Premature Release of Prisoners: Need for a Comprehensive Rehabilitation Policy in India

Sridip S. Nambiar*

Abstract

This paper seeks to describe and analyse the gaps in the system in place for premature release of prisoners in the background of demand for a rehabilitation centric mechanism. Part 1 introduces the issue of premature release in the background of rejection of request for release by the convicts in Rajiv Gandhi Assassination case. Part 2 describes the law currently applicable for remissions. The operational role is played by the state government and specifically, jail manuals at the state level. Judicial review is restricted to gross arbitrariness. Part 3 provides a random snapshot of the various schemes available in India. The approach towards the issue is disorganised and inconsistent. The functioning of advisory boards has been challenged in some cases. Part 4 concludes by suggesting that a comprehensive rehabilitation policy should be evolved and premature release should be part of this policy.

Introduction

On January 17, 2016, A. G. Perarivalan, one of the life convicts in the Rajiv Gandhi assassination case sought a query under the Right to Information Act seeking details of release of Sanjay Dutt, who was sentenced to five years imprisonment for committing offence under Arms Act and was released three months prior to the completion of term for good conduct. Perarivalan has been undergoing sentence for 25 years without bail or parole. The Supreme Court had revoked Tamil Nadu's decision to cancel the life sentences in the case citing the primacy accorded to central government in cases involving CBI. Nalini Sriharan, another convict in the case was granted a 12 hour parole for attending her fathers funeral. On the other hand, Kerala will release 215 life convicts this year. Haryana will release 65 persons.

International norms do not support life sentences without a possibility of release. Life convicts should be eligible for release into society once they have served sufficient period of time in the prison to mark the seriousness of their offences. European Court of Human Rights had held in

2013 that sentences for whole life without a chance of review amounts to cruel and degrading treatment. In another case, the same court validated a practice in the United Kingdom which permitted release only in exceptional circumstances based on the discretion of the Justice Secretary. UK was able to convince the human rights watchdog that a possibility of release was enough to validate it's release procedures. UK succeeded because it had a comprehensive lifer manual for dealing with life convicts.

India does not have a Uniform Policy for premature release of prisoners. The law provides for executive remissions, which is completely based on discretion. Discretion is based on the basis of guidelines framed at state level. There is no minimum standard that the states have to keep in mind when drafting these schemes. NHRC has asked the Ministry of Law and Justice to frame a policy, but no progress has been made so far on that front. This paper seeks to describe and analyse the gaps in the system in place for premature release of prisoners. Part 2 describes the law currently applicable for remissions. The operational role is played by the state government and specifically, jail manuals at the state level. Judicial review is restricted to gross arbitrariness. Part 3 provides a random snapshot of the various schemes available in India. The approach towards the issue is disorganised and inconsistent. The functioning of advisory boards has been challenged in some cases. Part 4 concludes by suggesting that a comprehensive rehabilitation policy should be evolved and premature release should be part of this policy.

Law on Remissions

Social and legal systems have always responded to crimes with a comparatively higher level of seriousness. Murder of a man by another man is considered as a 'public wrong'. States have been successful in institutionalising criminal justice. The capacity to punish and the severity of punishmentsets out criminal courts from other courts. Criminal law provides the avenue for the strongest formal condemnation of an individual in a society.The purposes and methods of punishment are debated vehemently in national and international fora. Punishment has been legitimised on the basis of its ability to provide retributive justice, it's power to deter persons who have been found guilty and society in general from committing crimes and the noble vision of reforming and rehabilitating individuals. The methods of punishment have also been subject to critical analyses.

The global trend is towards individualising and humanising punishment. This indicates a mechanism that is customised to meet the needs of each individual who is found guilty of a

crime. The punishment should fit the person and not other way around. The recognition of the 'human' element in punishment has paved the way towards abolition of death penalty in international law. However, by virtue of its existence in an additional protocol to ICCPR, abolition still cannot claim the status of a binding norm.

There are strong advocates for both abolition and retention. On the other hand, imprisonment, as a form of punishment has not attracted much objections. It is agreeable and morally defensible.

As an effective alternative to death penalty, imprisonment and specifically life imprisonment has been favoured by legal systems. In this context, duration of imprisonment is a very important issue. Usually, statutes prescribe a minimum and a maximum term. It is within the discretionary power of a judge to decide the exact duration. A sentence of imprisonment is finalised after considering various factors. Sentencing power is based on judicial application of mind. Though there are noformally expressed sentencing guidelines in India, the 'rarest of rare' doctrine created and developed by the Supreme Court of India for application in murder cases is an example of how judicial discretion can be self regulated.

After sentencing, various executive procedures govern the stay of the prisoner in state prisons. One of the most important executive powers relating to a prisoner is the power to release a prisoner prior to the completion of the time mentioned in the sentence.

In India, a person can be punished with death penalty, life imprisonment, rigorous imprisonment, simple imprisonment, forfeiture of property and imposition of fine. A person who is awarded imprisonment can be subjected to premature release.Section 53 of the IPC prescribes imprisonment as aform of punishment. There are three categories of imprisonment – life imprisonment, rigorous imprisonment (ie with hard labour) and 'simple' imprisonment.

Imprisonment for life was substituted for the colonial punishment of transportation for life. The Supreme Court has held that imprisonment for life would mean "rigorous imprisonment for life" and not "simple imprisonment for life". An important question is whether life imprisonment means imprisonment for the remaining period of convicts natural life.

Section 55, IPCprovides that in every case for which a person is sentenced for life, the appropriate government may, without the consent of the offender, commute the punishment for imprisonment of either description for a period not exceeding fourteen years. Section 57, IPC provides that, for the purposes of calculating fractions, imprisonment for life shall be equivalent to twenty years. West Bengal mentions a period of twenty years. However, it has been settled by the Supreme Court that life imprisonment means imprisonment for the remaining period of the prisoners natural life. There is no right of automatic release on the expiry of any period in any law.

On the basis of powers vested in state legislatures by virtue of articles 245, 246 read with entry 4, list II of the constitution(prisons and persons detained therein), states have passed laws that prescribe various periods with reference to life imprisonment.The state government is empowered under section 59 (5) to make rules relating to award of marks and shortening of sentences.

The release of a prisoner is subjected to executive discretion. There are three kinds of remissions constitutional, statutory and remissions earned in accordance with jail manuals.

Constitutional Remission

Article 72 of the constitution empowers the President of India to grant pardon, reprieve, respite or remission of punishment or to suspend, remit or commute the sentence of any person convicted of any offence in all cases, *inter alia,* where the punishment is for an offence against a law relating to a matter to which the executive power of the Union extends. The President acts on the advice of the home minister. This power is absolute and cannot be limited in scope by statutory provisions.It may be limited, though, by judicial review, in case of arbitrary decision – making.Though a question was raised before the Supreme Court on the formulation of a standard or guidelines for exercising powers under Article 72, it was held that it may not be possible to lay down precise guidelines and that "there is sufficient indication in the terms of article 72 ". The governor of a state has similar powers under Article 161 of the Constitution relating to a matter to which executive power of the state extends.

Pardoning power has been misused in several cases, especially when political prisoners are involved. An MLA, who was convicted for murder and sentenced to life imprisonment was granted remission within a period of two years. The Supreme Court rejected the exercise of pardon in a case in which a political leader was involved and held that court could interfere when the decision was based on the sole discretion of the governor without consulting the government.These cases compelled Prof. M. P. Jain to observe that it is necessary to develop a non – political mechanism for exercise of pardoning power.In *Maru Ram*, the Supreme Court clarified that pardoning power must obey "standards and guidelines intelligible and intelligent and integrated with the manifest purpose of the power". Punjab High Court has held that schemes or guidelines passed in pursuance of these articles have overriding effect.

Statutory Remission

Section 432 empowers the 'appropriate government' to suspend or remit the sentenceof a prisoner. The government is not required to give reasons for its decision. Section 432(2) provides that the government may seek the opinion of the judge who convicted the prisoner on whether the application for remission must be accepted or rejected. In *Sangeet* v. *State of Haryana,* the Supreme Court limited the application of s. 432 to only those situations which are not covered by existing jail manuals or statutory rules. In fact, it has been held that powers under section 432 are subject to satisfaction of conditions in these manuals and rules.

Section 433 provides that life imprisonment may be commuted to imprisonment for a period not exceeding 14 years. But, Section 433Aprovides that a prisoner shall not be released before 14 years of undergoing sentence in the case of two kinds of life convicts – those life convicts who have been found guilty of an offence punishable with death and those convicts whose death sentences were commuted to life imprisonment under section 433.

Further, the courts have held that as remission is an executive power, it is not fair for the judiciary to intervene. In various cases, however, courts have nullified state government decisions. The Madhya Pradesh governments decision to grant remission to persons of a particular caste is an example. The courts have disapproved the practice of releasing prisoners when home minister or other ministers visit jail.

Life Sentence without remission

In this context, it is important to note another category of cases, in which the court orders aterm of imprisonment beyond the scope of remissions and in some cases, life imprisonment for the remainder of the persons natural life. The courts were faced with various difficulties after death sentence was made an exception and life sentence was made the rule. Life sentence, which practically meant 14 to 20 years, seemed inadequate in those cases which falls just short of the rarest of rare requirement. The Supreme Court held that court can give directions to curtail state's executive powers.This position was reiterated by a Constitution Bench of the Supreme Court. The decision was delivered on the basis of a 3:2 majority.

The majority judgment upheld it's own decision in *Swamy Shraddananda* v. *State of Karnataka.*The majority judgment noted that it was compelled to put certain life imprisonment sentences beyond the scope of remissions because of the unsound manner in which remission is allowed. Further, the proper effect of remissions can take place only if there are opportunities for reformation in the prisons. Currently, the court noted, the prisons did not have sufficient facilities for reform.Thus, the net effect of remissions, according to the court, was the premature release of hardened prisoners into society, which led to offences being repeated.The court considered it as going against the interests of the victim. The court took a practical view to resolve the issue of shortening of sentences through an irrational remission mechanism by placing some serious cases

beyond the scope of remissions. Here, the court was careful not to include constitutional remission (under articles 72 and 161) within the ambit of its decision. Thus, today, a court can frame a sentence and exclude the application of statutory remission (under Cr.PC).

The minority dissenting judgments considered the creation of a new sentence as judicial legislation. Courts cannot enter the legislative domain in any circumstance. *Shraddananda* only dealt with those cases where life imprisonment was given as an alternative to death penalty. Therefore, according to Uday Umesh Lalit, J., there is a possibility that a person, whose death sentence was later commuted to life imprisonment may get remission and a person who was given the no – remission life sentence will have to stay in prison without any ray of hope.

This decision exhibits the pitiable condition of Indian sentencing system. The Supreme Court itself has admitted that the *Bachan Singh* guidelines are ineffective and have to be reconsidered.To decide whether or not a case falls within the rarest of rare category itself is difficult. It will be even more difficult to decide whether a life sentence should be placed beyond the scope of remissions.

The constitution bench decision is the culmination of the sentencing woes of our country. Though the decision can be lauded for its realistic approach, the systemic flaws it reveals cannot be ignored.

Grounds for Premature Release

Judiciary, NHRC and several states have framed guidelines for premature release. The information is in a state of disarray. There is no body of knowledge that comprehensively looks at the guidelines. Most guidelines consider terminally ill prisoners as eligible for remission.

In *Laxman Naskar,* the Supreme Court listed a out a few questions which are relevant for considering premature release:

(i) Whether the offence is an individual act of crime without affecting the society at large

(ii) Whether there is any chance of future recurrence of committing the crime

(iii) Whether the convict has lost potential for committing the crime

(iv) Whether there is any fruitfulness of purpose for confining the convict anymore

(v) What is the socio economic condition of the convicts family.

Premature release has been recognized as one of the facets of the human rights of prisoners. The National Human Rights Commission had taken up this issuein a couple of instances. The commission formulated guidelines for release because various representations were made to the commission on the non-uniformity of standards applied by state governments when using the power of remission. The commission envisaged setting up of a sentence review board which would consider applications for release. The commission set down guidelines for the sentence review board to decide on remissions which are similar to the *Laxman Naskar*guidelines. Importantly, the commission observed that within the category of prisoners under 433A, a reasonable classification can be made on the basis of magnitude, brutality and gravity of the offence. Further,

(i) The total period of imprisonment should not go beyond 20 years, including remissions.

(ii) Some category of prisoners shall be considered for remission only after 20 years. Even in such cases, the total period should not exceed 25 years. E.g persons convicted for murder wit rape, murder with dacoity; persons whose death sentence has been commuted to life imprisonment etc. Convicts who have been imprisoned for life for murder in heinous cases such as murder with rape, murder with dacoity, murder involving an offence under the Protection of Civil Rights Act 1955, murder for dowry, murder of a child

below 14 years of age, multiple murder, murder committed after conviction

while inside the jail, murder during parole, murder in a terrorist incident, murder in smuggling operation, murder of a public servant on duty

(iii) Other male prisoners, not covered by 433A,should be entitled to release after 10 years of actual imprisonment, without remissions. In the case of female prisoners, 7 years of imprisonment is sufficient.

The 2003 directives had removed one directive in the 1999 directions. This direction had made some prisoners ineligible for premature release.

The Bureau for Police Research and Development released a Model Prison Manual in 2003. A chapter was devoted to premature release. It was suggested that premature release and remission

should be used as incentives for self – discipline. Other important points for consideration in that manual are :

(i) Cases of women offenders sentenced for infanticide should be reviewed without delay and if needed, they must be sent to voluntary organizations

(ii) Non-habitual male, female and adolescent offenders should be eligible for remission on completion of a minimum term

(iii) Old (above 65 years of age) and infirm offenders would be eligible

(iv) Offenders suffering from incurable diseases would be eligible.

(v) Applications can be made before the review board several times

(vi) There should be a body for monitoring the activities of the review board

Several states have their own versions of guidelines. Andhra Pradesh excludes two categories of prisoners from eligibility:

(i) The persons whose sentence specifies that it shall be for the remaining period of the convicts life, without commutation or remission

(ii) Persons convicted outside the state of Andhra Pradesh, prisoners involved in communal incidents, life convicts who are guilty of prison offences, life convicts who have been found guilty of rape and twenty such descriptions

Karnataka also has a similar list of excluded category of persons. It is submitted that blanket exclusion of certain life convicts goes against the spirit of the amended NHRC guidelines.

Following reasons were cited in some cases by the advisory board for denying release:

(i) Convicts were involved in sensational murder of 13 year old boy

(ii) One of the Co – convicts who was released was murdered

(iii) Absconded during parole

(iv) Party faction in the village

(v) Convicted for double murder

In 2002, Kerala High Court called for the files of prison review committee to look into alleged violations of section 433A. It found serious violations in the processing of applications. The committee had merely mentioned 'recommended' and 'not recommended' against the names of the prisoners and forwarded the report. It was found that government had cleared the list without application of mind. In another instance, the committee had considered the case of 60 persons within three hours time. The offenders who were cleared by the board were also the ones who were indiscriminately granted parole. Some of them were in parole during review board meetings.

The multitude of documents shows that there is lack of uniformity. Each state government has a different approach in relation to premature release. Heinousness of offence is still considered to be a ground for denying remission altogether. It is submitted that if there is a proper rehabilitation policy, any offender can be made part of the premature release scheme.

Conclusion: Comprehensive Rehabilitation Policy

Today, release from prison is perceived as an escape from the pernicious influence of the prison. Prisons are considered as breeding grounds for criminal minds. The primary focus of prison policy must be rehabilitation. A comprehensive policy for rehabilitation should be made and premature release should be part of this policy. The focus of criminal justice system should be to punish those deserving a sentence. After the purpose of sentence has been served, attempts should be made for resocialisation of prisoners. A premature release policy must be backed up with a proper rehabilitation plan. Section 77 of the Kerala Prisons and Correctional Services (Management) Act, 2010 provides that well – behaved, long term convicted prisoners may be prematurely released with the objective of their reformation and rehabilitation by the government, either *suo motu* or on the recommendations of an advisory committee. This is how society can get the benefit out of release of a prisoner. It is highly idealistic to consider the idea of reformation in Indian jails, but a system of premature release based on irrational criteria does not help either. This can ultimately be linked to the absence of a proper sentencing regime. If a person who assassinated a former prime minister of this country can be re-socialised, the idea that 'every saint has a past and every sinner a future' can be reaffirmed.