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Revisiting Domestic Violence as a Gross Violation of Women's Fundamental Rights to Freedom from Torture

Reviewing the Interpretation of the Inheritance Law with Special Reference to Kalala

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দাপ্তরিক গোপনীয়তা আইন ও তথ্য-অধিকার

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Parole: Philosophy and Operation in Bangladesh

Md. Ismail Hossain*

Concept & Definition of parole

Parole is an alternative measure to punishment. The word parole originates from the French and used as "*parole d'honneur*" or "word of honour"¹. Historically, parole is a concept known to military law and denotes release of a prisoner of war on promise to return.² According to Schwartz "Parole was born in America a century ago, intended as a reform to avoid having prisoners rot away in their cells. The theory was that rehabilitation would be fostered if the offender served the last portion of his sentence in the community, free but supervised."³

Now a days, parole is a system of releasing prisoner, under supervision before the end of their prison sentence; they are not discharged officially from prison until the end of the parole period, and if they violate the conditions of parole they may be returned to prison to complete serving their sentence within the prison walls.⁴ Although not available under some sentences, parole is usually granted for good behaviour on the condition that the parolee regularly report to a supervising officer for a specified period⁵. It is a kind of supervision that begins after a person's release from prison or jail after serving part of a sentence. Parole is a privilege, not a right. While only a judge can sentence someone to a jail term, the judge doesn't decide how much of that jail sentence the person will have to serve before being released back into the community.

Parole is the system of release from incarceration prior to expiration of the maximum or flat sentence on certain conditions and under supervision, pending final release.⁶ It is the act of releasing or the status of being released from a penal or reformatory institution in which one has served a part of his maximum sentence, on condition of

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¹ Devasia, V.V. and Leelamma Devasia, (1997) "*Criminology Victimology and Corrections*" Anish Publishing House, New Delhi, p.153

² Paranjape, N.V. (2005) "*Criminology and Penology*", Central Law Publications, (12th Ed,) Allahabad, p. 424.

³ Schwartz, Herman (1973) "*Lets Abolish Parole.*" Readers Digest, August, at page 185.

⁴ Cavan, Ruth Shonle (1962) "*Criminology*" (3rd Ed), p. 540

⁵ Garner Bryan A. (2004) "*Black's Law Dictionary*" West Publishing Co. (8th Ed.) p. 1149.

⁶ Silver, Isidore (1981) "*Criminology- An Introduction*" Barnes & Noble Books, p. 222

maintaining good behaviour and remaining in the custody and under the guidance of the institution or some other agency approved by the states until a final discharge is granted.⁷

J. L. Gillin defined it as “the release from a penal or reformatory institution, 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”⁸. Parole helps the parolee and supervising his adjustment to society, and also protecting the society from further criminal activity. The parolee must also face the hatred and fear of the general public, the frequent boundary of the police and the exploitation of employer or others who know his past records. Donald Taft characterises parole as a release method which retains some control over prisoners which however permits them normal social relationships in the community. The ultimate significance of parole lies in the fact, that it enables the prisoner a free social life yet retaining some effective control over him.⁹

The Supreme Court of India in a case¹⁰ defines the concept of parole as “parole is taken as an act of grace and not as a matter of right and the convict prisoner may be released on condition that he abides by the promise. It is a provisional release from confinement but is deemed to be a part of the imprisonment. Release on parole is a part of the reformatory process and is expected to provide opportunity to transform himself into useful citizen. Parole is thus a grant of partial liberty or lessening of restriction to a convict prisoner, but release on parole does not in any way, change the status of a prisoner”. So the essence of parole is release from prison, before completion of the sentence, on condition that the prisoner abides certain rules during the balance of the sentence.

Origin and development of parole in Bangladesh

Parole did not develop from any specific source or experiment. It is an out growth of a number of independent measures which includes conditional pardon, apprenticeship by indenture, and transportation of criminals to America, Australia or to any Island. According to Devasia, “Parole grew out of change in emphasis in correctional

⁷ Sutherland, Edwin H. and, Donald R. Cressey (1964) “*Principles of Criminology*” J.B. Lippincott Company, U.S.A. p. 566.

⁸ Gillin, J.L. “*Criminology and Penology*” (3rd Edn.) p. 339.

⁹ Paranjape, N.V. (2005) “*Criminology and Penology*”, Central Law Publications, (12th Edn.) Allahabad, p. 424.

¹⁰ *Smt. Poonan Lata V. Wadhawan & others*, AIR (1987) SC 1383.

philosophy from one of punishment to one of reformation".¹¹ It is a combination and extension of penal practices that had existed for a long time, although the notion of giving treatment, in the form of guidance and assistance is relatively new.

Conditional pardon began early in the seventeenth century in Europe. In the beginning no specific conditions were imposed upon those receiving these pardons. However after a number of pardoned had evaded transportation or had returned to England prior to the expiration of their term, it was found necessary to impose certain restrictions upon the individuals to whom it was granted.¹²

In early days of transportation, the government paid a fee to the contractor for the prisoner transported. Subsequently this was changed and the contractor was given "property in service" of the prisoner until the term expired.¹³ The contractor sold their service to the highest bidder and transferred the "property in service" agreement to the new master and the felon was no longer referred as a criminal but became an indentured servant.¹⁴ This method was used for juvenile delinquents from the time of the origin of the houses of refuge. Later the supervision was extended by the appointment of a state visiting agent with the special function of protecting the wards of the institution against imposition.¹⁵

The English Penal Servitude Act, 1853, governing prisoners convicted in England and Ireland, substituted imprisonment for transportation who received sentences of less than fourteen years. This law also specified the length of time to serve before becoming eligible for conditional release on Ticket of Leave.

Sir William Crofton became Head of the Irish Prison system in 1854.¹⁶ The Irish convict system under Crofton's administration became famous for three stages of penal servitude, with the final stage being conditional release on Ticket of Leave.¹⁷

¹¹ Devasia, V.V. and Leelamma Devasia, (1997) "*Criminology Victimology and Corrections*" Anish Publishing House, New Delhi, p.153

¹² Abadnisky, Howard, (1977) "*Probation and Parole- Theory and Practice*" Prentice-Hall Inc., New Jersey. p. 156.

¹³ Ibid, p. 157.

¹⁴ Ibid, p. 157.

¹⁵ Sutherland, Edwin H. and Donald R. Cressey (1964) "*Principles of Criminology*" J.B. Lippincott Company, U.S.A. p. 567.

¹⁶ Abadnisky, Howard, (1977) "*Probation and Parole- Theory and Practice*" Prentice-Hall Inc., New Jersey. p. 157.

¹⁷ Ibid, p. 158

Massachusetts became the first State to institutionalize concern for ex-convict after care. By 1865, the Crofton's system had been widely publicized in America; however the supporters of him did not believe that the adoption of the Ticket of Leave would never be accepted in the U.S.A. A letter written by Crofton in 1874, in reply to an inquiry sent to him by the secretary of the New York Prison Association, stressed that the police of Ireland were permitted to delegate competent individuals in the community to act as custodians for Ticket of Leave men. This along with an Irish variant becomes the basis of modern American Parole.¹⁸

The history of parole in British India is not so impressive. Everyone tried to hide from the authority. In September, 1758, parole was first given to John Brohier, the engineer of Fort St. David (Bombay). The engineer was arrested on charge of fraud and, later released on parole¹⁹.

During the Pakistan period Ila Mitra, who was the leader of peasants and indigenous *Santhals* in greater Rajshahi region, fell very sick in jail in 1954. The United Front government of Pakistan paroled her and sent her to Kolkata for treatment. To avoid persecution, she did not return to Pakistan and stayed the rest of her life in India²⁰.

Bangladesh adopts the maximum penal laws of East Pakistan as well as of the British India with some amendments. However, there was no specific provision of parole in those laws. Progressive view advocates for utilizing alternative measures for rehabilitation and transformation of offenders in Bangladesh. Sheikh Hafizur Rahman, describes the situation as "The penal policy of Bangladesh lacks sufficient alternative measures to punishment. Probation is a before sentence and parole is an after sentence mechanism through which offenders are set free in the society on condition of good behaviour under supervision of an officer. Our penal system provides one alternative measure that is probation. Where a person is convicted of an offence punishable with imprisonment for not more than two years, the court may, after considering the age and character of the offender and the nature of the offence, make an order discharging him after due caution under section 4 of the Probation of Offenders Ordinance, 1960. Where a person is convicted of any offence other than a offence punishable with death (and some other specific offences), the court under section 5 of the Ordinance may,

¹⁸ Silver, Isidore (1981) "*Criminology- An Introduction*" Barnes & Noble Books, p. 223

¹⁹ Collected from Banglapedia "Fort William"(electronic resource) retrieved 25/07/2007 from <http://banglapedia.search.com.bd/HT/F_0169.htm>

²⁰ Collected from wikipedia (electronic source) retrieved 12/12/2007 from <http://en.wikipedia.org/wiki/Ila_Mitra>

instead of sentencing the person at once, make a probation order requiring him/her to be under the supervision of a probation officer, with or without sureties, on condition of good behaviour. So a judge does not require to award punishment to the offender at the first instance, rather the offender can be set free under the supervision of a probation officer. If the response is positive the offender need not to be punished. The system of parole is not sufficiently provided by any laws of Bangladesh.²¹

In 2006, thirty four years after the birth of the country, legislature passed an Act named "*Karagare Atok Saja Prapto Narider Bishes Subidha Ain, 2006*"²² for the convicted women in jail. According to the provisions of the said act women convicts will need to serve 50 per cent of the term of imprisonment in the case of the sentence for a year or more to get release on parole or conditional release. They will remain under the supervision of a probation officer of the social welfare ministry in their district for two years. However the Act is applicable to convict women only.

Operation in Bangladesh

The penal policy of Bangladesh is essentially reformatory in character as opposed to retributive²³. However it lacks sufficient alternative measure to punishment viz., parole probation, aftercare etc. The penal system of Bangladesh provides one for alternative measure i.e., probation. As per Justice Md. Imam Ali in the case of *Abdul Khaleque V. Hazera begum & another*²⁴ "the provision afforded by the Probation of offender's Ordinance, 1960 is a prime example of such policy. If a sentence of probation is imposed for a period of time then it is likely to be more of a deterrent and will have a rehabilitating effect which will fulfil the intention of the legislature".

In a joint seminar on "Rehabilitative and Human Treatment of Offenders"²⁵, the participants recommend that aftercare services should be statutory for offenders and parole should be introduced by the law. Bangladesh Law Commission describes the necessity of alternative to punishment. According to the Commission "necessary measures including legislative may be taken to introduce some alternative to imprisonment such as, bail, conditional discharge (parole), suspension of sentence,

²¹ "Alternative measures should be introduced through amendment" by Sk. Hafizur Rahman, retrieved 22/07/2007 from <<http://svr87.edns1.com/~starnet/law/200305/03/index.htm>>

²² Act No. XLVIII of 2006.

²³ *Abdul Khaleque V. Hazera begum & another*, (2006), 58 DLR (HCD) 322

²⁴ 58 DLR (HCD) 322.

²⁵ Bangladesh joint seminar (electronic source) retrieved 13/07/07 from <www.unafei.or.jp/english/pdf/PDFOverjntsem/joint_bangladesh.pdf>

probation, binding-over, fines, community service order, compensation, restitution, etc. Clear and detailed schemes outlining the powers and functions of the agencies involved should be drawn²⁶.

There is no specific clear provision in the Bengal Jail Code, 1864, Cr.P.C. 1898, Penal Code 1860, or any other law to order a convict to render community service like parole, aftercare in lieu of imprisonment. It is a progressive measure adopted by many countries of the world. Some States of India adopted the law of parole by enacting law. However, parole is not totally unknown in Bangladesh. The fact is that only a few number of person released on parole. Generally the time is 12 hour to 24 hours. In 2002, Golam Moula Sanu, a listed criminal against whom the court framed charges in a murder case on May 27, took oath as Commissioner of Ward No. 26 of the Khulna City Corporation (KCC) in the evening on that day. He was released from Khulna district jail on parole for the oath taking and was sent back to the jail after the oath. The order for his release on parole was given by the ADM of Khulna in consultation with higher authorities.²⁷

In a recent case the caretaker government released detained Awami League (AL) leader Sheikh Fazlul Karim Selim on parole in the evening as family members submitted a petition seeking his bail so that he could attend his mother's janaza and burial. After janaza he was sent back to jail. He was made free for hours on parole following a petition to the Home Ministry filed by the family members through the DC office.²⁸

As parole is an administrative function administered by the authority of the State, Metropolitan Magistrate or District Magistrate may grant parole in consultation with higher authorities for a period of a very short term. Generally the higher authority is the Secretary, Ministry of Home Affairs²⁹.

First time in 2006, the legislature introduced the provision of parole only for convicted women in jail by enacting the act "*Karagare Atok Saja Prapto Narider Bishes Subidha*

²⁶ "Report on the Reference of the Government on Prison Reforms"(Electronic source) retrieved 24/07/07 from <www.lawcommissionbangladesh.org/reports/54.pdf>

²⁷ Collected from the magazine "weekly holiday" online archive. Retrieved 27/07/07 from <<http://www.weeklyholiday.net/310502/met.html>>

²⁸ "Selim on parole joins mother's burial" news published in "The New Nation" dated 29 Jun 2007, retrieved 22/07/2007 from <http://nation.ittefaq.com/artman/publish/article_37208.shtml>

²⁹ The information is based on an informal interview with a magistrate of Joypurhat district.

*Ain, 2006*³⁰. According to this Act the convicted women in jail will need to serve 50 percent of the term of imprisonment in the case of the sentence for a year or more to get special privileges³¹. Special privileges under this Act means conditional release³² or parole, vocational training³³ such as Block, Batik, hair cutting, tailoring etc, aftercare service for the convicted who have completed various trade courses during the period of conviction³⁴.

Some important provisions of the Act are as follows:

There will be a national committee³⁵ which will review the applications from women convicts imprisoned for 10 years or more and a district committee³⁶ will review the applications from women convicts jailed for less than 10 years.

The convicted women will remain under the supervision of a probation officer of the Social Welfare Ministry in their district for two years³⁷. During this period if she fails to correct their conduct or violate any of the conditions set for the special privilege e.g., parole, she will be sent back to jail. She will finally be released if the officer reports after two years that the convict has satisfactorily reformed hereof and her activities are acceptable. The provisions are, however, not applicable for women convicts sentenced to death penalty or jailed for life or the convicts charged with sedition³⁸.

In order to provide social security to helpless and problem ridden segments of the population, the Social Service Department (under the Ministry of Social Welfare) arranges for the release of people sent to correctional programs for good conduct on parole after confinement for a specific period and take action for their resettlement.³⁹

³⁰ Act No. XLVIII of 2006.

³¹ Section 4 of *Karagare Atok Saja Prapto Narider Bishes Subidha Ain, 2006*.

³² Section 3 (a) of *Karagare Atok Saja Prapto Narider Bishes Subidha Ain, 2006*.

³³ Section 3 (b) of *Karagare Atok Saja Prapto Narider Bishes Subidha Ain, 2006*.

³⁴ Section 3 (c) of *Karagare Atok Saja Prapto Narider Bishes Subidha Ain, 2006*.

³⁵ Section 4 of *Karagare Atok Saja Prapto Narider Bishes Subidha Ain, 2006*.

³⁶ Formed under section 7 of the Act consists of District Magistrate, Police Super, Jail Superintendent, Public Prosecutor, District women & children related officer, social worker and some other officer.

³⁷ Condition no (a), described in the schedule of the Act.

³⁸ Section 5 of *Karagare Atok Saja Prapto Narider Bishes Subidha Ain, 2006*.

³⁹ Stated in the Grant no. 21, ministry of social welfare, page 76, (electronic source) retrieved 27/07/07 from <www.mof.gov.bd/previous_budget/budget_2006/MTBF/4_MoSW_E.pdf>

However, till July, 2007 no women convicted in jail awarded conditional release or parole from Rajshahi Central jail.⁴⁰

Recommendations for Parole success

Based on common observation and on informal interviews with the probation officer, Metropolitan Magistrate, Additional District Judge⁴¹, learned advocates of Rajshahi Bar, some problems regarding parole and its solution is discussed in a concise format. Parole is the best form of release from prison but to be completely effective, it must contain the following elements:

- 1) *Introduce parole:* Parole, both for convicted women and men should be introduced by the law. Now only women are eligible for the special privilege given by Act XLVIII of 2006.
- 2) *Flexibility in the sentencing and parole laws:* There must be sufficient flexibility in the cause governing sentence and parole to permit the offender at the time when his release under the supervision of social workers is in the best interests of society.⁴²
- 3) *A qualified parole board:* For a successful operation of parole qualified parole board is a must. However, in Bangladesh conditional release or parole under Act XLVIII of 2006 is given by the National or Zilla Committee. Parole board must be composed of members qualified by character, intelligence, training and experience to understand the complex problems of human behaviour involved in parole decisions, and have the knowledge, patience and integrity required to render wise and just decisions.⁴³
- 4) *A qualified parole staff:* It is essential that the parole services be composed of persons selected in accordance with high standards of ability, character, training and experiences, and appointed on career service basis.⁴⁴ It is necessary that the administrative structure provide an adequate number of administrative and supervisory personnel, field and institutional parole officers, employment training

⁴⁰ The information is collected from a probation officer of Rajshahi district during the visit of the probation office at 10.45A.M. August, 04, 2007.

⁴¹ The informal interview held on July, 25, 2007 in Rajshahi District Judge Court.

⁴² Coffey, Alam, R. (1975) *Correctional Administration: The Management of Institutions, Probation and Parole*, Englewood: Prentice-Hall, pp.152.

⁴³ Panakal, J.J. (1986) "Indian Prison and Correctional Service", *Indian Journal of Criminology*, 14, 2, 1986.

⁴⁴ Short, M. C. and M.J. Stinger (1972) "Group Work with Youths on Parole", *International Social Work*, 7,6, November, pp. 56-58.

and research and other specialists and stenographic and clerical staff, to perform the work of the parole system.

- 5) *Freedom from political or improper influence*: Political influence is a common phenomenon in Bangladesh. No political government left the chance to use administrative power, influence, control over police, jail, even judiciary. Political and other improper influence make obstacles to success of the rehabilitation system. If the situation can not be changed, the total system of rehabilitation will collapse. According to Devasia "Complete freedom from improper control or influence, political or otherwise is imperative".⁴⁵
- 6) *Parole assigned to a workable position in the government administrative structure*: an administrative structure within the framework of the government as a whole which makes it possible from the parole system, without sacrifice of proper independence to function in complete or co-ordination with other departments and services, notably probation services, correctional institutions, and departments of health, mental hygienic, welfare and public safety.⁴⁶
- 7) *Proper parole procedure*: a parole procedure which makes provisions for orienting the prisoners towards parole, preparation for the parole board of all data pertinent to the case, a parole hearing based upon careful study of such data formulation, and investigation of a satisfactory parole plan, release under adequate supervision, and return to the institution of those who are unable to readjust satisfactorily under supervision.⁴⁷ However, there is only a few number of probation officers to select, supervise and give aftercare service to the parolee.
- 8) *Pre-release preparation within the institutional program*: Operation within the institution of a program which aims at utilizing the period of confinement for preparing the inmate physically, vocationally, mentally and spiritually, for his return to society, and puts forth intensive effort, at the close of the term, toward effecting his release under optimum conditions as far as he, his dependants and the community are concerned.⁴⁸

⁴⁵ Devasia, V.V. and Leelamma Devasia, (1997) "Criminology Victimology and Corrections" Anish Publishing House, New Delhi, p.153

⁴⁶ Khan M.Z. (1983) "Crime problem: A Challenge to Social Scientists", Indian Journal of Criminology, 11, 2, pp. 69-70.

⁴⁷ Sikka, K.D. (1980) "Professional Social Work in Correctional Institutions", Indian Journal of Criminology, 8, 1, p. 93-96.

⁴⁸ Mohanty, S. (1985) "Understanding Human Factors for better Implementation of Work Program in Jails" Indian Journal of Criminology, 13, 2, pp. 139-143.

- 9) *Parole research*: A system of gathering presenting and interpreting data concerning the practical operations of the parole system and its effectiveness of the system.⁴⁹ Such a system should be kept up-to-date and be used as a guide for the evaluation of the operation and decisions of the parole board.
- 10) *Proper public attitude towards parolee*: So that they may be accorded fair and helpful treatment in their effort to make good, especially in matters of employment and social integration.
- 11) *Regular visit*: regular visit to jail by probation or parole officer to select convict person for parole is necessary. It helps to chose correct and eligible person.

Conclusion

There is a difference between reality and legality in our society. Individual treatment is essential for correcting and rehabilitating the criminals. Inadequacies in the existing system and human involvement stand as a bar in the way of providing proper treatment. In order to cope with the urgent situation the government must launch more non-institutional facilities such as: firstly, suspended sentences and investigations, probation for all offenders under certain conditions. Secondly, parole and good conduct release which will work as incentives for their good behaviour⁵⁰.

If the government takes a policy decision to introduce community service like parole, aftercare for prisoner, both men and women in lieu of imprisonment a legal framework will be required. The legal framework may be provided either by enacting a separate law or by amending the law by inserting additional provisions. It is thus evidently clear that parole as a part of aftercare program serves as a very useful purpose for the re-socialization of convicted prisoners, making them lesser risk for the society if selected carefully by expert parole officer. It is not only more favourable to the social readjustment of the prisoner but at the same time it is also more encouraging to their mental and physical health, since they get an opportunity to live in free and normal life. Moreover, it relieves the government of its burden of expenditure on prisoners to a considerable extent. We hope that our government and respective officials would take much more initiative to re-socialize them.

⁴⁹ Khan M.Z. (1984) "Criminology in India: Problems and Prospects" Indian Journal of Criminology, 12, 2, pp. 69-70.

⁵⁰ Bangladesh joint seminar on "Rehabilitative and Human Treatment of Offenders" (electronic source) retrieved 13/07/07 from <www.unafei.or.jp/english/pdf/PDFOverjntsem/joint_bangladesh.pdf>