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A SOCIO-LEGAL CRITIQUE OF BIAS AND ARBITRARINESS IN CRIMINAL RELEASE SYSTEM IN CRIMINAL JURISPRUDENCE IN INDIA

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Abstract

This paper will establish the central topic of contention in Indian criminal jurisprudence: balancing the fundamental right to individual liberty, including the presumption of innocence, against the state's interest in the effective administration of justice and public safety.

The contemporary Indian criminal justice system operates on a fundamental duality: the imposition of just punishment and the unwavering commitment to the reformatory ideal. This paradigm, rooted in constitutional imperatives, insists upon recognizing and protecting the intrinsic worth of every human being, including those incarcerated. Consequently, the objective of imprisonment extends beyond mere isolation to encompass self-reflection, personal growth and eventual reintegration into society.¹

This paper will define "release mechanisms" primarily in terms of bail jurisprudence but will expand the scope socio-legally to include processes that determine whether a person is released from detention, exclusion or legal limbo. It then proceeds to analyse the various factors that play a key role in discriminating criminals in being provided bail or emission of sentence.² The paper concludes by making some suggestions that could be implemented to ensure the liberties and rights of prisoners are not compromised in the name of the expending justice.

Introduction

One aspect which is critical to the rehabilitative process is mechanisms of temporary and premature release: Parole, furlough and remission. Remission refers to the outright reduction of a sentence, while parole involves conditional, temporary release for specific needs. Furlough conversely is periodic, temporary release granted as a matter of right of good conduct,

¹ Bharucha, S. P., Cj, Quadri, S. S. M., Lahoti, R. C., Hegde, N. S., Raju, D., Pal, R., & Pasayat, A. (2002). *P. Rama Chandra Rao V. State Of Karnataka*. https://main.sci.gov.in/pdf/aorexam/leading_cases/17.pdf

² PMF IAS. (2024, January 13). *Remission in India*. <https://www.pmfias.com/remission-in-india/>

recognizing that prolonged, continuous incarceration without respite can be criminally counterproductive. These legal instruments are indispensable for softening the punitive impact of imprisonment and facilitating social reentry.³

However, the efficacy and fairness of these mechanisms are challenged by the structural realities of the correctional system. India currently has a crisis of institutional overcrowding, with the occupancy rate of its prisons rising to 131.4% of actual capacity in 2022. This structural strain necessitates efficient and fair release mechanisms. When the application of discretion fails to be impartial, the resulting arbitrary denials transform a correctional tool into an instrument of governance crisis.⁴

1. Institutionalization of inequality

The core contradiction in the Indian correctional system lies in the clash between its reformative mandate and the demographic composition of its incarcerated population. The constitutional mandate emphasizes the creation of dignified prisons and the promotion of rehabilitation. Yet, the empirical data reveals a striking demographic reality: approximately 85% of released prisoners belong to the most backward sections of society in terms of cast and 88% have studied below the 10th standard.⁵

This disparity suggests that the correctional system, rather than acting as a leveling field for rehabilitation, often serves to perpetuate the socio-economic inequalities prevalent outside the prison walls. When the decision to grant or deny discretionary release is influenced by factors external to correctional conduct, such as political connections or financial capacity to secure the surety bond, the denial of parole or remission ceases to be a neutral correctional assessment.⁶ Instead, it turns into an institutional reinforcement of systemic socio-economic disadvantage. This effectively renders rehabilitation a privilege accessible only to those with certain means of connection, rather than a process available equally to all convicts under the

³ Santhosh, R., & Mathew, E. (2021). Social Reintegration of Released Prisoners: An Empirical Analysis from Two Indian States. *International Annals of Criminology*, 59(2), 200–222. <https://doi.org/10.1017/cri.2021.18>

⁴ Prisons in India 2024, <https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2024/11/2024110677.pdf>, December 8, 2025

⁵ DEFINING 2024 Report of the NCMS Sub-Committee on Defining Arrears ARREARS, <https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2024/11/2024111276.pdf>, December 8, 2025

⁶ Scholars International Journal of Law, Crime and Justice, Published by Scholars Middle East Publishers, Dubai, United Arab Emirates, © 2019 |

protection of article 21.⁷

2. Legal framework governing these mechanisms

2.1 Bail jurisprudence: bail jurisprudence, primarily governed by CrPC has evolved through judicial interpretation and legislative enactments. It serves to uphold the presumption of innocence, protect constitutional rights, prevent unnecessary incarceration and contribute to the efficient functioning of the legal system. Grant of bail is the rule and refusal is considered the exception.⁸

The operational framework for sentence modification is largely contained within the CrPC section 432 which empowers the 'appropriate government' to suspend or remit sentences. This discretion must be exercised reasonably and rationally. Temporary release mechanisms- parole and furlough are governed by state specific Prison Acts and Manuals, leading to significant variations in eligibility and procedure across India.

2.2 Judicial discretion and the criteria established: the court's discretionary power enables judges to assess cases individually. This discretion is exercised based on well-established criteria, including the nature and severity of the alleged offense, the strength of the prima facie case, the likelihood of the accused absconding, potential for tampering with evidence, the accused's criminal history and consideration of victim's rights and public safety.⁹

2.3 The need for socio legal accountability: the study investigates the challenges faced by courts in exercising discretion, noting the need for consistency, fairness and transparency in bail orders. It hypothesizes that the interpretation and application of bail provisions vary among different high courts in India, leading to inconsistencies in outcomes. The foundational purpose is to ensure access to justice, particularly for vulnerable populations.¹⁰

2.4 President's powers: the supreme clemency powers of the president and the Governor are covered in article 72 and article 161, however it is subject to judicial review if exercised arbitrarily or based on irrelevant political grounds.

⁷Press Release:Press Information Bureau, <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2182603®=3&lang=2> , December 8, 2025

⁸ From Cell To Society: A Study On The Social Reintegration, Dr Santhosh, December 8, 2025

⁹ Rajendra Mandal v. The State of Bihar & Ors., Writ Pet. (Criminal) No. 252 of 2023 (Patna High Court, Aug. 25, 2023)

¹⁰ Parole & Furlough | Prison Department | India. (n.d.). <https://prison.uk.gov.in/parole>

3. The constraints of 433A

A major statutory limitation on remission involves section 433A CrPC, which mandates that a person sentenced to life imprisonment for an offence that also carried the death penalty cannot be released until they have served at least fourteen years of actual imprisonment, irrespective of any remissions earned. This constraint is often criticized for hindering timely reformation. The Mulla Committee on jail reforms advocated for a more flexible approach, recommending that life convicts demonstrating good prognosis for reformation and rehabilitation should generally be released after 8 to 10 years of actual imprisonment. Section 433A thus creates a statutory barrier to integrating rehabilitation timelines with the principle of premature release.

4. Discriminatory application of release mechanisms

The promise of judicial fairness is often undermined by structural barriers and biases that result in the discriminator application of release mechanisms across different jurisdictions and communities.

4.1 Caste, class and procedural barriers in accessing justice

In states like Bihar, the criminal justice system is deeply affected by systemic caste- based violence and prejudice. Structural inequalities related to caste and class are replicated within the prison system.¹¹

Individuals from marginalized backgrounds are often falsely implicated or named in multiple open FIRs of a similar nature, even without evidence, merely to help police close pending investigations. This forces the accused to defend themselves across multiple courts, which is financially and logistically prohibitive.¹²

The high cost of filing bail applications in the high court deters marginalized families. Furthermore, the traditional bail system in Bihar relied heavily on surety bonds requiring land ownership or vehicle registration documents which those without assets cannot provide. The inability to navigate the legal process or provide documentation leads to prolonged incarceration.

Transgender individuals are another class of people who face exclusion as courts do not legally recognize affidavits submitted by their non- family supporters, such as friends or other trans-

¹¹ Pranav Gupta & Kavya Mittal, *Unraveling India's Remission Policy: A Critical Analysis*, The Society for Constitutional Law Discussion (TSCLD) (last visited Dec. 8, 2025), <https://www.tsclcd.com/india-remission-policy-analysis>.

¹² *Epuru Sudhakar & Anr v. Government of Andhra Pradesh & Ors.*, (2006) 8 SCC 161 (Supreme Court of India, Oct. 11, 2006).

individuals. Moreover delay in higher courts can mean bail applications take over a month to be listed, leaving innocent under trials in custody for weeks or months.¹³

Ethnographic study of rape adjudication in Lucknow's Fast Track Court (FTC) reveals a profound chasm between the written formal law and operational law. This disparity arises because courtroom actors are often guided by **phallogocentric notions of sexual violence**.

Courts and police often hold a narrow understanding of "real rape", especially in rural areas, which is perceived to involve stranger rape cases resulting in serious injuries. Cases that depart from this paradigm are less likely to be accepted as genuine. Over half of the rape trials observed in the Lucknow FTC involved runaway marriages between consenting couples, where the women's family had filed a criminal complaint. This reality bolsters the problematic notion that most rape cases are false, leading to the normalization of sexual violence in acquaintance with rape trials.¹⁴

The trials often ignore legal mandates such as the requirement for in camera proceedings. Defence lawyers frequently employ leading questions to establish that the accused and survivor had a pre-existing relationship or that the survivor did not resist sufficiently, thereby implying consent. The court may rely on extra-legal factors, such as previous relationships, to dismiss charges of sexual violence, conveniently relying on a patriarchal approach to delegitimize the claim of rape.¹⁵

4.2 The process of determining citizenship: in Assam through foreigners' tribunals (FT) demonstrates an extreme form of discretionary power leading to the denial of liberty, particularly affecting ethno- religious minorities. FTs impose excessively stringent documentation requirements, exercising arbitrary discretion over the evidentiary process. Documents are often dismissed on flimsy grounds, such as minor spelling errors, contradictory dates, illegality or failure to properly establish linkage.

The reference process initiated by authorities often lacks clear grounds for suspicion. Furthermore, defective notice processes mean suspected individual often receive ex-parte order

¹³ Thulborn, J. (n.d.). *PhD student's research helps reform Delhi's process for lifetime sentencing*. Institute of Criminology. <https://www.crim.cam.ac.uk/news/phd-students-research-helps-reform-delhis-process-lifetime-sentencing>

¹⁴ Sucheta. (2025, February 20). SC decision on appropriate Government's power to remit the whole or a part of the sentence of the convicts. SCC Times. <https://www.sconline.com/blog/post/2025/02/19/explained-appropriate-govt-power-remit-sentence-sc-legal-news/>

¹⁵ Rangaswamy, H. R., Prasannan, A., & VidhiAagaz. (2024). The Sentence Review Boards in India: A Critical Analysis. In *International Journal of Law Management & Humanities, International Journal of Law Management & Humanities* (Vol. 7, Issue 1, pp. 2214–2218) [Journal-article]. <https://ijlmh.com/wp-content/uploads/The-Sentence-Review-Boards-in-India.pdf>

without realizing a citizenship case has been filed them, striking at the heart of equity. Moreover, Bilkis Bano case¹⁶ is the ultimate illustration of how the executive discretion becomes arbitrary and discriminatory, citing the Supreme Court finding of jurisdictional overreach and the disregard for the gravity of the offense.

4.3 SRB: the SRB's tasked with evaluating life convicts eligibility for premature release suffer from a lack of independence due to executive control. Research indicated that the composition of these bodies is often heavily weighted with political and executive members; for instance, it has been noted that 6 of the 7 members may represent the state's executive branch. This compositional bias inherently introduces a conflict of interest. The SRB may prioritize institutional priorities, such as maintaining punitive discipline or aligning decisions with the prevailing political sentiment regarding law and order, over independent, correctional assessments. This structural dominance ensures that decision may be vulnerable to politically motivated discretion, thereby compromising the constitutional mandate for humane correction.

5. Suggestions and Conclusion

The state governments must strictly adhere to the Supreme Courts direction to formulate a clear, comprehensive and standard national policy framework for emission and premature release. This framework must mitigate the current disparity arising from states applying differing standards. Furthermore, the policy and all procedural documentation must be made accessible to convicts through transparent publication and provision in every prison.

Legislative action should be taken to amend section 433A of CrPC, implementing the Mulla Committee's recommendation to lower the mandatory minimum actual imprisonment threshold to 8 to 10 years of life convicts showing genuine potential for reformation and rehabilitation is crucial.¹⁷ This shift prioritizes the reformatory objective over rigid punitive duration.

The Supreme Court's repeated intervention and issuance of detailed implementation directives demonstrate that fairness in the correctional setting requires a high standard of administrative

¹⁶ 2024 INSC 24

¹⁷ Young, K. M., & Chimowitz, H. (2022). How parole boards judge remorse: Relational legal consciousness and the reproduction of carceral logic. *Law & Society Review*, 56(2), 237–260. <https://doi.org/10.1111/lasr.12601>

competence and technological integration. Policy reforms must therefore conceptualize administrative delay and inefficiency as a violation of the convict’s fundamental rights under article 21, thereby necessitating systemic investment and performance monitoring.

The analysis of discretionary release mechanisms in India reveals a profound tension between the necessary grant of executive power and its susceptibility to arbitrary and discriminatory application. While the constitutional framework provides a robust foundation for justice and rehabilitation, the operational reality, governed by opaque sentence review boards and fragmented state policies, often fails the constitutional test of equality and liberty.

