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Parole System in India: Comparative Analysis

(With specific reference to the States of Maharashtra, Delhi, Madhya Pradesh, Kerala and West Bengal)

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ABSTRACT

In India every State has its own law, rules, regulations, guidelines on parole but there is no uniformity in the law that governs the parole system. Comparing Parole Rules of different States gives an insight on the discrepancies that exists in the Rules. Most provisions of parole rules in various States are similar, but certain differences that exist in parole rules of various States may lead to discrimination towards the prisoners, as the prisoners of a particular State may get more benefits due to broader and lenient parole rules in that State, while the prisoners serving similar sentence for the same offence who are eligible for parole as per the competent authority may not get the same benefits in other States due to stringent parole rules. Thus the discrepancies that exist in the parole rules of different States violate Article 14 of the Indian Constitution which guarantees equality before law and equal protection of laws to all. In this Article author has compared parole Rules of five States which includes State of Maharashtra, Delhi, Madhya Pradesh, Kerala and West Bengal.

I. INTRODUCTION

Parole is one of the most widely and effectively used individualized treatment method for the inmates in India. Earlier, parole was used as a device to reduce the overcrowding of the prisons. But with advent of the era of social reformation (with respect to prisons and prisoners) all around the world, concept of parole along with other corrective measures were used to reform and help prisoners rehabilitate in the free society. Professor Gillin has defined parole as the release from a penal or reformatory institution of an offender who remains under the control of correctional authorities, in an attempt to find out whether he is fit to live in the free society without supervision.² Parole is an act of leniency on the part of the executive, frequently given as a reward for good behavior in prison. Strictly speaking parole is a privilege and no prisoner is entitled to it as a matter of right. The significance of parole lies in the fact that it enables the prisoner a free social life, yet retaining some effective

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² John Gillin, *Criminology and Penology* (3rd Edn.), p.339

control over him.³ The main object of releasing the prisoner's on parole is not only to save them from the evils of continuous incarceration but also enable them to maintain family and social ties. It also gives them the hope and enables them to develop active interest in life, which in turn keeps them motivated to maintain good conduct and remain disciplined in prison.⁴

In India as stated earlier every State has its own parole rules which differs to some extent in every States, but analysis of the discrepancies that exist in parole rules is of substantial importance as the prisoners in different States convicted for the same offence, undergoing similar sentence and eligible for parole according to the competent authority are treated differently which leads to violation of rights guaranteed under Article 14 of Indian Constitution i.e. right to equality before law and equal protection of laws .

Author has specifically compared parole Rules of the State of Maharashtra, Delhi, Madhya Pradesh, Kerala and West Bengal in the following article. Chapter 19 of the Delhi Prison Rule 2018 deals with prisoner's right to be released on parole. Whereas Rules 18 to 28 of the Prisons (Bombay Furlough and Parole) Rules 1959 or Maharashtra Prisons (Mumbai Furlough and Parole) Rule 1959 deals with the rules regarding grant of parole. In Kerala, Chapter 23 (Rules 333 to 351) of the Kerala Prison Rules 1958 deals with the prisoner's right to leave. Whereas in Madhya Pradesh the M.P. Prisoner's Leave Rules, 1989 deals with the prisoners right to leave. Similarly in West Bengal, Sections 62 and 63 of the West Bengal Correctional Services Act, 1992 deals with the provisions related to parole. Most of the provisions related to parole in the above mentioned States are similar to some extent. But as stated earlier, certain differences that exist in the Rules related to parole in different States may lead to discrimination towards the prisoners, as the prisoners of a particular State which has more generous and liberal provisions related to parole may enjoy the benefits of the same in that particular State, at the same time prisoners serving similar sentence for the same offence may not get the same benefits in the another States due to more stringent or strict rules.

II. TYPES OF PAROLE IN DIFFERENT STATES

Most of the States have two types of parole in general that is ordinary parole and emergency parole. In Delhi, parole is classified in two types i.e. Custody Parole and Regular Parole. Similarly in Maharashtra, parole is classified as Emergency Parole and Regular Parole.⁵ In

³ N.V.Paranjape, *Criminology and Administration of Criminal Justice* (1970) p.177

⁴ Model Prison Manual 2016, Para 19.02

⁵ Maharashtra Prisons (Mumbai Furlough and Parole) Rule 1959, Rule 19

the State of Madhya Pradesh on the other hand the word 'Leave' is used instead of the term 'Parole'. There are two types of leaves in the State of Madhya Pradesh i.e. General Leave and Emergency Leave. In the State of Kerala apart from Ordinary and Emergency Leaves, there is a concept of Home Leave which is available to the prisoners serving sentence in open prison. Prisoners not eligible for any of the three leaves in Kerala i.e. (Ordinary, Emergency and Home Leave) may be granted permission to visit under police escort to visit close relatives for 24 hours, such visit is called Escort visit. In West Bengal, leaves granted to the prisoners are classified as Ordinary leave and Emergency leave.

III. EMERGENCY OR CUSTODY PAROLE/LEAVE IN DIFFERENT STATES

(A) Delhi

Custody Parole in Delhi may be granted to the convict by an order in writing, issued by the Superintendent Prison and to the under trial prisoners by the trial court concerned, for a period of not more than six hours in eventualities like death of a family member; marriage of a family member; serious illness of a family member or any other emergency circumstances with the approval of DIG of prisons.⁶ The prisoner would be escorted to the place of visit until his return there from, ensuring the safe custody of the prisoner.⁷ Such prisoner would be deemed to be in prison for the said period which would also be treated as period spent in prison. In recent case Supreme Court in **Md. Shahbuddin vs. State Gov. NCT Delhi**⁸ granted custody parole to the petitioner who is a criminal cum politician, booked under 75 criminal cases, convicted under 10 cases and a history sheeter (Type A). Custody parole was granted (due to death of his father and to visit his ailing mother) for a period of 6 hours at a time on any 3 days of his choice, whether consecutive days or otherwise, within a period of 30 days from the date of its order. It was also held that during 'custody parole' the prisoner continues to remain in the custody of the court and for this reason the period spent on custody parole is counted towards period spent in prison.

(B) Maharashtra

Similarly, Emergency parole in Maharashtra may be granted in case of death, serious illness or Marriage of the close relatives. The Maharashtra Prisons (Mumbai Furlough and Parole) Rule 1959 has specifically stipulated as to who falls under the category of close relatives. It states that emergency parole may be granted in case of (a) Death of Paternal grandfather, grandmother/ father/ mother/ spouse/ son/ daughter/ brother/ sister, (b) Serious illness of

⁶ Delhi Prison Rules 2018, Rule 1203

⁷ Id. Rule 1206

⁸ W.P. (CRL) 1558/2020 & CrI. M.A. No.14691/2020

father/ mother/ spouse/ son/ daughter, (c) Marriage of / son/ daughter/ brother/ sister. Emergency Parole may be granted for 7 days at a time on confirmation of emergency situation and no extension shall be granted.⁹

(C) Madhya Pradesh

According to the M.P. Prisoners Leave Rules 1989, emergency leave in M.P. shall be granted to the prisoner in case of marriage or death of a family member. Prisoner shall be eligible for leave of 15 days for his own marriage or for the marriage of his/her daughter, son, sister and brother. He shall also be eligible for leave for a period of 15 days in the event of death of his/her son, daughter, mother or father as well as mother or father of his/her wife/husband.¹⁰ The note to the rule states that the duration of emergency leave shall not be included while calculating the duration of the prisoner's total sentence. It also states that prisoner shall not be sanctioned more than one emergency leave for marriage in a year.

(D) Kerala

Emergency leave in Kerala shall be granted to all the well behaved prisoners (except those convicted in respect of offences related to National Security) in case of Death or terminal illness or close relatives (father, mother, husband or wife, brother, sister, son, daughter, half-brother, half-sister, grandmother, grandfather, grandson, granddaughter, father in law, mother in law, son in law, daughter in law, brother in law, sister in law, mother brother/ sister, father's brother/ sister, direct nephew/ niece; Marriage of son, daughter, brother, sister, grandson, granddaughter, brother in law, sister in law, direct nephew/ niece) or in case of loss of residential property due to natural calamities.¹¹ Emergency Parole shall be granted for not more than 15 days at a time. Emergency leave in Kerala is also granted on the merits with reference to the report of station officer concerned and the recommendation of Superintendent of the prison.

(E) West Bengal

As per the West Bengal Correctional Services Act 1992, Emergency Parole shall be granted for a period not exceeding 5 days at a time in case of emergency such as serious illness of his relatives, death, marriage, funeral, education or any other ceremony where prisoners participation as per the prevalent custom is essential.¹² The period spent on parole shall be deemed to be period for which the prisoner has served the sentence.

⁹ Maharashtra Prisons (Mumbai Furlough and Parole) Rule 1959, Rule 19(1)

¹⁰ The M.P. Prisoners Leave Rules 1989, 4D

¹¹ The Kerala Prison Rules 1958, Rule 336

¹² The West Bengal Correctional Services Act 1992, Section 62(3)

(F) Analysis of Emergency Parole in different States

After analyzing the provisions related to the emergency/Custody parole it can be seen that the number of days for emergency parole granted by different States differ. In Delhi Custody parole is granted only for 6 hours, whereas in Maharashtra emergency parole is granted for maximum 7 days at a time, in the State of Madhya Pradesh emergency leave is granted for 15 days and in Kerala it is granted for 15 days at a time, whereas in the State of West Bengal it is granted for 5 days at a time. It can be seen that the prisoners serving the sentence in certain States (like Kerala and M.P) get to spend longer time with family in emergent situations, whereas in other States (like Delhi and West-Bengal) time span of emergency leave is less. Similarly, it can also be seen that in some States like Delhi and Maharashtra period spent outside the prison by the prisoners while on emergency leave is deemed to be period spent in jail while in some other States like Madhya Pradesh the period spent outside by the prisoner on emergency leave is not considered to be period spent in jail. Hence it can rightly said that because of the discrepancies that exist in parole rules of different States, prisoners of a particular States may get more benefits due to broader and lenient parole rules in that State, while the prisoners serving similar sentence for the same offence who are eligible for parole as per the competent authority may not get the same benefits in other States. Thus the Constitutional right of equality before law and equal protection of laws guaranteed under Indian Constitution is violated as prisoners imprisoned in different States are treated differently due to different laws.

IV. REGULAR PAROLE IN DIFFERENT STATES AND ELIGIBILITY CRITERIA FOR PAROLE

Regular parole may be granted to the prisoners on certain grounds only after serving specific term period of his sentence as specified under the Rules of respective States.

(A) Delhi

Regular parole in Delhi may be granted by the competent authority on various grounds like serious illness of the family members of the convict, critical condition in the family due to accident or death of the family member, marriage of a family member, delivery of a child by the wife of the convict, serious damage to the life or property of the family members including damage caused due to natural calamities, sowing or harvesting of crops, maintaining social and family ties, in order to file a Special Leave Petition before the Supreme Court of India against a judgment delivered by the High Court convicting or

upholding the conviction, as the case may be.¹³ However an under trial prisoner is not eligible for regular parole. In **Chandrakant Jha vs. State of NCT of Delhi**¹⁴ one of the issues that came before the court was whether the period spent on regular parole shall be included in total sentence. Court in this case referred to **Asfaq vs. State of Rajasthan**¹⁵ where S.C. made distinction between parole and furlough and held that release of the prisoner on parole has to be treated as mere suspension of the sentence for time being, keeping the quantum of sentence intact. Thus, the term of imprisonment is not included in computation of the term of parole.

To become eligible for parole the convict must have served at least 1 year in prison (excluding under trial period or remission period). In exceptional cases where prisoner has spent 3 years as under trial or half of the sentence of punishment awarded as under trial, then his application may be considered if he has spent at least 6 months in prison as convict. His conduct must have been uniformly good for 2 years from the date of application in case he has been awarded major punishment for prison offence and 1 year in case he has been awarded minor or no punishment for prison offence. He must not have committed any offence during his last release on parole and must not have violated conditions of parole. Minimum 6 months must have elapsed from his last return from parole.¹⁶

In Delhi a convict would be released on parole for a period of maximum eight weeks (approximately 2 Months or 56 days) in minimum two spells in a conviction year. However, the period of release in one spell should not be more than four weeks (28 days).¹⁷ This Rule states that parole period shall not be considered as a period spent in jail thus prisoner will have to spend extra days in prison.¹⁸

(B) Maharashtra

In Maharashtra all prisoners eligible for furlough shall be eligible for Regular Parole. As per rule 4 of the principle rules, all Indian prisoners whose annual conduct reports are good shall be eligible for furlough and parole (except those categorized under Rule 4).¹⁹ If an average sentence of the prisoner is not exceeding 5 years, prisoner becomes eligible for his first release on regular parole after completion of 1 year from the date of admission to prison

¹³ Delhi Prison Rules 2018, Rule 1208

¹⁴ W.P. (CRL.) 682/2019

¹⁵ AIR 2017 SC 4986

¹⁶ Id. Rule 1210

¹⁷ Id. Rule 1212

¹⁸ Id. Rule 1198

¹⁹ Maharashtra Prisons (Mumbai Furlough and Parole) Rule 1959, Rule 19 (2)

under convicted crime and subsequently after completion of 6 months imprisonment²⁰. In case of sentence more than 5 years but less than 14 years, prisoner must serve at least 2 years in prison to be eligible for release and subsequent release may be granted after completion of 1 year of imprisonment from the date of return and then onwards subsequent release may be granted after completion of 6 months of imprisonment.²¹ In case of life imprisonment or sentence more than 14 years, prisoner becomes eligible for first parole after completion of 3 years of imprisonment and for 2nd parole after completion of 1 year calculated from the date of his return from last parole and subsequently after completion of 6 months to be calculated from his last return.²² In all the above cases prisoner shall be eligible for 45 days of parole in a year, which can be extended to 60 days once in three years only under exceptional circumstances. The period spent on sanctioned Parole shall be counted as remission of the sentence.²³

(C) Madhya Pradesh

As per the M.P. Prisoners Leave Rules 1989, the general and emergency leave shall be granted to the well behaved prisoners sentenced to the imprisonment for the period of 3 years and above and who has undergone half of the sentence or period of not less than 2 years of sentence including remission. He must have shown good conduct in Jail during the period of his under-trial confinement and must not have been punished for any other Jail offence. Prisoners good conduct during the period of the year in which prisoner submits his application for leave makes him eligible for leave.²⁴

General Leave in M.P. may be granted for maximum period of 42 days during the calendar year and can be sanctioned by the sanctioning authority in 3 parts i.e. 14 days at any time²⁵ with an interval of 3 months between 2 general leaves. The note to the rule states that the duration of general leave shall be included while calculating the duration of the prisoner's total sentence. The High court in **Jeevan Singh Verma vs State of M.P**²⁶ granted parole to the petitioner's son in order to visit his sick mother. In this case petitioner's son was convicted u/s 20(b) (i) of NDPS act and his parole application was rejected by the District Magistrate, thus writ petition was filed before the High Court by the petitioner. In this case

²⁰ Id. Rule 19 (A)

²¹ Id. Rule 19(B)

²² Id. Rule 19 (C)

²³ Id. Rule 20, also see:

<https://bprd.nic.in/WriteReadData/userfiles/file/201708091236539857484Maharashtraason21.05.2017.pdf>
(Referred on 23/01/2021)

²⁴ M.P. Prisoners Leave Rules 1989, Rule 4A (Amendment 2009)

²⁵ Id. Rule 4C

²⁶ 2001 (5) MPHT 386

the Apex Court emphasized the concept of 'Karuna' and directed that parole should be allowed to the convicts if they show responsibility and trustworthiness.

(D) Kerala

As per the Kerala prison Rules 1958, ordinary Leave shall be granted to the well behaved prisoners [except those categorized under Rule 333(1) h] sentenced to imprisonment for one year and above and who have served out actually 1/3 of the sentence or two years whichever is less are eligible for ordinary leave.²⁷ A prisoner is eligible for 60 days of ordinary leave in a year and it can be availed for 4 times in a year. Ordinary leave shall be granted for a maximum period of 30 days at a time. The total number of release on leave of all kinds in Kerala shall not exceed 4 times in a year except for the prisoners serving in open prison, where the permission is permitted to 5, including home leave. The period of leave shall be taken as period undergone as a sentence (except in case of violation of sentence)²⁸. As per rule 346, the prisoners whose case is pending trial shall not be eligible for leave. In case of Home leave, maximum period for which it is granted shall be 15 days at a time and subsequent home leave shall not be granted unless the prisoner serves 1 year of imprisonment from the date of his return from last visit. And those not eligible for any of the 3 leaves shall be granted escort visit for 24 hours.

(E) West Bengal

In the State of West Bengal, section 62 (2) of the West Bengal Correctional Services Act 1992 states that the prisoners convicted for two years or more can avail the benefit of parole. In order to become eligible for parole he must serve 1 year of imprisonment in case his sentence is more than two years but less than five years and he must serve 2 years of imprisonment in case his sentence is more than five years and no such prisoner shall be released on parole during the remaining period of imprisonment. Ordinary parole shall be granted for a period not exceeding 30 days at a time.

(F) Analysis of Regular parole and Eligibility Criteria for Parole in different States

After analyzing the provisions related to the Regular Parole and eligibility criteria for parole of different States, it can be seen that number of days for which regular parole is granted in each State differ from the range of 8 weeks i.e. 56 days in Delhi, 45 days (which can be extended to 60 days once in 3 years) in Maharashtra, 60 days in Kerala, 42 days in Madhya Pradesh. Apart from difference in the number of days of release on parole, discrepancy also

²⁷ The Kerala Prison Rules 1958, Rule 333

²⁸ Id. Rule 344

exists in the calculation of total sentence of imprisonment. In Maharashtra, Kerala, M.P. and West Bengal the days spent on regular parole is included towards calculating the total period spent in jail, whereas in Delhi the period spent on regular parole is not included while calculating the total sentence of imprisonment of prisoner.

In **Smt. Poonam Lata v. M.L. Wadhawan & Anr**,²⁹ the question was raised before the court whether the parole period spent by the convict outside the prison should be excluded while calculating the period spent in parole. In this the apex court affirmed that the parole period has to be excluded while reckoning the period of detention. But this judgment was overruled by the apex court in **Sunil Fulchand Shah v. Union of India**³⁰ where the bench expressed that, 'It seems to us prima facie that one possible view can be that if parole is granted the period of parole should be counted within the total period of detention and not outside it.' Supreme Court in this case held that '*A temporary release of the person detained does not change his status as his freedom and liberty are not fully restored. Therefore, the period of temporary release on parole cannot be excluded from the maximum period of detention.*'

But it can be seen from the above analysis that States have either failed or ignored to update their parole rules/laws even after decades of the apex court's decision as some States still exclude the period spent outside the prison on parole from the total Sentence.

The above analysis shows that a prisoner in Delhi can avail 8 weeks (56 days) of parole release in a year but the same shall not be calculated towards the total sentence, hence he will have to spend extra time in prison. On the other hand prisoners in Kerala can avail 60 days of parole release and the same shall be deemed to be period spent in jail, hence parole period will be included in the total sentence. Similarly in Maharashtra and Madhya Pradesh, parole is granted for 45 and 42 days respectively and it is also included in the total sentence. Hence after analyzing the regular parole in different States along with the eligibility criteria and number of days of parole granted by different States it can be rightly said that the difference or discrepancies in the parole rules are discriminatory towards the prisoners, as the prisoners in Kerala can get the benefit of 60 days of parole whereas prisoners from Madhya Pradesh get only 45 days, also the prisoners in Delhi face the disadvantage of spending extra time in prison if they avail the regular parole.

Apart from the discrepancies in the number of days for which parole is granted in different States, it should also be noted that in order to be eligible for regular parole, convict has to

²⁹ 1987 AIR SC 1383

³⁰ AIR 1989 S C 1529

serve a specific time period in prison which is again different in different States. Among the five States, it can be seen that for grant of Parole in the State of Maharashtra prisoners are classified in 3 categories (i.e. prisoners convicted for 5 years and less, prisoners convicted for more than 5 years but less than 14 years and those convicted for life or more than 14 years) and it has also specified different time span that the prisoner has to serve in order to be eligible for parole. West Bengal in its parole law has classified prisoners in 2 categories (prisoners convicted for 2 years but less than 5 years who has to serve 1 year in prison whereas those convicted for more than 5 years has to serve 2 years in prison). In Kerala the prisoner sentenced to imprisonment for 1 year and more shall have to serve 1/3rd of the sentence or 2 years whichever is less in order to be eligible for ordinary leave. In Delhi the convict has to serve at least 1 year in prison (excluding under trial period or remission period) and in exceptional cases where prisoner has spent 3 years as an under trial or half of the sentence of punishment awarded as under trial, then his application may be considered if he has spent at least 6 months in prison as convict. Whereas in M.P. the well behaved prisoners sentenced to the imprisonment for the period of 3 years and above has to undergo 1/2 of the sentence or period of not less than 2 years of sentence including remission in order to be eligible for parole. Though, the behavioral aspect of the prisoner is taken into account before considering his parole grant which is similar in all the States, but the minimum time period which the prisoner has to spend in prison in order to be eligible for parole differs in every State which again gives rise to the discrepancy and discrimination towards the prisoners of different States.

V. CONCLUSION

After analyzing different provisions of parole of the States of Maharashtra, Delhi, Madhya Pradesh, West Bengal and Kerala it can be seen that the discrepancies that exist in the Parole rules of different States violates the rights guaranteed under Article 14 of the Indian Constitution which states that 'The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India'. This right of equality before law and equal protection of laws is not only available to the free citizens of the country but it also available to the prisoners. As Dr. Jennings rightly said 'equality before the law means that among equals the law should be equal and should be equally administered, that the like should be treated alike.'

The principle of equality is not the uniformity of treatment to all in all respects. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and

liabilities imposed by the law. Equal law should be applied to all in the same situation, and there should be no discrimination between one person and another. The above analysis clearly shows that the prisoners convicted (in different States) for same offence, serving similar sentence and found eligible for parole by the competent authority are subjected to different laws and hence goes against the well establish principle 'the like should be treated alike'. Thus the principle of equality before law and equal protection of laws is disregarded which leads to discrimination towards the prisoners. The Supreme Court of India in **Ramamurthy V. State of Karnataka**³¹ strongly emphasized on an urgent need for bringing uniformity in laws and regulations governing prisons. But the States have failed to do so by avoiding incorporation of the rules of Model prison manual 2016 in States laws in order to bring uniformity in rules and regulations governing the prison administration all over the country. The substantial discrepancies in Parole rules/laws of various States which has been ignored for a long time has thus become exigent. Hence Uniform legislation on parole in India is the need of an hour in order to prevent discrimination and to ensure fair and equal treatment to all the prisoners irrespective of the State in which they are incarcerated.

³¹ (1997) S.C.C. (Cri) 386