

REMISSION POLICY FOLLOWED BY THE STATE OF
KERALA

1.Provisions in the Kerala Prisons and Correctional Services
(Management)Act, 2010

As per section 77 of Kerala Prisons & Correctional Services (Management) Act 2010, well behaved, long term convicted prisoners may be prematurely released with the objective of their reformation and rehabilitation, by the Government, either suo moto or on the recommendations of an Advisory Committees as may be prescribed.

2.Provisions in the Kerala Prisons and Correctional Services
(Management) Rules, 2014.

Rule 462. Advisory Committee.- The Advisory Committee constituted under sub-section (1) of section 77 of the Act, shall examine the premature release of prisoners confined in each Central Prison, Open Prison and prison for women and submit appropriate recommendations to the Government.

Rule 463. Constitution of the Committee.-

(1)The Advisory Committee shall consist of the following members :-

- (a) Head of Prisons department - Chairman
- (b) Collector of the district in which the jail is situated -Member
- (c) District and Sessions Judge in which jail is situated -Member
- (d) Commissioner of Police/ District Police Chief of the District in which jail is situated -Member
- (e) District Probation Officer of the district in which jail is situated - Member
- (f) Three Non-official members appointed by the Government - Members

(g) Jail Superintendent, Concerned - Member secretary.

(2) The term of office of the non-official members shall ordinarily be five years. The Committee shall be convened at least once in six months. The quorum of the Committee shall be four, of which at least one shall be a non-official member:

Provided that, for sufficient reasons the Government may cancel the appointment of non-official members at any time during such term.

Rule 464. Functions of the Committee.-

(1) The Committee shall consider the cases of prisoners and make appropriate recommendation to the Government relating to the premature release of prisoners, subject to the conditions specified below, namely:-

(i) cases of Women offenders sentenced for infanticide shall be reviewed immediately on admission in prison and shall be sent to the care of voluntary organizations of good repute, for a particular period of time;

(ii) cases shall be reviewed immediately on admission in prison and sent to the care of voluntary organizations.

(iii) In the case of women offenders sentenced to life imprisonment except for cases which come under the purview of section 433 A of the Code of Criminal Procedure, 1973 and cases which shall be considered only after completing fourteen years of actual imprisonment, shall be considered when seven years of imprisonment, including remission is completed.

(iv) As regards Life convicts of men and young offenders , except for cases which come under the purview of section 433A of the Code of Criminal Procedure, 1973 and cases which shall be considered after completing fourteen years of actual imprisonment shall be considered when ten years of imprisonment, including remission is completed.

(v) As regards Non-habitual male and young offenders, in cases other than those sentenced to imprisonment for life but sentenced to a term of imprisonment for more than one year on completion of half of their substantive sentence including remission but for those sentenced for one year only shall be considered the subject to the condition that one year including remission is completed.

(vi) As regards Non-habitual women offenders, in cases other than those sentenced to imprisonment for life, but sentenced to a term of imprisonment for more than one year, subject to condition that half of the substantive sentence, including remission or seven years, whichever is less, shall be considered for release. This would be subject to the condition that such prisoners shall be released only after undergoing at least one year imprisonment including remission.

(vii) As regards Habitual offenders, in respect of those habitual offenders who are not sentenced to imprisonment for life but sentenced to undergo 5 years or more, the condition that completion of two-third of their sentence including remission, subject to the condition that they shall undergo at least five years of imprisonment including remission, before release, shall be considered.

(viii) As regards male prisoners above 65 years and for female prisoners above 55 years and infirm offenders, who don't come within the purview of section 433A of Code of Criminal Procedure, 1973, sentenced for one year or more, on completion of one third of the substantive sentence including remission, shall be considered, condition that they shall be in jail at least one year.

(ix) In the circumstances where a designated Medical Board certifies that prisoner's condition may likely to become fatal due to non curable diseases, appropriate recommendation may be given.

(2) The Board shall submit recommendation to release the aforesaid

classes without adversely affecting the society.

Rule 465. Records and information to be made available to the Committee. -

(1) In order to prescribe the eligibility for the release of prisoners by the Advisory Committee, the judgments in each case full and accurate details of the prisoner's previous history and prison records shall invariably be produced. The responsibility for the same shall be on the Member Secretary of the Committee; but Departments such as Police, Judicial Department and Social Justice Department shall render him every assistance in collecting the said information. The Member Secretary shall produce the following documents, before the Committee, namely:-

1. Name;
2. Convict Number;
3. Date of sentence;
4. Case number;
5. Name of Court;
6. Date of admission to the jail;
7. Actual sentence;
8. Set off;
9. Remission earned;
10. Duration on Bail;
11. Substantive sentence;
12. Details of appeal;
13. Whether the qualification prescribed has been achieved;
14. Police Report ;
15. Report of District Probation Officer, with social response assessment;
16. Report of Jail Superintendent;

17. Arguments for defending adverse remarks;

18. References, if any, from the Government of India or from courts.

(2) While considering for release, the perspective and response from the victim of crime shall also be taken into account. For this purpose, enquiry shall be made by contacting the relatives of the victims, neighbours, members of the local bodies etc. Such enquiries shall also be made from the relatives of the prisoner. The Confidential Investigation Report made by the police officer and the probation officer shall be used for evaluating the response of the victim. The Superintendent of the concerned correctional institution shall obtain comments on the victim's response, from the District Probation Officer and place the same before the Committee with his comments on the said report.

(3) The Committee may, as it thinks fit, arrange a further enquiry if it thinks that victim's response report received is inadequate or improper and get the necessary report. While considering the case, the Committee may also request the presence of persons so victimized directly or indirectly. On the basis of the above mentioned reports and statements (if taken) of the victims, the Committee may as it deems appropriate recommend the premature release with or without conditions.

Rule 466. Meeting of the Committee.- (1) The Committee shall convene on a fixed date, time and venue. Notice for the convening of the Committee together with copies of prescribed documents and complete agenda including note of the Superintendent, shall be given to the Chairman and Members, at least ten days prior to the convening of the Committee.

(2) The Member Secretary shall submit the case of each prisoner under consideration before the Committee. The Committee shall consider each case and give, as far as possible, unanimous recommendations. In case

of dissent, the majority opinion shall be considered as the the opinion of the Committee. If the difference of opinions are equal, the decision of the Chairman shall be final.

(3) While considering recommendation of the premature release of each prisoner, prime importance shall be given to the welfare of prisoner and society at large, general principles laid down by the Government or courts regarding remission and precedents. The Committee shall not decline the premature release of a prisoner, on the sole reason that the recommendation from police is not favourable, on certain speculative and imaginary assumptions. The recommendation for release shall be submitted, considering the circumstances, in which the offence was committed by the prisoner and whether there is propensity to commit similar or other offences again.

(4) Rejection of recommendation for premature release for one or more occasions by the Committee shall not be a bar for reconsideration. Rejected case of a convict in this manner shall be reviewed only after one year. A fresh report from the Superintendent of Prison is necessary for reconsideration. Reconsideration of the case shall be on the basis of the conduct of prisoner in the jail after the rejection of the recommendation for premature release and not on the basis of the reports relied for rejection earlier.

Rule 467 . Nature of the Recommendation. -The recommendation of the committee for premature release shall contain detailed analysis of the case,the nature of available information/reports and the grounds for recommendation.

Rule 468. Final Decision.-The recommendation of the Committee shall be placed before the Government for consideration without delay. The Government may either accept or reject the recommendation of the committee or demand reconsideration of a particular case.

Rule 469A, 469 B State Level Advisory Committee

A State Level Advisory Committee has been constituted for the purpose of considering and recommending the application/complaint on premature release of prisoners against the recommendations of the Advisory Committee constituted under Section 77(1) of the Act to Government. The State Level Advisory Committee consists of a retired High Court Judge as Chairman, Additional Chief Secretary (Home) as Member Secretary, Law Secretary, Secretary (Social Justice Department) as Members and a person having experience and expertise in the field of correctional administration as Non-official Member. Guidelines for the working of State Level Advisory Committee has also been issued.

The recommendations received as above will be subjected to a thorough examination by the Government referring to the case file which includes judgements of the courts concerned, police report narrating the law and orders, issues that may arise upon his release, probation report describing his familial and social acceptability after release and report of superintendent of prison concerned regarding his character and conduct inside prison. Case of each prisoner is examined individually by the Council of Ministers. After detailed deliberations, if found eligible, the Council of Ministers take a decision to advise the Hon'ble Governor to grant premature release to the prisoners after remitting their remaining period of sentence in exercise of powers conferred under Article 161 of the Constitution of India, subject to the conditions laid down in Rule 470 of Kerala Prisons and Correctional Services (Management) Rules, 2014.

In the cases of prisoners who were convicted under section 302 IPC and who did not complete 14 years of actual sentence the reason for deviation from section 433A CrPC is recorded in writing while sending the decision of Council of Ministers to the Governor.