Chapter-1
Introductory
INTRODUCTORY

1.1 STATEMENT OF THE PROBLEM

The history of human civilization testifies the fact that society is continuously growing between the liberty of the individual and the security of the society. There is perpetual conflict between them, the resolution of which appears to be extremely difficult, if not impossible. The conflict between them naturally becomes more sharper and complicated in a developing, plural, multilingual and closed society like India. It is necessary, to strike a just balance between the 'liberty' and the 'Security'. Any preference between them is bound to lead lopsided consequences in the society.

Retribution and deterrence emphasis security of society and reject the notion of reformation of criminals. On the other hand, reformation and rehabilitation emphasis the reformation of the criminal and do not believe in the ideas of deterrence and rehabilitation.¹

In beginning, criminals were treated like chattels, animals and slaves. There was total dominance of retributive and deterrent theories of punishment.² The prisons established in beginning were based on these ideas and obviously, the contents

of prison life were horrible, terrifying and deterrent to those who were sent to serve imprisonment for committing offences.

The advancement of philosophical knowledge, developments of scientific and technological knowledge, increase of scientific temper and increasing rationality in human beings led to the development of new penological thoughts and ideas. They became more attractive as retributive and deterrent goals of punishment failed to bring desirable results and crime rates could also not be arrested within the limits.

Therefore, reformation and rehabilitative theories of punishment gained grounds and were regarded as fresh approaches to the problem of crime and criminals. Individualized treatment became the cardinal principle for reformation of offenders. As the time passed and scientific study of criminal behavior attracted attention, reformation and rehabilitation of criminals increasingly came to be regarded as goals of punishment. The result is that new therapeutic technique has come into being. Contents of prison life have also changed. Prison environment has become more humane and wholesome. Criminals are also increasingly being treated as human being and not the slaves of the State.
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The prison jurisprudence has developed under ordinary legislation and the Constitution. The most powerful technique for reformation and rehabilitation is parole. Parole has emerged as a technique to mitigate the consequences of severe punishment as imprisonment has become the more common mode of penal sanction. The main object of this technique is rehabilitation of offenders. In parole convict is released after serving some part of his sentence and the release is not the result of judicial decision but it is quasi judicial or administrative function. The problem has a reason regard to the limits of granting parole because by exercising parole power the criminals are released in society. It is also true that they are released subject to certain conditions. However, the cases are not wanting when the parolees have committed new offences during the release on parole. It comes in conflict with the security of the society. It is necessary that proper balance should be struck between the ideas of reformation and rehabilitation of criminal and security of society.

Parole pursues the objectives of rehabilitation of offenders and involves skillful supervision of selected offenders outside the

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prison. The convict is released after serving some part of sentence for some time. And, the release is subject to certain conditions. Therefore, it becomes necessary to study the nature and origin of parole. A study of its history and international position would provide matrix to evaluate the existing legal position on parole in India.

Generally, parole is governed by State legislations and rules made there under and concerned State Jail Manual. For release of prisoners, Good Conduct Acts were passed in India. The Punjab was the first state when the Punjab Prisoner’s Probational Release for Good Conduct Act was passed in 1926.\(^4\) Subsequently, similar legislations were passed in other states also for example, Assam (1939), U.P. (1938) and the Central Provinces and Berar Prisoner’s Act, 1939.\(^5\)


Sec 3 of the Himachal Pradesh Good Conduct Prisoner’s (Temporary Release) Act, 1968 deals with parole. It provides that

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the State Government, in consultation with the District Magistrate, to temporarily release for a specified period any prisoner if the government is satisfied about the existence of the grounds mentioned in the said section. The section provides that a prisoner may be released if a member of the prisoner's family has died or seriously ill or if the marriage of the prisoner's daughter or son is to be celebrated or if it is necessary for ploughing, sowing or harvesting or carrying on any other agricultural operation on his land. The maximum release in case of death or serious illness shall be two weeks and in case of marriage or other sufficient causes, it shall be four weeks. The period of release shall not count towards the total period of sentence of a prisoner.

The legal position on parole varies from State to State. Therefore, it is necessary to find out the law on the subject. It is also to be enquired whether the legislative policy, on the subject is clear or not. It has to be identified whether the law which governs parole shows uniform trends or reflects state of confusion. Parole and similar therapeutic techniques have come in prominence because of insistence on adoption of alternatives to imprisonment approach.

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Section 3, The Himachal Pradesh Good Conduct Prisoners (Temporary Release) Act, 1968; See also appendix I.
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The issues relating to paroles have come before the courts. For example, in Gurdeep Bagga v. Delhi Administration\textsuperscript{7}, where the parole was refused to life convict by Competent Authority, but the High Court recommended annual vocation for life convict.

Therefore, it has to be examined whether parole is significant mode of handling the offenders or effective therapeutic technique of treating the criminals. Whether there is gap between parole (individual liberty) and security of the society. Is there need to restate the law on parole to maintain the balance between parole and security of society. It needs to be tested whether the courts are aware of its utility or only the lip service is being paid by them. This has to be enquired as to what is the judicial response over issue relating to parole.

The grant of parole is a very sensitive issue. It involves security of the society and liberty of individual (Parole). Thus, parole should not be seen as a measure of leniency but as a therapeutic technique, developed to achieve certain social objectives. The study probes whether parole is sufficient means of handling offenders and secondly, what has been the legal and societal response to the issues concerning or related to parole. The aim of the work is to strengthen parole as a perfect mode of handling the offenders.

\textsuperscript{7} 1987 CriLJ 1497 (Del).
The Courts decisions and laws make direct and indirect impact on the members of the society. Many times, they have far reaching consequences. Therefore, it becomes necessary to find out social response on issues relating to parole.

1.2 AIM AND OBJECTIVES OF THE STUDY

The chief object of the proposed work is to study empirically and analytically the social perception of the context and extent of parole in the light of recent legislative policy and judicial approach.

To be more specific, it is a response study. The study of social response would reveal the gap between legal process and social process in the country. The methodological significance of the work need not be overemphasized for linking legal and social data on the subject chosen for study. The findings would provide hitherto unknown criterion to evaluate legal and judicial philosophy in the research area.

The objective of the proposed work is to find out the legislative policy, judicial approach and societal perception on parole. An attempt has been made to find out the sufficiency or existing laws on the subject. It is also necessary to determine whether there is a gap between the legislative policy, judicial approach and societal perception. It will also be interesting to know whether the judiciary has shown activism in the research area or not. The study attempts to find out whether parole as a
component of correctional administration is successful. One of the objectives of study is to find out the working of parole system in Himachal Pradesh.

The study is useful not only from theoretical point of view but also from practical point of view. It is hoped that findings of the study will be beneficial in strengthening and improving the parole system in India.

1.3 HYPOTHESIS

The work proceeds on the hypothesis that there is difference between law including judicial decisions and social perception on parole. The legislative approach is in state of confusion. It is not adequate. The courts have applied it lopsidedly and are suspicious of its reformative reach.

1.4 OVERVIEW OF THE EXISTING LITERATURE

There is abundance of legal literature and sociological material on the subject. However, the study of parole in either discipline becomes lopsided because of the absence of knowledge on the subject of the other disciplines. It is imperative for sound correctional administration that parole should be studied taking into account the literature available in all disciplines. Some works may be referred just by way of illustration. Professor Sutherland in his classical book on
Principles of Criminology has devoted one chapter on parole.\(^8\) He has taken into account definition, conditions, selections, supervision and position in the states. According to him "parole is the act of releasing or the status of being released from a penal or reformatory institution in which one has served a part of his maximum sentence, on condition of maintaining good behavior and remaining in the custody and under the guidance of the institution or some other agency approved by the state until a final discharge is granted."\(^9\)

Professor Siddique in his book Criminology: Problems & Perspectives also deals with parole under the chapter 'Therapeutic Approach-Probation & Other Flexible Techniques'.\(^10\) He deals parole, from Indian point of view and points out that parole is governed by the Act, Rules and Manuals which vary from State to State. He has also referred to certain studies\(^11\) and pointed out that the number of parolees is less but it is charitably granted to those who apply for it.

Barnes and Teeter in his book New horizons in Criminology has devoted one chapter on parole.\(^12\) He has taken into account, the nature of parole, origin of parole, the mechanics of parole, parole selection, supervision of parolees etc. According

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\(^8\) Sutherland and Cressey, Principles of Criminology, 566-589 (6\(^{th}\) ed. 1968).

\(^9\) Id. at 566.


\(^12\) Barnes and Teeters, New horizons in Criminology, 566-583, (3\(^{rd}\) ed. 1966).
to them "Parole is a form of correctional release granted after prisoner has served a portion of his sentence, in a correctional institution. \(^{13}\) Walter C. Reckless in his book The Crime Problem has also devoted one chapter on parole.\(^{14}\) According to him "Parole is a release procedure. The offender after having served part of his sentence in a correctional institution is released according to law from the prison or reformatory". \(^{15}\) N.K. Chakrabarti in his book Institutional Corrections (in the Administration of Criminal Justice) deals with parole under the Chapter Social Rehabilitation of Prisoners.\(^{16}\)

According to him "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, the offenders need as they serve the remainder of their sentences within the free community.\(^{17}\) V.V. Devasia & Leelamma Devasia, in his book Criminology Victimology and Corrections also deal with parole under the chapter Parole: Philosophy and Operation. \(^{18}\) He has taken into account the objectives of parole, origin of parole, essentials of parole system, Parole Board, parole hearing,

\(^{13}\) Id. at 566.
\(^{15}\) Ibid.
\(^{17}\) Id. at 126.
\(^{18}\) V.V. Devasia & Leelamma Devasia; Criminology Victimology and corrections, 149-166, (1992).
conditions, parole supervision and violation of parole. The Article on "Judicial response to parole", points out cases relating to grant of parole, refusal of parole and under the preventive detention laws.  

19 According to him "Parole means the release of prisoner temporarily for a special purpose before the expiry of the sentence and the prisoner promises good behavior and return to Jail." S.P. Srivastava in his article Parole: The Indian Perspective, points out the historical backdrop, the recent position, the recent amendment, criticism and suggestions.  

20 According to him "Parole means a temporary release of prisoners during the period of their incarceration, akin to what is 'furlough', 'ticket of leave' or 'emergency release' elsewhere. Mohammad Najmi in his article The Role of Parole: Parole System At Glance, deals with meaning, conditions, preparation, selection, supervision, and advantages of parole.  

21 According to him "Parole is a form of conditional release granted after a prisoner has served a portion of his sentence in a correctional institution. It presupposes careful selection, adequate preparation for
release and some type of supervision in the community for a sustained period of time".  

1.5 RESEARCH METHODOLOGY

The Methodology of the present study has been designed in such a way so that the socio-legal aspect of parole as a technique of reformation and rehabilitation can be investigated. In order to examine the provisions of law, rules and regulations pertaining to the above mentioned aspect of the study, secondary information/sources have been relied upon. A major part of this work relates to the theoretical aspect of the problem under study. Decided cases by the courts pertaining to parole have been analyzed. As the scope of the subject is vast and ever expending with a regular output of legal data i.e. law and decisions, a representative selection of Indian cases has been made so as to cover all important aspects of the chosen problem. The work is confined up to June, 2013. The work also concentrates on field investigations. The first hand information regarding parole has been obtained from Prisoners, Prison Officials and members of the society. The researcher had to limit the sphere of field research to four prisons of the State of Himachal Pradesh and one ward (namely, Jakhoo Ward) of district Shimla. The respondents who represents almost all sections of the society i.e. students, employees, businessmen, advocates and police have

24 Id. at 6.
been selected randomly. The information collected with the help of an interview schedule has been analyzed in tables.

**Processing of Data**

According to the procedure indicated in the methodology adopted for the purpose of the present study, first hand information has been collected from the respondents with the help of an interview schedule framed for eliciting their response to explore the social dynamics of Parole as a technique of reformation and rehabilitation. Three interview schedules were prepared. One for the prisoners lodged in the prisons. The second interview schedule was prepared for the staff of these prisons and the third one for societal response. The first interview schedule was filled up by the prisoners kept in Model Central jail, Kanda, Shimla, District and Open Air Jail, Dharamshala and sub-jail, Kaithu, Shimla. The total number of the prisoners from whom the interview schedule was filled up was 123. The second interview schedule was filled up by the staff of these prisons. The total number of the staff of these prisons from whom the interview schedule was filled up was 40. The third interview schedule was administered to the respondents in Shimla, belonged to different cross sections of the society. For the social response by respondents in Shimla the interview schedule have been filled up by 206 persons in whom 120 were males and 86 were females. The interview schedule have four main variables i.e. sex, age, education and profession. On the basis of sex peoples were
Categorized among male and females, in education they were categorized Matric, +2, graduates, PG and above, on the basis of age they were categorized 21-35, 35-50, 50-65, and 65 onwards and on the basis of profession they were categorized Advocate/Police, Professionals, Business class, Service class and others. The total number of respondents up to Matric was 47, up to +2 were 40, and Graduates were 88, PG and above were 31. The total number of persons up to the age of 35 was 62, up to the age of 50 were 92, up to the age of 65 were 32 and 65 onwards the number of respondents were 20. On the basis of profession total number of advocates and police were 76, professionals were 43, service class was 24, business class was 36 and others were 27 in number. In this way, social response in Himachal Pradesh and India was found.

The correlation analysis of the data derived through interview schedule from respondents has been given after analysis of social response. The data have been given diagrammatical representation too. Appendix I deal with the Himachal Pradesh Good Conduct Prisoners (Temporary Release) Act, 1986. Appendix II deal with the Himachal Pradesh Good Conduct Prisoners (Temporary Release) Rules, 1969. Appendix III deal with Parole/furlough Guidelines, 2010. Appendix IV deals with the Tables. Social perception on parole which could not find place in the main body but had some trends. Appendix V
reproduces three Interview Schedules. Appendix VI deals with Jail wise capacity and population of prisoners as on 31-03-2013.

1.6 CHAPTER SCHEME

The study has been conducted under the following rubrics:

Chapter 1 "Introductory" is devoted to the statement of the problem, aims and objectives of the study. Review of existing literature and the research methodology used in the present work have also been dealt with.

Chapter 2 "Parole: General Aspects" gives a brief but succinct account of some general aspects of parole such as concept, history, origin, nature, object, distinction with other techniques, such as furlough, probation, suspended sentence, indeterminate sentence and international position.

Chapter 3 "Legislative Policy and Administrative Approach" examines the Legislative policy and Administrative Approach on parole. It describes the Himachal Pradesh Good Conduct Prisoners (Temporary Release), Act, 1968, Parole/Furlough Guidelines 2010 and All India Model Jail Manual etc.

Chapter 4 "Judicial Approach" examines the approach of the judiciary in addressing the problem of parole and adjudicating the cases of parole.

Chapter 5 "Societal Perception on Parole" analyses the views and response of the respondents and sets forth the findings of the analysis and interpretation of various data collected so as
to determine similarity or difference between the legal approach and social perception.

Chapter 6 “Concluding observations” after making trend analysis offers certain generalizations arising out of the study. It lists the findings of the study and puts forward constructive suggestions.