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# CONDITIONAL LIBERTY: PAROLE IN THE INDIAN CRIMINAL JUSTICE SYSTEM

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## Introduction

India's criminal justice system, similar to many other legal systems around the world, has its challenges in deciding the right mix of punishment and offender rehabilitation (Ghosh, 2008). Inside that circle, parole and probation stand out as two important tools that are used mainly to help prisoners who have been convicted of crimes to become law-abiding members of society again. Besides, these tools also help in relieving the issue of overcrowded prisons as well as the potential for offenders to relapse into crime (Joseph & ML, 2025).

Let's take a closer look at parole in the Indian criminal justice system from various angles: its legal basis, how it works in practice, and the trends shown by the statistics also comparing it with international research (Lovtsov, 2022). Primarily, it will investigate how parole, which is the releasing of a prisoner who has only served part of his sentence under certain conditions, can be used as a way for the prisoner to return to live in society (Haque & Khan, 2025). Parole will be compared with probation, which is a judicial procedure where most times a first-time defendant bypasses going to jail (Haque & Khan, 2025).

Knowing the difference is very important because in general parole is for an individual who has already been in jail for some time whereas, probation is usually a first step which may be substituted for confinement, not forgetting that the main objectives of both strategies include the reduction of re-offense and the creation of opportunities for the offenders to live successfully in the community (Haque & Khan, 2025; Jodha, 2023).

The main idea of a reformatory penal system is that the guilty should be reformed eventually by their punishment and that therefore they can be accepted back into society as normal members again (Santhosh & Mathew, 2021). Hence, the need for correctional methods that do not focus alone on locking up but on the overall change of the person through rehabilitation (Haque & Khan, 2025). Therefore, the article investigates the capability of the parole system to help attain these resocialization-oriented objectives in India while balancing the benefits

with the difficulty of the problem of prisons being filled far beyond the recommended number of inmates (Nomani & Hussain, 2022). Besides, the article sheds light on the system in which parole decisions are made, including the identity and decision, making power of parole boards that are essential for the system to be trustworthy and efficient (Guiney, 2022).

### **Background of Parole in Criminal Justice**

The idea of parole has its roots in various penal reform movements that focused on rehabilitation and mitigating the harshness of sentences. In the 19th century, the first signs of conditional release were seen when there was a realization that absolute confinement did not necessarily help individuals to become productive members of society (Morales et al., 2023). The refocus on inmates' reintegration led to the implementation of parole systems, which provide the opportunity for a convicted person to be released under supervision before serving the entire sentence, on the conditions of good conduct and reform.

In India, the matter of parole mainly depends on the prison rules in each state, which is why it differs from place to place and its effectiveness varies accordingly. The fragmented nature of the issue has resulted, among other things, in inconsistencies in policy and practice, thus making the establishment of a unified national strategy for the reintegration of prisoners a challenging task.

Parole boards are mainly tasked with the role of motivating inmates to rehabilitate by participation in educational and therapeutic programs, improvement of behavior, showing of remorse, and the like, so that eventually, they could be allowed to return to the community under supervision (Cunius & Miller, 2023). This closely follows the rehabilitative model which directed the mid, twentieth, century parole, release systems and presupposed that being released at the correct moment would give the ex, offenders the optimal chance of reintegrating into society successfully (Bell, 2017).

Nevertheless, these lofty reflections are at odds with parole boards day, to, day realities, which, among other things, entails a struggle with ingrained prejudices in the decision, making process. For example, research indicating that gender identity and type of crime affect mock parole members judgment (Cunius & Miller, 2023) is evidence of such problems. Parole boards makeup and discretion often bring up issues concerning equal access to release criteria. Usually, board members are gubernatorial appointees and, therefore, enjoy significant

autonomy that is not always subject to stringent legal oversight (Herbert, 2022). Such a high level of autonomy, combined with the lack of proper legal monitoring, easily leads to situations where board members decisions are influenced by personal preferences or prejudices rather than following the set, evidence, based criteria (Decision, Making Processes, 2017).

Numerous parole boards across the United States, as an example, continue to hold substantial and sometimes nearly unlimited power over who gets to be released from custody, which is a challenge faced globally when it comes to the standardization of parole decisions (Cox & Betts, 2020). Frequently, in making these determinations, the boards take into account the outcome of risk assessments as well as the seriousness of the charges, and the offender's past record of crimes (Cunius & Miller, 2023). Besides, the public perception of how atrocious a crime was can lead parole boards to overlook the offender's efforts to reform, place more weight on the community's sentiment, rather than on an individual's demonstrated changes (Cox & Betts, 2020).

### **Significance of Parole in Rehabilitation and Reintegration**

Parole is important mainly because it can be a link between imprisonment and total freedom, thus it can offer a controlled living situation for ex, inmates to get used again to the society, its norms, and their responsibilities. That change stage is very important in lowering the chances of re, offending because it gives the offender a supervised release where the necessities for a stable life are ensured, thus they will not be immediately thrown into the world on their own, which is a very big change from the controlled life inside prison. In addition to this, parole is a very important tool for the government to lessen the cost of imprisonment as it can help bring down the number of inmates resulting in resources being released that can then be used for prevention, and programs of community, based corrections. However, parole cannot work well when there are some systemic issues like lack of openness, decisions being made arbitrarily, and outcomes distribution being unfair especially in those areas where the right to due process in parole release is only getting the notice that the application has been denied and therefore no proper, fair hearing is given to the case (Cox & Betts, 2020). Such deficiencies often cause prisoners and the public to lose trust in the fairness of the parole system. Thus, it becomes necessary to analyze how parole is actually carried out and whether its processes meet the rehabilitative goals that have been set for it (Decision, Making Processes, 2017).

The subjectivity of parole decisions that depend on what an imprisoned person says when

expressing remorse, parole date, institutional reports, public opinion, and even the location, evidence of one's good behavior, promise to reform, and the recognition of all these done by the parole board contribute to the matter very significantly (Cunius & Miller, 2023). Besides, it is quite unfortunate that there are parole boards that still focus on punishment and reject the release even if it is proven that the individual has made progress in his or her behavior and reform (Bell, 2017; Cox & Betts, 2020). So far, this has led to a gap between the theoretical basis of parole that is basically rehabilitation and its practical side which is dominated by punishment. Consequently, the system really is not able to accomplish its main goal which is to prepare offenders for a successful reintegration (Annison & Guiney, 2022).

### **Conceptual Framework of Parole**

This section provides a comprehensive discussion of the concept of parole from a theoretical perspective. Additionally, the paper continues to identify distinctions between parole and other forms of early release such as pardons and remissions that are usually granted through executive decisions and thus lie outside the sphere of the criminal justice process (Perry, 2017). On the other hand, parole is a conditional release that the parole board may grant to the inmate under certain behavioral and supervision conditions, emphasizing rehabilitation and reintegration (Akkoyun, 2024). It is an approach that not only facilitates the transition of the individual from prison to society but also puts him/her on the right track to becoming a law-abiding citizen (Akkoyun, 2024). Parolees successful reintegration depends to a great extent on social support that is typically lacking during incarceration, thus the importance of community and family involvement in the parole process (Sathoo et al., 2021). Besides, the lack of stable housing, job opportunities, and social services makes it even more difficult for parolees to return to society successfully (Letlape & Dube, 2023). For example, in South Africa, the Correctional Services Department is unable to ensure the provision of proper post-release support thus pointing to a global call for family and other stakeholders engagement to be able to track and assist offenders (Letlape & Dube, 2023). The situation becomes trickier when inmates have been wrongfully convicted. In fact, exonerees have to go through many hurdles when they come back to society and in most cases, they are not provided with sufficient psychological and social support even though they have suffered greatly in prison and have been negatively impacted by bail conditions after they were freed (Erlich et al., 2023; Pacholski & Anderson, 2023). The absence of proper mechanisms to identify or keep track of people who have been wrongfully convicted leads to continued wrongful convictions which result in the

further alienation of such people from society and turns their return to society into a very complicated affair.

### **Theoretical & Penological Framework of Parole**

Parole is a feature of the evolution of modern penology. It signifies a shift away from retributive punishment only towards rehabilitative and reformatory models of criminal justice. Its theoretical underpinnings are a mingling of classical criminology, positivist thought, welfare, state penology, and constitutional humanism. In India, parole is essentially an administrative procedure of conditional freedom that echoes this intricate confluence of penal philosophies.

#### ***Classical Theory and the Limits of Retribution***

The classical school of criminology, based on the idea of free will and rational choice, sees punishment as a legitimate consequence of criminal behavior. In this model, deterrence is achieved through the certainty and proportionality of punishment. Parole creates a tension with the classical theory as it brings flexibility into a punitive system that was formerly very strict. Nevertheless, even classical thought can accommodate parole as a reward system for inmates that is conditionally linked to their good behaviour and progress. By associating parole with good conduct, the system maintains the deterrent aspect of punishment while permitting a certain degree of leniency.

But classical theory by itself fails to clarify parole's rehabilitative goals. The idea that punishment should be commensurate with the crime does not allow for individualized treatment or a post, conviction change of heart. That is why reform, oriented penology was born.

#### ***Positivist Criminology and Rehabilitative Justice***

The positivist school is where parole receives its most solid theoretical support. Positivist criminology argues against the notion of free will as the sole factor for crime and points out the social, psychological, economic, and environmental factors influencing an individual. From this perspective, criminals are not simply bad decision makers but people who have been shaped by their environment and are capable of change.

Parole is a reflection of the positivist idea of treatment tailored to the individual. It grants the

penal system the opportunity to determine if the offender has taken the rehabilitative path and is ready for a phased return to the community. A parole under supervision is essentially reform trial which gives the authorities the means to find out if the prisoner has genuinely changed outside the controlled environment. Parole, therefore, is a transitional phase from imprisonment to total freedom, it perfectly fits the positivist value of reforming rather than punishing.

It is worth noting that Indian judiciary has consistently reiterated the essence of parole as a tool for reform, maintenance of family bonds, and prevention of social exclusion which is generally the outcome of long, term incarceration.

### ***Reformative and Welfare, State Penology***

Reformative penology, which became the focus in the twentieth century, considers punishment as a tool for offender's reintegration into society. On this ground, the state plays a welfare role and holds itself accountable not only for public safety but also for the moral and social rehabilitation of prisoners. Parole is therefore very much consistent with this model as it lessens the psychological distress caused by being continuously locked up and also leads to a smoother social reintegration.

In welfare terms, parole has multiple positive effects at the system level. It helps ease the problem of overcrowding in prisons, encourages good behaviour, and makes it possible to keep up with family and neighborhood ties. This way of thinking is based on the fact that the effects of imprisonment extend beyond the prisoner to the family and society. Indian penological deliberations are increasingly considering parole in this wider context, thus they look at it as a rectification rather than an indulgence.

### ***Custodial and Administrative Theory of Parole***

Even though it has a reformative nature, parole in India has been characterized by law as a mere extension of custody rather than a suspension of the sentence. The custodial theory states that the parolee remains under the constructive custody of the state and is therefore, supervised and can be recalled to prison. By taking this theoretical stance, parole is able to operate within the existing punitive system and at the same time, it can be granted and revoked by the executive in an unquestionable manner.

Judicial decisions have also been justified through this theory to say that parole doesn't

eliminate the penal authority. A parolee's freedom is still very much conditional; it is regulated by his/her compliance to the rules and the risk of going back to prison. On the one hand, this model ensures public safety, but on the other hand, it also makes room for parole authorities to wield too much power and thus, there are little, if any, procedural safeguards especially, when the decisions regarding parole are non, transparent or lack standardisation.

### ***Risk Management and the New Penology***

Recent developments in penology are indebted to risk assessment and actuarial decision, making, these changes are framed in the discourse of a new penology. This new outlook has brought about a shift in focus, i.e. away from the reform of an individual's morality to the management of groups or populations perceived as risky. Parole decisions, thus, are based on offence seriousness, an individual's criminal record, and psychosocial behaviour within the institution which may contradict the rehabilitative ideal to some extent

In the Indian setting, this approach oriented towards risk has resulted in the judiciary taking a cautious stance especially, in relation to those offenders who are either serious or habitual. Of course, risk assessment is indispensable when it comes to the protection of society but, there should be no over, dependence on it in order to avoid the nullification of parole's reformatory nature and, the unnecessary and unjustified exclusion of certain groups which is fundamentally at odds with the principle of equality under the law.

### ***Constitutional Humanism and Dignity***

The foundation of Indian parole law is constitutional humanism. Articles 14 and 21 are the harbingers of equal treatment, human dignity, and fairness in criminal policy. The concept that imprisonment does not entail the negation of one's personhood is what grounds judicial support for the use of parole as a legitimate instrument of reformation. Lower courts have reiterated that the loss of personal freedom should not equal the loss of dignity of a person, and parole is a way in which the humanity of the punished can be upheld.

Thus, the criminal justice system of India is evidence of a multitude of philosophical strands integrating the penological framework of parole. It evidences influences from different schools such as classical deterrence, positivist rehabilitation, welfare, state correctionalism, custodial control, and contemporary risk management, all brought together and regulated by

constitutional values. The real test is how to reconcile these divergent theories of parole when it comes to its real, life application. When parole is an authentic tool for reform and conditional liberty, its use carries out the penological intention. When it is abused for arbitrary or privileged reasons, it goes against its theoretical basis and criminal justice loses the people's trust.

### **Parole System in India**

India's parole system, in comparison with global practices, integrates certain universal principles but is deeply impacted by the country's complex socio, cultural setup and legal heritage. Unlike the internationally harmonised parole systems, it is largely regulated by the Prisons Act, 1894 and various state prison rules, where different terms have been used, 'parole' refers to short term releases for a specified purpose whereas 'remission' and 'furlough' are longer, term leaves and are often rights for good conduct. Nevertheless, questions about the impact of these provisions on the reduction of re, offending are still relevant considering that the process of social re, integration is very complex and is influenced by various levels of factors: individual, interpersonal, community, organizational, and political (Choudhary, 2024; Mouro et al., 2025).

This situation is prompting a paradigm shift in the understanding of parole, calling for a concerted effort that goes beyond tackling only the legal aspects to dealing with those psycho, social and economic constraints that render the reintegration of ex, offenders unsuccessful (Varghese & Raghavan, 2019). One of the key issues that the existing system does not sufficiently address is that of wrongful convictions where the wrongly convicted, among other things, have to deal with the stigma of having been found guilty and have limited access to support and resources for their social reintegration (Pacholski & Anderson, 2023). In fact, to the best of their knowledge, those upholding their innocence very often run into such a deadlock because showing remorse is one of the preconditions for parole and therefore, they are forced to admit guilt falsely in order to be released ("Litigating Innocence: Why Systemic Reforms Are Needed to Exonerate Innocent, Pro Se Individuals, " 2023).

Moreover, exonerees, unlike parolees, may find themselves deprived of the usual reintegration services which puts them at an even greater disadvantage in terms of dealing with the challenges after release (Catlin & Redlich, 2023). The situation is very problematic, especially when we take into account that India is notorious for wrongful convictions in terrorism cases where various factors, including the state's high, handedness and the accused's stigmatization



as a minority, often lead to such miscarriages of justice (Roach, 2024). The Indian Constitution, through Articles 72 and 161, gives the President and Governors the power to grant pardons, reprieves or remissions respectively, which therefore can be used as a last resort in dealing with cases of wrongful convictions but only in very rare instances where there are undoubtedly grounds of a legal mistake or excessive hardship (Tijani et al., 2024). Still, these clemency powers under the Constitution are not parole; the President or Governors exercise them to mitigate a punishment or correct an error in the judgment (Agarwal & Kansal, 2023; McBain, 2022; Perry, 2017).

Although clemency acts as a corrective instrument, generally, it is only applied after the fact hence, there is a need for the parole system itself to adopt a more forward, looking and therapeutic perspective to cater to the diverse needs of all persons, including the wrongly convicted (Horowitz, 2023). This difference brings into focus the pressing necessity to overhaul the parole system in such a way as to make it capable of dealing systematically with issues that exonerees face without resorting to executive clemency as the only option (Novak, 2016). In addition, the rather limited ambit within which courts in India can review clemency decisions, as kept being the case while the Supreme Court has been upholding it, calls for a well, functioning and accountable parole system that is in a position to deal with justice miscarriages not only after the fact but rather effectively following a preventative and remedial approach (Surendranath & Pathak, 2022).

This system should take a leaf from the book of the provisions of some other legal systems where the request for clemency and parole that are based on claims of factual innocence are exempted from the usual limitations imposed on clemency and parole, thus recognizing the special circumstances of inmates who are there erroneously (Novak, 2016). This means that a considerable revision of the practices of the parole board will be necessary to confirm that no one is de facto punished for asserting their innocence which is a consequence of them being wrongfully convicted since in reality an injustice is committed when on the grounds of obtaining parole an admission of guilt is forced. Carrying out such a revision will bring India's parole system in line with world best practices that take cognizance of the fact that a claimant of innocence needs to have access to a special hearing procedure, be exempted from waiting periods, and have relaxed evidentiary requirements (Novak, 2016).

## **Legal Provisions for Parole in Indian Law**

The main legislation that governs parole in Indian is the outdated Prisons Act, 1894 which is, however, supported by an unorganized collective of state, specific prison manuals and rules, the result of which is resultant disparities in the way it is applied and understood in different jurisdictions. These laws normally define the temporary release conditions, the release granting authorities and the revoking methods but very rarely have provisions for identifying wrongful conviction or post, release support (Rozen, 2023). Moreover, the lack of a single, all, inclusive parole law comprehensively at the national level worsens these problems, resulting in a disjointed, often arbitrary system, indifferent to the original purpose of parole which is rehabilitation (Ayinde, 2022).

Parole in Indian law has been equally influenced by judicial interpretations as by the executive rules; the cases reported in the literature you supplied demonstrate three central recurring points in the doctrine: (1) parole is a privilege granted by the executive/administration and not a right given by the judiciary; (2) parole does not suspend or end the sentence it is a continuation of custody by a conditional release; and (3) generally parole should be generously given for legitimate humanitarian and rehabilitative reasons, while the refusal should be the exception when the prisoner poses a real threat. These fundamental concepts are very commonly revisited in the Indian case, law covered in the articles.

The Supreme Court rulings constitute the doctrinal framework's core. The Court in *Sunil Fulchand Shah v. Union of India* ruled that parole is not a suspension of the sentence and the parole period can be considered as a part of the sentence for a number of legal purposes a standpoint that has resulted in subsequent diverse state practices. In the same way, *State of Haryana v. Mohinder Singh* and other apex court rulings describe parole as a conditional release that does not change the prisoner's penal status. These judgments form the foundation of later high, court and administrative practice and are frequently cited in the doctrinal literature.

However, at the same time, the Supreme Court has expressed a vision of parole guided by human rights and rehabilitation. The Court has cited decisions like *Asfaq v. State of Rajasthan* and others for the point that the criminological objective of parole is reformation and re, integration, and hence the courts have put stress on the fact that the refusal of parole has to be reasoned and cannot be arbitrary; parole should generally be the rule and the refusal should be the exception, especially when humanitarian grounds (illness, bereavement, family

responsibilities) are involved.

Nevertheless, the legal principles show ambivalence when dealing with public, safety counter, arguments: the Supreme Court and many high courts acknowledge that serious and heinous offenders might have to undergo stricter scrutiny for community safety reasons. The case, law contains the most visible cases where courts have declined parole on the grounds of the severity of the crime or the verified risk. They demonstrate the tension between the concessions made for the welfare of the convict and the imperatives of risk, management, a conflict that recurs in judicial opinions described in the literature.

Several criminal appeals and writ petitions that have been reported have become exemplary as in these it is shown that parole has been abused thus resulting in loss of trust by the public. Among others, notable cases documented in NUJS and critical reports include Sidharth Vashisht (Manu Sharma) v. State (NCT of Delhi), where the parolee openly violated parole conditions by using the temporary release for social activities, and the well, known Bibi Jagir Kaur case where the former minister was granted early temporary release which was interpreted as a preferential one. These examples have resulted in the public perceiving that the powerful get parole relief disproportionately while the prisoners of concern to the public, most of the times, get a rejection.

The jurisprudential record is even more disturbing as far as re, offending while on parole is concerned and the courts have termed such cases as “the rarest of the rare” when they are used to refuse or withdraw parole. Saibanna v. State of Karnataka (murder while on parole) and Krishan v. State of Haryana (re, offending leading to denial/call, back) are mentioned in the doctrinal literature as the examples that the courts use to justify the necessity for careful pre-release examination and conditionality. The episodes served as a justification for a strict refusal in some cases and have had an influence on the administrative reluctance.

The COVID, 19 pandemic has caused an unprecedented wave of litigation; judiciary and the executive had to modify parole policies to meet public health requirements urgently. The Supreme Court while calling for immediate relief to control overcrowding has left a wide latitude to the states to decide on the eligible categories a delegation that resulted in inconsistent outcomes and later breaches suit under Article 14.

Furthermore, it is through state, level litigation that the constitutional inequality comes to light.

The comparative analysis of state rules exposes the cases brought to court again and again regarding whether parole time should be considered as part of the sentence (discrepancy between *Poonam Lata v. M.C. Wadhawan*, type decisions and *Sunil Fulchand Shah*) and whether state regulations that exclude certain categories from parole altogether are in line with Article 14. The judiciary has declared categorical exclusions unlawful where they violate the principle of equality, however the states' varied actions continue to be a problem that often results in the intervention of the high courts.

Lastly, the reports of a number of cases serve as evidence of procedural lapses: absence of police reports on time, insufficient supervision on release, and the ineffectiveness of the method of tracking and re-arresting of absconders. Comptroller and Auditor General (CAG) observations and case inquiries as mentioned in the NUJS and other papers have shown the extent of parole "jumpers" and the poor records of their recapture; the courts have been relying on these administrative findings while questioning the safety of parole regimes of particular states. These documentary facts have become part of the judicial deliberations when the rehabilitative goals are to be balanced with the capacity of the system.

Lessons from the cases. On the whole, the case, law as reflected in your sources fashions a mixed model: parole is an executive, conditional release granted only for the purposes of reform, dignity and family ties; and only if the exhibiting of risk by the prisoner is tolerable and the community supervision is sufficient. The courts have required reasoned and fair decisions and at the same time have indicated their willingness to give weight to the executive's expertise in security matters. The real, world effect, as illustrated by the cases you shared, is that of an inconsistent law: at a theoretical level it is progressive but from the administrative point of view it is weak and thus it is done unevenly across states and it is susceptible to elite capture and public backlash.

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