

**PAROLE, PROBATION, AND THE PHILOSOPHY OF
REHABILITATION: A COMPARATIVE ANALYSIS BETWEEN THE
INDIAN AND U.K SYSTEM**

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ABSTRACT

Parole and probation are two important parts of rehabilitation in today's criminal justice system. However, their structure varies significantly among legal systems with colonial backgrounds. This paper compares the parole and probation systems in India and the United Kingdom. It examines how each country has dealt with the conflict between punishment and rehabilitation.

India's system is largely fragmented and largely controlled by the executive branch. It lacks a central parole law, an independent body for hearings, and adequately staffed probation services. This results in outcomes that are random, inconsistent, and biased against certain socio-economic groups.

In contrast, the UK's system, which was established after 1998 and is based on the Criminal Justice Act 2003, the Parole Board, and obligations under the Human Rights Act, offers better procedural protections and professional oversight. However, it faces challenges from a "recall crisis" due to technical breaches of license and unresolved issues related to Imprisonment for Public Protection (IPP) sentences

When comparing these systems to international standards like the Nelson Mandela Rules, the Tokyo Rules, and Article 10(3) of the ICCPR, this paper finds that neither India nor the UK fully achieves its rehabilitation goals. It recommends that India should implement independent, rights-based adjudication systems similar to those in the UK. Meanwhile, the UK needs to invest in essential social services like housing, mental health care, and reintegration support. This investment would help make release a true new beginning instead of just a procedural step.

KEY WORDS: Parole; Probation; Rehabilitative Ideal; Comparative Public Law; Criminal Justice Reform; Prisoner Rights; India; United Kingdom; Nelson Mandela Rules; Tokyo Rules

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INTRODUCTION

Parole and probation are two of the most fundamental instruments of non-custodial and post-custodial penology in the modern criminal justice system. Parole refers to the conditional early release of a prisoner who has served a portion of their sentence, subject to supervision and compliance with specified conditions.³ Probation by contrast, is a sentencing option that allows a convicted offender to serve their punishment within the community under court imposed conditions in lieu of or as a substitute for incarceration.⁴ The two are jointly referred to as the twin pillars of the rehabilitative ideal which is what criminologists refer to as the rehabilitative ideal the philosophy that retribution is not the end goal of punishment but rather the reformation and reintegration of the criminal into society.⁵

It is especially enlightening to compare these institutions as they are reflected in various legal systems. India and the United Kingdom are the two countries even though their colonial legal backgrounds are similar that have had vast divergence in their policies dealing with the parole and probation during the post-independence and post war periods respectively.⁶ India still has a fragmented executive dominated system controlled by a patchwork of central and state laws and still largely unreformed since the middle of the twentieth century.⁷ The United Kingdom has instead established a rights-aware regime that is based on independent tribunals, statutory entitlements and robust supervision services that have been overhauled in totality via the Criminal Justice Act 2003 and its subsequent legislation.⁸

The methodology that will be used in this paper is termed, comparative public law, which is the process of studying distinctions and similarities between the law and the legal systems of various countries to analyse these structures frameworks.⁹ This analysis transcends the description and aims at illuminating policy questions which cut across national boundaries and critically to assess whether

³Parole, MERRIAM-WEBSTER DICTIONARY (2024); see also Prisons Act, 1894, §59 (India).

⁴Probation of Offenders Act, 1958, §3 (India); Powers of Criminal Courts (Sentencing) Act 2000, §41 (UK).

⁵FRANCIS A. ALLEN, THE DECLINE OF THE REHABILITATIVE IDEAL: PENAL POLICY AND SOCIAL PURPOSE 5 (1981).

⁶UPENDRA BAXI, THE CRISIS OF THE INDIAN LEGAL SYSTEM 42 (1982).

⁷Law Commission of India, Report No. 268: Parole and Furlough Laws in India (2017).

⁸Criminal Justice Act 2003, c. 44, §§239–264 (UK); Offender Management Act 2007, c. 21 (UK).

⁹Vivian Grosswald Curran, Cultural Immersion, Difference and Categories in U.S. Comparative Law, 46 AM. J. COMP. L. 43, 45 (1998).

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these systems accomplish their proclaimed rehabilitative role.¹⁰

PHILOSOPHICAL AND LEGISLATIVE FOUNDATIONS

The Retributive vs. Rehabilitative Friction

The inherent philosophical dilemma of any system of parole or probation is the conflict between retributivism the opinion that punishment is a moral punishment to wrongdoing that must be commensurate and rehabilitationism the utilitarian and humanistic opinion that the main objective of criminal justice is to rehabilitate the offender and decrease recidivism in social advantage.¹¹

Kantian ideas of Classical retributivism According to Classical retributivism, punishment is an end to itself: the offenders should be punished in relation to his wrongdoing. Early release on parole is in this system conceptually disturbing a watering down of the sentence deserved. In comparison with the utilitarian tradition of Bentham and developed by contemporary criminologists hold that no end of punishment can be achieved by keeping in incarceration the offender who is already reformed and is not a threat to society anymore.¹² The friction between these two philosophies is the driving force of conflict in the Indian and UK models.

Statutory Frameworks: India

India's legislative framework for parole and probation is notably fragmented operating through multiple central and state level instruments enacted across different eras.

- i. **Probation of Offenders Act, 1958**: The principal central statute governing probation. Section 3 empowers courts to release first time offenders charged with offences not punishable by death or life imprisonment on good behaviour bond. Section 4 provides a broader power to release offenders on probation of good conduct with supervision.¹³
- ii. **Code of Criminal Procedure, 1973 (CrPC) / Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)**: Section 360 of the CrPC (mirrored in S.479 of the BNSS) empowers courts to release offenders on probation of good conduct effectively incorporating probation into the mainstream sentencing framework.¹⁴

¹⁰ ROGER HOOD & SURYA DEVA, CONFRONTING CAPITAL PUNISHMENT IN ASIA xi (2014).

¹¹ ANDREW VON HIRSCH, DOING JUSTICE: THE CHOICE OF PUNISHMENTS 6–9 (1976).

¹² JEREMY BENTHAM, AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION 170 (1789).

¹³ Probation of Offenders Act, No. 20 of 1958, 3–4 (India).

¹⁴ Code of Criminal Procedure, No. 2 of 1974, 360 (India); Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, 479 (India).

- iii. **Parole under State Prison Rules:** Critically there is no dedicated central legislation governing parole in India. Parole is governed by rules framed by individual State Governments under the Prisons Act, 1894 or the Model Prison Manual, 2016 issued by the Ministry of Home Affairs. This creates profound inter-state inconsistency in eligibility procedure and duration.¹⁵

The Supreme Court of India has acknowledged this fragmentation. In *Sunil Fulchand Shah v. Union of India* (2000)¹⁶ the Court noted that parole is not a right but a privilege each characterization that has been critiqued as fundamentally at odds with the rehabilitative purpose the instrument is meant to serve.

Statutory Frameworks: United Kingdom

The UK's legislative framework is far more consolidated and has been comprehensively reformed in the post Human Rights Act 1998 era:

- i. **Criminal Justice Act 2003 (CJA 2003):** The foundational statute for the modern English parole framework. It created the system of automatic release at the half-way point of a determinate sentence for standard determinate sentences and release on licence subject to conditions and supervision. Crucially it established the Parole Board as a statutory body exercising quasi-judicial functions.¹⁷
- ii. **Offender Rehabilitation Act 2014:** Extended statutory supervision to short-sentence prisoners those serving less than 12 months previously left without any post-release oversight. This was a significant step toward a comprehensive supervision framework.¹⁸
- iii. **Powers of Criminal Courts (Sentencing) Act 2000 (PCC(S)A 2000):** Governs community sentences and probation orders now termed community orders and suspended sentence orders, administered by the National Probation Service (NPS) and Community Rehabilitation Companies.¹⁹
- iv. **Human Rights Act 1998 (HRA 1998):** By incorporating the European Convention on Human Rights (ECHR) into domestic UK law the HRA transformed the legal landscape for prisoner rights. Article 5(4) ECHR the right to have the lawfulness of detention decided by a court has been particularly

¹⁵ Ministry of Home Affairs, Model Prison Manual 2016, Ch. 22 (India); see also Law Commission of India, Report No. 268

¹⁶ *Sunil Fulchand Shah v. Union of India*, (2000) 3 S.C.C. 409 (India).

¹⁷ Criminal Justice Act 2003, c. 44, 239–264 (UK).

¹⁸ Offender Rehabilitation Act 2014, c. 11 (UK).

¹⁹ Powers of Criminal Courts (Sentencing) Act 2000, c. 6, 41 (UK).

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consequential compelling the UK to ensure the Parole Board is a genuinely independent and fair tribunal.²⁰

COMPARATIVE FRAMEWORKS: INDIA AND THE UNITED KINGDOM

India: A Fragmented and Discretionary System

Executive dominance and judicial passivity is the hallmark of the parole and probation system in India. Parole decisions are usually decided based on the recommendation of prison authorities by the State Government usually the Home Department without the presence of independent adjudicatory body comparable to the UK Parole Board.²¹ This implies that the decision to grant parole is not a quasi-judicial decision as it is administrative in nature and therefore, does not receive the rigorous examination that hallmark court proceedings.

The standards that are applied in awarding paroles differ widely among states. There are states that differentiate normal parole in personal emergencies like death of a family member or marriage of a dependent and custody parole in court appearances or medical treatments under escort. The reason, how long and why vary considerably.²² This fragmentation is explicitly pointed out in the 268th Report of the Law Commission of India (2017) as a severe systemic breakdown that suggested enactment of a single central law and creation of a statutory Parole Board on international best practices.²³

India's probation framework similarly suffers from structural underutilization. Despite the Probation of Offenders Act, 1958 being over six decades old empirical studies demonstrate that courts routinely fail to invoke probation powers.²⁴ The Supreme Court has repeatedly lamented this underuse. In *Ishwar Singh v. State of M.P.* (1979)²⁵ the Court held that the provisions of the Probation Act are mandatory in character for eligible offenders and that courts must consider them. Yet the gap between judicial pronouncement and ground reality remains vast. The absence of a functioning and adequately staffed probation officer service required for the preparation of pre-sentence reports and post release supervision renders the framework largely theoretical.

The socio-economic dimension of India's system mirrors the arbitrariness documented in other

²⁰Human Rights Act 1998, c.42 sch.1, art.5(4)(UK) (incorporating European Convention on Human Rights art.5(4)), Nov.4, 1950, 21

²¹Law Commission of India, Report No.268, supra note 5, at 20–24.

²²Amit Mukherjee, Parole in India: An Overview, 3 INDIAN J. CRIMINOLOGY & CRIMINALISTICS 45, 47 (2018).

²³Law Commission of India, Report No.268, supra note 5, at 60–65.

²⁴NATIONAL LAWS SCHOOL OF INDIA UNIVERSITY, DEATH PENALTY IN INDIA REPORT vol.2, at 112 (2016)

²⁵*Ishwar Singh v. State of M.P.*, (1979) 1 S.C.C. 331 (India).

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aspects of criminal justice. Empirical research has shown that parole is disproportionately accessed by prisoners with social connections, financial resources, and the ability to navigate the administrative bureaucracy.²⁶ Those who are vulnerable and socio-economically disadvantaged precisely the population most in need of rehabilitative intervention are the least likely to access it. This replicates at the parole stage the systemic inequality that has been documented throughout India's capital punishment jurisprudence.

United Kingdom: A Structured and Rights-Based System

The UK's parole and probation system offers a structural contrast that is both instructive and in key respects cautionary. The system is characterized by three defining features: independent adjudication, statutory rights and entitlements and professional supervision services.

The Parole Board for England and Wales is the centrepiece of the UK system. Established as an advisory body in 1967 and later reconstituted as a non-departmental public body with quasi-judicial functions, the Board now operates under the Criminal Justice Act 2003 and its own Parole Board Rules 2019. Critically following the landmark ruling in *R(DSD and NBV) v. Parole Board* (2018)²⁷ the Board has been confirmed to operate under Article 5(4) ECHR obligations requiring its processes to be independent, impartial and procedurally fair. Prisoners have a statutory right to an oral hearing for certain determinate and indeterminate sentences. This stands in stark contrast to India where no such independent body or procedural entitlement exists.

The UK's probation service is administered through the National Probation Service (NPS) which manages high-risk offenders and a network of Regional Probation Services following the partial reunification after the failure of the "Transforming Rehabilitation" programme.²⁸ Probation in the UK is not merely supervisory but is integrated with robust intervention programmes: cognitive skills training, substance misuse services and accommodation support addressing the root causes of reoffending. The jurisprudential evolution in the UK has been particularly significant. In *Rv. Stafford* (2002)²⁹ the House of Lords applying the ECHR held that indefinite detention beyond the tariff (punitive) element of a sentence without independent review was incompatible with the right to liberty. This case fundamentally restructured the release framework for life-sentenced prisoners and

²⁶Project 39A, Annual Statistics on Death Penalty in India 2022, at 34 (2023).

²⁷*R(DSD and NBV) v. Parole Board*, [2018] EWHC 694 (Admin) (Eng).

²⁸Ministry of Justice, Probation Reform Programme: A New Approach (2020) (UK).

²⁹*Rv. Stafford*, [2002] UKHL 45, [2004] 1 A.C. 162 (UK).

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demonstrated how rights-based judicial review can be a powerful engine of penal reform a model that India's judiciary has only partially embraced.

SYSTEMIC FAILURES AND CRITIQUES

Arbitrariness and Inconsistency (India)

Beyond the legislative fragmentation, India's parole system suffers from a failure of due process that is systemic and documented. The absence of reasoned written orders in most parole decisions means that no principle of consistency can develop. There is no appellate structure within the parole framework aggrieved prisoners must resort to writ petitions under Article 226 or 227 of the Constitution a remedy that is itself structurally inaccessible to poor prisoners.³⁰

The Supreme Court of India has directly acknowledged this arbitrariness. In *State of Haryana v. Mohinder Singh* (2000)³¹ the Court deprecated the tendency of states to exercise parole powers without any consistent principle and called for the framing of uniform rules. However such uniform national rules remain elusive more than two decades later. The practical result is that parole in India functions less as a rehabilitative instrument and more as a periodic administrative concession susceptible to political influence and corruption.

This situation is compounded by the chronic under-resourcing of the correctional apparatus. There are fewer than 1,000 probation officers serving a prisoner population of over five lakhs (5,00,000) inmates in India.³² This ratio approximately 1 officer per 500 inmates makes meaningful supervision and rehabilitative engagement essentially impossible and constitutes a structural argument for why the rehabilitative ideal whatever its legislative recognition cannot be realized in the current institutional context.

Over-reliance on Recall and Supervision (UK)

The UK which is structurally stronger has critical failures of its own. Top among them is what critics have dubbed as the recall crisis. The process of recalling prisoners to custody due to a violation of the conditions of a licence without always involving a new crime has been acknowledged to be one of the major causes of the UK prison population.³³ The number of receptions into prison custody in

³⁰UPENDRABAXI, THE CRISIS OF THE INDIAN LEGAL SYSTEM, *supra* note 4, at 55-58

³¹*State of Haryana v. Mohinder Singh*, (2000) 3 S.C.C. 394 (India)

³²Bureau of Correctional Services, Ministry of Home Affairs, Annual Report 2022-23

³³PRISON REFORM TRUST, BROMLEY BRIEFING SPRISON FACT FILE 14-17 (Autumn 2023).

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England and Wales in 2022-23 recalls was more than a quarter of the record number in 2021³⁴.

This is a paradox of the UK supervised release model. A program that is aimed at encouraging community reintegration has in effect become a tool of recidivism that is used again and again to put the same group of socially and economically disadvantaged people in prison. The Prison Reform Trust has shown that a large percentage of the recall cases are occasioned by technical violations like the inability to check-in with a probation officer or have a fixed address that indicate poverty and housing insecurity than actual risk.³⁵

The most fundamental systemic failure has been the UK experience with indeterminate sentences to protect the population (IPP) which was abolished in 2012 through the Legal Aid Sentencing and Punishment of Offenders Act (LASPO) but continues to impact thousands of prisoners almost after their tariff dates. In *R (Brown) v. Secretary of State for Justice* (2017)³⁶ the Court of Appeal recognized the unfairness of the persistence of IPP detention in the cases when rehabilitation programmes fail to be established but discovered little in the legal redress. The UK Supreme Court in *R (AAA) v. Secretary of State for the Home Department* (2023)³⁷ also got involved with the systemic duties of the state where the failures of the state make the conditions of detention incompatible with human dignity. Such cases demonstrate how even a rights based system may result in institutional cruelty by neglecting structure.

PAROLE AND PROBATION UNDER INTERNATIONAL STANDARDS

Both the Indian and UK systems must be evaluated against the growing body of international standards that govern the treatment of prisoners and the administration of non-custodial sanctions. The primary international instruments are-

- i. **The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules, 2015)**: Rule 107 specifically addresses prisoners release and reintegration, providing that the authorities shall ensure a gradual return to life in society and must cooperate with social agencies to maintain and improve community ties. Rule 90 mandates the establishment of

³⁴Ministry of Justice, Offender Management Statistics Bulletin: England and Wales (2023) (UK).

³⁵PRISON REFORM TRUST, UNJUST DESERTS: IMPRISONMENT FOR PUBLIC PROTECTION 8-11 (2022).

³⁶*R (Brown) v. Secretary of State for Justice*, (2017) EWCACiv145, (2018) Q.B.285 (UK).

³⁷*R (AAA) v. Secretary of State for the Home Department*, (2023) UKSC42 (UK)

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specialized reintegration programmes.³⁸

- ii. **The United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules 1990):** These Rules directly govern probation and parole systems. Rule 2.3 requires that non-custodial measures be implemented in a manner that takes into account the development needs of the offender and the interests of society. Rule 3.4 insists that non-custodial measures involve the least possible interference with the liberty of the offender. Rule 10 mandates that supervision if applied shall not be more restrictive than necessary.³⁹
- iii. **The International Covenant on Civil and Political Rights (ICCPR):** Article 10(3) of the ICCPR to which both India and the UK are parties provides that the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.⁴⁰ The Human Rights Committee in its General Comment No. 21 interpreted this as imposing a positive obligation on states to create conditions conducive to rehabilitation including functional parole and probation mechanisms.⁴¹

Evaluating Using these standards to compare the two systems to their equivalents, one can draw these conclusions:

The system of Indians lacks in three essential aspects. First the lack of a common national framework and lack of procedural rights to prisoners when making parole decisions does not comply with the requirements of fairness which are implied in Article 10 (3), ICCPR and Rule 3.3 of the Tokyo Rules that states that decisions be reviewable by a judicial or other competent independent body.⁴² Second the chronic under-resourcing of probation services directly violates the affirmative rehabilitation obligation in Article 10(3). Third the characterization of parole as a privilege rather than a right is directly at odds with the Tokyo Rules foundational premise that non-custodial alternatives are presumptively desirable and should be actively facilitated.

The UK for its part falls short of international standards primarily in the recall crisis. The Tokyo

³⁸United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), G.A. Res. 70/175, rules 90, 107 (Dec.17,2015).

³⁹United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules), G.A. Res. 45/110, rules 2.3, 3.4, 10 (Dec.14, 1990).

⁴⁰International Covenant on Civil and Political Rights art.10(3), Dec.16, 1966, 999 U.N.T.S. 171.

⁴¹U.N. Hum. Rts. Comm., General Comment No. 21: Article 10 (Humane Treatment of Persons Deprived of Their Liberty), 10 (Apr. 10, 1992).

⁴²Tokyo Rules, *supra* note 38, rule 3.3.

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Rules' requirement that supervision be not more restrictive than necessary is plainly violated by a system that recalls prisoners for technical breaches rooted in poverty rather than genuine risk assessment. Furthermore, the persistent IPP crisis thousands of prisoners held beyond their tariff dates due to the state's failure to provide rehabilitation programmes is a direct violation of the obligation in Rule 107 of the Nelson Mandela Rules to facilitate reintegration and of the proportionality principle inherent in Article 5 ECHR.⁴³

An emerging international norm further relevant to both systems is the right to hope doctrine developed by the European Court of Human Rights (ECTHR). In *Vinter and Others v. United Kingdom* (2013)⁴⁴ the Grand Chamber held that a whole life sentence without any possibility of release or review was incompatible with Article 3 ECTHR the prohibition on inhuman or degrading treatment. The Court reasoned that every prisoner even the most dangerous must retain the possibility and hope of release. While this case concerned life sentences rather than parole specifically the underlying principle that the state has an obligation to facilitate and not preclude rehabilitation has profound implications for the design of parole frameworks. Any system that makes release effectively inaccessible through procedural complexity, administrative indifference, or institutional neglect is in tension with this emerging norm.

CONCLUSION: RECONCILING FRAMEWORKS FOR THE 21ST CENTURY

A Comparative case analysis of the Indian and the United Kingdom parole and probation systems show systems which, although they share a common legal ancestry have taken radically different paths and both are in the midst of a crisis of legitimacy in the 21st century.

The system in India is languishing in structural underdevelopment. the lack of central law the administrative, as opposed to the quasi-judicial, aspect of parole determinations the endemic under resource of the probation services and the description of release as privilege rather than a right to rehabilitation all add up to a basic violation of the rehabilitative ideal formally supported by the Constitution and the Probation of Offenders Act. The Supreme Court jurisprudence that has been at some point progressive such as *Ishwar Singh* on probation has failed to make up these structural deficits. The recommendations of the Law Commission 268th Report such as a single Parole Act and independent Parole Board are still not put in place and are one of the urgent legislative plans.

⁴³PRISON REFORM TRUST, UNJUST DESERTS, *supra* note 34, at 18-22.

⁴⁴*Vinter and Others v. United Kingdom* App. Nos. 66069/09, 130/10, 3896/10 (Eur. Ct. H.R. July 9, 2013)

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The system of the UK is structurally better providing procedural protections and professional supervision services on the basis of model independent adjudication rights but is itself undermined by the recall crisis and the unresolved history of indeterminate sentences. The Vinter principle, and the Tokyo Rules norm of minimal restriction are not compromised deliberately through the intent of the laws but through structural neglect in the form of failure to offer decent housing, mental health care and reintegration services which would render technical recall unwarranted.

The comparison view, therefore, demonstrates some overlap in instruction: the formal building of parole and probation is required but not adequate. India should have a construction that the UK has independent adjudication homogenized eligibility requirements and procedural rights. UK requires the substantive investment that neither system has yet made a serious social infrastructure of reintegration that looks at release as the start of a rehabilitative process and not its finish. Neither of the two systems passed the normative test of Article 10(3) of the ICCPR the Tokyo Rules and the Mandela Rules is finalized. The new 21st century requirement is to shift away rhetoric of rehabilitation to its structural implementation.

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