

BIHAR HUMAN RIGHTS COMMISSION
9, Bailey Road

File No **BHRC/COMP.** 20/08

Case of **AWADH YADAV**

The case of the convict Awadh Yadav for premature release has again been rejected by the Remission Board on 9.4.2010 on the ground that he was involved in a case of dacoity with murder. On notice AIG Prisons Shri S.K. Ambashth appeared. He produced copy of the notification dated 10.12.2002 in terms of which a person convicted for committing the offence of dacoity, amongst others, is not eligible for premature release.

The Commission would like to observe that the right to premature release is not absolute right; it nevertheless is a valuable right, for, the person has a right to be considered for premature release. The State Government is undoubtedly empowered to frame rules and lay down the conditions and categories of offences/ prisoners for the purpose of premature release but, it goes without saying, such rules must be just & proper and pragmatic, conforming to the tests of Article 14 of the Constitution of India. It is not understandable as to how there can be a blanket prohibition on premature release of a person convicted under section 395 or even 396 IPC, when a person convicted under section 302 IPC can be allowed premature release. Section 302 IPC is a graver offence than section 395 or even 396 IPC. The gravity of the offence, it may be pointed out, is determined by the punishment provided for the offence and not simply the ingredients thereof. Whereas in a case under section 396 IPC (depending on the facts and circumstances) a person can be sentenced to imprisonment for a term "which may extend to ten years", that is, for a term which may be less than ten years, the sentence awardable under section 302 is either death or imprisonment for life. In other words, the minimum sentence which can be awarded in a case under section 302 is imprisonment for life which makes it a graver offence.

What has been observed above is just by way of illustration. The Commission is of the view that the conditions/prohibitions laid down in the notification dated 10.12.2002 (supra) are not in accordance with law and require a re-look by the Government.

Adverting to the present case, as the rule stands, the Commission cannot find fault with the decision of the Government to reject the application for premature release of convict Awadh Yadav. As indicated above, the right to premature release is subject to rules framed by the Government.

File is accordingly closed. Copy of this order may be sent to applicant Manushree Devi wife of convict Awadh Yadav as well as IG Prisons Bihar.

Justice S.N. Jha
Chairperson