



ISSN 2278 – 0211 (Online)

Indian Parole System- A Review of Judicial Stand and Critical Issues

NSSR Murthy

Professor, Mumtaz College of Engineering & Technology, Malakpet, Hyderabad, India

Dr. MSV Srinivas

Professor, Mahatma Gandhi Law College Hyderabad, India

Abstract:

Parole is reforming process for prisoners to help them to come into the mainstream of life. It is an instrument for social rehabilitation of the prisoner. The present paper reviews the concept of parole and Indian parole system. Judicial stand on parole and various court decisions. It also discusses Steps to prevent misuse of parole and balancing social security and human rights through parole is elaborated.

Keywords: Parole, prisoner, selection and supervision, social security, human rights.

1. Introduction

Parole is a major correctional process in jail reforms. It is a part of consideration granted to the prisoners to help them to come back into the mainstream of life. It is a tool for social rehabilitation of the prisoner. In recent times, the concept of parole been utilized by the highly influential class to escape the prison sentence. Thus, we have so many examples who are enjoying free life, even after committing inhuman offences and conviction. There are lakhs of other prisoners, uninfluential, and do not have means to utilize the process, or refused the benefit on simple grounds. The present article is to review the concept of parole, its objectives, procedures in the legal system and critical issues in parole.

1.1. Parole

Parole[1] is the conditional release of an offender who has already served a portion of his sentence in a correctional institution. While on parole, the released prisoner remains in the custody and under the supervision of the paroling authority. The period of parole may be as long as the time the prisoner would otherwise have served in the institution or it may be terminated earlier. At any point during this period, parole may be revoked for a violation of parole regulations and the violator must return to the institution to serve the remainder of his sentence in confinement. Walter Croflon advocated reform of the individual as a purpose of imprisonment and moreover urged that "Tickets of leave" be given to those who showed a change in attitude. Thus, what is now called parole was from its start to the concepts of offender reformation and indeterminacy in sentencing. Parole ideally includes treatment in the form of supervision, guidance and assistance. It has been rightly held that all released prisoners can benefit from the guidance of parole officers, but the benefit that society itself would derive if all prisoners were kept under close surveillance during the period of adjustment immediately following incarceration, is also considerable. A prisoner who has spent a decade inside has lost touch with the everyday world of transport, shopping and renting, but has gained a set of different everyday living skills relevant to prison life that needs to be unlearned [2]. Parole gives a chance of reformation to the prisoner. It can have a positive impact towards changing the prisoner's attitude to what they have done and make them come to accept that their behavior was wrong [3]

1.2. Objectives of Parole

Parole had its root in the Positivist School. The word 'Parole' comes from the French word "je donne ma parole" meaning 'I give my word', while the dictionary definition is 'word of honour. The term 'parole' was first coined in a correctional context in 1847 by Samvel G. Howe, a Boston penal reformer. The Classical School of thought opined that people are free to choose their own conduct. While committing any crime, an offender always calculates his gain, his pleasure, at the cost of other's pain. So he must be punished. But the Positivist school argued that it is the circumstance which forces anybody to commit crime. So he must be rehabilitated. From there the thought of parole arose. It provides a second chance to the prisoner to rehabilitate himself. The offender might have committed an offence, but it is not desirable that he always be labeled and must not be given any chance to rehabilitate himself. Its objectives are twofold: the rehabilitation of the offender and the protection of society. It is a means of helping the inmate to become a law-abiding citizen, while at the same time ensuring that he does not misbehave or return to crime. The paroling function may be important as a "safety valve" to help control the levels of prison populations in relation to capacities and thus to avert the dangers and

costs of over-crowding. Parole is a correctional method to bring about the reformation in the characteristics of such persons. If the delinquent proves, he can mend his ways and shall refrain from such criminal activities which are detrimental to community and if he shows an overall improvement in his character and conduct, the purpose of this correctional method is fulfilled.

1.3. Parole in India, Selection and Supervision of Offenders Paroled

In India, the grant of Parole is largely governed by the rules made under the Prison Act, 1894 and Prisoner Act, 1900. Each of the States has its own parole rules, which have minor variations with each other. There are two types of parole- custody and regular. The custody parole is granted in emergency circumstances like death in the family, serious illness or marriage in the family Regular Parole is allowed for a maximum period of one month, except in special circumstances, to convicts who have served at least one year in prison. It is granted on certain grounds [4] such as:

Serious Illness of a family member
 Accident or Death of a family member
 Marriage of a member of the family
 Delivery of Child by wife of the convict
 Maintain family or social ties
 Serious damage to life or property of the family of convict by natural calamities
 Pursue filing of a Special Leave Petition.

Certain categories of convicts are not eligible for being released on parole like prisoners involved in offences against the State, or threats to national security, non-citizens of India etc. People convicted of murder and rape of children or multiple murders etc. are also exempted except at the discretion of the granting authority. Selection for parole is based on two separate considerations. First one, more or less arbitrary because it is usually fixed by statute. The second entirely discretionary involving a decision and a calculated risk by the parole board. The First consideration is the offender's parole eligibility, the second his suitability for parole. To these considerations which are explicit, there may be added others which are no less decisive because they are less tangible.

Parole cannot be granted to every type of offender. The purpose of parole is to bring about a change in the behavior of the person sentenced and also at extraordinary circumstances such as serious illness or death of near relatives, death of the kith and kin and so forth. The offender paroled has to be kept under close surveillance by the police so that he does not relapse into the commission of crime. Even though the paroled offender is not in physical confinement, for all practical purposes he is a person sentenced and every of his movement of him has to be closely monitored so that his associations and his activities which perpetrate crime can be mitigated.

1.4. Parole Regulations

- 1) The paroled person should hold the permit always and should produce on being tendered by any police officer or magistrate or any other competent authority.
- 2) He shall not associate with notorious bad characters, ruffians and anti-social elements.
- 3) He shall not indulge in coercing any of the witnesses or complainant to adduce evidence in his favor.
- 4) He shall report any change in the address or his movement and leaving the locality or jurisdiction which is specifically prescribed in his behalf.
- 5) He shall also obey all laws and public ordinances.
- 6) He shall not indulge in alcoholism, intoxicating beverages and narcotics.

1.5. Judicial Position on Parole

In the view of Indian judicial system, parole is claimed to be a success in rehabilitation and checking crime attitude.

Parole has been defined by Hon. Court as "a conditional release of a prisoner, generally under supervision of a parole officer, who has served part of the term for which he was sentenced to prison". Parole relates to executive action taken after the door has been closed on a convict. [Mohinder Sing vs state of Haryana, 2000]

During parole period there is no suspension of sentence but the sentence is actually continuing to run during that period also." [sunil fulchandshah vs Union of india ,2001]

Hon. court remarked that "It is not out of place to mention that if the State takes up a flexible attitude it may be possible to permit long spells of parole, under controlled conditions, so that fear that the full freedom if bailed out, might be abused may be eliminated by this experimental measure, punctuated by reversion to prison. Unremitting insulation in the harsh and hardened company of prisoners leads to many unmentionable vices that humanizing interludes of parole are part of the compassionate constitutionalism of our system" [Babu Singh and Ors. v State of U.P]

The Court opined that persons kept incarcerated and embittered without trial should be given some chance to reform themselves by reasonable recourse to the parole power, calculated risks, by release for short periods may, perhaps, be a social gain, the beneficent jurisdiction being wisely exercised. [Babulal Das v The State of West Bengal]

In Inder Singh v The State of Delhi Administration the Court has emphasized on the need for liberal use of parole even in the case of heinous crimes.

1.5.1. Critical Issues

Two significant issues arise in case of Parole in contemporary India- one, the refusal of grant of parole on insufficient grounds and second, the misuse of parole.

Misuse of Parole: concept of parole has been emphasized by the Judiciary and penologists to reduce the problems of prison life, whether parole really serves a purpose or provides a way to escape becomes a significant question. Misuse is clearly evident in the following cases.

In Sidharth Vashisht @ Manu Sharma v The State of N.C.T. of Delhi case, Manu Sharma, a murderer, asked for parole on three grounds: to attend religious rites for his late grandmother, to tend to his ageing mother and, to take care of the family's business interest. He misused parole and returned to Jail only after he was traced to a Delhi pub enjoying his night life with friends, drinks and dance.

In Bibi Mohanty case. The convict, the son of a DGP, Orissa, was sentenced for rape of a German national. He was sentenced to seven years rigorous imprisonment along with fine. He was granted fifteen days parole to visit his ailing mother. He escaped and his father pleaded ignorance about his whereabouts. A significant period of seven years elapsed, The police caught him from Kerala. The convict changed his identity. His father refused to accept that the person arrested was his son. A court has recently ordered the DNA test to establish his identity.

Parole also provides a dangerous opportunity to a criminal to engage in criminal activities while on parole. As in Saibanna v State of Karnataka case and in the case of Krishan v State of Haryana.

1.6. Refusal of Parole

Release on parole is a wing of the reformatory process and is expected to provide opportunity to the prisoner to transform himself into a useful citizen. Parole is a grant of partial liberty of lessening of restrictions to a convict prisoner. The Code of Criminal Procedure does not contain any provision for grant of parole. By administrative instructions, rules have been framed in various States, regulating the grant of parole. Parole Rules or administrative instructions, framed by the Government are purely administrative in character and for securing release on parole, a convict has, to approach the Government concerned or the jail authorities. In most cases, the executive acts in a mere mechanical manner, without application of mind and appreciation of facts. They reject parole on grounds like breach of peace or the possibility of the prisoner committing a crime during the parole period, .

The criteria for probable refusal of parole, laid down by Delhi High Court are as follows:

- i) A reasonable apprehension, based upon material available with the Government that the petitioner, if released on bail may not return back to Jail to undergo the remaining portion of the sentence awarded to him;
- ii) A serious apprehension of breach of law and order or commission of another offence by the petitioner if he comes out on parole;
- iii) Past conduct of the petitioner such as jumping the bail or parole granted earlier to him;
- iv) A reasonable possibility of the petitioner trying to intimidate or harm those who have deposed against him or their relatives.

The Court emphasized that it is neither possible nor desirable to exhaustively lay down all such grounds as would justify denial of parole in a particular case. Each case has to be examined by the Government dispassionately and with an open mind,

1.7. Parole Grant-Balance of Human Rights and Social Security

The grant of parole is not a matter of right, but a concession granted to the prisoner. The grant is regulated by rules laid down in each state and is a part of executive discretion. Such discretion cannot be exercised arbitrarily or capriciously. The grant of parole should be based on twin considerations- human rights and social security. It is important to ensure that the convict is not deprived of his rights as a human being. The imposition of sentence, in itself, impairs the exercise of basic rights granted under the Constitution. The liberties and freedoms remain curtailed during the term of sentence. But that should not take away the fundamental humane considerations of life.

The issue of social security is also of concern where the release should not, affect the safety of the community or victims and ensure that the released convict does not use parole to escape from law or commit further offences. A fine balance achieved between security and human right. A significant role has to be played by state and jail authorities in this regard. They should understand the offender's social history. The grounds on which parole to be granted have to be properly examined. The grant of parole should be based on considerations such as:

Nature of Offence and circumstances related thereto;

Time spent in prison;

Conduct of the convict;

Previous antecedents, if any;

Possibility of engaging in illegal activities, committing crimes, during the period;

Possibility of seeking vengeance, causing harassment, in specific categories of crimes;

Impact of release on society;

.It is important that the State must take fair, reasonable and unbiased decision for grant of parole

2. Conclusions

Freedom and liberty of conscience should be the concept of parole and establish societal love and acceptance. Inconsistent orders based on irrelevant grounds, False police reports, misuse of power and position should be avoided in parole. . It is important to review the existing system and procedures of Parole and give serious consideration so that the deserved should not be rejected.

3. References

- i. History of Parole System, www.wikipedia.org
- ii. JaytilakGuha Roy, Prisons and Society: A Study of the Indian Jail System (Gian Publishing House Delhi 1989)
- iii. J. C. Chaturvedi, Penology and Correctional Administration (Isha Books New Delhi 2006).
- iv. All India Jail manual
- v. Indian Kanoon.com for relevant court decisions
- vi. Vidya bhushan, Prison Administration in india
- vii. Justice Mulla committee report on jail reforms 1988
- viii. AP puranik, Rights of prisoner's in jails, 1992
- ix. Helen Leland Witmer, History, Theory and Results of Parole, The 18 Am. Inst. Crim. L. & Criminology (1927-1928)
- x. Cass, E. R. Study of Parole Laws and Methods, Prison Association of New York, 1921,
- xi. Eichorn, W. H., Methods and Results of Parole, Journal of Criminal Law and Criminology, vol 11 page 368.