Bail [Meaning, History, Scope for UPSC Exam]

Legal terms such as bail are often seen in the news. It is important to understand what the word 'bail' means in the legal sense if you wish to clear government exams like the IAS exam. In this article, we explain the term 'bail', cover its origins, meaning and scope, etc. You can also read important Supreme Court judgements for a better understanding of the Indian judiciary and polity.

Bail - Meaning & Scope

'Bail' is derived from the old French verb ‘baillier’ meaning to ‘give or deliver’.

- The term bail has not been defined in the Criminal Procedure Code, nevertheless, the word has been used in the Cr.P.C. several times and remains one of the most vital concepts of the criminal justice system in consonance with the fundamental principles enshrined in Parts III and IV of the Constitution along with the protection of human rights as prescribed under international treaties/covenants.
- **Definition of Bail:** Wharton’s Lexicon and Stroud’s Judicial Dictionary defines Bail as “the setting free of the defendant by releasing him from the custody of law and entrusting him to the custody of his sureties who are liable to produce him to appear for his trial at a specific date and time.”
- The position with respect to bail can be described as what was held in Vaman Narain Ghiya v. State of Rajasthan, "Bail" continues to be understood as a right for assertion of freedom against the State imposing restraints.
- Since the Universal Declaration of Human Rights of 1948, to which India is a signatory, the concept of bail has found a place within the scope of human rights.
- The dictionary meaning of the expression 'bail' denotes security for the appearance of a prisoner for his release.
- Bail may thus be regarded as a mechanism whereby the State devolves upon the community the function of securing the presence of the prisoners, and at the same time involves the participation of the community in the administration of justice.

Bail - History

The concept of bail can be traced back to 399 B.C. when Plato tried to create a bond for the release of Socrates. The modern system of bail evolved from England.

- In medieval England, the sheriffs originally possessed the sovereign authority to release or hold suspected criminals. Some sheriffs would exploit the bail for their own gain.
- The Statute of Westminster (1275) limited the discretion of sheriffs with respect to the bail. Although sheriffs still had the authority to fix the amount of bail required, the statute stipulates which crimes are bailable and which are not.
- In the early 17th century, King Charles I ordered noblemen to issue him loans. Those who refused were imprisoned. Five of the prisoners filed a habeas corpus petition arguing that they should not be held indefinitely without trial or bail. In the Petition of Right (1628), Parliament argued that the King had flouted Magna Carta by imprisoning people without just cause.

Bail and Individual Liberty

In serving simultaneously the end of personal liberty and the ends of justice, the institution of bail attempts to achieve a synthesis of two almost conflicting principles:

1. Detention guarantees appearance, and

2. Liberty is the right of one whose guilt has not yet been proven. Nevertheless, there are some considerations which tend to give the thesis of personal liberty a dominant part in the synthesis achieved. The presumption of innocence, for example, if applied rigorously, would lead to bailing out almost every accused. The development of society is accompanied by the development of judicial hierarchies and the appearance of stricter and more refined rules of procedure and evidence. Duration of detention and of trial, and consequently bail, acquire greater importance. Considerable time may elapse before the accused is brought to trial or before a final judgment is delivered by the highest court with jurisdiction. The delay occasioned, for example, by the infrequent visits of itinerant justices was an important factor in establishing bail.

It is possible for a legal system to eliminate bail completely if it is prepared to try every accused directly after his arrest, or to supply adequate accommodation for the many accused, regardless of the gravity of the offence or the probability of their guilt. A less efficient and less ambitious system would accept the necessity of bail, and may adopt one of three criteria to decide whether to grant bail or not. Reference may be made to:

1. The nature of the offence;
2. The probability of guilt; or
3. The authority that ordered detention.

Bail or Jail

The much-used phrase that bail is the rule and jail an exception sounds very catchy but the actual happenings on the ground in the existing criminal justice system are very different. The right of personal liberty is sacrosanct and its deprivation takes place only through a law that is just, fair and reasonable.

In the years after the emergency, the courts took a very liberal view with regard to human rights issues including personal liberty with Justice Krishna Iyer and other judges in the Supreme Court giving pro-liberty and pro-citizen decisions. This, however, changed in the early nineties after the liberalisation era when the Court favoured the State more than they did the incarcerated individual. It then started looking at liberty through the prosecutor's eyes, and not the constitutional mandate of liberty.

This approach thus led to arrested persons spending more time behind bars without getting bail. In 1997, the court in DK Basu observed that the worst violations of human rights take place during investigations. Yet, even while giving directions to safeguard individuals from the abuse of authority, the court paradoxically held that the freedom of an individual must yield to the needs of the State's security.

Conclusion

With restrictive bail conditions and a conservative view on bail, we have forgotten the meaning of personal liberty, which is the greatest of human freedoms. The result of this restrictive approach to human liberty is that as bail is unlikely to be granted, courts give long dates and bypass the principle that the history of liberty is the history of the observance of procedural safeguards. Today, pleas for release from custody by invoking habeas corpus or for grant of bail are often not being given the priority they deserve. Adjourning bails and habeas corpus for long periods strikes at the root of the right to liberty.