

Chapter XIV

Release of Prisoners

Note: - For the method of calculating the date of release, see Chapter XI on the admission of prisoners.

28. Examination of warrants. - The warrants of all convicts, whose release becomes due in any month shall be examined on the 20th day of the month preceding to ascertain their correctness.

29. (a) Not less than fourteen days before any convict, in respect of whom an order under section 356 of the Code of Criminal Procedure, 1973, has been made, is to be released, the officer in charge of the jail or other place in which the prisoner is then confined shall explain to the prisoner nature of the order and the requirements of the rules made by the State Government under such section, and shall call upon him to state the place at which he intends after his release to reside.

(b) Every convict in respect of whom an order has been made under section 356 of the Code of Criminal Procedure, 1973 shall, not less than fourteen days before the date on which he is entitled to be released, notify the officer in charge of the jail or place in which he may be for the time being confined, of the place in which he intends to reside, after his release.

(c) The officer incharge of the Jail or other place of confinement shall thereupon report (Form No. 175) to the Superintendent of Police of the District in which such jail or other place of confinement is situated, the name and other particulars necessary for the identification of the prisoner and the place at which such prisoner intends, after his release, to

(d) In every case in which a Criminal Court makes an order under section 356 of the Code of Criminal Procedure (directing a convict to notify his residence and every change of residence after release), a copy of such order will be transmitted by the court passing the sentence and order, with the warrant of commitment, to the officer incharge of the jail in which the prisoner is, or is about to be, confined.

Note 2: - A re-convicted prisoner is not necessarily a habitual and a convict may be classified as a habitual on his first conviction.

30. Release of police registered prisoners. - (1) The release notice, i.e. slips, of prisoners classed PRT, shall be forwarded by the Superintendent direct to the Deputy to the Inspector-General (CID), Punjab, at least two months before the date of release.

(2) The release notice, i.e. slips of prisoners classed PR, shall be made over by the Superintendent of the jail from which such prisoners are to be released to an officer to be specially deputed for the purpose by the Local Superintendent of Police. In the case of persons to be released from the jail of the district in which they were convicted, the release notices shall be made over to the Police on the Saturday preceding the dates of release. In the case of persons to be released in a district other than that in which they were convicted, the release notices shall be made over to the Police at least one month prior to the dates of release.

Note: - As the original copy of the slips is sent to the jail it is necessary that a full receipt for the slips be obtained from the police officer, when forwarded to other places they should be sent under registered cover to ensure their return.

31. Procedure under Article 161 of the Constitution and Sections 432, 433 and 434 of Cr. PC 1973. - (1) (i) Minimum periods of imprisonment to be undergone for

for exercise of powers of the Government under Sections 432, 433 and 433-A of Cr.P.C. 1973

IN YEARS

C	D	E
Persons who have been imprisoned for offences for which death is a penalty but crimes are considered heinous	Other life convicts imprisoned for offences for which the death penalty is not a punishment and have committed heinous crime	Other life convicts

C	D	E
Actual imprisonment with remission	Actual imprisonment with remission	Actual imprisonment with remission
3	4	5

14	10	14	8-1/2	14
12	8	12	6	12

‘B’ of 1(i) above are defined as follows: (1) Section 347 of the IPC i.e. murder with wrongful confinement with rape.

Offences under the Terrorist and Disruptive Activities (Prevention) Act, 1987.

Offence under the Untouchability (Offences) Act, 1955.

Murder has been committed in connection with any dispute on dowry and this is indicated in the Judgment of the trial court.

Victim is a child under the age of 14 years and the offence was committed after conviction while inside the jail. Such cases shall be treated as heinous crime.

(k) Any conviction under Section 120-B of the IPC. (l) Offences under Section 304(b) of the IPC, i.e. a dowry death.

- (1) Offence under Section 304(b) of the IPC, i.e. a dowry death.
- (2) Offence under Section 304 along with Section 347 of the IPC i.e. culpable homicide with wrongful confinement for extortion.
- (3) Offence under Section 304 with Section 375 i.e. culpable homicide with rape.
- (4) Offence under Section 304 along with offence under the Terrorist and Disruptive Activities (Prevention) Act, 1987.
- (5) Offence under section 304 where culpable homicide has been committed in connection with any dispute on dowry and this is indicated in the judgment of the trial court.
- (6) Offence under Section 304 where the victim is a child under the age of 14 years.
- (7) Any conviction under Section 120-B of the IPC i.e. for criminal conspiracy in connection with the above crimes.

Adults are defined as persons above the age of 18 years.

The cases of premature release will only be considered provided the convict has maintained good conduct in jail. For this purpose good conduct means that he has not committed any jail offence for a period of 5 years prior to the date of his eligibility for consideration for release as per Para 1.1 above.

Cases for premature release will only be considered if the Government is satisfied in the event of release of the convict there is no likelihood of the convict committing a breach of peace in any way connected with the circumstances of the crime for which he was originally convicted.

The Government reserves the right to exercise its powers under Article 161 of the Constitution in any way it deems fit.

Procedure to be followed : (1) On becoming eligible for consideration for premature release under Article 161 of the Constitution as per Para-1 of the Policy the convict must submit a petition to the Governor indicating the grounds on which he desires his case to be considered for premature release.

(2) The State Government shall refer the petition to the Inspector General of Prisons for preparing the case in the prescribed format for verification of details of imprisonment as well as for a report of good behaviour.

(3) A copy of the petition shall simultaneously be forwarded to the District Magistrate for verification of the contentions made in the petition and a report regarding the likelihood of commission of breach of peace or crime by the convict which is connected with the circumstances of the crime originally committed by him. For this purpose, *inter alia*, the following will be taken into account :

- (a) the behaviour of the convict during periods of parole.
- (b) the views of the local panchayat.

(4) A separate verification and report regarding likelihood of commission of breach of peace or crime shall be made personally by the concerned station house officer and report presented under his signatures to the District S.P. (SSP). Further the District S.P. (SSP) shall forward it under his own signatures to the District Magistrate who shall further send

it to the Government under his own signatures. These duties shall not be delegated by District Magistrate and the District S.P. (SSP) and the S.H.C.

(iv) On receipt of the report from the I.G. Prisons as well as the District Magistrate the State Government will decide the petition in accordance with the policy laid down.

3. As regards the policy for dealing with premature release under Sections 432 and 433 this will be identical to the policy proposed for deciding cases under Article 161 of the Constitution, with the following difference :

The minimum period of actual imprisonment to be undergone before a case for premature release is considered will be as follows :

For convicts whose death sentence has been commuted to life imprisonment	Convicts who have been imprisoned for life for offences for which death is a punishment and have committed heinous crime	Convicts who have been imprisoned for life for offences for which death is a penalty but crimes are not considered heinous	For other life convicts imprisoned for life for offences for which the death penalty is not a punishment and have committed heinous crime	Other life convicts
A	B	C	D	E
1	2	3	4	5
Actual imprisonment	Actual imprisonment with remission	Actual imprisonment with remission	Actual imprisonment with remission	Actual imprisonment with remission
Adults 14 20	14 20	14 20	10 14	8-1/2 14
Females/minors 14 20	14 20	14 20	8 12	6 10

As regards procedure it would not be necessary for the convict to submit his petition on the completion of the required number of years of actual imprisonment. The I.G. Prisons would send the case of the concerned convict to Government on or after the eligibility date which would then obtain the report of the District Magistrate and take appropriate action.

As regards the prisoners convicted before 18.12.1978.

(a) Their cases will be considered in the light of the policy framed by the Government in 1971 (10.11.1971) and 1976 (30.1.1976) in respect of premature release.

(b) The cases of lifer prisoners convicted after 18.12.1978 will be governed by the policy adopted by the Govt. 12.12.1985 (See Appendix No. _____).

✓ **COMMENTARY**

SYNOPSIS

- 1. History of Premature release in Punjab, Haryana Chandigarh

- 2. Scope - Prospects
- 3. Prisoner is entitled to certain rights.
- 4. Availability of Premature release
- 5. Power to Pardon
- 6. Premature release
- 7. Power of High Court
- 8. Exercise of power
- 9. Imprisonment for life means "imprisonment for life"
- 10. Persons sentenced to death
- 11. Background
- 12. Premature release
- 13. Age by appearance in Premature release
- 14. Premature release
- 15. Army Act.
- 16. Apprehension
- 17. Premature release
- 18. Premature release
- 19. Premature release
- 20. Premature release
- 21. Late surrender
- 22. Punishment for premature release
- 23. Premature release
- 24. Jail offence
- 25. Appraisal by
- 26. Judicial Appellate Court considered for premature release
- 27. Premature release
- 28. Time fixed for premature release
- 29. Time fixed for premature release
- 30. Classification
- 31. Under-trial detention
- 32. Rejection of premature release
- 33. Rejection of premature release
- 34. Premature release - Does not
- 35. Premature release
- 36. Period of Parole
- 37. Heinousness
- 38. Heinous offence

These duties shall not be delegated to the S.H.C.

Prisoners as well as the District Magistrate in accordance with the policy.

Premature release under Sections 432 and 433 and deciding cases under Article 161.

It to be undergone before a case follows :

	For other life convicts imprisoned for life for offences for which the death penalty is not a punishment and have committed heinous crime	Other life convicts
D	E	
4	5	

Imprisonment with remission	Actual imprisonment	Imprisonment with remission	Actual imprisonment	Imprisonment with remission	Actual imprisonment
20	10	14	8-1/2	20	10
20	8	12	6	20	10

Application for the convict to submit his petition for actual imprisonment. The Government on or after the eligibility of District Magistrate and take appropriate steps.

12.1978.

In light of the policy framed by the Government (1976) in respect of premature release.

After 18.12.1978 will be governed by the policy (See Appendix No. 1985)

Case in Punjab, Haryana

2. Scope - Prospective in nature
3. Prisoner is entitled to invoke Article 21 for protection of his rights.
4. Availability of Habeas Corpus to prisoners.
5. Power to Pardon
6. Premature release is not mercy perse.
7. Power of High Court in pre-mature release
8. Exercise of power under Articles 72 and 161 - Guidelines.
9. Imprisonment for life and premature release - Imprisonment for life means "imprisonment till natural life."
10. Persons sentenced to death and persons who could have been sentenced to death constitute a single Class.
11. Background
12. Premature release on the ground of Age.
13. Age by appearance - Age dispute - Burden upon State to prove in Premature release
14. Premature release of Juvenile life Convict.
15. Army Act.
16. Apprehension of breach of peace and Public Safety
17. Premature release on the ground of ill health.
18. Premature release on Medical Board Instructions.
19. Premature release when co-accused released.
20. Premature release - Jail offence not to be considered.
21. Late surrender after furlough - No jail offence
22. Punishment for Jail offence undergone - it is no bar for premature release
23. Premature release - Jail Punishment not to be considered.
24. Jail offence no bar for premarure release for all times to come.
25. Appraisal by Session Judge - Non-application of mind.
26. Judicial Appraisal of jail punishment not obtained - Not to be considered for premature release.
27. Premature release on basis of forged documents.
28. Time fixed failing which release be ordered
29. Time fixed failing which released on bail.
30. Classification of Prisoners for purpose of remissions.
31. Under-trial detention to be considered.
32. Rejection of Premature release - Reasons must be proper
33. Rejection of Premature release - Speaking order must be passed.
34. Premature release case deferred without assigning any reasons - Does not amount to rejection.
35. Premature release deferred for one year.
36. Period of Parole in determining actual sentence
37. Heinousness of Crime affects premature release.
38. Heinous offence - Government to decide as per guidelines.

The Punjab Good Conduct Prisoners (Temporary Release) Act, 1962.

Punjab Act 11 of 1962

Action taken against the absence	Remarks
6	7

An Act to provide for the temporary release of prisoners for good conduct on certain conditions.

Be it enacted by the Legislature of the State of Punjab in the Thirteenth Year of the Republic of India as follows :-

1. Short title, extent and commencement. - (a) The Act may be called the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962.

(b) It extends to the whole State of Punjab.

(c) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

2. Definitions. - In this Act, unless the context otherwise requires, -

(a) "District Magistrate" means the District Magistrate of the District within whose jurisdiction the prisoner after his temporary release under this Act, is likely to reside during the period of his release;

(b) "member of prisoner's family" means the husband, wife, son, daughter, father, mother, brother and sister of the prisoner;

(c) "prescribed" means prescribed by the rules made under this Act;

(d) "prisoner" means a person confined in prison under a sentence of imprisonment;

(e) "Superintendent of Jail" means the Superintendent of the Jail in which the prisoner is undergoing his sentence of imprisonment.

3. Temporary release of prisoners on certain grounds. - (1) The State Government may, in consultation with the District Magistrate and subject to such conditions and in such manner as may be prescribed, release temporarily for a period specified in sub-section (2) any prisoner if the State Government is satisfied that -

(a) a member of the prisoner's family had died or is seriously ill; or

(b) the marriage of the prisoner's son or daughter is to be celebrated; or

(c) the temporary release of the prisoner is necessary for ploughing, sowing or harvesting or carrying on any other agricultural operation on his land and no friend of the prisoner or a member of the prisoner's family is prepared to help him in this behalf in his absence;

(d) it is desirable to do so for any other sufficient cause.

(2) The period for which a prisoner may be released shall be determined by the State Government so as not to exceed -

(a) where the prisoner is to be released on the ground specified in clause (a) of sub-section (1), four weeks ;

(b) where the prisoner is to be released on the ground specified in clause (b) or clause (d) of sub-section (1), four weeks; and

(c) where the prisoner is to be released on the ground specified in clause (c) of sub-section (1), six weeks.

(3) The period of release under this section shall not count towards the total period of the release of a prisoner.

(4) The State Government may by notification authorise any officer to exercise its power under this section in respect of all or any of the grounds specified therein.

4. Temporary release of prisoners on furlough. - (1) The State Government or any other officer authorised by it in this behalf may, in consultation with the District Magistrate and subject to such conditions and in such manner as may be prescribed, release temporarily, on furlough, any prisoner who has been sentenced to a term of imprisonment of not less than five years, and who -

(a) has, immediately before the date of his temporary release undergone imprisonment for a period of three years, excluding remissions; and

(b) has not during such period committed any jail offence and has earned at least three annual good conduct remissions:

Provided that nothing herein shall apply to a prisoner who -

(i) is a habitual offender as defined in clause (3) of section 2 of the Punjab Habitual Offenders (Control and Reform) Act, 1952, or

(ii) has been convicted of robbery or dacoity or such other offences as the State Government may, by notification, specify.

(2) The period of furlough for which a prisoner is eligible under sub-section (1) shall be three weeks during the first year of his release and two weeks during each successive year thereafter.

(3) Subject to the provisions of clause (d) of sub-section (3) of section 8 the period of release referred to in sub-section (1) shall count towards the total period of sentence of a prisoner.

5. Exclusion of certain days in computing period under sections 3 and 4. - For the purpose of calculating the period of temporary release of a prisoner under sections 3 and 4, the days of departure from and arrival at the prison shall be excluded.

6. Prisoners not entitled to be released in certain cases. - Notwithstanding anything contained in sections 3 and 4, no prisoner shall be entitled to be released under this Act, if, on the report of the District Magistrate, the State Government or any officer authorised by it in this behalf is satisfied that his release is likely to endanger the security of the State Government or the maintenance of public order.

NOTE

Section 6 as amended by Punjab Act 30 of 1978 reads as under.

6. Cases where consultation with District Magistrate not necessary or where prisoners are not to be released. - Notwithstanding anything contained in sections 3 and 4 -

(i) It shall not be necessary to consult the District Magistrate where the State Government is satisfied that the prisoner maintained good conduct during the period of his earlier release under any of the aforesaid sections; and

(ii) no prisoner shall be entitled to be released under this Act, if on the report of the District Magistrate, where consultation with him is necessary, the State Government or any officer authorised by it in this behalf is satisfied that his release is likely to endanger the security of the State or maintenance of public order."

Journey expenses of poor prisoners. - (1) The District Magistrate, the State Magistrate or the District Jail Officer shall not bear the expenses of his journey from the prison to any place under this Act the expenses may be borne in such manner as may be prescribed.

Liability of prisoners to surrender on temporary release. - (1) On the expiry of the term of his sentence under this Act, he shall surrender himself to the District Magistrate or the District Jail Officer.

(2) If a prisoner does not surrender himself to the District Magistrate or the District Jail Officer within ten days from the date on which he is required to do so, he shall be liable to be taken into custody by any police officer without a warrant and to be imprisoned for the unexpired portion of his sentence.

(3) If a prisoner surrenders himself to the District Magistrate or the District Jail Officer within a period of ten days of the date on which he is required to do so, he shall be liable to satisfy the Superintendent of Jail or the District Jail Officer, on the day of his surrendering himself immediately on the day of his release, all or any of the following penalties: -

(a) a maximum cut of five days' remission;

(b) stoppage of canteen concession for the period of his release;

(c) withholding concession of either inter-caste or inter-religious contact for a period of three months;

(d) the period of temporary release on furlough shall not be counted towards his sentence;

(e) warning;

(f) reduction from the status and grade of "Senior".

Penalty for failure to surrender. - Any prisoner who fails to surrender himself as required by clause (2) of section 8, should be punishable with imprisonment for a term which may extend to two years or with fine or both.

Explanation :- The punishment in this section shall be awarded to the prisoner for the offence of failure to surrender.

Power to make rules. - (1) The State Government may make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing, the rules may provide for -

(a) the execution by the prisoner (including the amount for which and the form and manner in which) of any labour during the release period and for his return to the prison;

(b) the amount for which and the form and manner in which any labour shall be performed;

(c) the forfeiture of the amount of bonds if the prisoner fails to surrender himself as required by clause (2) of section 8.