

A STUDY ON IMPACT OF BAIL IN THE CRIMINAL JUSTICE SYSTEM

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INTRODUCTION

The idea of bail may be traced lower back to 399 BC, while Plato attempted to create a bond for the discharge of Socrates¹. The contemporary-day bail gadget advanced from a sequence of legal guidelines originating withinside the center a while in England². There existed an idea of circuit courts at some stage in the medieval instances in Britain. In The Magna Carta, in 1215, step one turned into granting rights to citizens³. It stated that no guy may be taken or imprisoned without being judged through his friends or the regulation of the land. Then in 1275, the Statute of Westminster was enacted which divided crimes as bailable and non bailable⁴. It additionally decided which judges and officers should make selections on bail. In 1677, the Habeas Corpus Act turned into the Right Of Petition of 1628, which gave the proper to the defendant the proper to be instructed of the costs towards him, the proper to recognize if the costs towards him had been bailable or not. The Habeas Corpus Act, 1679 states, "A Magistrate shall discharge prisoners from their Imprisonment taking their Recognizance, with one or extra Surety or Sureties, in any Sum consistent with the Magistrate's discretion, except it shall seem that the Party is devoted for such Matter offenses for which through regulation the Prisoner isn't always

bailable." The software for bail will be filed earlier than the Magistrate, who's engaging in the trial⁵. The software after being filed is typically indexed the following day. On this type of day, the software can be heard, and the police shall additionally give the accused in court. The Justice of the Peace might also additionally ship such orders, as he thinks fit. The elements such as, preceding behavior and conduct of the accused withinside the Court, the duration of detention of the accused and health, age and intercourse of the accused additionally can be taken into consideration on the time of provide of bail. Recently, the Supreme Court underlined that "there's an urgent need" for reform withinside the regulation associated with bail and known as at the authorities to not forget framing a unique regulation at the traces of the regulation withinside the United Kingdom⁶. The author attempts to analyze whether a bail is fundamental to a criminal justice system that ensures liberty of an accused without granting unjust benefit. A bench of Justices A M Khanwilkar and J B Pardiwala set aside a bail condition imposed by the Allahabad High Court to seal the premises of Mohammad Ali Jauhar University at Rampur while granting bail to senior Samajwadi Party leader and former Uttar Pradesh minister Azam Khan⁷. The court said it was disturbed by such orders. It also pointed out a separate bench last week passed directions, setting aside a similar order. The top court had on July 18 stayed the adverse remarks and proceedings initiated by a Karnataka High Court judge against the state's Anti Corruption Bureau and its head in a bail matter, saying those observations were "irrelevant

1 Plato, *Crito*, in which Socrates' friends arrange for his escape from prison, which he refuses. See generally, I.A. Richards, *Plato's Republic* (Cambridge University Press 1966).

2 Frederick Pollock and Frederic William Maitland, *The History of English Law Before the Time of Edward I* (2nd edn, Cambridge University Press 1968) vol 2, 584–89.

3 Magna Carta 1215, cl 39. (The original 1215 version, though later reissued, is the foundational text for this principle).

4 Statute of Westminster 1275 (3 Edw 1), ch 15.

5 Habeas Corpus Act 1679 (31 Cha 2 c 2), s 2.

6 Satender Kumar Antil v. Central Bureau of Investigation 2021 SCC OnLine SC 922, para 24.

7 Mohammad Azam Khan v. State of Uttar Pradesh, Order dated 26 July 2022 in Special Leave to Appeal (Crl.) No(s). 5691/2022 (Supreme Court of India).

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and detrimental" to the fair trial for the accused in a bail matter⁸. On July 14, the court had similarly set aside a Patna High Court's order that summoned Sahara group chief

Subrata Roy in an anticipatory bail case completely unrelated to him⁹. On Friday, after hearing senior advocate Kapil Sibal for Khan, the bench said, "This is yet another matter where we find the HC has referred to matters which are unrelated to prayer for bail in respect of crime. The High Court ought to have dealt with only those aspects which were related to bail and not venture into unrelated issues, much less to impose conditions much beyond what is required to ensure presence of accused during investigation and trial¹⁰." The High Court by its interim order on May 10, 2022, the High Court granted bail to Khan in an alleged case of grabbing of enemy property for the construction of the University¹¹. It had directed the Rampur District Magistrate to take possession of the property attached to the campus of Jauhar University by June 30, 2022, and raise a boundary wall with barbed wire around it. Rationality and visibility are intricately tied to a discussion on equity in bail decision making. Rationality requires a direct link between the criteria for decision making and the intended bail outcome. However, where money bail is the predominant mode of securing bail in a legal system, a determination on bail and corresponding period of detention, as well as the factors driving it are 'low visibility' occurrences, as the ability to furnish bail is entirely dependent on the financial strength of the accused person, Equity demands that similarly situated accused persons are treated alike in terms

of both process and outcome. This leads us to the principle challenge of identifying the driving factor behind a bail decision. Should a positive bail outcome depend solely on the financial capability of the accused? Alternatively, are factors like seriousness of the charge, community ties and circumstances of the accused more relevant? However, this is a difficult determination in any legal system in the absence of consensus on the main purpose behind a bail decision or a framework by which competing values may be weighed and In performing the balancing act between crime control and due process concerns while making bail decisions, three challenges of ensuring equity, rationality and visibility are evident, Higher courts in India have also failed to engage with the competing purposes of a bail decision, despite having upheld the cardinal rule of 'bail not jail' on more than one occasion. As under-trials are legally presumed innocent with little evidence to suggest guilt, any time spent in prison deserves justification. Excessively long prison time, even prior to establishing guilt of the detainee, is a matter of individual and societal concern due to its long-term debilitating effects on a person's health, income and employability, as well as costs to the family and the society at large and In its 268th Report, while reviewing the definition and purpose of bail in India, the Law Commission noted that "The current scenario on bail is a paradox in the criminal justice system, as it was created to facilitate the release of accused person but is now operating to deny them the release". However, despite the lament, the Law Commission failed to weigh competing principles or values that guide bail decision making and suggest an analytical framework¹².

8 State of Karnataka v. Uma Hiremath, Order dated 18 July 2022 in Special Leave Petition (Crl.) No. 5886/2022 (Supreme Court of India).

9 Subrata Roy Sahara v. State of Bihar, Order dated 14 July 2022 in Special Leave to Appeal (Crl.) 2022 (Supreme Court of India).

10 Mohammad Azam Khan v. State of Uttar Pradesh, Order dated 26 July 2022 in Special Leave to Appeal (Crl.) No(s). 5691/2022 (Supreme Court of India), para 4. [This quotes the Supreme Court's reasoning from the specific order in the Azam Khan case.]

11 State of U.P. v. Mohammad Azam Khan, Interim Order dated 10 May 2022 in Criminal Misc. Bail 2022 (Allahabad High Court)

OBJECTIVES:

1. To analyze whether a bail is fundamental to a criminal justice system that ensures liberty of an accused without granting unjust benefit.
2. To determine whether in case of non-bailable offense, a bail granted by a magistrate can be canceled under section 437(5) of CrPC.
3. To examine whether the purpose of bail is to help

12 The Legal Framework – Re-Imagining Bail Decision Making, Centre for Law & Policy Research.

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- ensure that a person accused of a crime does not leave town or miss specified trial dates in court.
4. To ascertain whether the bail is fair and it doesn't punish the poor and temporarily exonerates the rich.

LITERATURE REVIEW:

1. In some jurisdictions there is a presumption in favor of bail, even a right to bail. However, such a presumption or right is not universally accepted and in some jurisdictions there is a presumption against bail in certain situations and pretrial detention has effectively become preventative detention. (Bröder 2002)
2. Bail will, for example, be curtailed where there is a risk that the defendant will fail to appear at later court proceedings, will commit crimes, will interfere with the proceedings or poses a risk to victims or the safety of the public (Hannaford, n.d.)
3. It is hardly surprising that the information used by magistrates may predict which offenders are most likely to offend while on bail, rather than which offenders will fail to attend their hearing (Morgan and Henderson, 1998).
4. Psychologists contend that bail legislation is vague, constructs are ill-defined and silent on exactly what information magistrates should use and how that information should be weighted and integrated (Goldkamp and Gottfredson 1979).
5. While magistrates do not necessarily follow the legislation strictly, researchers have found that they generally apply the relevant provisions (Hucklesby, n.d.).
6. Nevertheless, inconsistencies found among magistrates that cannot be fully explained by the differences in the relevant cases, suggest that extra-legal factors may play a role (Gordon et al. 1988).
7. At one level this is inevitable because bail decision-making involves the exercise of discretion and subjective factors will therefore play a role. (Clifford and Wilkins 1976). This can be due to what Nagel calls bench bias, that is the tendency of particular magistrates "to prefer some kinds of outcomes to others regardless of case characteristics".
8. However, inconsistencies between magistrates could also be due to social bias that involves the systematic discrimination against a specific group or groups of people. It is the latter that is of the greatest concern in the case of bail, personal characteristics such as age, gender, demeanor and race of defendants have been identified as factors that may play a role. (Bernat 1985)
9. Other factors that may influence bail decision-making include social status, community ties, familial relationship, and geographical location, such as whether the relevant court is situated in an urban or rural area. However, the findings in respect of some of these factors are not consistent (Unnever, n.d.)
10. From a social psychological perspective it would not be surprising if magistrates whose large caseloads force them to make fast decisions, make biased decisions. Under such conditions people tend to use mental shortcuts and focus on a minimum of information, usually one or two factors. (Rieskamp and Hoffrage 1999)
11. The use of fast and frugal heuristics may, at least partly, explain why the opinion of the prosecutor has, independent from other factors, consistently been shown to be strongly predictive of judicial bail decisions. (Bamford, King, and Sarre 1999)
12. Another possible explanation for the strong relationship between magistrates' bail decisions and the opinions of police and prosecutors, is that the bulk of bail decisions are made at a very early stage of the judicial process when most of the available information will be coming from the police. Especially when defendants are unrepresented they are often so confused, distressed or ignorant that they fail to provide information that could influence the decision the magistrate makes. The sequence in which information is presented in a typical bail application may not be conducive to effective decision-making. (Astor, 1986)
13. Nor do magistrates have much opportunity to learn from experience because they receive no formal, and little informal, feedback about the appropriateness of their bail decisions. (Scruton 2007)
14. The factors that may influence the processes

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- and rates of adult remand in custody which may contribute to variation in remand rates in jurisdictions. They compared Victoria, South Australia and WA and found that there were significant differences between these jurisdictions. They were, however, not able to isolate any single factor that explains this difference. **(King, 1973)**
15. Detained remandees are more at risk of physical and sexual assaults and of contracting communicable diseases **(Barry, 1997)**. For example, people who are remanded in custody for the first time, display a higher prevalence of self-harm and suicide.
 16. Being in custody reduces the likelihood that defendants will be able to afford legal representation, but even those defendants on remand in custody who can afford legal representation will be disadvantaged. The fees of a lawyer will likely be higher when the defendant is in prison as additional time and costs are involved in, for example, traveling to prison to consult the defendant. The lawyer will often also have to undertake tasks, such as finding witnesses, that a remandee on bail could see to personally **(Friedland, 1965)**.
 17. Detention is stigmatizing and can erode remandees' family and community ties. The impact is likely greater for Indigenous people who may be "remanded in custody far from home, community, and even Language and Skin group" **(Fitzgerald & Marshall, 1999)**.
 18. The discussion of the features of the bail system covers pretrial options of the court and potential adverse consequences of the bail system, and the analysis of the functions of the bail system focuses on factors that predict appearance, factors that predict pretrial criminal activity, and the effect of bail amount on pretrial behavior. Following a review of research literature bearing upon factors that judges use in setting bail, methodology and results are reported from this study's use of two research approaches in determining factors that influence bail decision making. **(Vladimir, 1982)**
 19. A number of bail provisions have been identified by academics, community organizations, and court workers as having unintended consequences on vulnerable populations. For instance, reverse onus provisions, which place the responsibility on the accused for proving why they should be released, were noted as challenging for those with mental health issues or those that are not represented by counsel. **(Rogin, 2017)**
 20. Concerns have been voiced with the increased focus placed on risk avoidance and risk management within the bail system. A risk averse mentality has influenced key decision makers, police officers, and the courts. This has limited the use of decision-maker's discretion and contributed to the practice of not releasing accused who present non-trivial levels of risk to re-offend, even those who allegedly committed minor offenses. (Webster 2015)
 21. In cases of bailable offenses, bail can be requested as a matter of law and is almost never denied; however, in cases of non-bailable offenses, a request for bail can be made in good faith, and the courts' tendency to grant bail in most cases emphasizes the importance of this right in the individual context. ("Website," n.d.)
 22. The right to liberty is the legal term for bail in criminal law. Articles 19 and 21 of the Indian Constitution provide the essential right to liberty, and this is related to that, which is universally recognized. The right to bail allows the accused to be freed from prison, enabling individuals to go about their everyday lives. This is strengthened by classifying charges as either bailable or non-bailable. When it comes to bailable offenses, the right to bail is usually granted; on the other hand, when it comes to non-bailable offenses, it's possible to request bail in good faith, and the courts usually grant it, which shows how important this right is in individual cases. (Scott-Hayward and Fradella 2019)

METHODOLOGY:

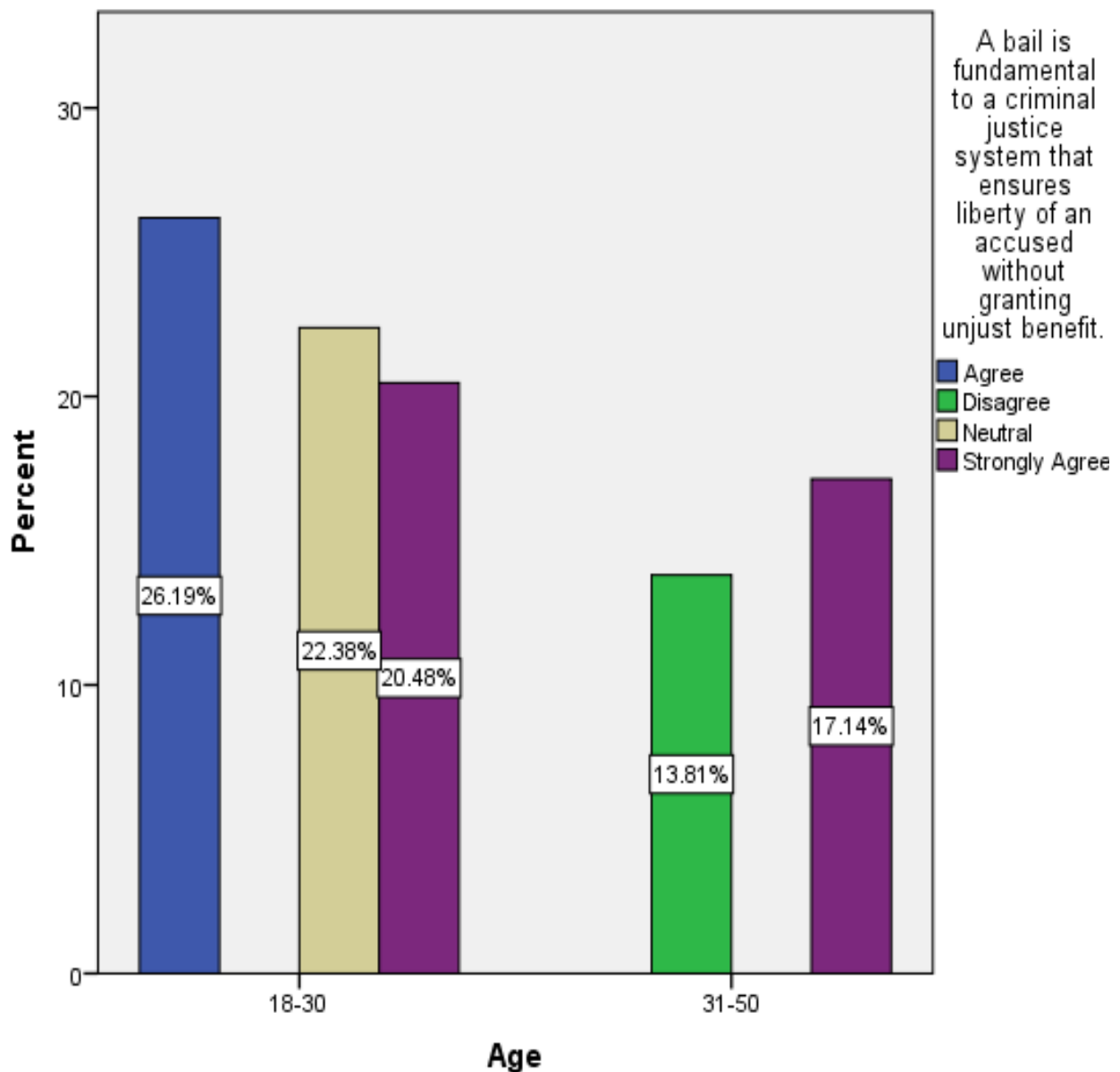
The method of research used in this study is Empirical research and This study is based on primary and secondary data,the primary data for this research has been collected through a questionnaire and the secondary data is through books,journals and various other research papers.the primary data has a respondent sampling of about 200 sample .the sampling method used in this research paper

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is simple random sampling method and the instrument used in this is a well structured questionnaire with independent variables and dependent variable. The independent variable has the demographic information such as the age of the respondent, gender of the respondent, educational qualification of the respondent.

ANALYSIS:

Figure 1:

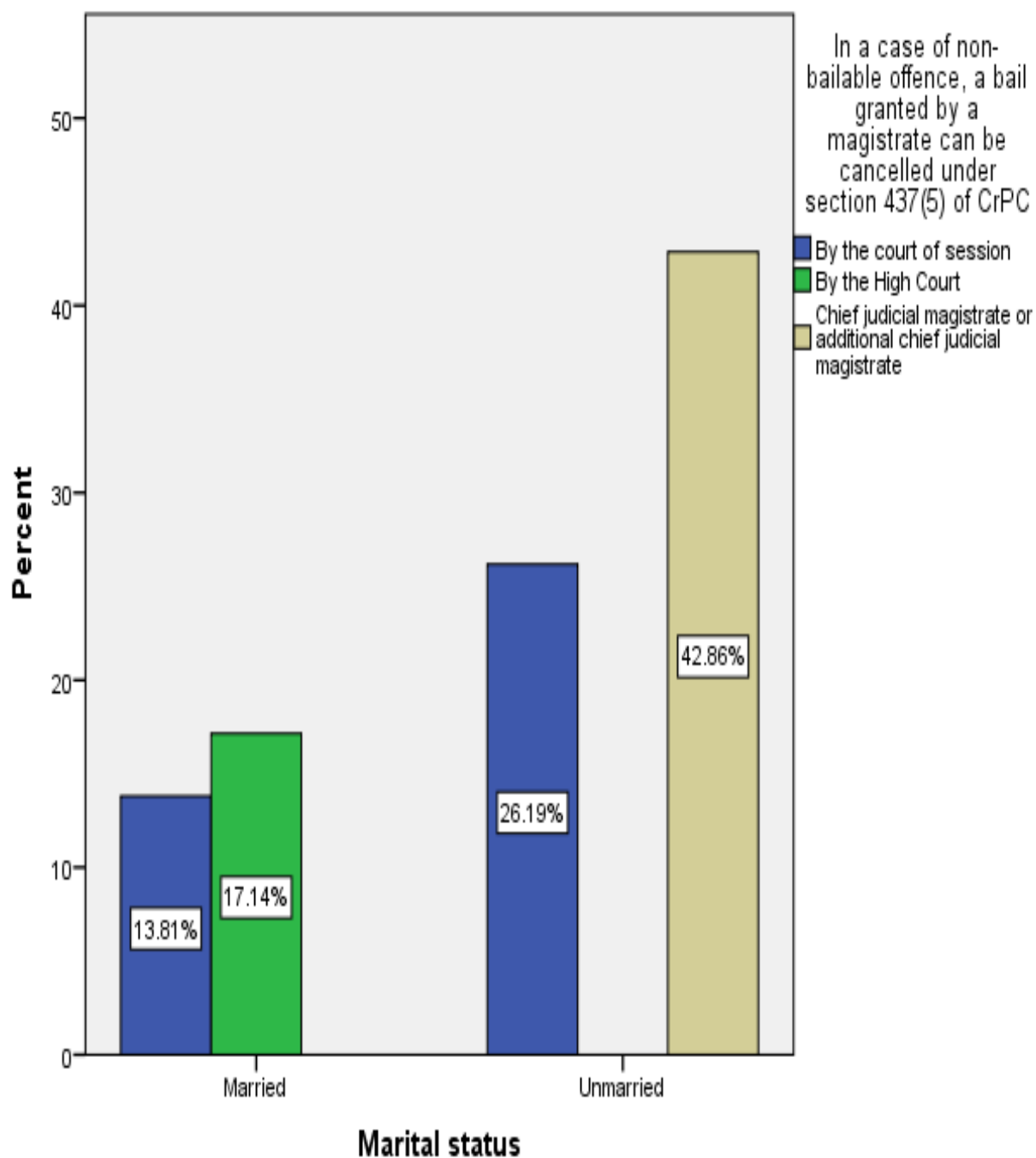


Legend:

This graph shows the significant difference between age and bail is fundamental to a criminal justice system that ensures liberty of an accused without granting unjust benefit.

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Figure 2:

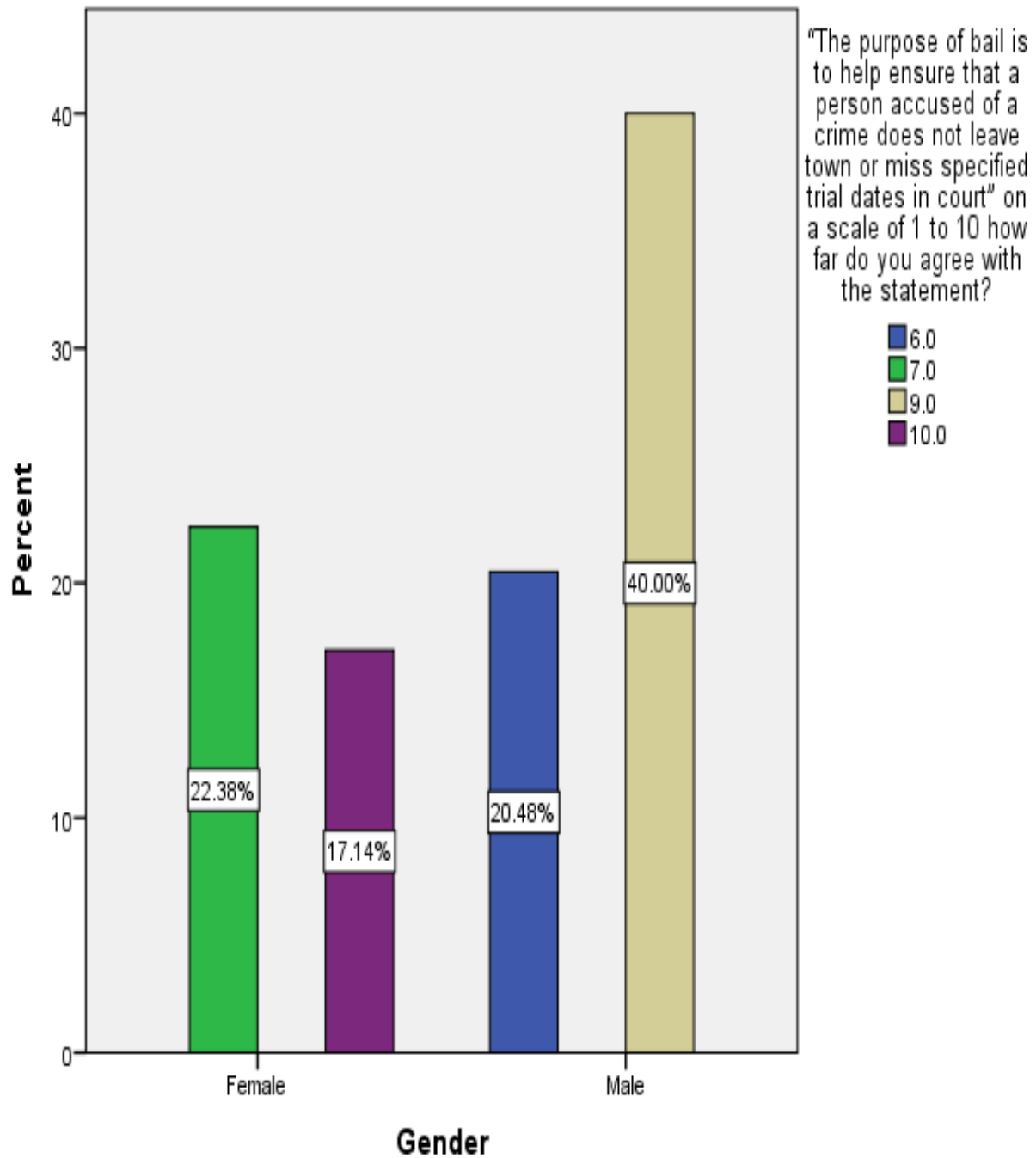


Legend:

This graph shows the significant difference between marital status and in case of non-bailable offense, a bail granted by a magistrate can be canceled under section 437(5) of CrPC.

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Figure 3:

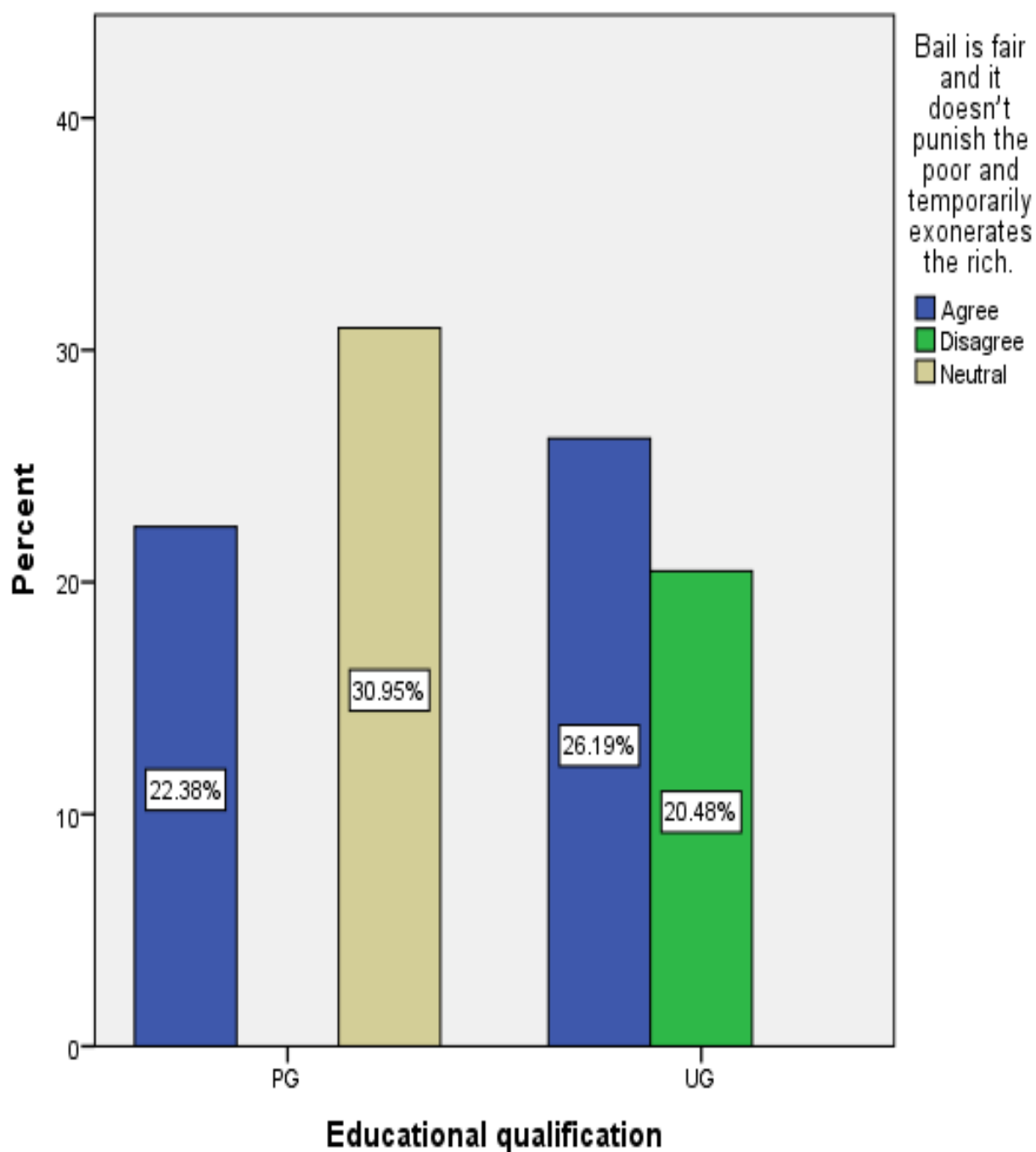


Legend:

This graph shows the significant difference between gender and the purpose of bail is to help ensure that a person accused of a crime does not leave town or miss specified trial dates in court.

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Figure 4:

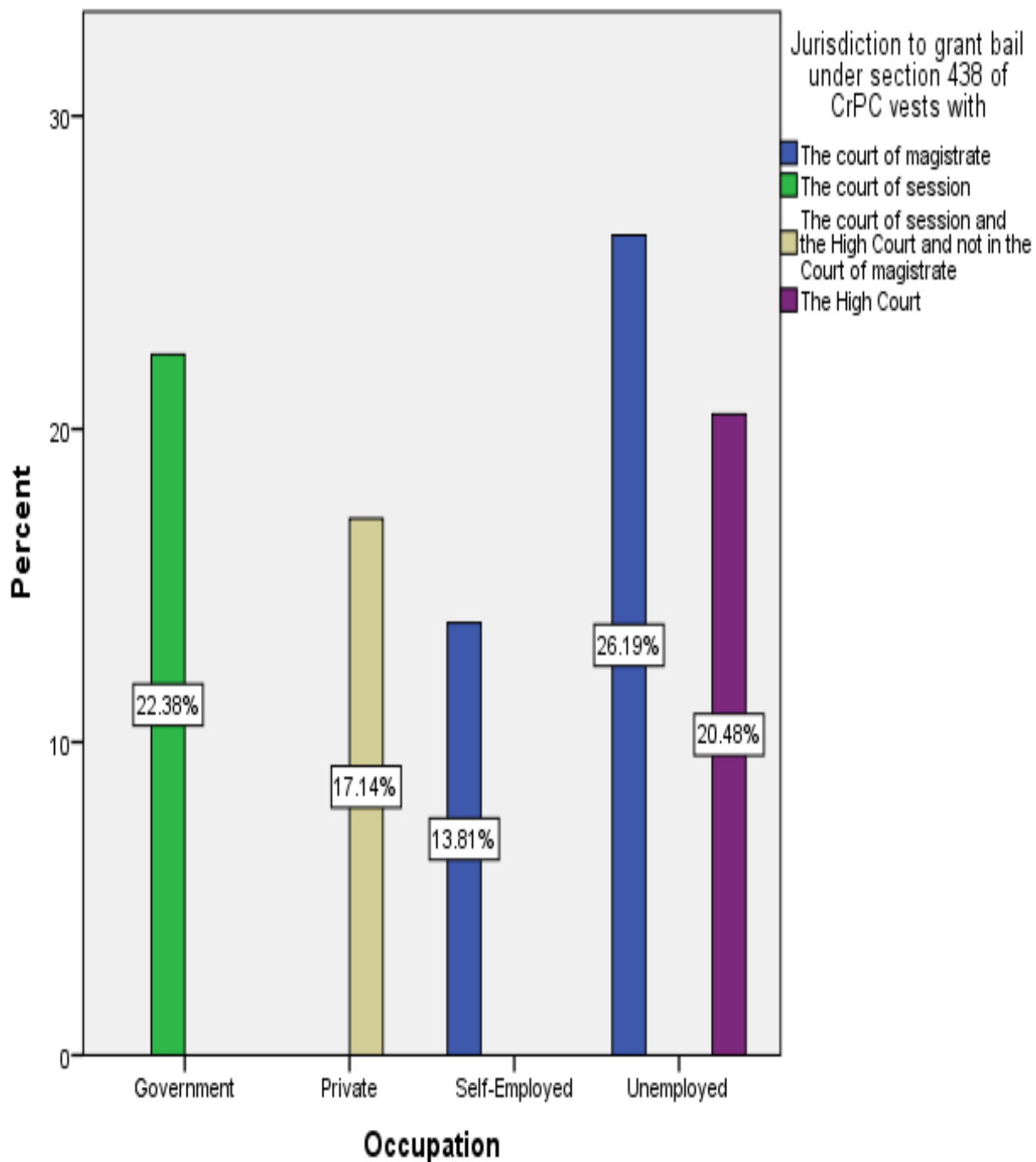


Legend:

This graph shows the significant difference between educational qualification and bail is fair and it doesn't punish the poor and temporarily exonerates the rich.

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Figure 5:



Legend:

This graph shows the significant difference between occupation and jurisdiction to grant bail under section 438 of CrPC vests with.

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Figure 6:

Age ^ "The purpose of bail is to help ensure that a person accused of a crime does not leave town or miss specified trial dates in court" on a scale of 1 to 10 how far do you agree with the statement? Crosstabulation

Count

		"The purpose of bail is to help ensure that a person accused of a crime does not leave town or miss specified trial dates in court" on a scale of 1 to 10 how far do you agree with the statement?				Total
		6.0	7.0	9.0	10.0	
Age	18-30	43	47	55	0	145
	31-50	0	0	29	36	65
Total		43	47	84	36	210

Chi-Square Tests

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	121.154 ^a	3	.000
Likelihood Ratio	151.595	3	.000
N of Valid Cases	210		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 11.14.

Legend:

This table shows the chi-square test to find significant differences between the dependent variable; the purpose of bail is to help ensure that a person accused of a crime does not leave town or miss specified trial dates in court compared with the independent variable age of the respondent.

Figure 7:

Chi-Square Tests

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	121.154 ^a	3	.000
Likelihood Ratio	151.595	3	.000
N of Valid Cases	210		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 11.14.

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Chi-Square Tests

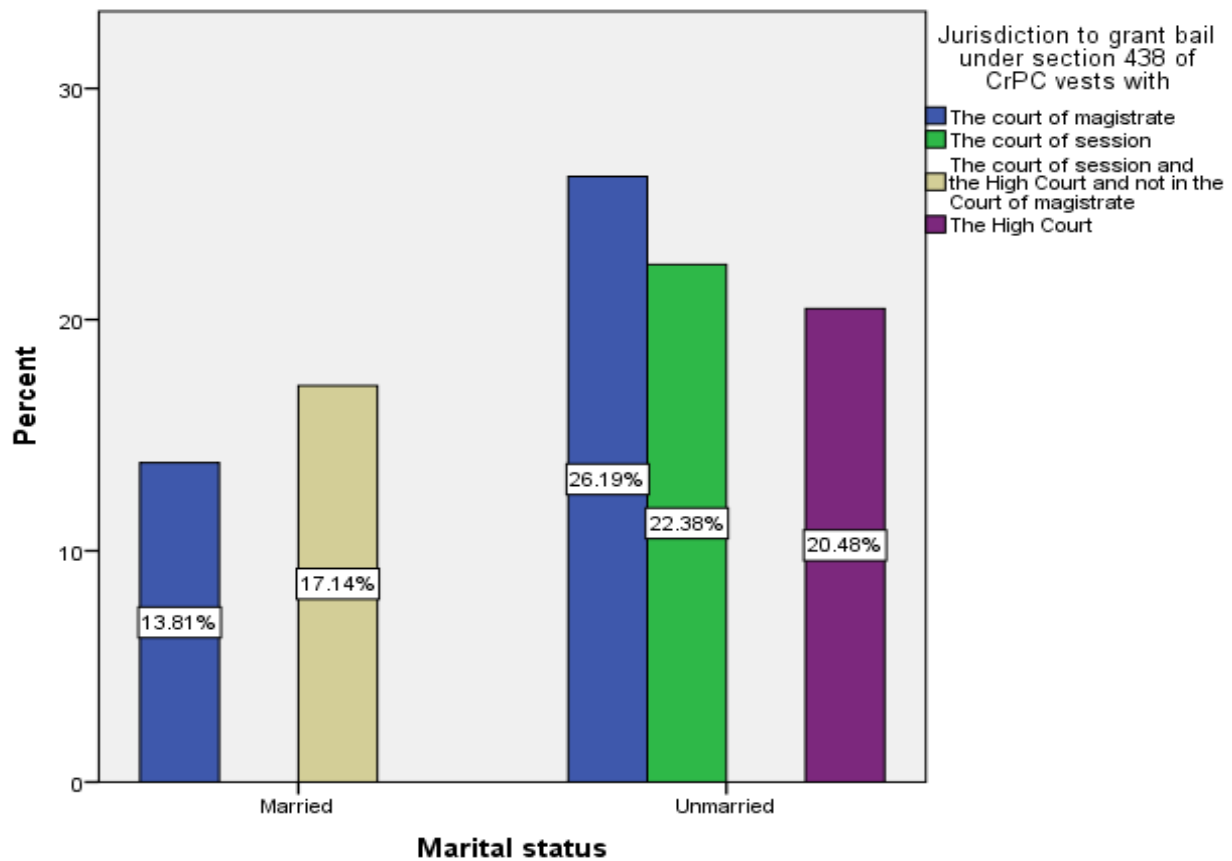
	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	36.777 ^a	2	.000
Likelihood Ratio	51.706	2	.000
N of Valid Cases	210		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 17.00.

Legend:

This table shows the chi-square test to find significant differences between the dependent variable; bail is fair and it doesn't punish the poor and temporarily exonerates the rich compared with the independent variable gender of the respondent.

Figure 8:

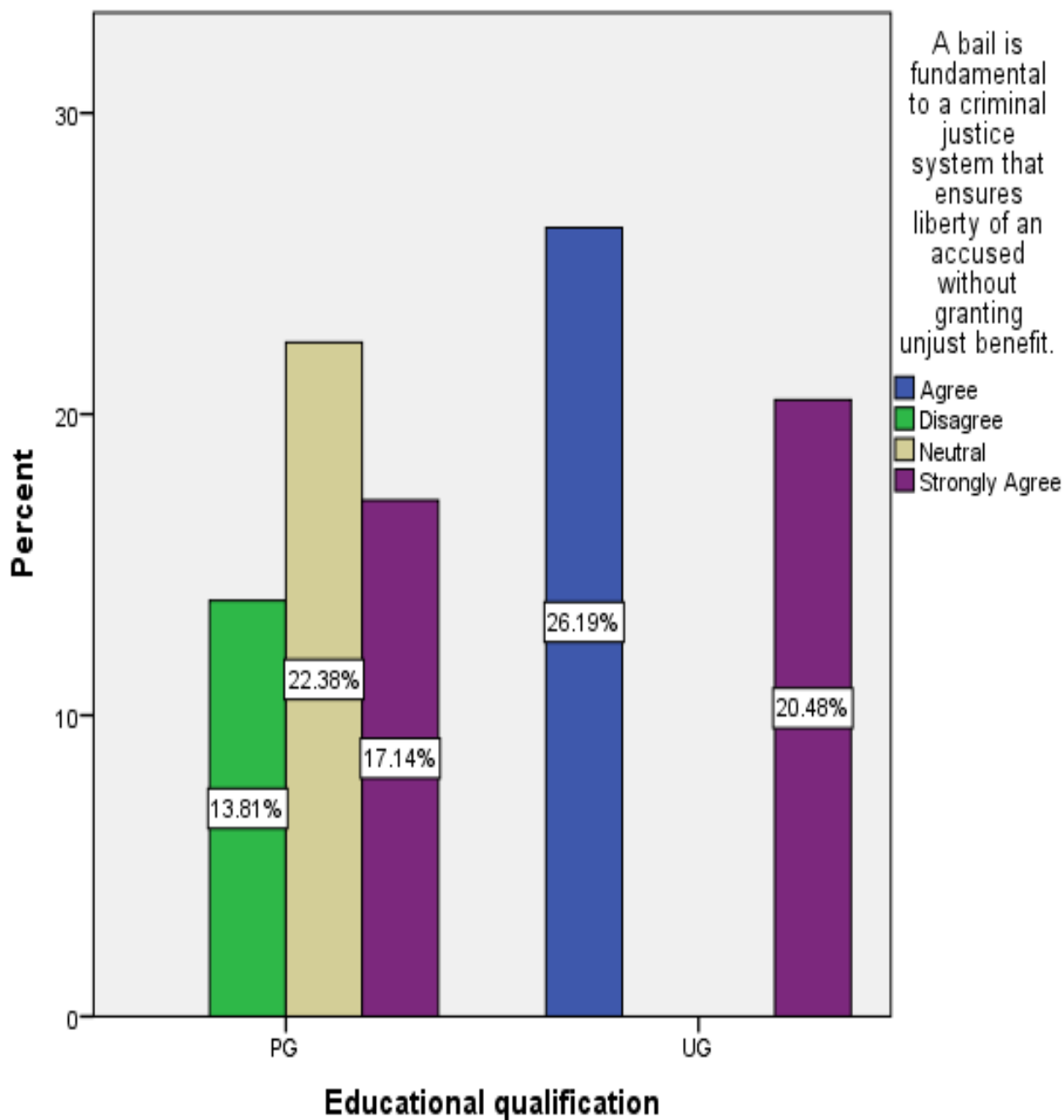


Legend:

This graph shows the significant difference between marital status and jurisdiction to grant bail under section 438 of CrPC vests with.

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Figure 9:

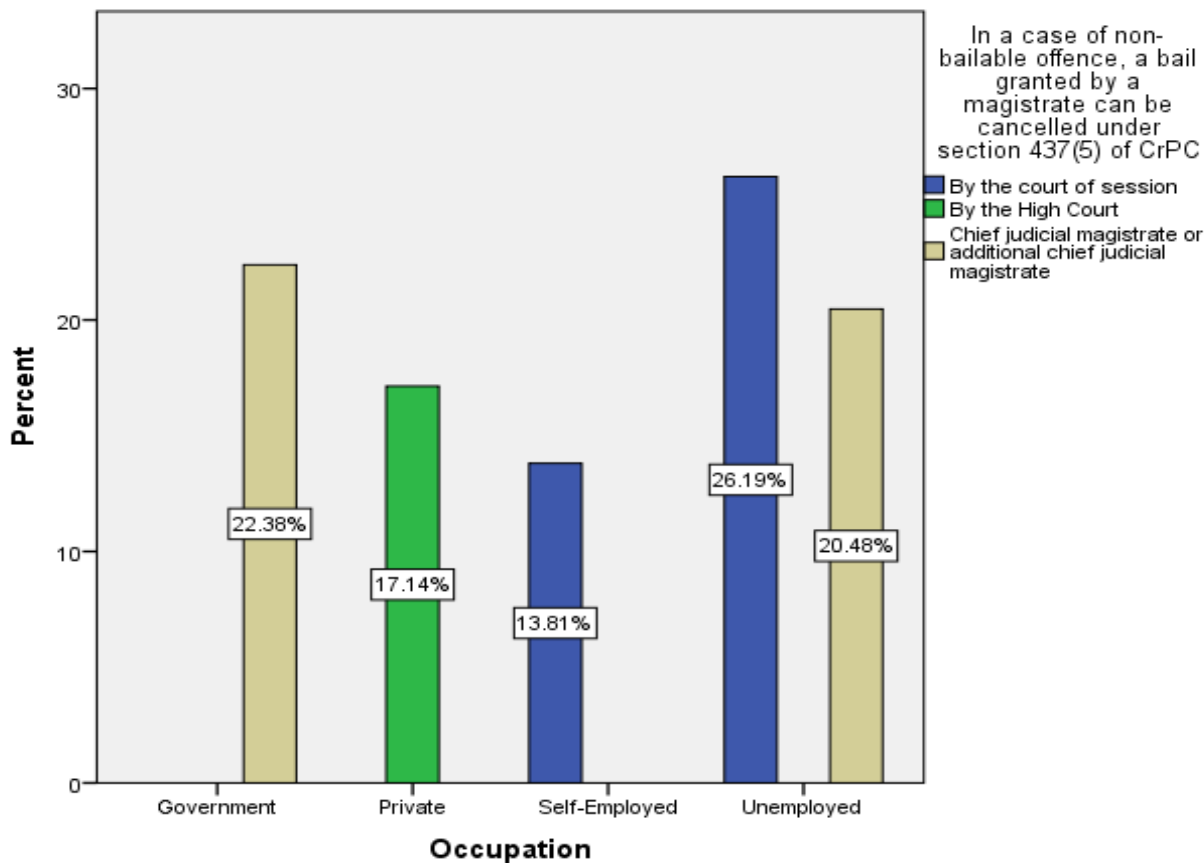


Legend:

This graph shows the significant difference between educational qualification and bail is fundamental to a criminal justice system that ensures liberty of an accused without granting unjust benefit.

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Figure 10:



Legend:

This graph shows the significant difference between occupation and in a case of non-bailable offense, a bail granted by a magistrate can be canceled under section 437(5) of CrPC.

RESULT:

Figure 1: Most of the respondents of the age group belonging to 18-30 years have agreed and most of the respondents of the age group belonging to 31-50 years have strongly agreed that a bail is fundamental to a criminal justice system that ensures liberty of an accused without granting unjust benefit. **Figure 2:** Most of the married respondents have chosen " by the High Court" and most of the unmarried respondents have chosen Chief Judicial Magistrate or Additional Chief Judicial Magistrate that in a case of non-bailable offense, a bail granted by a Magistrate can be canceled under section 437(5) of CrPC. **Figure 3:** Most of the girl respondents have selected 7 on the dimensions and the male respondents have selected nine on the dimensions that the motive of bail is to assist make sure that

someone accused of a criminal offense does now no longer depart metropolis or omit unique trial dates in court. **Figure 4:** Most of the PG respondents are neutral and the UG respondents have disagreed that bail is fair and it doesn't punish the poor and temporarily exonerates the rich. **Figure 5:** Most of the government employees have chosen the court of session, private employees have chosen the court of session and the High Court and not the court of magistrate, self-employed respondents have chosen the court of Magistrate and the unemployed respondents have also chosen the court of Magistrate that jurisdiction to grant bail under section 438 of CrPC vests with. **Figure 6:** $P < 0.05$, the value of chi-square is .000 it is lesser than P value, Null hypothesis is rejected and Alternative hypothesis is accepted, there is no significant association between

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independent variable and dependent variable. **Figure 7:** $P < 0.05$, the value of chi-square is .000 it is lesser than P value, Null hypothesis is rejected and Alternative hypothesis is accepted, there is no significant association between independent variable and dependent variable. **Figure 8:** Most of the married respondents have chosen the court of session and the High Court and not in the court of Magistrate and most of the unmarried respondents have chosen the court of Magistrate that has jurisdiction to grant bail under section 438 of CrPC vests with. **Figure 9:** Most of the PG respondents are neutral and the UG respondents have agreed that a bail is fundamental to a criminal justice system that ensures liberty of an accused without granting unjust benefit. **Figure 10:** Most of the government employees have chosen Chief Judicial Magistrate or Additional Chief Judicial Magistrate that in a case of non-bailable offense, a bail granted by a magistrate can be canceled under section 437(5) of CrPC.

DISCUSSION:

From figures 1 and 2 Most of the respondents of the age group belonging to 18-30 years have agreed and most of the respondents of the age group belonging to 31-50 years have strongly agreed that a bail is fundamental to a criminal justice system that ensures liberty of an accused without granting unjust benefit. Most of the married respondents have chosen " by the High Court" and most of the unmarried respondents have chosen Chief Judicial Magistrate or Additional Chief Judicial Magistrate that in a case of non-bailable offense, a bail granted by a Magistrate can be canceled under section 437(5) of CrPC. Most of the female respondents have chosen 7 on the scale and the male respondents have chosen 9 on the scale that the purpose of bail is to help ensure that a person accused of a crime does not leave town or miss specified trial dates in court. Most of the PG respondents are neutral and the UG respondents have disagreed that bail is fair and it doesn't punish the poor and temporarily exonerates the rich. Most of the government employees have chosen the court of session, private employees have chosen the court of session and the High Court and not the court of magistrate, self-employed respondents have chosen the court of Magistrate and the unemployed respondents have also chosen the court of Magistrate that jurisdiction to grant bail under

section 438 of CrPC vests with. Most of the married respondents have chosen the court of session and the High Court and not in the court of Magistrate and most of the unmarried respondents have chosen the court of Magistrate that has jurisdiction to grant bail under section 438 of CrPC vests with.

LIMITATIONS:

Many of the students at the secondary level lag behind on elementary-level competencies. I do not have extensive experience in primary data collection, there is a great chance that the nature of implementation of data collection method is flawed. My sample size is too small, so statistical tests would not be able to identify significant relationships within the data set. The importance of sample size is greater in quantitative studies compared to qualitative studies.

CONCLUSION:

Courts have greater discretion to grant or deny bail in the case of persons under criminal arrest. The law lexicon¹ defines bail as the security for the appearance of the accused person on which he is released pending trial or investigation. What is contemplated by bail is to "procure the release of a person from legal custody, by undertaking that he/she shall appear at the time and place designated and submit him/herself to the jurisdiction and judgment of the court". The Criminal Procedure Code, 1973, does not define bail, although the terms bailable offense and non-bailable offense have been defined in section 2(a) Cr.P.C. as follows: " Bailable offense means an offense which is shown as bailable in the First Schedule or which is made bailable by any other law for the time being enforced, and non-bailable offense means any other offense". Further, ss. 436 to 450 set out the provisions for the grant of bail and bonds in criminal cases. The amount of security that is to be paid by the accused to secure his release has not been mentioned in the Cr.P.C. Thus, it is the discretion of the court to put a monetary cap on the bond.

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