

101 Questions on Prisons

- you didn't know whom to ask



CHRI

Commonwealth Human Rights Initiative

working for the *practical* realisation of human rights
in the countries of the Commonwealth

About Commonwealth Human Rights Initiative

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-profit, non-partisan, international non-governmental organisation working in the area of human rights. In 1987, several Commonwealth professional associations founded CHRI, since there was little focus on human rights within the association of 53 nations although the Commonwealth provided member countries the basis of shared common laws.

Through its reports and periodic investigations, CHRI continually draws attention to the progress and setbacks to human rights in Commonwealth countries. In advocating for approaches and measures to prevent human rights abuses, CHRI addresses the Commonwealth Secretariat, the United Nations Human Rights Council members, the media and civil society. It works on and collaborates around public education programmes, policy dialogues, comparative research, advocacy and networking on the issues of Access to Information and Access to Justice.

CHRI's seeks to promote adherence to the Universal Declaration of Human Rights, the Commonwealth Harare Principles and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights in the Commonwealth.

CHRI is headquartered in New Delhi, India, with offices in London, UK and Accra, Ghana.

International Advisory Commission: Yashpal Ghai, Chairperson. Members: Alison Duxbury, Wajahat Habibullah, Vivek Maru, Edward Mortimer, Sam Okudzeto and Sanjoy Hazarika

Executive Committee (India): Wajahat Habibullah, Chairperson. Members: B. K. Chandrashekar, Jayanto Choudhury, Maja Daruwala, Nitin Desai, Kamal Kumar, Poonam Muttreja, Jacob Punnoose, Vineeta Rai, Nidhi Razdan, A P Shah, and Sanjoy Hazarika

Executive Committee (Ghana): Sam Okudzeto, Chairperson. Members: Akoto Ampaw, Yashpal Ghai, Wajahat Habibullah, Kofi Quashigah, Juliette Tuakli and Sanjoy Hazarika

Executive Committee (UK): Joanna Ewart-James, Chairperson. Members: Richard Bourne, Pralab Barua, Tony Foreman, Neville Linton, Suzanne Lambert and Sanjoy Hazarika

Sanjoy Hazarika, International Director

ISBN: 978-93-81241-65-3. © 2019. Material from this report may be used, duly acknowledging the source.

CHRI Headquarters, New Delhi

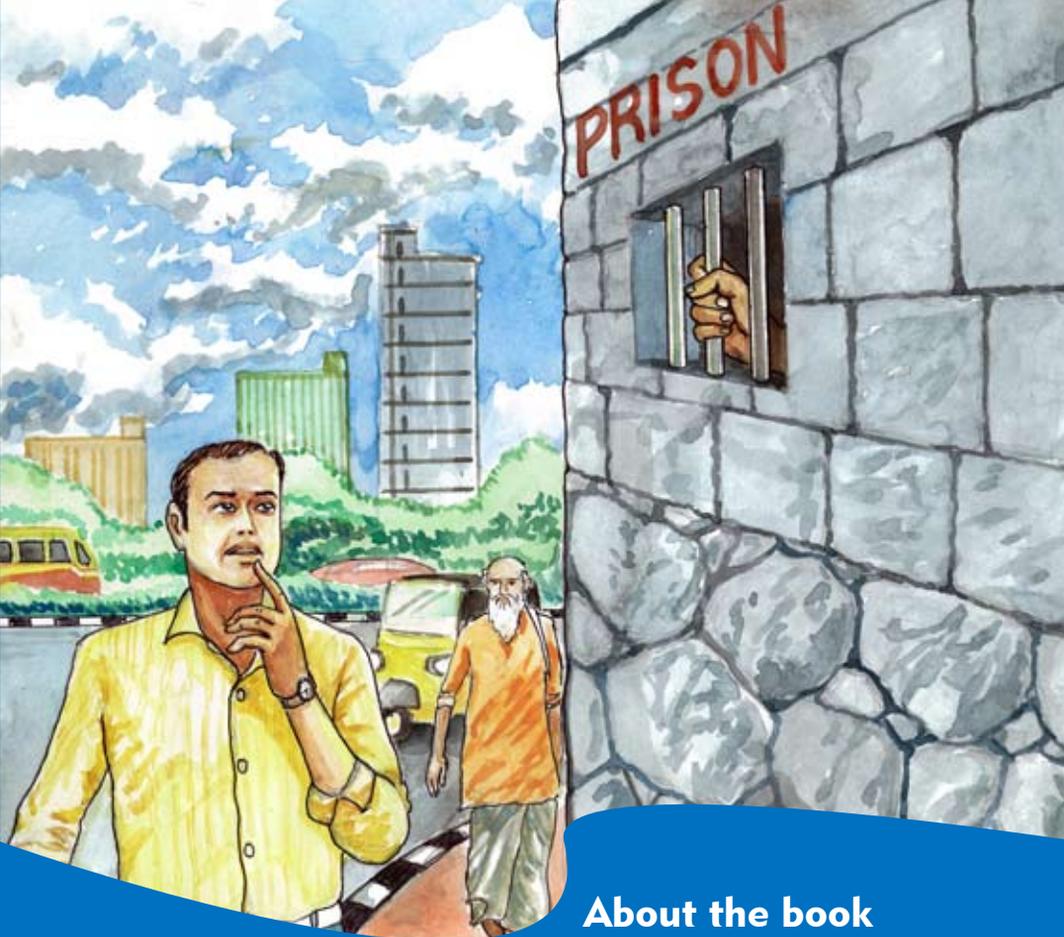
55A, Third Floor, Siddharth Chambers
Kalu Sarai, New Delhi 110 017, India
Tel: +91 11 4318 0200, Fax: +91 11 2686 4688
E-mail: info@humanrightsinitiative.org

CHRI London

Room No. 219, School of Advanced Study
South Block, Senate House, Malet Street
London WC1E 7HU, United Kingdom
E-mail: london@humanrightsinitiative.org

CHRI Africa, Accra

House No.9, Samora Machel Street, Asylum Down
Opposite Beverly Hills Hotel
Near Trust Towers, Accra, Ghana
Tel/Fax: +233 302 971170
Email: chriafrika@humanrightsinitiative.org

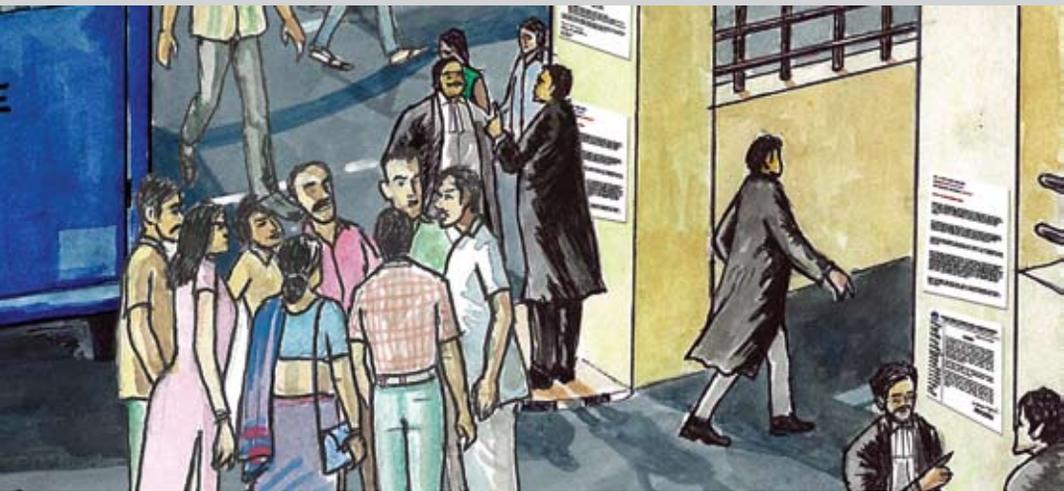


About the book

Prisons are closed spaces. Very little information is available on the daily lives and routines of prisoners. Additionally, very few people are interested in learning about the details of prison life unless they find themselves in one. This may mean that for many, questions they have on prisons, sparked either by curiosity or necessity, are often left unanswered. This book contains answers to 101 frequently asked questions on prisons and prisoners' lives.

Indian Prisons vary considerably in the way they are governed and the rules they follow. This means that there is almost never a simple, concise answer to a question and the final reference has to be made to the prison manual of the particular state where a person is imprisoned. However, the underlying principles are often same, and answers in this booklet have been provided keeping these in mind. Answers are based on CHRI's vast experience of working with the prison system in many states. Yet, due caution must be exercised while reading this book, as rules may differ in each state, and must be consulted specifically for the certain provisions. Omissions, if any, are unintentional; we have gathered material from publicly accessible sources and followed due diligence in the research.

ACKNOWLEDGEMENTS



The Commonwealth Human Rights Initiative (CHRI) wishes to thank all those who enriched this document with their knowledge, expertise and experience. This publication, modelled on the lines of CHRI's '101 Things You Wanted to Know About the Police in India but were Afraid to Ask', was conceived by Maja Daruwala, now Senior Advisor, CHRI, when she was the organisation's Director, Navaz Kotwal, former Coordinator, Police Reforms Programme, CHRI and Sana Das, former Coordinator, Prison Reforms Programme, CHRI.

Our thanks go to Sanjoy Hazarika, International Director, CHRI, who saw the opportunity in a document that had been dormant for some time and encouraged its revision and publication, taking interest in its design and content. Richa, Communications Officer, CHRI, also provided important editorial inputs. Madhurima Dhanuka, Programme Head, Prison Reforms Programme, led the extensive revisions, editing and finalising of the document. Special appreciation to Sugandha Shankar, Senior Programme Officer, Prison Reforms Programme, Jaishree Suryanarayana, Former Consultant, Prison Reforms Programme and Ruchika Nigam, Former Consultant, Prison Reforms Programme who painstakingly prepared the draft document. The support of Vinu Sampath Kumar, Head, Strategic Planning and Collaborations, and Raja Bagga, Senior Advocacy and Research Officer, CHRI, London was also instrumental in 101's completion. We also value the consistent support of other team members of the Prisons Reforms Programme in the completion of this document.

Chenthil Kumar provided fine creative content for 101's design and layout.

GENERAL

1. What are prisons?

A prison is a place of confinement, managed by the state, where people are sent to serve a sentence of imprisonment or while they await the completion of their trial.

2. Are prisons same as a police lock up?

No, they are different. A police lockup is a temporary holding facility of the local police and is used to hold suspects during interrogation or the completion of arrest proceedings, and their transits. A person can be confined in police custody for more than 24 hours only with an order from the court.

3. Can anyone be sent to prison?

A person can be sent to a prison only by a judicial order of the court, which is called a warrant. It is illegal to confine anyone in prison without a valid court order. Persons below the age of 18 years who have been accused or convicted of an offence cannot be confined in any prison in India.

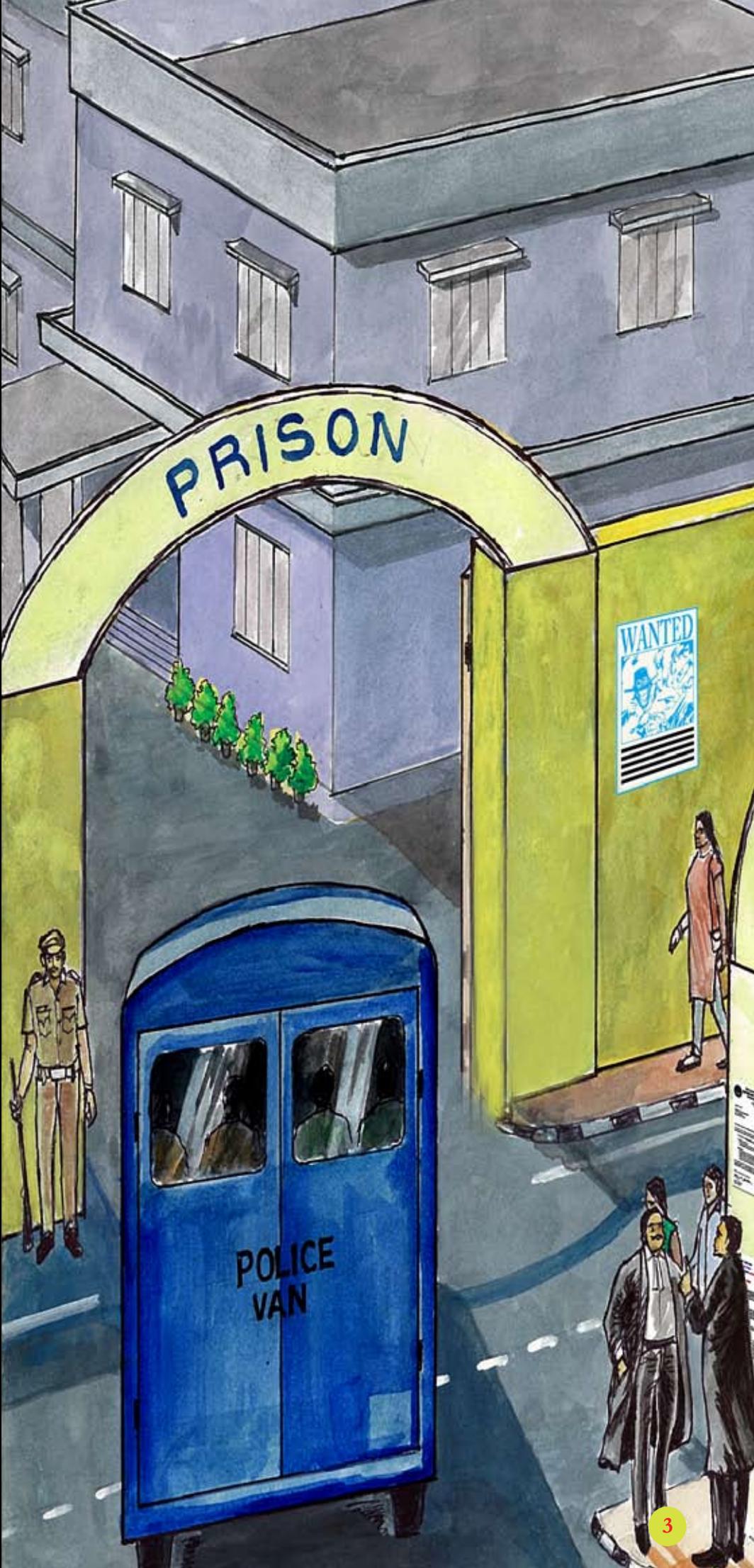
4. What laws govern prisons in India?

Prisons are governed under a Central Act -- the Prisons Act of 1894. But since prisons are a state subject under the Seventh Schedule, each state has also formulated their own prison acts or rules. Codified in Acts or Jail Manuals, these rules govern the treatment of prisoners and lay down procedures for prison management, as well as the rights and duties of prisoners. The Prisoners (Attendance in Court) Act 1955, The Transfer of Prisoners Act 1950, The Repatriation of Prisoners Act 2003 are some legislations governing particular aspects of prisons.

The Constitution of India, the Code of Criminal Procedure (CrPC), 1973, the Indian Penal Code, 1860 primarily govern the confinement of persons in a prison. Additionally, there are other central and state laws, which contain penal provisions which permit imprisonment.

5. Who governs prisons? What is the organisational structure of a prison department?

The day-to-day governance of prisons is the responsibility of a set of administrative, security and supplementary staff. Each state has its own organisation structure. Generally, the Director General (DG), Additional Director General (ADG) or Inspector General (IG) is the chief of prisons in each state. He/she reports to the Home Department in the state. In Union Territories, the DG/IG has to report to the Ministry of Home Affairs at the Centre. Below the DG/ADG/IG is the rank of the Deputy Inspector General (DIG), who supervises the Assistant Inspector General (AIG), who in turn supervises the superintendents of each prison.



PRISON

POLICE VAN

WANTED

The Superintendent is usually the head of a prison, and is responsible for both prison administration and prisoners' welfare. Below him are other executive staff - the Additional Superintendent, Deputy Superintendent, Assistant Superintendent, Jailer, Deputy Jailer, Assistant Jailer. Next in hierarchy is the jail cadre staff comprising Chief Head Warder, Head Warder and Warder/Guard. At the lowest rung is the Warder/Guard who is a guarding staff responsible for maintaining security and discipline inside prison through searches and counting of prisoners, opening and locking up the prison, sanitation and hygiene, and prisoner welfare through the distribution of food and work. Executive staff is assisted by a set of correctional staff consisting of welfare officers, probation officers, vocational trainers, factory supervisors, teachers, social workers, psychologists; medical staff with prison medical officers and paramedical staff; and ministerial staff and other supportive functionaries.

6. Is there an Indian Prison Service?

No, there is presently no all India Prison Services, unlike the Indian Police Services or Indian Administrative Services. The head of the prison department (DG/ADG/IG) is generally drawn from the Indian Police Service (IPS) while Superintendents, Assistant Superintendents, Warders belong to the state prison service.

7. What are the different kinds of prisons?

There are broadly seven types of prisons based on their capacity, security, infrastructure, personnel and facilities:

Central jails: These lodge both convicts and undertrials.

District jails: These lodge primarily undertrials; upon conviction prisoners are sent to central jails.

Sub-jails: These lodge only undertrials.

Women's jails: These exclusively lodge women prisoners.

Semi Open or Open jails: These lodge only convicts, and allow prisoners to be engaged in work to earn their own livelihood.

Borstal schools: These lodge prisoners between 18 and 21 years of age

Special jails: States may define certain prisons as special jails; however, no set criteria is prescribed to define what constitutes them.

8. What the different types of prisoners?

Prisoners can be classified on the basis of status of their trial as:

Convict Prisoners: Persons who have been adjudged guilty by the court of a criminal offence and have been sentenced to imprisonment.

Undertrial prisoners: Persons who are in prison pending completion of their trial.

Detenués: Persons who have been detained in prison under preventive detention laws.

Internees/Awaiting release: Persons who have completed their sentence but have not been released due to procedural delays; these are primarily in case of foreign national prisoners (FNPs).

Civil Prisoners: Prisoners who do not belong to any of the above categories and have been detained for default of payment of a fine or a civil financial liability.

9. Are there different rules for different kinds of prisoners?

Yes, prison manuals usually provide different rules for each category of prisoners. In general, rules for undertrials, detenués and civil prisoners are more lenient than those for convicts.



ADMISSION PROCEDURES

10. What happens after a person is sent to prison by the court?

Upon entry into a prison, certain mandatory procedures are undertaken. At the prison's main gate, the court order is inspected and the person's identity is checked. Thereafter s/he undergoes procedures such as admission, physical search, medical examination, allocation of basic amenities, wards, etc.

11. What happens during the admission process?

All persons sent to prison must be formally admitted to the prison. The admission process varies across states, but where the prison management system is used, the admission process entails the taking of photograph and fingerprints. Each person's details are noted down in the admission register. A prisoner may then be provided a copy of his history-ticket or be informed about how to access his details using the e-kiosks (where available). A history ticket is a document containing all relevant information on the person's case, including the case reference number, the concerned court, prisoner details, address, age, dates for production, etc. This history ticket must be maintained throughout the period of confinement. Some states also permit the prisoner to keep a copy of the ticket in their possession.

12. What is 'physical search'? Who conducts it?

After the completion of the admission process, a person is physically searched for any contraband items – objects not permitted inside a prison. All search procedures must be conducted with due respect to the dignity of the individual. Only female staff can search

women prisoners, and this is done in a closed area, preferably a separate room, to ensure privacy.

The list of contraband usually differs across states, as does the intensity of search. It is usually the deputy superintendent or assistant superintendent of the jail who supervises it. All valuable items such as cash or jewellery in a person's possession are entered in relevant registers and the prisoner's signature/thumb impression is taken. These items are then kept in safe custody and handed over to the person upon their release from prison.

13. What is a medical examination? Is it compulsory?

Every prisoner must be examined by a medical officer within 24 hours of admission in a prison. The medical officer must create a health examination record for the individual, which generally includes the age, weight, history of illnesses and substance abuse, and details of their physical state of health, including vaccinations. The medical officer must inform concerned authorities if they find any injury marks or wounds are found on the prisoner's body, especially if they are fresh, indicating that they may have been inflicted while the prisoner was in police custody. The medical record must also mention if a prisoner is pregnant or suffering from a contagious disease such as leprosy or HIV/AIDS. This record also forms the basis, in case of convicts, to decide the nature of labour that can be assigned to the prisoner.

14. What basic amenities are provided in a prison?

Some basic amenities are provided by the prison administration, or prisoners are permitted to get their own amenities or are permitted to buy from the prison canteens, where available. However, this differs across states, and one can refer to the relevant prison manual for a complete list. Generally electronic items such as mobiles, radios, or music players are not permitted; neither are items such as cigarettes, beedi, tobacco, or pan masala, etc.

Generally, basic amenities include toiletries such as toothbrushes, toothpaste, soap, shampoo, toilet paper, sanitary napkins, and personal items such as undergarments, towel, shoes and slippers, books and stationery items such as pencils, notebooks, etc. The rules are lenient for undertrials, and they are usually permitted to keep and wear their own clothes. Prisoners can also carry sealed/packed branded medicines for personal medication after obtaining permission from the medical officer.

15. How are prisoners allocated wards?

The policies adopted to allocate wards to prisoners not only differ across states but also across prisons in the same state. Prisoners can be segregated based on their age, physical and mental health, nature of offence, status of trial, court where they are being tried, criminal record and the length of sentence, etc. As a general practice, convicted and undertrial prisoners are confined separately, as are male and female prisoners. Habitual offenders are also separated from first-time offenders. Prisoners are usually accommodated in barracks with accommodation varying from 20-50 or more, depending on infrastructural capacities which vary from prison to prison and state to state.



LIFE INSIDE PRISON

16. Are prisoners required to stay in their wards the whole day?

No, each prison has a specified lock-in and lock-out time. Generally, prisons are locked up from sunset to sunrise and under normal condition, prisoners are not allowed to move around during these hours. During the day, there are specific times allotted for movement around the yard, wards, bathing and recreational activities. Prisoners are also counted several times a day, in accordance with the policy for each prison.



17. Can prisoners follow their religious practices while in prison?

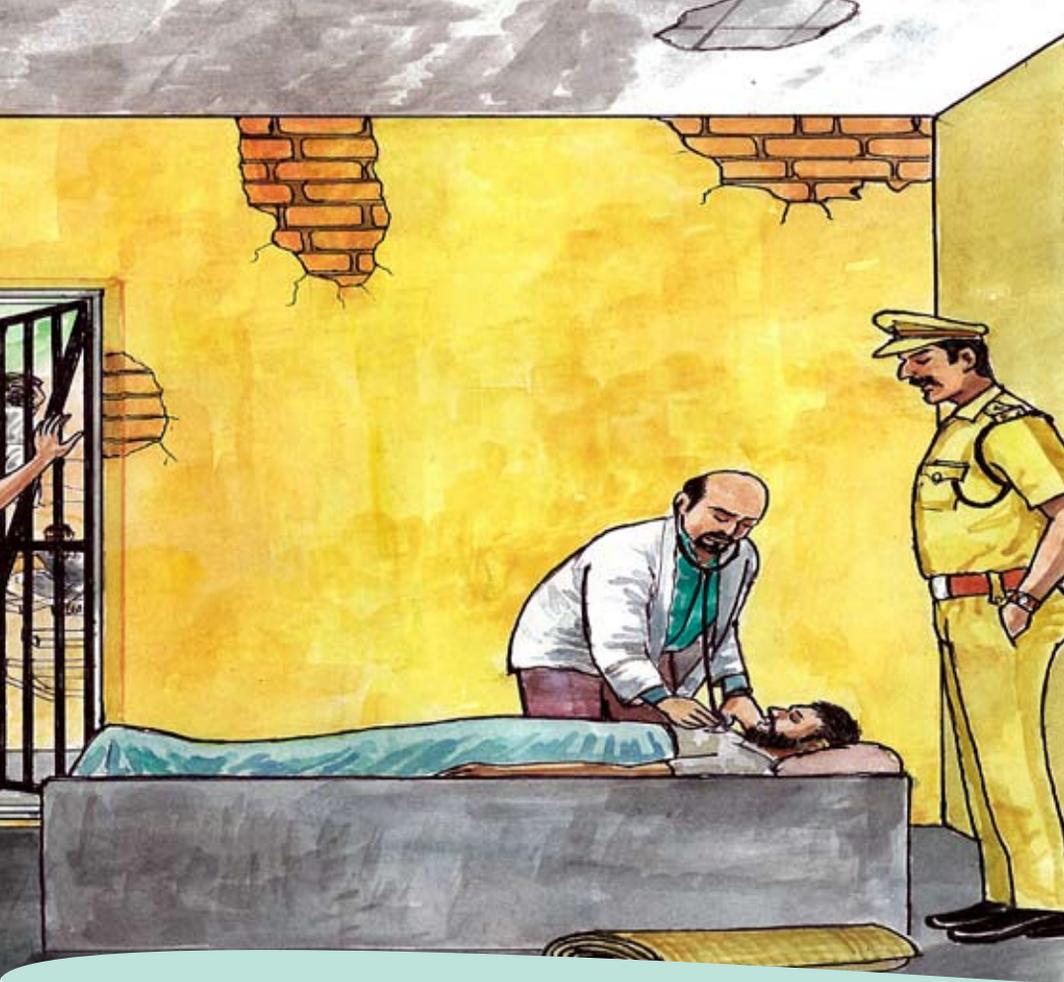
Yes, a prisoner has the freedom to follow their religion. However, they may not be permitted to carry or use articles that fall under the prohibited category, such as *kirpan*. Rituals obstructing prison routine or rules are also not permitted. Prisoners may request the officer-in-charge for special considerations such as a separate space or special diet in accordance with their religious beliefs.

18. What are dietary provisions for prisoners?

All prisoners are provided food three to five times a day; this includes tea, light snacks and three meals. A diet chart is usually displayed inside the prison premises, or can be obtained from the officer-in-charge of the prison or the jail manual. Prison rations consist of basic and balanced food such as dal and rice or roti, and may include vegetables and sometimes meat or eggs. This differs across regions and states in India. Some prisoners are also provided special diets if required according to the directions of the medical officer. Different meals may be allocated to prisoners according to their health, work or religious beliefs. Sick or infirm prisoners or those in the hospital ward also receive a special diet, as do pregnant or lactating women, and children.

19. Can one get outside food in prison?

Undertrial prisoners may get food from outside, subject to certain conditions and with the permission of the Superintendent. Some prisons also have canteens from which prisoners can buy food in accordance with the applicable rules and regulations. Canteens usually stock basic food items such as biscuits,



namkeen, bread, butter, etc., and may provide snacks like *samosa*, *kachodis*, *dhokla*, etc. This varies from canteen to canteen.

20. Who is responsible for hygiene and sanitation inside prisons?

Cleaning regimes are generally set out in the prison manual. It is the duty of both the prison staff and prisoners to maintain cleanliness and hygiene inside prison premises. Prisoners are usually responsible for cleaning their living spaces, while cleaning of common areas is either undertaken by convict prisoners assigned as part of prison labour or by sweepers hired by the prison administration. Sweepers also clean toilets inside the wards, and the common bathing and toilet areas in the prison.

21. Is clean drinking water available inside prison?

Every prisoner has a right to clean and safe drinking water. Prisons have different provisions to ensure this: some provide filtered water or have established Reverse Osmosis (RO) plants, whereas some provide unfiltered water, which might not be fit for consumption. Complaints regarding quality of water can be made to the officer-in-charge of prisons, officers from legal services authorities or members of the Board of Visitors.

22. What healthcare facilities are available to prisoners?

Where medical officers are available within the prison premises, sick prisoners can inform them; otherwise, the prison administration must ensure that the prisoner meets the medical officer. The medical officer can then take necessary steps for the prisoner's treatment, which may include prescription for medicines, requisition for further

diagnostics tests, or admission to the prison hospital. The medical officer can also change the prisoner's diet or labour schedules to suit their health requirements. Where a pathology lab is available, diagnostic tests are conducted inside the prison itself. Medicines are also supplied free of cost to prisoners by the prison department.

23. Can prisoners seek treatment from other hospitals?

Yes, prisoners can be permitted treatment from other hospitals. The medical officer can recommend specialised treatment in a local hospital, or the prisoner can write to the officer-in-charge of the prison seeking permission to be treated in another hospital. They can also seek permission from the court where their case is being tried for this by making an application through their lawyer. If the prisoner does not have a lawyer, they should write to the concerned secretary, legal services authority, or seek assistance from the paralegal volunteer or jail visiting lawyer of the prison legal aid clinic.

24. What mental healthcare facilities are available in prison?

To ensure early detection of mental illness or to prevent them, all prisoners must be provided psychiatric and psychological counseling by the prison department. Every central and district jail is supposed to employ the services of a qualified psychiatrist who is to be assisted by a psychologist and a social worker trained in psychiatry. Central and district jails are required to have facilities for preliminary treatment of mental disorders. Sub-jails should take inmates with mental illnesses to the nearest psychiatric facilities or seek their transfer to district or central jails. All jails should also be formally affiliated to a mental hospital. Further, prisoners with mental illness can be transferred to appropriate mental health establishments for treatment.

25. Can prisoners work in prison? Are they provided wages?

Yes, convict prisoners, in particular those who are sentenced to rigorous imprisonment, are mandated to work during their imprisonment. The officer-in-charge of prison or jailor assigns work to prisoners. Prisoners who are sentenced to long terms or those who are educated are sometimes assigned work to assist the prison administration. They are called convict officers or convict warders as per local parlance. Prisoners are usually assigned to factory or manufacturing units, kitchen, cleaning, security or building maintenance work. Some prisoners can even be trained by legal services authorities as convict paralegals and are assigned to work in the prison legal aid clinic. Wages for convicts differ for skilled, semi-skilled or unskilled work, but they cannot be below the minimum wage fixed by the state. Rates for wages differ across states.

Undertrials cannot be asked to work in prison; neither can prisoners sentenced to simple imprisonment. They can, however, voluntarily seek permission to work from prison authorities, which may or may not be granted.

26. What happens if a prisoner dies in prison?

A death in prison is referred to as a custodial death. Intimation of all deaths in custody is supposed to be sent to:

(i) the nearest Magistrate empowered under sub-section (4) of

Section 174 and 176 of the Code of Criminal Procedure, 1973 to hold inquests;

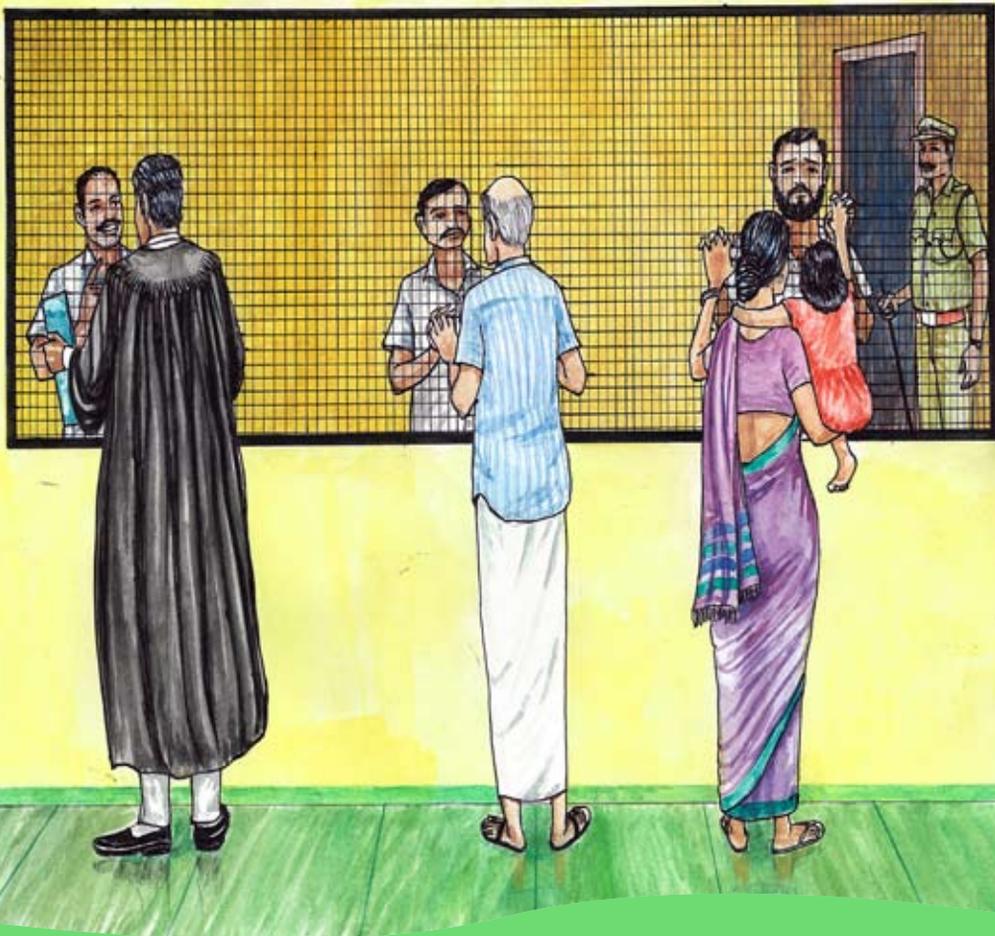
(ii) the officer-in-charge of the police station with jurisdiction, who is required to make a preliminary investigation;

(iii) the National and State Human Right Commission, within 24 hours of death.

When a prisoner dies, an inquiry must be conducted to ascertain the cause of their death -- whether it was natural or unnatural, whether medical attention was needed and provided, and whether there was abuse or negligence on part of jail officials. It is also the responsibility of the prison department to inform the prisoner's family about the death immediately.

27. Do prisoners have rights and duties?

Yes, prisoners have all the fundamental rights guaranteed by the Constitution of India, except those which are curtailed due to confinement. They also have duties. It is the duty of all prisoners to abide by rules, obey all lawful orders given by competent authorities, and maintain discipline and order. They must also respect the rights of other inmates, prison staff and other functionaries and abstain from making false allegations or hurting religious belief of others. They must not vandalise government property. All prisoners are responsible to maintain prescribed standards of cleanliness and hygiene. See page 36 for detailed list of rights and duties.



CONTACT WITH FAMILY, FRIENDS AND LAWYERS

28. Who can visit a prisoner in prison and how often?

Prisoners are entitled to meet their family, friends or lawyers in prison on fixed days and at fixed times, according to the prison rules. The frequency of visits could range from twice a week to once a week depending on whether the prisoner is an undertrial, detainee, civil prisoner or a convict. The system of being visited in prison is called *mulaqat*(interview).

29. How is *mulaqat* (interview) conducted?

The meeting usually takes place in a common area where the visitor is separated from the prisoner by a wire mesh or bars or glass. The duration can be for 10 or 30 minutes or more, depending on the applicable rules. Some prisons also pre-fix days when interviews can be sought. Prior to the visit, the visitor might be searched by prison staff. The prisoner may also be subjected to a body search before and after the meeting to check for contrabands.

30. How can visitors apply for *mulaqat* (interview) ?

Prisons usually have different rules for *mulaqat*; some permit scheduling visits via telephone or web-portals, while in others, visitors may have to go to the prison in person to schedule a visit or wait in queue before they are permitted to visit the prisoner. All visitors must carry a proof of identity such as ration card, Aadhaar card, voter ID card, etc.

31. Can visitors give food, clothes, or medicines to the prisoner during *mulaqat*?

Yes, visitors can carry a few permissible items to give to the prisoner, but they cannot be transferred directly during *mulaqat* due to security concerns. They are usually handed over to the prison administration at the main gate of prison, and then given to the prisoner after they are inspected. Prisons with canteen facilities also permit visitors to deposit or transfer money into prisoners' account so they can use it to purchase items from the canteen.

32. Are prisoners allowed to make phone calls? Who bears the cost of these calls?

Yes, prisoners can make phone calls, but only in prisons that have the facility. This is usually called the Prison Inmate Calling System and it can be used to speak to two or three pre-registered numbers. This enables prisoners to talk to their family, relatives, friends or lawyers. Costs are usually borne by prisoners themselves. The duration and frequency of calls varies between prisons.

33. Are prisoners allowed to write letters? Who bears the cost?

Prisoners are permitted to write letters to their family, relatives, and friends from prison and also receive letters, photographs and documents. These may be subject to reasonable censorship. The letters may be checked by the officer-in-charge of the prison, and any offensive or coded content may be censored or the letter withheld. Some prisons provide writing material and postage stamps. The Superintendent can also decide the frequency of such communication as per the prison rules. Some prisons provide postcards free of cost, whereas in others, the prisoners must pay for the postage of letters.

34. Are prisoners allowed to contact their family members through video-conferencing?

Yes, where facilities are available, the officer-in-charge of prisons may grant a prisoner permission to contact their family members through video-conferencing, after a request is submitted to the officer-in-charge in this regard. Permission can also be sought from the court, if the prison has not agreed to the request. Once approved, one can follow up with the prison for procedure to seek visits through video-conferencing. Some prison management systems, like the *e-prisons suite*, provide the facility to book appointments online using their website.

35. Are prisoners allowed to meet their spouse if confined in other prisons?

Yes, officer-in-charge of prisons can permit visits between prisoners, but a prisoner must submit a request seeking it. A *mulaqat* (interview) may be permitted between spouses confined in the same prison or in different prisons in the same city.



36. Are prisoners allowed to meet their children?

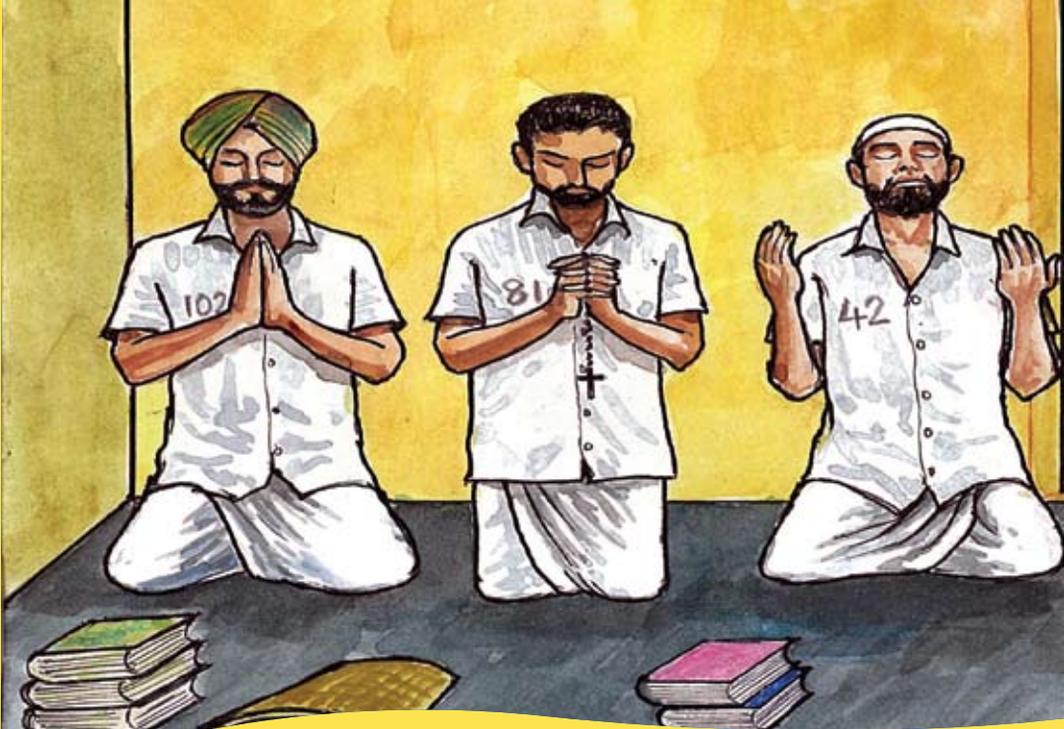
Yes, prisoners can meet their children. Some prisons allow prisoners to have physical meetings with their children by allowing them to meet in a room in the office area. Additionally, children below the age of six are permitted to stay with their mother in prison. Some states permit children to stay with their fathers as well. Where the child is in a shelter home, permission must be sought from the officer-in-charge of prison and officer-in-charge of the shelter home to ensure regular visits can be undertaken by prisoners with their children.

37. If prisoners' families are located distantly, what alternative methods are available to ensure contact with family?

In such situations, a prisoner may seek a transfer to a prison near their home. An application to this effect must be given to the officer-in-charge who will take a decision based on security, prisoner's well-being and administrative convenience. Another option is to use video-conferencing or telephone facilities to communicate with family members.

38. Can lawyers also visit their clients in prison? Is the procedure the same for their visits?

Yes, lawyers have a duty to visit their clients as and when required. Generally, there are fewer restrictions on lawyer visits, and some prisons provide separate spaces or rooms for these interactions. Lawyers may contact the officer-in-charge of the prison to schedule the date and time for their visit.



RECREATIONAL AND OTHER FACILITIES

39. Are prisoners allowed to read newspapers, books etc in prison?

A prisoner can keep books, subject to permission from the officer-in-charge of prisons. Prisoners can also read or borrow books and newspapers from the prison library.

40. Can prisoners listen to music or engage in other recreational activities?

Recreational facilities differ widely from prison to prison. Some prisons provide a centrally controlled common radio or television in the barracks to be used at specified timings. Some others permit prisoner's bands or theatre groups which prisoners can be a part of, depending on their interests and abilities. Some also allow prisoners to engage in sports such as football, cricket, volleyball etc. or play indoor board games such a carrom etc.

41. Are prisoners allowed to pursue educational courses?

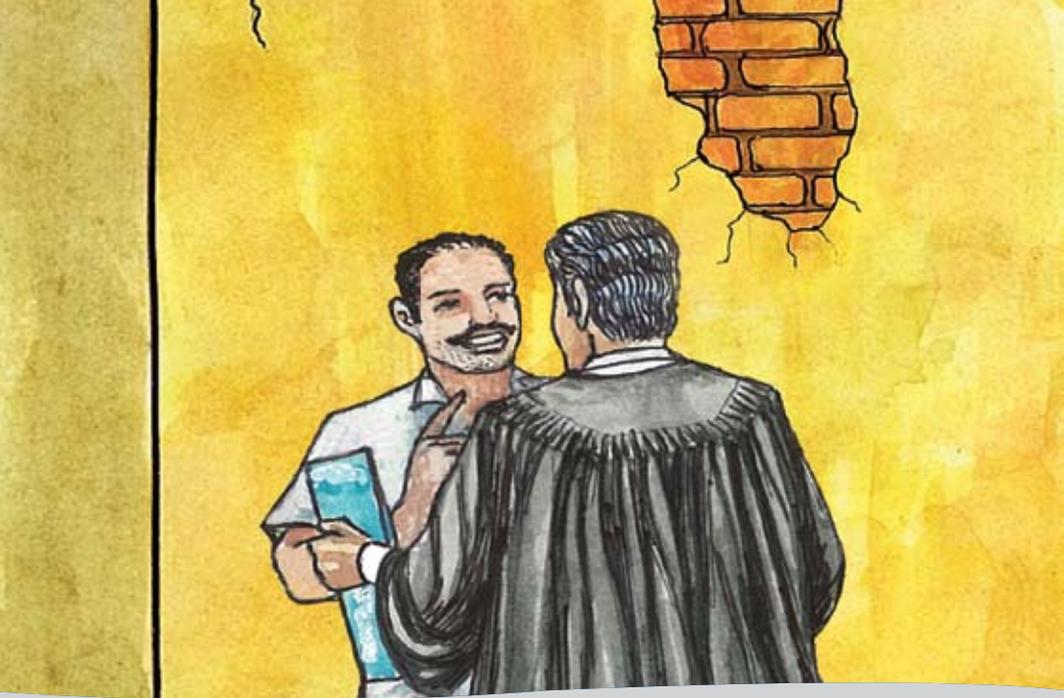
Yes, a prisoner can continue or begin their studies while in prison. They are also permitted to appear for any examination. Prisoners undergoing educational courses are permitted to receive books and writing material from their family or friends, and may also be provided books by the state or be permitted to purchase on their own. Some jails have special programmes under Indira Gandhi National Open University (IGNOU), adult literacy programmes and even Information Technology (IT) courses at computer centres. Prisoners must apply to the prison authorities to seek permission to pursue their studies.

42. Can prisoners open bank accounts while they are in prison?

Yes, prisoners are permitted to open bank accounts. Some states have opened bank accounts for all inmates. Bank accounts can be used to deposit money towards wages, or used by prisoners to buying items from canteens (where available).

43. Can prisoners vote while confined in prison?

Unsentenced Prisoners are not permitted to vote when confined in a prison, but may be permitted to contest elections.



ACCESS TO LEGAL REPRESENTATION

44. Do prisoners have a right to a lawyer?

Yes, every person is entitled to be represented by a lawyer of their choice. This right ensues immediately upon arrest. A lawyer is entitled to be present during interrogation, and can be instructed to file bail applications and prepare adequate defence by the prisoner. Lawyers are required to visit the client in prison, and inform them about the progress in their case and make preparations for their defence in consultation with the prisoner.

45. What if a prisoner cannot afford to engage a lawyer?

All prisoners are entitled to free state-sponsored legal aid services as per section 12(g) of the Legal Services Authorities Act 1987. The concerned legal services authority is responsible to provide a lawyer who will defend the prisoner free of cost at the time of production and during trial proceedings.

46. What is a legal services authority?

The Legal Services Authorities have been set up by the government at national, state, district and *taluka* levels to provide free legal assistance to all eligible persons, including persons in custody. They are responsible to ensure that each person has a lawyer when produced in court for the first time within 24 hours of the arrest. In case a prisoner does not have a lawyer at the time of their first appearance in court, it is mandatory that the magistrate appoint a legal aid lawyer to defend the prisoner.

Despite all these checks, if a prisoner is admitted to prison without a lawyer or if the appointed lawyer does not show up, the prisoner can contact the prison legal aid clinic or any prison officer. They can then take appropriate steps to file an application for legal aid.

47. How does a prisoner apply for a legal aid lawyer?

Prisoners can either approach paralegal volunteers or jail visiting lawyers who run the prison legal aid clinics. Alternatively, they can

contact the prison officer or welfare officer in charge of this duty to bring the issue to the notice of the legal services authority.

48. What services can be provided free of cost by legal aid providers?

Free legal services include (a) payment of court fee and all other process fees, (b) legal representation in court, (c) obtaining certified copies of orders and other documents, and (d) preparation of appeal, and paper book, including printing and translation of documents relating to legal proceedings.

49. Are legal aid lawyers supposed to be paid any fees?

No, prisoners are not supposed to pay legal aid lawyers. If a lawyer asks for money, the prisoner must bring this to the notice of the concerned legal services authority.

50. How does a prisoner get to know if a legal aid lawyer is appointed for him?

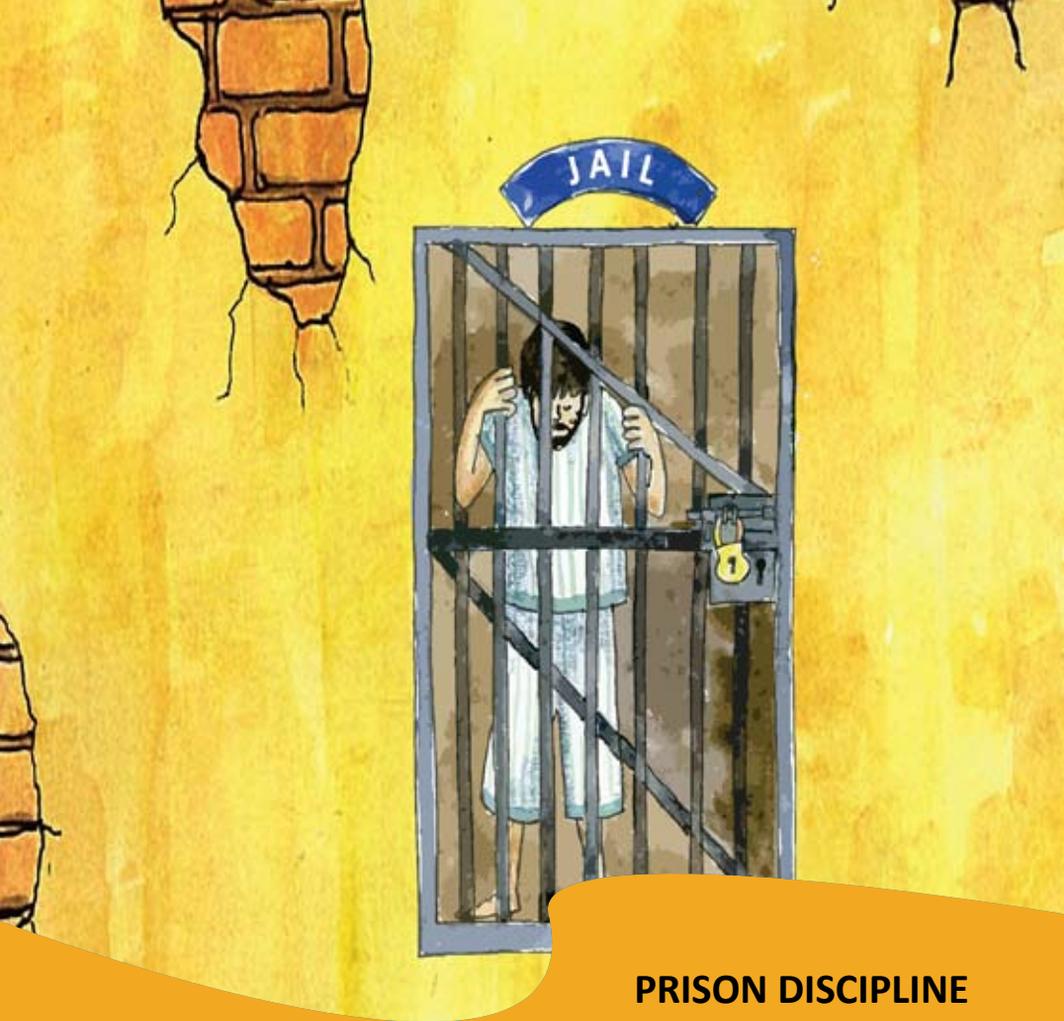
Upon the appointment of a lawyer, legal services authorities are required to send intimation letters to the prisoner via the prison administration or the paralegal volunteer or jail visiting lawyer informing them about this. The letter should contain the name of the lawyer as well as their contact details.

51. Can prisoners meet their lawyers to discuss their case details and make preparations for trial?

Yes, prisoners can meet their lawyer in prison to discuss their case, apply for bail, prepare for trial or for an appeal or review petition. Prisoners can also meet their lawyer when they are taken to court for their hearing. If a prisoner is being produced via video-conferencing, they can request the court in writing to enable them to meet their lawyer prior to the hearing.

52. What is a prison legal aid clinic?

As per the existing rules and regulations of the National Legal Services Authority, it is mandatory to have a legal aid clinic in each prison in India. These clinics are conducted by legal aid providers -- paralegal volunteers and jail visiting lawyers appointed by the competent legal aid authority. Paralegal volunteers can be either community or convict paralegals, or can be a combination of both. Prisoners can approach prison legal clinics for any legal assistance, even for their private civil matters.



PRISON DISCIPLINE

53. What laws or regulations govern prison offences and punishments?

Prison offences and punishments are defined in state prison manuals. All prisoners are entitled to a right against arbitrary prison punishment. This means that if they are accused of a disciplinary violation, prisoners are entitled to

- (i) precise information about the nature of violation of Prisons Act and Rules,
- (ii) be heard in defence,
- (iii) be informed about the decision of disciplinary proceedings, and
- (iv) appeal as provided in rules made under the Act.

The officer-in-charge of prison decides the punishment for prisoners in accordance with the facts and circumstances of the case.

54. What kinds of prison punishments can be awarded?

Prison punishments can be either be minor or major. Minor punishments include formal warning or loss of privileges etc. Major punishments include forfeiture of earned remission, transfer to another prison, stricter monitoring and security, recovery of cost for any damage that might have been resulted from the prisoner's actions, etc. However, no punishment or denial of privileges and amenities, or no transfer to other prisons with penal consequences should be imposed on prisoners without judicial appraisal. Prison offences and punishments are provided in the prison manuals of each state. In certain states, solitary confinement is also permitted as a form of prison punishment.

55. What is solitary confinement?

Solitary confinement is the confinement of prisoners for 22 hours or more per day without meaningful human contact. Though various prison manuals permit the officer-in-charge of prisons to award solitary confinement, according to various Supreme Court directives, it can only be awarded by a competent court.

56. Can prisoners be kept indefinitely under solitary confinement?

No, the Indian Penal Code 1860 prescribes that the period of solitary confinement cannot exceed 14 days, and that moreover, an interval of that duration must prevail between any two periods of solitary confinement. Solitary confinement of more than 30 days cannot be sanctioned without the approval of a judge of the Sessions Court. And in no case can the total period of solitary confinement awarded by a court exceed three months.

57. Is being in an isolation ward and solitary confinement the same thing?

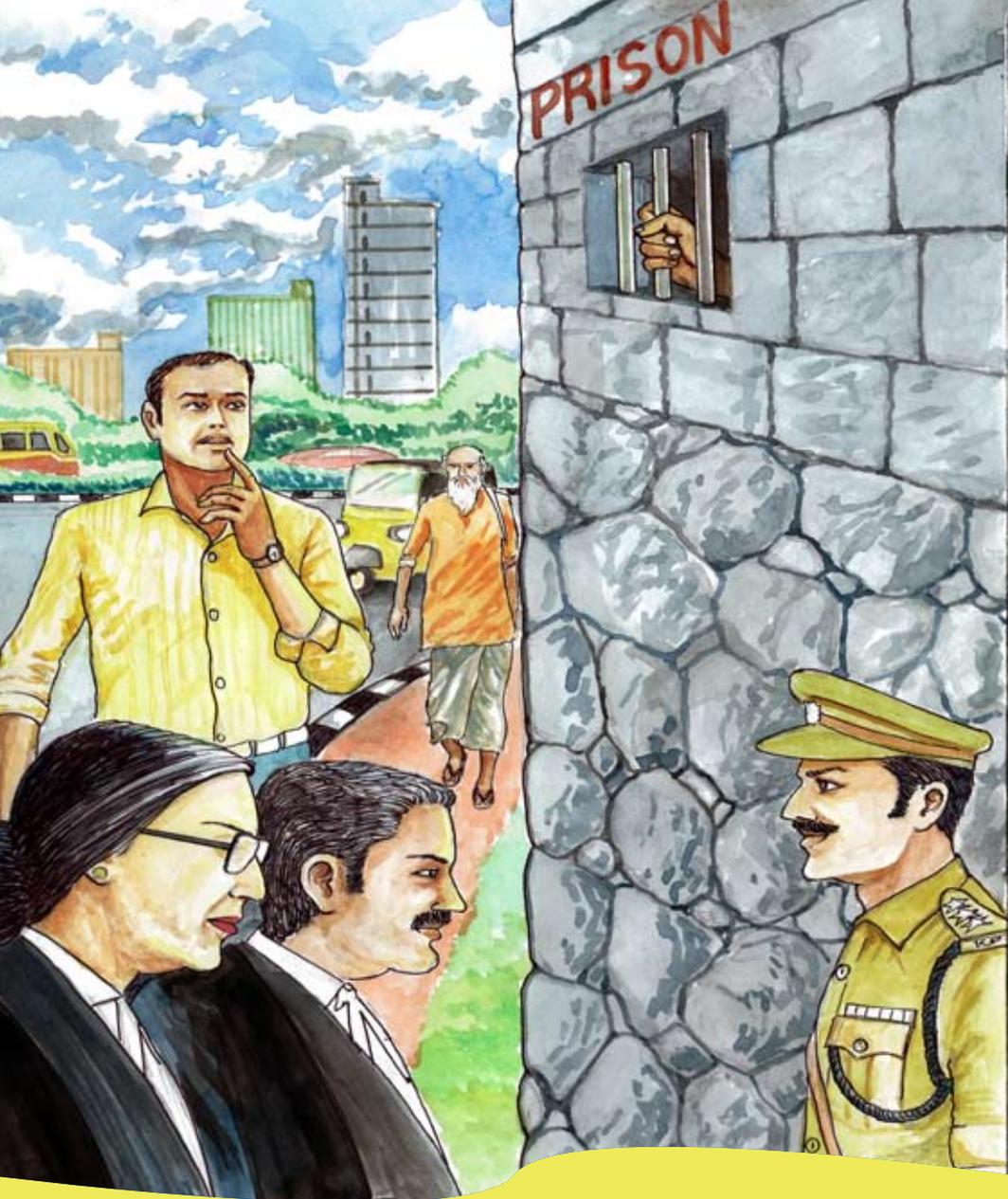
No, they are different. Confinement in an isolation ward entails keeping a prisoner in isolation from others due to security or other reasons. Such prisoners face no other restrictions that one associates with solitary confinement.

58. Can prisoners be subjected to whipping, fetters or chains?

No, it is illegal to subject any prisoner to punishments such as whipping, flogging or using fetter or chains. There are several directives by the Supreme Court of India which place a bar on their use. However, in most of the states, the prison rules have not been revised and continue to mention these punishments. A prisoner can challenge such punishments if meted out to him/her to by intimating his lawyer, making an application to the court, and inform members of the Board of Visitors for that prison.

59. Is the use of force permitted for maintaining discipline?

The use of force or weapons is permitted only under certain circumstances. For instance, if a prisoner is (i) escaping and the prison staff cannot otherwise stop the escape, (ii) engaged in any attempt to break open the outer gate or wall of the prison, or (iii) using violence against prison staff or other person which may result in death or serious injury. Firearms can be used only after a loud and clear warning is given to the prisoner that he is about to be fired upon. The prison staff must ensure that only minimum force is used to incapacitate the person for committing an intended offence.



GRIEVANCE REDRESSAL AND PRISON OVERSIGHT

60. Can a prisoner complain against any issue faced in prison?

Yes. Any prisoner can make complaints regarding ill-treatment by prison staff, bullying by inmates, about unattended medical, family, legal and legal aid problems, or about food and other living conditions to the appropriate authority.

61. What authorities can a prisoner complain to?

Prisoners can make complaints to any senior prison official of the prison to the Inspector General of Prisons, to the government, or to the judiciary. They can also complain to a prison visitor from the Board of Visitors mandated to monitor prisons or to their lawyer. They can also convey their grievances to the district and session judge or any other judicial officer, including the secretary of the district legal services authority or taluka legal services committee, who are statutorily obliged to visit prisons in their jurisdiction once a month.

62. What is a grievance redressal system?

The Model Prison Manual 2016 lays down that every prison must have an 'active' Grievance Redressal System (GRS) for prisoners to make complaints. It also recommends complaint boxes in convenient and centrally located places in the prison for prisoners to drop written petitions. The box is supposed to be locked, with the key only in the custody of the deputy superintendent. Similar boxes are also required to be installed by legal services authorities, and these keys are to be kept with the secretary, district legal services authority.

63. Who can inspect prisons?

It is a two-fold system for regular inspections of prisons and penal services. Its objective is to ensure that prisons are managed in accordance with existing laws, regulations, policies and procedures with a view to fulfil the objectives of penal and corrections services, and protect the rights of prisoners. Prison oversight mechanisms should include:

- (a) Internal or administrative inspections conducted by the state prison administration, and
- (b) External inspections conducted by a body independent of the prison administration, which may include competent international or regional bodies.

64. Which external bodies can conduct prison inspections?

Several bodies are mandated to visit prisons regularly; these include judicial officers (in particular, district judges and higher judiciary of the Supreme Court), the Board of Visitors (BOVs) comprising ex-officio and non-official visitors (NOVs), the Under-Trial Review Committee (UTRC), the National and State Legal Services Authorities (NALSA/SLSA), and the National and State Human Rights Commissions.

65. Who are members of the Board of Visitors (BOV)?

The Model Prison Manual 2016 points to the following composition of Board of Visitors, which may vary from state to state as per prison rules:

The Official Members are the District and Sessions Court Judge, or the Sub-divisional Judicial Magistrate, government officers such as the District Magistrate/District Collector or Sub-Divisional Officer; District Superintendent of Police; the Chief Medical Officer of the Health Department or Sub-Divisional Medical Officer at Sub-Divisional level; the Executive Engineer, Public Works Department or Assistant Engineer; District Education Officer; District Social Welfare Officer; District Employment Officer; District Agricultural Officer; and the District Industrial Officer.

The Non-Official Members shall consist of three members of the state Legislative Assembly of which one shall be a woman; a nominee of the State Human Rights Commission; and two social workers of the district/sub-division, one of whom shall be a woman with an interest in the administration of prisons and welfare of prisoners.

NOVs could also be drawn from other fields such as counselling, law and medicine. The number of NOVs should be appointed are different for Central, District and sub-jails and they have a fixed tenure.

66. What are the BOV's functions?

The Board of Visitors are mandated to oversee prison conditions, visit prisons regularly, address prisoners' grievances and make recommendations to improve prison conditions to concerned authorities.

The Board also inspects prison facilities (barracks, work-sheds, other buildings), the quantity and quality of prison diet, the condition of prison kitchens and hospitals, the water supply, sanitary arrangements, availability of medicine, hospital management, medical treatment, vocational training, literacy and library facilities, security arrangements, and prison punishment. It looks into individual and collective prisoner grievances, petitions and redressal, assesses prison records, checks whether legal procedures are being followed through periodic visits to jails and gives recommendations for correctional work. Their work brings transparency and openness into prisons.

67. What is an Under-Trial Review Committee (UTRC)?

The Under-Trial Review Committee (UTRC) has been formed in every district under the Supreme Court's directions issued a petition in April 2015 in *Re-Inhuman Conditions in 1382 Prisons*. UTRCs are mandated to periodically review cases of all prisoners to detect cases of unnecessary detention and recommend appropriate action for their release. They must convene once every quarter.

68. Who are the UTRC members?

The UTRC is a five-member Committee in every district comprising the District & Sessions Judge (Chairperson), District Magistrate, Superintendent of Police, Officer-in-Charge of Prisons and the Secretary, District Legal Services Authority.

69. What category of cases do the UTRCs review?

The following categories of prisoners are eligible for their case to be reviewed by the UTRC:

- (i) Undertrials eligible under Section 436A of the Code of Criminal Procedure 1973 (CrPC);
- (ii) Undertrials eligible under Section 436 of the CrPC;
- (iii) Undertrials who have been released on bail by the Court but have not been able to furnish sureties;
- (iv) Undertrials eligible to be released on bail under Section 167(2)(a)(i)&(ii) of the CrPC
 - a. where investigation has not been completed in 90 days;
 - b. where investigation has not been completed in 60 days;
 - c. where investigation has not been completed in 180 days [S.167 read with Section 36A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (where persons accused of section 19 or section 24 or section 27A or for offences involving commercial quantity)];

- (v) Undertrials detained on apprehension of commission of offence under sections 107, 108, 109 and 151 CrPC;
- (vi) Undertrials who may be covered under section 3 of the Probation of Offenders Act, namely accused of offence under sections 379, 380, 381, 404, 420 of the Indian Penal Code 1860 (IPC) or alleged to be an offence with not more than 2 years imprisonment;
- (vii) Undertrials accused of compoundable offences;
- (viii) Undertrials imprisoned for offences which carry a maximum punishment of two years should be considered for release under the Probation of Offenders Act 1958;
- (ix) Undertrial women offenders;
- (x) Undertrials who are sick or infirm and require specialised medical treatment can be considered for bail under section 437 CrPC;
- (xi) Undertrials who are mentally ill;
- (xii) First-time offenders, between the ages 19 and 21, detained for offences punishable with less than seven years and have served at least 1/4th of the maximum sentence must be considered for release under the Probation of Offenders Act 1958;
- (xiii) Undertrials whose cases are triable by magistrate, if the trial of a person accused of non-bailable offence has not been concluded within a period of 60 days from the first date fixed for taking evidence (Section 437(6) CrPC);
- (xiv) Convicts who have undergone their sentence or are entitled to release because of remission granted to them.

70. Does judiciary have a responsibility to monitor prisons?

District Judges are key overseers of the judiciary who are mandated to inspect jails regularly and serve as an important functionary for inter-departmental supervision. They are part of committees that review and report on prison health, illegal detentions, and prisoner grievances, and that inquire into cases of injuries, deaths or punishments inside prison.

Prisoners remanded to prisons are under judicial custody and since courts are their key custodians, they are mandated to ensure the statutory well-being of prisoners. They can also look into the implementation of directions that lay down standards for prison administration, treatment of prisoners especially vulnerable groups and access to legal processes.



PAROLE, FURLOUGH, REMISSION AND PREMATURE RELEASE

71. What is parole?

Parole is the temporary release of a prisoner for a short period to enable them to maintain social relations with their families and the community to fulfil their familial and social obligations. The period spent by a prisoner outside jail while on parole is not considered to be a part of their sentence, and they have to spend extra time in prison for this period.

72. What is furlough?

Furlough is the release of a prisoner for a short period of time to which a prisoner is entitled after the completion of a specified number of years in prison, and if he has displayed good conduct and discipline. This is purely an incentive for good conduct in prisons. The period spent by the prisoner outside the prison on furlough is counted towards his sentence.

73. Can prisoners seek temporary release in cases of family emergency?

A short temporary leave or emergency parole for family emergencies can be granted by the head of the prison department. Generally, leave can be requested for following reasons:

- (i) A member of the prisoner's family has died or is seriously ill or the prisoner themselves is seriously ill;

- (ii) The prisoner or a close relative is getting married;
- (iii) It is necessary for agricultural operations such as ploughing, sowing or harvesting;
- (iv) If there is any other sufficient cause.

74. What is the procedure for applying for temporary release?

A prisoner wishing to avail temporary leave must submit their application to the officer-in-charge of prison. The officer-in-charge will then examine the case with regard to eligibility and forward the application to the competent authority, who will in turn forward the application to the Superintendent of Police (SP) of the district through the district magistrate. The SP should submit his report to the competent authority via the district magistrate; in case he disagrees with the proposed release reasons must be mentioned in his response. The competent authority will then take a decision on the application.

The prisoner should be kept informed of all decisions regarding his application, including grounds of rejection, if that is the case. To avail the leave, a prisoner may be asked to agree to certain conditions, such as including a cash security or a personal bond, agreeing to reside at a designated place, maintaining good behaviour during the period of release, and agreeing to return to prison on expiry of the release period.

75. What is remission?

Remission is a system in which points or days are given to prisoners for good behaviour and adherence to prison rules. When these points are earned, a prisoner's sentence is remitted or shortened -- thus reducing the actual period of imprisonment. For every month of good behaviour, a prisoner's sentence can be reduced by a certain number of days on account of the points/days added to his remission record. A maximum of one-third of one's sentence can be earned through remission.

76. What are the different types of remission?

Remission can be of three types:

- a) Remission under provisions of the Prisons Act 1984 or respective Prisons Act of the state and rules made thereunder.
- b) Remission in sentence granted by the appropriate government under section 432 CrPC.
- c) Remission by the Head of the State under Article 72 or 161 of the Constitution of India 1950.

77. What kind of remission can prison authorities grant?

Remission by prison authorities can be of the following types:

- a) Ordinary Remission: It can be granted by the superintendent of prison or any officer nominated by him on his behalf. Eligibilities and scales for its grant are provided in state prison manuals. Generally, prisoners with substantive sentences of two months or more are eligible for grant of ordinary remission. Scales can go up to three days per calendar month for good conduct, three days for performance of work, eight days for those working as night watchmen, 30 annual days for not committing a prison offence for a full year, among others.

- b) **Special Remission:** It can be granted by the head of the prison department on the recommendation of the superintendent of prison. Eligibilities and scales for its grants are provided in the state prison manuals. Generally, meritorious work by prisoners is rewarded by grant of special remission. This can include tasks such as saving the life of a government employee or prison visitor or prisoner, assisting in preventing the escape of prisoners, assisting prison officials in handling emergencies like fire, riots and strikes, outstanding contribution in cultural activities or education or good work in industry, agriculture or any other development programme or in vocational training. Special remission usually does not exceed 30 days in a calendar year.

78. What is premature release?

Premature release is the release of prisoner prior to the completion of their actual term of imprisonment. This can be of the following types:

- a) By way of commutation of sentence of life convict or other convicts under section 433 of the CrPC.
- b) By way of remitting term sentence of prisoner under section 432 of the CrPC.
- c) By order of the head of the state passed exercising power under Article 72 or 161 of the Indian constitution.
- d) Release under any special law enacted by the state providing for release on probation of good conduct prisoners after they served a part of their sentence.

79. What is the process for granting premature release?

Each state has a committee to recommend the premature release of convicts in appropriate cases. The committees are known by various names, such as the Sentence Review Boards, State Level Committees, among others. The composition of such committees differs across states. Generally, they includes the head of the prison department, a senior police officer, the principal secretary in-charge of prisons and the Chief Probation Officer. The committee is required to meet regularly, and consider cases of prisoners that are eligible for release.

Every officer-in-charge of prison has to initiate the process of premature release for eligible cases and prepare comprehensive notes for each such prisoner. The note includes his family and societal background, details of their offence and the circumstances under which the offence was committed. The note also reflects upon the conduct and behaviour of the prisoner while in prison, as well as his physical and mental health.

80. Do all prisoners have a right to premature release?

No, all prisoners do not have a right to be released prematurely. However, upon the completion a specified period of imprisonment such as 14 or 20 years (in case of lifers), or a certain proportion of one's sentence, as per the rules in that state, prisoners have the right to be considered for premature release.



EXECUTION OF SENTENCES, TRANSFERS AND RELEASE

81. How is a sentence of imprisonment calculated?

The duration of sentences is calculated in calendar years, months and days. Life imprisonment means imprisonment for one's entire life. While calculating the date of expiry of one's sentence, the day on which the sentence was passed and the day of release are both included as days of imprisonment. For example, a prisoner sentenced on 1 January to one month's imprisonment will be released on 31 January and not 1 February. Under no circumstances are prisoners supposed to be detained in prison beyond the period indicated in the court warrant.

82. What are concurrent and consecutive sentences?

Prisoners convicted for multiple offences can be ordered by the court to either serve the sentences concurrently or consecutively. In the former, all sentences run simultaneously whereas in the latter, sentences are served as an aggregate. For example, a prisoner sentenced to five and seven years of sentence will be imprisoned for 7 years if sentence runs concurrently, and 12 years if

it runs consecutively. Imprisonment in default of payment of fines generally cannot run concurrently.

83. When can a prisoner be transferred to another prison?

Prisoners may be transferred from one prison to another for various reasons; these may include:

- a) medical reasons
- b) for attendance in court for the purpose of standing trial or giving evidence
- c) to be closer to their home district
- d) on grounds of security, expediency, etc.
- e) on humanitarian grounds, in the interest of their rehabilitation

84. What happens upon release of a prisoner from prison?

On the day of their release, a prisoner's identity is verified against details recorded in the admission register or the prison management system. They are then given back any valuable property, like cash or jewellery, that were in their possession when they were admitted to prison. Relevant documents such as pass books, etc., too are provided. Wages earned during imprisonment are generally remitted to prisoners' bank accounts, but if not, the entire amount is handed over to the prisoner at the time of their release.

Upon completion of these procedures, the superintendent or officer-in-charge provides the final approval for release. The prisoner's name is recorded in the release register and marked as 'out' in the prison management software. The prisoner must leave their signature and left thumb impression in the register, upon which they are released. Convicts are also provided with a release certificate upon release.

85. Who can a prisoner complain to if he is not released upon completion of his sentence?

Prisoners should immediately inform the prison officers, their lawyers or legal aid authorities and their family members if they have not been released upon the completion of their sentences. A prisoner can also send a petition informing superintendent and seeking reasons for the delay in their release. One can also raise the issue with any visiting judicial officers, or write to the members of the Under-Trial Review Committee, or send a letter to the Chief Justice of the High Court.



PRISONERS WITH SPECIAL NEEDS

86. Which groups are “vulnerable” in prison?

Certain groups are in a particularly vulnerable position in prisons, and therefore, need additional care and protection. Some people may experience greater suffering while incarcerated due to inadequate facilities and lack of specialist care available to address their special needs. Such groups may suffer from humiliation, physical and psychological abuse, and violence due to their ethnicity, nationality, disability, gender and sexual orientation. These vulnerable groups include women, children of prisoners, foreign national prisoners (FNPs), death-row prisoners, young offenders, the physically or mentally differently abled, or old and infirm prisoners.

87. What special attention can be provided to each vulnerable group need?

a) Women

- a. Women prisoners must be housed separately and should be taken care of only by women staff.

- b. At the time of admission to prison, a woman prisoner must be checked by a female doctor only and searched by female staff. If she is found pregnant at the time of admission, a proper gynaecological examination must be conducted, and adequate prenatal and postnatal care provided thereafter. She must also be given a special diet.
- c. Sanitation and hygiene are important concerns for women's health and they should be provided adequate privacy for self-hygiene in prison.

b) Children of Prisoners

- a. The birth of a child in prison must be registered in the local birth registration office without mentioning the fact that the birth took place in prison.
- b. A child can stay in prison with their mother -- or in rare cases, with their fathers -- up to the age of six after which they can be sent to their family, or to a shelter home if they have no other place to go to.
- c. Children in prison are to be provided with clothing suited to the local climate. They should be given a diet keeping in view the calorific requirements for their age, and be vaccinated for various diseases including polio.
- d. Children of women prisoners must be given proper education and recreational opportunities. While their mothers work in prison, the children must be kept in crèches/nursery schools under the charge of a matron or female warden.

c) Young Offenders

- a. Young offenders aged between 18 and 21 should be kept separately and not in association with other prisoners.
- b. Any person under the age of 18 years cannot be kept in prison. If a prisoner appears or claims to be younger than 18, their case should be immediately referred to the local Child Welfare Committee after intimation to the legal services authority and the concerned court.
- c. They should be provided with a balanced diet that is required for their growth.
- d. Educational needs of young offenders must be adequately met with special emphasis on physical and health education, social and moral education, education, vocational education, arts and handicrafts education.

d) Foreign National Prisoners

- a. Immediately after admission to prison, the Superintendent must inform the concerned embassies through proper channels about the confinement of their citizen.
- b. FNPs must be given reasonable facilities to communicate with their consulate officials as soon as they enter prison. Their communication should be sent to their consulates without delay (subject to permissible censorship).
- c. They may also be allowed to buy postage stamps to write letters to family, relatives or friends in foreign countries. If they do not have any cash deposited in prison, stamps are to be supplied by the prison.
- d. FNPs may be permitted to use video-conferencing and email facilities, subject to security regulations, to contact

their families.

- e. The process of nationality verification must start immediately upon admission of the FNP in prison.

e) Differently abled and mentally ill prisoners

- a. Differently abled prisoners have an equal right to access facilities, programs and services.
- b. Hearing-impaired prisoners should be given sign language interpreters during disciplinary hearings, classification hearings, educational and vocational programs.
- c. Mentally ill prisoners should be provided proper treatment, and their cases must be reviewed periodically to avoid prolonged or indefinite detention.

f) Death-row prisoners

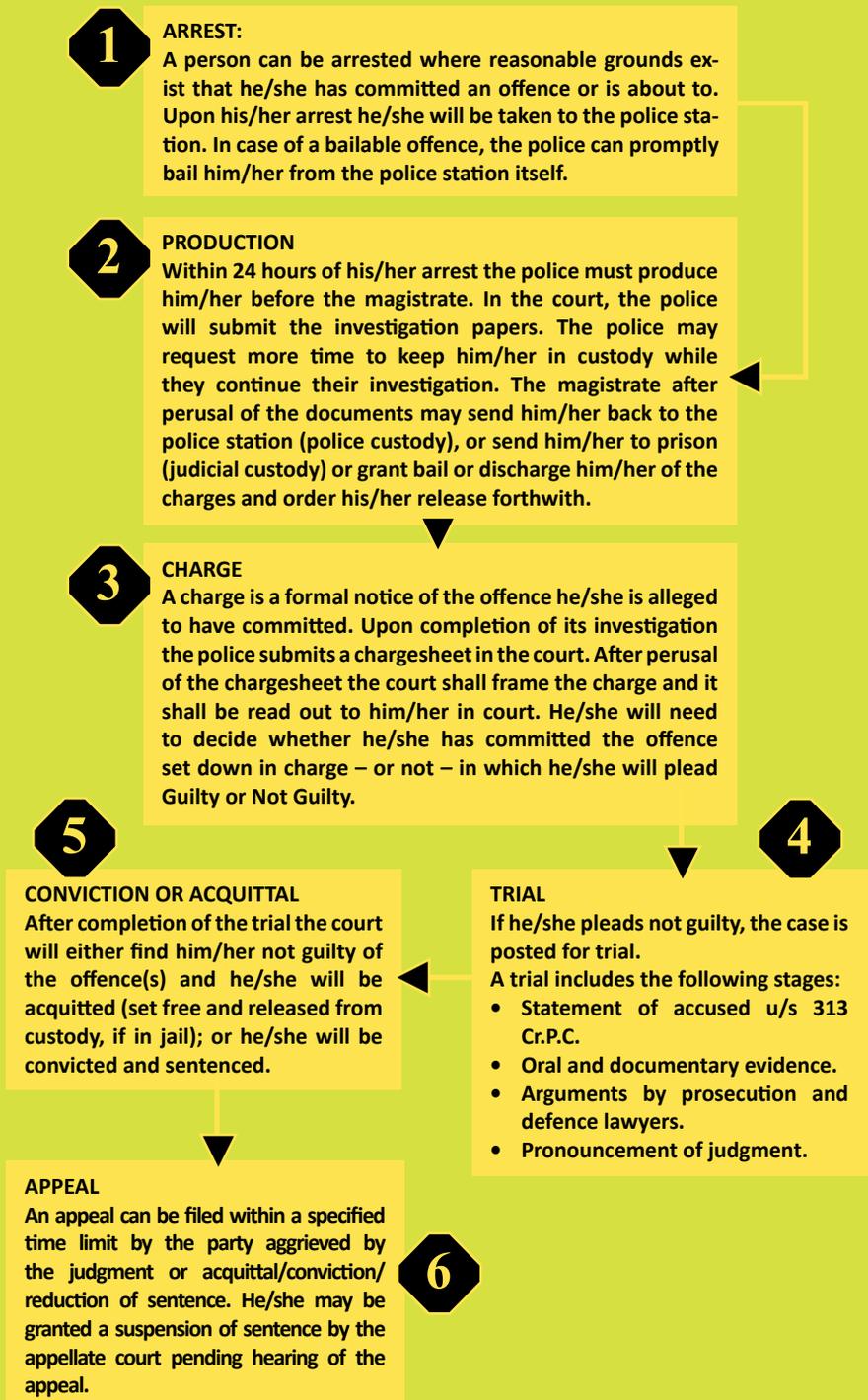
- a. They must be granted interviews with their family, relatives, friends, or lawyers once a week or more often, if necessary, in the presence of an official.
- b. They may be visited by a priest of the faith they follow.
- c. They may be allowed religious books, pictures and emblems, newspapers, books and stationery items.
- d. They must be confined in a separate cell and be placed under the charge of a guard day and night.

STAGES IN A CRIMINAL TRIAL

88. What is a trial?

A trial is the process in which facts and evidence in a case are examined; arguments are advanced by the prosecution and defence; and based on these a judge makes a decision.

89. What are the various stages of a trial?



90. Who is responsible for the production of prisoners before courts on the date of hearing of their cases?

Every prisoner must appear in court on the date of their hearing. For production hearings -- that is, prior to the filing of the chargesheet -- prisoners are also permitted to appear in court via

video-conferencing facilities in prisons. However, where physical production has been requested or for presence in court hearings, the police are responsible for escorting prisoners to and from courts. The prison administration is required to requisition for an adequate number of police guards to escort prisoners to court.

91. What can a prisoner do if they are not taken to court on their hearing due to lack of escorts or other administrative reasons? What if they have been taken to court but are kept in the court lock up and not produced physically before a magistrate? What about cases when they are produced through video conferencing but are not given the opportunity to interact with the judicial officer?

Under such circumstances, the prisoner must immediately file a petition through their lawyer or members of the prison legal aid clinic informing the court of the instances of non-production and request to be physically produced before the court at the earliest.

92. What are cognizable and non-cognizable offences?

Cognizable offence means an offence in which a police officer may arrest without warrant. They are usually offences which are serious in nature such as murder, rape, kidnapping etc.

Non-cognizable offence means an offence in which a police officer without any warrant has no authority to arrest. They are usually not very serious in nature such as assault, cheating, mischief etc. In case of non-cognizable offences it is mandatory for the police officer to obtain permission from the Magistrate to start the investigation.

93. What are bailable and non-bailable offences?

Offences are classified as bailable or non-bailable under the CrPC. The former consists of offences that are less severe in nature than the latter. An accused can be granted bail even if he is charged with a non-bailable offence, but on the court's discretion, whereas in bailable offences, an accused has a right to be released on surety or personal bond.

94. What is bail? What are sureties and bonds?

The temporary release of a prisoner awaiting trial is called bail. The release may be conditional or unconditional. Before any person is released on bail or released on their own bond, a bond for such sum of money as the court considers sufficient shall be executed by such person. The person is then released on bail by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the Court. A surety is thus a promise to fulfil an undertaking or a promise to answer for the debt or default of another. A personal bond is a formal written agreement in which a person undertakes to perform/abstain from certain acts. Failure to do so may attract monetary penalty.

95. What happens to prisoners who are unable to pay bail amount/ provide surety?

In bailable cases, if the accused is unable to pay bail bonds or provide surety and has spent seven days in detention, they must be declared indigent and immediately released on a personal bond. In cases of non-bailable offences, the lawyer can request the court to reduce the bail amount. If the accused does not have a lawyer, they can approach the prison legal services clinic for assistance. All such cases are also eligible for review by the Under-Trial Review Committees (UTRCs).

96. What happens if a prisoner does not abide by the conditions of bail?

Failing to appear for trial in court without furnishing reasons is considered as a 'bail jump'. If a person breaks any condition of their release, they will be re-arrested and the bail amount maybe recovered from them or their sureties.

97. Can bail be granted as a matter of a right under any circumstances?

Yes, a prisoner is entitled for statutory bail under certain situations. As per the CrPC,

- a) a person must be released on bail in bailable cases by either the police officer or magistrate (S 436 CrPC)
- b) a person must be released on bail if a charge-sheet has not been filed within the stipulated period in which police is expected to complete its investigation for different offences (S 167(2) CrPC)
- c) a person must be released on bail if he has served the maximum period of sentence that he can be awarded upon conviction (S 436A CrPC)
- d) A person can be released on bail if he has served one-half of the maximum period of sentence that he can be awarded upon conviction (S 436A CrPC)

98. What happens after a sentence is pronounced?

If the court finds a prisoner guilty, the judge will convict them and award punishment. The punishment could be in the form of 'admonition' or 'probation of good conduct' or a fine, and/or imprisonment or death (to be confirmed by the High Court). When a prisoner is sentenced to a specific term of imprisonment, he is termed as a convict. If the court finds a prisoner not guilty, he is immediately released and bail bonds and sureties are discharged.

99. How can one appeal against a sentence?

All persons have the right to appeal within a specified period after the pronouncement of a sentence. However, there is no provision to appeal convictions based on applications of the accused who plead guilty before the court. A person can be temporarily released pending the decision on the appeal, which is termed as 'suspension of sentence', or more commonly as bail.

100. How can a prisoner file an appeal if they cannot afford a lawyer?

If a prisoner or their family cannot afford to hire a lawyer to file an appeal, an application can be sent to the High Court Legal Services Committee or the Supreme Court Legal Services Committee directly or through the prison legal aid clinic for the appointment of a lawyer and the filing of an appeal.

101. How can a prisoner or their family track status of their trial or appeal while confined?

In addition to asking their lawyer for regular updates on the status of the case, any person can track the status of any trial or appeal case by accessing the e-courts website (www.ecourts.gov.in/ecourts_home/). Any cases pending in district court, High Court or the Supreme Court can easily be tracked in this portal. Assistance can also be sought from legal aid authorities, prison staff, paralegal volunteers, or others to access these websites. One may also visit the front office of the legal services institution for the concerned court to seek an update on their case.

RIGHTS OF PRISONERS

Prisoners have the right to all fundamental rights guaranteed by the Constitution of India, except those which are curtailed due to confinement. The rights and duties provided below are not exhaustive.

Right to Human Dignity:

- Right to integrity of the body and of the mind and to be treated with basic human dignity.
- Right against torture or to cruel, inhuman or degrading treatment or punishment or any form of abuse or repression.
- Right to enjoy Fundamental Rights subject to reasonable restrictions established by law.
- Right against use of restraints such as chains and fetters.
- Right to be medically examined at the time of admission.
- Right to protection against unreasonable discrimination.
- Right to take part in cultural activities and education aimed at the full development of the human personality.

Right to Basic Minimum Needs:

- Right to be informed of the amenities and privileges of prisoners admissible under the law.
- Right to access to adequate diet, health care, access to clean and adequate drinking water.
- Right to access to clean and hygienic conditions of living accommodation, sanitation and personal hygiene.
- Right to access to adequate clothing, bedding and other basic amenities.
- Right to air grievances.
- Right of every convict to be paid equitable wages for the work done in prison as per the prescribed rate and rules.
- Right to pursue one's religious faith subject to such reasonable limits with regard to the security of prison or safety of persons.
- Right of a convict to be considered for parole and furlough.

Right of Communication:

- Right to communication with the outside world: right to periodic interviews with family, friends and lawyers.
- Right to inform family or friend, about his/her imprisonment or transfer to another prison or about any serious illness or injury.
- Right of foreign nationals to communicate with embassy/ consulate/ diplomatic missions to receive full information about their detention, legal assistance and repatriation.
- Right to receive information about the outside world through prison libraries; access to magazines, newspapers, books, journals, and periodicals.

Rights of Women Inmates and Children in Prison:

- Right to be lodged completely secluded from male prisoners.
- Right of women inmates to keep their children with them in prison till they attain the age of six years.
- Right to be supervised and searched only by female staff.
- Right to periodic gynaecological examination of pregnant female prisoners in the district government hospital.
- Right to access to basic minimum facilities for child delivery and pre-natal and post-natal care within prisons.
- Right not to record in the birth certificate that the child was born in prison.
- Right of children to food, shelter, medical care, clothing, education and recreational facilities.
- Right of children to receive timely vaccination and be regularly examined by lady Medical Officer.

- Right of children to have a crèche and a nursery attached to the prison.

DUTIES OF PRISONERS

- Comply with prison rules and obey all laws and instructions issued by competent prison authorities.
- Assist prison officials in the performance of their official duties in maintaining discipline and good order.
- Lead a disciplined life inside the prison and maintain the prescribed standards of cleanliness and hygiene.
- Report any unpleasant or unwanted incident or activity inside prison to the jail authorities.
- Use the grievance redressal mechanisms and encourage others too, but refrain from making any false complaints or conniving in forming any agitation/ disruption within the prison.
- Return to jail immediately after the completion of parole or furlough.
- Not bring any prohibited item inside prison.
- Do not tamper with prison locks, doors and windows or any prison equipment negligently or wilfully and use government property with care.
- Preserve and promote congenial correctional environment in the prison.
- Convicts to perform prison labour duties dutifully as prescribed.
- Respect the dignity and the right to life of every inmate, prison staff and others.
- Abstain from hurting religious feelings, beliefs and faiths of other persons.

CHRI PROGRAMMES

CHRI believes that the Commonwealth and its member countries must be held to high standards and functional mechanisms for accountability and participation. This is essential for human rights, transparent democracies and Sustainable Development Goals (SDGs). CHRI specifically works on strategic initiatives and advocacy on human rights, Access to Justice and Access to Information. It focuses on research, publications, workshops, analysis, mobilisation, dissemination and advocacy and informs the following principal programmes:

1. Access to Justice (ATJ)

* **Police Reforms:** In too many countries the police are seen as an oppressive instrument of state rather than as protectors of citizens' rights, leading to widespread rights violations and denial of justice. CHRI promotes systemic reform so that the police act as upholders of the rule of law rather than as enforcers of a regime. CHRI's programme aims at mobilising public support for police reforms and works to strengthen civil society engagement on the issues. In East Africa and Ghana, CHRI examines police accountability and political interference.

* We are preparing to add a portfolio on anti-discrimination on the basis of colour, appearance and gender.

* **Prison Reforms:** CHRI's work in prisons looks at increasing transparency of a traditionally closed system and exposing malpractices. Apart from highlighting failures of the legal system that result in overcrowding and unacceptably long pre-trial detention and prison overstay, we engage in interventions and advocacy for legal aid and policy changes to revive prison oversight systems. Attention to these areas can bring improvements to the administration of prisons and conditions of justice.

2. Access to Information

CHRI is acknowledged as a key organisation working on the promotion of Access to Information. It encourages countries to pass and implement effective Right to Information laws. It routinely assists in the development of legislation and has been particularly successful in promoting Right to Information laws and practices in India, Sri Lanka, Afghanistan, Bangladesh, Ghana, and more recently, Kenya. In Ghana, CHRI is the Secretariat for the RTI civil society coalition. We regularly critique new legislation and intervene to bring best practices into governments and civil society knowledge both at a time when laws are being drafted and when they are first being implemented. We have experience of working in hostile environments as well as culturally varied jurisdictions; these enable us to bring valuable insights into countries seeking to evolve new laws on right to information. In Ghana, for instance, it has been promoting knowledge about the value of Access to Information and to campaign for the introduction of an effective law.

* South Asia Media Defender's Network (SAMDEN)

CHRI has developed a regional network of media professionals to address the issue of increasing attacks on media workers and pressure on freedom of speech and expression in South Asia, especially in rural areas. This network, the South Asia Media Defenders Network (SAMDEN) recognises that such freedoms are indivisible and know no political boundaries. Anchored by a core group of media professionals who have experienced discrimination and intimidation, SAMDEN is developing an interactive website platform to highlight pressures on media, issues of shrinking media space and press freedom. It is also working to mobilise media so that strength grows through collaboration and numbers. A key area of synergy lies in linking SAMDEN with the Right to Information movements and activists.

3. International Advocacy and Programming

CHRI monitors the compliance of Commonwealth member states with human rights obligations and advocates around human rights exigencies where such obligations are breached. CHRI strategically engages with regional and international bodies including the Commonwealth Secretariat, Ministerial Action Group, the UN and the African Commission for Human and People's Rights. Ongoing strategic initiatives include advocating for and monitoring the Commonwealth reform, reviewing promised by Commonwealth members at the UN Human Rights Council, and the Universal Periodic Review. We advocate for the protection of human rights defenders and civil society spaces and monitor the performance of National Human Rights Institutions in the Commonwealth while pressing for their strengthening.

PRISON



Prisons are closed spaces. Very little information is available on the daily lives and routines of prisoners. Additionally, very few people are interested in learning about the details of prison life unless they find themselves in one. This may mean that for many, questions they have on prisons, sparked either by curiosity or necessity, are often left unanswered. This book contains answers to 101 frequently asked questions on prisons and prisoners' lives.

Design/Layout: Chenthil (+91 75105 82104)

Illustrations: Anil Ooruttambalam



Commonwealth Human Rights Initiative

55A, Third Floor, Siddharth Chambers, Kalu Sarai
New Delhi 110 017, India

Tel: +91 11 4318 0200; Fax: +91 11 2686 4688

E-mail: info@humanrightsinitiative.org