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Analysis of the Legal Framework and Common Practices Governing Law of Bail in Pakistan

Muhammad Umair Razzaq¹

Ali Ahmad Abbas Sial²

Muhammad Muneeb Raza³

¹Assistant Professor, Department of Law, The Islamia University of Bahawalpur, Pakistan. E-Mail: Umair.razzaq@iub.edu.pk

²Advocate High Court Multan, Pakistan. E-Mail: Aliahmadabbas94@gmail.com

³Lecturer, Department of Law, The Islamia University of Bahawalpur, Pakistan E-Mail: Muneeb.raza@iub.edu.pk

ABSTRACT

This research study delves into the profound significance of bail and its multifaceted role within the context of access to justice and the criminal justice framework in Pakistan. At its core, it underscores the paramount importance of the right to liberty and life, enshrined as a fundamental human right upheld and regulated by the legal system. This right, cherished universally, finds its safeguard in the hallowed provisions of Article 4, 9, and 10 of the Constitution of Pakistan. The concept of bail emerges as a pivotal cornerstone within this discourse, serving a dual purpose of paramount importance. On one hand, it upholds the principle of preserving individual freedom, recognizing the inherent dignity and rights of every person to not be deprived of their liberty without just cause. On the other hand, bail also serves to protect the broader societal interests, striking a delicate equilibrium within the criminal justice system. Notably, individuals granted bail are afforded a distinct advantage, a more favorable opportunity to diligently prepare and present their case. This research study aims to contribute to this imperative discussion by shedding light on the nuanced interplay between bail, constitutional rights, and access to justice within the unique context of Pakistan's criminal justice system.



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Corresponding Author's Email: Umair.razzaq@iub.edu.pk

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1. Introduction

It can be helpful to begin by talking briefly about the right to obtain justice. Throughout history, there have been many interpretations of this phenomenon. The most restrictive interpretation of "access to justice" originates from the liberal governments of the 18th and 19th centuries, namely about an individual's legal entitlement to initiate or respond to judicial proceedings. During the 1960s, the primary emphasis of the concepts about access to justice revolved around the provision of legal services for those with little financial means. The primary aim was to offer legal assistance to those with little financial resources who were unable to afford legal counsel. The primary objective was to mitigate the financial burden, duration, and intricacy of the legal system, a principle that continues to underpin contemporary legal aid and poverty law clinics. Since the year 1980, equality has shifted the viewpoint on getting justice, resulting in a broader vision. This method aims to attain equal results for marginalized litigants by reducing obstacles to entering the legal system beyond equal access. Consider modernizing and simplifying the legal system and social institutions to create a more comprehensive service paradigm. This method includes reduced court processes, alternative conflict resolution, and proactive actions to resolve legal issues before litigation. The current idea of "gaining access to justice" requires cultural changes beyond legal matters. It encourages the judicial system to work alongside governments and the public to address legal issues holistically. It emphasizes shifting from court-centric and lawyer-centric practices to a client-centric approach that addresses community members' everyday issues (Cooper, 2014).

Pakistan's constitution does not include any explicit reference to the concept of bail (karim, 2019). Bail refers to a kind of security that is provided to ensure the appearance of an individual when it is legally required. The concept of bail involves securing the liberation of an individual from lawful confinement with the condition that they will present themselves at the specified time and location and subject themselves to the authority and decision of the court (Black's Law Dictionary,2019). Granting bail does not liberate the prisoner from jail or detention but rather releases them from legal custody and entrusts them to their sureties to present them at their trial at a stated time and place. Bail is granted as a norm and denied as an exception. Bail is available to those charged with bailable offenses. Bail is required for bailable crimes. When considering bail, the Criminal Procedure Code (Cr. P.C differentiates between bailable and non-bailable crimes. The decision to grant bail for non-bailable offenses is not the right of the accused but grace and concession. (Tariq Bashir,1995) Someone who is accused of a bailable crime while under arrest without a warrant has the right to be freed on bail at any stage of the proceedings. Section 497(1) pertains to the concept of bail. Offenses that are not included by the restrictive provision of section 497(1) of Cr.P.C. Exceptions to the granting of bail in offenses of this nature are recognized. In the Criminal Justice System of Pakistan, bail is of paramount importance because it sets the whole case from the beginning (Jamshed et al., 2021)

While bail is generally permissible in such cases, it is not an automatic entitlement. Bail may be denied if the circumstances of the accused align with any of the three established exceptions: (i) a high probability of absconding to evade trial; (ii) a high probability of tampering with prosecution evidence or influencing prosecution witnesses to impede the administration of justice; and (iii) a high probability of reoffending (Hilal Khattak vs State, 2023). The term "BAIL" refers to the tension between police authority to limit the freedom of an accused and a presumption of innocence for the accused. To protect citizens from criminals, the state has granted police the right to arrest and request custody of suspected individuals in criminal courts. No idea of bail existed in early societies, but it is now a law in civilized societies.

The current research study mostly relies on secondary data sources. Law books reported case laws, and precedents from various sources have been considered and are then critically examined. The use of panel discussions with colleagues within the legal profession and academicians is also seen.

2. Life and Personal Liberty of a Person

Human life and freedom are priceless. Without respect and integrity, there is no point in continuing to exist. Since being arrested and detained may have far-reaching consequences, broad rules have been developed to safeguard citizens against abuses of State power. This is also what inspired the creation of bail. Bail is supposed to provide a suspect a chance to answer charges without infringing his right to freedom and the presumption of innocence until guilt is established, as stated on pages 298 and 300 of American Jurisprudence, 2009. Its purpose is to prevent the defendant from escaping justice, to guarantee his appearance at trial, and to give him time to arrange his defense. Pretrial bail, according to a different line of thinking, exists to protect defendants from being executed pending trial. (American Jurisprudence, , 2009)

3. Definition of Bail and Criminal Law

The etymology of the name 'Bail' may be traced back to its old French counterpart, *baillier*, which has the connotations of "exercising control, providing protection, and facilitating delivery." Furthermore, its origins may be traced back to the Latin term *baiulare*, denoting the act of carrying a load, as well as *Baiulare*, referring to an individual who assumes the role of a porter or carrier responsible for bearing burdens. According to St. Thomas Aquinas, the efficacy of the law is contingent upon the degree of justice it embodies. However, it is undeniable that the availability of justice, especially in the context of the criminal justice system, is severely limited in Pakistan. However, for those without specialized knowledge in the field, criminal justice is often the most familiar component of the legal system. The subject of crime and punishment has always had a captivating allure for individuals (Karim, 2019). In Pakistan's criminal justice accused or his lawyer spend their maximum energies rather on trial because if the accused gets bail in case he can influence the outcome of the case (Jamshed et al., 2020)

The code governing criminal process the major criminal procedural law in Pakistan, often referred to as adjective law, encompasses a set of regulations governing the procedures and practices followed in criminal cases. This is distinct from substantive criminal law, which defines the actual offenses and is the basis for the establishment of criminal courts responsible for its administration.

4. Types of Bail in Pakistan

First, the type of bail is referred to as Bail "Bail in Bailable Offence. Second " The concept of bail in cases classified as non-bailable offences. The third is Anticipatory Bail refers to a legal provision that allows an individual to seek pre-arrest bail in anticipation of being accused or arrested for a non-bailable offense. This provision aims to safeguard the fundamental rights of individuals by providing them with protection against potential harassment and arbitrary arrest. The offense in question does not come within the scope of the prohibitory clause outlined in Section 497 of the Criminal Procedure Code, 1898 (Cr.P.C.). Granting bail in circumstances similar to this is often the norm, whereas denying bail is considered to be an exceptional circumstance (Muhammad Nawaz alias Karo vs. The state,2023).

In Pakistan, bail is often categorized into the following sorts. Pre-arrest bail and second-arrest bail in Pakistan are regulated by the Code of Criminal Procedure, 1898, specifically under Sections 496, 497, and 498. These provisions pertain to the aforementioned types of bail as outlined in criminal law. Bail before arrest includes the Court may consideration of the merits of the case while deciding whether or not to grant bail before arrest (Muhammad Tanveer vs. State, 2023). Sections 497 and 498 of the legal frameworks pertain to the concepts of "pre-arrest" and "post-arrest" bail. These provisions delineate the scope and applicability of bail about the stages before and after an individual's arrest. The principles that regulate pre-arrest bail and post-arrest bail exhibit notable distinctions. The mere denial of pre-arrest bail for an accused individual is not enough justification for denying them the opportunity to seek post-arrest

bail (Roshan Ali Shaikh vs Pakistan through Secretary, Ministry of Law, 2023).

5. Accused Appearance is Mandatory in Pre-Arrest Bail

Upon examination of Section 498-A Cr.P.C., it becomes evident that the accused's appearance before the Court is a prerequisite for obtaining pre-arrest bail in the case. Without the accused's attendance, pre-arrest bail cannot be awarded. This requirement is supported by the case of "Shazaib etc. versus The State etc. 2021)."

6. The Concept of Bail in relation to Bailable Offences

Section 496 of the Code of Criminal Procedure (Cr.P.C.) pertains to bailable offenses and includes the phrase "shall be released." This provision indicates that in cases where the offense is bailable, the accused has the right to be released on bail. However, the court has the discretion to discharge the accused without requiring bail if it deems it appropriate, provided the accused executes a bond without sureties for their appearance. According to Section 496 Cr. P.C, individuals who are arrested or imprisoned and aren't accused of a non-bailable crime have the inherent right to request release on bail. Bail is awarded as a matter of right in cases of bailable crimes, whereby it is not seen as an act of grace or concession. In instances of this kind, it is customary for the individual to be granted freedom unless he is unable to provide the necessary modest security, if any, as mandated, which is deemed appropriate for ensuring his presence before the court throughout the ongoing investigation. In such circumstances, it is deemed necessary for him to be held in custody.

7. The Concept of bail for Offences that are not bailable in Pakistan

The granting of bail is considered a matter of right in instances where the crime is bailable. The bail granted for non-bailable offenses is a matter of grace and concession, and each case must be decided on its own merits. However, in non-bailable cases, the decision to grant bail is solely at the discretion of the court. It may be seen that the extent of discretion is contingent upon many factors.

- I. The severity of the offense is inversely proportional to the discretion score. As the severity of the act escalates, the latitude to grant bail to the perpetrator becomes more restricted.
- II. In the comparison between the police and judicial officials.
- III. Among the many judicial officials and courts, it is observed that a high court as well as a court of sessions has much broader discretion compared to other courts and judicial authorities.

8. Cancellation of Bail

The Supreme Court of Pakistan settled the guidelines for the cancellation of bail in the case and the researcher weighed on the said judgment (Saeed Ullah vs. State, 2023). Section 497(5) pertains to the revocation of bail. The scope of the principles governing the cancellation of bail differs from those governing the granting of bail. Bail can only be canceled if the order granting bail is unreasonable and violates the principles that govern the granting of bail. The mere existence of an alternative perspective is not enough to revoke a bail order (Mst. Veera vs. Jonathan. 2023).

9. Conditions for Granting Bail to an Accused Person

Section 499 of the Code of Criminal Procedure (Cr.P.C) that's is relevant to the sureties and bonds, but the specific principles established by the Supreme Court of Pakistan regarding the issuance of bail and the conditions placed on the accused for such release in his recent judgment Javed Iqbal vs The state through Dag Islamabad & Others,2023). The bail amount of surety, the establishment of determining whether or not to grant bail, the court should consider the accused's ability to pay the required surety amount. If the amount is too high, it amounts to a de facto refusal of bail (Muhammad Ibrahim vs. The State,1995).

10. Bail in Cross Version case and Judicial Principal

Bail, cancellation of --The honorable apex court decided the principal when in criminal Bail in Cross-versions case fall within Further investigation When a case with two versions of the story is brought before a judge, it directly falls under the purview of section 497(2) of the Criminal Procedure Code further inquiry (Muhammad Umar Waqas Barkat Ali vs State, 2023).

11. Guiding Principles While Deciding Bail Application:

Guidelines on the composition of bail writing orders and prospects for future development. The issue of bail at hand pertains to a temporary character, focusing only on the administration of the defendant's confinement during the trial. It is noteworthy to observe that the judge had the potential to deliver a more succinct judgment, preserving significant court resources and facilitating the expeditious consideration of other urgent situations of a like kind. The guiding principles articulated by the highest court of Pakistan (Muhammad Shakeel vs. The State. 2014).

12. The United Nations Declaration of Human Rights on the Right to liberty and security:

The entitlement to liberty and security is inherent to all individuals, regardless of their treaty responsibilities. It is incumbent upon all nations to adhere to international law and uphold and safeguard the right to liberty and security for all individuals. According to international human rights standards, individuals should not be victimized by arbitrary detention, imprisonment, or expulsion (UDHR, 1948).

13. The Necessity of Transformation in Pakistan:

In the context of Pakistan, when an individual face an allegation of a grave offense and anticipates a high probability of conviction and subsequent harsh punishment, there exists a tendency for them to abscond or evade the legal process by jumping bail, to evade the trial and the resulting sentencing. Granting bail and restoring liberty to an individual who is under arrest would be seen as imprudent. Moreover, if the individual who has been apprehended is granted bail, there is a possibility that they may impede the fair trial process by engaging in activities such as destroying evidence or tampering with prosecution witnesses. Additionally, there is a risk that they may commit further offenses while they are released on bail. In light of these circumstances, it would be inappropriate to grant bail to such an individual. Conversely, in situations when the apprehension of the detained individual does not pose any significant concerns, it would be deemed both inhumane and inequitable to withhold bail from them.

14. Conclusion

In the end, Bail is an influential kind of non-custodial release that derives its effectiveness from the accompanying surveillance systems. The legislative framework in Pakistan permits the use of outdated and limited monitoring techniques, along with bail bonds that are largely inadequate in fulfilling the essential objectives of bail. It can be inferred that the information provided supports the notion that the topic of the existing legislation about bail in Pakistan is deemed insufficient and characterized by a lack of clarity. The functionality of the system is also deemed inadequate. In Pakistan, bail-granting authorities must have a legislative mandate to apply terms and limits tailoring to the bail-seeker's circumstances to address the monitoring system's lack. The flexibility of monitoring techniques allows authorities to plan alternate measures in case of failure, and one measure may be used as a backup for another. The criminal court administration has acknowledged that the determination of bail is a repeating process that occurs through many different phases. Additionally, it acknowledges that the police's pretrial releases on bail are within the jurisdiction of the bail system. Moreover, bail may be granted before the accused's court appearance, before the trial judgment, and even after a declaration of guilt and conviction, to facilitate the individual's access to the appeals process. In recent years, many violent criminals, including extremists, terrorists, drug traffickers, and smugglers who operate in gangs, have established deep roots in society. Some people worry that lenient questioning techniques won't be able to uncover crimes committed by hardened offenders if basic rights are liberalized and enforced more strictly. Some people worry that if

the court focuses too much on protecting criminals' human and civil liberties, no criminal element will be exposed and the criminals will walk free. If this happens, the crime will go unpunished, and, in the end, society will be the loser. The situation is serious, and the worries are sincere. A fair resolution is necessary to achieve justice's goals in this kind of circumstance. The bail system's manner of operation has also shown that, among other flaws, it appears to operate on the erroneous premise that "the risk of monetary loss is the only deterrent against fleeing from justice. In Pakistan, bail-granting authorities must have a legislative mandate to apply terms and limits tailoring to the bail-seeker's circumstances to address the monitoring system's lack.

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References

American Jurisprudence 2d (AmJur 2d). (n.d.). John Marshall Law School Library. Retrieved from <https://johnmarshall.libguides.com/americanjurisprudence>

Black's Law Dictionary. (2019). 11th ed. Thomson Reuters.

Cooper, B. P. (2014). Access to Justice Without Lawyers. *Akron Law Review*, 47, 205.

Hilal Khattak vs State. (2023). 2023 SCMR 1182.

Jamshed, J. (2021). Gender discrimination and sexual harassment in the legal profession: A perspective from patriarchal society. *Women & Criminal Justice*, 1-13.

Jamshed, J., Kareem, N., Rafique, W., & Javed, M. W. (2022). An empirical study of lawyer-client relationships in Punjab, Pakistan. *International Journal of the Legal Profession*, 29(3), 335-351.

Javed Iqbal vs the State through Dag Islamabad & others. (2023). 2023 SCMR 401.

Karim, J. (2020). Access to Justice. Pakistan Law House (2nd ed.).

Karim, Justice (R) Fazal. (2020). Change is the Only Constant. Pakistan Law House.

Shahzaib etc. versus The State etc. (2021). PLD 2021 SC 886.

Mst. Veera vs Jonathan & 2 others. (2023). 2023 PCrIJ 421 Islamabad.

Muhammad Ibrahim vs the State. (1995). 1995 MLD 1839.

Muhammad Nawaz alias Karo vs State. (2023). 2023 SCMR 734.

Muhammad Shakeel vs The State. (2014). PLD 2014 SC 458.

Muhammad Tanveer & others vs the State & Others. (2023). 2023 SCMR 581.

Muhammad Umar Waqas Barkat Ali vs State. (2023). 2023 SCMR 330.

Roshan Ali Shaikh vs Pakistan through Secretary, Ministry of Law. (2023). 2023 YLR 943.

Saeed Ullah & 2 others vs State and others. (2023). 2023 SCMR 1397.

Tariq Bashir & 5 Others versus The State. (1995). PLD 1995 SC 34.

United Nations Declaration of Human Rights (UDHR). (1948).

What is Access to Justice, five different ways of considering Access to Justice? (2021). ACLRC - Alberta Civil Liberties Research Centre. Retrieved from <https://www.aclrc.com/what-is-access-to-justice>