

## **REVISITING THE CONCEPT OF PAROLE SYSTEM IN INDIA: CRITICAL ANALYSIS**

Sushree Saswati Mishra

*Research Assistant, KIIT School of Law, Kalinga Institute of Industrial Technology,,  
Bhubaneswar, Odisha, Email: sushreesmishra30@gmail.com*

### **Abstract**

*Crime is a part of our society, but the reaction and response to crime makes different criminal justice system globally. Administration of such criminal justice system plays an important role in shaping the understanding of society's response towards crime and criminal. With changing needs of this globalizing world, the idea of criminal justice system had also made an shift from giving harsher punishments to restorative and reformative justice. Parole is one of such concept of implementing rehabilitation and reformative measures in correctional process of jail reform. It is a reformation which helps the prisoners to reintegrated in the society which helps him in social rehabilitation. Now a days this concept of parole is changing in India. Thus a revisiting to the concept of parole in India is much required. In the Covid-19 pandemic, the overcrowded prisons also an alarm for reformation of parole system in India.*

*This study will be a doctrinal research based on various secondary data available in different books, journals and websites. In this paper, the author will be dealing with the critical analysis of parole system in India, misuse of Parole and very importantly the effect of Covid-19 pandemic and various High court and Hon'ble Supreme Court decision on Parole orders.*

**Keywords** - Parole, Rehabilitation, Prisons, Reformation, Correctional administration.

### **Introduction**

The concept of parole is crucial in the criminal justice system. Based on the good behaviour, while serving sentence, a temporary release that is Parole is given. This concept is offered to the prisoners in order to reintegrated in the society. Military law gave rise to the concept of parole. A temporary release was given to the prisoners so that they can go to their family but will return with a promise when their release period gets over.<sup>1</sup>

Parole is ideal for treatment that includes monitoring, supervision and assistance. Although the parole is granted by the parole officers, the society is actually getting benefit when such

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<sup>1</sup> Jaytilak Guha Roy, *Prisons and Society: A Study of the Indian Jail System*, GIAN PUBLISHING HOUSE, DELHI, 169 (1989).

prisoners are under vigilance during the release.<sup>2</sup> The paradigm has altered considerably in recent years, with the wealthy and powerful misusing parole to avoid serving prison sentences. Thousands of other offenders, on the other hand, have their parole petitions rejected because they are poor and powerless, lack the resources to use the process, or have been wrongly denied the benefit for trivial grounds.<sup>3</sup>

Now a days this concept of parole is changing in India. Thus a revisiting to the concept of parole in India is much required. In the Covid-19 pandemic, the overcrowded prisons also an alarm for reformation of parole system in India.

### **Conceptualization**

The term “parole” is originated from a French word "je donne ma parole," that means "I give my word," or "word of honour". In 1847 Samvel G. Howe from Boston for the 1<sup>st</sup> time used the word "parole" in a correctional context. Parole was later developed in 1876 by Brockway Zebulon as a way to minimise jail overcrowding while also rehabilitating convicts through their good behaviour. Parole is a monetary compensation given to inmates for good behaviour. It entails a decrease in the number of years and months spent in prison.

Military law gave rise to the concept of parole. A temporary release was given to the prisoners so that they can go to their family but will return with a promise when their release period gets over. Over the years, Parole got its position in India's criminal justice system, by giving a room to the prisoners to spend time with society, but it can only be done once the prisoner had already served a portion of their sentence awarded.

The Positivist School gave root to parole. According to this school, due to certain circumstances, the person commits crime hence that person need a chance to reform and rehabilitate himself. As per the classical school of criminology, people commits crime because of the free will and the offender is actually calculating the pain and pleasure derived from the offence and according work for it. Hence classical school gives no scope for reformation, on the other hand positivist school gave rise to parole concept. Though the prisoners committed crime, we cannot stigmatised that for the whole life and will not give him a chance to reform.

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<sup>2</sup> J. C. Chaturvedi, *Penology and Correctional Administration*, ISHA BOOKS, NEW DELHI, 8 (2006).

<sup>3</sup> Dr. K Sangeetha, *A Critical Analysis on Law Governing Parole in India*, SCH INT. J LAW CRIME JUSTICE, (2019), [https://saudijournals.com/media/articles/SIJLCJ\\_29\\_263-270\\_c.pdf](https://saudijournals.com/media/articles/SIJLCJ_29_263-270_c.pdf).

Thus Parole's 2 fold goals are - prisoners reformation and making the prisoner a law abiding citizen for the protection of the society and to decrease recidivism.<sup>4</sup>

### **Literature review**

In the article of Mrs. Nayana Medhi and Prof. AK Sinha<sup>5</sup>, they stated parole as an social control weapon which acts more effectively than the punitive system. Here they mean parole as treating prisoners in a humanely way in order to make them a responsible citizen from a criminal. Thus parole according to them is Social instrument of rehabilitation and Government is implementing more rules and regulation as to the upliftment of humanity in prisoners.

The concept of parole is not a new one to consider, as written by NSSR Murthy, and Dr. MSV Srinivas in India on International Journal of Innovative Research & Development<sup>6</sup>. In this they highlighted how parole is a reforming procedure for convicts to reintegrate into society. It is a process of prisoner's social rehabilitation. The current study examines the notion of parole as well as the Indian parole system. The judicial position on parole as well as other court rulings It also elaborates on steps to prevent the abuse of parole including reconciling social security with human rights via parole.

Furthermore, Dr. K. Sangeetha, in her paper A Critical Analysis on Law Governing Parole in India<sup>7</sup>, where she discussed about parole being an reformative process by giving opportunity to the prisoners. The parole system refers to the process of releasing inmates on parole by suspending their sentences in compliance with the rules in force at the time. Furthermore, she claims that some types of criminals or prisoners are ineligible for parole release. She very clearly described how those convicted of murder, rape of minors, or many murders, among other things, are likewise excluded, unless the issuing authority decides otherwise. She distinguished between parole and furlough and explored their many elements. She has emphasised how parole is primarily an executive function, and that examples of detainees being released on parole were almost unknown until this Court and other High Courts in India issued orders of releasing on parole on humanitarian grounds in recent years.

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<sup>4</sup> Bruce Vichert and Walter Zahnd, *Parole: Low and High Risk Parolees*, 7(1) CANADIAN JOURNAL OF CORRECTIONS, 39-48 (1965).

<sup>5</sup> Mrs. Narayan Medhi and Dr. AK Sinha, *Parole the reformative instrument of punishment in prisonition*, RESEARCH JOURNAL OF USLR.

<sup>6</sup> NSSR Murthy, and Dr. MSR Srinivas, *Indian Parole System- A Review of Judicial Stand and Critical Issues*, INTERNATIONAL JOURNAL OF INNOVATIVE RESEARCH AND DEVELOPMENT, (Aug 2015), [http://internationaljournalcorner.com/index.php/ijird\\_ojs/article/viewFile/135804/94926](http://internationaljournalcorner.com/index.php/ijird_ojs/article/viewFile/135804/94926).

<sup>7</sup> *Id.* at 3.

### **Objective of the study**

In this research paper, the researcher will be focusing on Parole system in India. The objectives behind the study is to -

1. Understand critically the concept of parole in India and need for its reformation.
2. Find case studies on misuse of grant of parole and judicial trend.
3. Analyse orders of Supreme and High court on granting parole amid covid-19 pandemic.

### **Theoretical framework**

There are several ideas that explain how and why parole as a measure of reformation came to be, as well as the rationale for including it into the criminal justice system.

Custody Theory: Parolees must be retained in custody of the warden, parole board, or other executive agency, according to statute. Courts have deduced the custody theory from this. Parole "has the legal impact of imprisonment," and the parolee is "constructively a prisoner...bound by his parole's rules and restrictions." The parolee is "essentially in the same situation as a 'trustee'..."<sup>8</sup>. "A violation of the conditions of his release relegates him to the status of an escaped prisoner. The custody theory, like the others, is frequently used to protect parole cases from judicial scrutiny and review on both non-constitutional and constitutional grounds. The parolee's position is restricted to that of an inmate, and parole is an administrative exercise of the prison's discipline authority, subject to the broad discretion afforded to prison officials when dealing with those entrusted to their care."

Exhausted Rights: This theory is usually connected to parole which consider parole as a part of prison system rather exercising it in sentencing policy. No where the aftermath of the sentence is discussed. But under due process of law as safeguarded by the Constitution of India, certain Prisoner's rights were given until the sentence period get exhausted. This theory wants to relate the parole concept with the exhausted rights given as human rights and constitutional rights especially under Art. 20, which can be safely assured during the stay in the prison. Hence parole being a part of prison can be well explained by this theory rights.

"Parens Patriae: this theory is linked with custody. While we are considering rehabilitation and reformation model of treatment for the prisoners, flexible and discretionary power of the parole granting authority should also be taken into account. "The Board of Parole as an identity

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<sup>8</sup> *Comment, The Parole System*, 120 UNIVERSITY OF PENNSYLVANIA LAW REVIEW, 282-377, (1971).

of interest with the parolee... to nurture his rehabilitation..." it assumes.<sup>9</sup> The argument serves to insulate the parolee from judicial concern because one does not need to be safeguarded from another who has an identity of interest. This theory's justification and effects are similar to those that have long been used in juvenile law but were recently rejected in *In re Gault*.<sup>10</sup>

### **Research methodology**

This research is based on Qualitative, doctrinal type (non-empirical type of research). Doctrinal research is also known as traditional or pure form of research for acquiring knowledge. Case laws are reviewed and materials are collected from secondary sources. Print and electronic media, such as search engines and internet databases, are also used to gather information about the study. The research design includes the conceptualization of Parole, and will follow descriptive methodology to describe the various issues in this paper. The researcher tried to critically evaluate the study's subject and strives to achieve the study's objectives primarily through the use of books, papers, journals, and other sources of information based on the material and information available.

### **Findings of the study**

#### **1. Understand critically the concept of parole in India and need for its reformation**

The award of Parole in India is governed by the legislation issued under the Prison Act of 1894 and the Prison Model of 1900. Each state has its own set of parole rules that are slightly different from one another. The two sorts of parole are custodial and regular parole. In emergency cases, such as a family death, critical illness, or a family marriage, custody parole is granted. It is limited to a twenty-four-hour period. During this time, the prisoner is escorted to and from the visitation location. The Superintendent of Jail grants release after obtaining proof of the circumstances from the concerned police station. "The idea of parole, as established in the case of *Budhi v. State of Rajasthan* (2005), serves three purposes:"

1. "As a motivator for prison inmates to change their ways."
2. "Ensure that the prisoners' family relationships are as intact as possible, as they may be prone to fracture as a result of the prisoner's protracted confinement."
3. "Assist the offenders in gradually assimilating into society and adapting to its folds."

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<sup>9</sup> *Menechino v. Oswald*, 430 F.2d 403, (1970).

<sup>10</sup> *In re Gault*, 387 U.S. 1 (1967).

Section 432 of the Criminal Procedure Code of 1973 governs the power to suspend or remit sentences. The Supreme Court said specifically in *Sunil Fulchand Shah v. Union of India*<sup>11</sup>(2000) that "parole does not imply the suspension of punishment." As a result, it's clear that the Criminal Procedure Code's Section 432 does not apply to parole. Parole comes under state list hence we no uniform laws present to govern it. As a result, when it comes to parole concerns, there is some ambiguity. India lacks codified parole legislation as compare to US and UK and the ability to rule on parole concerns is based primarily on statutes and decisions. As a result, India need strong parole legislation.

## **2. Judicial Trend of the grant of Parole**

As stated in the case, "Parole, a penological innovation, is hailed as a success in terms of rehabilitation and reducing recidivism"<sup>12</sup>. Later the view of the Indian judiciary in *Mohinder Singh*<sup>13</sup> case, "A conditional release of a prisoner, often under the supervision of a parole officer, who has served part of the term for which he was condemned to jail." Parole refers to a temporary release which can only be given after some period of the sentence is served and there is no suspension during this phase rather once the prisoner return will compensate back those release period<sup>14</sup>.

In *Babu Singh and Ors. v State of U.P.*<sup>15</sup> the court stated that, if the state is of flexible nature parole for longer period can be issued which is way better than giving full bail as here we have vigilance over the prisoner, Justice Krishna Iyer said. Keeping a person in harsh and inhuman condition not only harm the persons physically also mentally. Hence to maintain human vibes as accepted in constitution, Parole system is important<sup>16</sup>.

In the case of the Election Commission of India vs. Mukhtar Ansari (2017), the Delhi High court, stated that we should not confuse bail and custody parole and neither should take daily visit or long period time in Parole. Similarly in *Babulal Das v The State of West Bengal*<sup>17</sup>, The Court emphasized on the benefit of parole. By using Parole, the convicts and the under trials must get a chance of reformation by short term release. This will not only help the convict but also will help the society if exercised in a proper manner. In the case of *Inder Singh v. The*

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<sup>11</sup> *Sunil Fulchand Shah v. Union of India & Ors*, (2000) MANU/SC/0109/2000 (India).

<sup>12</sup> *Krishan Lal v. State of Delhi*, AIR 1976 SC. 1139.

<sup>13</sup> *State of Haryana & Ors. v. Mohinder Singh*, (2000) MANU/SC/0073/2000 (India).

<sup>14</sup> *Joginder Singh v. State of Punjab*, (2001) 6 SCALE 280.

<sup>15</sup> *Babu Singh and Ors. v State of U.P.*, (1978) CriLJ 651.

<sup>16</sup> *Gudikanti Narasimhulu and Ors. v. Public Prosecutor, High Court of Andhra Pradesh* AIR 1978 SC 429.

<sup>17</sup> *Babulal Das v The State of West Bengal*, AIR 1975 SC 606.

State (Delhi Administration)<sup>18</sup> the Court has emphasized on how to use parole judiciously even in cases of grievous nature.

In the case of *C.A. Pious v The State of Kerala and Anr.*<sup>19</sup>, the court discussed the scope of imprisonment and stated, "In our view, penal humanitarianism and rehabilitative desideratum warrant liberal paroles, subject to security safeguards, and other humanising strategies for inmates so that the dignity and worth of the human person are not desecrated by making mass jails anthropoid zoos," Institutional transformation and the search for alternatives must be infused with human rights awareness. "Section 433A Cr PC does not prohibit parole or other release during the 14-year period," it continued.

It was again seen in a recent case of *Sanjay Kumar Valmiki v. State of NCT of Delhi*<sup>20</sup> (2020) "Whereas parole is a discretionary exercise, furlough is a favourable privilege of the offender to be considered for release, which the convict can claim if he fits the Act's and Rules' standards." In emergency instances, beside parole, furlough can be given if it meets the conditions. Only based on annual good report prisoner is allowed furlough where the period will no more be compensated rather will be suspended for that short period only as stated in 1171 to 1178 of the Delhi Prison Rules, 2018 and Rule 1223.

### **Misuse of Parole: A route of Escape and Re-offending**

Its been a long time we are discussing about the concept on parole and different judicial judgement and trend that developed the use of parole as a reformative tool going beyond the negative impact of prison life. But then the main concern arise as to the implementation and actual functioning of parole system in India. The most highlighted case of Manu sharma misusing the parole questioned the jail management as well as the role of state in approving parole in jessica murder case.

In *Sidharth Vashisht @ Manu Sharma v The State (N.C.T. of Delhi)*<sup>21</sup>, Jessica was murdered by Manu Sharma at 2 a.m. on April 30, 1999. Manu came from a well-connected political family. The Delhi High Court condemned him to life in jail and fined him on December 20, 2008. He was granted one-month parole on September 24, 2009. It was later extended for another month. Manu Sharma requested parole for three reasons stating that he will attend last riot ceremonies of grandmother, to take care of her mother who is ill and to protect the family's

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<sup>18</sup> *Inder Singh v. The State* (1978) 4 SCC 161.

<sup>19</sup> *C.A. Pious v The State of Kerala and Anr* AIR 2007 SC 3221.

<sup>20</sup> *Sanjay Kumar Valmiki v. State of NCT of Delhi*, (2019), W.P (CRL) 2049.

<sup>21</sup> *Sidharth Vashisht @ Manu Sharma v The State (N.C.T. of Delhi)* AIR 2010 SC 2352.

commercial interests as the majority stakeholder of Piccadilly Industries. On the 10th of November, 2009, he was apprehended in a Delhi pub, where he was enjoying his nightlife, which was highlighted in the newspapers. Also the parole granted for the visit to sick mother, who was found attending various event and parties throughout Delhi<sup>22</sup>. After further investigation, it was found the leave granted for grandmother death was also a lie as his grandmother already died in 2008 before a year and 7 month back. Even after all these reported incident, the High Court granted him 5 days leave for brother's wedding in November 2011, but only on the condition that he not go to any clubs or discos. Justice VK Shali cited his behaviour while on parole, stating that he went to discotheques in violation of his parole requirements. 'He doesn't have to attend all (wedding activities),' Shari had said earlier when denying his bid for release from November 10 to November 20. The Delhi Police, on the other hand, reversed their previous position of opposing Sharma's parole. The Delhi Police had objected to Sharma's request in a previous document filed with the court last week, claiming that his "prior conduct did not entitle him to parole."<sup>23</sup>

This created a feeling of dozen among the other inmates of the jail. Being wealth and powerful was never a condition for parole but repeatedly the petition of parole of poor inmates were got rejected even if it have genuine reason to leave. On the other hand hardly rich and affluent people serve their sentence in jail. When Manu sharma even after violating rules were given parole it was a concern for the authority to now check its misuse<sup>24</sup>. as per an report by 2009 only 11 prisoners were granted parole out of 132 applications<sup>25</sup>.

Bibi Jagir's Kaur is another case where she was sentenced to jail for 5 years, for playing an important role in kidnapping her daughter. But just after 4 months in prison she was given parole and received many comforts as she was a former Punjab Cabinet Minister<sup>26</sup>.

Biti Ghotra Mohanty is the most discussed parole case. Here the son of the DGP Odisha was convicted for raping a German national for seven years of imprisonment. Later he was given a period of 15 days as parole in 2006 as his mother was ill. His father stands for his surety but

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<sup>22</sup> *Jessica Lall Murder Case: Manu Sharma granted Parole*, The Times of India (New Delhi), (Nov. 16, 2011), [https://articles.timesofindia.indiatimes.com/2011-11-16/india/30405164\\_1\\_30-day-parole-manu-sharma-parole-application](https://articles.timesofindia.indiatimes.com/2011-11-16/india/30405164_1_30-day-parole-manu-sharma-parole-application).

<sup>23</sup> *Manu Sharma gets 5 day Parole despite Violations*, Tehelka, (16 Nov. 2011) [https://www.tehelka.com/story\\_main50.asp?filename=Ws161111JESSICA\\_MURDER.asp](https://www.tehelka.com/story_main50.asp?filename=Ws161111JESSICA_MURDER.asp).

<sup>24</sup> *Parole And Prejudice*, 6 TEHELKA MAGAZINE, (2009), [https://www.tehelka.com/story\\_main43.asp?filename=Ne281109parole\\_and.asp](https://www.tehelka.com/story_main43.asp?filename=Ne281109parole_and.asp).

<sup>25</sup> *Amend Laws to prevent parole misuse*, HARDNEWS, <https://www.hardnewsmedia.com/2009/11/3347>.

<sup>26</sup> *After four months in jail, former Punjab minister JagirKaur given parole*, NDTV, (2012), <https://www.ndtv.com/article/india/after-four-months-in-jail-former-punjab-minister-jagir-kaur-given-parole-252765>.

later he escaped and his father said he didn't had any idea about this incident. After almost 7 years he was found in Kerala with a different identity. After investigation and police apprehension, when he was brought back to Odisha his father denied to recognize him. High Court judge immediately order DNA testing to find the true identity of the convicted person.

After this with due inquiry a report was made by the Comptroller and Auditor General (CAG) which stated that there was no misuse of Parole rather parole became the most convenient way to escape by majority of the inmates. "The auditor obtained records from the Amritsar Central Jail and four Superintendents of Police and discovered that between May 2001 and May 2008, more than 8,200 prisoners convicted of serious crimes under the NDPS Act, such as murder, rioting, and carrying deadly weapons, were released on parole but did not surrender even after their parole period had expired"<sup>27</sup>. The police have a poor track record in catching parole violators. Between 2007 and 2011, just 310 people were re-arrested in Maharashtra, 80 in Punjab, and 14 in Uttar Pradesh. "It's not a big problem if you skip parole. Even persons convicted of serious crimes can simply acquire no-objection certifications regarding their character and be eligible for parole. "From there, it's only a matter of not reporting back to prison," a senior IPS official explains<sup>28</sup>.

Grant of Parole also provides a dangerous opportunity to the convicts to commit crime again if proper vigilance was not done. Taking the example of the case Saibanna v State of Karnataka<sup>29</sup>, the convict was awarded with the life imprisonment for murdering his 1<sup>st</sup> wife. He was granted parole and during her temporary release he again murdered his 2<sup>nd</sup> wife and child by inflicting 21 injury to them. The Supreme Court here accepted the fact that this is a case of "rarest of rare case" which contain such grievous and heinous crime while on a release in Parole. Krishan v State of Haryana<sup>30</sup> is yet another instance, when the accused again did a murder while on parole leave for his 1<sup>st</sup> conviction sentenced to life imprisonment.

Thus analyzing these cases, it is quite clear as to how effluent people misuse parole for own purposes. This not only affects the society but also creating a question in the mid of poor inmates who could ever get parole for genuine reasons. Also it shows the implementation and jail authority capacity which is actually very weak, as a result of which we see such mishaps

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<sup>27</sup> Pradeep Thakur, *60% convicts don't return after parole*, TNN, (2009), [https://articles.timesofindia.indiatimes.com/2009-11-13/india/28082072\\_1\\_cag-parole-absconding-prisoners](https://articles.timesofindia.indiatimes.com/2009-11-13/india/28082072_1_cag-parole-absconding-prisoners).

<sup>28</sup> *Maharashtra tops Parole jumper's List*, TOI, (2012), [https://articles.timesofindia.indiatimes.com/2012-06-05/india/32054766\\_1\\_parole-rules-parole-jumpers-ips-officer](https://articles.timesofindia.indiatimes.com/2012-06-05/india/32054766_1_parole-rules-parole-jumpers-ips-officer).

<sup>29</sup> Saibanna v State of Karnataka, (2005) JT 5 S.C. 564.

<sup>30</sup> Krishan v State of Haryana, (1997) CriLJ 3180.

to be happened in our society. Not just these cases, there are no of cases every year where such misuse is happening still we don't have any mechanism to check this now we had stringent laws to solve it. Hence this became a matter of great concern to be addressed soon.

### **3. Grant of parole in COVID-19 pandemic**

We all are now suffering with an very dangerous and widely spread virus, Coronavirus, in this pandemic period. People with various diseases are vulnerable to such virus<sup>31</sup>. The virus is active in crowded places, which we can well found in Jails with many prisoners. Many prisoners all over the country applied for bail or parole just to avoid overcrowding and for not getting affected by this life threatening virus. Jails are the most risk place. As a result, India's Supreme Court issued an order requiring states and union territories to release offenders on parole as soon as practicable, taking into account the nature of the crime.

Indian prisons hygiene and over crowd was always in question. Especially in such pandemic it became a concern for the state and central Government. Hence the Parole order of Hon'ble supreme court also lead to many confusion as to who and under what conditions the parole an be granted and for how many days<sup>32</sup>. according to this judgement Convicts must be released based on the seriousness of the crime they committed or the amount of time they must serve their sentence. Another problem that occurred is the age of the offenders along with their risk of catching virus due to the health conditions or previous medical records. Hence if the criteria will be seriousness of the offence, then these people cannot considered in this<sup>33</sup>. Along with that in the supreme court judgement it was further stated that the state is not required to provide transfer facilities in case the parolee is released under this judgment criteria. The order gave discretion to the state govt. To release on parole but the criteria will be on "the type of offence, the number of years he or she has been condemned to, or the gravity of the offence."

Hence affected by the judgement, a PIL was filled before the Bombay High Court, challenging the classification under Article 14 of the Indian Constitution by referring the case National Alliance for People's Movements Through its National Convener and Others v. Maharashtra State Through its Additional Chief Secretary and Others<sup>34</sup>. Because there was no "sanction of

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<sup>31</sup> *If You're at a Higher Risk*, HAVARD PUBLICATION, (2020), <https://www.health.harvard.edu/diseases-and-conditions/if-you-are-at-higher-risk>.

<sup>32</sup> In Re: Contagion Of Covid 19 Virus in Prisons, Suo Motu Writ Petition (Civil) No.1/2020, [https://main.sci.gov.in/supremecourt/2020/9761/9761\\_2020\\_1\\_8\\_21570\\_Order\\_23-Mar-2020.pdf](https://main.sci.gov.in/supremecourt/2020/9761/9761_2020_1_8_21570_Order_23-Mar-2020.pdf),

<sup>33</sup> *Report of the All India Committee on Jail Reforms* (1980-83), vol.1, para 3.17.

<sup>34</sup> National Alliance for People's Movements Through its National Convener and Others v. Maharashtra State Through its Additional Chief Secretary and Others, SLP (CRL) NO.4116 (2020).

law traceable either to a legislation of the competent legislature, or to an order having the force of law which the executive has authority to make, or to a law declared by the Supreme Court binding on all inmates," the question of whether inmates were entitled to emergency parole as a right was considered in light of the pandemic.

### **Response to Supreme Court's order by different states**

According to a report provided by the Commonwealth Human Rights Initiative, states released around 22,000 convicts by the virtue of Supreme Court's order on the pandemic. Based on the Supreme Court's order different states issued directives. As per the J&K High court, "A person who has been convicted in one case and has served more than ten years in prison (eight years and five months in the case of a woman), except in cases involving militancy, the NDPS Act 1985, the POCSO Act, or crimes against women, acid attacks, or foreign nationals, can be considered for special parole."

Similarly the Allahabad High Court and the Rajasthan High Court added one more criteria that the offender have to deposit 2 surety bonds before being released on parole, declaring that "the aim of the order of parole shall be defeated otherwise due to the unique conditions of a statewide lockdown". The Rajasthan High Court accepted the criteria given by the supreme court regarding the grant of parole depending on the type and severity of crimes they committed. "Special parole can be offered to some types of offenders," the court found, "and such a rider cannot be regarded unconstitutional if the benefit is not given to persons who have been convicted of offences affecting the State or grave offences."

"The UP High Power Committee had requested that the interim bail of 14,854 under trial prisoners be extended for another eight weeks on May 27, 2020. The High Court of Madras cancelled the parole orders of 11 convicts who were released from cells following a March 26, 2020 order by a coordinating bench to decongest prisons in the aftermath of the COVID-19 outbreak." "The Bombay High Court quashed and set aside the Superintendent of Kolhapur Central Prison's orders denying three applicant convicts parole, stating that the amended parole rule, which states that convicts with a maximum sentence of more than 7 years may be considered for release on emergency parole if they have returned to prison on time on their previous two releases, is only applicable if the convict has returned to prison on time on their previous two releases, is only applicable if the convict has returned." "This ruling was eventually upheld in the case of *Milind Patil vs. Maharashtra (2020)*<sup>35</sup> The authority must

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<sup>35</sup> *Milind Patil vs. Maharashtra*, W. P NO.3612 (2021).

proceed on the presumption that the parole period will be automatically extended unless the Court has expressly stated that the parole period will not be prolonged beyond that time in another matter before this Court.”

In the case of *Pintu vs the State of Maharashtra*<sup>36</sup> (2020), the full bench of Bombay High Court, said persons convicted under POCSO Act are not entitled to emergency parole on the ground of Covid 19 by citing the High Court's decision in *Sardar s/o. Shawali Khan vs. The State of Maharashtra & Anr* (2020). “The Supreme Court had extended AG Perarivalan’s parole for a week and ordered the state of Tamil Nadu to provide an escort for his medical tests. Perarivalan was convicted in the 1991 assassination of former Prime Minister Rajiv Gandhi.” In *Pradeep vs. the State of Delhi*<sup>37</sup>, the court held that no distinction can be made between convicts who were released on parole by the jail authorities and those by court orders. Along with that due to the pandemic of COVID-19, the Delhi High Court's High Powered Committee met on May 6, 2021 to discuss, “to take steps to prevent the outbreak of COVID-19 inside jails and to ensure social distancing inside prisons by identifying and determining the class or categories of prisoners who can be released on interim bails or paroles once again.”

“In accordance with a Supreme Court of India order of May 7, 2021, the High-Powered Committee for the states of Uttarakhand and Haryana issued 90 days of parole to criminals who had previously been granted parole. It's worth noting that the Supreme Court instructed the High Powered Committee of the States to release all of the inmates who had previously been released under the Supreme Court's March 23, 2020 order as soon as possible, subject to certain conditions along with the fresh release.”

### **Discussion on the findings**

In criminal law, parole is the release of an offender from jail on the condition that he adhere to specific restrictions. It is a discharge from jail after serving a portion of the term, with the prisoner staying in prison and subject to stipulated restrictions until released, and entitled to return to the facility if any of these terms are violated. Parole is a means of choosing and conditionally discharging convicts from prison when their terms expire in order to aid and regulate them throughout their journey from jail to the society.<sup>38</sup>

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<sup>36</sup> *Pintu vs the State of Maharashtra*, CR. APL NO.515 (2016).

<sup>37</sup> *Pradeep vs. the State of Delhi*, CR. REV. No. 199 (2019).

<sup>38</sup> David Biles (Ed.), *126 Crime and Justice in Australia*, (1977).

One importance of parole would be that it allows the convict to have a free social life while still maintaining some direct control on them. Every prisoner is carefully examined, and those who respond well to the institution's regulated existence and demonstrate the ability to change their attitudes are given substantial leeway and eventually freed to reenter free and open society under restricted terms.<sup>39</sup> As a result, parole is primarily a customised technique of therapy that envisions a final stage of the detained prisoner's reintegration into society.

There is no uniform parole laws and only based on the recommendation of different prison reform committees and supreme court guidelines, laws are made by various states basing solely on them. The action for granting parole in our nation is, in generally, an official activity. The Delhi Prisons Act of 2000 defines "parole system" as "the scheme of freeing inmates from jail on parole by suspending their sentence in compliance with the laws." It's impossible to pin down a single specific definition of parole. It is a crucial component of the whole rehabilitative procedure. In a way, parole is a technique of selecting discharging criminals from prisons and placing them under intensive supervision, with the community receiving continued security while the criminal adjusts and begins to participate in society.<sup>40</sup>

### **Conclusion**

The notion of parole ought to be freedom and moral freedom in order to foster social tolerance and affection. Fake police reports, inconsistency in made in order on extraneous grounds, and abuse of power and status should all be prevented in parole. It is critical to evaluate the present Parole system and processes and give them serious attention so that the deserving are not denied.

A Policy is Required; Rehabilitation necessitates a directed come back to the obligations of living in a free country. A parole system is likely to be logical and necessary in this context. A parole system can operate without the presence of a jail or correctional facility. Parole isn't only a way to relieve the jail population's strain. It is the final phase in the jailed offender's reintegration into society. It is a component of a therapy plan that begins with detention at a facility.<sup>41</sup>

It is followed by effective stages in education for just a trade and a free social activity in the institution, with supervision progressively eased when the prisoner displays correction of his

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<sup>39</sup>Charles L. Newman, *Source Book on Parole and Pardons*, 73 (1970).

<sup>40</sup>N.V.Paranjape, *Criminology and Administration of Criminal Justice*, 177 (1970).

<sup>41</sup>Thomson Douglas, *Prisons, Prisoners and Parole*, West Thomson Reuters publications, 325 (2013).

behaviour. As can be seen, parole is not something that can be overlooked. It serves as a correctional facility between the world and the prison. Its purpose is to modify. It is an offers the perfect and therapy response to crime because it provides the parolee with a succession of chances to educate oneself for a productive life and social.

It is widely acknowledged that intense political and administrative pressure has impeded the effectiveness of parole administration. As just a consequence, many unsuitable offenders are granted parole, and the goal of the programme is frequently undermined. In terms of parole, a clear judicial policy is required, and the executive responsibilities performed ought to be subject to judicial review. It is past time for our legislators to make the required adjustments to enhance our Criminal Justice System, including developing strong guidelines for implementing the supervised release system in a progressive way for the betterment of civilization among inmates, demonstrating that it is a powerful tool for rehabilitation by formulating uniform parole laws and to put check and balance for the misuse of parole in India. This Pandemic period, and the over crowding of jails should be the matter of concern for the government and should be look into immediately.