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## Temporal Release of Prisoners: A Study of Furlough and Parole in India

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*Furlough and parole serve as critical mechanisms within the Indian legal system's reformatory approach to justice, aiming to facilitate a convict's reintegration into society. Parole is a conditional release granted for specific, urgent exigencies, such as family deaths or marriages, and is generally considered a discretionary administrative action rather than a legal right. Furlough is intended to break the monotony of long-term imprisonment and maintain social ties.<sup>1</sup> Unlike parole, it is often viewed as a 'salutary right' for eligible prisoners.<sup>2</sup> Jurisprudence from landmark cases like *Asfaq v State of Rajasthan* emphasises that the heinousness of a crime alone should not disqualify a prisoner from release, as 'convicts too must breathe fresh air' to encourage reform. Conversely, *Sunil Fulchand Shah v Union of India*<sup>3</sup> clarifies that parole constitutes 'constructive custody' and does not interrupt the period of detention. Beyond the penal context, employment furlough functions as a strategic workforce tool to reduce payroll costs during temporary disruptions while preserving job status. Despite their importance, the lack of unified central legislation leads to inconsistent application across Indian states.*

**Keywords:** *furlough, parole, conditional release, verlof, grace theory.*

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<sup>1</sup> *State of Gujrat & Anr v Narayan Alias Naryan Sai Alia Mota Bhagwan Ashram Alias Asumal Harpalani* (2021) SCC OnLine 949

<sup>2</sup> Sohini Ghosh, 'Who has the power to grant furloughs? Why Delhi HC is hearing a case about this' *The Indian Express* (19 March 2025) <<https://indianexpress.com/article/explained/explained-law/power-to-grant-furloughs-delhi-hc-case-9819472/>> accessed 25 February 2026

<sup>3</sup> *Sunil Fulchand Shah v Union of India & Ors* (2000) 3 SCC 409

## INTRODUCTION

In the Indian legal system, parole and furlough serve as vital instruments of the reformatory theory of punishment, aiming to humanise incarceration by allowing convicts to maintain social ties and settle personal affairs. These mechanisms are designed to facilitate a prisoner's eventual re-entry into society, recognising that 'convicts too must breathe fresh air' to encourage rehabilitation. While both involve a conditional release from prison, they are legally distinct in their purpose, duration, and impact on a prisoner's sentence.

Parole is generally granted for specific, urgent exigencies, such as the death of a family member, marriage of a relative, or serious illness. Legally, parole involves the suspension of the sentence, meaning the period spent outside the prison does not count toward the total term of imprisonment. As established in *Sunil Fulchand Shah v Union of India*, parole is typically an administrative action and is considered a discretionary 'act of grace' rather than a legal right.

Conversely, furlough is intended to break the monotony of long-term imprisonment and maintain family continuity, often granted periodically without the need for a specific reason. Unlike parole, the period of furlough counts as part of the sentence served. While some frameworks, such as the Prisons (Bombay Furlough and Parole) Rules, 1959,<sup>4</sup> suggest that furlough is a 'matter of right' for eligible prisoners, the courts in the State of Haryana v Mohinder Singh<sup>5</sup> and *Asfaq v State of Rajasthan*<sup>6</sup> have clarified that it remains a discretionary remedy subject to good conduct and the interests of society. Recent jurisprudence, including challenges before the Delhi High Court, continues to scrutinise these rules under Articles 14 and 21 of the Constitution,<sup>7</sup> ensuring that the state's 'kindness to the convicts does not result in cruelty to society'.

## FURLOUGH

Furlough, a system under the Prisons Act, aims to humanise the correctional process by granting offenders temporary liberty. The program aims to help offenders retain contact with

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<sup>4</sup> The Prisons (Bombay Furlough and Parole Rules) 1959

<sup>5</sup> *State of Haryana v Mohinder Singh & Ors* (2007) 13 SCC 606

<sup>6</sup> *Asfaq v State of Rajasthan* (2017) 15 SCC 55

<sup>7</sup> Constitution of India 1950, arts 14 and 21

their families, handle their personal affairs, and cope with the negative effects of incarceration. Furloughs, unlike parole, are issued on a regular basis but require official clearance. Crucially, time spent on furlough counts as a mitigation of sentence.<sup>8</sup> Prisoners sentenced to 1–5 years may receive **two weeks** of furlough for every year of actual imprisonment. For sentences exceeding five years, it is granted every two years. Life convicts are eligible for annual furlough after completing seven years of actual imprisonment. The term ‘actual imprisonment’ includes time served as an under-trial.

Furlough is denied to habitual prisoners and those convicted of specific crimes, such as robbery or dacoity (IPC 392–402), or offences under the NDPS Act. It may also be refused for unsatisfactory conduct, previous escape attempts, or if authorities believe release would jeopardise public peace. Prisoners must apply two months before becoming eligible. Release requires executing a personal bond and providing a surety bond from a relative, though the surety may be waived for prisoners in extreme poverty. Inmates must adhere to conditions such as maintaining good behaviour and surrendering promptly upon the period's expiry. Failure to comply can lead to a revocation of the order and further imprisonment.

## PAROLE

Parole is a reformatory process that allows prisoners to temporarily be released from confinement for humanitarian reasons. Unlike furlough, which is a legal right for well-behaved prisoners, parole is granted at the discretion of the executive authorities. The goal is to help the prisoner maintain family ties and become a productive citizen.<sup>9</sup> According to Black’s Law Dictionary, parole is a release generally conducted under the supervision of a parole officer for an individual who has already served a significant portion of their prison term.<sup>10</sup>

Under Rule 18, parole may be sanctioned by different competent authorities depending on the nature of the case. The State Government retains authority to sanction parole for prisoners convicted of political offences or those convicted by courts outside the State. In most other cases, the Divisional Commissioner or Additional Divisional Commissioner is the competent authority. The Superintendent of the Prison is also vested with limited authority, specifically

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<sup>8</sup> The Prisons (Bombay Furlough and Parole Rules) 1959

<sup>9</sup> *Ibid*

<sup>10</sup> Bryan A. Garner, *Black’s Law Dictionary* (11th edn, Thomson Reuters 2019)

to grant parole for a period not exceeding 15 days in the event of the death of a close relative, including a parent, sibling, spouse, or child.<sup>11</sup> Rule 19 prescribes the grounds on which a prisoner may be released on parole. These include serious illness or death of a nearest relative, as well as natural calamities such as the collapse of a house, floods, or fire. The same rule, read with Rule 25, governs the duration and permissible extensions of parole. Parole is generally granted for a period not exceeding 30 days at a time, and while the Competent Authority may extend this period, the aggregate duration of parole cannot exceed 90 days in total. As a general rule, a prisoner who has already been released on parole cannot apply for parole again until one year has elapsed from the date of expiry of the last parole period, except in cases involving the death of a relative.<sup>12</sup> With respect to procedural requirements, a police verification report is mandatory for all parole applications and extensions, except where the application is made on the grounds of a relative's death. Release on parole is further conditional upon the prisoner executing a personal bond as well as a surety bond in the prescribed Forms A and B, ensuring compliance with the conditions of conduct imposed during the parole period. Applications for parole may be submitted by the prisoner himself or by his relatives, friends, or legal advisers.

A critical distinction between parole and furlough arises under Rule 20, which provides that the period spent by a prisoner on parole shall not be counted as remission of sentence. Unlike furlough, where the period of release is treated as part of the sentence undergone, a prisoner on parole continues to be a convict in the eyes of the law, and the time spent outside prison does not reduce the overall term of imprisonment.

Finally, Rule 22 sets out the consequences of a breach of parole conditions. Where a prisoner overstays the permitted period or violates any condition of the release order, the parole order may be cancelled. Such a prisoner may be arrested without a warrant and remanded to serve the unexpired portion of the sentence. Additionally, the prisoner is liable to be punished under Section 51-B of the Prisons Act, 1894, which provides for further imprisonment of up to two years, or a fine, or both.<sup>13</sup>

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<sup>11</sup> The Prisons (Bombay Furlough and Parole Rules) 1959, r 18

<sup>12</sup> The Prisons (Bombay Furlough and Parole Rules) 1959, rs 19 and 25

<sup>13</sup> The Prisons (Bombay Furlough and Parole Rules) 1959, r 22

Unlike bail or furlough, parole is not recognised as a legal right in India; it is a discretionary administrative action decided by state or jail authorities. Furthermore, the Supreme Court in *Sunil Fulchand Shah v Union of India* established that the period spent on parole counts as part of the jail term, meaning it is not deducted from the actual sentence issued to the convict.<sup>14</sup>

## LEGAL FRAMEWORK IN INDIA

**No Single Uniform Law:** Currently, India lacks a unified central legislation that directly governs the subject matter of parole and furlough. While other jurisdictions like the United Kingdom or the United States have codified federal laws like the Criminal Justice Act 2003, the Indian system remains decentralised. Because there is no common codified law, the power to decide on these matters is derived largely from various state-specific regulations, judicial precedents, and foreign statutes.

**Governed by Prison Manuals:** Beyond the primary Acts, the procedural details are contained within Prison Manuals and specific state guidelines. A notable example is the Delhi Prison Rules 2018, which contains specific provisions in Chapter XIX regarding the executive's power to grant release. These manuals and the Parole/Furlough Guidelines of 2010 provide the standard protocol for jail inmates to request release, requiring reports from police stations and recommendations from Jail Superintendents before a final decision is made by the State Government or District Magistrate.

**Constitutional Principles Under Article 21:** The entire framework for parole and furlough is deeply rooted in the fundamental right to life and dignity under Article 21 of the Constitution of India. The judiciary has emphasised that the reformatory theory of justice is a catalyst for these provisions, as rehabilitation is considered a basic human right. Courts have often stepped in to strike down prison rules that infringe upon Articles 14 and 21, ensuring that prisoners are not denied the opportunity to maintain family ties and social relations.

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<sup>14</sup> Kishita Gupta, 'Parole in India' (*iPleaders*, 15 October 2024) <<https://blog.ipleaders.in/parole-india-laws-related/>> accessed 24 February 2026

## **DIFFERENCE BETWEEN FURLOUGH AND PAROLE**

**Purpose and Reason Needed:** The purpose of these two forms of release differs significantly. Furlough is intended as a reformatory tool to break the monotony of long-term imprisonment and enable a convict to maintain family and social ties. Because of its reformatory nature, a prisoner does not need to provide a specific reason or emergency to be granted furlough. Conversely, parole is strictly granted for urgent exigencies or specific reasons, such as a death in the immediate family, the marriage of a blood relative, or a serious medical emergency involving the inmate's family.

**Legal Right vs Discretion:** Regarding legal status, parole is viewed as a discretionary 'act of grace' and is not recognised as an absolute legal right in the Indian context. The authorities maintain the power to refuse it if they apprehend that the prisoner poses a danger to public safety. In contrast, furlough is generally considered a 'matter of right' or a salutary right for eligible prisoners, provided they fulfil the criteria regarding their behaviour and the length of their sentence served. However, this 'right' is not absolute and remains subject to the limitations imposed by state prison rules.

**Frequency and Impact on Sentence:** The frequency and impact on the sentence further distinguish the two. Furlough is granted periodically to facilitate the inmate's eventual rehabilitation. Notably, the period a prisoner spends on furlough counts as time served toward their total sentence. Parole, however, is granted occasionally based on the appearance of an emergency. Legally, parole involves the suspension of the sentence, and therefore, the time spent on parole is generally not counted toward the completion of the prison term.

## **OBJECTIVE**

In the Indian criminal justice system, the objectives of parole and furlough are centred on the rehabilitation and social reintegration of convicts. Parole serves as a mechanism for addressing 'urgent exigencies' or specific contingencies, such as attending the funeral of an immediate family member, the marriage of a blood relative, or managing a serious family medical crisis. In contrast, the objective of furlough is more reformatory; it is specifically designed to help long-term prisoners break the 'prison monotony' and ensure that their family and community ties remain intact during extended incarceration. Both methods act as catalysts for the reformatory theory of justice, providing a 'leap of hope' and motivation

for inmates to maintain good behaviour while effectively reducing the burden of overcrowded and unhygienic prisons.

In the professional and corporate world, a furlough is utilised as a strategic workforce management tool to help organisations navigate temporary financial or operational disruptions. The primary objective is to reduce immediate payroll expenses, which can represent approximately 70% of operating costs during economic downturns, plant shutdowns, or government funding shortages. Unlike layoffs, which involve permanent discharge, a furlough aims to preserve the employer-employee relationship, allowing a company to retain its trained talent pool. This ensures that once business conditions stabilise, the organisation can recover rapidly by recalling experienced workers, thereby eliminating the significant time and expense required for recruiting and onboarding new personnel while maintaining institutional knowledge.<sup>15</sup>

### IMPORTANT CASE LAWS

The Supreme Court case of *Asfaq v State of Rajasthan* (2017)<sup>16</sup> is a significant judicial authority that clarifies the laws applicable to parole and furlough in India. While the provided sources do not detail the specific criminal history of the petitioner, they describe the case as one that defines parole as a conditional release granted to a convict based on their good behaviour and the requirement to report to authorities regularly. The primary legal ground explored in such cases is that a prisoner who has served a significant portion of their sentence and demonstrated satisfactory conduct should be allowed to reintegrate into society temporarily to maintain family and social ties. The sources suggest that the grounds for seeking such release are rooted in the need to prevent the total severance of societal relations, which can occur when an individual remains 'behind bars' for an extended period.

The prayer in this and similar petitions generally asks the court to exercise its discretionary power to grant a temporary postponement of the sentence. This is often presented under the 'Grace Theory,' which views such a release as an act of mercy by the state to reduce the agony of the prisoner. The Supreme Court in *Asfaq* clarified that such a prayer, if granted, does not change the status of the detainee or reduce the severity of the punishment; rather, it is a

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<sup>15</sup> 'Furlough Meaning Explained: Complete Employee Guide (2025)' (*Taggd*) <<https://taggd.in/hr-glossary/furlough/>> accessed 24 February 2026

<sup>16</sup> *Asfaq v State of Rajasthan* (2017) 15 SCC 55

temporary suspension of the prison term that allows the convict to acquire essential 'living skills' outside of a controlled environment. Furthermore, the court addressed the distinction between parole and furlough, noting that while parole is a discretionary administrative action, furlough is often claimed as a 'matter of right' for eligible long-term prisoners to break the monotony of imprisonment. Ultimately, the case established that even though parole acts as a catalyst for rehabilitation, it is not an absolute legal right recognised under Indian law.

### **THE REFORMATIVE APPROACH AND GUIDELINES**

The Supreme Court in *Asfaq* and related jurisprudence has heavily emphasised the reformatory approach to imprisonment, which views convicts as individuals who 'must breathe fresh air' to encourage their social and mental reformation. This approach is rooted in the belief that rehabilitation is a basic human right and that the penal system should move away from purely deterrent punishments. To implement this vision, the court relies on structured guidelines, such as the Parole/Furlough Guidelines of 2010, to ensure that the release of prisoners is managed systematically. These guidelines lay down strict eligibility criteria, stating that a convict must have served at least one year of their sentence (excluding remissions) and must have shown constant and uniform good behaviour while in custody. Additionally, there must be a minimum gap of six months between two periods of parole to ensure the system is not abused.

The court has also laid down clear limitations to balance the reformatory goal with public safety. Under Clause 12 of the guidelines, parole can be refused if the convict's release would result in a national threat or pose a danger to society. Furthermore, individuals serving sentences for heinous crimes such as murder, rape, or sedition, as well as foreign nationals and escaped prisoners, are generally considered ineligible for such release. The judiciary stresses that while the state should provide a 'leap of hope' to inmates through these reformatory measures, it must ensure that this 'kindness' to convicts does not result in 'cruelty to society'. By adhering to these guidelines, the state monitors the parolee's behaviour through custody theory, maintaining a balance between the prisoner's freedom and the state's duty to protect the public. Ultimately, these guidelines serve to facilitate the

prisoner's transition back into a peaceful society while upholding the constitutional principles of Articles 14 and 21.<sup>17</sup>

The case of *Sunil Fulchand Shah v Union of India*<sup>18</sup> originated from a writ petition and a Special Leave Petition concerning preventive detention under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA), 1974. The petitioner, Sunil Fulchand Shah, was detained on July 4, 1986, for a maximum period of one year. Although the Gujarat High Court initially quashed the notification under Section 9(1) of the Act, it upheld the detention order itself. Crucially, the High Court directed the petitioner to undergo the 'remaining period' of his one-year detention, excluding the time he spent free due to a previous erroneous court order.

The primary legal grounds for the appeal involved a significant conflict in judicial opinion regarding the computation of detention periods. The core question was whether the period of detention is a fixed term running from a specified date or if the period is automatically extended by any time spent on parole or resulting from an erroneous judicial release. The petitioner argued that because his original one-year detention period (starting July 4, 1986) had expired on July 3, 1987, any further detention was unauthorised by law. The court also examined the distinction between punitive and preventive detention, noting that the latter is a 'necessary evil' aimed at prevention rather than punishment, necessitating a strict construction of the law.

The prayer before the Supreme Court was to challenge the legality of the petitioner's continued detention after the expiration of the one-year calendar period. The petitioner sought a declaration that the period of detention cannot be extended by adding the time spent on parole. Ultimately, the five-judge Constitution Bench was tasked with determining if the 'clock' of a detention order keeps ticking while a detenu is out on parole.

### **CLARIFIED LEGAL STATUS AND THE DISTINCTION OF PAROLE**

In *Sunil Fulchand Shah*, the Supreme Court provided a definitive clarification on the legal status of parole, particularly how it differs from bail and its impact on a sentence. The court established that parole is a form of 'temporary release' that does not interrupt the period of

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<sup>17</sup> *Asfaq v State of Rajasthan* (2017) 15 SCC 55

<sup>18</sup> *Sunil Fulchand Shah v Union of India & Ors* (2000) 3 SCC 409

detention. Unlike bail, which releases an accused from the 'custody of the law' into the 'custody of sureties, a person on parole is deemed to be in the 'constructive custody' of the State. The court emphasised that a parolee is 'not a free man' and remains under the control of the state's agents, meaning their movement is merely shifted from prison walls to specified bounds.

A landmark distinction made in this case is that parole does not suspend the sentence; rather, it changes the mode of undergoing the detention. The Bench held that the period spent on parole must be counted toward the total period of detention unless the specific rules or conditions of the parole order explicitly state otherwise. This distinguishes it from other forms of unauthorised liberty, which would be excluded from the computation of the sentence. The court reasoned that since Section 10 of COFEPOSA prescribes a 'maximum period' from the date of actual detention, the clock 'keeps ticking' even during temporary releases, as interpreting it otherwise would turn preventive detention into a form of punitive punishment.<sup>19</sup>

## CHALLENGES

Misuse by Prisoners- One of the most significant issues is the abuse of liberty by convicts. Courts have emphasised that 'kindness to convicts' must not result in 'cruelty to society,' yet ensuring that a released prisoner does not return to a criminal path remains a difficult task for authorities.

Arbitrary Grant or Rejection- The granting of these releases is often criticised for being arbitrary. Because parole is rooted in the 'Grace Theory,' it is viewed as a discretionary gift of the state rather than an absolute legal right. While furlough is sometimes considered a 'matter of right' for eligible long-term prisoners, both remain subject to the broad discretion of jail and state authorities, which can lead to inconsistent application of the rules.

Lack of Uniformity and Delays- A major systemic hurdle is the absence of a unified central legislation governing parole and furlough in India. Instead, the system relies on fragmented State Prison Rules and manuals, resulting in vastly different eligibility criteria and procedures across jurisdictions. This lack of uniformity is compounded by prolonged delays

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<sup>19</sup> *Sunil Fulchand Shah v Union of India & Ors* (2000) 3 SCC 409

in decision-making. The standard protocol requires obtaining police reports, recommendations from the Jail Superintendent, and final approval from the State Government or District Magistrate, a bureaucratic process that often frustrates the objective of providing timely relief for genuine emergencies.

## CRITICAL ANALYSIS

**Are these Rights or Privileges?** The legal status of these releases remains a point of significant debate. Parole is fundamentally viewed through the 'Grace Theory,' which defines it as a discretionary 'act of grace' or a gift from the state, rather than an inherent legal right. In contrast, furlough is often categorised as a 'salutary right' intended to help long-term inmates maintain family ties and break prison monotony. However, the Supreme Court has clarified that even a furlough is not an absolute right; it is a discretionary remedy subject to strict eligibility criteria and the interests of society. Thus, while furlough has a stronger legal footing as a 'right' compared to parole, both remain conditional privileges managed under the state's administrative oversight.

**The Need for a Uniform Law:** A primary challenge identified in the sources is the absence of unified central legislation in India. Currently, the system is a patchwork of the Prisons Act of 1894, various State Prison Rules, and individual Prison Manuals. This fragmentation leads to significant inconsistencies, uniquely restricting the executive's power to grant furlough when an appeal is pending, a rule currently facing constitutional challenges under Articles 14 and 21. Establishing a codified, national framework would ensure procedural uniformity, reduce arbitrary rejections, and streamline the decision-making process, which is currently plagued by bureaucratic delays.

**Balancing Public Safety vs Prisoner Rights:** The judiciary must perform a delicate balancing act to ensure that 'kindness to the convicts does not result in cruelty to society'. On the one hand, the reformatory approach recognises that prisoners must 'breathe fresh air' to facilitate eventual reintegration. On the other hand, high-profile instances of misuse. Ultimately, the rights of the victim and the safety of the public must remain paramount, ensuring that the 'leap of hope' provided by parole and furlough does not compromise the fundamental security of the community.

## **PERSONAL ANALYSIS**

The furlough and parole system illustrates a thoughtful growth in India's approach to criminal justice, attempting to strike a balance between the punitive purpose of imprisonment and the reformatory goal of rehabilitation. What impresses me most about these rules is that both recognise a simple but deep truth: extended isolation from society does not result in a better citizen. Furlough, in particular, stands out as a progressive move rather than simply a compromise. The law recognises a prisoner's humanity by allowing them to preserve familial relationships and break the monotony of perpetual imprisonment, as underlined in cases such as *Bhikabhai v State of Gujarat*.

However, the legal position is cautious. Rule 17 of the Prisons (Bombay Furlough and Parole) Rules, 1959 specifically states that furlough is not a legal entitlement, although Rule 16 rewards a prisoner who is granted furlough by considering the duration as a remission of sentence. This tension between recognising furlough as a rehabilitative tool and not an enforceable right reflects the law's attempt to protect both prisoner dignity and public safety. Similarly, parole under Rule 19 addresses urgent personal requirements, but, as *Sunil Fulchand Shah v Union of India* reminds us, it is discretionary rather than absolute. In my opinion, the true difficulty is to ensure that this discretion is exercised consistently, fairly, and without political influence – a worry that cases such as *Hasmukh D. Prajapati v State of Gujarat* have already raised.

## **CONCLUSION**

The concepts of parole and furlough represent the dual commitment of the Indian legal system to the reformatory theory of justice and the preservation of human dignity. While they share the common goal of humanising incarceration, they serve distinct procedural functions. Parole acts as a discretionary 'act of grace' to address urgent exigencies such as family deaths or marriages, and typically results in the suspension of the sentence. In contrast, furlough is a periodic release designed to break the 'monotony of imprisonment' for long-term inmates, allowing the sentence to continue running while the prisoner maintains social ties.

The judiciary has consistently emphasised that even a convict does not cease to be a human being and possesses the right to 'breathe fresh air' to encourage rehabilitation. Landmark

rulings, such as *Asfaq v State of Rajasthan*,<sup>20</sup> clarify that the nature of a serious crime should not lead to an outright denial of parole, provided the inmate shows signs of reform. However, this ‘leap of hope’ is not absolute. The courts maintain a delicate balance, ensuring that ‘kindness to the convicts does not result in cruelty to society’. The risk of recidivism and the potential for misuse are evidenced in high-profile cases.

Beyond the legal sphere, the term furlough carries significant weight in the corporate world as a strategic workforce management tool. Unlike a layoff, an employment furlough preserves the relationship between the employer and employee, allowing organisations to reduce costs during temporary disruptions while retaining trained talent for future recovery.

Ultimately, the lack of unified central legislation in India remains a significant hurdle, leading to a fragmented landscape of inconsistent state rules and procedural delays. As the legal system evolves, there is an imperative need for codified national guidelines to ensure that the grant of parole and furlough is objective, fair, and aligned with constitutional principles. By bridging the gap between punishment and rehabilitation, these mechanisms ensure that offenders have a structured pathway for successful re-entry into society.

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<sup>20</sup> *Asfaq v State of Rajasthan* (2017) 15 SCC 55