

CRITICAL STUDY OF PAROLE IN INDIA**Pratik Kumar Gupta, Dr. Jayendra Singh Rathore, Supriya Yadav**

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Abstract- *The role of criminal law is very important and crucial in the society in comparison to any other branch of law because criminal law is more concern in the society. For this purpose, criminal law always should be just, fair and reasonable. It should always make the balance between the social interest and an individual interest. The objective of criminal law to tackle the problem of crime, criminal and criminality, thereby protect the society against criminals, criminality and crimes, which are interrelated to each other. Criminal law has objective to tackle these problems and to protect to the society and solve to these problems, an objective of criminal law to prevention of crimes and provides the rehabilitation and reformation of the accused person this is an emerging trend in criminal Jurisprudence. If we see our criminal justice system in rehabilitation perspective we see it's provide juvenile homes for juvenile offenders and provision of parole for hard offenders.*

Keyword- Parole, Rehabilitation, criminal, justice, family

Introduction- Thus, though the concept of parole differs under the Indian system and other systems, one similarity is that parole does not amount to suspension of sentence and the person is deemed to be undergoing imprisonment during the period that he is on parole. Sometime Parole makes the confusion whether the Parole or Bail is same thing or it is different.

However, the concept of parole under the English law, the American law and the Indian law is quite different. Under the English Law, parole is granted to a convict who has undergone major part of his sentence. It is a undergone major part of his sentence. It is a reformatory process on account of the changing attitude towards crime and criminals.

Meaning of Parole- "Parole is known as a pre-mature release of offenders after a strict scrutiny of long-term prisoners, under the rules laid down by various governments. Premature release from prison is conditional subject to his behavior in society and accepting to live under the guidance and supervision of Parole officer. The word 'parole' means "a term to designate conditional release granted in penal institution."¹

Definition of Parole- - Parole has been defined the various dictionaries, The Prison Act, 1984 and Prison Act 1900, further each of the States has its own parole rules, which have minor variations with each other and various judgments of the Supreme Court of India also defines the parole.

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 reformer².

Case- S. Sant Singh v. Secretary, Home Department of Maharashtra³

¹ See, J.P.S. Sirohi, Criminology and Criminal Administration, (1992), p. 264, Shiv kumar Dogra: Criminal Justice Administration in India.

² Shiv Kumar Dogra: Criminal Justice Administration in India

³ 2006 CriLJ 1515, 2006 (2) MhLj 422 5

'Parole' is defined in Black's Law Dictionary 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. Historically, 'parole' is a concept known to military law and denotes release of a prisoner of war on promise to return. Parole has become an integral part of the English and American system of criminal justice intertwined with the evolution of changing attitudes of the society”

Dictionary definition of Parole-“The temporary or permanent release of a prisoner before the expiry of a sentence, on the promise of good behavior⁴.”

The Prison Act of 1894 being Act of 9 of 1894 has defined the Parole ‘the system of releasing prisoners in jail on parole, by suspension of their sentences in accordance with the rules for the time being in force.’⁵”

Types and Ground of Parole in India-

The grant of Parole is in India mainly depends upon the rules made under the Prison Act, 1894 and Prisoner Act, 1900. If we see our criminal justice system there is no any central law regarding this issues because the prison come the state subject⁶ so each of the States has its own parole rules and regulations with minor variations with each other. Generally there are two types of parole – custody parole and regular parole.

The custody parole is mainly granted by the parole board when there is any emergency circumstances of the accused family i.e. death in the family, serious illness of any family member or marriage in the family.

Another type of parole is Regular Parole, it is allowed for a maximum period of one month, except in special circumstances, there is general rule that convicts who have served at least one year in prison. It is not a matter of right but it is also depends upon some grounds such as:

Illness of a family member, serious Accident or Death of any near family member, Marriage of a member of the family, Delivery of Child by wife of the convict, and Maintain family or social ties, Serious damage to life or property of the family of convict by natural calamities.

There are certain categories of accused are not eligible for being released on parole i.e prisoners involved in offences against the State, danger to national security, non - citizens of India etc. Accused who are convicted for murder and rape of children also exempted from the parole 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 and the second one discretionary of the parole board.

Parole board and Parole Regulations- Parole involves supervision, Parole board is function of the executive branch of Government but It is mainly based on the Chief Executive’s right to commute or suspend sentences imposed by courts. The authority to release offenders for cause and good conduct is usually delegated to a parole Board. Release on parole is generally based on inmate readiness, past conduct and a prognosis for success. The prisoner signs a parole agreement. If the agreement is violated and a new crime committed, the parolee may be returned to prison following

⁴ English Oxford Living Dictionaries

⁵ Under section 5(B) of the Prisons Act, 1894. As per section 5(B) parole system means

⁶ List II, seventh schedule , Entry-4

a revocation hearing⁷. The Parole Board consists of parole administrators, who are from among the respectable members of society. Another important function is parole board to prepare a case history of parolees and help and advise them in process of their rehabilitation. There is also a set of field personnel keep a close supervision over parolees and report the cases of parole violations to the parole authorities. Thus the parole organizations consist of three agencies, viz. the parole board, the case investigation and the parole supervisors; all of them work in close connection with each other⁸.

Judicial Position on Parole

In the various cases Supreme Court and High Court has defined the necessity and object of the parole and the Courts also gives the various guidelines relating to the parole.

Case- State of Haryana v. Mohinder Singh⁹ court observed in this case that in our country, there are no statutory provisions dealings with the questions of grant of parole. The Code of Criminal Procedure, 1973 does not contain any provision for grant of parole. By administrative instructions, however, rules have been framed in various States, regulating the grant of parole. Thus, the action for grant of parole is generally speaking an administrative action, further court observed 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 super vision 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 close d on a convict.

Case- Smt. Poonam Lata v. Wadhawan and others¹⁰ Where a person detained under COFEPOSA Act of 1974 was released under an order of the Supreme Court on parole, it was held that the period of parole has to be excluded in reckoning the period of detention, further in this observed there is no denying fact that preventive detention is not punishment and the concept of serving out a sentence would not legitimately be within the purview of preventive detention. In the instant case, the detenu was engaged in receiving smuggled goods from across the Indo-Nepal border and was making payments in foreign currency and remitting the sale proceeds of such smuggled goods out of country in shape of U.S. dollars with the help of others.

This above decision has, however, been overruled by the Supreme Court by its judgment in Sunil Fulchand Shah v. Union of India & other.

Case-Sunil Fulchand Shah v. Union of India¹¹ 9 is a landmark case of the parole the Constitutional Bench observed that release on parole is only a temporary arrangement by which a detenu is released for a temporary fixed period to meet certain situations, it does not interrupt the period of detention and, thus, needs to be counted towards the total period of detention unless the rules, instructions or terms for grant of parole, prescribe otherwise. The period during which parole is availed of is not aimed to extend the outer limit of the maximum period of detention indicated in the order of detention. The period during which a detenu has been out of custody on temporary release on parole, unless otherwise prescribed by the order granting parole, or by rules or instructions, has to be

⁷ Harry W. More, Principles and Procedure in the Administration of Justice, (1975), p.19, Shiv kumar Dogra:

⁸ N.V. Paranjape, Criminology and Penology, (2001), p. 185

⁹ AIR 2002 SCW 478

¹⁰ AIR 1987 SC 1383: 1987 Cri L J 1130

¹¹ AIR 2000 SC 1023

included as a part of the total period of detention because of the very nature of parole. An order made under section 12 of temporary release of detenu on parole does not bring the detention to an end for any period- it does not interrupt the period of detention- it only changes the mode of detention by restraining the movement of the detenu in accordance with the conditions prescribed in the order of parole.

Conclusion- However, the concept of parole under the English law, the American law and the Indian law is quite different. Under the English Law, parole is granted to a convict who has undergone major part of his sentence. It is a reformatory process on account of the changing attitude towards crime and criminals. Parole under those systems is a provisional release from jail but it is deemed to be part of the imprisonment. A convict is supposed to maintain good behavior during this period and not abuse the liberty granted to him in any manner, otherwise he would be called back to serve out the remaining part of his imprisonment

It is clear that the powers of the State to grant parole are not fettered even if the appeal of the convict is pending before the Court. Thus, the competent authority or the Government would have the legal competence to entertain an application for parole by following the procedure set out under the Prison Rules to meet the contingencies stated therein. The exercise of such power would not be in any way be in conflict with the powers exercised under section 389 or section 432 Cr PC.