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The Sentence Review Boards in India: A Critical Analysis

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ABSTRACT

The sentencing policy of a country reflects the morale, rationale, and judgment in the country. It helps to establish a certain degree of punishment and helps to reduce the existence of a crime through reprimanding, rehabilitation, or any other lawful or justified procedure thereby, ensuring the law and order in society. The idea of reprimanding and sentencing policy has evolved through the centuries. The lack of uniformity in the sentencing policy has led to disparity and arbitrariness. This disparity particularly exists because of the discretion exercised by the judges, i.e., in their decisions and judgments. This leads to an inconsistency in the system and a continuous routine of disparity in what can be considered the ideal and just 'punishment' for a particular offence. This disparity and inconsistency happen in the premature release also. In order to eliminate the disparity and inconsistency in the premature release of prisoners, the Mulla committee suggested constituting a sentence review board in each state. Besides this, in 1999 the National Human Rights Commission also suggested constituting the Sentence Review Board in each State and Union Territory to eliminate the disparity and inconsistency in the premature release. The study will focus on the functioning of the sentence review board. In India which will be examined in the background of the sentencing guidelines in the UK and USA. The procedure of sentencing policy, guidelines, and premature release of prisoners will be analyzed and focusing on the efficacy in the implementation of the legal measures and the issues and challenges adopted by the Sentence Review Board in India.

Keywords: Sentence, punishment, offences, judges. Premature release, Review Board.

I. INTRODUCTION

The changes in the socio-economic strata after the independence make to evolve new policies in the prison system in India. In absence of a sentencing policy in India has made it embark from a deterrent policy to a reformatory policy³. The main goal of the reformatory policy would be to provide the prisoner with a congenial environment to reform himself during imprisonment.

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³ S S Hegde, Sentencing Process- Review of jural perspective, Cochin University Law review, 1981, page 259-279

One of the benefits of the reformatory policy is to provide a premature release for life convicts after their serving 14 years which is described in sections 432 and 433 of the Criminal Procedure Code 1973⁴. The pardoning power of the President and Governors is provided in articles 72 and 161 of the Indian Constitution⁵. The prisoners can be released on the basis of good conduct and behavior in the prison. The Mulla committee has suggested constituting the Prison Advisory boards in States and Union Territories on the premature release of prisoners. The Advisory board proposes to release the prisoners who had completed the age of 65 years and 3 years of actual sentence, elderly prisoners those who have completed the 10 years of the sentence. Besides this, after receiving complaints from aggrieved persons, in 1999 the National Human Rights Commission suggested constituting the Sentence Review Board in Each State and Union Territories to maintain the uniformity in Premature release⁶. However, the premature release is subject to the influence of politics and bureaucracy.

II. BACKGROUND OF THE BOARD

The premature release of prisoners is a device and an incentive of bringing back to the community of such prisoners, who have been absolved of their criminal tendencies through reformatory treatments. The prisoners are eligible to be released only after serving a certain portion of their sentences. The prisoners, who have been sentenced to life imprisonment, will have the chance for premature release after they have completed seven years of actual imprisonment or 10 years with remission, and those, who had crossed 65 years of age and had completed 5 years of actual imprisonment. India does not have uniformity for the premature release of prisoners. Law provides executive remission, which is completely based on discretion. That discretion is based on the guidelines framed by the State Governments⁷. In order to maintain uniformity in premature release, the Mulla committee suggested constituting Advisory Boards in each state in 1988. To honour the suggestions of the Mulla committee, states constituted the Advisory Board for the premature release of prisoners, who have completed the age of 65 years. Until 2001 the states adopted different procedures, particularly in suspension and remission of sentences. To effectuate, the premature release of such prisoners each State has to constitute the Sentence Review Board⁸. The Sentence Review Board plays a vital role in reviewing the application for premature release. The National Human Rights Commission observed the

⁴ Batuk Lal, Criminal Procedure Code, 1973, Central Law Agency Allahabad, First edition 2008, page no 571

⁵ Batuk Lal, Criminal Procedure Code, 1973, Central Law Agency Allahabad, First edition 2008, page no 572

⁶ K. Murali, Premature Release of Prisoners, Economic and Political Weekly, Sep. 25- Oct 1, 2004, Vol. 39,

⁷ Sridip S. Nambiar, Premature Release of Prisoners: Need for a Comprehensive Rehabilitation Policy in India, Galgotias Journal of Legal Studies, Vol II, 2014,

⁸ Dr. Mridul Srivastava and Dr. Anup Yadava, Premature Release of Prisoners, Word scope, Publishers Private Limited, First Edition 2015, page no 32

discrepancies and different criteria used by various states to determine eligibility for premature release. National Human Right Commission has formed a committee to provide a consistent criterion to handle this situation. In response, the committee formulated the rules and proposed to constitute the state sentence review board to handle the situation of early release. The National Human Right Commission published the revised recommendations in 1999 for states and union territories to implement the recommendations of the Committee⁹. Accordingly, the States and Union Territories have constituted the Sentence Review Board for premature release.

III. STRUCTURE OF BOARD

In order to maintain uniform standard criteria for determining the eligibility of prisoners undergoing life imprisonment for their premature release, the states are pleased to constitute a sentence review board as per the guidelines furnished by National Human Rights Commission to review the sentence awarded to prisoners and recommend premature release. In the nutshell, these guidelines led to the birth of the idea of a state sentence review board. The State Sentence Review Boards have served the purpose admirably keeping in view the general principles of amnesty, remission of the sentence, and welfare of the prisoners and society at large. The sentence review board shall be a permanent body of administrative control of the law department.

The Board shall consist chairman and other five members. The principal secretary of home department is the chairman and secretary of Law department, one district and session judge to be nominated by the High court, the Director of Health Service, a senior police officer who does not bellow the rank of Additional Director General, and inspector general of police to be nominated by Director General of Police, shall be its members. The Inspector general of police prison department is the member secretary of the board. The function of the sentence review board shall review the sentences awarded to a prisoner and recommend premature release in appropriate cases.

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IV. A CRITICAL ANALYSIS

The problem with the pre-release mechanism being followed in different states arises from the want of uniform standard legislation on the subject. As the consequences policies, procedures

⁹ K. Murali, Premature Release of Prisoners, Economic and Political weekly, Sep, 25- Oct 2004 vol. 39

and practices vary from state to state. Each state has its own policies regarding eligibility, the constitution of the recommendatory board, and the processing of paper and procedure for obtaining the bond which makes a lot of confusion about the terminology used to denote the sentence review board for premature release. The procedure followed by the number of states is so cumbersome that sometimes deprives suitable prisoners of availing of this facility.

The eligibility criteria and procedure prescribed for the State Sentence Review Board consider only the cases of those convicts who have been sentenced to life imprisonment. In light of these guidelines, the scope of suspension and remission under section 432 of the Code of Criminal Procedure 1973 has been limited only to these cases whereas the Criminal Procedure Code provides suspension and remission to any person who has been sentenced to punishment for an offence without laying down any length of punishment as eligibility criteria for consideration for premature release¹⁰.

In the National Human Rights Commission guidelines, there is no reference to this statutory provision of the Criminal Procedure Code 1973.

The Apex court in a few recent judgments has reinforced the mandatory observance of the procedure provided in section 432 (2) of the Criminal Procedure code 1973. In the case of *Sangeet and others Vs the state of Haryana*¹¹, the Supreme court observed that before actually exercising the power of remission under Section 432 Criminal Procedure code. The appropriate Government must obtain the opinion with the reason of the presiding Judge of the convicting or confirming Court. Remission can, therefore, be given only on a case-by-case basis, not in a wholesale manner.

In a different case pending before the Supreme Court of India, the Apex Court stated in an interim order in the case of *Union of India Vs V Sriharan Murugan and Others*¹² No sue motu power of remission is exercisable under Section 432 (1) of code of Criminal procedure. It can only be initiated based on the application by the person convicted in accordance with section 432 (2), and the ultimate order of the suspension or remission should be guided by the opinion of the Judges concern.

In *Jessica Lal and Priyadarshini Mattu*¹³ murder case Manu Sharma and Santhosh Sing have languished in prison for 20 years, and the State Sentence Review Board has rejected their

¹⁰ R. V Kelkar's, Criminal Procedure, published by Eastern Book Company, Sixth Edition Reprinted 2019, page 762

¹¹ <https://indiankanoon.org/doc/174283964/> (2013) 2 SCC 452, in para 77.7.

¹² *Union of India Vs Sriharan@Murugan and Others* (2016) 7 SCC 1 paragraph 52. 6 of judgement

¹³ <https://www.indiatoday.in>india>story>jessica-lal-pr>

application for premature release. This shows that there is no uniformity in the system, hence there is room for political influence thereby creating arbitrariness in the functioning of the Sentence Review Board.

It has been experienced that the sentence Review Board decides the cases of premature release in a wholesale manner in one sitting. The application received from the convicts seeking premature release is allowed to pile up till the Sentence Review Board meets. This lacuna in the system can be warded off by enacting or formulating the rules through Parliament.

V. CONCLUSION AND SUGGESTION

There is a need to bring uniformity in the procedure, including laws, rules, regulations, and policies regarding the system of premature release all over the country. Even the terminology should be made uniform. For example, the term 'parole', as used in an international sense, should be substituted for the term 'premature release'. The Sentence Review Board should consider factors such as the probability of prisoners reoffending; the protection of the public, including the victims; the behavior of prisoners while in prison, and the extent of rehabilitation and integration of prisoners in society. The prisoners should be given the opportunity to request a review of the board's decision. The large-scale premature release of prisoners on special occasions(August 15, January 26, etc.) may be avoided. Pre-release programs with appropriate counselling will make them ready for release in all respect.
