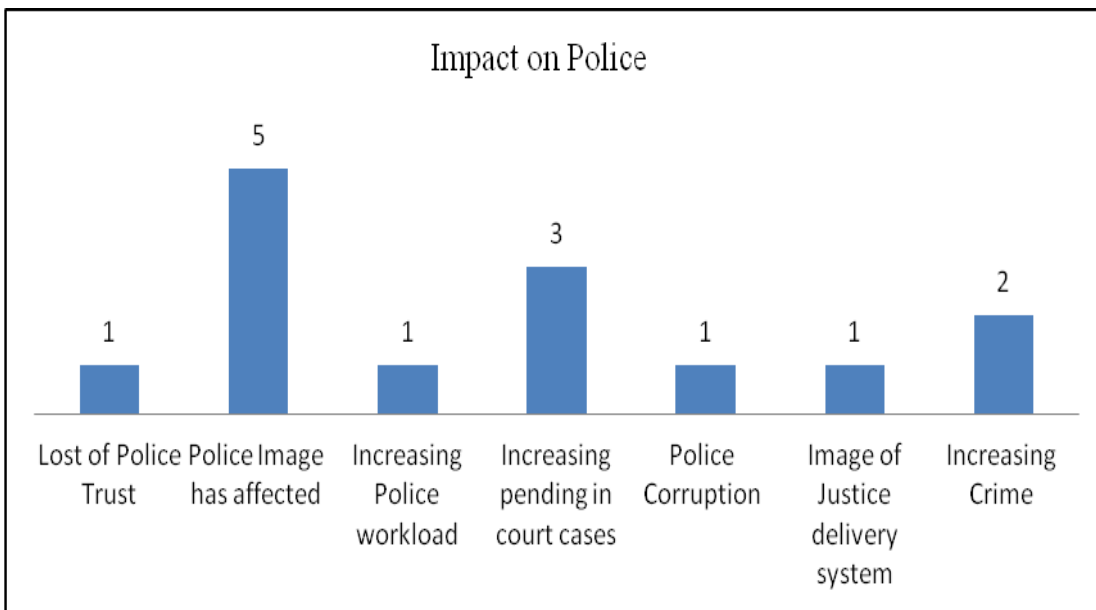
⁹³ Ibid.

⁹⁴ Ibid.

Impact on Police

The impact on police due to frequent bail abuse by offenders is affecting police image among the public, Increasing pendency of court cases, increasing crime, and other consequences reported by them are lose police trust, increasing police work load, corruption and damaging justice delivery system. These offenders adversely affect image of police due to increased abuse of bail including recidivism in their area.

Figure 6.13: Police perception on impact of bail abuse



Impact of separation of prosecution from police on bail system

The investigation and prosecution are two separate and distinct aspects of administration of criminal justice. Formation of an opinion as to whether a case can be made out to place the accused for trial is the exclusive function of the police. Under Section 173 of the Code of Criminal Procedure (hereinafter called the “Code”), the “police report” (result of investigation under Chapter XII of the Code) is the finding that an investigating officer draws on the basis of materials collected during investigation. Such conclusion can only form the basis of a competent court to take cognizance and to proceed with the case for trial (“police report” is sometimes in popular parlance referred to as a charge sheet). Normally the role of a PP commences after the investigation agency presents the case in the court on culmination of investigation. Of course, it is open to the police to get the best legal opinion, but it is not obligatory for the police to take the opinion of the PP for filing the charge sheet (2000 SCC 461). After the Code was promulgated in 1973, the prosecution agency was expected to be completely separated from the police department. The objective of such

separation is obviously to ensure that police officers who investigated a case shall have no manner of control or influence over the prosecutors who will prosecute the case. Under the scheme of Sections 24 and 25 of the Code, a police prosecutor (of former times) cannot even become eligible to be appointed as assistant public prosecutor (APP) on regular basis. (N.R. Madhava Menon, 2006)⁹⁵

Insufficient Coordination between the Prosecutor and the Investigating Officer

According to Prof. Madhav Menon⁹⁶ prior to the Criminal Procedure Code (Amendment) Act, 1973, prosecutors appearing in the courts of magistrates functioned under the control of the police department. Prosecutors used to scrutinize police papers and advise the police on legal issues before filing them in court. The prosecutor used to keep a close watch on the proceedings in the case, inform the jurisdictional police to bring the witnesses on dates of trial, refresh the memory of witnesses where necessary with reference to their police statements and examine them lengthily. As a result of close monitoring and careful preparation, very few witnesses would dare turn hostile. In case they did, the prosecutor expertly exposed them through effective cross-examination. The amendment to the Criminal Procedure Code in 1973 changed the situation and weakened the effectiveness of the system of coordination between the police and the prosecution. The 14th Report of the Law Commission observed that it was not possible for PPs to exhibit that degree of detachment necessary for fair prosecution if they were part of the police organization. Consequently the prosecution wing was separated from the police department and placed under a Directorate of Prosecution (Sections 24 and 25, Cr.P.C). The Supreme Court also reiterated this position and directed the States to place the prosecution wing administratively and functionally under the direct control of the *State Government (AIR 1995 SC 1628)*⁹⁷. Thus, the police and the prosecution were made totally independent of each other.

Whereas there used to be unity of control and cooperation between them in prosecuting cases, with separation, this cooperation disappeared substantially and accountability got diluted. While in some states the Directorate of Prosecution functions under the administrative control of the Home Ministry, in others it is under the Law Department. The decision was left to the discretion of the Council of Ministers of the State Government. Similarly, while in some states the Director of

⁹⁵ Prof. (Dr.) N.R. Madhava Menon, strengthening the criminal justice system, from the ADB regional workshop in Dhaka, Bangladesh, 30–31 may 2006, Asian Development Bank public prosecution service in India: an institution in need of reform.

⁹⁶ Ibid

⁹⁷ State Government (AIR 1995 SC 1628).

Prosecution is an officer of the higher judicial service (district and sessions judge), in others it is a police officer of the rank of Inspector General or Additional Director General. The impartiality of the PPs is largely dependent upon who controls the agency. Most police officers as well as some administrators and judges believe that the lack of coordination caused by the separation has resulted in falling conviction rate, falling disposal rate, poorly investigated cases being filed, of trial proceedings including bail, and lack of effective review particularly at the district level. There is no doubt that the police prosecution interface is in need of immediate remedial action, but giving the prosecution back to the police is neither desirable nor practical (N.R. Madhava Menon, 2006)⁹⁸.

The Need for a Unified Prosecution Agency: If the prosecution at the district level is to function efficiently and impartially, it is not only essential to have a proper system of selection and training but also a closer supervision and monitoring mechanism particularly at the junior levels.

This would require a unified integrated structure, which may be functionally separate in terms of the tasks of investigation and prosecution. While the prosecutor should not be dependent on the police, he or she should be able to seek closer cooperation with the investigating officer.

The investigating officer's intimate knowledge of facts can certainly help the prosecutor in countering the defence. At the same time, the investigator will gain immensely from the expert legal knowledge of the prosecutor. Since the functions are integral and complementary to one another and the personnel employed in the two agencies cannot meaningfully work in isolation, a total divorce is undesirable. Some degree of unification of control is necessary for effectiveness in prosecution. To achieve this mutual cooperation without subordination of one to the other and without impinging upon the independence of either, an arrangement should be worked out to have a common centre of control and accountability (N.R. Madhava Menon, 2006)⁹⁹. Similarly, a study conducted by Mr. Madanlal Sharma, Retd. IPS shows the comparative analysis of two-prosecution system working in India in the following manner:

⁹⁸ Ibid

⁹⁹ Ibid

Prosecution System under the Control of the Home Department

In the states of Tamil Nadu, Madhya Pradesh, Uttar Pradesh, Andhra Pradesh, Delhi, Maharashtra, Jammu and Kashmir, Bihar, and Kerala, the prosecution wing is under the Home Department. The conviction percentage in these states for the last seven years ranges from 67.8 per cent in Tamil Nadu to 17.7 per cent in Kerala. The average percentage of conviction for 7 years is given in below table.

Table 6.9: State Prosecution System under Home Department

States	Convictions %
Tamil Nadu	67.8
Madhya Pradesh	64.5
Uttar Pradesh	54.0
Andhra Pradesh	51.6
Delhi	47.6
Maharashtra	39.4
Jammu & Kashmir	37.4

(Source: Field Work)

Prosecution System under the Department of Law

In certain other states, the average percentage of conviction for seven years, again, ranges from 76.4 per cent in Meghalaya to 21.9 per cent in Himachal Pradesh. This is shown in below table.

Table 6.10: State Prosecution System under the Department of Law

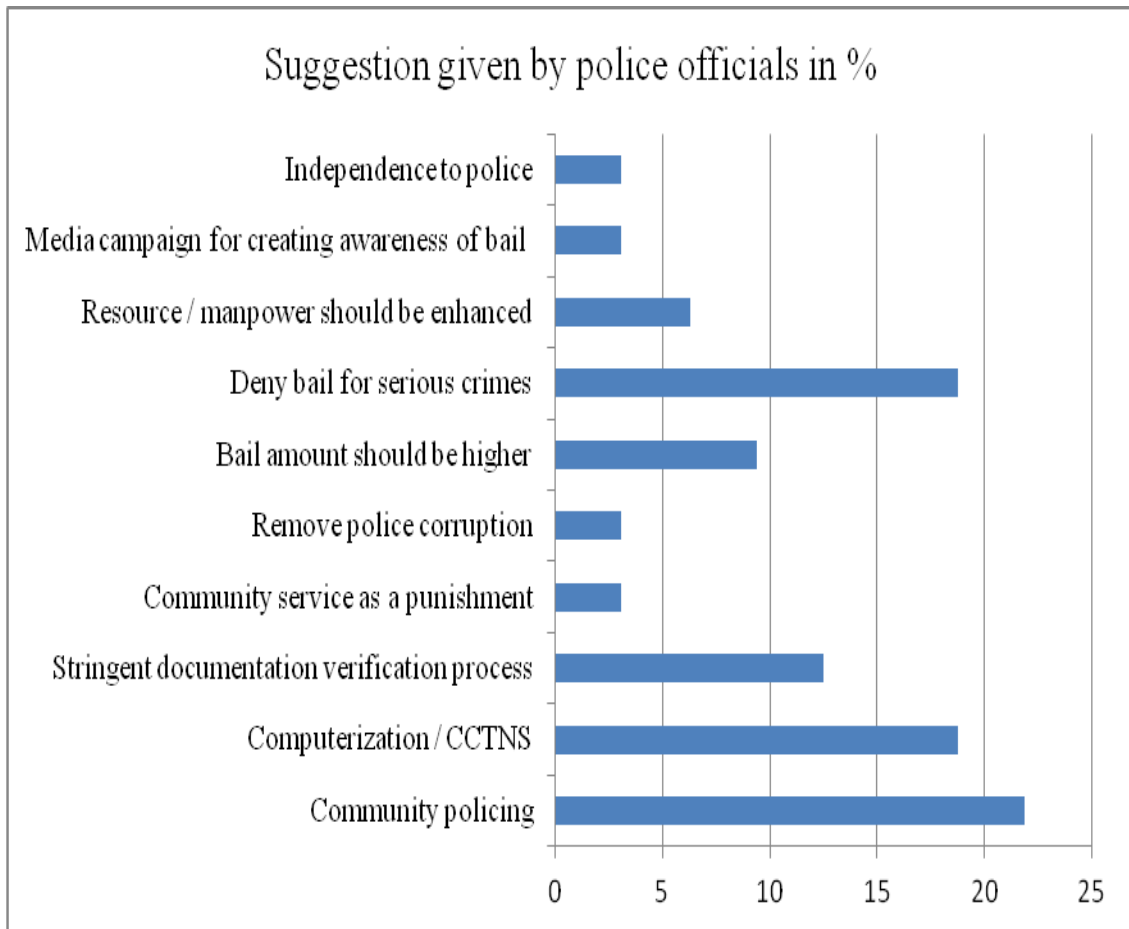
States	Convictions %
Meghalaya	76.4
Pondicherry	72.2
Sikkim	67.2
Chandigarh	65.5
Haryana	61.2
Gujarat	61.0
Manipur	47.6

(Source: Field Work)

Thus, no clear picture emerges as to which of the two systems is working more efficiently. The Law Commission of India has also supported total separation between the police department and the prosecution agency. Even so, it would be desirable to make some institutional arrangement for proper co-ordination between the two agencies (Madan Lal Sharma, 2007)¹⁰⁰.

¹⁰⁰ Madan Lal Sharma, the role and function of prosecution in criminal justice, resource material series no. 53, 107th international training course participants' papers, 2007.

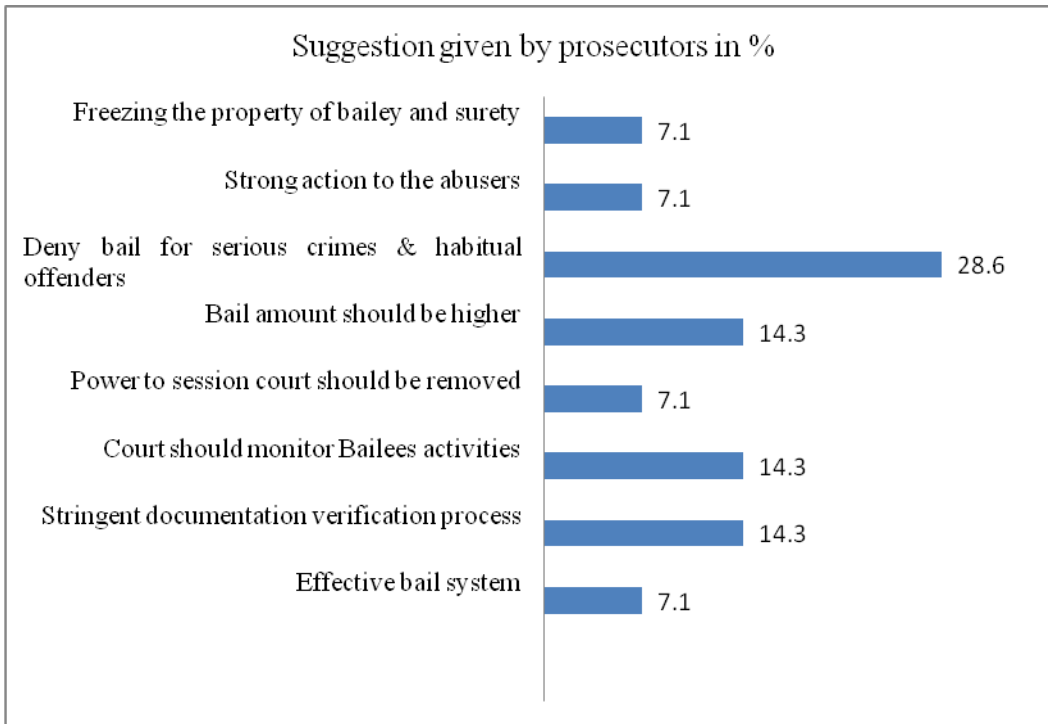
Figure 6.14: Suggestions given by police officials



To strengthen bail system and reduce bail abuse and recidivism police officials were asked to suggest practical solutions. A majority of them (21.9%) felt that community policing shall be institutionalised,(18.8%) each wanted computerization and installing CCTNS and bail should be denied to those who commit serious crimes and habitual criminals even inailable offences.

Suggestions by Public Prosecutor

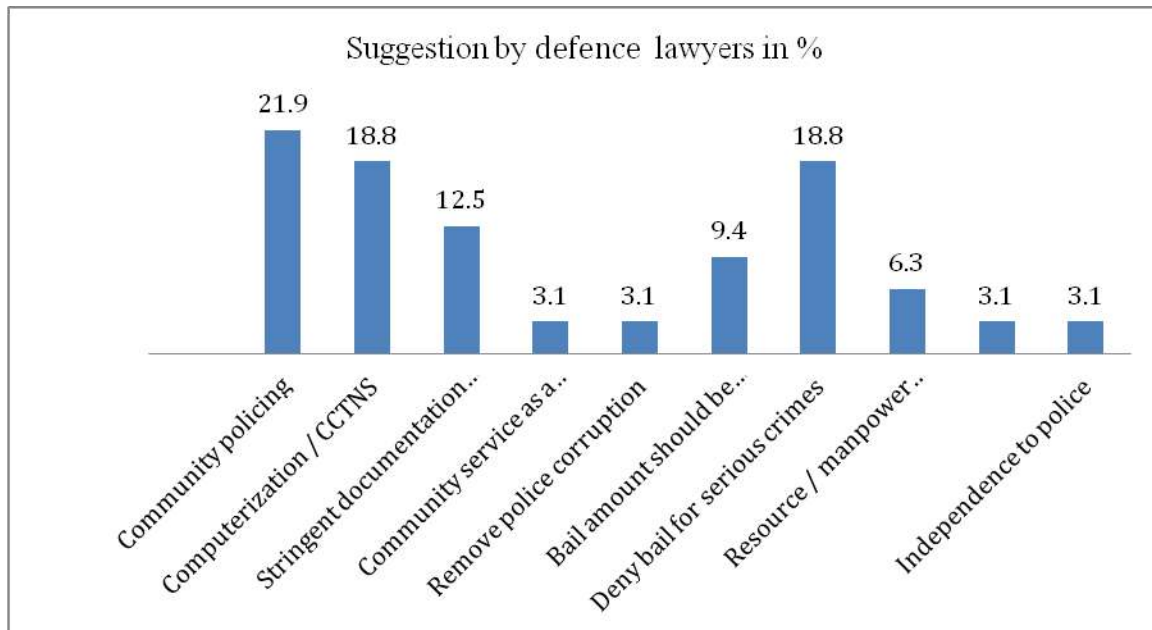
Figure 6.15: Suggestion given by Public Prosecutors



Majority of the prosecutors (28.6%) suggested that bail should be denied to those who committed serious crimes and habitual offenders / abusers of bail, while 14.3% suggested stringent documentation verification process. This aside, 7.1% of the prosecution lawyers felt effective bail system to be devised and strong action against bail abusers and freezing the property of bailey and surety.

Suggestion by defense lawyers

Figure 6.16: Suggestion given by defense lawyers



The lawyers suggested a few ideas for improving bail system. 21.9% lawyers expressed that community policy will be a solution for this problem, 18.8% respondents suggested computerization and not giving bail to those who commit serious crimes respectively, another 12.5% suggested stringent documentation verification process will be the solution. 6.3% suggested resources enhancement and increasing manpower. Community service as a punishment, removal of police corruption, start a media campaign for creating awareness of bail and its conditions among public, and finally giving independence to police are all suggested by 3.1% respondents.

More recently, modifying the “bail is rule, jail exception” view, Hon’ble Supreme Court has held that history-sheeters or habitual offenders to be a nuisance and terror to society and asked courts to be cautious in granting bail to such individuals who are not on a par with a first-time offender. A Bench of Justices Dipak Misra and Prafulla C Pant said discretionary power of courts to grant bail must be exercised in a judicious manner in case of a habitual offender who should not be enlarged on bail merely on the ground of parity if other accused in the case were granted the relief¹⁰¹.

¹⁰¹ Neeru Yadav Vs. State of U.P. and others. (CRIMINAL APPEAL NO.1272 OF 2015 (@ SLP(CrI) No. 1596 of 2015, dated 29th September, 2015.

The Hon'ble Supreme Court, which has in slew of cases taken a pro-bail stance, said that criminal past of the accused must be checked before granting bail. It said that courts should not grant bail in a whimsical manner. In the past it has held that seriousness of the offence is not the only ground to deny bail, that compelling circumstances are needed to cancel bail and that interests of individual must be balanced against those of society (Times Of India dated 4/10/15, Navi Mumbai edition)¹⁰².

The Bench's observation came as it quashed the order of Hon'ble Allahabad High Court which had granted bail to a history-sheeter in a murder case without taking into account the criminal antecedents of the accused who was involved in seven other heinous offences including murder. The Bench also highlighted "A history-sheerer involved in the nature of crimes which are not minor offences so that he is not to be retained in custody, but the crimes are of heinous nature and such crimes, by no stretch of imagination, can be regarded as superficial. The law expects the judiciary to be alert while admitting the plea of these kind of accused persons to be at large and, therefore, the emphasis is on exercise of discretion judiciously and not in a whimsical manner" (Times Of India dated 4/10/15, Navi Mumbai edition)¹⁰³. Referring to the number of cases filed against accused Santpal Yadav, the Bench said "there can be no scintilla of doubt to name him a history-sheeter" and asked Uttar Pradesh police to take him into custody forthwith if he had been enlarged on bail in the case. The Bench said it is clear as cloudless sky that the High Court has totally ignored the criminal antecedents of the ac caused and granted bail merely on the ground that eleven other accused were granted the relief earlier. Further the court observed "It has been clearly laid down that the grant of bail though involves exercise of discretionary power of the court, such exercise of discretion has to be made in a t judicious manner and not as a matter of course. The heinous nature of crimes warrants more caution. A crime, as is understood, creates a dent in the law and order situation. In a civilized society, a crime disturbs orderliness. It affects the peaceful life of the society. An individual can enjoy this liberty, which is definitely of paramount value, but he cannot be a law unto himself (Times Of India dated 4/10/15, Navi Mumbai edition)¹⁰⁴.

Reclassification of crime for bail

It must be kept in mind that another cause for the high incidence of unnecessary arrests in our country is the outdated scheme for the classification of offences in our criminal laws. The division

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

between cognizable and non-cognizable offences, between bailable and non-bailable offences as well as the nature and quantum of punishments for the respective offences needs to be thoroughly re-evaluated (The Justice Malimath Committee, 2003)¹⁰⁵.

The triggers for the various responses of the criminal law machinery were originally designed in the colonial-era and despite some piecemeal changes from time to time there is a need to reclassify the offences. For instance many minor offences against property are still classified as non-bailable, whereas it is evident that classifying them, as compoundable offences and relying on methods such as 'plea-bargaining' may be more effective and agreeable to address the injury caused by the same. It is also obvious that the number of offences wherein arrests can be made without warrants need to be streamlined in a systematic manner (The Justice Malimath Committee, 2003)¹⁰⁶.

Justice Malimath Committee (2003) recommended that non-cognizable offences should be registered and investigated and arrestability shall not depend on cognizability, the present classification has further lost its relevance.

However, the Committee feels that when reviewing the Indian Penal Code it may be examined whether it would be helpful to make a new classification into i) The Social Welfare Code, ii) The Correctional code, iii) the Criminal Code and iv) Economic and other Offences Code.

Hence, the Committee has made the following recommendations-

1. To remove the distinction between cognizable and non-cognizable offences and making it obligatory on the Police Officer to investigate all offences in respect of which a complaint is made. This is discussed in the chapter on Police Investigations.
2. Increasing the number of cases falling within the category of cases triable by following the summary procedure presented by Sections 262 to 264 of the code in respect of which recommendations have been made in the Section dealing with "Trial Procedures."

¹⁰⁵ Ibid.

¹⁰⁶ Ibid

3. Increasing the number of offences falling in the category of “Petty Offences” which can be dealt with by following the procedure prescribed by Section 206 of the Code which has been discussed in the Section dealing with “Trial Procedure.”
4. Increasing the number of offences for which no arrest shall be made which has been discussed in the section dealing with “Police Investigation”
5. Increasing the number of offences where arrest can be made only with the order of the court and reducing the number of cases where arrest can be made without an order or warrant from the Magistrate, which has been discussed in the section dealing with “Police Investigation.”
6. Increasing the number of offences, which are bailable and reducing, the number of offences, which are not bailable, discussed in the Section dealing “Police Investigation.”
7. Increasing the number of offences that can be brought within the category of compoundable/settlement category discussed in the Section dealing with “Sentences and Sentencing.”
8. The Committee recommended a comprehensive review of the Indian Penal Code, the Evidence Act and the Criminal Procedure Code by a broad based Committee representing the functionaries of the Criminal Justice System, eminent men and women representing different schools of thoughts, social scientists and vulnerable sections of the society and make recommendations to the Parliament for stronger and progressive laws for the country (The Justice Malimath Committee, 2003)¹⁰⁷.

Similarly, Mr. Justice K.G. Balakrishnan, Former, Chief Justice of India stated that ‘a considerable proportion of the criminal cases pending before our courts actually involve regulatory offences such as traffic violations, dishonour of cheques and failure to pay maintenance. These regulatory offences have of course been created by the various special laws, wherein the legislature identified an overarching public interest in prescribing punitive remedies for certain kinds of acts that are

¹⁰⁷ The Justice Malimath Committee on Reforms of Criminal Justice System (Government of India, 2003).

otherwise more akin to civil wrongs. Hence an informed analysis of criminal laws must also differentiate between the nature of the acts and the subsequent degree of harm while deciding on the appropriate response from the criminal law machinery. This line of thinking is clear in the *'Draft National Policy on Criminal Justice'* (published in 2007) wherein it has been suggested that all the offences presently identified under the Indian Penal Code (IPC) and the numerous special and local laws should be streamlined into four legislations. This re-classification is proposed to be done on the basis of the gravity of the offences, appropriate procedures for investigation and dispute-resolution as well as the proportionate nature and quantum of fines and punishments.

The proposed categories are those of a Social Welfare Offences Code, a Correctional Offences Code, the Penal Code and the Economic Offences Code. Such a re-classification is important since a 'one-size-fits-all' approach does not work and we need to adopt innovative procedures, which will be responsive to social realities rather than legal niceties. The concept of 'compoundable' offences corresponds to the idea of arriving at a settlement without trial. Furthermore, with the introduction of 'plea-bargaining' in our system, there is a possibility for the accused to admit to his or her guilt in return for a lower penalty. This method will prevent the delays associated with the presentation and contestation of evidence in the usual trial procedure. Magistrates are already empowered to adapt their procedure for trying 'petty offences' and increasing reliance can be placed on 'summary trials' for handling offences, which carry lower punishments' (K.G. Balakrishnan, 2009)¹⁰⁸.

¹⁰⁸ 10th D.P. Kohli Memorial Lecture on *'Criminal justice system – growing responsibility in light of contemporary challenges'* by Hon'ble Sh. K.G. Balakrishnan, Chief Justice of India (New Delhi – April 2, 2009)

Chapter VII

Case Studies on Bail Abuse

The present Chapter illustrates 30 case studies of bail absconders and recidivists. These case studies provide in-depth insight on the phenomenon of bail abuse and recidivism from bail abusers' point of view. This aside, through content analyses, an attempt is made to understand the problem and durable solution of bail abuse and recidivism .

Part - I

Absconders (A category of bail abusers)

CASE STUDY ONE (Drug Possessed):

A 35 year unmarried youth, an auto rickshaw driver, was arrested by police on midnight of 21.3.2009 along with 40 packets of smack (Total around 15 gram). The case was registered under Section-8/18/21 of NDPS Act, 1986 by Police Station-Naka, Lucknow city of Uttar Pradesh. The accused contended that he was innocent and falsely implicated by the police. Further, he argued that he has no criminal history despite he was lodged in the jail. The Prosecution has challenged his bail application on the basis of true incident and confiscation of drug. Latter, the Forensic Science Laboratory has also verified in its report that the actual weight of smack drug was around 11.8 gram, which is higher than a small quantity (5 gram).

On 14.07.2009, the 4th Additional District & Session Judge (ADJ) Court, Lucknow while considering all facts and circumstances and possessed quantity of the drug (smack) granted bail with surety of 25,000 and accused was released from the jail.

After some years, one of the surety men who is a LIC Assistant received a notice from the Court (recovery warrant) to deposit surety amount of Rs.25, 000 or produce the accused in the court as he is absconding (absentee) from Court's hearing. On 13.08.2009, the surety man had deposited surety amount in the court when he could not find the accused. The first surety man said, I know the accused person since long. He is brother of my office staff. In fact, he was a tempo driver and has not committed any crime. Hence, I was ready to give surety. He was a simple person. After released on bail, he made his presence in court once or twice and later on disappeared and I have no clue about him till date. He left behind his wife, children and siblings who tried their level best to trace

him but failed. Therefore, they informed police about his absconding and made wide publicity through pamphlets in different places including area police station Naka and also published news in a popular newspaper but no success in the case. “Then I thought to deposit surety amount and get rid of this problem. Moreover, I was spending around Rs.300 per hearing in the court, and taking casual leave from my office, this is an expensive affair and I faced mental tension and consequently was not keeping well. I have learnt a lesson from the case that accused person should be helped carefully” (Interview held with surety men on 28.07.2012 at 4:00 pm at his residence, Lucknow District).

The accused (bail abuser) has five brothers; one of his younger brothers was present at home at the time of our visit. He informed the researcher that his brother (accused) became alcoholic. After released on bail, he had attended 4-5 times the court trial and suddenly one day he decided to visit to his grandmother’s house (maternal side) but did not reach there. We inquired about him and also informed the police and media but could not trace him. It is also emerged through home visit that family members of the absconder experienced harassment by the police and felt vulnerable and frustrated due to missing of their family member (accused) and consequently faced pressures from the Police and the Court. The police had visited frequently his home for inquiring about his brother. As a result, the family is going through turmoil and facing mental tension and financial crunch. (Interaction held with Family members visit on 29.10.2012 at 5:00 R/o House No. 344/2D, Buddhulal Tiwari Road, Police Station, Bazar Khala, BhavaniGanj, Lucknow). Later, the younger brother of bail abuser informed the researcher over phone that second surety man had also deposited of Rs.25,000 in the court due to non-appearance of accused in the Court.

CASE STUDY TWO (Drug Possessed):

On 03.04.2008, an accused aged 35 years engaged in manual labor work was arrested by Sarojni nagar police station, Lucknow in connection with crime no.138/2008 u/s-8/21 NDPS Act, 1986. On 08.04.2008, he was granted bail on the ground that his advocate on behalf of him argued that only 10 grams smack was recovered from his possession, which falls within the category of the minimum quantity. Therefore, the accused is an innocent person and he has been falsely implicated in the case and has no criminal history. Further, he alleged that Police did not follow due procedure as per NDPS Act. No independent witness of the alleged recovery of drug is shown on the spot and alleged recovered drug i.e. smack does not fall within the category of commercial quantity list. He also said that police framed him falsely because he had not paid money/ bribe asked by the police.

After considering the fact and circumstances of the case in a holistic manner, the trial court on its merits found that it is a fit case for bail. Hence, the accused was released on bail by executing a personal bond of Rs. 10,000 and furnishing two sureties for the same amount to the satisfaction of the court. While interacting with researcher at his residence (Bijnor town area of the District Lucknow), the accused (abuser of bail) accepted the fact that he could not attend the Court trial since last 4-5 years because he did not receive any summon from the Court. Further, he said that if he receives summon for next hearing he will definitely attend the court (Interview held with accused in the Bijnor town of District Lucknow). The Mother-in-law of the accused who was one of the sureties for him expressed her feeling and frustration, "I have taken surety for the accused because he is my son-in-law. He has two children. Both (husband & wife) are earning. My daughter is doing tailoring and my son-in-law is doing manual labour. He is an alcoholic and not taking care of his family. He has also not bothered about court and police procedures and therefore police was harassing us. With utter frustration I ask him and my daughter to leave my home. Now, he is living in a different place with his family in Bijnor town. (Interview held with surety in the Bijnor town of Lucknow).

CASE STUDY THREE (Kidnapping and Rape)

The accused, a police officer, during his posting at Maharajganj Police Station of Faizabad district, he used to visit Madna village for official duty and developed friendship with complaint's family. Because of his (accused) proximity, the accused some time was staying in the night time at complaint's house in Madna village on request and therefore developed friendship with them. On 16.06.2006, the accused requested the owner for night shelter at the complaints' house. At mid night, he asked drinking water from complaints' minor daughter. While serving water to the accused, the he molested and kidnapped her. Since then he is keeping the minor girl with him forcefully. The police at Maharajganj Police Station registered this case, district Faizabad, Uttar Pradesh (Crime no. 407/2006 under sections-363, 366 and 376 of Indian Penal Code, 1861 at PS-Maharajganj).

Meanwhile, the accused got bail from the court and did not appear in court for hearings (absconded). The accused (Police Officer) is declared as an absconder by the competent court. The criminal proceeding has been initiated against him (under Section-82/83 Cr.P.C) and Non-Bailable Warrant had been issued to arrest him. Also, a notice had been served to surety to produce the accused before Court will forfeit the court in the next hearing otherwise surety amount. The

victim's father (70 years old), a senior citizen, felt insecure and vulnerable in accessing justice in the case as he said that police are supposed to protect the citizens but had breached his trust as the accused is still beyond the reach of law. He is also disillusioned with the judiciary as this matter is pending in the court since more than 6 years and no serious efforts are being made by the judiciary and police department to arrest the accused police official. Further, he said, "I strongly feel that State is not doing justice to my family. He emphasized that due to this incidence his family has been suffering in many ways, economic loss, destroyed social image and loss of young minor girl." Now, I heard that one of the sureties has deposited surety amount in court as the accused did not turn up in the court hearing. The police department is perhaps protecting the accused as I am a poor senior citizen and accused is a police officer (Interview held with family members at Madna village, Maharajganj town, District Lucknow on 05.01.13).

CASE STUDY FOUR (Pick -Pocketing in Train)

On 11.07.1987, while travelling by train no. 52 down from Lucknow to Ayodhya, the accused was arrested by GRP (Government Railway Police) for pick- pocketing case in the running train. However, the accused denied such charges and applied for bail. On 20.7.1987, the Chief Judicial Magistrate (C.J.M.), Faizabad, heard the bail application. The accused contended that during train journey, a dispute took place due to sudden provocation with fellow passengers and those passengers reported false complaint against him. The court considered the facts and circumstances and ruled that the accused to be released on bail for Rs. 3000 with sureties. Later, he (accused) absconded. After four years of the incident on 10.06.1991, the accused was charge sheeted for crime no. 118/87 under section-379/511 IPC by-GRP Police Station Faizabad District, Uttar Pradesh. On 06.02.1997, his second bail application was moved to Additional Chief Judicial Magistrate (A.C.J.M.)-IV. In his application the accused prayed before the court that he was regularly attending the court hearing. But when the court transferred the case to AJM-I that information could not reached to the accused neither from judiciary nor from his advocate. In this matter the Court again granted bail second time to him with surety of Rupees 10,000. Again, the accused absconded. On 10.02. 2006, the accused surrendered against non-bailable warrant and prayed honourable Court that due to his mental illness/health problem he could not attend court regularly. Again, third time the court had approved his bail application with condition of Rs. 10,000 sureties. According to Surety man, "Accused was known to us through community relations in the area. Accused was good behaviour person that is why we were ready for his surety. Accused also approached me second time for surety but I did not consider his request. We are not aware that he is not attending

court hearings and therefore police visited frequently in our village. Now I am a senior citizen do not have money to visit court again & again.” (Researcher visited to sureties and interaction held them in the village-Chitva, (Tarun town), District Faizabad on 20.11.2012 at 12.00 pm).

CASE STUDY FIVE (Rash and Negligence driving)

On 18/03/88, an accused aged 30 years, was arrested by Kotwali Police Station, District Faizabad, UP for a criminal case registered against him pertaining to rash and negligence driving causing death of a person (crime no. 59/88 u/s 279, 338, 337, 304A, 427IPC).

On 10/06/1991, the Office of the Chief Judicial Magistrate explained to the accused about his act of rash and negligence driving caused death, however, accused refuted the charges and argued that due to rivalry the false allegation is made against him. After considering fact the Magistrate reached on conclusion that accused (crime no. 259/88 under sections 279/337/304A IPC) shall be released on personal bound of Rs. 3,000 (Three Thousand). The accused absconded after released on personal bond. During data collection in the field, the researcher tried to contact sureties but could not succeed. However, surety's father met but did not commented anything on the issue or shown his unwillingness despite the several attempt made to pursue him (visit Inyatnagar town, District Faizabad on 31.12.2012 at 3: 45 p.m.). This case shows that absconding is a serious problem to the court as well as in access to justice to the victims.

CASE STUDY SIX (Alleged set fire on complaint's house)

A complaint was lodged against the accused in Police Station–Purakalandar, District Faizabad, and Uttar Pradesh. It was alleged that accused has used abusive language against complainant and insulted him. The Charges were read over and explained to the accused in Hindi language; however, he did not plead guilty. Finally, he was released on bail of Rs.30, 000 with two sureties (Crime No.- 713/2010, Under Section-436, 504, 506 IPC). During home visit to the accused and interaction held with him he said that “in our village an incident of blaze took place on 03.03. `2010 at 9.00 p.m. in the complaint's house and he was wrongly fabricated in the case. In this matter I was called him at police station with assurance that he is called only for inquiry purpose and later on he will be allowed to go home. However, police detained him and later sent to jail. Family members and neighbours perceive this a fake case. The family and community people also informed the researcher that accused is not keeping well and having health related problem such as epilepsy etc. His (accused) family was also living in poverty. For managing court and other day-to-day expenses,

they had borrowed money from the local moneylender through mortgage of land.

CASE STUDY SEVEN (Theft)

On 21.01.1991, an auto rickshaw driver was booked for offence of theft- stealing a musical instrument (tape) from another auto rickshaw. As a result, a criminal case was registered under section-379 of Indian Penal Code, 1860 (CR no.53/91,U/S-379 IPC, PS-Kasturbanagar, Mumbai city. The 26th Metropolitan Magistrate of Borivali Court granted bail of Rs. 1500/- and released the accused with terms and conditions to be followed by him during trial of the case in court of law. However, the accused remained absent in court hearings despite non bailable warrant issued against him. The details of NBW are given below:

- First Non-bailable Warrant issued against accused on 10/05/1995;
- Second Non-bailable Warrant issued against accused on 13/09/1996
- Third Non-bailable Warrant issued against accused on 30/08/2010
- Fourth Non-bailable Warrant issued against accused on 19/03/2013

(Source: CC No. 149-P-91 of 68th Metropolitan Magistrate Court, Borivali, Mumbai)

The local police reported the concerning court that despite their continuous efforts to deliver the NBWs those could not be delivered due to wrong address. The researcher had also paid several visits to the local area and inquired about him. According to the Karkoon (Court Clerk) of Kasturbanagar Police Station, “The major problem faced by the police is that most of the absconders live in slum area and due to various reasons such as migration (voluntarily or force migration due to re-development policy of slum) they shift from one place to another place without intimating to the police or neighbours.” He suggested that alternative mode of conflict resolution in compoundable cases should be adopted to avoid further delay in the disposal of these cases which will also provide justice to the victims of crimes. The Judicial clerk (JC) the records keeper of the cases in these court informed that this particular case is pending in the court since last 22 years for that 3 years maximum punishment could be awarded if the accused is convicted. The Metropolitan Magistrate had already issued four times NBM (non-bailable warrant against accused) and notice to the surety who had deposited surety amount of Rs.15000 in the court. The accused is still not traceable which is hindering court proceeding and denial of justice to the victim (Interaction held with Judicial Clerk of 68th MM Court of Borivali, Mumbai at 02/04/2013 at 5:00 p.m.).

CASE STUDY EIGHTH (Theft by domestic maid servant)

The accused, a Muslim woman, 45 years (at the time of incident), was working as a domestic worker (cook) in the Thane area of Maharashtra and getting salary of Rs. 900 per month. On 03.07.2010, her master (employer) made a police complaint alleging her in a theft case. As a result, a FIR was registered against accused women for house breaking and stealing of Rs. 52300 (FIR No. I-108/2010) in the Rabodi Police Station, District Thane. She was taken into police custody on 05.07.2010 at 11:15 a.m. from her residence at Gali no. 10, Krantinagar area of Thane district and produced in the court next day. Her police custody was further extended till 10/07/2010 and finally bail was granted to the accused on 10/07/2010 with followings conditions;

- Accused should not temper with evidence;
- Accused be released on personal bond (PB) and Surety bond (SB) of Rs 25,000
- Accused should attend concerning police station on each Tuesday and Saturday during 9:00 to 12:00 time frame.

The charge-sheet was filed by police on 23.07.2010 and finally hearing of the case started in court from 14/12/2010. Since 24.01.2011 the accused is not attending court and therefore notice had been issued to the surety man on 23.11.2011. The surety-man appeared in Court on 29.12.2011 and promised before Hon'ble Court to produce the accused in further hearings, however, both accused and surety are now not traceable despite many summons, warrants (bothailable and non-bailable) issued by the competent court.

CASE STUDY NINE (Alleged Murder)

The accused was charged for a murder at Boiwada Police Station, Bhiwandi, and Thane (Cr no: (I-65/97). The detail of the case is noted from the judicial records¹⁰⁹. Accused was released on bail on 16.10.2002 on security bond (S.B.) in the sum of Rs. 25,000 with one solvent surety conditioned with he should not temper with prosecution evidence and he should attend the police station on every Monday and Friday between 5.00 to 7.00 p.m. Till filling of the charge-sheet on his failure to attend the police station on any two consecutive dates the bail stands automatically cancelled. The

¹⁰⁹ Offence Committed on: 18.07.1997;

1. Offence Registered on: 19.07.1997
2. Accused Arrested on: 14.07.2002
3. Charge-sheet filed on: 22.11.2012
4. Released on Bail on: 16.10.2002

accused had followed the bail conditions for few months and later absconded.

The Boiwada police station has submitted its report to the District Court (ADJ-V), Thane stating that the accused and his surety both are not found on the addresses furnished by them in police and judicial records for securing bail (Sr. P. I. Boiwada police station report submitted dated 03.04.2013). Researcher during his visit to the police station and community in Bhiwandi town had tried his level best to contact the accused/his family and surety in the given addresses; however, they could not be traced. Obviously, the addresses given in the official record are fake. While interacting with the local community we come to know that fake sureties' men are available and they run the racket in conveyance with police and duty or judicial clerks.

Part -II

Recidivists (Another Category of Bail Abuser)

The second type of the case studies is related to the repeat offenders who had committed similar or different nature of offences during the bail period. Out of total 21 sample case studies, 70% of them belong to this category of bail abuse. Broadly, these case studies are pertaining to recidivists or bail abusers developed on the basis of random sampling method including information gathered through face to face interviews held with them, their family members or relatives etc. Later, the information was transcribed into the English version and the documents were analyzed through content analyses and eventually themes and sub-themes are categorized and presented in this part II. The identity of the abusers is not disclosed due to ethical consideration.

CASE STUDY TEN (Threat to Victim)

On 21.08.2010, the victim lodged the First Information Report against accused and two witnesses alleging them for their involvement in a fake land transaction case (hereafter referred opposite party and also known as accused and co-accused in this case). After the registration of F.I.R under crime no. 399 of 2010 u/s 420,467,468,471 and 506 IPC at Wazeerganj police station of Lucknow city, Uttar Pradesh police framed charges against the accused (opposite party hereafter referred). The Magistrate took cognizance and registered it as miscellaneous criminal case and summoned the accused. The concerned Magistrate initiated action under Section 82 & 83 Cr. P.C. and accused were sent to judicial custody. On 30.08.2011, the both accused were granted Interim bail by 2nd Additional District & Session Judge, Lucknow on the basis of the Supreme Court (SC) ruling which states that if bail application can't be decided due to any reason then accused will be released on

Interim bail.”

The issue before the court was that the opposite party who was released on interim bail had unholy nexus with absconding accused and threatened to kill the victim and his family. Therefore, opposite party was misusing the liberty given by the law through interim bail. In view of the above, it was requested by the victim that the Hon’ble Court may cancel the interim bail of the opposite party as they are interrupting the fair trial processes and tempering the evidence, threatening life and property of accused, his family and his counsel, which is evident from the police report, concerned Magistrate orders and Hon’ble High Courts’ orders in writ petition under Section 482 of Cr. P.C. in application u/s 340 Cr. P.C. against all the accused for securing the ends of Justice.

During fieldwork, the researcher had an opportunity to interact with the disputed parties. The son of the opposite party (accused) who is an advocate stated, “We are witnesses in this case. This case is related with *Patta* (possession of land). The first party (informant) filed a case in the court and claimed a portion of land as his ancestor’s property, which is not true. Actually, the land belongs to the mother of the accused whom original title of *Patta* was made. Presently, this case is pending in the Hon’ble Supreme Court. Hence we are facing harassment from first party (informant) and we are also tortured. My father (accused) is a heart patient and suffered two heart attacks. To avoid further harassment we surrendered in the court though we are witnesses in original land dispute case. But legally, surety money had been deposited in the court while release on bail with full verification. Now, first party had applied for cancellation of bail. Let us see the court direction in this case? (Interaction held with family of accused on 10th august, 2012). Later, researcher had tried his level best to interact with complaint who is also a lawyer but he refused to furnish any information relating to the case. He was not comfortable with researcher and said, “I heard that you also met my opposite party.PL. Do not come to me as I do not want to talk to you further in this matter.” (Interaction held with informant/complaint at his lawyer’s chamber in District Court Compound, Lucknow September 2012).

CASE STUDY ELEVEN (Threat to Witness)

A woman (witness) aged 50 years old faced threats from the accused in Northern area of Mumbai city (C.R. No.121 of 2009, PS-Dindoshi Police Station of Mumbai).On March, 2010, she wrote first letter to the Commissioner of Police, Mumbai regarding threat given to her by the accused. The letter narrated nature and extent of harassment and threat given to her by the accused persons since last 6 months. In her letter she alleged that local police is not taking any action against the accused

rather they are giving undue protection to them. On 9th March, 2010, the second letter written by her was addressed to DCP, Dahisar, Zone-XII and the third letter to North Region Police; Kandivali (East) dated 19th March, 2010. Unfortunately, none of the police authorities took these letters seriously. When no action was taken on the letters she was forced to leave Mumbai. In fact, it is not known whether any action was taken at all on these complaints.

The Serious lapses noted in the investigation of the above mentioned case (CR-121/2009) so far by the police could be enumerated as follows:

- They allegedly never made the statements of victim and witness annexed to the coversheet.
- The statement of the victim dated 25th June 2009 was not initially annexed to the charge sheet. This was added after a direction from the Court. The second statement of witness does not form part of the coversheet.
- The statements of the victim and witness are seem to be recorded at the police station, despite specific bar under section 160 Criminal Procedure Code, which states that statements of women to be recorded at their residence.

In view of the gross deficiencies in the investigation done by the police and the request made by the petitioner for further investigation should have been accepted by them as observed the learned trial judge. In fairness, as an officer of the Court concedes that there are material deficiencies in the investigation by the officers of the Dindoshi Police Station into C.R. No.121 of 2009 and therefore further investigation shall be carried out. It has been pointed out that directions for further investigation by another officer of the same police station or for that at matter anybody form Deputy Commissioner of Police, Zone-XII would not serve the purpose, since the petitioner had already approached these authorities. They had merely summoned her for interrogation and not taken any concrete steps for grievance redress. She was summoned by the office of the Deputy Commissioner of Police, Zone-XII, Dahisar on 18th June 2009, Dindoshi Police Station on 25th June 2009 and 29th June 2009, Office of North Region Division, Kandivali (East) on 30th June 2009. At Dindoshi Police Station though her further statements were recorded, the same were not even included in the charge sheet filed in the court. In view of this, investigation is required to be entrusted to the State C.I.D.

The fact of the case also calls for action against the concerned officers dealing with the complaint. A detailed enquiry into the manner in which C.R. No.121 of 2009 was investigated must be held and suitable action against them taken.

The Commissioner of Police, Mumbai shall cause an enquiry to be made into the manner in which the investigation was conducted by the police officers in to C.R. No. 121 of 2009 and take appropriate departmental action against them (Source; Petition seeks Re-investigation by CID, Pune into the complaint being C. C. No. 2402304/PW/2009 pending on the file of the Metropolitan Magistrate, 24th Court Borivali, Mumbai).

CASE STUDY TWELVE (Theft)

An accused, 22 years, Hindu unmarried OBC male, educated up to VIIIth standard was working in a construction office (private firm) with a salary of Rs.10, 000 per month. Around 25 criminal cases such as assault, simple and grievous hurt, use of criminal force and property related offences etc. were registered against him between 2009 to 2012¹¹⁰. At the time of the personal interview with the accused at Malad Police Station on 27.8.2014 he has admitted his involvement in some of the crimes registered against him. He said 'I was involved in 5 cases of sudden fight or disputes took place at the community level, however, he denied other 20 cases and alleged that police have implicated him falsely. He further disclosed that he was involved in criminal activities due to peer group pressure, alcoholism and drug addiction. His bail was arranged by his parents (mother and father). Nevertheless, out of 25 cases, he is discharged in four cases and in remaining cases charge sheets are not filed by police. He is attending police station as well as court hearing regularly. He complained that his present status is affecting his livelihood and peace of mind because police conduct surprise raids in his house frequently and disturb peace and tranquillity at family level.

CASE THIRTEENTH (NDPS Act)

A 22 years old youth, belong to Schedule Tribe (ST) community was arrested by GRP Police Station, Lucknow under the NDPS Act, in the year of 2010 and 2012 respectively. (CR-412/2010, U/S21&22 of NDPS Act and CR322/2012, U/S-21&22). According to police and prosecution, the accused has been declared as recidivist as he had committed second crime during the bail period. In one sense or other he (accused) has actually violated bail conditions which were imposed on him by the court. The police labelled him as habitual criminal and had framed charges under Sections 21 and 22 of the Narcotic and Psychotropic Substance Act, 1986. The researcher met the accused in Lucknow Jail who has informed that on 21.10.2010 he was granted bail in the first case. While defending his first case the accused said, "Police has labelled him as criminal because he is a poor

¹¹⁰ Cr. 163/2011 under sections 379/34 IPC, PS-PS-Malad Police Station; Cr. 212/2011 under sections 379/34 IPC, PS-Malad Police Station; Cr. 391/2011 under sections 37(1) Mumbai Police, PS-Malad Police Station.

person belonging to the marginalized community (ST). He further narrated an incidence “One day, I went to watch a movie in Novelty Talkies of Lalbagh area of Lucknow city. During interval when he came out of the theatre, police caught him and framed him in a false case at Kapurthala police station, Lucknow. In the second case, the accused said that “when he was coming back from District Sitapur to Lucknow city at around 11 pm at Alambugh bus stand, I had altercation with an auto rickshaw driver. In the meanwhile, police reached on the spot and arrested me without any reason and again framed me in a false case.” He further contended that he is the victim of police biasness and atrocity towards nomadic tribes people whom they consider as criminal tribes even today (Interview held with accused in Luck now Jail on 07.09.2012 at 3:00 pm). The fact also substantiated by his lawyer who said that “My client is not a case of bail abuser; actually it is a case of misuse of power by police.” My client is a petty offender whom police is using NDPS Act as preventive action against him (Interview held with lawyer at Lawyers’ chamber in court, Lucknow). The accuser’s mother also expressed the frustration. She said, “I have 6 children including the accused. We, around 10-12 families, belong to the Kanjar community (tribal) and living near the railway line of Lucknow city Railway Station, as we do not have fixed abode. Mostly our families are engage in unorganized sector or self-employment work like flower making, broom making, mat making and honey selling from door to door etc. The city railway station police are biased with us. Even when our children are going for defecation in the open area, police would arrest them and book in false criminal cases, which they have never committed. In case of my son, the police falsely implicate him. Now, his image and confidence is totally lost because of police biasness? In first case, police team came to our home around 2-2:30 a.m. and told us that they wanted to inquire about the accused. They took him to the police station and framed false charges on him. Consequently, after spending around 11 months in jail he was released on bail and we had paid approximately 40,000 rupees to the lawyer. In the second case, when my son was returning from his *sasural* (father-in-law’s house) police caught him charged again in a false case as we had refused to pay bribe. My husband is not keeping well. Also we are the poor people and do not have money. Now, his father is not taken food since last 2 and half months. My son was sole bread winner for us. We are in trouble due to police harassment. Further, she also told that not only police but other community people are also biased towards our community because they feel that we are committing crimes in the area. For example, few months back one house breaking took place in our neighbourhood and police and neighbouring community people have doubt on us for that crime. On the basis of suspicion, police took us (entire family) to the police station, they applied machine or some instruments on us, the police took our finger prints and after proper inquiry they released us but with the complement that we are the culprit but police do not have any evidence against them.

Our Neighbours are not allowing us even to sit down on the road and raising objections for everything like washing clothes on road and also calling police on small issues. But my question is that this is a public road. Do we have right to life with dignity in this country or not? (Interview held with mother of accused at her residence R/O LoharGanj, MadhavMandir, Hasangunj, Lucknow on 20.10.2012 at 10 a.m.).

CASE STUDY FOURTEEN (NDPS Act)

A 20 years, illiterate, tribal youth from Lucknow city, was charged with four times in drug related crimes and got bail in his previous crime(s). Police considered him as a habitual criminal and also bail abuser especially in NDPS or drug related crimes¹¹¹–Accused got bail amounting Rs.30, 000 with two sureties in his first case after spending 8 months in Lucknow Jail. Nevertheless, the accused refuted all allegations against him and narrated, “I used to go for toilet in an open space on the railway line side due to non-availability of toilet facility in my house. One-day police caught me and asked to pay bribe for release, which I could not do so as, I am a poor person. Consequently, I was sent to jail in a false case.” He also informed the researcher that police atrocities on tribal youths are a routine phenomenon and many young people from our community had been victimized since last five years. The impact of this fear psychosis is resulting in livelihood, family and community life.” He further narrated an incidence that there was some dispute between two groups and the matter was reported to the police. Police came on the spot and arrested him and booked him under NDPS Act with 240 gram Diazepam (drugs) which he never used either personal or commercial purpose. He further shared his anguish and summarized that “Police from railway city station is misusing their powers and harassing us (Kanjari) Dalit Community because we are illiterate and poor. Now, we are thinking to migrate from one place to another due to police atrocities otherwise police will not allow us to live peacefully. However, he also accepted the fact that he is involved in petty offences like theft, mobile theft, pick pocketing but not in drug related offences (Interview held with accused in Lucknow Jail on 07.09.2012 at 2:30 pm). Father of the accused who arranged bail and sureties manifested his anger over police and justice system. He said,” In first case, I had arranged surety of Rs 30,000 from one of my friend who is an employee of DRM (Office of the Divisional Railway Manager, Lucknow). My son is not bad person but police has made him a bad man. We do not know what is Diazepam? My son was selling domestic cleaning instruments door to door for livelihood in Hajratganj Police Station, where no case is

¹¹¹ Crime Registration No.150/07, Police Station-GRP, Lucknow; Crime Registration No. 743/10, Police Station-GRP, Lucknow; Crime Registration No.289/12, Police Station-GRP, Lucknow.

registered against my son (accused). GRP police station is very far, which had registered only drug related cases against him. I have brought these incidents to the notice of the higher authorities such as chief Minister and Railway Minister about fake cases registered against our community particularly youths but nothing has happened. Tell me if police is doing this to the poor people like us then where we will go? Actually, police is not catching real criminals rather creating criminals from poor and social excluded community.” (Interview held with father of the accused on 16.10.2012 at 2 pm). The mother of the accused, aged 50 years also shared her feeling with researcher saying that “my son has become mad since 6 months due to torture in police custody” (Interview held with mother of the accused on 16.10.2012 at 2:30 pm). One of the police Officers (Police Parokar) revealed an insight of police functioning. He said that “this particular case does not come under NDPS Act (Narcotic case). However, police apply NDPS Act as a crime control strategy for preventing petty criminals for further committing crimes because if they are booked under general law then they can get bail easily and repeat the crime. Since NDPS Act 1986 debars bail to the accused that possess 5 gram smack, 1 kg, ganja, 100 gram, Charas, 25 gram, Alphium and 20 grams, diazepam police use stringent laws for preventing petty offenders to repeat crimes. (Interaction with police officer from GRP, Police Station at NDPS Court Lucknow on 06.09.2012 at 1 pm).

CASE STUDY FIFTEEN (Theft Case)

An accused, 21 years, a married Muslim youth from Malwani area of Mumbai city is a self-employed person engages in cloth selling on the street. He earns Rupees 15,000 per month. About twenty criminal cases are registered against him in Malwani Police Station. During personal interview he confessed that he developed criminal tendency due to alcoholism and drug addiction habits. Although he had committed some petty crimes, in many cases he is falsely implicated. He also admitted that due to his criminal career and bad reputation in the area his wife and children are suffering. In some cases she has furnished sureties (cash) for releasing me on bail. While narrating his family life, he said that his daughter is having some medical problems and I am unable to help her due to my criminal career. (Interview held with accused at 27.8.2014 at Malwani Police Station).

CASE STUDY SIXTEEN (THEFT)

The accused, 25 years married Muslim youth from Malwani area of Mumbai city is engage in weaving (*Jari*) and earns around 15,000 rupees per month. He is educated up to 12th standard. According to the local police records (Malwani Police Station), three criminal cases are registered against him¹¹². Therefore, he was processed through chapter proceeding u/s-110 of Criminal Procedure Code, 1973 dated 19.06.2013 by order of ACP Malwani and filed personal bond-24/2013(Interaction with police official at Malwani Police Station, Mumbai city at 07.11.2014). During personal interview with the accused, he said that three cases registered against him are false. According to him, “there was a dispute with his neighbours over land issue. Consequently, one of the members of disputed party got heart attack and later died due to internal bleeding causing natural death. However, a case of murder was filed against him for whom he was not responsible. He (accused) had vehemently denied the charge of murder and said that police falsely implicated him in such cases which he had never committed. He further said that due to criminal cases, he has faced many problems and his livelihood is severely affected. (Interview held with accused on dated 07.11.2014 at Malwani Police Station).

CASE STUDY SEVENTEENTH (THEFT)

An accused, 22 years Muslim youth from Malwani area of Mumbai city was charged for 5 criminal cases¹¹³ at Malwani Police Station of Mumbai city. He is an unmarried & school dropout male who is engage in hand weaving work (known as *jari*) and earns approximately Rupees 9000 per month. He was processed through chapter proceeding no. 15/2013; under section-109 (A) of Criminal Procedure Code, 1973 and subsequently furnished personal bond to concerning ACP (interaction held with police officials from Malwani Police Station on 07.11.2014). During personal interview, he confessed that he had committed theft when he was the child due to influence of alcoholism. Then, his grandmother (*dadi*) bailed her out. He informed the researcher that he is already discharged in two cases however; he could not show documentary proof for that. Further, he said that due to his past crime the local police labelled him as a criminal and police often ask him to visit the police station or police beat and inquire about his movements in the locality. He said that his image is tarnished in the local community and affecting his livelihood. (Interview held with accused at Malwani Police stations at 27.8.2014).

¹¹² Cr. 127/2011 U/S-379, 511,427 & 27 IPC; Cr. 110/2013 U/S-302, 324, 504, 506 & 34 IPC; Cr. 467/2014 U/S-324, 323, 504, 34 IPC

¹¹³ Cr. 10/2007- U/S-379, 34 IPC; Cr. 17/2008-U/S-323, 324, 504IPC; Cr.80/2009-U/S-124 MOCCA; Cr. 55/2012-U/S-379, 34 IPC; Cr. 81/2014, SLL-122E, MOCCA

CASE EIGHTEENTH (Theft case)

Accused is a 24 years old Muslim youth who attained education till 5th standard. He is a married person and self-employed who earns rupees 10,000 per month by refilling plastic water bottles. He vehemently denied for his involvement in any criminal activity (theft) and alleged that his rival party had implicated him in the false criminal cases as they have connivance with the local police. He further informed that he was released on bail in this case and still observing bail conditions such as he visits local police station daily to ensure his presence before the police authority and this is causing problems in getting good job. This aside, the police also harass his family during their visits to his house. He said that I am not a criminal as the matter is still pending in the court, although he was charged with three types of criminal cases¹¹⁴. Accordingly, preventive action proceeding took place against him as accused not criminal (chapter case-8/2009 & 12/2009; u/s-110 Cr. P.C.1973 as a result, he was extended for 6 months (interview held with accused on 07.11.2014 at Malwani Police Station of Mumbai city).

CASE NINETEENTH (Disturbing public peace)

The accused, 28 years, Muslim youth is a vegetable vender from Cheeta camp, Trombay, Mumbai. He was booked in two criminal cases registered at Trombay Police Station, Mumbai (CR no. (1) 180/2006, U/S -324IPC & (2) 311/2006, U/S 324, 506, 34 of IPC). According to the accused, “A dispute took place in the Vegetable Market and he was trying to resolve the matter along with other persons, police reached on the spot and arrested him. Finally, he was booked under Section-324 IPC (Voluntarily causing hurt by dangerous weapons or means, u/s-506 (Punishment for Criminal Intimidation) and U/S-34 (Acts done by several persons in furtherance of common intention). Further, he added that in his support around 100 people went to police station but police did not listen to them and framed him in a false case.” In the second case, he was working in election campaign for a candidate during BMCElection-2012. Police arrested him and charged for disturbance of public peace. During field visit at his residence, he stated the researcher that he was framed and victimized by police in both the cases because he is a Muslim. Further, he said, “My father is a heart patient and suffering with high blood pressure and not keeping well. So I have family responsibility. He alleged that police is framing innocent people on basis of the information supplied by their informers. Police should cross check the information given furnished by the informers before implicating the poor and innocent people like me.” The Father of the accused (55 years) said, “My son’s life is spoiled by the police. This has also adversely affected our image and

¹¹⁴ Cr. 123/2007-u/s-457, 380 IPC; Cr. 170/2008-u/s-380 IPC; Cr. 236/2008-u/s-454, 457, 380, 34 IPC

livelihood. Due to labelling of my son as a criminal, his reputation is faded and we feel helpless and eventually seeking justice because we are poor Muslim.” (Interaction held with accused and family members on April 20, 2012 at 2: 00 pm.).

CASE STUDY TWENTEETH (Theft)

Accused is 23 years old Muslim male and working as a security guard and getting salary of Rupees 6000 per month. He is an unmarried person who has passed 8th Standard of education. The accused has shared his journey of crime and criminal justice system with the researcher. “Around 10 criminal cases (theft) were registered against me and he was convicted in 5 cases only. He said that his rival party from local area falsely implicated him. In all cases his mother who is poor and staying in the Malvani area of Mumbai city furnished cash bail. He was extended from Mumbai city for 7 cases out of ten cases (extern proceedings). He alleged that police brand a person as accused and implicate in many false criminal cases so that such person may be sent out of Mumbai city through extern proceedings. Presently no criminal case is registered against him” (interview held with accused at Malwani Police Station at 27.8.2014).

CASE STUDY TWENTTY ONE (Theft)

An illiterate boy of 18 years (accused) was working in a garage at the Linking Road area of Khar (West), Mumbai city. He is staying with his father and sister in the slum located nearby road, Juhu Tara Road, Mumbai. He accepted the fact that he was involved in theft cases with his friends. In his first case of theft, which falls under section-380 IPC, he spent 14 days in jail before he was released on personal bond on mercy ground. In second case, as he mentioned, “I was with my friends in Juhu Chaupati area. It was Sunday, so I was relaxing while having beer with my friends. Suddenly, we made a plan for theft in nearby building at Juhu area. After committed theft, I have gone for shopping in Vile Parle area where Police arrested me and sent to the jail.” He further said “since last few months (3-4), I am lodged in Jail; there I am doing cleaning work and getting Rs. 700 per month wages. Now, I have realized that crime does not pay anything” During informal discussion, he stated that due to peer influence he got involved in crime, “ My family is facing criticism and social rejection due to my bad character and my father is forced to return to his home town in Uttar Pradesh. I have now decided that I will not commit crime and will lead a good social life, however, I need legal and financial support.” (Interview held with prisoner in Author Road Jail, Mumbai).

CASE STUDY TWENTY TWO (Theft)

A (18 years, old) Muslim boy, educated up to 4th standard, migrated from Kolkata few years back was staying with his family in Kamathipura area of Mumbai city. He was working as a helper in the truck (private vehicle). He mentioned about his journey in crime. At the first time, he did not commit any crime despite that he was charged for theft case falsely by the police because at midnight, he was returning home from his workplace. Later, he was released on personal bond. In the second crime, he has accepted the fact that he has developed friendship with some young prison inmates inside the jail and after being released on personal bond he committed theft. His parents arranged Rs. 10,000 as surety amount & court released him on bail. In third time, he again committed theft along with a group of boys and languishing in jail since last 6 months and his bail application of Rs. 15,000 was under consideration of Dogri Court (Juvenile Justice Board (JJB)). When researcher asked him about his future plan to lead crime free life he stated that I want to get rid of this bad company of friends and would like to do some work with hard labour after getting bail (Interview held with prisoner (1258/ UT) in side Author Road Prison, Mumbai during data collection).

CASE STUDY TWENTY THREE (Theft)

An accused, 20 years, is working as a helper in Taxi stand as his father is also a Taxi driver in Mumbai. He is a school dropout and staying in the slum area. He was charged in 2 cases of theft. He alleged, "In the first case, police implicated him in a false case (theft) which ruined his life. During my short stay in prison I came in contact with bad people and later outside too my peer group has influenced my journey in crime. I am an alcoholic and drug addict therefore need money. The peer group influenced and instigated me to commit theft. However, I have decided now that I will not commit crime as my family is getting social rejection and my parents are getting bad name in the society."

CASE STUDY TWENTY FOUR (Theft)

The accused, a teenager, Hindu boy is a school dropout after 9th standard. He was staying with his parents and an elder brother. Initially he was working in furniture shop as a casual labourer and developed habit of drug abuse and alcoholism under the influence of peer group (5-6 boys of his locality) who were indulged in mobile theft and chain snatching activities. According to the accused, "In my first attempt of crime, I stole mobile phone and charged for theft but released on personal bond. He confessed that he adopted criminal career after joining the group of boys who are

professional thieves. In the second case, his father had arranged surety of Rs. 1500 and now in third case he is languishing in Jail. He further stated that due to his criminal behaviour, he is facing embarrassment in the family and local community level. Therefore, he has decided to change himself as a good person.”

CASE STUDY TWENTY FIVE (Theft)

A Muslim female teenager, an accused of 19 years, from Mumbai was working as a casual labourer in a catering firm and was getting Rs. 5000 per month remuneration. She stated that her salary was not sufficient to fulfil basic requirements of her family. Therefore, she indulged in petty crimes such as pick- pocketing and chain snatching in the local trains and stealing goods from shopping malls etc. and in each case she was given minor punishment like one month or two months imprisonment by courts and released on personal bond. She stated that if I get an opportunity to earn livelihood through some skill development programme I would like to leave criminal career.

CASE STUDY TWENTY SIX (Theft)

The accused, a married woman, 23 years educated up to 8th standard from Mumbai city was working in catering firm and getting remuneration Rs. 2500 per month. She said that she was engaged in theft cases because her peer group was also engaged in theft or stealing cases. She used to carry out her theft related activities in running train and charged with under section-379 IPC in many cases. Since she was young the court released her on personal bonds with warning. Unfortunately she could not improve her habit of theft and became recidivist at young age.

CASE STUDY TWENTY SEVEN (Theft Cases)

A 22 years, Hindu unmarried, school drop- out boy is currently working in a shoe factory at Kandiwali area of Mumbai city. He earns rupees five thousand monthly. Around 18 cases of theft are registered against him. He got bail (cash bail three times) ranging Rs. 10,000; 5,000 and 3,000 respectively and abused the bail in a number of times . Some of the cases are summarized here's¹¹⁵. During personal interview at the Kandiwali police station in Mumbai city, he confessed the fact that he was involved in the criminal activities because of his friend circle. For example, if there were any small disputes in the local community he would be involved in these matters to resolve them.

¹¹⁵ Cr. 225/2008 under section 454,386 IPC PS Kandiwali; Cr.21/2008 under section 325,324, 504 IPC PS Kandiwali;Cr. 323/2008 under section 506 IPC;Cr. 150/2008 under section 379.,34 IPC PS Kandiwali; Cr. 352/2008 under section 379 IPC PS Kandiwali.

As a result, he was charged for petty crimes and was sent jail many times(spent 5 months, sometimes 4 months and sometime one years as case may be and availability of surety). He was also extended 2 times for two years.

CASE STUDY TWENTY EIGHT (Theft)

The accused, 30 years, an illiterate man from the tribal community from Bhatiwada village of Dahod Taluka, District-Dahod, Gujarat State was an agricultural labourer. He stated that on 27.07.2011 I was going to my field and around 9 am morning a police vehicle stopped on the way and inquired about his identity and asked him to sit in the vehicle (Jeep). Some of the policemen were in uniform and others were in civil dress. His wife had seen this incidence from a distance. Later, I was brought in Dahod police station, Gujarat and after an hour I was shifted to Thane central Jail because police charged me falsely in many cases¹¹⁶.

CASE STUDY TWENTY NINE (Theft)

A co-accused, 22 years, illiterate tribal youth, engage in agricultural work at Kharoda village, Taluka-Dahod, Gujarat State was arrested by plain clothed policemen at Dahod town when he was coming out of a Restaurant after having dinner. According to him, I spent one night in lock up of Dahod police station and thereafter 6 days I was taken to various unknown places and police stations by the police. Finally, police falsely implicated me for many cases and eventually I was sent in Thane Central Jail. Presently, my bail application is pending in Palghar Court. He refuted all the charges levelled on him and stated that police is working against marginalized and poor people and therefore I have been falsely implicated in the various criminal cases without any reasons. According to Prison officials he is a recidivist as 4 cases are pending against him¹¹⁷.

CASE STUDY THIRTY

A school drop-out, young boy, 22 years, belong to Other Backward Caste from Chuligram village, District Shidharthnagar, Uttar Pradesh came to Mumbai along with his wife in search of employment. He is a professional painter. According to him, “my friend had invited me to visit Mumbai so that I could get gainful employment. On reaching LTT Station, Kurla, Mumbai police

¹¹⁶ CR. No. 55/2011 U/S-395, 397 IPC at Shafala Police Station, District-Thane ;(2) CR. No. 65/2011 U/S-394, 380-34 IPC at Bhiwandi police Station, District-Thane (3)CR. No. 103/2011 U/S-395,397,411 IPC at Bhiwandi police Station, District-Thane(4) CR. No. 16/2011 U/S-395,341 IPC at Ghorvad police Station, Thane.

¹¹⁷ Ibid.

asked me to show railway ticket. Accordingly, I have shown the ticket but they arrested me saying that you are without ticket. I was taken to the some police station and charged for various crimes falsely. Since 8 months I am lodged in Thane central prison. But he did not mention about his wife who was accompanying him. According to Thane Prison records he is charged for four criminal cases¹¹⁸.

CASE STUDY ANALYSIS: BAIL ABUSERS (Recidivism)

The second categories of bail abusers are recidivists. Out of 30 case studies, 21 cases (70%) respondents (abusers) belong to repeat offenders' category. Further, nature of bail abuse could be classified into two categories – (i) threatening victims and witnesses (ii) committed similar nature and different nature of crimes. In contrast to the absconders, recidivists are repeat offenders who have committed more serious nature of crimes minimum 2 crimes - NDPS crimes (case studies 13,14) and maximum any number of time up 25 cases against one criminal case study (case study 12). The analysis further shows that most of the recidivists are young offenders between 21 to 30 years and a vast majority of them are school drop -outs and have adopted criminal career mainly due to alcoholism and drug addiction. Thus, youths who could be productive human resource and social capital of our country are moving into wrong direction and unable to contribute significantly in nation building. Therefore, there is a need to link these youths through various skill development schemes of the Governments.

¹¹⁸ CR. No. 269/2011 u/s 454/457, 380 IPC at Manikpur Police Station, District -Thane; CR. No. 79/2011 u/s 379, 402 IPC at Navghar Police Station, District-Thane; CR. No. 122/2011 u/s 454/457, 380 IPC at Navghar Police Station, District-Thane; CR. No. 149/2011 u/s 454/457, 380 IPC at Navghar Police Station, District-Thane

Summary of Case studies

Part - I : Bail Absconders -a category of bail abusers)

CASE STUDY ONE (Drug Possessed)-

Causes- Alcoholism as one of the reasons for non attending court proceedings and harassment, fear of police and false implications by police as there had been no previous criminal history of the accused .

Impact – The bail absconder left behind his wife, children and siblings who tried their level best to trace him but failed. The absconder’s family experienced harassment by the police and felt vulnerable and frustrated due to missing of their family member (accused) and consequently faced pressures from the Police and the Court. The police had visited frequently his home for inquiring about his brother. As a result, the family is going through turmoil and facing mental tension and financial crunch.

CASE STUDY TWO (Drug Possessed)-

Causes – Alcoholism as one of the reasons for absconding bail. Harassment, fear of police and false implication of the accused by Police as the accused has no criminal history. Rather the possible reason for arrest has been refusal by accused to pay bribe to the Police. Police did not comply with due procedure while making arrest as there are no independent witness of the alleged recovery of drug as shown on the spot and the alleged recovered drug does not fall within the category of commercial quantity list. Another reason being failure to receive summon from the Court.

Impact - The accused /bail absconder has left behind his wife who is doing tailoring job and two children and his mother in law who acted as surety for him. The Mother-in-law of the accused who was one of the sureties for him expressed her feelings and frustration. The family complains for not being taken care of or nor provided adequate resources.

CASE STUDY THREE (Kidnapping and Rape)-

Cause –Abuse of power by Police as the accused bail absconder is the Police officer himself.

Impact –On the family of victim as the victim opines that the State is not doing justice to my family. The victim’s family has been suffering in many ways including economic loss, distortion destroyed of social image and loss of young minor girl.

CASE STUDY FOUR (Pick -Pocketing in Train)-

Causes -The accused is not informed of the case transfer, no summon has been provided either by Courts or Police. Mental illness or health problem of accused is another reason for not attending the court regularly.

Impact – On the surety frequent police visit in their village and consequent police harassment and questioning.

CASE STUDY FIVE (Rash and Negligence driving)-

Causes – Fear of false allegation and harassment by Police.

Impact - Absconding of accused has impact on court proceedings and as this impedes access to justice to the victims.

CASE STUDY SIX (Alleged set fire on complaint’s House)-

Causes – Police making false and wrong fabricated charges and construing a false case against the accused bail absconder. Another reason for bail absconding is epilepsy, mental health related problem.

Impact – The accused’s family is living in poverty as they are unable to manage day-to-day expenses, they had borrowed money from the local moneylender through mortgage of land.

CASE STUDY SEVEN (Theft)-

Causes – The accused, bail absconder is a migrant worker living in slum areas (not permanent address), the accused address could not be found.

Impact – Hindrance on court proceedings and denials and delays justice to victims.

CASE STUDY EIGHTH (Theft by domestic maid servant)-

Causes - Accused, bail absconder is charged for petty offences as theft of domestic household commodity hence for fear of heavy police sanction, the accused is absconding.

Impact – The Accused or Bail absconder and Surety both are not traceable, both have gone missing or not to be found. No further details could be found on the same.

CASE STUDY NINE (Alleged Murder) –

Causes – Wrong address mentioned in the official record, Racket run by fake surety in connivance with police, judicial clerks. Hence the accused is found to be absconding.

Impact - The Accused or Bail absconder and Surety both are not traceable, both have gone missing or not to be found. No further details could be found on the same.

Case Study Analysis- (Absconding) Identification of common causes of absconding-

Inferring from the above case studies, some of the common causes for absconding bail are fear of police harassment, loss of faith in police and law enforcing agency and judiciary, alcoholism coupled with drug abuse, mental ailments, fake address, gone missing among others.

The Problem of Absconding: Some Observations

Some of the common trends emerging from the bail absconder's cases are as enumerated below:

It is observed that male accused are more prone to absconding bail than the female accused. The accused have found to have committed more than one crime two or more crimes usually these crimes involve crimes against human body, property and possession of drugs which affect social and public order of the society. Largely these people are found to be picked up on random basis hence fear harassment from police and resort to absconding.

Causes of absconding: Bail abusers' perspective

Though these individuals have been granted bail but these individuals could not meet the bail conditions due to one or other reasons including poverty being major cases therefore inability to furnish requisite sum under bail bond, no communication from Police, Court on date of summons, hearings, ill health habits as alcoholism, drug abuse, physical and mental health problems among others.

Another important cause is fake surety who share no prior knowledge no connection with the accused as bail absconder, rather these are fake rackets.

Further, it has been corroborated by the researcher during the field visit that despite several visits by the research team, some of the accused and surety men could not be traced in the given addresses therefore, no reasons for absconding could be ascertained.

Solution: Need of Collaborative and Concerted Efforts

The phenomenon of absconding (due to bail abuse) can be attributed in two folds. *Firstly*, one of the reasons for not attending court trial or police station on specific time and date by the accused prevails due to lack of timely communication from the courts and concerning lawyers to the clients. Hence it is suggested that the lawyers should be made responsible for informing their clients about progress of the case and the appropriate date, time, address of the court, along with brief on the stage of court proceedings where in the accused is required to appear well in advance so that non appearance may be checked. when and where they are supposed to attend the proceedings. *Secondly*, some cases of absconding are related to non-availability of accused on given addresses as furnished by them in the judicial records at the time of getting bail and sometimes both accused

and surety have migrated voluntarily or forcefully. This situation is creating a complex phenomenon for police system because they are already struggling with poor infrastructure, manpower due to a large number of vacancies) time and resources to nab the absconders. In the light of this issue of traceless accused, surety and fake address, coupled with the issue of lack of staff among police for verification, it is proposed that community policing may be used for resolving the same.

Part –II- Recidivists -another category of bail abuser

CASE STUDY TEN (Threat to Victim)

Causes – One of the main causes was misuse of bail provisions is the misusing of liberty given by the law through interim bail and illicit nexus with absconding accused.

Impact – There is impending threat to kill the victim and his family. There is possibility of interruption of fair trial processes and tampering with the evidence, threatening life and property of accused, his family and his counsel.

CASE STUDY ELEVEN (Threat to Witness)

Causes – Police inaction and deficiencies, lapses in investigation are the reasons for recidivism.

Impact –The witness has been facing harassment and threat for last six months. The Commissioner of Police directs an enquiry into gross deficiencies in the investigation done by the Police.

CASE STUDY TWELVE (Theft)

Causes - The accused was associated with repeated criminal tendencies due to peer group pressure, alcoholism and drug addiction.

Impact – There is adverse impact on his livelihood. Police conducted surprise raids in his house frequently and Police disturbed peace and tranquillity at family level.

CASE THIRTEENTH (NDPS Act)-

Causes –Arbitrary arrest by the Police on false criminal cases as the accused belongs to the scheduled tribes community. Police makes random arrest on them for reasons due to Police bias and

atrocities towards nomadic tribes as police considers them as criminal tribes, community also doubts them.

Impact – Non co operation, stigmatization and exclusion from neighbours as the neighbours do not allow them to use common civil amenities as roads. Neighbours have been harassing them by calling police and issuing them threats.

CASE STUDY FOURTEEN (NDPS Act)

Causes – Police makes arbitrary arrest of tribal youth by filing successive charges falsely for drug related crimes under NDPS Act.

Impact –The accused's family contemplating migration from the city. The accused is rendered mad following police abuse, torture. The accused old mother is facing hardships, frustration making complaints against the fake charges against her son.

CASE STUDY FIFTEEN (Theft Case)

Causes – The accused attributed his criminal tendency due to alcoholism and drug addiction habits.

Impact –The accused and his family faces stigmatization, ill social standing and bad repute in society. His wife and children are suffering. Owing to this, his daughter undergoing some medical problems, he is unable to help nor she receives any help from society.

CASE STUDY SIXTEEN (THEFT)

Causes –there are three false cases registered against him by neighbours over land issue. A wrongful case of murder is filed against him even though the other part died of heart attack.

Impact – There is grave adverse impact on his livelihood he is unable to find gainful employment. There is deep social stigma on him.

CASE STUDY SEVENTEENTH (THEFT)

Causes – Alcoholism is one of the main reason for indulging in petty offences but police alleged that due to his past crimes record police labelled as habitual offender and charged him in fake cases.

Impact –there are frequent visits by police and police enquiry about whereabouts of his movements. Police perpetrates violence on accused.

CASE EIGHTEENTH (Theft case)

Causes – False criminal charges by rivals along with connivance with the local police despite his observance of bail conditions.

Impact – The accused's family faces harassment from police as the police frequently visits and check his home. Police has initiated preventive action proceeding against him as accused.

CASE NINETEENTH (Disturbing public peace)

Causes – Police framing false charges against the accused on mere suspicion, hear say sources without checking or verification of facts and the police victimizing the accused as he belongs to minority community.

Impact – The accused is labelled as a criminal and this has negatively impacted his image and livelihood. Further the accused family member including his father's health condition has deteriorated due to these incidents. His father is heart patient and suffering with high blood pressure. They feel helpless and frustrated as they receive no help from police.

CASE STUDY TWENTEETH (Theft)

Causes – False implication of criminal charges by rival party in the locality.

Impact – There has been labelling of the accused person as criminal and the police has initiated externment proceedings against him thereby compelling him to move out of Mumbai. The accused's old poor mother is forced to stay alone and she is deprived of her son's support.

CASE STUDY TWENTY TWO (Theft)

Causes – Peer influence and consequent involvement in petty cases as thefts is one of the reason for repeating crimes.

Impact – The accused's family is facing criticism and social rejection due to his bad character and his my father is forced to return to his home town due to such stigmatization. However the accused has strongly expressed his remorse and guilt and he contends that he never wishes to commit crime and that he will lead a good social life. But he seeks legal and financial support for the same.

CASE STUDY TWENTY THREE (Theft)

Causes – False implication by Police on petty charges as theft. Consequently, the influence of peer group and prison inmate while his stay in prison influenced his ill life style habit as alcoholism drug addiction and this peer pressure influence instigated him to commit thefts, other petty crimes and this perpetuated criminal tendencies in him to seek more money for the same.

Impact –The accused's family is receiving social rejection and his family including his parents are getting bad name in the society. He expressed his regret that he does not intend to commit any more crime in near future for the stigma he and his family is facing for the same.

CASE STUDY TWENTY FOUR (Theft)

Causes – The accused's drug abuse and alcoholism under the influence of peer group along with the boys of his locality leading the accused's indulgence in petty offences as mobile theft and chain snatching activities.

Impact - The accused and his family is facing embarrassment in the family and at the local community level. He laments about the same and he seeks to change himself as a good person.

CASE STUDY TWENTY FIVE (Theft)

Cause –The accused is a casual labour with meagre salary and owing to lack of money to meet the basic requirements of her family sufficiently. Therefore she indulged in petty crimes such as pick-pocketing and chain snatching in the local trains among others.

Impact - She wishes to renounce her criminal activities and she seeks to undergo some skill development programme so that she may earn better livelihood.

CASE STUDY TWENTY SIX (Theft)

Causes – The accused in involved in series of petty theft cases following peer groups from her early young age.

Impact – She has developed criminal tendencies due to lack of reform opportunities.

CASE STUDY TWENTY SEVEN (Theft Cases)

Causes – The accused is involved in petty crimes because of his friend circle from a long time.

Impact – He has been jailed many a times and he continues to languish in jail due to lack of surety.

CASE STUDY TWENTY EIGHT (Theft)

Causes – The Police has charged the accused falsely in several cases. The Police made arbitrary arrest after making some random enquiry and then made him sit in the Police vehicle (Jeep) without any further information and procedural compliance.

Impact – The accused is subject to detention and this incident of random, arbitrary arrest has adversely affected his wife who has been eye witness to the same. This has caused mental or psychological disturbance to his wife.

CASE STUDY TWENTY NINE (Theft)

Causes - Falsely implication in various criminal cases without any reasons and arbitrary or random arrest by Police in plain clothes without any information.

Impact - It is a common generalization expressed by the accused that the police is working against the poor marginalized particularly tribals as they are associated with anti social or criminal activities.

CASE STUDY THIRTY

Causes – False charges imposed on the accused by Police following his arrest in a petty case of travelling without ticket and thereafter subsequent charges by Police.

Impact –The accused does not disclose the identity, whereabouts of himself, his family or wife fearing police harassment. This indicates mistrust in Police, Courts and other law enforcing agencies by the accused.

CASE STUDY ANALYSIS: BAIL ABUSERS (Recidivism)

Some of the common underlying emerging trends from the case studies are as mentioned below:

Most bail abusers are found to be repeat offenders or recidivists who have committed minimum two crimes or more of serious nature under NDPS Act or other serious crimes among others.

Most of the recidivists are young offenders in the age group of 21 to 30 years and it is found that a vast majority of them are school drop –outs.

Some of the common reasons for development of recidivist tendencies is the peer pressure, lack of education, vocational skill and consequent dearth of gainful employment opportunities, ill health habits as drug abuse, alcoholism, among others leaving them no scope for coming out of such criminal activities.

The recidivists have faced harsh social stigma, labelling of character as criminal, casting aspiration on his personality, denial of livelihood opportunities, exclusion from immediate society, neighbourhood, separation from family, loss of repute or social standing of family.

Some of these recidivist regret their criminal activities and they seek to engage in better livelihood opportunities as well as learning skill based activities for their reformation, reintegration in society.

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- CR No. (1) 180/2006, U/S -324 IPC & (2) 311/2006, U/S 324, 506, 34 of IPC.
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- Accused was interviewed at Athur Road Prison, Mumbai
- Accused was interviewed at Athur Road Prison, Mumbai

- Accused was interviewed at Author Road Prison, Mumbai
- Accused was interviewed at Author Road Prison; Mumbai Case studies 21,22,23 &24).

Chapter VIII

Major Findings and Recommendations

The present study aims to understand the phenomenon of bail abuse and its impact on recidivism through an exploratory research method. Since the study is first of its kind (with limited sample size) we could not make direct inference of all findings and recommendations. However, these findings and recommendations shall be examined by a national study (with a large and representative sample size) to devise a road map for policy and procedural reforms to address the phenomenon of bail abuse and its impact on recidivism. This research study could be located in the emerging branch of Translational criminology, in which criminological research knowledge is translated into criminal justice policy and practice.

MAJOR FINDINGS:

1. The data collected from eight police stations of Zone –XI, Mumbai Police Commissionerate, (Borivali, Goregon, Malad, Malwani, M.H.B, Kandivalli, Charkopand Bangur Nagar) in the Jurisdiction of North Region of Mumbai Police Commissionerate shows that about 60% the accused were granted bail out of total number of cognizable crimes registered in 2013-14. Around 27% Bailees became absconders and abused bail conditions and only 4.7 % of them could be re-arrested by police. It raises question on efficiency and effectiveness of bail granting process practiced by the criminal justice institutions.
2. On the advice of the Research Committee of Sardar Vallabhbhai Patel National Police Academy (SVP NPA), Hyderabad, some additional data on the above issue (Table 4.1(A) was also collected from all 12 Zones of Mumbai Police Commissionerate jurisdiction. To substantiate the finding from micro- level perspective an attempt has been made to analyze two years data (2014 – 2015) collected from the respective Zonal office .

Factors influenced ‘Recidivism’

3. Different factors influence the reasons why people commit crime or desist from crime on release. Some may be influenced by correctional services (such as the completion of a particular psychological program) but others may be unrelated (such as maturity or forming a positive new personal relationship). It can therefore be difficult to determine exactly what it was that ‘worked’.

According to the Crime in India-2015¹¹⁹, “The habit of relapsing into crimes by the criminals is known as Recidivism. A recidivist is a person who relapses into crime again and again.” This definition does not provide time-frame and what type of offending constitute recidivism. The share of recidivists among all offenders increased to 8.1% during 2015 as compared to 7.8% in 2014. In absolute terms, the number of past offenders involved in repeating IPC crimes during the year 2015 was 2,96,156 in comparison 2,95,740 in 2014 with a marginal increase of 0.1% of such offenders in 2015 over 2014.

4. The data shows that share of habitual offenders to convicts in the Indian prisons has drastically come down since last decade (2003-2015) from 7.3% to 3.0%. Another aspect is that National Crime Records Bureau’s publications- *The Prison Statistics* and *Crime in India* depict variation in data recording of different nature of the act of recidivism as total number arrests made by police in particular year and total number of convicts admitted during that particular year. This variation could be visible because after an arrest is made, some of the arrested persons get bail from the court. For example, according to *Crime in India 2015*, 2,96,156 people were arrested, however, only 1,86,566 persons were admitted in the Jails. It means the difference or variation of 1,09,590 persons is huge number for which no information is given in these reports. It is worth mentioning that 2,44,364 persons out of total recidivists were those who had been convicted once and could have been released on bail.

5. Similarly, an analysis of the number of bails granted also shows that a large number of bails were granted during the year 2014 by Zone IX and least number by Zone I. The correlation analysis between number of cognizable crimes and number of bails granted during the year 2014 is positively related ($r = 0.60$). Similarly, data for the year 2015 further shows that large

¹¹⁹ Crime in India, 2015: National Crime Records Bureau, New Delhi: Ministry of Home Affairs, GOI.

number of crimes was reported at Zone XI, however, highest number of bails were granted at Zone II. Indeed, further in-depth analysis to be done in the context of demographic and other Sustainable development Goals (SGD) in the localities of this Zone.

6. Correlation coefficient between reporting of cognizable crimes and bail granting shows that these two variables are positively related ($r = 0.46$), although the number of bail granted is always a direct function of rate of crime reported in the Zone. Data shows contrary result to the police argument that the bail is often misused. The data for 2014 shows that the number of bail granted in various Zones were not related to number of absconders (except in 2 Zones). For example, in Zone XI bail were granted to 1935 accused but only 493 had absconded, contrary to this, a large number of bails were granted by Zone IX but none of them absconded in that Zone. Thus, correlation between bail granted across Zones and bail absconded are very low ($r = 0.10$). Similar result is reported for the year 2015 as rate of bail granted and rate of absconders were not related ($r = 0.02$). Hence, rate of cognizable crimes reported at police stations under various Zones is positively associated with the rate of bail granted. Higher the crime reporting higher the bail granted. But to our surprise and contrary to police argument as bail is often misused, the data for both the years- 2014 and 2015 across 12 Zones of Mumbai Police Commissionerate shows that the bail granted is not at all related to number of absconders. These findings could be substantiated with the micro -level data collected from Police Stations under Zone XI (pl. see Table 4.1). An analysis of data regarding number of bail granted and number of absconders in various Zones shows that Zone XI has the singular distinction in this matter. Since this Zone constitutes higher percentage of minority population further in-depth analysis is required to understand nature and pattern of crime in relation with demographic and other related factors. While interviewing the recidivists from this area many accused told that they had committed some minor crimes but at the same time police had implicated them falsely in many more crimes which were never committed by them.

Bailees Perspective

7. The sex composition of the respondents clearly shows that men (97%) outnumber women (2.9%). It indicates that in the Indian society crime is still a male dominated phenomenon. Further, data indicates that majority of the Bailees was young people and below 30 years (70.3%). It means that seven out of every ten respondents were less than 30 years old who spent only one third of their lives and moved into the wrong direction. This is a cause of concern for

the country that young people's involvement in the criminal activities is increasing. Sometime these youths in absence of livelihood and employable skills are vulnerable to criminal activities and become repeat offenders or recidivists. Hence, it is inevitable to find ways and means to engage youths in skill development activities to build a strong human capital as well as a national resource. These youths in conflict with law should be rehabilitated through constructive rehabilitative programmes, which will keep them away from criminal activities.

8. Most of the Bailees were first time offenders and indulged in crime cycle due to some criminogenic factors. Majority of them were Hindus (66.3%) followed by Muslims (27.9%) and Christians (3.8%). This can be said that two major communities - Hindu and Muslim are major contributors for crime in the Mumbai city. Nevertheless, Hindu shares 67.39% of population and Muslim shares 18.56% of population of Mumbai. It shows that Muslim youths are over represented in the criminal activities.

9. The data indicates interesting findings within Hindu religion that across castes 32.4 % of the offenders belonged to general category, 11.8 % of them were from OBC category, 12.7% comprised of Scheduled Castes and only 2% of them are from Scheduled Tribes category. The relationship between nature of offence and caste of the respondents as data indicates that the claim or popular belief that petty or street offenders belong to a particular caste or social category could not be substantiated as the value has not met the requisite level of significance (value $X= 21.967$, $df = 2$ and $p > .05$). Hence, caste and crime are not related to each other.

10. The data indicates that, even educated youths were indulged in petty crimes. Data also revealed that majority of the respondents (89%) were educated. This trend can be easily attributed to the present education system, which is not focusing on skill development among the youths, and sometime this phenomenon is pushing youths in criminal activities.

11. Among them those who did primary education were 24%, secondary education 24%, middle education 20.2% and (10.6%) were illiterate. Thus, it can be said that low educational status including school dropout emerged a strong factors responsible for youth crime.

12. The marital status of the respondents shows that more than half (54.8%) of them were married and 41.3% were unmarried. Divorcee constituted only one percent. The data indicates that half of the respondents had families and got some support from them.

13. The relation between monthly income and the Bailees shows that most of the respondents were having monthly income more than Rs. 10,000 and 44 respondents were earning between Rs. 5000 to 10,000. The first time offenders (49%) belonged to higher income group i.e., earning more than Rs. 10,000 and above per month. About 22.1% belonged to Rs. 5001 – 7000 income group and another 20.2% came from the income group of Rs.7, 001 – 10,000 per month. The higher income among the respondents may be attributed to the fact that they are skilled and semi-skilled workers (34.6%) and working as self-employed or in the private sector (52.9%). More than 87.5% of the Bailees were self-employed or working in private sector therefore they could be considered as affluent when comparing them with rural agrarian jobs. However, they were not habitual criminals because they did not have criminal history behind them. Interestingly, they were involved in petty crimes such as disputes over water, garbage and other public resources in their localities. Nevertheless, a question arises: Is income of the Bailees' related to their demographic profile? So far as association between occupation and Bailare is concerned, the respondents' occupation is found to be significant (value $X = 80.51$ and $df = 15$, $p < 001$). Further, it shows that the offenders with high income were essentially skilled workers and self-employed, have come to vicious cycle of crime due to some socio- economic and ecological reasons.

14. The data show that 24% of them had committed violent offences and 33.7% property related offences. Those who were arrested and got bail under preventive detention and crime under SLL were 16.3% and 15.4% respectively. 9.6% respondents committed crimes against women and children and granted bail.

Access to bail at police station level

15. The data shows that majority of accused (Bailees) spent one day (56.7%) in police custody before getting bail or sending them in judicial custody. According to some of the respondents (accused/bailees) the practice of illegal detention is also prevalent as 13.5% of them claimed to have spent two days in police custody, 7.7% three days, 2.9% four days and 9.6% have spent more than four days in police custody before getting bail. By itself it is an insinuation against

the arresting police officers. Therefore, in a research study it is required to be examined objectively and rigorously before arriving at any conclusion on these discourses. It was found that if the version of illegal detention were to be accepted it is to be analysed with reference to their conduct at or around the time the individual had an opportunity to bring it to the notice of the Court which granted him bail through his advocate or, and filing complaint to the senior officers soon thereafter. It has, however, been seen that neither any complaint was made by them to the Magistrate during their appearance before the Court or to any senior officer soon after release on bail. Therefore, it boils down to an claim made by an interested party which some reason for grievance against the police for having proceeded against him, and arrested him. Taking a very objective view of the circumstances surrounding such claims, coupled with the conduct exhibited by them at the relevant time, it is not possible to derive any inference against the police on the one sided and uncorroborated assertion of the subjects interviewed. It is also to be viewed in the light of the absence of any record of their detention beyond one day from the time of arrest, and denial of the police officers having resorted to such unauthorised detention beyond the statutory limit of one day(24 hours). Hence it can be reasonably concluded that the insinuation of unauthorised detention, as claimed by some interviewees, remains largely uncorroborated in the absence of any credible evidence, direct or circumstantial, in support thereof.

16. The data shows that the Bailees got bail at court level by arranging personal bond (1.9%), cash bond (21.2%), surety bond (20.2%), and by other mode (11.5%). However, some of the responded (22.1%) did not respond to this question. It indicates that the cash and surety bonds still play an important role in getting bail. Further, those who were released on cash bonds have deposited between Rs. 5,000 to Rs. 20,000. This indicates clearly that 4.8% of the respondents have deposited Rs. 5,000, an equal number of Bailees have deposited Rs. 10,000 as a bail condition and 11.6% of them have deposited Rs. 20,000. Similarly, much emphasis is still given on one surety with movable property (15.4%).

17. Majority of the Bailees said that the time taken by court for granting bail was reasonable. A large number of respondents (81.5%) opined that bail helped them to prepare their cases in a better manner. This indicates that bail has helped the bailees for strengthening their cases in the courts.

18. Most of the young respondents (age group of 21-30) were aware that bail is a right in bailable offences. Interestingly, majority of the respondents agreed to the statement that bail as a right in bailable offences. While these two variables -age of the respondents and their awareness about bail as a legal right were cross tabulated, these were not found significant.

19. Majority of the respondents secured bail within three months. Further, nature of offence and time taken to get bail these two variables do not show any significant association ($p > .05$). Thus, age or caste of the respondents does not play any significant role in getting bail. It is noteworthy to mention that six out of every ten bailees (60.6%) did not receive legal aid during the process of getting bail.

20. Generally we assume that people belong to vulnerable sections of the society like SCs or STs are the victims of governmentality and system including criminal justice system and do not get justice on time. To understand the fact on this line, an analysis is made to understand whether caste of the respondents and time taken to get bail have any association, the chi square value shows that time taken to get bail and caste are not statistically significant as p value is less than 0.05 level.

Social support system for securing bail

21. Social support system such as family, community and friends had played an important role in helping the accused in getting bail. The data indicates that majority of the bailees (57.7%) received support from the family members in securing bail. Further, it is also clear from the data that close family members such as mother, father, uncle, brother; sister and spouses had rendered timely help and support in securing bail for the bailees. Besides family members, support was also extended from peer group (5.8%), neighbours and relatives (10.6%) and other stakeholders such as media, social workers and their employers etc.

22. In response to the question “whether non-appearance in the court during bail is violation of the bail condition?” 32.7% of the respondents opined “not at all,” and 15.4% viewed as “not really.” Only 29.8% perceived it as “very much” a violation of bail condition and another 10.6% felt that was “somewhat” amount to violation of bail condition. It means that majority of the respondents were not aware about it and took lightly or casually. Therefore, legal literacy to be imparted for common people in general and bailees in particular.

Awareness about the bail and non-compliance of its conditions

23. So far as sureties' role and obligation in production of bailees in the court or at police stations is concerned a large number of respondents (38.5%) stated that they were not aware about the rule that legal action may be taken against sureties if the Bailees do not appear in the court. Interestingly, some of the Bailees (25%) stated that generally action against sureties is not happening if one could manage the system. Further, it is apparent that many bailees do not take bail conditions seriously. It also implicit an overall picture that awareness on bail conditions is very poor among the Bailees. That is a grey area, which needs to be plugged through justice education by State and District Legal Services Authorities in collaboration with National/State Law Universities and Law Colleges in all the colleges and senior secondary schools located in their respective localities. Most of the respondents stated that time taken by the courts in granting bail was reasonable (Mean = 2.2, SD = 0.78).

Extent of bail abuse

24. The data shows that eight out of every ten respondents (80.3 %) were aware regarding bail as their legal right. To understand the views of bail abusers on the concept of bail from their perspective, question was asked 'what do you mean by bail?' The content analysis of the responses reveals that 4.3% of the abusers felt bail is meant for reform of offenders, but a majority felt it is meant to attend family issues and 39.1% stated it is a temporary relief from police custody. However, those who stated that it is designed to prepare their case for court hearing in a better manner and to get medical treatment for the fracture if any due to torture in police custody constitutes 4.3% each.

25. The analysis shows that the nature of crime and the bail duration from courts are related as value $X = 7.993$, $df = 16$ and $p < .05$. Hence, it is significant; those involved in violent crimes and property related crimes have managed to get bail within three months. This fact can be explained with respect to the association between nature of crimes and income explained in table 4.08. High-income groups proved to be involved in property related and violent crimes.

26. The extent of bail abuse can be gauged by analyzing the data on number of times bail was abused by the accused. 52% of the respondents stated that two cases were pending against them, 9.8% reported three cases 11.8% four cases, five cases against 9.8% abusers, six cases and seven cases against 5.9% respondents respectively.

27. Some of the bail abusers have stated that they were not aware about bail conditions although police officials have clearly stated that at the time of granting bail the bailee is briefed about the bail conditions. In fact, lawyers empanelled in legal service authority as well as defence lawyers should inform his or her client the bail conditions. Similarly, few surety men also did not have adequate understanding about bail conditions, particularly, if bailee is not appearing in the court on due date then he will have an obligation to produce him or her or deposit surety amount.

28. Some other problems faced by police officials in granting bail were also expressed in the FGD. They stated that many bail and parole absconders do not have permanent addresses which cause difficulty for police in execution of arrest warrant. Similarly, due to bad image of the police in society, public do not cooperate with police in discharging various statutory requirements. An overwhelming majority of the police officials suggested to minimize cases of bail abuse and bogus surety with the help of Court Karkoon which shall furnish detailed information about the surety (linked to ADHAR) before granting the bail to the Magistrate to avoid bail abuse and bogus surety.

Police Perspective on Bail System

29. The data shows that in some bailable offences such as offence under Section 324 of Cr. P.C. etc. if there is serious bodily injury and heavy bleeding despite it being bailable offence police do not grant bail to install public trust in police otherwise people would feel that police have taken bribe and granted bail. The FGD further highlighted that if the accused is released on bail from Police Station then he would feel that the process is very simple and some of them could indulge in more heinous crimes. So usually in serious Body Offences (BO) police produces the accused before the court for bail decision. The police officials also suggested that in such cases the option of bail should not be given to the Police Station level.

30. The analysis further shows that if a woman is accused the law mandates that they cannot be arrested between 8 pm to 8 am. For example, in hooch /liquor raids, the owners generally use women as a shield to avoid arrest. Therefore, women are generally arrested in the morning and then presented in the court even in bailable cases. Hence, to maintain public order in the society women are brought at Police Station and next morning they are shown as arrested and then

produced before the court. The FGD further indicated that in the cases relating to drug abusers, it is difficult to keep them in Police Station because due to influence of drug they become violent and hit themselves to the extent of slashing their own skin and police is accused for third degree treatment, which is not true. So to avoid this situation drug abusers are given bail at Police Station or sent to court for bail immediately after their arrest.

31. Regarding recidivism data indicates that many offenders involved in petty crimes always get bail in several bailable cases (8-10 offences) and repeat crime as a professional criminal. Therefore, classification of bailable and non-bailable offences and procedure to grant bail shall be reviewed. They further suggested that while releasing on bail, the court should examine whether accused has potential to abuse bail the?

32. The analysis shows that police department is monitoring and taking preventive action against abusers. In cases of repeat offenders or history sheeters especially regarding property offences, body offences and known *mawalis* are kept on surveillance . Periodic review is done for these repeat offenders. If the accused jumps bail then bail is cancelled and the accused is arrested and in some cases externment process is also initiated. Sometime petty offenders as chain snatchers are booked under stringent laws such as the Maharashtra Prevention Of Dangerous Activities Of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons And Video Pirates Act, 1981 and the Maharashtra Control of Organised Crime Act, 1999 so that they should not get bail and repeat crimes. Police officials suggested if local self-bodies and Panchayati Raj Institutions collaborate with police for monitoring of bail abusers it would facilitate them in tracking bail abusers and recidivists.

33. The FGD revealed the challenges faced by police in bailable cases. At the time of granting bail some conditions are attached .However some accused do not observe these conditions and make an excuse that they did not know these conditions. The officials informed that the accused who furnish cash bail often violate bail conditions. This aside, majority of the surety men who stand surety do not have understanding on bail conditions. One of the major challenges to police is that due to workload and non-availability of Standard Operating Procedure (SOP) on bail system proper documentation is not done and that creates difficulties in tracking bail abusers and recidivists. Other challenges faced by police are frequent change of addresses particularly in slum areas of Mumbai, fake/false/bogus identities and addresses furnished by the sureties. An interesting suggestion emerged through FGD is that real Estate developers and Slum Rehabilitation Authority should be mandated to create data base of local residents of a

particular locality developed by them so that can be used in such cases. The FGD analysis focalized that professional gangs, drug mafia, human traffickers; organized criminals etc. procure fake documents and use them for securing bail of their members so that they can repeat crimes. Increasing trend of chain snatching cases in Mumbai is one of the examples of such trend.

34. The analysis revealed that many offenders get bail in manyailable cases (8-10 offences) and become recidivists. Therefore, classification ofailable and non-ailable offences and procedure to grant bail shall be reviewed. They further suggested that while releasing on bail, the court should examine whether accused has abused bail in previous cases or have potential to abuse the bail.

35. The analysis also shows that police department is monitoring and taking preventive action against abusers. The repeat offenders/history sheeters especially property, offences affecting the human body and known *mawali* are kept on record. Periodic review is done for these repeat offenders. If the accused jumps bail then the bail is cancelled and the accused is arrested. Some repeat offenders are also faced externment proceedings. At times, good behaviour bond is taken from the accused. Sometimes The Maharashtra Prevention Of Dangerous Activities Of Slumlords, Bootleggers, Drugs offenders, Dangerous Persons And Video Pirates Act, 1981. (MPDA) and The Maharashtra Control Of Organised Crime Act, 1999 (MOCA) are applied so that accused should not get bail and detained in the prison. Police officials suggested that if community policing is institutionalised we could rope in its members in tracking bail abusers and recidivists.

Consequences of Bail Abuse

The present section attempts to analyse views of various stakeholders dealing with or experiencing consequences of bail abuse and recidivism. These stakeholders are;

- (1) Criminal Justice Functionaries (Police, Prosecution, Courts and Prison) & Lawyers
- (2) Civil Society groups (Individuals, Community, Media and NGOs).

Research team interacted with various stakeholders and interviewed them through in-depth interview method. Discussion and non-verbal communication-body language, tone and other

meaningful gestures have also been collated. The experience with each stakeholder with respect to consequences of bail abuse and recidivism is summarized in the following context:

- Impact on Individual, Family and Communities.
- Impact on Surety.
- Impact on Victims and Witnesses.
- Impact on Police.
- Impact on Judicial system.

Impact of bail abuse on individual, family & communities

A majority of the bail abusers, six out of every ten, opined that their absconding after securing bail has adversely affected them and their families. The major problem was police harassment to the family members and even relatives. Further, it has also impacted negatively on the livelihood as well as social image of the family members.

Impact on Family: Vulnerability

The families of the absconders experienced harassment by the police and felt vulnerable and frustrated due to illegal pressure of their family members. An analysis of data reveals that absconding and bail abuse impacted their families adversely.

Impact on Surety

Further, the data on the impact on surety shows that the problems faced by them are fear of attachment of property, police harassment, need to go to court frequently, loss of money and lose of trust of people in community. Another perspective emerged through analysis is that due to absconding and repeat crimes by the accused, surety felt harassed, frustrated and vulnerable and decided not to assist accused and the criminal justice any more. They also expressed that they gave surety due to their trust in the person and non-awareness of the fact that violation of bail condition or abused of bail will lend them in trouble. Further analyses shows that the problems faced by them are fear of attachment of property, police harassment, need to go to court frequently, loss of money and lose of trust of people in the community.

Impact on Victims

The impact on victim are listed as follows: uncertainty in justice to victim, life in fear of retaliation, fear of tampering evidence, unable to live in normal place of residence, feels justice not done, lost hope on judiciary and criminal justice delivery system. It is also emerged that the accused and co-accused after release on interim bail have threatened the victims and their families many times so that victims will not pursue the case in the court.

One of the problems is the hesitation of victims or witness to come forward to testify because of fear of retaliation. To remove that fear and to ensure the participation of victims and witnesses, Governments must establish effective witness protection programmes. Unfortunately no such proper provisions exist at present. Even if victims or witnesses are some sort of protection before and during trial, their safety in the long term remains a major concern. Special problems are caused by the long delays in the completion of trials: the longer a trial, the more opportunities offenders have to bribe or threaten witnesses or victims (Tenth United Nation Congress, 2000)¹²⁰.

International consensus has been reached on the basic principle of justice for victims of crime as embodied in the declaration of basic principles of justice for Victims of crime and abuse of power. Most governments have only recently begun to implement those rights. Exchange of information on best practices and cost-effective methods of implementation is urgently needed. Much progress can certainly be made in the improved treatment of victims of crime without negative implication for the offender. In some areas, however, rights for victims do interfere with the rights of offenders and difficult choices will have to be made. Many issues have yet to be solved. Opinion differs, in particular, about the extent of participation of victims in decision-making process. The restorative model may offer an alternative solution in some cases (Tenth United Nation Congress, 2000)¹²¹.

Suggestions to combat bail abuse

Broadly, following suggestions emerged through FGD with police personnel to tackle the phenomenon of bail abuse or recidivism:

¹²⁰ Tenth United Nation Congress on the prevention of crime and the treatment of offenders, Vienna, 10-17 April, 2000.

¹²¹ Ibid.

1. Bodily offences should be made non-bailable.
2. Repeat offenders in property offences should be severely punished.
3. Repeat offenders should not be released on cash/personal bond.
4. Bail should be given after examining the gravity of the offence, law and order and its consequence on society.
5. Surety should be essentially from local area, preferably with same Police Station jurisdiction and from amongst friends and relatives. The local police should prepare a list of professional surety men to avoid fake surety.
6. Advocates should be made accountable to some extent, if accused jumps bail and secure fake sureties.
7. Bail should be granted on the basis of severity of crime and its impact on the public order.
8. The Police *Patil*, Panchayati Raj Institutions and Urban self-bodies to be linked with verification of identify, abode and other documents submitted by bailees and sureties.
9. Court *Karkoons* and Court Clerks (dealing with bail matters) must work in coordination on bail related issues and Court *Karkoons* should liaison with Sr. P.Is at police stations level.
10. Training on professional attitude and ethics to be imparted to all police personnel at cutting edge levels and a module on bail abuse, recidivism and its impact on community to be included.
11. Infrastructure (both human resource and technology) shall be strengthened at the police station level.
12. Separate web page or website to be created for bail abusers and absconders at every police station level.
13. Time bound disposal of criminal cases by courts.
14. CCNTS (Crime and Criminal Network Tracking System) project shall be made functional and this should include data relating to bail abuse and parole/ furlough absconders. Also, this system shall be made accessible to all sub-systems of criminal justice - police, prosecution, courts and prisons.
15. Cash bail should not be given, as the chances of jumping such bail are higher.

16. Professional surety should be curtailed. Track should be kept of persons whether they are giving sureties for multiple times.

17. There should be a legal advisor at every station level. Bail should be given only after verification of addresses and other necessary details by the legal advisor.

18. There should be separate wing for verification of bail related matters. To implement this, essentially each police station should have two wings- Crime Investigation and Law and Order.

Prison officials' perspective on bail system

1. It is evident from the data that most of the prison officials are not sharing data about bail abusers and recidivists with other CJS functionaries as that do not maintain such data base.

2. Most of the prison officials (60.3%) opined that they do not have SOP on this issue.

Public prosecutors' viewpoint

Reflecting concerns that absconding is adversely affecting justice delivery system, 9 public prosecutors interviewed in Mumbai and Thane courts (with lot of persuasion and follow-up) strongly felt that absconding is one of forms of bail conditions and invites cancellation of bail itself.

Lawyers' perspective on bail system

1. The data shows that 40% of the lawyers stated that 'principle of presumption of innocence principle' is not realised for petty offenders belonging to poor and marginalized sections of society.

2. Generally, there is a belief in the society that the recidivist belong to the powerful section of society. But a vast majority of the lawyers (73.3%) opined that bail abusers do not belong to powerful section of the society.

3. The data highlights that six out of every ten respondents (lawyers) agreed that bail abusers use tactics to adjourn the cases.

Case Study Analysis- (Absconding) Identification of common causes of absconding-

Inferring from the above case studies, some of the common causes for absconding bail are fear of police harassment, loss of faith in police and law enforcing agency and judiciary, alcoholism coupled with drug abuse, mental ailments, fake address, gone missing among others.

The Problem of Absconding: Some Observations

Some of the common trends emerging from the bail absconder's cases are as enumerated below: It is observed that male accused are more prone to absconding bail than the female accused. The accused have found to have committed more than one crime two or more crimes usually these crimes involve crimes against human body, property and possession of drugs which affect social and public order of the society. Largely these people are found to be picked up on random basis hence fear harassment from police and resort to absconding.

Causes of absconding: Bail abusers' perspective

Though these individuals have been granted bail but these individuals could not meet the bail conditions due to one or other reasons including poverty being major cases therefore inability to furnish requisite sum under bail bond, no communication from Police, Court on date of summons, hearings, ill health habits as alcoholism, drug abuse, physical and mental health problems among others. Another important cause is fake surety who share no prior knowledge no connection with the accused as bail absconder, rather these are fake rackets.

Further, it has been corroborated by the researcher during the field visit that despite several visits by the research team, some of the accused and surety men could not be traced in the given addresses therefore, no reasons for absconding could be ascertained.

Solution: Need of Collaborative and Concerted Efforts

The phenomenon of absconding (due to bail abuse) can be attributed in two folds. *Firstly*, one of the reasons for not attending court trial or police station on specific time and date by the accused prevails due to lack of timely communication from the courts and concerning lawyers to the clients. Hence it is suggested that the lawyers should be made responsible for informing their clients about progress of the case and the appropriate date, time, address of the court, along with brief on the stage of court proceedings where in the accused is required to appear well in advance so that non appearance may be checked. when and where they are supposed to attend

the proceedings. *Secondly*, some cases of absconding are related to non-availability of accused on given addresses as furnished by them in the judicial records at the time of getting bail and sometimes both accused and surety have migrated voluntarily or forcefully. This situation is creating a complex phenomenon for police system because they are already struggling with poor infrastructure, manpower due to a large number of vacancies, time and resources to nab the absconders. In the light of this issue of traceless accused, surety and fake address, coupled with the issue of lack of staff among police for verification, it is proposed that community policing may be used for resolving the same.

CASE STUDY ANALYSIS: BAIL ABUSERS (Recidivism)

Some of the common underlying emerging trends from the case studies are as mentioned below: Most bail abusers are found to be repeat offenders or recidivists who have committed minimum two crimes or more of serious nature under NDPS Act or other serious crimes among others.

Most of the recidivists are young offenders in the age group of 21 to 30 years and it is found that a vast majority of them are school drop-outs. Some of the common reasons for development of recidivist tendencies is the peer pressure, lack of education, vocational skill and consequent dearth of gainful employment opportunities, ill health habits as drug abuse, alcoholism, among others leaving them no scope for coming out of such criminal activities.

The recidivists have faced harsh social stigma, labelling of character as criminal, casting aspersions on his personality, denial of livelihood opportunities, exclusion from immediate society, neighbourhood, separation from family, loss of repute or social standing of family. Some of these recidivists regret their criminal activities and they seek to engage in better livelihood opportunities as well as learning skill based activities for their reformation, reintegration in society.

Recommendations for the Governments

1. Definition and Conceptual Issue

The first and foremost issue faced by research team in the field was related with definitional and conceptual clarity of theme of research. There is no comprehensive understanding and definition of the concept of bail abusers and bail absconders among the law enforcement agencies as well as among the community.

2. Lack of Official Record Keeping

It has been observed at the grass root level that comprehensive database or information on abuse of bail is not maintained by any government agency of CJS in the country except for the fact that some data is partly available in police and judicial files, publications of National & State Crime Records Bureaus as well as some data is mentioned under court cases on cancellation of bail in piece meal manner. There is no standard systematic record keeping with relevant particulars mentioning the causes of refusal or cancellation of bail among others.

3. Enactment of New Legislation

There is a need to enact the new legislation entitled “The UK Bail Act” 1976 on the lines on United Kingdom and other countries. The UK legislation defines “bail in criminal proceedings” means (a) bail grantable in or in connection with proceedings for an offence to a person who is accused or convicted of the offence, or (b) bail grantable in connection with an offence to a person who is under arrest for the offence or for whose arrest for the offence a warrant (endorsed for bail) is being issued. Besides the definition, the Act provides for legal aid limited to questions of bail in certain cases and for legal aid for persons kept in custody for inquiries or reports, to extend the powers of coroners to grant bail and for connected purposes.

4. Data Base on Abuse of Bail

Data on recidivism including bail abuse and bail absconders ought to be reported under prison statistics published by NCRB or SCRB, though the NCRB data reports on data or information on parole absconders and repeat offences, juveniles and persons released through non-institutional measures such as probation and community services etc.

5. Research Study on Bail Absconders & Recidivist–

The concerned Government departments in collaboration with credible academic and research institutions may undertake and sponsor research studies to develop standard operating procedure (SOP) regarding monitoring of bail abusers and recidivist conduct, tendencies from international or foreign or translational criminology perspective.

6. Monitoring & Evaluation of bail abusers by Community leaders

The elected and community leaders at grass-roots level should be involved in monitoring and evaluation of bail abusers to enhance their accountability and social cohesion.

7. Rehabilitation of Recidivists

The Government should devise a rehabilitation plan for recidivists (particularly youths) linking them to employable skill development initiatives and social reintegration programmes with the support and partnership of civil society organizations, favourable government social economic security measures as MNREGA, urban, rural local self-bodies as *Panchayati Raj* institutions.

8. Victims, Witnesses and Surety Protection Program

There is need for formulating provisions on safeguard of Victims, Witnesses and Surety Protection Program in keeping with the human right. State to sponsor and fund witness protection fund as required in case of poor or destitute towards right to fair trial, providing humanizing conditions for production and furnishing of sureties. As for reasons related to non availability of surety there are many poor under trials languishing in jails. The quantum of bail bond, the number of sureties may be subject to revision and reduction considering the community or familial ties or social support may be diminished following stigma of crime. *Keshab Narayan Banerjee v. The State of Bihar* (AIR 1985 SC 1666, 1985 CriLJ 1857) hearing the petition the court opined that the bail amount and number of sureties imposed by the Sessions Judge was found to be excessive and thereupon the court reduced the bail amount after invoking its inherent power under Section 482 of the Code for attainments of ends of justice.

9. Convergence of Slum Re-development Policy with Local Police

Rehabilitation of slum dwellers and redevelopment slum policy and projects should be formulated / initiated devised and executed in partnership with local police and data or information pertaining to the residents shall be made available across the stakeholders.

10. Community Awareness on Bail Conditions

There is need to create awareness by concerned Government Ministry and Independent Human Right Institutions in society on right to bail, the nature of bail options as a preventive measure not necessarily punitive measure and implications, legal liabilities following bail conditions under the criminal justice process at the same time sensitize government officers, executive on checking rate of crime.

11. Professional Development & Capacity Building Programmes of Authorities

There is an urgent need to initiate professional development programs, capacity building programmes for Law Enforcing Agencies including Police, Prosecution, Judicial and Correctional officers, Advocates and Civil society on combating bail abuse and recidivism by strict compliance with the apex court order on non grant of anticipatory bail for bail absconders or proclaimed offenders and training of staff or authorities on alternatives mechanisms to prevent scope of one of the techniques used in foreign countries is using a questionnaire guide based on psycho metric tests to predict the tendencies on the same.

12. Evolution of Benchmarks and Indicators to Measure Recidivism

This explorative study found that there is a dearth of empirical research studies in the field of bail abuse, parole absconders and impact of recidivism on contemporary crime scenario and human resources development of recidivists belonging to vulnerable and marginalized sections of the society. Therefore, there is need for evidence based research studies to be undertaken, sponsored by the criminal justice agencies at the field so that appropriate benchmarks and indicators may be developed which could be used for defining, measuring and reducing recidivism in India.

Recommendations for Police

Recommendations for the police department

1. Offences affecting the human body shall be made non-bailable. (Consequential amendment should be made in Chapter XVI (offences affecting the Human body) First schedule of the CrPC, 1973 to broaden offences affecting the human body)
2. Repeat offenders in property offences should be strictly punished. (Consequential amendment needs to be done in Section 437 (1) (ii) CrPC, 1973, to include repeat offenders for other offences beyond the offences mentioned in this section)
3. Repeat offenders shall not be released on cash/personal bond. (Proviso shall be inserted by an amendment in Section 437 (1) (ii) CrPC, 1973)

4. Bail should be given after examining the gravity of the offence and law and order consequences on the society. (An explanation clause can be inserted by amendment in Section 437, Cr.PC, 1973)
5. Surety men/women shall be from local area, preferably with same Police Station jurisdiction and from amongst friends and relatives. To avoid professional sureties the local police shall create a data base on professional surety providers and this shall be shared with the prosecution, judiciary and other concerned departments . (Consequential amendment is required by adding a clause in Section 441 of CrPC, 1973)
6. The Police *Patil*, *Panchayati Raj* Institutions and Urban self-bodies to be linked with verification of identify, abode and other documents submitted by bailees and sureties. (Amendment to be made in Police Manual and other related legislations)
7. Court *Karkoons* and Court Clerks (dealing with bail matters) must work in coordination on bail related issues and Court *Karkoons* should liaison with Sr. P.Is at police stations level.
8. Training on professional attitude and ethics to be imparted to all police personnel at cutting edge levels and a module on recidivism and its impact on community to be included.
9. Infrastructure (both human resource and technology) shall be strengthened at the police station level. The recent order of Hon'ble Supreme Court dated 24th April,2017 regarding filling up of police vacancies in several States to be implemented. The bench of Hon'ble Chief Justice J S Khehar and Hon'ble Justice D Y chandrachurd said "If police vacancies are filled up, it will help in dealing with several law and order problems. You need to fill up the vacancies and do the recruitment in time-bound manner."
10. Separate web- page or website to be created for disseminating information regarding bail abusers, parole absconders and the recidivists at every District/Police Station level.
11. The expeditious disposal of criminal cases by the courts. (amendment to be made in Cr.P.C. Sections 309, 320, 436 A, 161(3), 164 & 275 and directions given by Hon'ble Supreme Court in *Amtiyaz Ahmad vs. State of UP & Others* shall be effectively implemented).
12. No further bail for bail abusers. (Consequential amendment is required in Section 437 of CrPC, 1973, by insertion of a separate Section 437 B).

13. CCNTS (Crime and Criminal Network Tracking System) project shall be made functional and this should include data relating to bail abuse and parole/ furlough absconders. Also, this system shall be made accessible to all sub-systems of criminal justice - police, prosecution, courts and prisons.

14. Cash bail should be avoided as the chances of jumping such bail are higher. (Adding a clause in Section 441 of CrPC, 1973 requires consequential amendment)

15. Professional surety should be curtailed. Track should be kept of persons whether they are giving sureties for multiple times.

16. Advocates shall also be made responsible/accountable while providing surety to their clients. With respect to surety, the person shall be within local area, and local Police Station jurisdiction including friends and family members. (A Chapter should be inserted under Part VI Bar Council of India Rules, under the Advocates Act 1961)

17. A legal advisor shall be posted at every police station level. Bail should be given only after verification of addresses and other details by the legal advisor.

18. There shall be a separate wing for verification of bail and other related matters. Essentially, each police station shall have two wings- Crime Investigation and Law and Order. (This is also recommended by Justice Malimath Committee and other committees and some States have implemented it, however, its effectiveness is yet to be established through Translational Criminological perspective).

19. Community policing shall be institutionalized .This could be a good support system for police and other governmental agencies to monitor, trace and reintegrate bail abusers and absconders (including parole absconders) in the community.

20. The elected and community leaders at grass-roots level should be involved in monitoring and evaluation of bail abusers. This will enhance their accountability and social cohesion.

Recommendations for judiciary

1. Mandatory Verification of documents of Surety stand for bail: The residential addresses, both permanent and local of bailee and surety shall be verified by court/ police/ revenue/ and transport department tin partnership with credible NGOs/ academic institutions. This will help authorities to monitor and trace bail abusers / absconders effectively.

2. Digitalization of cases files and judicial records shall be done on priority basis. The scheme of the Union Government shall be implemented in this regard.

3. Surety bond shall be replaced with community based bond in case of first time offenders and particularly in case of migrant offenders who are not in a position to find surety men.

4. Professional surety should be curtailed. There should be track and check of the record of persons if they have been giving sureties multiple times. Advocates shall be made accountable while providing surety to their clients. The surety must satisfy certain requisite criteria as with respect to standing as surety including the local residence of the person and his friends and family members to be within the local police station jurisdiction. A provision to this effect may be inserted under Part VI Bar Council of India Rules, under the Advocates Act 1961.

5. There should be liberal implementation of criminal law amendment in 2005 introducing Section-436 A of CrPC for securing release of under trials on bail of personal bonds towards reducing overcrowding in prisons. If the under trial is accused of any other offence other than death sentence, then such under trial who has served the maximum period of imprisonment prescribed for the offence for which they are accused, such under trial may be released on personal bail bond. This is necessary for doing complete justice in under trials case. There may be strict check on further bail to be granted for bail abusers by proposing for insertion of a separate Section 437 B through an amendment under Section 437 of CrPC, 1973 imposing a strict prohibition on bail for earlier bail absconders.

6. The present study highlights that long pendency of cases in the courts is disconnecting the poor accused from the criminal justice process leading to nonappearance in court hearings. Long drawn court proceedings causes more vulnerability to the litigants belonging to marginalized sections of society as this severely affects their livelihood and the social and human capital. For expediting the criminal cases before court, an amendment to this effect may be made in series of Cr.P.C. provisions namely power to postpone or adjourn proceedings (Sections 309), compounding of offences (Section 320), Maximum period for which an undertrial prisoner can be detained and bail on personal bond (Section 436 A), Examination of witnesses by police (section 161(3), Recording of confessions, statements by police(Section 164) & Plea Bargaining (Section 275) in accordance with the directions given by Hon'ble Supreme Court in *Amtiyaz Ahmad vs. State of UP & Others* (2017) which espouse for speedy

disposal of cases and the apex court directed for disbursement of funds to the state judiciaries towards creation of an additional infrastructure for meeting the existing sanctioned strength of their state judiciaries.

7. The backlog of cases in the courts shall be resolved through effective implementation of Alternative Dispute resolution mechanism such as strengthening of evening courts or mobile courts and setting up of human right courts. Further, there should be speeding up of the disposal of long pending petty offenses (such offences which are pending more than 15-20 years in courts and where in punishment is much lesser than the period of pendency of offences) such as accident or theft case that shall be disposed off through ADR.

8. To reduce recidivist tendencies, a restorative justice approach may be used to process the offenders for social integration with the community, victims. Restorative justice approach has proved highly successful in reducing recidivism by helping offenders to truly understand the consequences of their actions and to take responsibility for their behaviour.

9. It is noteworthy to mention that most of the recommendations made for Judiciary are being covered by the Department of Justice, Ministry of Law & Justice, GOI, through implementation of Vision Document for National Mission for Justice Delivery and Legal Reforms in 2009.

Suggested Areas for Future Research

1. Victim Participation in Bail Process-Legal framework
2. Problem of Absconding and Role of Neighbourhood and the Community
3. A Restorative Justice Approach to reduce recidivism
4. Police Reluctance in granting bail in bailable crimes: Causes and Solutions
5. From Economic to Social Criteria for Granting and Cancellation of Bail : A New Research Agenda
6. Attitude of Judges and Bar towards Bail Abusers, victims and witnesses
7. Recidivism in India: Issues, Challenges and Solutions
8. Social Security of Sureties and Effectiveness of Bail system
9. The phenomenon of absconding (Bail and Parole): Role of various stakeholders
10. Legal Aid to Petty Offenders in Accessing Bail: A Roadmap
11. Institutionalisation of Community Policing to address the problem of Bail Abuse

12. Role of Private Security Agencies/Detective Agencies in resolving the problem of bail and parole absconders

13. Use of Technology, CCTNS and other applications in crating comprehensive data base on Absconding.

Annexure – I

Interview Schedule for Police Personnel

To seek your consent for participation in this research study entitled, “**Bail & Extent of Its Abuse including Recidivism,**” sponsored by SVP National Police Academy, Hyderabad and undertaken by Nodal Centre of Excellence for Human Rights Education, School of Law, Rights and Constitutional Governance, Tata Institute of Social Sciences, Mumbai.

Section - I: Socio-economic Background:

1. Name (optional) _____

2. Designation

1. Police Constable/Head 2. Sub-Inspector 3. SHO
4. Circle Officer (Dy. S.P/A.C.P.) 5. S.P./D.C.P. 6. Other

3. Age (in years)

1. Below 20 2. 21-30 3. 31-40
4. 41 -50 5. 50 above

4. Gender

1. Male 2. Female

5. Religion

1. Hindu 2. Muslim 3. Sikh
4. Christian 5. Buddhist 6. Other (Specify)

6. Caste

1. General 2. OBC 3.SC 4.ST 5. Other (Specify)

7. Educational Status

1. Up to 10th Std. 2. Up to 12th Std. 3. Graduation 4. Post-Graduation
5. Other (specify)

8. Monthly Income (in Rupees)

1. Up to 10,000 2. 10,001 to 20,000 3. 20,001 to 30,000
4. 30,001 to 40,000 5. 40,000 and above

Section – II : Information Related to Custody & Bail :

9. Do you agree that police do arbitrary arrest & detention which led to police custody?

1. Strongly agree 2. Agree 3. Neutral
4. Disagree 5. Strongly Disagree

10. How long an accused is kept in police custody ?

1. 24 hours or a day 2. 2 days 3. 3 days
4. More days (Specify)

11. Do the police have legal duty to grant bail of an accused in police custody.

1. Very True 2. True 3. Do not know
4. Not True 5. Not at all True

12. Which types of offences are considered for bail at the police station level?

1. Bailable offences 2. Non-Bailable offences
3. Both

13. What is Bail ?(Specify)?

14. Whether bail serves Non-Custodial Measures ?

1. Strongly agree 2. Agree 3. Neutral
4. Disagree 5. Can't say

15. What are the conditions generally imposed by police while granting bail? (Specify)

Section III: Information pertaining to abuse of bail and its consequences

16. Whether non-attending court hearing by an accused is an abuse of bail?

1. Yes 2. No

17. What are the Other forms of abuse of Bail by accused?

18. Do the police keep the record of bail abuser at police station level?

1. Yes 2. No

19. Do you feel that violation of bail condition is an upward trend now-a-days?

1. Strongly agree 2. Agree 3. Neutral
4. Disagree 5. Strongly Disagree

20. Who are generally abuser of bail? (Specify)

1. Potential Criminals 2. Habitual Criminals 3. Women Criminals
4. Youth Criminals 5. Juvenile Criminals

21. Do the recidivists have some sort of political patronage?

1. Very Much 2. Some what 3. Undecided
4. Not really 5. Not at all

22. Whether Recidivists belong to a particular Religion?

1. Very Much 2. Some what 3. Undecided
4. Not really 5. Not at all

23. Whether Recidivists belong to a particular caste/tribe?

1. Very Much 2. Some what 3. Undecided
4. Not really 5. Not at all

24. Do the Recidivists have adopted particular modus operandi?

1. Very Much 2. Some what 3. Undecided
4. Not really 5. Not at all

25. Whether Recidivists are also called Habitual Offenders?

1. Strongly Agree 2. Agree 3. Can't say
4. Disagree 5. Strongly Disagree

26. What extent the problem of abuse of bail, absconding and indulging in committing crime affect justice system and police system in particular ?

27. What is the impact of abuse of Bail Abusers or absconders including Recidivism affects the victims, witnesses and community and society at large.

28. What is the legal mechanism to apprehend the accused who jumped the bail?

29. Would you like to suggest some measures to prevent abuse of bail? (Specify)

_____ ***** _____

Thank you!!

Annexure – II

Interview Schedule for Public Prosecutors

To seek your consent for participation in this research study entitled, “**Bail & Extent of Its Abuse including Recidivism,**” sponsored by SVP National Police Academy, Hyderabad and undertaken by Nodal Centre of Excellence for Human Rights Education, School of Law, Rights and Constitutional Governance, Tata Institute of Social Sciences, Mumbai.

Section - I: Socio-economic Background:

1. Designation _____

2. Age (in years) _____

3. Gender

1. Male 2. Female

4. Religion

1. Hindu 2. Muslim 3. Sikh
4. Christian 5. Buddhist 6. Other (Specify)

5. Caste

1. General 2. OBC 3. SC
4. ST 5. Christians 6. Other (Specify)

6. Educational Status

1. LL.B 2. LL.M. 3. LL.D. 4. (Specify)

7. Length of service in prosecution dept.

8. Monthly Income (in Rupees)

1. Up to 10,000 2. 10001 to 20,000
3. 20001 to 30,000 4. 30,001 to 40,00 5. 40,000 and above

Section -II information pertaining to abuse of bail and its cancellation

1. Non-attending court' hearing by accused can be lead for cancellation of bail?

1. Yes 2. No

2. Whether non-appearance of accused in Court is abuse of bail?

1. Yes 2. No

3. If yes, in what circumstances, an accused is not appearing in the court (Reasons)?

4. Whether non-appearance of accused in court caused delay in justice?

1. Yes 2. No

5. What do you understand by different forms of Abuse of bail?(Explain)

6. What is the Profile of Bail Abuser?

7. Whether the abuse of bail conditions and the term recidivism are synonymous?

1. Different 2. Same 3. Somewhat 4. Not at all

8. What action is taken against surety men in case of misuse of bail?

9. Whether the phenomenon of abuse of bail is adversely impacting on justice delivery system?

1. Great Extent 2. Some Extent 3. Undecided

4. Not Much 5. Not at all

10. What do you understand by recidivism?

11. Do the recidivists have some sort of political patronage?

1. Very Much 2. Some what 3. Undecided
4. Not really 5. Not at all

12. According to you, which among the following factor(s) are facilitating bail?

1. Police Records 2. Police Station Diary
3. Pocket note book 4. All of them

13. Do you agree that phenomenon of bogus surety prevail in the system?

1. Strongly agree 2. Agree 3. Neutral
4. Disagree 5. Strongly Disagree

14. Do you agree that abuser of bail often belong to powerful section of society?

1. Strongly agree 2. Agree 3. Neutral
4. Disagree 5. Strongly Disagree

15. Do you agree that some of the abuser of bail play pressure tactics through adjournment of cases in the court of law?

1. Strongly agree 2. Agree 3. Neutral
4. Disagree 5. Strongly Disagree

16. Whether Habitual Offenders can be granted bail under section - 437 of Cr. P. C.?

1. Strongly agree 2. Agree 3. Neutral
4. Disagree 5. Strongly Disagree

17. Please suggest some measures for combating misuse of bail.

Thank you!!

Annexure-III

Interview Schedule for Lawyers

To seek your consent for participation in this research study entitled, “**Bail & Extent of Its Abuse including Recidivism,**” sponsored by SVP National Police Academy, Hyderabad and undertaken by Nodal Centre of Excellence for Human Rights Education, School of Law, Rights and Constitutional Governance, Tata Institute of Social Sciences, Mumbai.

1. Designation

2. Age (in years)

3. Gender

1. Male 2. Female

4. Religion

1. Hindu 2. Muslim 3. Sikh 4. Christian
5. Buddhist 6. Other (Specify)

5. Caste

1. General 2. OBC 3. SC
4. ST 5. Christians 6. Other (Specify)

6. Educational Status

7. Experience in Bar (in years)

8. Do you feel that presumption of innocence is a justification for getting bail?

1. Strongly agree 2. Agree 3. Neutral

1. Disagree 5. Strongly Disagree

9. What is bail?

10. Tell us different types of bail prevailed in the court?

11. Whether any condition imposed by judiciary on granting bail?

1. Yes 2. No

12. Whether accused violate conditions of bail?

1. Yes 2. No

13. if yes, whether non-appearance in court' hearing is abuse of bail?

1. Yes 2. No

14. Whether abuse of bail affect judicial system and justice to victims?

1. Yes 2. No

15. How much money is generally spent by the client to get bail in a Criminal case?

16. How far legal aid system assists the poor accused/criminals to get bail?

17. What is security bond?

1. Security with money 2. Security with immovable property
3. Security with move able property 4. Other (specify)

18. What are the roads blocks in smooth functioning of bail and not jail principle?

19. What is the requirement of surety/bond in for non-bailable offence? Please specify?

20. Do you agree that Court take long time to grant bail?

1. Strongly agree 2. Agree 3. Neutral
4. Disagree 5. Strongly Disagree

21. Do you agree that Court generally grants bail easily to well off people?

1. Strongly agree 2. Agree 3. Neutral
4. Disagree 5. Strongly Disagree

22. Do you agree that stock surety man/bondmen are available in the court premises?

1. Strongly agree 2. Agree 3. Neutral
4. Disagree 5. Strongly Disagree

23. What is the profile of these surety man/bondmen?

24. What is the mechanism to identify the authenticity of surety man?

25. Have you come across any case relating to misuse of bail?

1. Yes 2. No

26. If yes, what kind of legal actions are taken by the judiciary against Surety man?

27. What is the impact of misuse of bail on victim, witnesses and the Community?

28. Do the bail provisions are equally applied to all the offenders irrespective of their socio-economic status?

1. Yes 2. No

29. If no, please specify.

30. Did you represent any bail abuser in the court?

1. Yes 2. No

31. If yes, why do you do that?

32. Whether bail abuser (your client) at any point of time has sought legal opinion on the consequences of jumping the bail?

1. Yes 2. No

33. If yes, how did you deal such clients?

34. Could you suggest some measures to combat misuse of bail?

Thank you!!

Annexure-IV

Interview schedule for Bailees (accused)

To seek your consent for participation in this research study entitled, “**Bail& Extent of Its Abuse including Recidivism,**” sponsored by SVP National Police Academy, Hyderabad and undertaken by Nodal Centre of Excellence for Human Rights Education, School of Law, Rights and Constitutional Governance, Tata Institute of Social Sciences, Mumbai.

Section-I: Socio-economic background of bailee:

1. Name (Optional) -----

2. Age (in years)

- | | | |
|-------------|-----------------|----------|
| 1. Below 20 | 2. 21-30 | 3. 31-40 |
| 4. 41-50 | 5. 51 and above | |

3. Gender

- | | | |
|---------|-----------|----------------|
| 1. Male | 2. Female | 3. Transgender |
|---------|-----------|----------------|

4. Religion

- | | | |
|--------------|-------------|--------------------|
| 1. Hindu | 2. Muslim | 3. Sikh |
| 4. Christian | 5. Buddhist | 6. Other (Specify) |

5. Caste

- | | | | |
|--------------------|--------|------|-------|
| 1. General | 2. OBC | 3.SC | 4. ST |
| 5. Other (Specify) | | | |

6. Educational Status

- | | | |
|--------------------------------|--------------------------------|---------------|
| 1. Up to 10 th Std. | 2. Up to 12 th Std. | 3. Graduation |
| 4. Post-Graduation | 5. Other (specify) | |

7. Marital Status

1. Married 2. Unmarried

If married, state number of dependents;

1. One 2. Two 3. Three 4. Four
5. Five 6. Other (specify)

8. Occupation (prior to incarceration)

1. Unemployed 2. Self-employed 3. Private Service
4. Government Service 5. Others (Specify)

9. Monthly Income (in Rupees)

1. Up to 3,000 2. 3001 to 5,000
3. 5001 to 7,000 4. 7001 to 10,000 5. 10,000 and above

Section- II Information about arrest & Bail at Police Station

10. Do you feel that police engage in indiscriminate arrest?

1. Strongly agree 2. Agree 3. Neutral
4. Disagree 5. Strongly Disagree

11. What was the nature of offence committed by you?

1. Bailable 2. Non-Bailable 3. Do not know

12. How much time spent by you in Police Custody?

1. One day 2. Two days 3. Three days 4. Four days
5. Specify

13. Whether offence committed by you is Bailable or Non-Bailable?

1. Bailable 2. Non-Bailable 3. Do Not Know

14. Have you informed by the police about right to bail at the Police Station?

1. Yes 2. No

15. If no, who has helped you to get out bail from Judicial Magistrate in the Court

1. Family Member 2. Neighbour 3. Relative
4. Peer Group/ Friend 5. Gang man 6. Others (specify)

16. How did you released on Bail?

1. Personal Bond 2. Cash Bond 3. Surety Bond 4. Other (specify)

17. In case of Personal Bond, please explain the conditions attached with it?

18. In case Cash Bond, how much money deposited by surety on behalf of you?

1. Rs. 5,000 2. Rs.10,000 3. Rs.15,000
4. Rs. 20,000 5. Other (Specify)

19. In case of Surety Bond, which is correct?

1. One Surety with Property (moveable)
2. One Security with Property (Immoveable)
3. Two Surety with Property (moveable)
4. Two Surety with Property (Immoveable)
5. Other Specify

20. How Much time is taken in released of you from State Custody?

1. One month
2. Two months
3. Three months
4. Six months
5. 1 year and above

21. Do you think time taken by Judiciary was reasonable?

1. Very Much like 2. Somewhat like 3. Not much like
4. Not like 5. Not at all

22. Do you think that getting bail is your human right?

1. Very Much like 2. Somewhat like 3. Not much like
4. Not like 5. Not at all

23. Do you think that Bail would help you to prepare your case in a better manner?

1. Strongly agree 2. Agree 3. Neutral 4. Disagree
5. Strongly Disagree

24. Whether any conditions imposed by court/ police at the time of granting bail?

1. Yes 2. No

25. If yes, what are these conditions?

26. Are you attending Court Trial or going Police station after released on bail?

1. Yes 2. No

27. If no, what were the reasons for non-appearance of Court and Police Station?

28. Do you think non-appearance in court or police station is a abuse of bail?

1. Very Much like 2. Somewhat like 3. Not much like
4. Not like 5. Not at all

29. Did you take advantage of bail ?

1. Very Much 2. Some what 3. Undecided
4. Not really 5. Not at all

30. Did you committing any of the following crime during bail period?

1. Indulged in repeating crime
2. Attempted to tampering with evidence
3. Threatened witnesses
4. Harmed to victims
5. Others

Thank you!!

Annexure-V

Interview Schedule for Bail Abusers

To seek your consent for participation in this research study entitled, “**Bail & Extent of Its Abuse including Recidivism,**” sponsored by SVP National Police Academy, Hyderabad and undertaken by Nodal Centre of Excellence for Human Rights Education, School of Law, Rights and Constitutional Governance, Tata Institute of Social Sciences, Mumbai.

Section-I: Socio-economic background of bail abuser:

1. Name (Optional)

2. Age (in years)

- | | |
|-------------|-----------------|
| 1. Below 20 | 2. 21-30 |
| 3. 31-40 | 4. 41 and above |

3. Gender

- | | | |
|---------|-----------|----------------|
| 1. Male | 2. Female | 3. Transgender |
|---------|-----------|----------------|

4. Religion

- | | | |
|--------------|-------------|--------------------|
| 1. Hindu | 2. Muslim | 3. Sikh |
| 4. Christian | 5. Buddhist | 6. Other (Specify) |

5. Caste

- | | | | | |
|------------|--------|------|------|--------------------|
| 1. General | 2. OBC | 3.SC | 4.ST | 5. Other (Specify) |
|------------|--------|------|------|--------------------|

6. Educational Status

- | | |
|--------------------------------|--------------------------------|
| 1. Up to 10 th Std. | 2. Up to 12 th Std. |
| 3. Graduation | 4. Post-Graduation |
| 5. Other (specify) | |

7. Occupation (prior to incarceration)

1. Unemployed 2. Self-employed 3. Private Service
4. Government Service 5. Others (Specify)

8. Marital Status

1. Married 2. Unmarried

9. Monthly Income (in Rupees)

1. Up to 3,000 2. 3001 to 5,000
3. 5001 to 7,000 4. 7001 to 10,00 5. 10,000 and above

10. Do you feel that police engage in indiscriminate arrest?

1. Strongly agree 2. Agree 3. Neutral
4. Disagree 5. Strongly Disagree

Section - II Information about Bail and Nature of Its abuse

11. What was the nature of offence committed by you?

1. Bailable 2. Non-Bailable 3. Do not know

12. Did the police inform you about right to bail at the Police Station?

1. Yes 2. No

13. What is Bail? (Please explain in your own words)

14. Do you know the legal mechanisms for getting bail at various levels?

1. Very Much 2. Somewhat 3. Undecided
4. Not really 5. Not at all

15. Who has helped you to furnish surety bond for bail?

1. Family Member 2. Neighbor 3. Relative
4. Peer Group/ Friend 5. Gang man 6. Others (specify)

16. What is Security bond?

1. Security with money 2. Security with immovable property
3. Security with move able property 4. Other (specify)

17. How much amount you have promised in personal bound?

1. Rs. 5,000 2. Rs.10,000 3. Rs.15,000
4. Rs. 20,000 5. Other(Specify)

18. Do you think that getting bail is your human right?

1. Very Much like 2. Somewhat like 3. Not much like
4. Not like 5. Not at all

19. Do you think that Bail would help you to prepare your case in a better manner?

1. Strongly agree 2. Agree 3. Neutral
4. Disagree 5. Strongly Disagree

20. Whether any conditions imposed by court/ police at the time of granting bail?

1. Yes 2. No

21. If yes, what are these conditions?

22. Are you attending court hearing or police station as case may be?

1. Yes 2. No

23. If no, what were the reasons for non-appearance of Court and Police Station?

24. Do you think non-appearance in court or police station is a abuse of bail?

1. Yes 2. No 3. Can not

25. Did you take advantage of bail?

1. Very Much 2. Somewhat 3. Undecided
4. Not really 5. Not at all

26. Did you committing any of the following crime?

1. Indulged in repeating crime 2. Attempted to tampering with evidence
3. Threatened witnesses 4. Harmed to victims
5. Others

Section - III – Impact of Misuse of Bail:

27. Whether abuse of bail has impacted adversely on you and your family?

1. Very Much 2. Some what 3. Undecided
4. Not really 5. Not at all

28. Tell us something about the impact of Abuse of bail on your family and society at large.

29. Do you know the victim / witness in your case?

1. Very Much 2. Somewhat 3. Undecided
4. Not really 5. Not at all

30. What was the reaction of your family and neighbour after jumping the bail?

31. Are you in touch with victim /witnesses in your case?

1. Very Much 2. Somewhat 3. Undecided
4. Not really 5. Not at all

32. Did you try to influence Victim/witness?

1. Very Much 2. Somewhat 3. Undecided
4. Not really 5. Not at all

Thank you!!

Annexure-VI

Interview Schedule for Prison Officials

To seeking your consent for participation in this research study entitled, “**Bail& Extent of Its Abuse including Recidivism,**” sponsored by SVP National Police Academy, Hyderabad and undertaken by Nodal Centre of Excellence for Human Rights Education, School of Law, Rights and Constitutional Governance, Tata Institute of Social Sciences, Mumbai.

1. Designation:

2. Type of Jail:

3. Abuser of bail in prison terminology is known as:

- 1. Recidivist 2. Habitual
- 3. Gangster 4. Others specify_____

4. What is the number of bail abuses in your prison?

5. Do you think now-a-days bail abuse cases are increasing?

- 1. Yes 2. No

6. If yes, what are the reasons for this phenomenon?

7. Do you maintain data relating to bail abuses?

- 1. Yes 2. No

8. If yes, please specify.

9. Do you keep such offenders in a separate cell or Barrack in Jail?

1. Yes 2. No

10. Whether prison administration is maintaining data or profile of Abuser of bail or Recidivists?

1. Yes 2. No

11. If yes, please specify?

12. Do you share such data with other Criminal Justice Agencies?

1. Very Much 2. Somewhat 3. Undecided
4. Not really 5. Not at all

13. Do you think that the recidivists have potential for reformation?

1. Very Much 2. Somewhat 3. Undecided
4. Not really 5. Not at all

14. Do the recidivists participate in prison's correctional programmes?

1. Very Much 2. Somewhat 3. Undecided
4. Not really 5. Not at all

15. What is difference between Abuser of Bail and Parole absconders?

Thank you!!

Annexure-VII

Interview Schedule for Civil Society

To seek your consent for participation in this research study entitled, “**Bail& Extent of Its Abuse including Recidivism,**” sponsored by SVP National Police Academy, Hyderabad and undertaken by Nodal Centre of Excellence for Human Rights Education, School of Law, Rights and Constitutional Governance, Tata Institute of Social Sciences, Mumbai.

1. Name (Optional)

2. Age (in years)

1. Below 20 2. 21-30 3.31-40 4. 41 and above

3. Gender

1. Male 2. Female 3. Trans gender

4. Religion

1. Hindu 2. Muslim 3. Sikh
4. Christian 5. Buddhist 6. Other (Specify)

5. Caste

1. General 2. OBC 3. SC 4. ST
5. Other (Specify)

6. Educational background

1. Up to 10th Std. 2. Up to 12th Std. 3. Graduation
4. Post-Graduation 5. Other (specify)

7. Occupation

1. Agriculture 2. Self-employment 3. Private company

4. Government Servant 5. Others (Specify)

8. Nature of civil society

1. Neighborhood 2. Teacher 3. Community worker
4. Social worker 5. Others (Specify)

9. What do you understand by abuse of bail? (Specify)

10. Do you know any abuser of bail in your area or locality?

1. Very Much 2. Somewhat 3. Undecided
4. Not really 5. Not at all

11. Tell us about socio-economic and political background of bail abuser?

12. What kind of modus operandi is generally adopted by bail abuser?

13. Do you agree that a bail abuser or recidivist is a threat to the society?

1. Strongly agree 2. Agree 3. Neutral
4. Disagree 5. Strongly Disagree

14. Generally, nature of threat is:

1. Tampering Evidence through various ways 2. Threatening to the Victim's family
3. Threat for Witness 4. Threat for Social Order/Law and Order
5. Others (Specify)

15. Whether offender has committed crime during bail period?

1. Yes 2. No

16. If yes, type of crime generally committed by abuser or absconders?

1. Killing of victims and witnesses
2. Kidnapping of victims & witnesses' family members
3. Threatening witness and victims to weaken the case
4. Anything else (Specify)

17. Whether victims and witnesses get social support from the community?

1. Yes 2. No

18. If yes, what kind of support is given to them (victims and witnesses)? (Specify)

19. What are the problems faced by bondman in abuse of bail cases? (Specify)

20. Do you think that community can play an important role in preventing abuse of bail or recidivism?

1. Yes 2. No

21. If yes, please specify.

Thank you!!

Annexure-VIII

Interview Schedule for Media

To seek your consent for participation in this research study entitled, “**Bail & Extent of Its Abuse including Recidivism,**” sponsored by SVP National Police Academy, Hyderabad and undertaken by Nodal Centre of Excellence for Human Rights Education, School of Law, Rights and Constitutional Governance, Tata Institute of Social Sciences, Mumbai.

1. Name (Optional)

2. Age (in years)

3. Gender

1. Male 2. Female

4. State

5. Type of Media

6. Name of the Media House

7. Language of publication or telecast

8. Coverage of publication or channel

9. Experiences in Media Profession

10. Do you agree that the court is delivering equitable justice to marginalized and poor offenders through granting bail?

1. Strongly agree 2. Agree 3. Neutral
4. Disagree 5. Strongly Disagree

11. Do you agree that potential or powerful criminals are getting bail easily than poor offenders?

1. Strongly agree 2. Agree 3. Neutral
4. Disagree 5. Strongly Disagree

12. Do you know that some offenders misuse bail provisions?

1. Yes 2. No

13. If yes, please give details.

14. What is the profile of misuser of bail?

15. What is the nature of misuse of bail?

16. Do you agree that misuse or abuse of bail is impacting adversely on victim/ witnesses and community?

1. Very Much 2. Somewhat 3. Undecided
4. Not really 5. Not at all

17. Do you think that recidivism is a serious issue for maintains social order and law and order?

1. Strongly agree 2. Agree 3. Neutral
4. Disagree 5. Strongly Disagree

18. Do you cover misuse of bail cases in print electronic media?

1. Always 2. Sometimes 3. Undecided 4. Not really 5. Not at all

19. Suggest some measures for prevention of misuse of bail:

Thank you

Annexure-IX

Interview Schedule for NGOs

To seek your consent for participation in this research study entitled, **“Bail& Extent of Its Abuse including Recidivism,”** sponsored by SVP National Police Academy, Hyderabad and undertaken by Nodal Centre of Excellence for Human Rights Education, School of Law, Rights and Constitutional Governance, Tata Institute of Social Sciences, Mumbai.

1. Name (Optional)

2. Organization

3. Nature of Activities

4. Target Group

5. Do you think that police is executing Non Bailable Warrants (NBW) effectively?

1. Very Much 2. Somewhat 3. Undecided 4. Not really 5. Not at all

6. Whether NBW has link with corruption in police and absconding of offenders?

1. Strongly agree 2. Agree 3. Neutral
4. Disagree 5. Strongly Disagree

7. Do you agree that abuse of bail has wider impact on individuals, community and Criminal justice system?

1. Very Much 2. Somewhat 3. Undecided
4. Not really 5. Not at all

8. What is the nature and extent of abuse of bail by offenders?

9. Do you agree that offenders threaten victims and witnesses after getting bail?

1. Strongly agree 2. Agree 3. Neutral 4. Disagree 5. Strongly Disagree

10. Do the victim and witnesses get protection from local police?

1. Very Much 2. Somewhat 3. Undecided 4. Not really 5. Not at all

11. Do you provide any support to such victims and witnesses?

1. Very Much 2. Some what 3. Undecided 4. Not really 5. Not at all

12. Suggest some measures to combat problem of abuse or misuse of bail.

Thank you!!

Annexure-X

Checklist for Police Station

To seek your consent for participation in this research study entitled, **“Bail& Extent of Its Abuse including Recidivism,”** sponsored by SVP National Police Academy, Hyderabad and undertaken by Nodal Centre of Excellence for Human Rights Education, School of Law, Rights and Constitutional Governance, Tata Institute of Social Sciences, Mumbai.

Checklist for Police Stations

Kindly furnish the following information for successful completion of the above research study.

Police Station:

City: _____

Zone: _____

1. Total no. Of Cognizable Crimes Registered during last three years.

a. 2010 _____ (b) 2011 _____ (c) 2012 _____

2. No. Of bailable crimes registered?

3. No. Of non bailable crimes registered?

4. No. Of persons released on bail in bailable offences by Police?

5. No. Of persons released on bail in bailable offences by the Court?

6. Why accused were sent to the court in bailable offences?

7. No. Of cases charge sheeted during stipulated time-frame?
8. No. Of offenders jumped the bail?
9. Reasons for jumping the bail?
10. No. Of bail misuser declared as absconders?
11. No. Of bail misuser committed further crime after released on bail?
12. No. Of absconders and bail misuser committed committing suicide and declared dead etc.
13. No. Of absconders and bail misuser re-arrested by police

Thank you!!

Annexure-XI

Guidelines for Focus Group Discussion (FGD)

To seek your consent for participation in this research study entitled, “**Bail& Extent of Its Abuse including Recidivism,**” sponsored by SVP National Police Academy, Hyderabad and undertaken by Nodal Centre of Excellence for Human Rights Education, School of Law, Rights and Constitutional Governance, Tata Institute of Social Sciences, Mumbai.

GUIDE LINES: KEY QUESTIONS

1. Whether police has accepted bail at Police Station inailable cases.
2. What are the problems faced by police inailable cases?
3. What are the causes behind abuse of bail by offenders?
4. Whether police is opposing bail for repeat offenders?
5. How police department is monitoring and preventing action taken against abusers?
6. What are the problems encounters by police in arresting abusers/ recidivists?
7. Suggestion for strengthening the Role of Police in dealing with bailees, abusers and recidivists.

Thank you!!

Annexure-XII

**DETAILS OF THE FGD CONDUCTED IN THE ZONE-XI OF MUMBAI POLICE
COMMISSIONARATE**

Sample of Focus Group Discussion with Police Personnel

Group-1	Group-2	Group-3	Group-4	Total
12 male police personnel aged between 27-52 years	10 police personnel (Sr.P.I.01, P.I.02, API02, HC02, PN02 & Constable female 01)	09 police personnel including 04 PI, 02 API, 01 Court <i>Karkoon</i>	10 police personnel	Total number of police personnel were participated in focus group discussion across various ranks such Sr PI to Constables
FGD held at Charkop Police Station, Mumbai on 08.11.2014 at 11 am- 01, pm	FGD held at Charkop Police Station, Mumbai on 08.11.2014 11 am- 01, pm	FGD held at Charkop Police Station, Mumbai on 08.11.14 at 11 am- 01, pm	FGD held at Charkop Police Station, Mumbai on 08.11.2014 at 11 am- 01, pm	
12	10	09	10	41

Thank you!!

Annexure-XIII

SOURCES OF THE CASE STUDIES

LUCKNOW	FAIZABAD	THANE	MUMBAI	TOTAL
05	04	06	15	30
LUCKNOW	Name of Court	Police Stations/ Prison	Case Study No.	
LUCKNOW 05 CASE STUDIES	Additional District & Sessions Judge –II	Naka	1	
	Additional District & Sessions Judge –V	Sarojnininagar	2	
	Additional District & Sessions Judge –I	Wazeergaj	11	
	Additional District & Sessions Judge-III	GRP	13 &14	
FAIZABAD 04 CASE STUDIES	Additional District & Sessions Judge –VII	Maharajganj Police Station	3	
	Additional District & Sessions Judge	GRP Police Station	4	
	Chief Judicial Magistrate	Kotwali Police Station	5	
	Additional District & Sessions Judge –VIII	Purakalander Police Station	6	
THANE 06 CASE STUDIES	Additional District & Sessions Judge –V	Rabodi Police Station	9	
	Additional District & Sessions Judge –V	Boiwada Police Station	10	
	Thane Prison, Thane	Thane Prison, Thane	27,28,29 &30	
	68th Metropolitan Magistrate Court, Borivali	Kasturbanagar Police Station	7	

MUMBAI 15 CASE STUDIES	11 th Metropolitan Magistrate Court, Kurla	Chembur Police Station	8
	67 th Metropolitan Magistrate Court, Borivali	Dindoshi Police Station	12
	67 th Metropolitan Magistrate Court, Borivali	Malvani Police Station	15,16,17,18
	45 th Metropolitan Magistrate Court, Kurla	Trombay Police Station	19
	34 th Metropolitan Magistrate Court, Vikroli	Nehrunagar Police Station	20
	Arthur Road Prison, Mumbai	Arthur Road Prison, Mumbai	21,22,23 &24
	Byculla Prison, Mumbai	Byculla Prison, Mumbai	25 &26

Thank you!!

Annexure-XIV

Response to NPA Comments

<p>The principle of Presumption of Innocence of the accused till proved guilty by the court needs a closer look from the perspective of victim. By necessary implication it amounts to saying and practicing that police and victim are telling a lie by accusing and charge sheeting the accused till they are proved correct in the court. This is too much of disadvantage to the victim and we need to aim at a more level playing field for the victim and the accused by seeking suitable amendments in the law.</p>	<p>As the number of prisoners grows and no additional space for their accommodation is provided, obviously overcrowding in prisons occurs. Building new capacity can be necessary to replace aging infrastructure and provide adequate space and standards of living, in line with national and international law. Many prisons in use today are old, with inadequate facilities and services. As ICRC has noted some prisons have accommodation blocks with few buildings other than a kitchen and gate entry area, with no or limited visiting facilities, health clinics, workshops, classrooms and other necessary services. As prison populations continue to increase it is common to find classrooms, workshops and other buildings and outside space converted to provide additional accommodation. Facilities built as temporary structures often continue to be used years later. Some facilities, which are used as prisons, were built for quite different purposes or for very different categories of prisoners than those currently accommodated. In some, no modification will have been made and even where building alterations have been undertaken, many facilities will continue to present significant challenges for prison management.</p> <p>The government should look out the increase of crime in society and followed by appropriate action by police which many time requires judicial custody, as it requires more space in jails to accommodate under trials. Government should plan for long-term policy for infrastructural improvement in prison and creating new prison as per crime rate proportion with population of India.</p> <p>But we also need to closer look on victim's rights. The victim's right may not compromise the right of offenders to fair trials. It is not clear, however, where rights of victims do impinge upon those of offenders. Since the rights of victims are new concerns in criminal justice system, it seems useful examine whether and how they conflict or interface with the older and more established rights of the offender.</p>
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<p>The separation of prosecution from police has adversely impacted the success rate of cases against offender, as felt by the police officers, because the PP hardly feels any accountability towards for the failure of the case. They simply throw the blame at the doors of the police citing defects in the investigation. The courts also generally side with them while acquitting the accused. The impact of this important development in the evolution of the criminal justice system needs to be included in the report.</p>	<p>One of the perceptions also came from FGD with police personal that the separation of prosecution with police is also creating problem. The Hon. Supreme Court in <i>Sarala v. Velu</i> AIR 2000 SC 1732, rendered the final push in tearing apart the two arms of the criminal justice system – prosecution and investigation. First the 1973 amendment to the Criminal Procedure Code extinguished police supervision over prosecution. Then the decision in <i>Sarala</i> ended the practice of consultation between the police and prosecutors at the investigation stage and prior to formation of opinion by the investigating officer (on laying of charge sheet or final report) under 173(2) of the CrPC. Cases are today investigated by the police and subsequently prosecuted by the prosecution with hardly any cooperation between the two (The Malimath Committee Report on Reforms of the Criminal Justice System, 2003).</p> <p>With the two agencies of criminal justice having nothing to do with one another the quality of trials has deteriorated and hurt the administration of justice adversely. While conviction rates in countries like USA, UK, France and Japan are in range of over 85%, conviction rate in India is in the 40% range. For serious cases like murder (39.1%), dacoity (22.7%), Robbery (30.9%) and rape (28%), it is even lower. An opportunity has now come up to correct this anomaly through the decision of the apex court in <i>State of Gujarat v Kishan Bhai</i> (2014) 5 SCC 108. In this case out of sheer frustration at the miserable investigation and prosecution in a case of a gruesome rape, mutilation and murder of a minor girl, the Hon. Supreme Court was forced to come out with a tough decision suggesting corrections in the work of these two agencies.</p> <p><i>State of Gujarat v Kishan Bhai</i> the Supreme Court directs, the Home Department of every State Government, to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. “All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of</p>
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<p>The analysis of the data according to age, sex, caste, religion etc. has, perhaps, not taken care of their actual representation in the population. Absolute figure taken from the sample for various categories of respondents need to be adjusted against their proportion in the community under study to make the analysis more objective, wherever not done in the report.</p>	<p>The analysis of the data is done in the report by taken care of their actual representation in crime registered.</p>
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<p>Serious decline in the social disapproval of the misdeeds of the offenders, as noticed from the phenomenal success rate of the criminals(Under investigation/trial) has serious implication for respect for law, expected from bailees, needs to be taken note of by the researcher. The figures of the candidates with criminal antecedents contesting and succeeding in elections are easily available from the Election Commission of India and some NGOs working on election reforms.</p>	<p>Criminalization of Politics and Bail system</p> <p>It is noticed that the respect for law expected from bailees has been decline as many political leaders contesting election after getting bail in serious crime and these numbers are increasing in every election. As Hon. SC stated that Criminalization of politics is an anathema to the sacredness of democracy. Commenting on criminalization of politics, the Court, in <u>Dinesh Trivedi, M.P. and others v. Union of India and others</u>, lamented the faults and imperfections, which have impeded the country in reaching the expectations, which heralded its conception. While identifying one of the primary causes, the Court referred to the report of N.N. Vohra Committee that was submitted on 5.10.1993. The Court noted that the growth and spread of crime syndicates in Indian society has been pervasive and the criminal elements have developed an extensive network of contacts at many a sphere. The Court, further referring to the report, found that the Report reveals several alarming and deeply disturbing trends that are prevalent in our present society. The Court further noticed that the nexus between politicians, bureaucrats and criminal elements in our society has been on the rise, the adverse effects of which are increasingly being felt on various aspects of social life in India. Indeed, the situation has worsened to such an extent that the President of our country felt constrained to make references to the phenomenon in his addresses to the Nation on the eve of the Republic Day in 1996 as well as in 1997 and hence, it required to be handled with extreme care and circumspection.</p> <p>It is worth saying that systemic corruption and sponsored criminalization can corrode the fundamental core of elective democracy and, consequently, the constitutional governance. The agonized concern expressed by this Court on being moved by the conscious citizens, as is perceptible from the authorities referred to hereinabove, clearly shows that a democratic republic polity hopes and aspires to be governed by a Government which is run by the elected representatives</p>
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<p>The analysis of the accused not granted bail against different variables need to be analysed with that of the accused granted bail to conclude about any significant correlation respecting one or the other variable.</p>	<p>Sufficient data is not available.</p>
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<p>Reclassification of crimes into BAILABLE or NON BAILABLE needs urgent attention so as to deny the benefit of bail to the accused in grave crimes and thereby secure advantage at trial in term of acquittal/discharge.</p>	<p>Modifying the “bail is rule, jail exception” view, the Supreme Court has held history-sheeters or habitual offenders to be a nuisance and terror to society and asked courts to be cautious in granting bail to such individuals who are not on a par with a first-time offender.</p> <p>A bench of Justices Dipak Misra and Prafulla C Pant said discretionary power of courts to grant bail must be exercised in a judicious manner in case of a habitual offender who should not be enlarged on bail merely on the ground of parity if other accused in the case were granted the relief.</p> <p>The SC, which has in slew of cases taken a pro-bail stance, said that criminal past of the accused must be checked before granting bail. It said that courts should not grant bail in a whimsical manner. In the past it has held that seriousness of the offence is not the only ground to deny bail, that compelling circumstances are needed to cancel bail and that interests of individual must be balanced against those of society.</p> <p>The bench’s observation came as it quashed the order of Allahabad high court, which had granted bail to a history-sheeter in a murder case without taking into account the criminal antecedents of the accused who was involved in seven other heinous offences including murder.</p> <p>“A history-sheeter involved in the nature of crimes which ... are not minor offences so that he is not to be retained in custody, but the crimes are of heinous nature and such crimes, by no stretch of imagination, can be regarded as jejune (simple)...The law expects the judiciary to be alert while admitting the plea of these kind of accused persons to be at large and, therefore, the emphasis is on exercise of discretion judiciously and not in a whimsical manner,” the bench said.</p> <p>Referring to the number of cases filed against accused Santnal</p>
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<p>Duty should be cast on the court to take cognizance of witnesses turning hostile from the point of view of the possibility of the accused admitted to bail tampering with the evidence through tactics noted in the report. The court may consider asking for report from police as to the need for cancellation of bail to the accused in order to ensure fair trial and dispensation of justice to the victim. Principle of <i>Res Ipsa Loquitur</i> in such cases to show the capacity of the court to prevent miscarriage of justice by the bail abusers.</p>	<p>Witness is an important constituent of the administration of justice. By giving evidence relating to the commission of the offence he performs a sacred duty of assisting the court to discover truth. That is why before giving evidence he either takes oath in the name of God or makes a solemn affirmation that he will speak truth, the whole of truth and nothing but truth. The witness has no stake in the decision of the criminal court when he is neither the accused nor the victim. The witness performs an important public duty of assisting the court in deciding on the guilt or otherwise of the accused in the case. He sacrifices his time and takes the trouble to travel all the way to the court to give evidence. He submits himself to cross-examination and cannot refuse to answer questions on the ground that the answer will criminate him. He will incur the displeasure of persons against whom he gives evidence. He takes all this trouble and risk not for any personal benefit but to advance the cause of justice</p> <p>In many cases involving high profile personalities or heinous crime, the courts easily grant bail to the accused thereby making the witness vulnerable to threats and intimidation by the accused. No doubt Section 439(2) of the Code of Criminal Procedure provides for the arrest of a person who has been released on bail, it is seldom used by the State in cases where there exists a reasonable apprehension that the accused might try to influence the witness.</p> <p>In many cases the witnesses are bought off or “purchased” with the use of money.</p> <p>In such cases the victims/witnesses are mostly poor who are badly in need of money. The procedure is simple. The prime witnesses in a case are contacted either directly by the party or through the lawyers litigating that case and then offered a sum of money for not cooperating in the investigation and/or are told to take a pre decided stand at the trial. If, however, the trial has already started then he is told to turn away from what he had said earlier or to contradict his own statement.</p>
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<p>The oft repeated excuse of overcrowding in the jails should be analysed with reference to the failure of the states to create additional capacity commensurate with the increase in the volume of crime and ever mounting pendency of the cases in the subordinate courts. Abdication of the states in their responsibility should not be allowed as the justification for the release of undeserving accused, leading to grave injustice to the victims flowing from the decreasing conviction probability of the accused.</p>	<p>Building new capacity can be necessary to replace aging infrastructure and provide adequate space and standards of living, in line with national and international law. Many prisons in use today are old, with inadequate facilities and services. As ICRC has noted, some prisons have accommodation blocks with few buildings other than a kitchen and gate entry area, with no or limited visiting facilities, health clinics, workshops, classrooms and other necessary services. As prison populations continue to increase it is common to find classrooms, workshops and other buildings and outside space converted to provide additional accommodation. Facilities built as temporary structures often continue to be used years later. Some facilities, which are used as prisons, were built for quite different purposes or for very different categories of prisoners than those currently accommodated. In some, no modification will have been made and even where building alterations have been undertaken, many facilities will continue to present significant challenges for prison management (UNODC)</p> <p>The government should look out the increase of crime in society and followed by appropriate action by police which many time requires judicial custody, as it requires more space in jails to accommodate under trials. Government should plan for long term policy for infrastructural improvement in prison and creating new prison as per crime rate proportion with population of India (UNODC)</p>
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<p>The advantage of the convicts through setting off their under trial detention period in the jail, against the quantum of imprisonment, should be looked from the angle of frustration of the sentencing order mandating rigorous imprisonment while the period set off was actually spent without rendering any prison labour. This dilutes the real deterrent value of the sentence of rigorous imprisonment as a punishment for crime.</p>	<p>The law commission may examine this issue.</p>
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Thank You!!

Annexure-XV

Observations of the Research Committee of SVP NPA



सरदार वल्लभभाई पटेल राष्ट्रीय पुलिस अकादमी
SARDAR VALLABHBHAI PATEL NATIONAL POLICE ACADEMY
(भारत सरकार : गृह मंत्रालय) (Government of India : Ministry of Home Affairs)
हैदराबाद Hyderabad – 500 052

F.No.27011/2/2011-Estt

February 06, 2017

To

Dr. Arvind Tiwari
Professor and Dean
School of Law, Rights and
Constitutional Governance
Tata Institute of Social Sciences (TISS)
Deonar Farm Road
Mumbai - 400088

Sub: Submission of Final Project Report on “A Study on Bail and Extent of its Abuse including Recidivism” – Regarding.

Ref: (i) This Academy’s letter No. 27011/5/2012-Estt(R) Vol-II dated May 11, 2016.
(ii) Your letter dated January 10, 2017.

Sir,

Please recall the presentation made by you on the report of your Research Project during the Research Committee meeting held on March 18, 2016. You have submitted the report after making changes/modifications based on the observations/suggestions made by the Research Committee. This modified report was sent to the Research Committee members for their observations/suggestions.

The observations of the Research Committee on the modified report of the research project are:

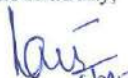
1. The total number of 511 offences mentioned in the IPC(P.8) need to be corrected after deducting the sections dealing with definitions and concepts. In fact all the 511 sections in the IPC do not denote one or the other offence. Hence total number of offences defined in the IPC is much less than the total number of 511 sections.
2. At page 34/35 in the Table the percentage of Recidivists’ is shown as 4.7% while it is mentioned as 7.2% quoting 2013 figures of the NCRB. It needs to be reconciled. It can be update with 2015 figures as well.
3. Conviction rate in the country is shown as 40% whereas it has been hovering around 50% during the last three years. It needs to reconcile with the latest figures of the NCRB to shown the correct position.

:2:

4. With reference to the all figures quoted for crime and related issues, used the same statistics for the year 2013, while the statistics for the year 2015 have also been published by the NCRB. Now that we are finalising the research report in 2017, it will be imperative if figures for 2015, available in NCRB publications, may be used. The more relevant field data used for the year 2015 also. This will bring more credibility to the findings.
5. At page 165 in ACCESS TO BAIL AT POLICE STATION, it has been shown with figures that illegal detention is prevalent in police stations. It seems, it is based on one sided version of the accused with no comments taken from the concerned police station officers to know their version. Without the same it cannot be used as objective material, so essential in research related papers. It is all the more important because it has not supported it with any observations of the courts where the accused has been produced, allegedly with delay of one or more days.
6. In the recommendation part some very good suggestions are given. But it will be more useful it could highlight the specific sections of the CrPC and IPC which need revision with reference to the suggestions made.
7. At page 237 Criminalisation of Politics is discussed without giving any empirical evidence in support of the phenomenon under discussion. Now figures are easily available as to the number of elected representatives and those who contested there for, with criminal antecedents. It will carry more conviction if it can be source these figures from Election Commission website or from any other study having already been done, in support of assertion/observations on this sensitive subject.
8. The report needs rigorous proof reading once again to take care of some grammatical/spelling errors here and there.
9. Also, while addressing the High Courts/Supreme Court it need to be prefixed by 'Honourable' as the same is used inconsistently in the report.

You are requested to give your compliance on the above mentioned observations.

Yours faithfully,


(Rajeev Sabharwal)
Joint Director (BC & R)

Annexure XVI

MHA Advisory

F. NO.IV/15012/4/2014-GSR-II
GOVERNMENT OF INDIA/BHARAT SARKAR
MINISTRY OF HOME AFFAIRS/GRIH MANTRALAYA
NORTH BLOCK, NEW DELHI /CS DIVISION

Dated N Delhi, the 24th June, 2014

To,

1. The Chief Secretaries of all the State Governments and the Union Territories of A&N, Delhi & Puduchery
2. The Administrators of Lakshadweep, D&D, DNH & Chandigarh.

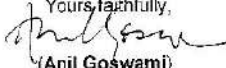
SUBJECT:ADVISORY ON FAST-TRACKING OF CRIMINAL TRIALS AGAINST SITTING MLAs & MPs

Dear Sir,

1. 'Police' and 'Public Order' are State subjects under the Seventh Schedule to the Constitution of India.
2. Supreme Court in its recent judgment in WP (Civil) of no. 536 of 2011 in Public Interest Foundation & Others vs Uoi and another dated 10th March, 2014 has observed as under:
"We, accordingly, direct that in relation to sitting MPs and MLAs who have charges framed against them for the offences which are specified in Section 8(1), 8(2) and 8(3) of the RP Act, the trial shall be concluded as speedily and expeditiously as may be possible and in no case later than one year from the date of the framing of charge(s). In such cases, as far as possible, the trial shall be conducted on a day-to-day basis. If for some extraordinary circumstances the concerned court is being not able to conclude the trial within one year from the date of framing of charge(s), such court would submit the report to the Chief Justice of the respective High Court indicating special reasons for not adhering to the above time limit and delay in conclusion of the trial. In such situation, the Chief Justice may issue appropriate directions to the concerned court extending the time for conclusion of the trial."
3. As the case would come up again in September, 2014 the Government of India would, therefore, advise the State Governments and UT Administrations to take the following steps for ensuring the compliance of the directions of the Supreme Court in the above mentioned case within their jurisdiction:-
 - i. The Directorate of Prosecution of the State/UT as envisaged u/s 25A of the Cr.P.C, 1973 will immediately take steps to identify all cases for which charges have been framed u/s 211 of the Cr.P.C or under the Special Act itself against any sitting MLA or MP in the State against the penal sections of various Acts enumerated in sections 8(1), 8(2) and 8(3) of the Representation of People Act, 1951.
 - ii. Once any case has been identified then the APP/PP will move a prayer before the concerned Magistrate/Sessions Judge seeking a fast-track trial of the case on a day-to-day basis in compliance with the above mentioned order of the Supreme Court.
 - iii. In case there is a shortage of prosecutors, then the State should appoint a Special PP to ensure that the case is not delayed for want of a prosecutor.
 - iv. Production of witnesses, medical/forensic reports and any document that is required to support the prosecution of the case shall have to be ensured and the highest priority should be given to the preparation of these reports. The State/UT police and other associated authorities should be suitably instructed to ensure that the highest priority should be given to ensure that the case is not delayed for want of production of witnesses or documents.
 - v. It would be best that the Home Secretary of the State/UT reviews the status of these cases at regular intervals.

- vi. A District level Coordination Committee may be constituted for monitoring these cases. It should be headed by District & Sessions Judge. The DM/DC and SP should be members of this Committee and the Public Prosecutor should be its Secretary. At the metropolitan level, a suitable monitoring mechanism may be evolved involving the Judiciary, Police and Prosecution;
- vii. It would be useful if a report of the action taken in this respect is intimated to the undersigned within 30 days.

The receipt of this letter may kindly be acknowledged.


Yours faithfully,

(Anil Goswami)
Home Secretary

Copy also for information and necessary action to:

- i. Finance Secretary, MoF, New Delhi
- ii. Secretary Department of Justice, Govt. of India, Jaisalmer House, N Delhi
- iii. Home Secretary of State Governments and UT Administrations
- iv. DGP of State Governments and UT Administrations.
- v. Joint Secretary (S.I.), MHA

Annexure XVII

Observation Made by Mr. RC ARORA, Member Research Committee, SVPNPA



सरदार वल्लभभाई पटेल राष्ट्रीय पुलिस अकादमी
SARDAR VALLABHBHAI PATEL NATIONAL POLICE ACADEMY
(भारत सरकार : गृह मंत्रालय) (Government of India : Ministry of Home Affairs)
हैदराबाद Hyderabad – 500 052

F.No.27011/2/2011-Estt June 2, 2017

To
Dr. Arvind Tiwari
Professor and Dean
School of Law, Rights and
Constitutional Governance
Tata Institute of Social Sciences (TISS)
Deonar Farm Road
Mumbai - 400088

Sub: Submission of Final Project Report on “A Study on Bail and Extent of its Abuse including Recidivism” – Regarding.

Ref: (i) This Academy’s letter No. 27011/2/2011-Estt dated February 06, 2017.
(ii) Your letter dated May 03, 2017.

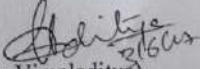
Sir,

The modified report submitted by you duly incorporating comments/observations given by Research Committee members on the modified report has been forwarded to Committee members for further comments/suggestions.

2. Shri R.C. Arora, IPS (Retd.), one of the Committee member has given his comments on the modified report is as stated below:

“I have carefully perused the responses mentioned in the reply of Dr. Arvind Tiwari, wrt my observations. The same appears to be very satisfactory. However, I still have some reservations wrt his reply related to the alleged detention of certain arrestees for over twenty four hrs before producing them before the Magistrate. It still, in my considered view, cannot be treated as very objective evidence to sustain the incriminating adverse inference derived by the researcher. I shall like to discuss it with the researcher during the meeting to sort it out logically”.

3. You are requested to give your compliance after obtaining the suggestions from the Committee member at the earliest please.

Yours faithfully,

(Putta Vimaladitya)
AD (IT) & I/c Research Cell