

IMPACT OF PROBATION AND PAROLE ON THE DELBILITATING CONDITIONS OF PRISON SYSTEM IN INDIA

A CRIMINOLOGICAL STUDY

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ABSTRACT

This paper shall deal with the importance of two correctional reformative tools which are probation and parole. It shall contain the conceptual meaning of the two terms and how they originated and became one of the most accepting measures of reformation. Moreover, the facts and data are presented to depict the present situation of prisons leading to the violation of human rights of the prisoners. At the end, the conclusion is presented to provide the entire crux of the study and the suggestions which should be implemented for the betterment of the prisoners and protection of their human rights.

KEY WORDS - Probation, Parole, Prisoner's Human Rights.

INTRODUCTION

"Society must strongly condemn crime through punishment, but brutal deterrence is fiendish folly and is a kind of crime by punishment. It frightens, never refines; it wounds never heals." ~ Justice **Krishna Iyer**¹

The subject of criminology, penology and victomology deals with the core study of criminal behavior and their psychology which gives the answer to a lot of questions like why criminals become criminals? Are biological factors responsible for the acts of horrendous crimes like rape, arson, murder etc.? Do economic factors also make a person criminal? Moreover, this subject is moulded in such a way that it gives the perception of the psychology of victims. All this leads to the conclusion and gives a larger perspective to various aspects of crime.

We can see that there is a trend depicting a pattern of crime. As society is advancing in technological terms and the concept of social justice is decreasing. The economy is getting affected due to which the capacity of each person is to hold money is getting debilitated. It means that the rich are becoming richer, and the poor are becoming poorer, which is directly affecting the mental health of the major portion of society resulting in the increase in

¹VR Krishna Iyer, 'Justice in Prison: Remedial Jurisprudence and Versatile Criminology' in Rani Dhavan Shankardass, Punishment and the Prison: Indian and International Perspectives' [2000] Sage Publications, New Delhi) 58

number of crimes. Hence, if we were able to catch the root cause of crime and criminal behavior, we would be able to find numerous ways through which we can tackle and decrease the growing number of crimes.

There are so many ways to curb crime like incarceration, imposing fine etc. Which are given to the one who is convicted according to the procedure established by law.

In India and according to Indian laws and modern jurisprudence, we follow the system of reformatory form of punishment according to which, 'Nobody is born as a criminal and there will always be a hope that one day his act of crime would make him feel his repentance due to which he could be a responsible individual and could work for the betterment of the society'. It is based on the principle of human rights that even if an offender commits a crime, he does not cease to be a human being.

In case **Ramji of Missar v. State of Bihar**, the apex court observed:

*"Modern Criminal Jurisprudence recognizes that no one is born a criminal & that good many crimes are the result of the socio-economic milieu. Although not much can be done for hardened criminals, yet a considerable emphasis has been laid on bringing about reform of juveniles who are not guilty of very serious offenses by preventing their association with mature criminals."*²

This article will look upon and try to find a road ahead which must be followed to bring down gruesomeness and the increasing number of crimes.

Various criminologists have shown that there is a direct connection between crime and punishment resulting in an increasing or decreasing number of prisoners. Therefore, it is necessary to look for ways through which the entire prison system could be better leading to the betterment of society. One such way to achieve that goal is to closely examine the two correctional devices that are "Parole and Probation" and look upon their impacts in contemporary times and how various measures can be taken to improve it.

MEANING OF PROBATION AND PAROLE

The word probation has come from a Latin word '*probare*' which means 'proved' or 'tested'. According to Black's Law Dictionary, Probation means "the evidence which proves a thing; the act of proving; proof."³ It connotes a meaning that "I prove my worth".

² AIR 1963 SC 1088

³ Black's Law Dictionary, (4th edn, 1968)

The other definition of probation is, “Probation is a method of treating (correcting) suitably selected offender by releasing him into the community upon certain conditions prescribed by the court on conviction, before sentencing (offender) generally upon supervision of Probation Officer”⁴

By examining the meaning of parole it may be said that there is a minute difference in the meaning of parole and probation. The word parole has originated from a French phrase ‘*de jone ma parole*’ which means that ‘I give my word’. According to Ballentine’s Law Dictionary, Parole is not an act of clemency, but a penological measure for the disciplinary treatment of prisoners who seem capable of rehabilitation outside of prison walls.⁵ Parole is a form of conditional release granted to the prisoners after they have served a portion of their sentences. The conditional release involves a service which includes the control, assistance, and guidance of the offenders need as they serve the remainder of their sentences within the free community.⁶

Probation is granted when there is a release of a prisoner before custodial sentence and parole is granted when the prisoner has just been released from custody.

HISTORY OF PROBATION AND PAROLE

In U.S.A, John Augustus was a cobbler who was designated as the first probation officer. He is also known as the “Father of Probation”. As he was a cobbler around the premises of the court, he used to view the court proceedings and became thoughtful about the prisoners and started thinking about the alternative method from which he could make the lives of prisoners much easier by creating a correctional method which could reform the prisoner to rehabilitate them into the society.⁷

He thought of an experiment and appealed in courts to keep prisoners out of jail under his watch after serving some time in jail to see whether they could again be a part of society or not. The prisoners showed signs of reform and then he started advocating more about this idea of reformation of prisoners and laid down the foot in western society. Slowly this idea started flourishing all around the globe and different countries began to experiment with it and later developed this idea according to their own culture and customs to codify this idea as part of law in their criminal justice system⁸.

⁴ Dr. Hira Singh, Social Defence (Vision 2020): http://www.planning commission.nic.in/reports/genrep/bkpap2020/21_bg2020.doc. accessed 16 September 2022.

⁵ BALLENTINE’S LAW DICTIONARY, P.no 1872 Lawyers Co-Op Pub Co, (3rd edition 1969)

⁶ Chakrabarti, Nirmal Kanti, Probation Services in the Administration of Criminal Justice, P.No.126 (Deep & Deep Publication Pvt. Ltd, New Delhi, 1stedn)

⁷ Ibid.

⁸ Ahmad Sidique, “Criminology and perspective”, P.g 206 (Eastern Book Company, India)

In India, this idea of probation got molded in such a way that it aligns to the basic principles of the Constitution of India and all the decision-making power related to probation is in the hands of the judiciary. Under article 226 of the constitution of India the probationary orders can be subject to judicial review.⁹

The idea of “parole” was coined by the Scottish Geographer Alexander Moconnochi in 1840, he was later designated as superintendent of British penal colonies. He wanted to give prisoners a punishment through which they would suffer for the deeds that they have done but he also held the view they still have a future, and they still could be a part of society. This mindset made him develop a strategy which was divided into three parts. The first two parts focused on the examining of their behavior and labor. And the last part focused on whether they could be free as a normal citizen with the condition that they would follow certain rules. If they do not abide by the rules they would again be sent back to prison. This system led to the establishment of first Parole system in the world.¹⁰

LEGAL ASPECT

On 18 November 1957, a bill on Probation of Offenders was introduced in Lok Sabha. A joint sitting was committed to form the Act's provisions; it described how the ACT shall function and what will be the ingredients appropriate for the prisoners to get reformed by this tool of institutional method of correction. After the diligent efforts of the parliament this act known as “Probation of offenders Act” was passed on May 16th, 1958¹¹.

Section 360 of CrPc,1973 also states the condition on which prisoners may get the order to be released on account of good conduct or after admonition.”¹²This section mentions the conditions in which the court may think that the behavior is in consonance with the “good conduct” in the eyes of law and may get the order of probation after entering in a bond or without sureties.¹³

There are certain laws which were enacted under the Prison Act of 1984 and the Prison Act of 1900 according to which the orders related to parole are given in India. There is no specific statutory legislation for the regulation of laws related to parole for whole India. Whereas, each state has its own set of parole guidelines, which differ slightly from one another.¹⁴

IMPACT ON PRISON SYSTEM AND REFORMS IN NEED

⁹ Ibid.

¹⁰ Ibid.

¹¹ N.V Paranjpe, Criminology and Penology with Victimology, P.NO- 552(Central Law Publications, Allahabad, 15th edition)

¹² The Code of Criminal Procedure,1973,s.360

¹³ Chapter XXVII, SECTION 360 Of CrPc, available at:

<https://devgan.in/crpc/section/360/#:~:text=An%20offender%2C%20when%20apprehended%20on,may%20after%20hearing%20the%20case%2C> accessed on: 16 March, 2023

¹⁴ Ms. [Kishita Gupta](https://blog.ipleaders.in/parole-india-laws-related/), Laws related to parole. available at:<https://blog.ipleaders.in/parole-india-laws-related/> accessed on 16 March, 2023

The present scenario of Prison system in India is quite complex to understand. There is a massive problem of overcrowding of convicts in Prisons. This overcrowding is the major reason other problems like food shortage, health issues, corruption, torture, and fights take place regularly.

The United Nations General Assembly passed a resolution on the Basic Treatment of Prisoners, which was adopted on 14 December 1990, stated that “All prisoners should be treated with respect due to their inherent dignity and values as a human being.”¹⁵ This instrument further protects other human rights violations by restricting the unequal treatment which may take place because of one’s race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.¹⁶ However, there are numerous cases happening regularly in which gross violation of this resolution occurs.

The vulnerable group which includes children, women and elderly persons are the one who are most affected. Among them too, children are the ones who get most affected. Due to their immaturity, they do not know what to think. How to think. And what is right and what is wrong. They absorb and learn from their surroundings. When they see darkness in prison, they start liking the dark. When they see violence, they begin to think violence is correct. Similarly, when they see police brutality against their parents, they begin to think that the entire prison and justice system is acting against their parents, and they are the one responsible for all the wrongful condition which they go through in prison. Their surroundings develop their thinking. And this sort of thinking develops a criminal mindset. However, this can be safeguarded by realizing the importance of Parole and probation as it gives an opportunity to the prisoners to live again a respectful life as a normal individual. In the case *Budhi Prakash Swarnkar vs State Of Rajasthan*,¹⁷ the honorable court emphasized the significance of parole and the requirement to give inmates opportunity for social reintegration. The court decided that to ensure inmates' successful reintegration into society and lower the likelihood of recidivism, parole should be granted to them, subject to reasonable conditions. In the case of *Delhi Administration v. Sunil Batra*,¹⁸ the Supreme Court of India acknowledged the value of parole as a strategy for prisoner rehabilitation and reintegration. The court determined that parole should be granted to qualified inmates because it acts as a transition between prison life and free life, allowing inmates to progressively adapt and adjust. Further in the case *Charanjit Lal vs State And Ors*¹⁹ it was observed that it is crucial to consider the regular release from custody of life offenders, giving them the chance to handle personal and family difficulties and keep ties to society. By giving them brief opportunities to breathe fresh air, as long as they behave well and show a willingness to change and become productive members of society, their rehabilitation and redemption become key factors to consider while serving their time in prison. This approach not only serves the benefit of the inmates but also to society at large. While looking at the specific

¹⁵ UN General Assembly, “Basic Principles for the Treatment of Prisoners”, GA reso. 45/111, UNHRC, 14 December 1990, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-treatment-prisoners> accessed on 29 September, 2022

¹⁶ Ibid.

¹⁷ RLW 2006 (1) Raj 118

¹⁸ 1980 SCR (2) 557

¹⁹ 1985 CriLJ 1541

group of juvenile offenders in the case of *Miller vs. Alabama*, it was held that, “age of the offender to be taken into consideration before sentencing him or her to life without parole”.²⁰ Thus, shedding a light on the fact that consideration of the rights of juvenile offenders should be taken with utmost seriousness as they have more tendency to reform easily. In the situation of emergency like that of covid, prisoners can also be removed on parole to decongest the prisons as it was done by the supreme court when the virus was rising at a rapid pace.²¹ The whole purpose of these correctional tools is to improve the condition of the entire prison system. According to the National Crime Records Bureau (NCRB) 2005, prison administrations in India spent an average of US\$ 333 (INR 10 474) per prisoner per year in 2005, divided among the categories of food, clothes, medical costs, vocational & educational costs, welfare programmes, and others. In contrast, the average annual operational cost for a state prisoner in the US in 2001 was \$22,650 (the latter figure likely includes staff compensation).²²

Recently the prison statistics in India shows that the budget allocated for the functioning of prison institute in the year 2020-21 has gradually decreased from Rs. 6740.6 crores to 2.9% that is 6943.3 crores as compared to the budget sanctioned in 2019-2020.²³ Funds which are needed for the basic needs like food preparation, health, legal aid, infrastructure have declined. Due to which the situation of convicts has become more debilitating

CONCLUSION

From the above deliberation, we can conclude that this reformative tool of Probation and Parole plays a crucial role in the preservation and protection of prisoners leading to the betterment of entire prison system.

In the beginning it originated as an idea and later became a part of the law. The hardened criminal gets the chance for the rectification of their past deeds. It now acts as a deterring factor for the improvement of the prison system. But there are umpteen number of lacunae in the present structure. There is a need to bring a more liberal perspective to make the stringent existing laws a little fragile. This will help to increase the pace of taking judicial decisions.

Both probation and parole create fluctuation in prisons because of which the space which was occupied by someone gets empty and gets occupied by someone else. This fluctuation helps in releasing the congestion in jails acting as major solution to the problem of overcrowding of prisons.

²⁰Miller vs. Alabama (2012), 567 U. S.

²¹ Prachi Bharadwaj, Release of prisoners during covid, SCC blog, March 27, 2023 available at:

<https://www.sconline.com/blog/post/2023/03/27/covid-19-parole-ends-prisoners-return-to-jail-overcrowded-prisons-undertrial-convicts-supreme-court-pandemic-legal-updates-news-research/>

²² Shubham Kashyap, “Major problems of prison system in India”, available at:

<https://timesofindia.indiatimes.com/readersblog/shubham-kashyap/major-problems-of-prison-system-in-india-40079/> accessed on 23 June, 2023

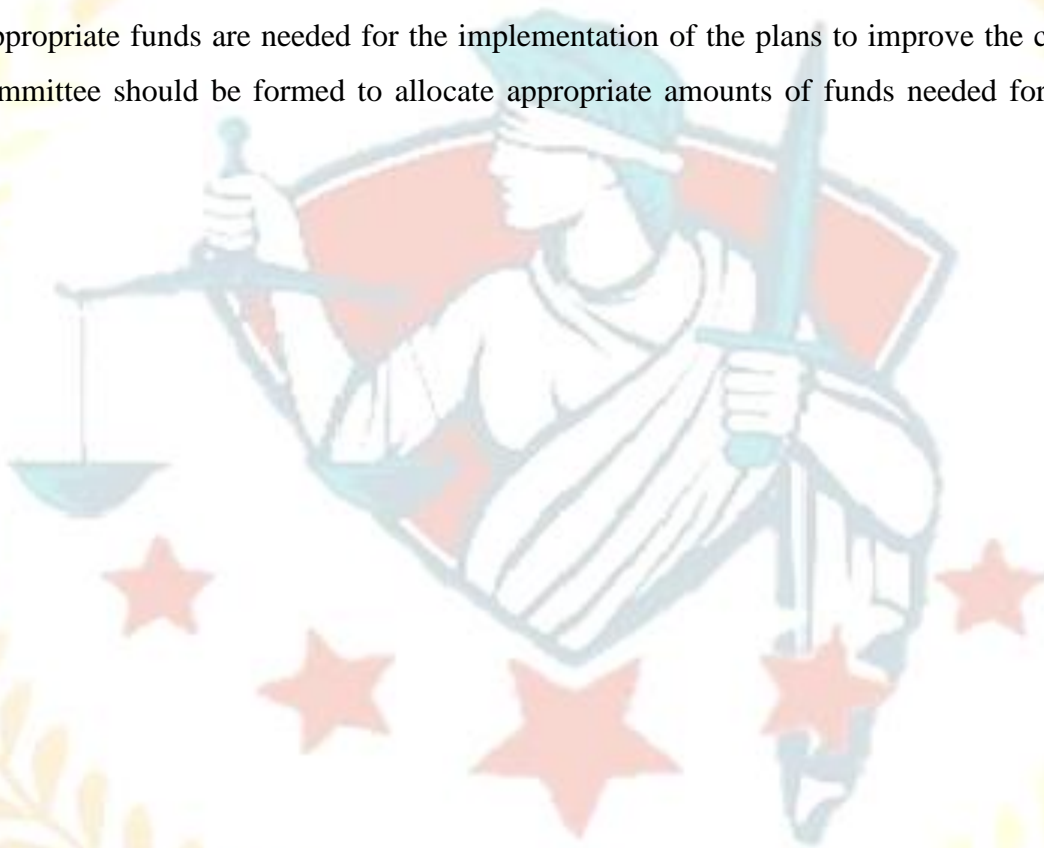
²³Prison Statistics in India 2020, ‘ National Crime Record beareau’, (Ministry Of Home Affairs) available at:

https://ncrb.gov.in/sites/default/files/PSI_2020_as_on_27-12-2021_0.pdf accessed on 25 September 2022)

Probation and Parole are similar in many ways, but there is uniqueness in both their respective characters. It can be drawn from comparative analysis that due to the codification of probationary laws there is a clarity of its usage. Laws for parole also need to be codified to prevent ambiguity.

According to the data presented by Prison Statistics India, there are 1,342 prisoners released on parole have absconded.²⁴ This is one of the major problems in the implementation of parole. This problem can be tackled by creating a separate vigilant group which would especially keep an eye on the prisoners who are susceptible to breaking the rules.

Funds sanctioned by the government are the basis on which the entire prison system's infrastructure is standing. Appropriate funds are needed for the implementation of the plans to improve the current situation. A separate committee should be formed to allocate appropriate amounts of funds needed for the betterment of prisoners.



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²⁴Id. at 167.