



A Gateway to all Post Graduate Courses



An MHRD Project under its National Mission on Education through ICT (NME-ICT)

Subject:

Production of Courseware

e-Content for Post Graduate Courses



Paper :

Module :



ज्ञान-विज्ञान विमुक्तये

BAIL, REMISSION, PAROLE AND PREMATURE RELEASE

Component I(A) – Personal Details

| Role | Name | Affiliation |
|---------------------------|---------------------------|---|
| Principal Investigator | Prof. (Dr.) Ranbir Singh | Vice Chancellor, National Law University, Delhi |
| Co-Principal Investigator | Prof. (Dr.) G.S. Bajpai | Registrar, National Law University, Delhi |
| Paper Coordinator | Prof. (Dr.) Arvind Tiwari | Dean, School of Law, Rights and Constitutional Governance, Tata Institute of Social Sciences (TISS) |
| Content Writer/ Author | Dr. Upneet Lalli | Deputy Director Institute of Correctional Administration, Chandigarh |
| Content Reviewer | Prof. (Dr.) Arvind Tiwari | Dean, School of Law, Rights and Constitutional Governance, Tata Institute of Social Sciences (TISS) |

Component I(B) – Description of Module

| | |
|---------------------|--|
| Subject | Criminology |
| Paper | Human Rights and Criminal Justice |
| Module Title | BAIL, REMISSION, PAROLE AND PREMATURE RELEASE |
| Module ID | |
| Pre Requisites | Basic knowledge of victimology and role of victim in criminal law. Understanding the writ jurisdiction of Supreme Court. Basic concepts of human rights and different international human rights instruments. |
| Learning Objectives | <ul style="list-style-type: none">• To understand the meaning of bail and various provisions under the law for grant of bail.• To understand the concept of Premature Release and distinguish between various types of premature release.• To be able to differentiate between Remissions granted by the state and prison authorities.• To be able to distinguish between parole and furlough . |
| Key Words | Bail, Remission, Parole and Premature Release |

BAIL, REMISSION, PAROLE AND PREMATURE RELEASE

Objectives

1. To understand the meaning of bail and various provisions under the law for grant of bail.
2. To understand the concept of Premature Release and distinguish between various types of premature release.
3. To be able to differentiate between Remissions granted by the state and prison authorities.
4. To be able to distinguish between parole and furlough .

The Universal Declaration of Human Rights enshrines under Article 9- *No one shall be subjected to arbitrary arrest, detention or exile.* While Article 11(1) provides that - Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense. As India is a signatory to the U.N. Declaration of Human rights of 1948, the concept of bail has found a place within scope of human rights.

While no right or freedom is absolute in any country, there are limitations provided under the Law. A person can be taken into custody by arresting him based on suspicion of having committed a crime. Article 21 of the Indian Constitution guarantees the Right to life and personal liberty as a Fundamental Right. It states that -*No one shall be denied his right to life and personal liberty except by a procedure established by law.* The Supreme Court has held in the Maneka Gandhi vs Union of India case that the procedure of curtailing this right has to be just, fair and reasonable.

Bail by Magistrate

“Bail” remains an undefined term in the Code of Criminal Procedure, 1973 (Cr.P.C. hereinafter). Nowhere else the term has been statutorily defined conceptually, it continues to be understood as a right for assertion of freedom against state imposed restraints.

- **Meaning of Bail.** The dictionary meaning of the expression `bail' denotes a security for appearance of a prisoner for his release. Etymologically, the word is derived from an old French verb `bailer' which means to `give' or `to deliver', although another view is that its derivation is from the Latin term baiulare, meaning `to bear a burden'. Bail is a conditional liberty.

Bail, in law, means procurement of release from prison of a person awaiting trial or an appeal, by the deposit of security to ensure his submission at the required time to legal authority. "Bail has been defined in the law lexicon as security for the appearance of the accused person on giving which he is released pending trial or investigation."

According to Black's Law Dictionary, what is contemplated by bail is to "procure the release of a person from legal custody, by undertaking that he/she shall appear at the time and place designated and submit him/herself to the jurisdiction and judgment of the court."

Criminal Procedure Code, 1973, does not define bail, although the terms bailable offense and non-bailable offense have been defined in section 2(a) Cr.P.C. as follows: "Bailable offense means an offense which is shown as bailable in the First Schedule or which is made bailable by any other law for the time being enforce, and non-bailable offense means any other offense". That schedule refers to all the offenses under the Indian Penal Code and puts them into bailable and on bailable categories. The analysis of the relevant provisions of the schedule would show that the basis of this categorization rests on diverse consideration. However, it can be generally stated that all serious offenses, i.e. offenses punishable with imprisonment for three years or more have been considered as non bailable offenses. Further, Sections 436 to 450 set out the provisions for the grant of bail and bonds in criminal cases. The amount of security that is to be paid by the accused to secure his release has not been mentioned in the Cr.P.C. Thus, it is the discretion of the court to put a monetary cap on the bond. The Code of Criminal Procedure 1973 confers wide powers upon Police of making arrest. In addition to the power of arrest, the Code bestows upon police powers parallel to the magistrate to release an arrested person on bail. Indian Courts however, have greater discretion to grant or deny bail in the case of persons under criminal arrest, e.g., it is usually refused when the accused is charged with homicide.

A right to get admitted to bail can lawfully be circumspected if the police needs the arrested person any time for purpose of investigation of the case. The Code of Criminal Procedure provides that a person suspected of having committed a cognizable offence can be remanded to police custody. In case of arrest without warrant, the request for remand in case of a suspect begins with a formal arrest. Any person who is arrested by a police officer should be produced before the Judicial Magistrate within 24 hours from the time of his arrest. Further Sec 41(1) provides that the police officer shall in all cases where the arrest of a person is not required issue a notice of appearance. Police and the Magistrate have been given power to grant bail under Cr.P.C. However, in bailable offences, bail can be claimed as a matter of right. Police or Magistrate has no discretion in this regard. If a person commits a bailable offence, then the magistrate grant him bail but if he commits any non-bailable offence, then it is on the discretion of the Magistrate that whether bail should be granted to

him or not. Section 59, 44 (1), 88, 167, 436, 437 etc. deals with powers of Judicial Magistrate to grant bail.

The Code of Criminal Procedure, 1973, makes provisions for release of accused persons on bail. Section 436 of the Code provides for release on bail in cases of bailable offenses. Section 436 provides that when person not accused of a non-bailable offense is arrested or detained he can be detained as right to claim to be released on bail. The section covers all cases of person's accused of bailable offences cases of persons though not accused of any offense but against whom security proceedings have been initiated under Chapter VIII of the Code and other cases of arrest and detention which are not in respect of any bailable offense. There are several reasons which have been enumerated as to why bail ought to be allowed to prevent pre-trial detention.

This section entitles a person other than the accused of a non-bailable offense to be released on bail, it may be recalled that S. 50(2) makes it obligatory for a police officer arresting such a person without a warrant to inform him his right to be released on bail. Section 436 (1) of the Code signifies that release on bail is a matter of right, or in other words. The word "appear" in this sub-clause is wide enough to include voluntary appearance of the person accused of an offense even where no summons or warrant has been issued against him.

"Bail or jail", is the question that repeatedly comes before courts wielding immense judicial discretion while exercising their bail jurisdiction. It may be pointed that in an oft-quoted observation, Justice Krishna Iyer had stated in the case of *Gudikant Narasimhulu v. Public Prosecutor, High Court of A.P.*, (1978)1 SCC 240 "Bail or jail?". At the pre-trial or post-conviction stage belongs to the blurred area of the criminal justice system and largely hinges on the hunch of the bench, otherwise called judicial discretion". These observations still hold true, if not in the letter of law then at least in practice, in spite of several judicial pronouncements as well as provisions in the statutes, as to how the judicial discretion has to be exercised. This judicial discretion has to answer one of the most important fundamental rights guaranteed under Article 21 of the Constitution, namely, *personal liberty*. Grant of bail is giving personal liberty to a person who has been arrested or who is anticipating an imminent arrest.

In India, bail or release on personal recognizance is available as a right in bailable offences not punishable with death or life imprisonment and only to women and children in non-bailable offences punishable with death or life imprisonment. The right of police to oppose bail, the absence of legal aid for the poor inhibit the right to speedy justice, where prolonged incarceration of the poor is inevitable during the pendency of investigation by the police and trial by a court. In **Sanjay Chandra v. Central Bureau Of Investigation (2G Spectrum Scam Case) (2012) 1 SCC 40** In bail

applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon.

Post-Conviction and Pre-Appeal Bail under section 389 Cr. P.C.

The section contemplates post-conviction and pre-appeal period. Pending an appeal against conviction, appellate Court may release the convict on bail and High Court can exercise this power when appeal lies to Sessions Court. So far as the court convicting the accused is concerned, the court is bound to admit the accused to bail pending order passed by appellate court or High Court when (a) the accused was already on bail and has been sentenced to imprisonment for a term not exceeding three years; or (b) when the offence was a bailable one.

Bail by Police

The power of a Police Officer, to release on bail a person accused of an offence and taken into custody by him, may be divided under two heads: (a) when the arrest was made without any warrant; and (b) when the arrest was made in pursuance of warrant of arrest. Power of police to grant bail under head (a) may be gathered from sections 42, 43, 56, 59, 169, 170, 436, 437 and Schedule I Column 5 of the Code. The powers of police to grant bail under head (b) are controlled by directions endorsed under Section 71 of the Code.

Bail under Section 437 Cr. P. C.

Section 437 deals with bail in bailable offence. Grant of bail is a rule and refusal is an exception. A person accused of bailable offence has the right to be released on bail. Bail in cases of bailable offences is compulsory bail. In the matter of admission to bail the Code of Criminal Procedure makes a distinction between bailable and non-bailable offences. The grant of bail to a person accused of non-bailable offence is discretionary. But a person accused of bailable offence at any time while under detention without a warrant at any stage of the proceeding has the right to be released on bail in view of section 436 Cr. P.C. Even when a person suspected of committing a bailable offence is produced before a Magistrate and he is prepared to give bail, Magistrate has no option but to release him on appropriate bail. The provisions of section 437 empower two authorities to consider the question of bail, namely (1) a "court" which includes a High Court and a Court of Session, and (2) an officer-in-charge of the police station who has arrested or detained without warrant a person accused or suspected of the commission of a non-bailable offence.

The Hon'ble Supreme Court in case of **Gurcharan Singh v/s State (Delhi Administration)** AIR 1978 SC 179 has laid down factors to be taken into consideration while granting bail and they were reiterated in : State of U.P. through C.B.I v. Amarmani Tripathi (2005) 8 SCC 21-- It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge;(iii) severity of the punishment in the event of conviction; (iv) danger of accused absconding or fleeing if released on bail; (v) character, behavior, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail.

In *Moti Ram & Others. v. State of M.P* [1978] 4 SCC 47-the Court said an urgent need for a clear and explicit provision in the Code of Criminal Procedure enabling the release, in appropriate cases, of an under trial prisoner on his bond without sureties and without any monetary obligation. Imprisonment of the under trials exceeded the period of imprisonment prescribed for the offences they were charged with- these appalling outrages were brought before the Supreme Court in *Hussainara Khatoon v. State of Bihar* AIR 1979 SC 1360.

The new provision Section 436A was introduced in order to solve the problems of undertrials' who were languishing in jails as they will now be given an opportunity to be set free instead of endlessly waiting for their trial to take place. This move has been made due to a faulty criminal justice system and provides a makeshift method of providing justice and relief to undertrial prisoners. According to S. 436-A, a person who has undergone detention for a period extending upto half of the maximum period of imprisonment imposed for a particular offense, shall be released on her/his personal bond with or without sureties. However, no prisoner can be detained for a period longer than the maximum period of imprisonment provided. The exception to the section is that it is not applicable to offenders who have been sentenced to death.

Cancellation of Bail

According to S. 437(5) any court which has released a person on bail under (1) or sub sec (2) of S. 437 may if considers it necessary so to do, direct that such person be arrested and committed to custody. The power to cancel bail has been given to the court and not to a police officer. Secondly, the court which granted the bail can alone cancel it.

Parole and Pre-mature Release-

Mahatma Gandhi had remarked that , "*Crime is an outcome of a distorted mind and jails must have an environment of hospital for treatment and care.*" Therefore, imprisonment is for reforming an "anti-social" personality into a social person. Imprisonment is for correction and not for destruction of personalities. However, the environment inside prisons is not conducive to reform. It is necessary that prisoners come out of jail for a short period at regular intervals.

The primary objective underlying premature release is reformation of offenders and their rehabilitation and integration into the society, while at the same time ensuring the protection of society from criminal activities. These two aspects are closely interlinked. Incidental to the same is the conduct, behaviour and performance of prisoners while in prison. These have a bearing on their rehabilitative potential and the possibility of their being released by virtue of remission earned by them, or by an order granting them premature release. The most important consideration for premature release of prisoners is that they have become harmless and useful member of a civilized society.

Premature release of prisoners can be of following four types -

- (i) By way of **commutation** of sentence of life convict and other convict under Section 433 of the Code of Criminal Procedure, 1973 by the State Government.
- (ii) By way of **remitting** term sentence of a prisoner under Section 432 of the Code of Criminal Procedure, 1973 by the State Government.
- (iii) By order of the Head of the State passed exercising power under **Article 72** or **Article 161** of the Constitution of India, as the case may be.
- (iv) Pre mature release under any special law enacted by the State providing for release on probation of good conduct prisoners after they have served a part of the sentence.

Remission system aims at the reformation of a prisoner. The scheme is intended to ensure prison discipline and good conduct on the part of the prisoners, and to encourage learning and better work culture, with the prospect of their early release from prison as an incentive.

Remission is a concession, which can be granted to prisoners by Head of the State, appropriate Government or by the Head of the Prison Department or by the Superintendent of Prison.

The appropriate Government reserves the right to debar/withdraw any prisoner, or category of prisoners, from the concession of remission. The Remissions other than that granted by the Head of the State may be withdrawn or forfeited if the prisoner commits specified jail offences or conditions prescribed in the relevant order of remitting the sentence.

Remission can be of three types

(a) firstly, remission under the provision of the Prisons Act, 1894 or respective Prisons Act of the State and Rules made thereunder. This can be earned by all eligible prisoners if they fulfill the required conditions provided hereinafter.

(b) secondly, remission in sentence granted by the appropriate Government under Section 432 of the Code of Criminal Procedure, 1973. The appropriate Government may remit the sentence of a prisoner, other than life convict, on case to case basis by following the procedure laid down in Section 432 of the Code of Criminal Procedure, 1973. It cannot deviate from the procedure prescribed under Section 432 of the Code of Criminal Procedure, 1973 while remitting the sentence of the prisoner on his request.

(c) thirdly, remission by the Head of the State under Article 72 or 161 of the Constitution of India. The Head of the State has all the powers to grant remission to any prisoner on his request as well as grant general remission to the specified category of prisoners on special occasions on the recommendation of the Council of Ministers. No rules can be laid down for the Head of the State for exercising powers under Article 72 or 161 of the Constitution of India.

The Rules are covered in the prison manuals of the state ,and therefore apply only on remission to be granted by Prison authorities under sub-paragraph (a), that is, the provisions of the Prisons Act, 1894 or respective Prisons Act of the State and the Rules made thereunder.

Purpose

Remission should be granted on the basis of an inmate's overall good behaviour during the stay in the Jail, willingness to take work while in custody, cooperation and help to the prison administration in prison management and general response to various institutional activities.

Kinds of Remission by prison authorities

Remission by Prison authorities can be of the following types:

- (i) Ordinary remission
- (ii) Special remission

Ordinary Remission

Authority to grant ordinary remission: The Superintendent of Prison, or an officer nominated by him on his behalf, is authorized to grant ordinary remission.

Eligibility: The following types of convicted prisoners shall be eligible for ordinary remission:

- i. Prisoners having substantive sentences of two months and more,
- ii. Prisoners, sentenced to simple imprisonment for two months or more, who volunteer to work,
- iii. Prisoners employed on prison maintenance services requiring them to work on Sundays and Holidays, e.g. sweeping, cooking etc., irrespective of the length & nature of their sentence i.e., simple or rigorous imprisonment,
- iv. Prisoners admitted for less than one month in hospital for treatment or convalescence after an ailment or injury not caused willfully. (Those admitted for such purpose for more than one month should be entitled to remission for good conduct only).

In the Model Prison Manual of 2016, it is stated that -it will be the responsibility of the prison administration to provide work to all eligible prisoners.

Non-Eligibility: The following types of prisoners should not be eligible for ordinary remission:

- i) Prisoners having substantive sentence of less than two months,
- ii) Prisoners sentenced in default of payment of fine only,
- iii) Prisoners whose sentence is reduced to less than two months (in such cases remission already earned, if any, should stand forfeited), iv) In the case of prisoners who are convicted of an offence committed after admission to the prison under various sections of IPC or who have assaulted another prisoners or staff member, or misusing the concession of parole/furlough granted under that law.

The remissions of whatever kind earned by him under these rules up to the date of the said conviction may, with the sanction of Head of the Prison Department, be cancelled.

- v) Prisoners debarred from remission as punishment for committing prescribed prison offences;
- vi) Prisoners specifically debarred from remission under any law or rule, and
- vii) Prisoners out on special leave like medical leave, temporary release on parole, release on bail etc. for the duration of such leave.

Scale of remission for convicted prisoners: Ordinary remission may be granted to prisoners who are eligible for it as per the scale mentioned in each state manual.eg, normally it is three days per calendar month for good behaviour, discipline and participation in institutional activities,-

Special Remission

Authority to grant special remission: Head of the Prisons Department, on the recommendation of the Superintendent of Prison, will be the competent to grant special remission.

Criteria to grant special remission: Meritorious work by inmates should be rewarded by grant of special remission in addition to the annual good conduct remission to create a spirit of healthy competition among prisoners. Such special remission may be granted to prisoners eligible for ordinary remission on the following considerations:

- i) Saving the life of a government employee, a prison visitor or an inmate,
- ii) Protecting a government employee or prison visitor or inmate from physical violence or danger,
- iii) Preventing or assisting in prevention of escape of prisoners, apprehending prisoners attempting to escape, or giving material information about any plan or attempt by a prisoner, or a group of prisoners, to escape,
- iv) Assisting prison officials in handling emergencies like fire, outbreak of riots and strike,
- v) Reporting of, or assisting in, prevention of serious breach of prison regulations,
- vi) Outstanding contribution in cultural activities or education or acquiring an additional education qualification (such as a degree or diploma) or teaching art & craft and special skills to fellow inmates,
- vii) Specially good work in industry, agriculture or any other skill development programme, or in vocational training.

Scale of Special Remission: Subject to the fulfillment of any one or more of the conditions aforementioned, special remission not exceeding 30 days in a calendar year completed by the prisoner in a Jail may be granted by the Head of the Prison Department on the recommendation of Superintendent of Prison to those prisoners who are eligible for ordinary remission.

Remission by Head of the State

Remission granted by the Head of the State under Article 161 of the Constitution of India, acting on the aid and advice of the Cabinet of Ministers, shall be called Remission by Head of the State. Remission by Head of the State may be granted on occasions of National importance or public rejoicing. Obviously, no rules can be prescribed for the Head of the State for grant of this type of remission.

Eligibility

The remission by Head of the State can be awarded to such prisoners, or categories of prisoners, as the Head of the State may decide.

In case of prisoners who, at the time of general grant of remission by Head of the State, are released on temporary or emergency release like on parole or furlough etc., specific orders of the Head of the State about the award of this remission to such prisoners are necessary;

Remission Committee

Remission by Head of the State may be granted at such scale, or in such quantum, as may be decided by the Head of the State.

The Remission Committee for remissions to be granted by the Jail authorities .In the Model Prison Manual,2016, it is mentioned that the Remission Committee of each institution will consist of:

- i) Superintendent-in charge of the institution – Chairman,
- ii) Deputy Superintendent or senior most prison officer available in the institution,
- iii) Assistant Superintendent/Deputy Jailor/Assistant Jailor in charge of remission section,
- iv) Officer in charge of Industries/ Vocational Training.

Amount of Remission-

Maximum limit of ordinary and special remission which a prisoner can earn should not be more than one fourth of a substantive sentence (to be calculated from the date of his conviction). The remission granted by the Head of the State shall be in addition to the ordinary and special remissions which the prisoner has earned. However, in no circumstances, maximum limit of all types of remissions earned by a prisoner should not exceed one third of the substantive sentence.

Life Convicts

Life sentence shall be taken as imprisonment for twenty years for the purpose of calculation of remission (as per the logic given in Section 57 of the Indian Penal Code, 1860). Grant of remission to a life convict shall not mean actual remission in his sentence. When his case will be examined by the Review Board for pre-mature release, the remission to his credit will be one of the factors on the basis of which the review of his sentence will be considered.

Removal and Revocation of Prisoner from Remission

The Head of the Prisons Department, on the recommendation of Superintendent of Prison, may remove any prisoner from remission for a period of six months for committing any specified prison

offence. Similarly, the Superintendent of Prison may remove a prisoner from remission for three months.

Conditions for Forfeiture of Remission

Remission earned by a prisoner may be forfeited by the Head of the Prisons Department on the recommendation of Superintendent of Prison if the prisoner is convicted of an offence committed after admission to prison, under various sections of the India Penal Code or convicted of an assault committed on a prison official, a prison visitor, a prisoner, or on conviction for any offence committed in violation of the law providing for temporary release of the prisoner on parole/ furlough etc. after admission to prison. All the ordinary and special remission, of whatever kind, earned by him under these rules up to the date of the said conviction may be forfeited in part, or in whole.

Parole And Furlough

The United Nations Standard Minimum Rules for the Treatment of Prisoners, 1955 prescribed temporary release of prisoners on parole and furlough in order to minimize the ill effect incarceration. No contact with the outside world drags the prisoner into solitude. Solitude turns a personality "anti-social". Regular contact of the prisoners with outside world is essential. Therefore, temporary release of prisoners on parole and furlough is important in the scheme of correction and social integration rehabilitation of prisoners.

Parole and furlough to inmates are progressive measures of correctional services. The release of a prisoner on parole not only saves him from the evils of incarceration but also enables him to maintain social relations with his family and the community. It also helps him maintain and develop a sense of self-confidence. Continued contacts with family and the community sustain in him a hope for life. The release of prisoner on furlough motivates him to maintain good conduct and remain disciplined in the prison. The provisions relating to release of the prisoner on parole and furlough should be liberalised to help a prisoner maintain a harmonious relationship with his family and the society and to be of good conduct during the period of incarceration.

According to J.L. Gillin, "Parole is the release, 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." It is thus the last stage of correctional scheme of which probation may probably be the first. The life in a prison is so rigid and restrictive that it hardly offers any opportunity for the offender to rehabilitate himself. According to Donald Taft ;'Parole" is a release from prison after part of the sentence has been served, the prisoner still remaining in custody and under stated conditions until discharged and liable to return the institution for violation of any of these conditions.

The privilege of release on parole and furlough should, of course, be allowed to selective prisoners on the basis of well-defined norms of eligibility and propriety. The objectives of releasing a prisoner on parole and furlough are:

- i) To enable the inmate to maintain continuity with his family life and deal with familial and social matters,
- ii) To save him from the evil effects of continuous long prison life,
- iii) To enable him to maintain and develop his self-confidence,
- iv) To enable him to develop constructive hope and active interest in life,
- v) To help him remain in touch with the developments in the outside world,
- vi) To help him remain physiologically and psychologically healthy,
- vii) To enable him to overcome/ recover from the stress and evil effects of incarceration, viii) To motivate him to maintain good prison and disciplined in the prison.

Parole

Parole means temporary release of a prisoner for short period so that he may maintain social relations with his family and the community in order to fulfil his familial and social obligations and responsibilities. It is an opportunity for a prisoner to maintain regular contact with outside world so that he may keep himself updated with the latest developments in the society. It is however clarified that the period spent by a prisoner outside the Jail while on parole in no way is a concession so far as his sentence is concern. The prisoner has to spend extra time in prison for the period spent by him outside the Jail on parole. Parole may be of the following **two types**, depending upon the purpose behind it –

- i) **Emergency parole** under police protection: to cater to the familial and social responsibilities of emergent nature like death/ serious illness/ marriage of a family member or other close relative. ii) **Regular parole**: to take care of the familial and social obligations and responsibilities of regular nature as well as for the psychological and other needs of the prisoner to maintain contact with the outside world like house repair, admission of children to school/ college, delivery of wife, sowing and harvesting of crops, etc.

Furlough

Furlough means release of a prisoner for a short period of time after a gap of certain qualified number of years of incarceration by way of motivation for him maintaining good conduct and remaining disciplined in the prison. This is purely an incentive for good conduct in the prison. Therefore the period spent by the prisoner outside the prison on furlough shall be counted towards his sentence.

Emergency Parole

Man is a social animal. A prisoner has to perform certain familial and societal obligations of social nature. The law provides that in the following situations, the eligible prisoner can be released temporarily on parole from jail for up to three weeks to discharge his social responsibilities. Emergency parole may be granted to the convict by the competent authorities as well as to the under trial prisoners by the trial court concerned, under adequate police protection, for a period extending up to 48 hours, in the following eventualities:

- i) Death or serious illness of father/ mother/ brother/s/ sister/s/ spouse/ children.
- ii) Marriage of brother/s/ sister/s/ children/ children of sister/s.

In some of the states, the jail Superintendent is authorized to release a prisoner on emergency parole. District Magistrate and Senior Jail Authorities have been authorized to grant emergency parole in some other states. If the prisoner does not qualify for release on parole, and there is death in the family or serious illness of family member, he can seek court intervention and request for parole from the court. The court may grant emergency parole under police escort.

Eligibility

Convicts are entitled to emergency parole, regular parole and furlough, subject to the fulfillment of eligibility criteria and other conditions prescribed in this regard by the State Government under any local and special law or instructions etc. Undertrial prisoners are not eligible for regular parole and furlough, and may be released only on emergency Parole, that too by the order of the concerned trial court.

The respective State Government/ Union Territory may enact a local and special law or issue instructions providing for temporary release of prisoners on parole and furlough. The eligibility criteria, competent authority to sanction parole/ furlough, liability for not surrendering at due time and date after availing parole/ furlough, grounds and frequency for release on parole/ furlough, procedures, duration of release on parole/ furlough, eligibility for release on furlough along with its duration and frequency and conditions relating to other connected matters etc. shall be properly laid down in the law/ instructions so provided.

Release on parole is not an absolute right, though, it is a legal right of every eligible prisoner as per the conditions laid down. This concession is subject to cancellation. The State Government/ Head of the Prison Department/ the Competent Authority reserves the right to debar/ withdraw any

prisoner, or category of prisoners, from the concession of parole and furlough if the prisoner becomes ineligible or violates of the prescribed conditions in this regard.

Restriction on release of a prisoner on regular parole and furlough

There are various categories of prisoners who may not be eligible for release on parole or furlough: eg- Prisoners whose immediate presence in the society may be considered dangerous or otherwise prejudicial to public peace and order by the District Magistrate and Superintendent of Police. Prisoners who are have been involved in serious prison violence like assault, outbreak of riot, etc,or those convicted for heinous offences such as dacoity, terrorist crimes, kidnapping for ransom, smuggling of commercial quantity of narcotic and psychotropic substances and, in the opinion of the District Magistrate/ District Superintendent of Police, there is such prisoners they may not report back to the Prison after the completion of the parole or furlough period, No parole/furlough can be granted to convicts sentenced to death penalty.

The Supreme Court has been in favour of release of prisoners on parole and furlough in order to ensure their rehabilitation. The need to paroling out long-term prisoners periodically for reasonable spells, subject to sufficient safeguards ensuring their proper behaviour outside and prompt return inside, has been highlighted by the Supreme Court .In *Dharamvir v. State of Uttar Pradesh*, Court once again called upon to consider the desirability of release of long-term prisoners on parole at regular intervals. The Apex Court, in *Suresh Chandra v. State of Gujrat*, has stated about the penological innovation in the shape of parole to check recidivism. It recommended liberal use of parole as viable alternative for reducing overcrowding in prisons as well.

The provisions relating to parole and furlough are found at two places in Indian Laws, first, in the Jail Manual of the state concerned and, second, in the Special Law on the subject enacted by the state concerned. It would not be possible to discuss the special law of every state here. However, the law applicable in northern states is accepted as the standard law for the purpose of understanding the concept. The broad parameters in all the state laws on the subject remain almost the same. Minor variations, however, may be there in the different state laws

Parole and Furlough are granted to the prisoners as per the Punjab Good Conduct Prisoners Temporary Release Act, 1926 in the state of Punjab. Similarly Haryana has its own Act, namely, the Haryana Good Conduct Prisoners Temporary Release Act. Temporary release of prisoners are of the following three types.

Parole is temporary release of an eligible prisoner for a specific period from the jail so that he may fulfill his social responsibilities towards his family and the society. The following purposes are generally prescribed behind temporary release of prisoner from the jail

- a) Marriage of self, son, daughter, grandson/grand daughter, brother, sister, sister's son/daughter (4 weeks)
- b) Ploughing, sowing, harvesting or any other agricultural operation on his land or HUF land in possession (5 weeks)
- c) Admission of dependents in school etc.
- d) Delivery of wife
- e) House repair/new construction (only once in 3 years)

No parole is granted to a prisoner facing capital punishment. It is clear that parole is a concession to the good conduct prisoners so that they may maintain contact with the outside world in order to fulfil their social obligations. Before granting parole, the authorities concerned seek a report from the police and the District Administration and procure their no objection to the release of the prisoner. Sometimes the police authorities do not recommend release of the prisoner on parole mentioning his release as a potential danger to the public peace, law and order and security of the state. It is up to the competent authorities to consider the objections raised by the police and take a judicious view.

A prisoner released on parole/furlough has to report back, after the parole period is over, at the prison from where he was released. If the prisoner fails to report back at the jail at the given time, he can be punished as per the jail manual and the laws relating to it. If the released prisoner does not report up to 10 days, the jail superintendent may award punishments to defaulting prisoner like-5 days remission cut on each day of overstay or Stopping canteen facility up to 1 month, or withholding interview/letter upto to 3 months etc .

If the released prisoner overstays from parole for more than 10 days, a criminal case can be registered against him and he can be prosecuted and punished by the court.

The period for which the prisoner remained outside the jail on parole shall not be counted towards the jail sentence. The number of days spent by the prisoner outside the jail on parole are added to the sentence of imprisonment of the prisoner.

Furlough

The Jail Reforms Committee (1983) recommended that besides the system of parole there should also be the system of release of prisoners on furlough under which well behaved prisoners of certain categories should, as a matter of right, have a spell or freedom occasionally after they undergo a specified period of imprisonment, so that they may maintain contact with their near relatives and friends and may not be uprooted from society. A prisoner is eligible for release on furlough if he fulfills the following conditions :

- His imprisonment should be more than 4 years.
- He should have spent 3 years in jail.
- He should have earned 3 good conduct annual reports.
- He should not have committed any jail offence entailing punishment ex warning.

State govt. may restrict furlough to certain offenders whose release may have an adverse impact on the security of the state or standards of morality of the society. Prisoner who is eligible for release on furlough may be released for 3 weeks in fourth year of his imprisonment and 2 weeks in subsequent years. Furlough shall be counted towards sentence. Furlough is an incentive to the prisoner for continuous good conduct. If a prisoner fails to report back from furlough on time, he may be punished the same way as a prisoner is punished for over staying from parole.

Furlough is different from parole on the following counts

1. Furlough is an incentive to a good conduct prisoner so that he may establish contact with his family outside the jail for spending some time with the Parole is temporary release of prisoner from the jail in order to help him fulfill his social obligations of the nature specified in the jail manual and special law on the subject.

2. A prisoner is eligible for furlough only after spending three years in jail, whereas parole can be availed by the prisoner after spending one year any other short period as prescribed in the jail manual or the law.

3. Period spent outside jail on furlough is counted towards the sentence. Parole period is not counted towards the sentence.

4. The tenure of release on parole is different for different purposes.

Judicial Trend

Release of prisoners on parole or furlough have been generally favoured by the courts in India as a rehabilitation and reformatory measure. The Supreme Court in its decision in *Ramamurthy v State of Karnataka* ,has observed that overcrowding in prison can be considerably reduced by release of prisoners on parole, which is a conditional release of an individual from prison after he has served part of the sentence imposed upon him. Recommending liberal use of parole, the court referred to the Report of All India Committee on jail Reforms headed by Justice A.N. Mulla (1980-83), wherein, the committee has stated that the effect of parole is premature release which is an accepted mode of incentive to a prisoner. In *Jang Bahadur Singh vs State of Haryana*, the Apex Court observed- "parole cannot be refused on the grounds that there was apprehension of breach of peace as per police report." In *Jagjit Kaur v State of Haryana*", the Supreme Court accepted the right of victims of crime to oppose the release of the convict on parole.Parole is a concession and it cannot be denied by prescribing unreasonably high amount of personal bond or surety bonds.

In *Jogender Singh v State of Punjab*, the Supreme Court directed that furlough could be refused on account of security of state and not when there is law & order problem. However reasonable restrictions on release on parole can be imposed if the prisoner is awarded minor or major jail punishment by the jail authorities on account of indiscipline and misconduct. In *Prem Kumar v State of Haryana*', the Supreme Court stated, 'Parole/Furlough is a concession and no person is entitled as a matter of right to the grant of parole.'" In the instant case the petitioner committed murder during first parole, second parole application was rejected.

Conclusion

The therapeutic approach entailing release of prisoners on probation, parole and furlough is becoming popular among the modern penologists. They subscribe to the theory that contact of the prisoner with the outside world has humanizing effect over him and it helps him in his rehabilitation and re-integration with the society after he is finally released from the jail. It will not be out of place to mention here that some of convicts released on parole or furlough do misuse this concession and indulge in crime and anti social activities. Some of them even jump parole and overstay the period or do not report back at all. This tendency gives a reason to the police authorities to oppose parole applications of even the genuine good conduct prisoners. Attempt have been made in some of the states like Punjab,Haryana to limit the scope of release of prisoners on parole and furlough by prescribing tough eligibility conditions. The courts, however, have always been of the view that parole and furlough should be granted liberally to the eligible prisoners in the best interest of the society.