Review of Literature

Rowena Jones, 2002, Bail Law and Practice: Recent Developments
In her paper says that bail is generally offered in New South Wales except when the accused is charged with murder rape or drug offences. In Australia there are bail hostels. The accused persons who have been granted conditional bail or whose trial is in progress are lodged in bail hostel.

Kelly Anne Collins, 2002, Queensland bail laws
This paper provides a survey of the current Queensland. Bail laws. Recommendations for reform have been made by the Queensland Law Reform Commission 1993. Granting of bail to a defendant raises questions fundamental to any justice system.: A person’s right to the presumption of his/ her innocence and his/her right to liberty vis a vis society’s right to ensure that those members of public charged with a criminal offences be detained and, if proved, be punished. A balance between these two demands must be struck. Striking a balance between danger to public safety by release of the accused and personal liberty of the accused only at the level of accusation which can be false also.

Merilyn Chilvers, 2002, Absconding on bail
The research paper which was published in Journal “Contemporary Issues in Crime and Justice in. 2002 discusses the issue of non appearance of bailed out person absconding and not returning for hearing. In this paper, trends in bail refusal, patterns of granting bail, and the rate of failing to appear in court are discussed
The factors associated with failure to appear while on bail were examined for each jurisdiction. The proportion of persons on bail in cases finalized in both the Local and Higher Courts has generally decreased since 1995, while the rate of bail refusal has increased. In 14.6 per cent. Persons with prior convictions are far more likely to have a warrant issued against them for failing to appear while on bail and, in the Local Courts, persons with multiple concurrent offences are more likely to have a warrant issued against them for non-appearance. Persons charged with theft offences, receiving, and break and enter, and disorderly conduct offences in the Local Courts are more likely to fail to appear while on bail. In the Higher Courts, the highest probability of failing to appear Occurs for persons charged with serious drug offences or burglary.
Georgia Brignell, 2002, Bail: An Examinatin of Contemporary Issues
Georgia Brignell is a Research Officer Judicial Commission NSW Australia. According to her there is gradual erosion of presumption in favor of bail which existed in Bail Act 1978 in NSW. The decision to grant or refuse bail is an extremely important one. Refusal of bail not only seriously infringes an individual's basic liberty, but also has broader ramifications in the subsequent criminal processing of that individual, such as lack of access to legal and rehabilitation resources.

R.Sharma, 2002, Human Rights and Bail
R.Sharma’s book published in  According to the author genesis of bail is in the pre-Norman England. The evolution of the bail is attributed to the administration of justice then prevailed. In 12 the Century A.D. the judges were very few and traveled all over the country dispensing justice. The accused could not be incarcerated since there was huge expenditure in keeping people in prison. Usually accused arraigned persons were released on the assurance of wealthy friends and relatives until judges arrived from other parts of the nation. Thus the practice of bail evolved.

Vidhan maheshwari, 2010, Right to bail as a constitutional right
Is a civil judge and has studied in National Law Institute University Bhopal. According to Vidhan liberty is on a higher pedestal and therefore the duty of the court is to grant bail except in cases of murder robbery rape. In Victimless crimes bail must be necessarily granted.

Rajiv Dhavan, 2011, Don’t deny accused basic right to bail
Rajiv Dhavan, columnist, India Today Magazine unfolds how India’s courts deny bail to the accused in a cryptic order “bail denied” When any judge uses discretion to deny bail, he has to write down one by one the reasons for denying bail. This is imperative because liberty has been granted by the Constitution of India and every judge snatching away liberty of a citizen must give reasons as to why liberty is being snatched away. Rajiv Dhavan cites Justice V.R.Krishna Ayer’s statement. “Impoverished brevity draped as discretion” for describing how judges in India deny bail in one sentence. From this, three things are clear: (i) Bail is a fundamental right (ii) The norm is bail not jail (iii) Good reasons, with full explanation in writing must exist for denying bail. Building on this, in 1980, Parliament added to Section 437 of the Criminal Procedure Code that even in highest punishment cases, special consideration has to be given to juveniles under 16
years, women, the sick and infirm. The benign provisions of the law are neglected by the judges to whom Rajiv Dhavan describes as “judicial amnesia”.

Max Taylor, 2010, Response by NSW council for civil liberties to review of NSW Bail Act 1978. Max Taylor says NSW Bail Act 1978 is not humanistic. Presumption in favor of bail has been removed from the act which must be restored then alone the council for civil liberties will give its opinion on the Act. All over the world presumption of innocence of the arrestee is eroding and judges are also swayed by the public opinion and articles published by the courts.

Gwendoline M. Alphonso, 1997, Right to bail
Gwendoline M. Alphonso is a professor of Political Science Fairfield University. She has contributed article to Central India Law Library in 1997 about right to bail. She discussed Justice V.R.Krishna Ayer’s judgment in GudikantiNarsimuluv. Public Prosecutor 1978. In which, guidelines to judges for granting bail have been given by the Supreme Court.

Jerrett Murphy, 2007, The Punishing Price of NYC’s Bail System
According to Jerrett Murphy Editor in Chief of City Limits Magazine New York the cost of bail is too high for poor struggling youths while bail is set by court for $1000 and #1500 the poor black people doing odd jobs hardly have 1000 dollars. One mother of a teen aged boy caught for smoking marijuana said she had $200 but the court wanted 1000 dollars. The bail amount ordered by court must be relevant to the living standard and income of the offender.

Karen Gladney, 2012, BAIL BOND HANDBOOK TEXAS
The handbook for bail bonds is specially drafted for laymen and not for lawyers the book is useful only in Australia and not in India. The book explains the procedures for bail seekers and powers of the courts. In relation to granting bail or refusing bail.

Jamila Pringle, 2012, Brooklyn Public Defenders Bail Fund
Jamila Pringle is reporter of City Limits Magazine New York. She says that working class people who somehow meet their monthly expenditure on household figure high in arrest and detention. If breadwinner of such family is struck with misfortune that the he is arrested and needs a bail of $1000/- he cannot afford such an amount. Brooklyn Public Defenders Bail Fund is a charitable fund that helps poor people in America who are arrested on suspicion and need to be brought out of prison by helping them financially to pay for bail expenses in petty crimes.
Gabrielle Denning-Cotter, 2008, Bail Support in Australia
Gabrielle has written the research paper for Indigenous Justice Clearing House in 2008. The indigenous people who are native aborigines of Australia are scantily educated and many are surviving on Government aid. Around 24% indigenous are in jail. For these people legal and financial support is necessary from Humanitarian Grounds for.

Supervised bail is similar to release of accused persons under Probation of Offenders Act 1958 in India. Supervised bail in Scotland is a social work whereby accused person who would otherwise be put on remand (that is, imprisoned while awaiting trial) are released on bail on the condition that they meet with a bail supervisor a specified Number of times a week, with the aim of supporting accused to comply with bail Conditions. This report outlines the findings of an evaluation of the impact of supervised bail in Scotland which comprised of: analysis of case level data, a workshop with Supervised bail workers, surveys of members of the judiciary and Procurators Fiscal, Interviews with people who had been on supervised bail, and economic analysis of Supervised bail as an alternative to remand. Supervised bail schemes are in place in most, but not all, Local Authority areas in Scotland, but uptake of the service has been declining in recent years. Potential bailees (i.e. accused who are likely to be remanded) are screened by bail workers, either in the cells by court based bail workers, or by referral from other Justice professionals, such as defense agents. Lack of appropriate and timely Processes for getting information to bail workers about the people in the cells and Procurator Fiscal bail positions hinders this screening process where bail workers Are court based, and awareness of supervised bail amongst justice professionals May affect referral rates where schemes rely on their referrals. Neil is in charge of Penal Policy and Reducing Reoffending Unit Scotland UK. He is in favor of supervised bail. According to Neil and his colleague Amy the bailee must be supervised about his behavior so that he would not do the crime again. That is reoffending.

International Bridges to Justice, 2011, Courts and Bail Procedure in Saudi Arabia
IBJ has paper on Criminal Defense Wiki web site which says that in Saudi Arabia. All courts run under the dictate of the king and regional Governors who are king’s cousin’s sons and nephews. There is sharia law in practice and there is no pretrial release systems like bail even though
there is Criminal Procedure Code 2002 on statute book promulgated by the king. There is no
penal code in existence and the criminals are awarded Once charged the accused must remain
in detention.

**Jerret Murphy**, 2007, Anatomy of Bail Chapter 3
Jerret Murphy is Editor in Chief of City Limits Magazine New York in his article published in
October 2008 in this article Anatomy on bail Murphy says the bail amount as deposit asked
by the court has been rising. Poor people who are arrested and brought before the court find it
difficult to deposit big amounts of $10,000/- and sometimes $20,000/- set by the court. The
attorneys and judges say they find it difficult and also too mechanical going through computer
fed records and rap sheets of accused persons before filing application for grant of bail. The
defending attorneys do not have much to say about the accused persons innocence while the
prosecutor has tons of evidence says Murphy. The research has to be done to prove in the
court that the accused person though a repeat offender is not dangerous to the society if
released on bail.

**Dr. John S, Goldkamp**, 2008, Judicial Discretion and the Unfinished Agenda of American Bail
Dr. John S. Goldkamp and E.R.Vilicica have focused in the paper mainly on Discretion in
Criminal Justice and innovation courts. The judges have discretion but the discretion should not
amount to arbitrariness. Attorneys and judges together through legal arguments and counter
arguments iron out some innovations. What these innovations could be is discussed in the
paper. Goldkamp basically is himself an innovator and thinks courts and lawyers together must
innovate new standards for criminal justice. Goldkamp basically worked on bails granted and
denied by Drug Courts in Australia. The drugs consumption and sale of small quantity to friends
and colleagues is victimless crime and bails in such cases are desirable according to
Dr. Goldkamp.

**Jonathan Ball**, 2011, Right to bail
Jonathan Ball Texas (USA) has his own web site. He says “Freedom from bodily restraint has
always been at the core of the liberty protected by the Due Process Clause” by bodily restraint
what Jonathan means is arrest. In Foucha v. Louisiana the U.S.Supreme Court has held that “In
our society liberty is the norm , and detention prior to trial or without trial is the carefully limited
exception” A part from bail as right and liberty as norm the U.S. Supreme Court has also said
that asking excessive sums as bail deposit or surety is also unconstitutional in USA. There
appears to be dichotomy in what the US supreme Court says and what the US jurisprudence says. According to Texas laws (state autonomy) trial courts have discretion about setting high bail deposits for ensure that the accused bailed out appears on the dates of hearing given by the trial court. If small amount is fixed as bail deposit then the accused may not appear for a long time and might commit another offence of the same type.

**Honorable Mr. Justice Carnwathetal, 2001, Bail and Human Rights Act**

Law Commission Bail and Human Rights Act 1998 (UK) Law Commission United Kingdom has dealt with the tricky question of bail and human rights in conflict. Law Commission of United Kingdom has recommended that Bail Act be amended to give it a humane face. It has been observed that at least in 30% cases the accused citizens are innocent and have been implicated in crime by persons having vested interests. Police chiefs in most counties have been given quotas of cases to be booked. To complete the quota the cases are booked against innocent people.

**Robert Watt, 2009, Concise Legal Research**

Robert Watt says finding legal material is an art. In this book the ways of finding legal material have been explained. The book can be used by the lawyer as well as a law teacher. Where to find primary source material, law reports and secondary source material is given. The book published by Universal Law Publishing company Delhi has given on page 153 the Indian legal environment and guidance where to find Indian Legal Material.

**V.R.Krishna Ayer, 1978, Grant of Bail :Practice and Procedure**

Justice V.R. Krishna Ayer in his judgment in cause celebra Gudikanti Narsimulu v. Public Prosecutor says “significance and sweep of Art. 21 make the deprivation of liberty, ,ephemeral or enduring, 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 Art. 19. Reasonableness postulates intelligent care and predicates that deprivation of freedom by refusal of bail is not for punitive purpose but for the bifocal interests of justice to the individual involved and society affected” The observation of Justice Ayer made in 1978 is also voiced by Jerrett Murphy a legal thinker and Editor in chief of City Limits Magazine in New York United states.

**Alexander Solzenitsyn, 1974, Gulag Archipelago**
In Gulag Archipelago published in 1973 in the United States of America is a book written in Russian language originally by Alexander Solzenitsyn who suffered a term in Russian prison because the Russian Government headed by Joseph Stalin had branded Solzenitsyn, a counter-revolutionary. Between 1920 and 1955 Russian secret police NKVD arrested all intellectuals and ordinary middle class Russians who opposed or criticized communism. There was no legal or judicial procedure and no bail procedures in Russia. The Soviet military tribunals decided who should go imprison and how long.

**Julie Stubbs**, 2010, Re-examining Bail and Remand for young offenders in New South Wales. The paper discusses the bail for young barely legal offenders. The rise in number of crimes committed by young offenders and these offenders unable to meet bail conditions. The paper says it is necessary that the Government of New South Wales reviews its policy on bail. The number of prisoners must be reduced and therefore more bails must be granted without harsh and costly conditions.

**Carolyn Raphaely**, 2013, Denying paraplegic bail is ‘torture’
In this News Article The Reporter Carolyn Raphaely tried to bring in to the notice of general public that how the Rich and Well known personalities can easily access to provisions of law and the poor people are deprived of justice. In a case where a Paralympian Olympian athlete Oscar Pistorius against whom the crime of murder has been proved and he himself admitted that he shoot dead his girlfriend, was realised/granted bail, with this we can understand that special treatment is given to celebrity people.

On the other side in a similar case where a accused has been arrested for the simple crime of fraud, Ronnie Fakude who also suffering with similar decease of paraplegic with urinary and faecal incontinence not only this he was not even provided proper medical attention in prison, However, Dr Mabuye, who examined Fakude, said: He had acute bronchitis, gastritis, peptic ulcers and bed sores on his buttocks oozing pus. He was genuinely ill. He’s a person of diminished ability to care for himself and depends on others. Fakude has no bowel or bladder control, a damaged lung resulting from prison-acquired tuberculosis and is prone to infection because of his compromised lung. He has one kidney and his intestines are sutured because of injuries from the hijacking that caused his paraplegia. He also suffers from depression.

To testify whether or not Fakude was suffering with paraplegic and other deceases he was referred to Dr Frans Kruger, a Universities neurosurgeon, for a third opinion. After an examination and magnetic resonance imaging scan, Kruger's report confirmed a lower motor neuron injury. The report said that Fakude had "no function of his lower limbs, his paraplegia was permanent and the soles of his feet were soft with no signs of recent weight bearing.

Fakude expressed his feelings in the court having tears in his eyes that how difficult it is for him to use bathroom facilities and how difficult for him to keep his wounds clean.
Ronnie Fakude has not been convicted yet, he is under trial, even after numerous applications for grant of bail, his bail application was repeatedly disallowed many times. Keeping him there is denying him his constitutional rights and this amounts to nothing less than a kind of torture.

With these kind of cases one can understand that how difficult is to get justice for the poor people who are not economically and socially strong. Today justice remains only for those who can afford if by wealth not for poor or needy, the very known saying of Law that equality before the law seems have no meaning hear.

Richard Williams, 2012, Bail or Jail

Number of accused peoples not been convicted of crime yet who are under trial are sitting in jails only because they cannot afford bail.

People who are kept in jails for simple offences like Theft, Property or some of pity offences Which are of nonviolent nature Although many are not considered a danger to the public or a society

It is the basic right of every person so arrested to be realised on bail prior to trial, a person can be realised on bail by imposing certain conditions as may think fit by the Judge, it can include posting the full bail amount, using property as collateral or signing a written agreement to appear, referred to as release on your own recognizance.

“We need to do a better job of distinguishing people who are suitable for release,” says Representative John Tilley (D) of Kentucky. “We don’t want people sitting in jails only because they cannot afford their financial bail.”

An effort has been made to reform and improve bail system, in 2011, Kentucky lawmakers set out to improve their pretrial system by determining who would be best-suited for release. They made efforts to bring back under trials successful reentry into the community, such as employment status, family ties and avoiding substance use. Those determined to be low or moderate risk to the public or alleged victims, and who are likely to appear for court, are released on their own recognizance, the courts impose conditions on the persons those who are realised on bail, such as drug testing or GPS monitoring even people who can’t pay bail receive a $100 credit toward their bond every day, allowing them to earn their release over time.