



Parole as a Modus Operandi of Reformation and Rehabilitation

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Abstract

The history of human civilization testifies the fact that society is continuously growing between the liberty of the individual and the security of the society. There is perpetual conflict between them, the resolution of which appears to be extremely difficult, if not impossible. The conflict between them naturally becomes sharper and convoluted in a developing, plural, multilingual and closed society like India. It is needed, to strike a just balance between the 'liberty' and the 'Security'. Any preference between them is bound to lead lopsided consequences in the society. Retribution and deterrence emphasis security of society and reject the notion of reformation of criminals. On the other hand, reformation and rehabilitation emphasis the reformation of the criminal and do not believe in the ideas of deterrence and rehabilitation. The advancement of knowledge, development of scientific and technological knowledge, increase of scientific temper and increasing rationality in human beings led to the development of new penological thoughts and ideas. They became more attractive as retributive and deterrent goals of punishment failed to bring desirable results and crime rates could also not be arrested within the limits. Therefore, reformation and rehabilitative theories of punishment gained grounds and were regarded as fresh approaches to the problem of crime and criminals. Individualized treatment became the cardinal principle for reformation of offenders. The most powerful technique for reformation and rehabilitation is parole. Parole has emerged as a technique to mitigate the consequences of severe punishment as imprisonment has become the more common mode of penal sanction. The main object of this technique is rehabilitation of offenders. In parole convict is released after serving some part of his sentence and the release is not the result of judicial decision but it is quasi judicial or administrative function.

Keywords: Reformation, Rehabilitation, Liberty, Security, Individualization

Introduction

Parole which occupies a prime place in handling adult delinquency and also known as ticket- of- leave first in England is in fact the result of unsatisfactory consequence of the penal system. The idea was suggested by Mirabeau in 1791 who emphasized that prisons should be founded on principle of labour, separation, rewards, conditional license and aid on discharge. The restorative technique may produce good results in reformatory and rehabilitative environment. The techniques should not disturb the balance occurring between the liberty of the individual and the security of the society. Prison reforms, parole, probation, furlough, indeterminate sentence, premature release, annual leave etc., have been developed to mitigate the evil effects of imprisonment and to achieve the objects of reformation and rehabilitation of the criminals.

Among all other correctional processes utilized for the transformation of the hard core criminals, parole has a significant place. Parole plays a vital role in the life of people who at a certain point of time committed crimes but later wish to change themselves and lives in a society like normal human beings. Parole gives such criminals a chance to understand the world they live in, and lets them develop social interaction by free mixing with other individuals.¹

Parole as a Restorative Technique

The life in prison is so rigid and dull that it provides no opportunity to offender to rehabilitate himself. It is, therefore, desirable that in suitable cases the prisoner be released under proper supervision after serving a part of their sentence. This may be helpful in their rehabilitation in society. The object is accomplished by the system of parole which aims at restoring the inmate to society as normal law abiding citizens.

When a convict after serving the sentence is released, it is difficult for society to admit him back as non-criminal person. The societal attitude is to treat him criminal forever. Naturally in case of non-acceptance in society, he goes to law violating group where he has acceptance. This frustrates the purpose of punishment. Therefore, release during the period of imprisonment enhances the chance of his correction, reformation and rehabilitation in the society.

Parole as a concept finds its origin in military law. It means release of prisoner of war on promise to return. However, now it has become an integral part of the criminal justice system.² The desired flexibility is achieved through techniques like parole, probation, furlough, pardon and suspended sentence and indeterminate sentence.³

¹ Mohammad Najmi, THE ROLE OF PAROLE: PAROLE SYSTEM AT A GLANCE, 6, CBI Bulletin, Volume 24, 1990

² 5(1) HALSBURY'S LAWS OF INDIA, 105.412, 2006.

³ Ahmad Siddique, CRIMINOLOGY & PENOLOGY, 243, (2011).

Parole has emerged as flexible technique to mitigate the consequences of severe punishment. It promotes his social integration.⁴ It is in consonance with the concept of Welfare State.

Definition and Nature of Parole

Parole is a release procedure. The offender, after having served a part of his sentence in a correctional institution, is released according to law from the prison or reformatory.⁵ Thus, the simple meaning of the term 'parole' is a conditional release from prison.

According to the Encyclopedia of Criminology, Parole is a method of conditional release of persons sentenced or committed to penal or correctional institutions after serving a portion of the sentence or term imposed by the Court.⁶ Parole has not been defined under any law. But Section 2(37) of the Delhi Prisons Rules, 2018, defines Parole System. According to Section 2(37), Parole system means the system of releasing prisoner from prison on parole by supervision of their sentences in accordance with the rules.⁷

Thus, the grant of parole limits, the ill effects of incarceration and provide an acceptable means of reducing the burden of actual period of incarceration. It offers an opportunity to test the rehabilitation programmes prior to the expiry of sentence. It allows him to maintain maximum physical contact outside the world. The possibility of parole allows prisoner to behave well in the prison. Prof. Goswami observes: Parole along with the companion service of probation, has demonstrated the efficacy of non-institutional treatment of offenders.⁸

⁵ N.V. Pranjape, CRIMINOLOGY AND PENOLOGY WITH VICTOMOLGY, 504, (2012).

⁵ Walter C Reckless, THE CRIME PROBLEM, 732 (1st Imp. 1971).

⁶ Vernon C Branham & Samuel B. Keetash, ENCYCLOPEDIA OF CRIMINOLOGY, 285 (1949).

⁷ Section 2(37), THE DELHI PRISON RULES, 2018: See also Section 2(p) of DELHI PRISONS ACT, 2000

⁹ B.K. Goswami, CRIMINOLOGY & PENOLOGY, 172-173 (1987).

¹⁰ Poonam Lata V. M.C. Wadhawan, A.I.R 1987 SC 1383.

Therefore, the release on parole is a wing of reformatory process and is expected to give the prisoner an opportunity to transform himself into the useful citizen.⁹

Origin and History

The origin of parole became possible because of excessive faith in the theories of reformation and rehabilitation. Under the influence of reformation and rehabilitation objects and contents of prison life have changed. A number of prison reforms have been introduced from time to time. The restorative approaches on penological spectrum do not enjoy a long chequered history, but in fact of recent origin. In India, it is in rudimentary form or nascent stage. Before the advent of British rule in India, Mohammedan Criminal Law regulated the administration of criminal justice. Mohammedan Criminal Law was cruel and inhuman and treated criminals incorrigible.¹⁰ It did not have slightest faith in the reformation of criminals. During the British period, criminal law became milder but the punitive techniques continued to be the basis of criminal law. It is particularly in the last three decades, a shift from punitive to restorative technique is being witnessed. The change favouring corrective technique is result of western liberal development taking place in the United States of America and United Kingdom.

The origin of parole, in the United States, may be traced to two movements in prison reform. One movement was fostered by the view that good conduct in prison should be rewarded by shortening of the sentence. The second step in this movement was that release should be made conditional, not only upon conduct in prison, but upon continued good conduct on the outside, with final discontinuance of custody after a period of time. The principle of conditional release was used in the prison colonies of Australia as early as 1790. In Australia the first “good time” law, designed to shorten sentences as reward for good conduct in prison was passed in the State of New York in 1817. Later, as leading penologists felt the need for a more flexible sentence to permit greater individualization of treatment, the indeterminate sentence idea gained ground. The first indeterminate sentence law was enacted in New York in 1869, when the Elmira Reformatory was established.¹¹

The other important movement was the establishment of philanthropic societies, both in America and abroad, whose interest was to aid criminals both in institutions and after release. These societies were established in Philadelphia in 1776 as is still in existence under the name of the Pennsylvania Prison Societies. As early as 1882 this society, then known as the

¹⁰ See M.P. Jain, *OUTLINES OF INDIAN LEGAL HISTORY*, 363-389 (1997); See also V.D. Kulushreshtha, *LANDMARK IN INDIAN LEGAL AND CONSTITUTIONAL HISTORY*, 215-225, (1995.).

¹¹ *Supra* Note 7 at 285

Philadelphia Society for Alleviating the Miseries of Public Prisons, recognized the importance of the problem of care for discharged prisoners and considered the opening of an “asylum” for those not in position to obtain work upon release in 1851, the society was able to appoint an agent to work with and for discharged prisoners and in 1871, the society succeeded in obtaining an annual appropriation from the State Legislature for the care of discharged prisoners. But as the appropriation was insufficient, the proposal of opening a home for discharged prisoners was revised and an “Industrial Home” was opened in 1889 which has continued to this day, although this is now no longer connected with the society.¹²

The work of the Pennsylvania Prison Society was closely emulated by such other organizations as the Boston Prison Society, founded in 1826 and the New York Prison Association, organized in 1845. The Interest of these organizations in the care of released prisoners supplemented the movement for shortening of sentences by “good time” allowances and for conditional release and gave the basic elements of parole as is known today.

A series of statutes enacted by New York in the United States and culminating in the opening of Elmira Reformatory in 1876 marked the earliest significant development of an establishment of parole system embodying indefinite sentence and parole with parole supervision and a return to custody for violation of parole rules.¹³

The first parole law in the United States was enacted to implement the Elmira Reformatory system in New York around 1877. By 1900, 20 States by 1920, 32 plus Federal government and by 1922, 44 States had introduced parole laws. By the second half of the 20th century, parole had become an integral part of the penal and correctional code of every state.¹⁴

The principle of conditional liberation (parole) seems to have had its origin in the British colony of New South Wales in Australia, 1790, when Governor Phillips was given the power of conditional pardon over the criminal transported there from England. This method of release later became known as ticket-of-leave system, under which the prisoners were set free with grants of land. In 1840, Captain Alexander Maconochie introduced the ticket-of-leave system at Norfolk Island. Under Maconochie’s plan tickets of leave were awarded on the basis of a system of marks earned for good conduct, instead of on the basis of time served. Alexander Machonochie was known as the father of parole. Maconochies system was adopted later in England and continued by Sir Walter Crofton.¹⁵

¹² Ibid.

¹³ 17, ENCYCLOPEDIA BRITANNICA, 401, (1986).

¹⁴ Supra Note 6 at 559.

¹⁵ ENCYCLOPEDIA AMERICANA, 342, (1964).; See also Barnes and Teeters, NEW HORIZONS IN CRIMINOLOGY, 576, (3rd ed. 1966); see also Elmer H. Johnson, CRIME, CORRECTION AND SOCIETY, 375-378 (4th ed. 1978).

Sir Walter Crofton has introduced the provision that, in case of violation of release, the parole was subject to re-incarceration. The ticket-of-leave system was legally sanctioned in the English Penal Servitude Acts of 1853 and 1857. In 1853, Sir Walter Crofton initiated in Ireland an Indeterminate Sentence under which prisoners could earn conditional liberty. Crofton's system which he called the 'Intermediate System' was noteworthy because the community was involved and an actual parole officer supervised the prison releases. The parole officer was James P. Organ, and his official title was Inspector of released prisoners. He supervised his charges, helped him adjust to the community and helped them to find jobs.¹⁶

Various forms of parole were also introduced in France in 1885, in Netherlands in 1886 and in 1953, the Federal Republic of Germany through a series of criminal law amendments introduced parole. In Denmark, parole is widely used.¹⁷ Parole or indeterminate sentence introduced in some other advance countries that release of prisoners for good conduct Acts¹⁸ were also passed in some of the States in India.

In India, prison reforms were not the result of any social movement but were necessarily an outcome of the worst conditions of treatment faced by the political sufferers in prison during the period of their imprisonment. In meantime, the reformatory trend which was gaining strength in the world also accelerated correctional method of treatment of offenders in India. It was realized that the confining convicts in prisons hardly served any useful purpose. Thus, the overall effect of these changes brought about significant reforms in prison administration in India during the latter half of twentieth century. Parole is fully in conforming to the existing Indian penal laws. The post-independence era in India brought in its wake a growing realization of the need of change in attitude towards the treatment of offenders. Parole occupies a significant place in the correctional treatment of offenders in as much as it is directed towards narrowing down the gap between the prison.

Advantages of Parole

The advantages of parole are as follows:

- I It avoids the evil consequences of long term imprisonment.
- II It makes reformation and rehabilitation of offender possible.
- III It avoids overcrowding in prisons and also reduces financial burden on state.
- IV The technique is in consonance with welfare state.
- V It includes punishment as well as treatment. Thus, deterrent element is also present.

¹⁶ Louis P. Carney, INTRODUCTION TO CORRECTIONAL SCIENCE, 313-314, (1974).

¹⁷ Supra Note 14 at 401.

¹⁸ G.R. Madan, INDIAN SOCIAL PROBLEM, Volume. 1, VII, 139-141 (2003).

- VI Parole provides an opportunity for the offenders to attempt adjustment to the community under the guidance of the parole officer. He is expected to obey certain rules that restrict his activities and associates, to seek and retain employment and to secure the advice of his parole officer. The community is partially protected from further criminal activities during the parole period as the offender may be immediately returned to prison without a trial until the expiration of his original sentence, if he commits another crime or breaks any of the rules imposed upon him by the conditions.
- VII Parole relieves the state and other agencies of certain financial burdens. Parole is less expensive to the state than imprisonment; also during the period of parole the offender may support any dependents who otherwise might be forced to seek public relief.
- VIII It checks recidivism.¹⁹

Thus, parole is significant to society as a release method which retains some control over prisoner, yet permits them more normal social relationship in the community and provides constructive aid at the time when they must need it. Parole is the last and in many ways most difficult stage in correctional treatment.

Disadvantages of Parole

Parole serves dual purpose, namely, public safety and reformation of prisoner. It suffers from certain drawbacks.

- I If selection is not proper, the purpose of parole is defeated.
- II If Parole Board does not have man of character and integrity, the technique fails.
- III If supervision is not effective, its violation becomes difficult to detect.

The disadvantages of parole lie chiefly in the present system of administration. Casual release of prisoners on common sense basis, because of the demand of family or political party, or to relieve overcrowded conditions in prison is not conducive to effective readjustment of the parolee.

When the prisoner is released before the expiration of his term without personal supervision, the effect of parole is merely to abridge the sentence. Again, the operation of the system may be criticized when parole officers are untrained in social work or when they have such heavy caseloads under their supervision that frequent individual attention does not seem possible.

¹⁹ Ruth Shonel Caven, CRIMINOLOGY, 548-549 (2nd ed. 1958). See also Mohammad Najmi, THE ROLE OF PAROLE: PAROLE SYSTEM AT A GLANCE, 7-8, CBI Bulletin Volume. 4 (1990).

The conditions of parole require revision since in some respects they run counter to community modes, so that the parole who follows them finds himself unable to participate in normal activities. If officers are better trained and in close touch with parolees they would be able to help them to plan a constructive course avoiding formal restrictions.²⁰

Legislations on Parole

The legislative efforts in other countries, legislative provisions on parole and other analogous techniques, such as, furlough, probation etc. has been made in India as well. Parole, actually is a direct consequence of reformist movements in India regarding prisons. Prison reforms though were not the product of any social movement. The worst conditions prevailing in prisons and increasing importance of reformatory treatment to prisoners were responsible for them. Parole is fully in conformity with the existing penal laws.

Generally, parole is governed by State Legislations and rules made there under and concerned State Jail Manual. For release of prisoners, Good Conduct Acts were passed in India. The Punjab was the first state when the Punjab Prisoner's Probationary Release for Good Conduct Act was passed in 1926.²¹ Subsequently, similar legislations were passed in other states also for example, Assam (1939), U.P. (1938) and the Central Provinces and Berar Prisoner's Act, 1939.²²

Many Acts passed by legislatures touch the subject of prison reforms like the Prisons Act, 1894, the Prisoners Act, 1900, the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962, the Himachal Pradesh Good Conduct Prisoners (Temporary Release) Act, 1968 etc.

The legal position on parole varies from State to State. Therefore, it is required to find out the law on the subject. It is also to be enquired whether the legislative policy, on the subject is clear or not. It has to be identified whether the law which governs parole shows uniform trends or reflects state of confusion. Parole and similar therapeutic techniques have come in prominence because of insistence on adoption of alternatives to imprisonment approach.

Present Legal Position

The evolution of law on reformatory techniques such as parole, furlough etc., appears to be criss-cross. The present section examines the legal position on parole and analogous techniques. It takes into account those provisions which are directly or indirectly relevant in the operation of such techniques.

Constitutional Provisions

²⁰ Id., at 549.

²¹ V.K. Jindal, COMMENTARY ON PUNJAB JAIL MANUAL 516 (1987).

²² G.R. Madan, INDIAN SOCIAL PROBLEM VOLUME - I 139-141 (2003).

Problem of parole should also be viewed from constitutional perspective. There are certain provisions in the constitution which are concerned with Prisons, Prisoners and Prison reforms. Hence, this sub-section examines their relevancy with reference to parole.

The Legislative Power of the State under Entry 4 List II of Seventh Schedule to the Constitution can deal only with prisons and prisoners, never with truncation of judicial sentences.²³ The Topic of Prisons and Prisoner's do not cover release by way of reduction of the sentences itself. It belongs to the criminal procedure in Entry 2 of List III although when the sentence is for a fixed term and remission plus the period undergone equal that the prisoner may win his freedom.²⁴

One principle well established in our Constitutional Jurisprudence is that all power is trust and its arbitrary exercise is ultra-virus. It follows that while the state may under Section 432 of the Criminal Procedure Code, 1973 and Article 161²⁵ of the constitution enjoy the power to grant parole, partial release, remission, suspension and premature termination of imprisonment. This exercise must not be arbitrary and ever governed by sound guidelines.²⁶ The mood and temper of our constitution certify that arbitrary cruelty to the prisoner and negative attitude to reformation of the Individual are obnoxious.

Provisions under the Code of Criminal Procedure

Once a sentence has been imposed, the only way to terminate it before the stipulated term is by action under Sections 432, 433 of the Criminal Procedure Code, 1973 or Article 72 or 161 of the constitution if the later power under the constitution is not invoked, the only source is power under Sections 432 and 433.²⁷

After pardon the accused is absolved of punishment and is deemed to be not guilty of the offence. But the remission or suspension of sentence does not have that effect. An order of remission or suspension does not in any way interfere with the order of the court. It affects only the execution of the sentence passed by the court and frees the convicted person from his liability to undergo the full term of imprisonment inflicted by the court, but the order of conviction and sentence passed by the court still stands as it was.²⁸

In the Code of Criminal Procedure, 1973 there are certain provisions. Section 432 of the Criminal Procedure Code, 1973, deals with the power to suspend or remit sentences. It confers on the appropriate Government the power to suspend the execution of sentence or remit the whole or part of the sentence with or without conditions. If any condition as per the law is not fulfilled, the appropriate Government may cancel the suspension or remission,

²³ List II Entry 4, THE CONSTITUTION OF INDIA, 1950; See, also *Maru Ram V. Union of India* AIR 1980 SC 2147 (2157-58.)

²⁴ Id. List III, Entry 2.

²⁵ Article 161, The Constitution of India, 1950 ran as "The Governor shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commit the sentence of any person convicted of any offence against any law relating to matters to which the executive power of the state extends. The Executive Power of the state extends to the matters with respect to which the legislature of the state has power to make Laws."

²⁶ V.R. Krishna Iyer, LEAVES FROM MY PERSONAL LIFE, 206 (repr. 2010). See, also *Maru Ram V. UOI* A.I.R 1980, 2147.

²⁷ Id. at 2157, para - .

²⁸ S.N.Mishra, THE CODE OF CRIMINAL PROCEDURE, 1973, 579, (16th ed. 2009). See, also *Sarat Chandra V. Khagendra Nath*, A.I.R 1961 SC 534.

and thereupon the person in whose favour the sentence has been suspended or remitted, may be arrested by any police officer without warrant and remanded to undergo the unexpired portion of the sentence.²⁹

Section 433 of the Criminal Procedure Code, 1973, confers powers on the appropriate Government to commute (a) a sentence of death for any other punishment provided under the Indian Penal Code, (b) a sentence of imprisonment for life for a term not exceeding 14 years or fine (c) a sentence of rigorous imprisonment for simple imprisonment or fine or (d) a sentence of simple imprisonment or fine.³⁰

Section 433 A deals with restriction on powers of remission or commutation in certain cases. This section has been inserted in the Code of Criminal Procedure, 1973 by an amendment Act of 1978. It provides that where an offender sentenced to imprisonment for life for an offence in which death is one of the punishments or where a sentence of death is commuted under Section 433 into one of punishment for life, such person shall not be released from prison unless he has served at least 14 years of imprisonment.

The Section 433 A was thoroughly examined by the Supreme Court in **Maru Ram V. UOI**.³¹ The Apex Court held that, "Imprisonment for life lasts until the last breath and whatever the length of remission earned, the prisoner could claim release only if the remaining sentence was remitted by Government and Commutation in such cases should not reduce the actual duration of imprisonment before 14 years. Thus, remissions were to be taken into account only towards the end of the term. However, section 433 A does not forbid parole within the 14 years period.

Thus, Indian criminal jurisprudence has crystallized the law of parole and release whether it is under statute or in exercise of clemency jurisprudence and therefore, just, fair and reasonable exercise is integral to parole release jurisprudence. Fundamental fairness- the touchstone of due process- obligates the state to ground its decisions on relevant, rational material with nexus to the objective of the parole release.

Role of Judiciary on Parole

The courts have favored the view that the prisoners, who have been incarcerated or kept in prison for a long time, should be released on parole to maintain unity of family. The courts have issued directions to prison authorities, which at least indicate their increasing awareness on parole. The desirability to release long term sentences on parole was emphasized by the Supreme Court in **Dharamvir V. State of U.P.**³² so that they may not

²⁹ Section 432 (5) of THE CRIMINAL PROCEDURE CODE, 1973 ran as under:

"The Appropriate Government may, by general rules or special order, give directions as to the suspension of sentence and the conditions on which the petition should be presented and dealt with:

Provided that in the case of any sentence (other than a sentence of fine) passed on a male person above the age of 18 years, no such petition by the person sentenced or by any other person on his behalf shall be entertained, unless the person sentenced is in jail and (a) where such petition is made by person sentenced. It is presented through the officer-in-Charge of the Jail; or (b) where such petition is made by any other person. It contains a declaration that the person sentenced is in Jail.

³⁰ Id. section 433.

³¹ A.I.R 1980 SC 2147. See also *Gopal Vinayak Godse V. State of Maharashtra*, A.I.R 1961 SC 600.

³² (1979) 3 SCC 645.

be totally cut-off from the society. The appellant was found guilty of murder and convicted for imprisonment for life. There being no scope for reduction of period of sentence, the Supreme Court found parole desirable in such cases. It issued directions to the State Government and the jail authorities that such prisoners are allowed to go on parole for two weeks once in a year, throughout the period of imprisonment, provided that they behaved well while on parole.

In **Inder Singh V. State (Delhi Administration)**³³ where the apex court invented new strategy, viz., a guarded parole release every year at least a month, punctuating the total prison term, for maintaining his family ties. A prisoner could not maintain family ties by living in a small world of his own cribbed, cabined and confined within the four walls of the prison. This case adds a new dimension to the prison philosophy. Parole, thus, has become an integral part of the criminal justice system. The nature and length of the sentence or magnitude of the crime committed by prisoner may be ignored for grant of parole.

In **Manu Sharma V. State of Delhi**,³⁴ Manu Sharma (Siddarth Vashisht) was a convicted murderer, serving life imprisonment for the murder of Model Jessica Lal. After conviction, he was imprisoned in Tihar Jail. On September 24, 2009 Delhi Lt. Governor granted him 30 days parole from jail on the ground that he needed to attend to his ailing mother, attend the last rites of his grandmother and also look after the family business which was suffering in his absence. But the basis for parole was proved unfounded as his grandmother had already died in 2008. During the second extension of the parole for another 30 days, he was seen partying in a discotheque in Delhi. His mother, whose illness was also the basis for parole was seen at a media briefing promoting a ladies cricket tournament at his family run hotel in Chandigarh. It was also later revealed that parole was granted despite an objection from the Delhi Police. In November, 2009, Chief Minister Sheila Dixit came under criticism for granting parole to Manu Sharma after media reports of him visiting night club in Delhi emerged. He violated parole norms and returned to Tihar jail after violation of his parole was confirmed. He was granted five days' parole in November 2011 to attend the wedding of his younger brother, nine days parole in December 2013 and 30 days on 26 December 2014 to appear for his master's degree exams. From November 2017, considering his good conduct during the jail time he was moved to an "open jail. On 2018, Sabrina Lal, only surviving family member of Jessica Lal said in a letter to the welfare office of Tihar jail that, she had no objection to the release of Manu Sharma as he had spent 15 years in prison. On June 2, 2020, Delhi Lieutenant Governor allowed him premature release after a recommendation by the Sentence Review Board (SRB).

In **Vikas Yadav V. State of U.P.**,³⁵ an application was filed by Vikas Yadav for release on interim bail for a period of one month to attend the marriage ceremonies of his sister. The appellant had been convicted for the offence of abducting and murdering Nitish Katara and causing disappearance of evidence by burning his dead body. He had been sentenced to undergo life imprisonment. The plea of the applicant was that his real sister had to marry

³³ 1978 Cri.L.J 766 (Del.); A.I.R 1978 SC 1091.

³⁴ A.I.R 2010 SC 2352.

³⁵ 2003 VIII AD Delhi 299, 108 (2003) DLT 357.

and he being the real brother of the bride was under a duty to not only actively participate in all family functions but he also had to made arrangements for the same. Invitation card of the marriage function was also annexed with the application. The reliance had also been placed by the applicant on the decision of a Division Bench of this court in **Shakuntla Devi V. State,**³⁶ **and Inder Singh V. State.**³⁷ The application was also contested on the ground that he had misused the liberty granted to him earlier during the period when he was on bail in Jassica Lal's murder case. He had committed the present offence while on bail in the said case. No doubt, the court had to be sensitive to the need of the convict to re-connect with his family and friends to re-establish his family ties. But the court had to exercise this discretion with utmost care and caution, balancing one's right and liberty on one hand and the interest of the society on the other hand. However, the custodial parole was granted to him to attend the marriage ceremony of his sister.

Parole and Impact of COVID19

The contagious corona virus is dangerous to life. People who suffer from diabetes, hypertension, chronic respiratory diseases, cardiovascular diseases or old age stand at a higher risk. The potential of this virus to spread increases in overcrowded areas. Considering the condition of prisons in India, many people were at a huge risk of catching this deadly virus. In the wake of the Covid-19 outbreak, the Delhi Government has introduced a new category of Parole Known as Emergency Parole which is intended to decongest jails in emergent situations such as an epidemic or a natural disaster. The Supreme Court of India passed an order urging States and Union Territories to effectively release the prisoners on parole taking into account the nature of offence committed.

Having regard to the provisions of Article 21 of the Constitution of India, it has become imperative to ensure that the spread of the Corona Virus within the prisons is controlled. Prime Facie, the order left it on the states to determine which class of prisoners can be released on parole. As a result, certain problems arose and a Public Interest Litigation was filed in the Bombay High Court against such classification for being violative of Article 14 of the Constitution of India.

Due to overcrowding it is difficult for jail inmates to maintain social distancing to prevent the spread of corona virus, which has been declared as a pandemic by the World Health Organization. If prompt measures are not taken, the situation might deteriorate in India. The Court has asked the Union of India to ensure that all the prisoners having been released by the States/Union Territories are not left stranded and they are provided transportation to reach their homes or given the option to stay in temporary shelter homes for the period of lockdown. Prisons in India are congested and the overcrowding has led to several health issues along with violation of human rights and dignity of the incarcerated person.³⁸

³⁶ 1996 Cr. L..J. 2954.

³⁷ A.I.R 1978 SC 1091.

³⁸ [IN RE: CONTAGION OF COVID 19 VIRUS IN PRISONS, 2020 SCC OnLine HYPERLINK "http://www.sconline.com/DocumentLink/De4I2UzS"ne SC 356, order dated

The process of release faced hurdle. While the decision has been taken by the government and the prisoners have been identified, the process of obtaining bail or parole has to be followed as earlier. The bail order has to be issued by a relevant court, while parole has to be sanctioned by authorized jail officer. Even though the decision to release them has been taken, the prisoners have to send bail applications to the designated courts.

Selection of eligible prisoners, verification of their records and completion of all formalities takes time. The superintendent of a jail is authorized to grant parole, and there is a process to be followed, some paperwork to be done. It was begun at a time when lockdown restrictions were the most severe. Prisoners released had no means to reach various destinations.

Conclusion

Conviction for a crime and subsequent imprisonment do not engulf human dignity and fundamental rights of persons. Parole is the most immediate and basic right available to prisoners. It must not be viewed as benefits doled out by the State but as rehabilitative process that is essential to any prison system. It is essential to remember that an individualistic and humane approach lies at the heart of rehabilitation. These foundational principles cannot be lost sight of and must constitute our understanding and enforcement of provisions on eligibility, application process and conditions for release on Parole. Therefore, the success of parole system depends upon a number of factors. Material and information before the Board for taking decisions, characters and integrity of the members of the Board, efficiency of the parole officers, all become important in the successful working of parole system. Parole should be liberally granted. We do not hate the person but the crime they commit and our job was to treat them as humanely as possible so they had a chance of reforming. However, the Indian prisons with their crowded spaces and inadequate healthcare facilities are at high risk of becoming epicenters for the spread of COVID-19.



07.04.2020<https://www.scconline.com/blog/post/2020/04/07/covid-19->

HYPERLINK

<https://www.scconline.com/blog/post/2020/04/07/covid-19-ensure-that-prisoners-released-on-parole-are-not-left-stranded-due-to-lockdown-sc-to-centre/>