

# ● PUBLIC HEARING IN PAROLE: A COMPARATIVE ANALYSIS



**Gautam Gupta\***

\*Ph.D. Scholar, UPES, Dehradun

**Dr. Shikha Dimri\*\***

\*\*Associate Professor (Law), UPES, Dehradun

---

## **Abstract**

*This paper examines public hearing of parole from a comparative perspective. It begins with a brief overview of the history and purpose of parole hearings. It then discusses the different types of public hearing models used in various nations. Comparative analysis of the public hearing process in each jurisdiction is provided, including how the public's role and input may differ. The study also explores how public hearing of parole has evolved over time and how it may be affected by current trends and changes to the criminal justice system. The paper attempts to highlight the benefits and limitations of public hearing of parole.*

---

**Keywords:** Parole, Law, Citizens, Transparency

---

## **INTRODUCTION**

The Supreme Court in the extra ordinary appellate jurisdiction while deciding a special leave petition has reiterated period of Parole is to be excluded from the period of sentence and observed that Parole is granted by the State Government. For parole, specific reason is required. Parole can be granted for number of times<sup>1</sup>. As the authority to grant parole rests with the state government prisoners who are influential may be granted parole for many numbers of times. This quasi-judicial function of the executive had always been into question in many cases which came in lime light of the common man through media.

Once an accused is convicted, he is exposed to altogether a different life of the prisons. In India prison is a state subject<sup>2</sup> so the state government legislates on functioning of prisons and role of different functionaries for prison administration.

Unlike probation, Parole is not very widely known as a correctional means for offenders as the proceedings are not in public and decided by the administrative authorities. Parole is an opportunity offered to some people convicted of crimes to serve part of their sentence outside of prison while still under correctional supervision<sup>3</sup>.

---

<sup>1</sup>Rohan Dhungat Etc. v. The State of Goa & Ors Etc., Special Leave Petition (Crl) Nos. 12574-12577 OF 2022 (@ DIARY NO. 29535 OF 2022).

<sup>2</sup>The Constitution of India, Seventh Schedule, State List, Entry 4.

<sup>3</sup>Alabama Prison Team, Daniel Teehan (Ed.), A Guidebook to Parole in Alabama, (Southern Poverty Law Center, 2019).

The grant of parole is governed by rules made under Prison Act, 1894 and Prisoners Act, 1900. Different State governments have also formulated various guidelines to bring out objectivity and facilitate decision-making to determine whether parole needs to be granted in a particular case or not. Such decisions are taken in accordance with guidelines framed from time to time<sup>4</sup>.

The controversial paroles granted to Manu Sharma who was convicted for the murder of Jessica Lall in 1999 by Delhi Government though there was opposition by the Delhi Police<sup>5</sup>. In this case the convict was also found guilty of violating the parole conditions. In *H.C. Arora v. State of Haryana*<sup>6</sup> wherein The division bench of Chief Justice Ravi Shanker Jha and Justice Arun Palli of Punjab & Haryana High Court dismissed the petitioners petition as withdrawn who had earlier moved the High Court through an ordinary writ plea challenging the 40-day parole granted to Dera Sacha Sauda Chief Gurmeet Ram Rahim Singh's who was convicted for the offences of rape and murder and later the plea revised and re-filed as a Public Interest Litigation. During his parole the offender was found virtual satsang from his Dera in Bhagpat, UP, and was addressing his followers all over the world. The petitioner also pleaded that Haryana Good Conduct Prisoners (Temporary Release) Act, 2002 confer powers on the competent authority to distribute "facility of parole like largesse". Later in this petition satisfied by the state government undertaking the petition was withdrawn<sup>7</sup>.

Though all citizens are equal in the eye of law but there have been incidents of the misuse of the grant of Parole by the competent authority on one hand and also the convicts who have at many occasions fled thereby abusing the reformatory privilege which is granted. Such incidences should not take away the objective of this correctional means Parole as social welfare reformatory legislation for penal reforms<sup>8</sup>.

Now the question has arisen whether still the same structure, procedures and powers which is enjoined by the competent authority is to be continued or it is need of the time that India should also adopt Public Hearing of Parole which recently introduced in United Kingdom. This paper attempts to analyse the legislative frame work relating to the Public Hearing in United Kingdom with reference to law of Parole in India.

The findings of this study will contribute to the understanding of the public hearing process for granting parole in different jurisdictions. This study will provide insights into the similarities and differences in the parole process, as well as the impact of these differences on the outcomes of parole decisions. The findings of this study may be used to inform policy and practice related to the parole process in different jurisdictions.

---

<sup>4</sup>Singh & Associates, India: What Is Parole?, available at: <https://www.mondaq.com/india/trials-amp-appeals-amp-compensation/905726/what-is-parole> (last visited on March 7, 2023).

<sup>5</sup>Varsha, Parole Law in India: A Tool to Social Rehabilitation or Route to Recidivism, available at: <https://bnblegal.com/article/parole-laws-in-india-a-tool-to-social-rehabilitation-or-route-to-recidivism/> (last visited on January 7, 2023).

<sup>6</sup>*H.C. Arora v. State of Haryana*, CWP-PIL-111-2022.

<sup>7</sup>*Ibid.*

<sup>8</sup>Supra note 4



## History of Parole

The positivist school of law is the source of the concept of parole. Samvel G. Howe, a criminal reformer from Boston, used the phrase "parole" in a correctional context in 1847. According to the Classical School of Philosophy, individuals are free to select their own actions. By committing a crime, a criminal continually evaluates his profit and his pleasure at the expense of the misery of others. Thus, he must be punished. Yet, the positivist school asserted that individuals committed crimes due to external factors. He must therefore be rehabilitated. The concept of parole eventually developed. It provides the prisoner a second chance to reform. Even if the offender may have committed a crime, it is undesirable for him to be permanently stigmatised and denied the opportunity to rehabilitate.

## INTRODUCTION TO PAROLE AND PUBLIC HEARING

The origins of parole can be traced back to military law. Prisoners of war were granted temporary freedom so that they may return home and participate in society for a period, with the promise that they would return at the end of this time. With the passage of time, parole was included into India's criminal justice system so that convicted individuals could serve as contributing members of society for a period of time. Thus, only prisoners who had already served a portion of their sentence were handed this item<sup>9</sup>.

Defining parole into a single statement or as a single concept would be a very complicated exercise and might even be futile. It is an integral concept of the rehabilitation and correctional process achieved with constant input and help from the society and its actors<sup>10</sup>.

It is a method for the temporary release of prisoners based on their good behaviour, allowing them to maintain family and social ties while fleeing from prison. This helps healing and social reintegration. In addition, parolees are required to report periodically to their parole officer for the term of their release. A prisoner who has not yet completed his or her sentence may petition for parole and be granted temporary freedom<sup>11</sup>.

## Audience Regarding Parole & Public Participation

In the context of parole, a public hearing is a meeting when members of the public can express their thoughts on whether a person convicted of a crime and sentenced to prison should be released on parole early. In this type of hearing, the parole board incorporates public opinion into its deliberations. The notion of public hearing may include, but is not limited to, victim/s, family members of the parties, media-houses, members of the community or society, and anybody else who desires to participate in the hearing. Nonetheless, in many nations the hearing normally consists of the convict, his legal

---

<sup>9</sup>Parole in India - Current state and the Need for Reforms- I, available at:

<https://criminallawstudiesnluj.wordpress.com/2021/02/23/parole-in-india-current-state-and-the-need-for-reforms/> (Last visited on March 4, 2023).

<sup>10</sup>N.V.Paranjape, *Criminology and Administration of Criminal Justice*, 177 (Central Law Publication, Allahabad, 1970).

<sup>11</sup>K. Sangeetha, "A Critical Analysis on Law Governing Parole in India" *Scholars International Journal of Law, Crime and Justice*, (2019).

representation and the members of the board charged with the job of deciding whether the guilty shall be released back into the society.

A comparative analysis of public hearings in parole systems can assist in detecting differences and similarities between nations and jurisdictions. Here are some factors to consider:

### **Legal Framework**

The legislative basis for parole hearings may differ from nation to nation. In several countries, including the United States, parole is a form of discretionary release. In some countries, such as the United Kingdom, parole is mandatory, and parole boards must consider the release of every eligible prisoner. Several criteria have been established and must be met in order to determine parole eligibility and subsequent release.

### **Citizen Participation**

The involvement of the general public in parole hearings may also vary. In some nations, such as the United States, parole hearings are common, and the public is given the opportunity to voice its view. In other countries, like as the United Kingdom, public hearings were less frequent and recidivism risk assessment was prioritised. The United Kingdom has just instituted the option of requesting a public hearing, which may or may not be granted. The first public parole hearing in the history of the United Kingdom is planned to take place on December 12, 2022<sup>12</sup>, following enhancements to increase transparency and improve parole system victim experiences.

Moreover, the method for granting parole may differ from one jurisdiction to another. In the United States, the parole board has extensive decision-making authority, and public opinion can influence its choices. In India, for example, the parole board evaluates the case based on its merits and requests information from the judges and attorneys involved in the trial to decide if granting release would be consistent with parole standards.

### **Transparency**

The level of openness during parole hearings is a further variable aspect. In the United States, the general public and the media have access to public hearings, and internet transcripts may be made available. The parole applicant and other relevant parties, such as their legal representatives, the prison governor, and the victim or their family, would be informed of the parole board's decision and receive a copy of the transcript in the United Kingdom. India adheres to the principle of the court issuing the order issuing a certified copy.

A comparative review of public hearings in parole systems can help discover differences and similarities between nations and jurisdictions. It can also feed discussions on how to enhance the effectiveness and fairness of parole regimes.

---

<sup>12</sup>First public parole hearing following government reforms, available at:

<https://www.gov.uk/government/news/first-public-parole-hearing-following-government-reforms> (Last visited on March 1, 2023).



## A COMPARISON OF THE PAROLE PROCEDURE AND THE PUBLIC HEARING

### United Nations of America

In the United States, state parole boards hold public hearings on parole. Those having the authority to grant or deny parole to eligible inmates are appointed to parole boards. When determining whether to grant parole, parole boards frequently conduct private interviews with convicts and assess their criminal records, institutional behaviour, and other relevant factors<sup>13</sup>.

During a parole hearing, the prisoner will appear before a parole board, which is normally comprised of state or federally appointed officials. The board will assess the prisoner's case, including their criminal background, prison conduct, and any other circumstances that may affect their release eligibility. During the hearing, the prisoner will have the opportunity to speak, as will any victim or family member who wishes to address the board. Also, the board will consider any written statements from the prisoner, victims, or any parties with an interest<sup>14</sup>.

Procedures and requirements for parole hearings differ from state to state in the United States, and not all jurisdictions hold parole hearings in public. In several states, the public can participate in the parole process through public hearings<sup>15</sup>.

Because parole regulations vary significantly from state to state, it is difficult to estimate the exact number of states that hold public parole hearings. In 2021, at least 24 states will include some form of public participation in the parole process, such as public hearings, victim impact statements, or other feedback. Alabama, Arizona, California, Connecticut, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Nevada, New Jersey, New York City, State of North Carolina, Ohio, Pennsylvania, Tennessee, Texas, Virginia, and Washington make up these states<sup>16</sup>.

The state of Indiana's official government website displays the following message allowing for parole hearings to be held in public when applicable or feasible in the interest of justice: "*A Parole Board Hearing is a proceeding in which the parole board permits the offender, victims, witnesses, and other interested parties to express their support or opposition for the parole of the offender. The parole process involves two distinct hearings before the parole board.*

*The public hearing is informal, and all parties, including victims, witnesses, and family members, are welcome to express their support or objection to the parole of the criminal. You have the right to make an oral, written, filmed, or audio-taped statement to the board. You would not be required to be present to submit a statement.*<sup>17</sup>"

---

<sup>13</sup>U.S. Parole Commission, available at: <https://www.justice.gov/uspc/frequently-asked-questions>(Last visited March 5, 2023).

<sup>14</sup>Ibid.

<sup>15</sup>Ibid.

<sup>16</sup>The parole procedure's rules and regulations are subject to change over time.

<sup>17</sup>Indiana Department of Correction, available at: <https://www.in.gov/idoc/operations/parole/hearings/> (last visited on March 3, 2023).

## Canada

Canada has a more accessible parole hearing system. In Canada, parole hearings are open to the public unless the offender wants a closed hearing. The public may attend and give spoken or written statements in person or in writing. In addition, the detainee may respond to any statements made during the hearing. The decision, however, remains with the board assembled for the parole hearing. The victims have the option to submit a form indicating whether or not they will attend the parole board hearing. The media are permitted to interview the victim if they so wish, and often report on the proceedings of the board as soon as they conclude<sup>18</sup>. The defendant may have his attorney present and submit evidence and arguments to support his case.

## United Kingdom

The parole hearing statute in the United Kingdom underwent a significant revision lately, with rule 15 containing new requirements.

The Parole Board (Amendment) Regulations 2022<sup>19</sup> amended the Parole Board Rules 2019 beginning on July 21, 2022. The National Archives published version of the rules has not yet been modified. Rule 15 currently says:

- "1) *An oral hearing must be held via video link, telephone conference or other electronic means if the duty member or panel chair so directs.*
- (2) *In all other cases, the oral hearing must be held at the location designated by the duty member or panel chair, with the approval of the Secretary of State.*
- (3) *An oral hearing (including a direction hearing or case management conference) must be held in private unless the Board chair determines, on their own initiative or in response to an application to the Board, that holding the oral hearing in public is in the interests of justice.*
- (3A) *Any request for a public oral hearing under subsection (3) must be made no later than 12 weeks prior to the scheduled oral hearing date.*
- (4) *Whenever an oral hearing is conducted in public, the panel chair or duty member may direct that a portion of the hearing be conducted in private.*
- (5) *During the oral hearing, the parties may not contest the presence of any witness called pursuant to these Rules or observer whose presence has been approved pursuant to Rule 14.*<sup>20</sup>

As a result, these new regulations have ushered in the era of public hearings in parole procedures, where a hearing may be requested if the parole board judges it to be in the interest of justice or in response to an application. When a section of a procedure is to be discussed or presented that may contain confidential information or evidence that is not to be made public, the board may order that portion of the procedure to be done in private and records to be sealed.

---

<sup>18</sup>Government of Canada, available at: <https://www.canada.ca/en/paroleboard/corporate/publications-and-forms/victims-observing-a-parole-hearing.html> (last visited on March 3, 2023).

<sup>19</sup>Parole Board (Amendment) Rules 2022. Instrument, 2022 no. 717.

<sup>20</sup>Opening up the Parole Board, available at: <https://rozenberg.substack.com/p/opening-up-the-parole-board> (Latest visit on March 5, 2022).



The Deputy Prime Minister, Lord Chancellor, and Secretary of State for Justice, Dominic Raab MP, stated that permitting parole hearings to be held in public is a huge step forward for victims who wish to witness justice being served in person.

*"It marks the first step in our reforms to overhaul the system - putting victims and public protection front and centre of the process."*<sup>21</sup>

## JAPAN

In Japan, only the victim, the victim's family, and the offender's family are permitted to attend mandatory public hearings. The public is not allowed to attend the hearing or address the board directly. The purpose of the hearing is to provide the victim and their family an opportunity to express their views and to tell the offender of the harm they have caused. When the regional parole board approves the chief of a correctional facility's parole application or finds parole necessary, parole proceedings are commenced. It is emphasised that prisoners have no right to apply for their own parole<sup>22</sup>.

A Japanese prisoner may be eligible for parole if they have served a certain amount of their sentence and meet further qualifying requirements. The parole eligibility requirements differ based on the sort of crime committed and the prisoner's individual circumstances.

In Japan, parole hearings are conducted by a panel of experts who examine the prisoner's case and make a recommendation to the Minister of Justice. The panel examines matters including the offender's prison behaviour, level of remorse, and plans for rehabilitation and reintegration into society<sup>23</sup>.

The Ministry of Justice makes the final choice whether the parole board recommends release on parole. The prisoner may be granted parole under certain conditions, such as regular contact with a parole officer and activity restrictions.

Particularly, the parole system in Japan is often criticised for its low approval rates and lengthy evaluation process. Several efforts have been made to make the system more effective and fairer for convicts.

Even while a vast number of Japanese individuals contribute willingly to the parole system in the form of "*hogoshi*"<sup>24</sup> their actual participation in parole hearings remains very limited.

## INDIA

Parole is the conditional release of the to the prisoners after they have undergone a portion of their sentences<sup>25</sup>. The grant of parole is essentially an executive function and instances of the temporary release of convicts in custody on parole were literally unknown the Supreme Court and some of the High Courts in India have ordered for the

<sup>21</sup>Supra note 12.

<sup>22</sup>Offender Rehabilitation in Japan Walk along with local communities,available at: <https://www.moj.go.jp/content/001345372.pdf>(Last visited on March 3, 2023).

<sup>23</sup>Ibid.

<sup>24</sup>Ibid.

<sup>25</sup>N.K. Chakrabarti, Institutional Corrections: In the Administration of Criminal Justice 126 (Deep & Deep Publications Pvt. Ltd., New Delhi, 1999).

release on parole on humanitarian considerations. Releasing a detenu on parole is a wing of the reformatory process as to provide an opportunity to the prisoner to transform himself into a responsible citizen. The release on parole does not change the status of the prisoner. The State Governments have framed rules providing supervision by parole authorities of the convicts released on parole and in case of failure to perform the promise, the convict released on parole is directed to surrender to custody<sup>26</sup>.

Thus, the grant of parole limits, the ill effects of incarceration and provide an acceptable means of reducing the burden of actual period of incarceration. It provides an opportunity to test the rehabilitation programmes prior to the expiry of sentence. Parole provides a means of protection to society from recidivism on the part of the released offender. Prof. Goswami observes: *Parole along with the companion service of probation, has demonstrated the efficacy of non-institutional treatment of offenders*<sup>27</sup>.

The term Parole has not been defined under any law. But Section 2(p) of the Delhi Prisons Act, 2000, defines a Parole System. According to Section 2(p), "Parole system means the system of releasing prisoner from prison on parole by supervision of their sentences in accordance with the rules"<sup>28</sup>.

As there are no uniform laws for Parole and each state has its own procedures for the grant of parole so it results ambiguity.

In India, there are provisions for parole hearing but not as public hearing, and it is provided the specific state legislation. In certain conditions, parole is the temporary release of a prisoner prior to the completion of his or her sentence. The government has the discretionary power to give parole, which is typically granted for a limited period of time to allow the prisoner to maintain family links, participate in employment or educational programmes, or seek medical treatment. Even though India recognises parole as an administrative benefit, it is not declared as a Right. A prisoner's right to parole is not absolute, and parole is granted at the discretion of the prison administration.

Generally, the hearing takes place at the district level, and the inmate has the chance to attend and argue their case before the board. If the prisoner is unhappy with the outcome of the hearing, he or she may file an appeal against the board's decision.

In India, parole is given after a hearing in which the case of the prisoner is heard by a panel of government officials and professionals. The parole board considers a range of factors when evaluating whether to grant parole, including the prisoner's conduct while confined, their family circumstances, and the nature of the offence. Before granting parole, the authorities consider reports from social agencies, pre-parole investigation reports, court or prosecutor comments, and studies and observations conducted by qualified prison staff during the inmate's incarceration. These studies may involve mental and psychological evaluations, a thorough social history, in-depth pre-parole investigation reports generated by field officers, the inmate's prison education, his behaviour and attitude, and a number of other relevant aspects.

---

<sup>26</sup>Poonam Lata v. M.L. Wadhawan (1987) 3 SCC 347.

<sup>27</sup>B.K. Goswami, Criminology & Penology 172-173(Allahabad Law Agency, 1987).

<sup>28</sup>The Delhi Prisons Act, 2000, s. 2(p).





## THE CASE OF RUSSEL CAUSLEY

Russel Causley was convicted of murdering his wife and given a prison sentence for the crime. The body of his wife was never recovered, and the perpetrator never gave any information about her, despite the passage of a law mandating such disclosure. He was initially granted parole on licence but was later sent to prison for violating the terms of that licence. Russel Causley's case would be the first to be heard in public following the modification of U.K. legislation pertaining to public hearing, based on an application filed by a member of his family and a member of the media.

Caroline Corby, chairwoman of the Parole Board, explained why she authorised the public hearing<sup>29</sup>.

1. *"Since November 2020's Prisoners (Disclosure of Information about Victims) Act and July 2022's Parole Board guidelines allowing public hearings, Mr. Causley's case is the first in which the prisoner has not disclosed the location of the victim's body. As a result, the primary hearing will focus on recall reasons and risk assessment, but the public will have its first opportunity to observe how the Parole Board handles this issue.*
2. *Mr. Causley was convicted of murder. If the crime is significantly heinous, a public hearing is required for justice.*
3. *The general populace misunderstands Parole Board judgements. The case of Causley is well-known. The media and victims support a public hearing. It calls for recall. The public interest in comprehension should therefore be addressed when evaluating justice.*<sup>30</sup>

The victims seek hearings in public. The victims believe that a public hearing would aid them. Even when the victims have permission to attend a private hearing and would be present regardless, their preference for a public hearing is relevant.

Finally, Russel was released on parole, considering the progress he had made while incarcerated and imposing rigorous conditions for his continued enjoyment of parole issued on licence<sup>31</sup>.

## ADVANTAGES AND DISADVANTAGES

Public parole hearings have the potential benefit of increasing the process's transparency and accountability. When the public is permitted to attend and provide input, it can increase confidence in the process's fairness and ensure that decisions are made with public safety in mind. When the public participates in a proceeding, they are better able to comprehend why a decision was made. When kids participate in the process, they begin to comprehend the cause and impact of any circumstance or board decision. Justice is both administered and observed, which reinforces the foundations of the public's faith in judicial and executive operations.

---

<sup>29</sup>Supra note 20.

<sup>30</sup>Supra note 19.

<sup>31</sup>Summary following the public hearing for Russell Causley, available at:

<https://www.gov.uk/government/publications/summary-following-the-public-hearing-for-russell-causley> (Last visited on March 6, 2023).

Nonetheless, there are significant drawbacks to public parole hearings. In some circumstances, public opinion may be more swayed by emotion or misinformation than by relevant facts concerning the offender's behaviour and possible harm to the community. Moreover, public hearings may increase the chance of media coverage and public scrutiny, which may influence the decision-making process. Prejudice has always posed a danger to the concept of natural justice, and such a hearing would develop prejudice in the mind of the adjudicator in one way or another. The public humiliation of the accused as a result of unverified written comments provided by the general public would likewise be unjustified and inappropriate. If the board decides to release a criminal against the preferences of the general populace, the accused may also be at risk of popular indignation and violence. Media trial and TRP-centred portrayal of the case may have the reverse of the desired effect.

## **SUGGESTIONS & CONCLUSION**

When considering the programme for parole public hearings in India, a blend of many countries may be considered. The primary necessity would be either consistent legislation or unambiguous state regulation that would dispel the haze surrounding the concept. A hearing with restricted access and facilities for written submission of any comments directly to the panel board would enable the panel member to examine the statement and make any appropriate enquiries from the accused and his counsel. As in Canada, only the parties involved should have access to direct interference and the ability to speak at such public hearings. Media outlets will be required to report the transcript verbatim and to preface any statements or speculation with appropriate disclaimers. The decision on whether or not a hearing should be held in public should be made after deliberation behind closed doors.

In order to retain social bonds, parole allows convicted individuals a period of time back in society. It also creates the prospect that the recidivism rate can be reduced. An opportunity for a second chance in society. A chance to make amends for the harm caused and a chance for penance, even though time is limited and the objective is predetermined. Public parole hearings increase the transparency of the current system. It enables matters of societal interest to be decided with input from and in front of the public. Also, victims gain from the public assistance extended during these periods.