Chapter-6
Concluding Observations
CONCLUDING OBSERVATIONS

Parole is not purely a legal problem but in fact a socio-legal problem. It is useful technique for the correction and rehabilitation of criminal. Social rehabilitation of prisoners is now a matter of serious concern to the modern criminologists. However, the success depends upon socio-logical variables, factors and conditions. Grant of parole is very sensitive issue. It involves two conflicting values, viz., liberty of the individual (criminal) and security of the society. The security of the society is ensured by the criminal law of the country whereas liberty of the individual (criminal as well as non-criminal) is ensured by the Constitution. The study finds that the Court has struck a nice balance between them.

The various definitions on parole shows that it is a conditional release from prison by the prescribed authority subject to certain conditions. These conditions generally relate to his place of abode, place of earning, non-commission of any new offences, maintenance of good behaviour during the period of parole, not leaving of the place without permission, surrender on due date, abstention from intoxicants etc.

Parole is significant to society as a release method which retains some control over prisoners, yet permits them more normal social relationship in the community. It provides
constructive aid at the time when they must need it. Parole is an integral part of the total correctional process. As such it is a method of selecting and releasing offenders from institutions, under careful supervision in the community.

Historically, parole was a concept of military law and denoted release of prisoner of war on promise to return. But, these days parole has become an integral part of the criminal justice system. It had its counterpart in England. It was known as "ticket of leave" which originated in plan worked out by Captain Alexander Maconochie on Norfolk Island in 1840. Alexander Maconochie is regarded as father of parole.

Parole, as a technique of reforming and rehabilitating criminal hardly has a history of more than 150 years. In India also it was introduced in the first quarter of twentieth century. The origin of parole became possible because of excessive faith in the theories of reformation and rehabilitation of the criminals. Under the influence of reformation and rehabilitation, objects and contents of prison life have changed. A number of prison reforms have been introduced from time to time. Some significant changes occurred in the prison administration in the latter half of the 19th century.

The post-independence era in India brought in the wake a growing realization of the need of change in attitude towards the treatment of offenders. Parole occupies a significant place in the
correctional treatment of offenders. It is directed towards narrowing down the gap between the prison life and the free life of the outside world.

Parole is a device which seeks to protect society and assist the prisoner in readjusting himself to a normal free life in the community which otherwise is very difficult after release. It offers an opportunity to test the rehabilitation programmes prior to the expiry of sentence. It allows him to maximum physical contact outside the world. Thus, parole serves two purposes, namely, protecting the society and rehabilitation of the offender.

A distinction has been drawn between parole, a therapeutic technique and other flexible techniques such as probation, furlough, suspended sentence and indeterminate sentence, etc. The concept of furlough is somewhat similar to parole with the difference that grant of parole is a matter of grace and grant of furlough is a matter of right. The period of furlough is treated as remission of sentence which is not the case with parole. Grant of parole is quasi-judicial or administrative function and grant of probation is a judicial function. Probation is pre-incarceratory technique whereas, parole is used when offender has served some part of sentence.

The study finds that correction administration and flexible techniques, such as parole, furlough and probation etc., aim at
correcting the criminal behaviour rather than punishing the criminal it is in consonance with the concept of welfare state.

The study finds that up till now a number of committees have been formulated to make the rehabilitative process a success. The committees have made numerous valuable recommendations to bring about not only improvements and reformation in the rehabilitative system but also in the entire criminal justice system.

Parole has universal validity as it is practiced in many countries, such as, the U.S., the U.K., Canada, Germany etc. The analysis of the reports of various international bodies and conventions in favour of giving the concept of rehabilitation of offenders a more humanistic and equitable touch. The international trends in community corrections are progressing well and should improve even more in future. The interrelationship of the different components of the system, as well as with the communities, is key elements to ensure community safety.

The study finds that parole laws are in a state of confusion, law varies from State to State. Rules are also not uniform. Even the legislations/rules do not bear the same title. There is an urgent need to improve the situation. Parole is implied not only in punitive detention but is effectively used in cases of preventive detention. It is indicative of legislative and judicial liberalism in the application of parole.
The release of prisoners for good conduct and Acts were also passed in some of the States in India. The Punjab was the first state when the Punjab Prisoners Probational Release for Good Conduct Act was passed in 1926. Subsequently, such Acts were also passed in U.P., Assam etc. Thereafter, the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 was also passed. The Himachal Pradesh Good Conduct Prisoners (Temporary Release) Act, 1968 was passed to provide for the temporary release of the prisoners for good conduct on certain grounds. Section 3 of the Act deals with temporary release of prisoners on certain grounds, such as, death or serious illness of the family member, marriage of son or daughter or for agricultural purpose or any other sufficient reason.¹

Some provisions are also given under the Delhi Jail Manual relating to parole & furlough. The provisions of parole and furlough as provided in the Punjab jail Manual and the Himachal Pradesh jail Manual are same as given in the Delhi Jail Manual.

The study finds out that for the administration and operation of parole system, Delhi Administration has made guidelines. Parole guidelines were set in motion by Delhi High Court after it was largely perceived that murder convict, Manu Sharma² had got

² Manu Sharma v. Delhi AIR 2010 SC 2352.
parole easily. The guidelines for the first time set a timeframe within which all concerned authorities are required to process and dispose of parole applications.

Thus, the study finds that the Legislative policy due to varying legislations from State to State is not explicit on parole. Legislative approach on parole shows that it is often resorted with a view to assessing the impact of reformative treatment administered during the period of serving the sentence in prison. Thus, parole is regarded as a therapeutic technique aimed at achieving the purpose of reformation and rehabilitation of the criminal.

The success of the parole programme depends upon effective supervision in India. The techniques of supervision are too weak or not effective. More good results may be obtained if selection of prisoners and supervision of parolees made more rationale and effective. The technique may yield dividends if it is applied after calculating all the important considerations relating to parole and the prisoners who are granted parole. The study finds that the authorities generally, mechanically exercise the powers in this regard. If fault persists, problems will persist in society. Parole cannot be denied on the ground that the release of prisoner on parole would endanger the social security. While assessing the issue of parole the constitutional perspective must
be kept or borne in the mind. Parole is generally granted by Parole Board/ADGP/DM/IG Prison as per rules.

In parole system the emphasis must be on supervision as well as guidance and assistance to parolee so as to make the system useful to the society in general and the parolees in particular. The parolees must be thoroughly prepared for parole administration before release on parole. The parolees must be assured an honourable employment and favourable surroundings at the time of their release on parole. This will impart hope, confidence, and social responsibility in them. It would also help them in overcoming their complex for being ex-convicts. The parolees have to be rehabilitated within the society through various social agencies. The parole authorities should seek active co-operation of the public in this task. The parole boards should be completely free from political pressure. The persons of proven ability and integrity should be inducted in these boards. They should be well qualified full time officials. The staff associated with parole agency should also be whole time workers. Well qualified and trained personnel should be required for this job. For a violation of parole, the person is to be returned to the institution. The consequences of parole violation are many. Penalty in the form of reducing some remissions earned by him is imposed if he returns after due date as per the rules made in this
behalf. Similarly, if new crime is committed, he would be accordingly punished.

The Judicial approach shows that the courts are liberal on the issue of parole and related matters. It is also taken as munificent mode of handling of the offenders. The judicial approach on parole seems quite encouraging. The courts believe in the worth and utility of parole as a reformative technique. Sometimes, the courts have issued appropriate directions. For example, in Gurdeep Bagga\(^3\) humanitarian touch is also found on the part of Court although parole may refused but annual leave was granted.

The Courts have granted parole sometimes on the ground of mercy, where it was not possible other options were also searched. For example, in Gurdeep Bagga, the parole was refused to the life convict, but the High Court recommended annual vacation for life convict.

Generally, the cases which have come before the courts, the parole was requested on certain grounds, such as, participation in marriage of the relative, death of near relatives, illness of any family members or the prisoner himself, etc. The Courts have shown human touch while releasing criminals on parole. It may be illustrated by the fact that where the surrender

\(^3\) *Gurdeep Bagga V. Delhi Administration*, 1987 CriLJ. 1497 (Del).
was not made on due date the courts have annulled the infliction of consequences of punishment on technical grounds, such as, non compliance of principles of natural justice.

The study of the cases reveals that the courts are sympathetic to prisoners and have generally favoured grant of parole. The courts have also highlighted that the importance of release on parole which helps in reformation and rehabilitation of the criminal and prevent them from becoming bestial and dehumanized. Periodical release on parole is desirable. Parole is desirable even in long term sentences. In *Dharamvir*⁴, the desirability to release long term sentences on parole was emphasized by the Supreme Court so that they may not be totally cut off from the society. The right to parole cannot be defeated merely on the ground that prisoner was unable to furnish security bond or surety bond. Parole may be granted to the prisoner with a record of good conduct in jail, subject to certain limitations and conditions. The exercise of power to grant parole should not be seen as act of charity, comparison or clemency. The discretion must be exercised in just and reasonable manner. It must avoid inconvenience, absurdity, hardship, or injustice.

The study finds that parole is beneficial for prevention of recidivism and overcrowding in prisons. Economic condition is not

relevant for grant of parole but parole may be tried for reasonable spells in such cases. The nature of the sentences and magnitude of the crime are not relevant. The court has condemned unreasonable and recalcitrant attitude in suitable cases. The parole cases have added new dimensions to the prison therapy and parole has become an integral part of criminal jurisprudence.

Mulla Committee recommended that the effect of parole is premature release which acts as incentive to a prisoner. In *Sharad Keshav Mehta*\(^5\), Justice Pendse pointed out the distinction between parole and furlough. Parole is granted for certain emergency and granted to prisoner on compliance with certain conditions. In many cases, parole has been granted on account of illness to prisoners, on production of medical certificate. However, it has become misused in many cases. The court should be cautious of the fact. The validity of the medical certificate should be taken into consideration while granting parole to prisoner on medical ground.

The study finds that even in while collar crime cases, parole have been emphasized for rehabilitation of criminal and prevention of recidivism. Parole is also being successfully tried in preventive detention cases. During the pendency of the appeal

\(^5\) *Sharad Keshav Mehta.V. State of Maharashtra*, 1989 Cri.LJ 681 (Bom).
also the parole may be granted. In Bhawar Lal Godara\(^6\), the court pointed out that during the pendency of appeal against conviction a prisoner could be released on parole and during the pendency of trial, the accused was not entitled for parole but after conviction, he could be released on parole. On the whole, the judicial approach is generous and sympathetic to prisoner. Keeping in view, its beneficial effect on criminals, efforts must be made to prevent its possible abuses.

The study finds that the parole system is also open to abuse. The provisions of parole appear to be a great risk if granted to politicians, under the influence of politician, on false medical ground or on false grounds without verifying the facts or unverified ground on the basis of which parole is granted. It may defeat the purpose of parole system. The response of prisoners, prison officials and social perception on parole reveals that parole is a technique of reformation and rehabilitation. It is a beneficial technique. It provides an opportunity to the offender to maintain family ties and also deals with family matters. It saves inmates from evil effects of long incarceration. 93 percent respondents (inmates) are of the view that parole is beneficial to solve their household problems as well as to reform himself/herself. The study also shows that parole is granted on

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\(^6\) Bhawar Lal Godara V. State of Rajasthan, 2005 (1) WLC Raj. 93.
certain grounds such as, death or serious illness of the family member, marriage of son or daughter, for agricultural purpose or any other sufficient reason mentioned in section 3 of the Himachal Pradesh Good Conduct Prisoners (Temporary Release) Act, 1968. The perception of Prison Officials is that parole is granted on the basis of all the grounds mentioned in Sec 3 of the Act. General Societal perception reveals that majority of the respondents 55% points out that it should be granted on the basis of all grounds mentioned in section 3 of the Act whereas minority of respondents 33.5% state that parole should be granted only on the death of the family members of the prisoner. It appears that prison officials possess sound legal awareness in this regard.

The study finds that parole can be refused on two grounds i.e. security of the society and security of the prisoners. It appears that balance between the security of society and liberty of individual is taken into consideration by the Competent Authority while releasing the prisoners on parole.

It is also found that when parole is granted, conditions are also imposed. Such conditions are remaining in specified territory, to surrender within time to the Jail Authority, free from bad associates, no work without permission etc. For violation of conditions, the person is to be returned to the institution. If he
returns after due date than there is reduction in remissions earned by him. If new crime is committed, will be punished.

Social perception (General) reveals that a heavy majority 83% state that parole should not be granted to those who violate parole conditions. The response is in conflict with judicial approach. The judicial approach on this point is that the parole should be granted to the prisoner who violates parole conditions if the reason for further parole is satisfactory.\(^7\)

It is also noticed that parole is granted to the offender even if the offence committed by such offender is heinous or simple. Thus, it appears that the punishment inflicted is simple or rigorous has no effect on grant of parole. Period of parole is not part of total punishment. Thus, the period of parole has no effect on the total punishment of offender.

Societal response shows that parole should not be granted to habitual offenders whereas prison officials are of the view that habitual offenders are also released on parole but on the basis of their conduct inside the prison and security of society is also taken into account.

The study also reveals that parole is also granted to lifers. The courts also emphasized the desirability to release long term sentences on parole so that they may not be totally cut off from

the society. The nature and length of the sentence or magnitude of the crime committed by prisoner may be ignored for grant of parole.

It is also found that parole can be granted on medical ground. If parole is granted on medical ground or medical certificate is produced by prisoner than the validity of the medical certificate is taken into consideration by the Competent Authority while granting him parole on this ground.

The study also reveals that parole is also granted to female offenders in the same manner as to male offenders. It also appears that grant of parole is not dangerous to the security of the society because parole is granted after maintaining balance between the security of the society and liberty of the individual. Thus, the purpose is not leniency towards the prisoner but to seek his rehabilitation in future life. Thus, parole is a useful technique in reformation and rehabilitation of offender in the society. It is a rehabilitative process.

The study discloses that the parole technique in general works well in Himachal Pradesh. It is governed by the Himachal Pradesh Jail Manual and Himachal Pradesh Good Conduct prisoners (Temporary release) Act, 1968 and the rules made

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thereunder. The judicial approach is also satisfactory and very few cases have come before the courts appendix VI which provides statistical information up to 31-03-2013 on Jail wise population of prisoners, there were 61 prisoners on parole.

Thus, at certain issues there is difference between legal approach and social, perception. The gap is obvious but it should not be too wide to defeat parole system in India.

**SUGGESTIONS**

1. There is need of removing confusion in respect of law. Legal position varies from State to State. There should be a comprehensive legislation on parole and other reformatory techniques. Central Government should take adequate steps for effective centralization of prisons and a uniform Jail Manual should be drafted throughout the country. The uniformity of standards can be maintained throughout all the States.

2. The limits of reformative theory should not be ignored. There must be careful selection of prisoners and supervision of parolees.

3. It is not a technique of reducing of overcrowding of prisoners and ought not to be used for that purpose otherwise the whole purpose of reformatory technique would stand frustrated.
4. Parole should not be granted to habitual criminals, for it merely affords them another opportunity to commit crime again. The mechanical application of the principle that the service of one third, half or two-third of the term sentenced automatically entitles the prisoner for release on parole is both unsound and dangerous to society. The record of the prisoner in the institution, his criminal background, his personality, his attitude towards the law enforcement, and above all his definite respect for law should be taken into consideration before parole is granted.

5. Parole Board should be completely free from political pressure and comprise of a persons of integrity and character.

6. Formulation of a national policy on parole to promote more consistent exercise of discretion and to enable a fairer and more equitable decision making without removing individual case considerations.

7. Parole procedures should permit representation of offenders under appropriate conditions if required. Such representation would do much to increase the credibility of parole system in the public's view.

8. In case of female prisoners, parole should be more generously granted and the authority should not insist upon technical formalities, such as, surety, security bond, etc.
Thus, liberty and dignity of individual and security of the society, must guide working of parole system in India.