

Government of Odisha

Law Department

No. IV-J-12/2021, 4375 L, Dated 19.04.2022

RESOLUTION

Whereas in order to make uniform standard and criteria for determining the eligibility of prisoners undergoing life sentence for their premature release, the State Government vide Resolution No.12019 dtd.26.09.2000 have constituted the State Sentence Review Board as per the guidelines issued by the National Human Rights Commission (NHRC) in their letter dtd.26.11.1999 with a view to review of sentence awarded to a prisoner and for recommending his premature release in appropriate cases;

And whereas, the Resolution dtd.26.09.2000 have been modified as per the guidelines issued by the National Human Rights Commission (NHRC) in their letter dtd.26.09.2003;

And whereas, the State Government have issued a Resolution vide Resolution No.4817 dtd.05.05.2010 superseding the earlier Resolution;

And whereas, in the meantime various Criminal laws were amended in order to provide enhanced punishment as a stringent measure to deter the rising trend of child sexual abuses in the country, including rape and gang rape on women under age of twelve and sixteen years and to ensure security and dignity of a child;

Now, therefore, taking into consideration the changes made in Criminal laws, in which punishments have been enhanced in cases of heinous offences, the State Government have been pleased to consolidate and issue the following guidelines for the purpose of determining eligibility criteria for premature release of life convicts prisoners by superseding the Resolution No.4817 dated 05.05.2010, namely:—

1. Short title and commencement.— (1) These guidelines may be called the Guideline for Premature Release, 2022.

(2) They shall come into force on the date of their publication in the Odisha Gazette.

2. Constitution of State Sentence Review Board. — (1) There shall be constituted a State Sentence Review Board (hereinafter referred as the Board)

for the purpose of review of sentence awarded to a prisoner and to recommend his premature release.

(2) The Board shall be a permanent body under the administrative control of the Law Department.

(3) The Board shall consist of the following members, namely: —

(a)	Secretary/Principal Secretary to Govt., Home Department.	:	Chairman
(b)	Secretary/Principal Secretary to Govt., Law Department.	:	Member
(c)	District and Sessions Judge, Khurda, Bhubaneswar	:	Member
(d)	Director of Health Services, Odisha or His nominee not below the rank of Joint Director, Health Services, Odisha.	:	Member
(e)	An Addl. D.G. & IG of Police or IG of Police (to be nominated by the DG & IG of Police, Odisha).	:	Member
(f)	Addl. D.G. of Prisons or IG of Prisons, Odisha.	:	Member Secretary

3. Procedure to be regulated by the Board. — (1) The Board shall meet at least once in a quarter at Bhubaneswar on date to be notified to all the members at least ten days in advance with complete agenda:

Provided that it shall be open to the Chairman of the Board to convene a meeting of the Board more frequently as may be deemed necessary.

(2) The quorum to constitute a meeting of the Board shall be four members including the Chairman.

(3) The recommendation of the Board shall not be invalid merely by reason of any vacancy in the Board or the inability of any member to attend the Board meeting.

4. Powers and function of the Board. — The functions of the Board shall be to review the sentence awarded to a prisoner and to recommend his premature release in appropriate cases.

5. Eligibility for Premature Release. — Save as provided in these guidelines, every convicted prisoner whether male or female undergoing sentence of life imprisonment and covered by the provisions of section 433 A of

the Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C.) shall be eligible to be considered for premature release from the prison immediately after serving out the sentence of fourteen years of actual imprisonment i.e. without the remissions.

Explanation. — For the purpose of this clause, it is clarified that upon completion of fourteen years in prison by itself will not entitle a convict to be released automatically from the prison and the Board shall have the discretion to release a convict at an appropriate time and cases considering the circumstances in which the crime was committed and the other factors, namely: —

- (a) whether the convict has lost his potential for committing crime considering his overall conduct in jail during the fourteen years incarceration;
- (b) the possibility of reclaiming the convict as a useful member of the society; and
- (c) Socio-economic condition of the convict's family.

6. Categorization of Prisoners for premature release.- (1) Having regard to the provisions contained under section 433 A of Cr.P.C, the National Human Rights Commission(NHRC) opined that a reasonable classification may be made within the category of convicts on the basis of magnitude, brutality and gravity of the offence for which the convict was sentenced to life imprisonment and accordingly certain categories of life convict prisoners other than those mentioned in clauses (a) to (e) below may be eligible for premature release after the completion of twenty (20) years of imprisonment including remission:

- (a) Convicts who have been imprisoned for life for murder in heinous cases such as murder with rape cases, coming under the categories undergoing imprisonment for life being convicted under sections 376 A, 376 AB, 376 DA and 376 DB of the Indian Penal Code, 1860 (hereinafter referred to as IPC), dacoity with murder, murder involving an offence under the Protection of Civil Rights Act, 1955, murder of a child below 14 years of age, prisoners sentenced to life imprisonment being convicted with the offence of aggravated penetrative sexual assault on a child under section 6(1) of the Protection of Children from Sexual Offences Act, 2012(hereinafter referred to as 'POCSO', Act), multiple murder, murder committed after conviction while inside the Jail, murder during parole, murder in a terrorist incident, murder in smuggling operation, murder of a public servant on duty;
- (b) Gangsters, contract killers, smugglers, drug traffickers, prisoners those sentenced to life imprisonment being convicted under section 31A of the Narcotic Drugs and Psychotropic Substances Act, 1985, racketeers

awarded with life imprisonment for committing murders as also the perpetrators of murder committed with premeditation and with exceptional violence or perversity;

- (c) Convicts whose death sentence has been commuted to life imprisonment;
- (d) Convicts undergoing life imprisonment under section 121 of IPC; and
- (e) Such convicts of like categories as the Board may decide:

Provided that the categories of life convicts mentioned in clauses (a) to (e) may be placed for consideration for premature release after completion of twenty five (25) years of incarceration.

(2) Female convict sentenced to imprisonment for life including those governed by section 433 A of the Code of Criminal Procedure, 1973 aged more than sixty (60) years and have undergone an actual imprisonment of five (5) years including remand period and total imprisonment of six (6) years including remission as on date shall be released except the following, namely:-

- (a) Prisoners convicted and sentenced by courts situated outside the State of Odisha;
- (b) Prisoners convicted of offences against laws relating to a matter to which the executive powers of the Union extends;
- (c) Prisoners involved in and convicted for offences relating to communal incidents;
- (d) Life convicts who are punished for any prison offence during the last three preceding years and/or those who are punished for any serious prison offence like revolt/ organising revolt against the prison administration anytime during their entire period of stay in the prison;
- (e) Prisoners who are released on parole/furlough and who committed or attempt to commit any of the offences punishable under any law for the time being in force;
- (f) Life convicts who have escaped from custody during the preceding three years and have not surrendered voluntarily;
- (g) Prisoners convicted under the Essential Commodities Act, 1955;
- (h) Prisoners convicted under Narcotic Drugs and Psychotropic Substances Act, 1985, the Prevention of Terrorism Act, 2001 and special Acts enacted for Prevention of Terrorism and Mafia and other organized crimes who had been sentenced to imprisonment for life;
- (i) Life convicts who have committed offence/offences against children;
- (j) Life convicts who are convicted for Kidnapping and related offences U/s 363A, 364, 364 A, 366, 366 A, 366 B, 367, 368, 369, 372 and Section 373 of the Indian Penal Code. 1860;
- (k) Life convicts convicted under sections 304 B, 306, 498 A of IPC and offences under the Dowry Prohibition Act, 1961;
- (l) Prisoners involved and convicted for life in two or more different murder cases;

- (m) Professional killers who have been guilty of murder being hired;
- (n) Prisoners convicted under waging or attempting to wage war, or abetting the waging of war against the Government of India;
- (o) Prisoners convicted of murder of Public Servants while performing official duty;
- (p) Prisoners sentenced to death sentence, which is later commuted to life sentence;
- (q) Prisoners convicted for life under sections 379 to 402 IPC;
- (r) Prisoners who are convicted for life imprisonment in any case with two counts or more;
- (s) Life convicts who have overstayed on parole/furlough for more than three days in the last preceding three years shall not be released unless they complete ten (10) years of actual sentence with remand period and twelve (12) years with of remission as on date.

(3) Male convict sentenced to imprisonment for life including those governed by section 433 A of the Code of Criminal Procedure, 1973 aged more than sixty five (65) years and have undergone an actual imprisonment of five (5) years including remand period and total imprisonment of seven (7) years including remission as on date shall be released except the following, namely:-

- (a) Prisoners convicted and sentenced by courts situated outside the State of Odisha;
- (b) Prisoners convicted of offences against laws relating to a matter to which the executive powers of the Union extends;
- (c) Prisoners involved in and convicted for offences relating to communal incidents;
- (d) Life convicts who are punished for any prison offence during the last three (3) preceding years and/or those who are punished for any serious prison offence like revolt/ organising revolt against the prison administration anytime during their entire period of stay in the prison;
- (e) Prisoners who are released on parole/furlough and who committed or attempt to commit any of the offences punishable under any law for the time being in force;
- (f) Life convicts who have escaped from custody during the preceding three (3) years and have not surrendered voluntarily;
- (g) Prisoners convicted under the Essential Commodities Act, 1955;
- (h) Prisoners convicted under Narcotic Drugs and Psychotropic Substances Act, 1985, the Prevention of Terrorism Act, 2001 and special Acts enacted for Prevention of Terrorism and Mafia and other organized crimes who had been sentenced to imprisonment for life;
- (i) Life convicts who have committed offence/offences against children;

- (j) Life convicts who are convicted for kidnapping and related offences U/s 363A, 364, 364A, 366, 366A, 366B, 367, 368, 369, 372 and Section 373 of the Indian Penal Code. 1860;
- (k) Life convicts convicted in crimes against women under sections 376, 304 B, 306, 498 A of IPC and offences under the Dowry Prohibition Act, 1961;
- (l) Prisoners involved and convicted for life in two or more different murder cases;
- (m) Professional killers who have been guilty of murder being hired;
- (n) Prisoners convicted under waging or attempting to wage war, or abetting the waging of war against the Government of India;
- (o) Prisoners convicted of murder of Public Servants while performing official duty;
- (p) Prisoners sentenced to death sentence, which is later commuted to life sentence;
- (q) Prisoners convicted for life under sections 379 to 402 IPC;
- (r) Prisoners who are convicted for life imprisonment in any case with two counts or more;
- (s) Life convicts who have overstayed on parole/furlough for more than three days in the last preceding three years shall not be released unless they complete ten (10) years of actual sentence with remand period and twelve (12) years with of remission as on date.

(4) All other convicted male prisoners not covered by section 433 A of the Cr.P.C. undergoing the sentence of life imprisonment shall be eligible to be considered for premature release after they have served at least fourteen (14) years of imprisonment inclusive of remission but only after completion of ten (10) years of actual imprisonment i.e. without remissions:

Provided that in the case of following categories of cases , the convicts who have served at least twelve (12) years of imprisonment may be considered for premature release namely:-

- (a) Penetrative sexual assault under section 4(1) of the POCSO Act, 2012;
- (b) Penetrative sexual assault on a child below sixteen years of age;
- (c) Cases of Gang rape on a woman below sixteen years of age punishable under section 376 DA of the IPC;
- (d) Cases of Gang rape on a woman by one or more persons constituting a group or acting in furtherance of a common intention;
- (e) Cases of voluntarily causing grievous hurt by use of acid or acid attack;
- (f) Cases of "counterfeiting currency-notes or bank-notes" where punishment can extend to imprisonment for life under section 489 A of the IPC;

- (g) Using as genuine, forged or counterfeiting currency –notes or bank-notes where punishment can extend to imprisonment for life under section 489 B of the IPC;
- (h) Making or possessing instruments or materials for forging or counterfeiting currency-notes or bank-notes where punishment can extend to imprisonment for life under section 489-D of the IPC; and
- (i) Cases of 'Offence against the State under Chapter VI of the IPC such as under section 121 A, section 122, section 124 A (Sedition), section 125 ,section 128 and section 130 of the IPC wherein the punishment prescribed can extend to imprisonment for life amongst other shorter terms.

(5) The female prisoners not covered by section 433 A of the Cr.P.C undergoing the sentence of imprisonment would be entitled to be considered for premature release after they have served at least ten (10) years of imprisonment inclusive of remissions but only after completion of seven (7) years actual imprisonment without remissions.

(6) Cases of premature release of prisoner undergoing life imprisonment before completion of fourteen (14) years of actual imprisonment on the ground of terminal illness etc. can be dealt with under the provisions of Article 161 of the Constitution of India.

7. Procedure for processing of the cases for consideration of the Review Board. - (1) Every Superintendent of Central or Circle or District Jail, who has prisoner (s) undergoing sentence of imprisonment for life, shall intimate processing the case of prisoners at least one year in advance of the due date when the prisoners would become eligible for consideration of premature release as per the criteria, laid down by the State Government in that behalf.

(2) The Superintendent of the Jail shall —

- (a) prepare a comprehensive note on each case giving out the family and social background of the prisoner, the offence for which he was convicted and sentenced and the circumstances under which the offence was committed and also reflect about the conduct and behavior of the prisoner in the jail during the period of his incarceration, behavior or conduct during the period he was released on probation or leave, change in his behavioral pattern and the jail offences, if any, committed by him and punishment awarded to him for such offence(s); and
- (b) report about his physical or mental health or any serious ailment with which the prisoner is suffering, entitling his case for special consideration for his premature release and the note shall also contain recommendation of the Superintendent of jail whether he favors for the premature release of

the prisoner or not and in either case, it shall be supported by adequate reasons.

(3) (a) The Superintendent of Jail shall make reference to the Superintendent of Police of the district where the prisoner was ordinarily residing at the time of the commission of the offence, for which he was convicted and sentenced or where he is likely to resettle after his release from jail; and

(b) where the prisoner was ordinarily residing at the time of commission of the offence is different from the place where he committed the offence, a reference shall also be made to the Superintendent of Police of the district in which the offence was committed and in either case, he shall forward a copy of the note prepared by him to enable the Superintendent of Police to express his views with regard to the desirability of the premature release of the prisoner.

(4) (a) On receipt of the reference, mentioned in clause (b) of sub-para (3), the concerned Superintendent of Police shall cause an inquiry to be made in the matter through a senior Police Officer of an appropriate rank and based on his own assessment shall make his recommendations and while making the recommendations, the Superintendent of Police shall not act mechanically and oppose the premature release of the prisoner on untenable and hypothetical ground or apprehension; and

(b) In case the Superintendent of Police is not in favour of the premature release of the prisoner, he shall justify the same with cogent reasons and materials and shall send the reference keeping in view the general or special guidelines laid down by the State Government to the concerned District Magistrate and the Superintendent of Jail within a period not later than thirty (30) days from the date of receipt of the reference.

(5) (a) On receipt of the reference of the Superintendent of Police, the concerned District Magistrate shall either hold or cause to be held an inquiry with regard to the desirability of premature release of the prisoner having regard to his family and social background, his acceptability by his family members and the society, prospects of the prisoner for rehabilitation and leading a meaningful life as a good citizen;

(b) He shall not act mechanically and recommend each and every case for premature release and in either case, he should justify his recommendation by reasons or materials; and

(c) The District Magistrate shall furnish his report or recommendation to the Superintendent of Jail within a period not later than thirty (30) days from the date of receipt of the reference.

(6) (a) On receipt of the report or recommendations of the District Magistrate and Superintendent of Police, the Superintendent of Jail shall put the case before Inspector General of Prisons at least one month in advance of the proposed meeting of the Board;

(b) The Inspector General of Prisons shall examine the case bearing in mind the report or recommendations of the Superintendent of Jail, Superintendent of Police and District Magistrate and shall make his own recommendations with regard to premature release of the prisoner or otherwise keeping in view the General or Special guidelines laid down by the Government or the Board;

(c) Regard shall also be given to various norms laid down and guidelines given by the Apex Court and the Orissa High Court in the matter of premature release of prisoners; and

(d) The matter relating to the premature release of prisoner should be followed by all concerned authorities like the Superintendent of Police, the District Magistrate etc. for quick release of their reports.

8. Procedure and Guidelines for the Review Board.- (1) The Inspector General of Police shall convene a meeting of the Board on the date and time at Bhubaneswar, with a notice given to the Chairman and members of the Board at least ten (10) days in advance of the scheduled date of meeting and it shall accompany the complete agenda papers i.e. the note of the Superintendent of Jail, recommendation of Superintendent of Police, district Magistrate and that of the Inspector General of Prisons along with the copies of documents, if any.

(2) (a) A meeting shall ordinarily be chaired by the Chairman and if for some reasons, he is unable to be present in the meeting, it shall be chaired by the Secretary or Principal Secretary to Government, Law Department without getting it postponed;

(b) The Member Secretary (I.G of Prisons) shall present the case of each prisoner under consideration before the Board and the Board shall consider the case and take a view; and

(c) As far as practicable, the Board shall endeavor to make unanimous recommendation and in case of dissent, the majority view shall prevail and will be deemed to be the decision of the Board.

(3)(a) While considering the case of premature release of a particular prisoner, the Board shall keep in view the general principles of amnesty or remission of the sentences as laid down by the State Government or by Courts as also the earlier precedents in the matter;

(b) The paramount consideration before the Board shall be the welfare of the prisoners and the society at large;

(c) The Board shall not ordinarily decline a premature release of a prisoner merely on the ground that the police have not recommended his release on certain farfetched and hypothetical premises;

(d) The Board shall take into account the circumstances in which the offence was committed by the prisoner and whether he has the propensity and likely to commit similar or other offence again; and

(e) The Board shall be empowered to consider such cases which are within six month of the due date subject to anything untoward happening during the interviewing time before release on the due date, in which case release could be stayed for reconsideration by the Board.

(4) Rejection of the case of a prisoner for premature release on one or more occasion by the Board shall not be a bar for reconsideration of his case in a subsequent occasion:

Provided that the reconsideration of the case of convict already rejected shall be done only after the expiry of a period of one year from the date of last consideration of his case.

(5) The recommendation of the Board shall be placed before the State Government without delay for consideration which may either accept the recommendation of the Board or reject the same on the grounds to be stated or may ask the Board to reconsider a particular case.

(6) The decision of the State Government shall be communicated to the concerned Jail Superintendent and in case the State Government has ordered to grant remission and order his premature release, the prisoner shall be released forthwith with or without conditions.

By order of the Governor

Pratap Kumar Patra
19.04.2022
Principal Secretary to Government (I/C)

Memo No. 4376 /L, dt. 19.04.2022

Copy forwarded to the Director of Printing Stationery and Publication, Odisha, Cuttack/ the Asst. Director, Secretariat Branch Press, Unit-III, Bhubaneswar with a request to publish the above resolution in the next issue of Odisha Gazette and supply 100 copies to this Department for official use.

A. Mahanta
19.4.22

Deputy Secretary to Government

Memo No. 4377 /L, dt. 19.04.2022

Copy forwarded to the Registrar General, Orissa High Court, Cuttack/ P.S. to Addl. Chief Secretary to Government, Home Department/ District and Sessions Judge, Khurda at Bhubaneswar/ Director, Health Services, Odisha, Bhubaneswar/ D.G. & I.G. of Police, Odisha, Cuttack/ Addl. D.G. of Prisons/ I.G. of Prisons Odisha, Bhubaneswar for information and necessary action.

A. Mahanta
19.4.22

Deputy Secretary to Government

Memo No. 4378 /L, dt. 19.04.2022

Copy forwarded to the Secretary to Hon'ble Governor, Odisha/ P.S. to Hon'ble Chief Minister, Odisha/ P.S. to Hon'ble Minister, Law / P.S. to the Principal Secretary to Government, Law Department for kind information of His Excellency Governor of Odisha/ Hon'ble Chief Minister, Odisha/ Hon'ble Minister, Law/ Principal Secretary (I/C) to Government, Law Department.

A. Mahanta
19.4.22

Deputy Secretary to Government

Memo No. 4379 /L, dt. 19.04.2022

Copy forwarded to the All District Magistrates/ All Superintendent of Police/ All Superintendent of Jails for information and necessary action.

A. Mahanta
19.4.22

Deputy Secretary to Government

Memo No. 4380 /L, dt. 19.04.2022

Copy forwarded to the Registrar, Odisha Human Rights Commission, Bhubaneswar for information and necessary action.

A. Mahanta
19.4.22

Deputy Secretary to Government