

# Necessity of Granting Emergency Leave to the Prisoners

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Referring to life in prison, Former Supreme Court Judge V.R. Krishna Iyer in ***Sunil Batra -Vs- Delhi Administration (AIR 1980 SC 1579)***, said “Prisoners are peculiarly and doubly handicapped. For one thing, most prisoners belong to the weaker segment, in poverty, literacy, social station and the like. Secondly, the prison house is a walled-off world which is incommunicado for the human world, with the result that the bonded inmates are invisible, their voices inaudible, their injustices unheeded. So it is imperative, as implicit provided in Article 21 of the Constitution that life or liberty shall not be kept in suspended animation or congealed into animal existence without the freshening flow of air, procedure”. Further he describes that it is “something more than mere animal existence. The inhibition against its deprivation extended to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm. Or leg, or the putting out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world”.

The economically well-off prisoners do not have any difficulty in getting emergency leave from Prison authorities. As we know a Public Interest Litigation has been filed by a Pune based lawyer at Bombay High Court against the parole extension accorded to the actor Sanjay Dutt questioning the constant leave being granted to the actor for various reasons and subsequently the Bombay High Court on the 25<sup>th</sup> February this year ordered the state to set up a committee headed by the Chief Secretary to suggest changes to the prison leave rules and screening process after observing that 'diligence' was shown in Dutt's case. The Tamil Nadu Suspension of Sentence Rules, 1982 provides two types of leave to convicted prisoners i.e., Emergency leave and ordinary leave. This article is an attempt to emphasize the need of the emergency leave for convicted prisoner in extraordinary circumstances like illness of their own, family members, wedding and death rites.

## Origin of Parole:

Generally speaking Parole means temporary release of a prisoner before the expiry of a sentence, on the promise of good behavior. Alexander Maconochie, a Scottish geographer and captain in the Royal Navy, introduced the modern idea of parole when, in 1840, he was appointed as Superintendent of the British penal colonies in Norfolk Island, Australia. He developed a plan to prepare them for eventual return to society that involved three grades. The first two consisted of promotions earned through good behaviour, labour, and study. The third grade in the system involved conditional liberty outside of prison while obeying rules. A violation would return them to prison and starting all over again through the ranks of the three grade process. The Probation of Offenders Act, 1958 provides the release of offenders on probation or after due admonition and for matters connected therewith in our country. But this system is not effectively implemented in this country.

## Parole and Furlough:

The Bombay Prisons (Furlough and Parole) Rules, 1959 deals with Parole and Furlough in the State of Maharashtra. Parole (temporary release from prison) is granted to a convict in an emergency such as a death in the family or marriage of relatives whereas furlough is generally given to a prisoner once in a year on certain conditions and criteria. The Hon'ble Bombay High Court elaborately discussed this in ***P.D. Gajbhiye vs State of Maharashtra (1994 CrI.L.J.2016)***, “It is now well settled that furlough and parole have two different purposes. Furlough is a matter of right whereas parole cannot be claimed as a matter of right. Furlough is to be granted, periodically under Rule 3 of the (Furlough Rules) and the principal object of grant of furlough is to enable the prisoner to have family association and to avoid ill effects of continuous prison life. While undergoing sentence according to the Furlough Rules, a prisoner is

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accorded social interaction. Man being a social animal social life is brought into existence periodically for a prisoner by providing furlough. Furlough is not provided or granted for any particular reason and if he is not eligible under Rule. 4 of the Furlough Rules. The scheme of grant of furlough is that after a convict has been sentenced, on completion of a particular period of imprisonment undergone he should be provided an opportunity to have a social inter-action with an intention that he forgets bitterness and sufferings for a while. It is thus well settled that grant of furlough is a substantial legal right which a prisoner is entitled on fulfillment of the conditions provided in Furlough Rules". However there is an amended Rule 4(13) of the Prisons (Bombay Furlough and Parole) Rules, 1959, which states that prisoners convicted in crimes related to terrorist activities shall not be granted furlough. However in our State neither is there any Act of the Legislature nor any administrative rules or regulations issued under the executive power of the State Government under the Constitution of India or any statute enabling the authority, including the Government, to grant temporary release of prisoners on parole.

### **Types of Leaves and its grounds for release:**

There are two types of leave for convict i.e., Emergency leave and the ordinary leave. Emergency leave is granted under the Rule 6 of the Tamil Nadu Suspension of Sentence Rules, 1982 to prisoners to attend emergencies like serious illness, death and marriage of their blood relatives after proper verification and sometimes with Police escort for security reasons. Ordinary leave is granted for purpose like settlement of property, admission of children in Schools and Colleges, repairing of home, arrangement of marriage of son, daughter, brother or sister, agricultural harvesting and other extraordinary reasons after proper verification. Conditions are more stringent for ordinary leave. For example, Conduct should be satisfactory in Prison, the prisoner should be convicted under life imprisonment, the prisoner should have completed 5 years of sentence, No case should be pending against him, he should not be a habitual offender and further he should not have committed prison offences like assault, outbreak, riot, mutiny, escape, strike etc, in prison and he should be of sound mind.

### **Does the State of Tamil Nadu grant Parole?**

The Criminal procedure Code does not contain any provision for grant of parole. Nonetheless, rules have been framed in various States, regulating the grant of parole by way of executive instruction. Likewise the State of Tamil Nadu created The Tamil Nadu Suspension of Sentence Rules, 1982 to grant leave to the prisoner. The Rules governing the grant of emergency and ordinary leave to prisoners in Tamil Nadu. In exercise of the powers conferred by sub-section (5) of section 432 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), the Governor of Tamil Nadu made the Tamil Nadu Suspension of Sentence Rules, 1982.

As per Rule-3 the leave cannot be claimed as a matter of right. It is a special consideration granted to the prisoner. The Supreme Court held in **Sunil Fulchand Shah –Vs- Union of India and others (AIR 2000 SC 1023)**, " In this country, there are no statutory provisions dealing with the question of grant of parole. By administrative instructions, however, rules have been framed in various States, regulating the grant of temporary release as parole. Thus, the action for grant of parole is generally speaking an administrative action. The Parole is considered to be a provisional release of a prisoner who agrees to certain conditions prior to the completion of the maximum sentence period and it is a reformatory method to allow the person again into the society after rehabilitation in other countries. In our state there is no provision for granting parole to the prisoners.

### **Are the prisoners' ordinary or emergency leave days counted as sentence period?**

The Supreme Court held in several verdicts that the temporary release period is treated only as suspension of sentence and the prison authority does not add the same towards the sentence period imposed by the court of law. Rule 239(1) of the Tamil Nadu Prison Rules says that in the following cases, the period spent by prisoners outside the prison shall not count towards sentence i.e., escape from prison, Bail, suspended period of sentence including emergency leave, Unauthorized extension of

temporary release, Suspended period of sentence if directed by the Court, Suspension of sentence for police investigation, any violation of conditional release and Extradition. The Full Bench of Madras High Court held in ***The State represented by the Home Secretary and others -Vs- Yesu @ Velaiyan and others –reported in 2011 (4) MLJ CrI 359***, that in the State of Tamil Nadu, as of now, since there is no statute or administrative rule or regulation, to grant temporary release on parole, such release of prisoners granted hitherto shall be treated only as suspension of sentence and therefore the same shall not be counted towards the sentence period.

### **One day emergency leave for prisoners who already exhausted the maximum leave:**

In exercise of the powers conferred by sub-section (5) of section 432 of the Code of Criminal Procedure, 1973 the Governor of Tamil Nadu made an amendment to the Rule 13 of the Tamil Nadu Suspension of Sentence Rules, 1982 for Grant of one day Additional Emergency Leave for the convict prisoners to attend the funeral ceremony of their relatives. According to the government order issued by the Home (Prison-V) Department, the Superintendent of Prisons or the Inspector General of Prisons may grant one day emergency leave to a prisoner who had already exhausted the maximum eligible period of emergency leave. The one day leave will be to attend the funeral of the prisoner's spouse, father, mother, son, daughter, brother or sister, on each occasion. (*G.O.MS.734 dated 24.09.2013*).

### **No rule for granting emergency leave to the remand prisoners:**

There is no rule for granting emergency leave to the remand prisoners in our state. If the remand prisoners meet with any emergency situation they have to obtain interim bail from the concerned court or from the Hon'ble High Court as emergency leave under the Article 226 of the Constitution of India or under 482 of Criminal Procedure Code. The Hon'ble Madras High Court considered number of interim bail and emergency leave petitions by considering the extraordinary situations such as death, marriage, illness of health. In a special sitting on Saturday the Hon'ble High Court Bench, Madurai granted interim bail to a remand prisoner to perform his father's final rites. (***G.Surendar-Vs-State represented by the Inspector of Police, Kodaikanal and another in W.P.(MD).No: 9725 of 2014***). Furthermore there is no rule framed by the Government for granting emergency leave to the prisoners detained under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers Drug offenders Forest Offenders, Goondas, Immoral Traffic offenders, Sand offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamilnadu Act 14 of 1982).

### **Judiciary and Emergency Leave**

In most of the circumstances the Prison authorities fail to implement the emergency leave to the prisoners even in the event of death, marriage or illness. Some Superintendents of Prison grants emergency leave by considering humanitarian grounds. But extraordinary situations are not taken into consideration by the prison authorities and do not execute the powers under the Tamil Nadu Suspension of Sentence Rules, 1982 for granting emergency leave. The Judiciary has been granting emergency leave even on non working days by considering the case under the humanitarian grounds. The Hon'ble Madurai Bench of Madras High Court ruled that the minimum requirement stipulated under Rule 22 of Tamil Nadu Suspension of Sentence Rules, 1982, would not apply for emergency leave. The prison superintendent has to verify the genuineness of the enclosed documents through the Probation Officer or police station concerned. In case of emergency, such as attending a funeral, the verification can be made over phone. On receipt of leave applications, the superintendents are bound to dispose them as per the rules and cannot keep them pending without passing any orders. (***G. Vellaiammal –Vs- The State of Tamil Nadu represented by its Home Secretary (CDJ 2009 MHC 2146)***).

Judiciary defined and interpreted the term "death" subsequent to the cremation of the body. The Hon'ble Mr. Justice V.Ramasubramanian interpreted "death" means including the ceremonies as per religious customs after cremation of the body. His lordship gives definition to death in his order Para No-7, "the words appearing in Rule 6 Viz, "death" "serious illness" and wedding cannot be given ordinary literal meaning. The word death would certainly include within the fold, the ceremonies that a person is obliged to perform, if he happens to be a believer. Otherwise if a plain and literal interpretation is given to the

word “death”; even a father, mother, son, daughter or brother would be able only to pay last respects like a stranger to the family. The intention of Rule 6 cannot be understood to be reducing the role of a father, son, mother or daughter to that of a mere visitor paying last respects to a departed soul. Therefore, I am of the view that a word “death” appearing in Rule obligations imposed by the personal law of the party or custom, so that the purpose of grant of leave is satisfied”. Finally the Hon’ble Judge directed the prison authorities to allow the prisoner to attend the 40<sup>th</sup> day fathitha ceremonial of his deceased mother. ***(Mohamed Iliyas Usmani -Vs- The Superintendent of Central Prison, Palayamkottai in W.P.(MD).No: 11868 of 2011)***. Furthermore in the same order the Hon’ble judge has given landmark ruling regarding of another repeated objections raise by prison authorities for granting emergency leave in Para No:10, “One more objection raised by the respondent is that the appeal filed by the petitioner against his conviction in the Coimbatore bomb blast case is pending before the Supreme Court. But there is no rule or regulation which prohibits the grant of emergency leave merely on the ground that an appeal filed by him is pending in a forum. The appeal filed by the petitioner may result only in either of the three things viz., his getting acquittal or his sentence getting reduced or getting confirmed. In extraordinary cases, it may result in enhancement of penalty. The grant of emergency leave will not certainly have a bearing upon any of the above results which are possible to come out of the appeal pending on the file of the Supreme Court. Therefore all the objections are over ruled”. Later, in ***S.Damotharan –Vs- The Superintendent of Jail in W.P.(MD)No.4170 of 2013)***, the division bench of Madras High Court Madurai bench upheld the same and affirmed in its order that a pending appeal before Supreme Court cannot be a bar to entertain an application for emergency leave.

## Conclusion

No one is born a criminal in this society. Circumstances create wrongdoers in the society. Offender must be brought to book and made to learn lessons but during incarceration the prisoners’ also should be allowed to avail emergency leave for purposes such as attending the final rites in case of death of their parent, relatives, friends and attending wedding ceremonies of their own children and for treatment for their health or their spouse or children’s health. The supervision of prisons in our country is regulated by the Prisons Act, 1894, and Prison Manuals/Regulations framed by various States. Prisons have been included at Entry No. 4 (Prison Reformatories, Borstal Institutions and other institutions of like nature and persons detained therein; institutions) in the State List (List II) of the Seventh Schedule to the Constitution of India. Thus, States have all the responsibilities/competence to bring about any change which may be required in the current prison law to address any inadequacies in the prison management system. Therefore the State Government has to make legislations for quick emergency leave sanction system for remand prisoners and convict. Prison authorities should act swiftly in case of requisition for emergency leave to the prisoners on humanitarian grounds as per existing rules.