

## **RIGHTS OF PRISONERS**

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### **ABSTRACT**

"Prisoner" is a legal term for a person who is imprisoned. Prisoners are a neglected group of people. Prisoner in many third world and developing countries are neglected and denied their basic human rights. It is accepted that these people have committed crimes and other offences and hence deserve to be in prison but they are still human beings and deserve certain basic rights such as right to food, water and protection from violence in prison. In many cases, these rights are overlooked or forgotten and prisoners live in highly deplorable conditions. Human Rights are the inalienable rights to which every human being is entitled to as a part of the human society. It enables human beings to live a dignified and respectful life and provides equal rights, freedoms and justice to all. The aim of this paper is to look at the various basic human rights to which a prisoner is entitled to, within the purview of the rules and regulations of the law and the prison and to discuss the various problems faced by the prisons in our country, today.

**Keywords: Dignity, Human Rights, Prison, Prisoner, Punishment, Violence.**

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## **RIGHTS OF PRISONERS**

It is a common perception that a person convicted of any crime loses all his rights. Although going to prison involves restriction of one's rights, a prisoner, irrespective of the crime he or she has committed, deserves certain basic rights as a human being. Over the years, 'rights of prisoners' are being taken more seriously consequent to the involvement of Governments, NGOs and the public. From being treated in a barbaric manner with minimum or no rights, today, there are organisations working tirelessly for the recognition of rights of prisoners and even the governments of different countries have come up with laws to protect these rights.

There is a broad agreement now that prisoners must be allowed to live with dignity and must be granted certain basic rights such as protection from cruel and harsh punishments, torture, sexual harassment and mental and medical health care. Every human being is entitled to some inalienable rights and these cannot be taken away merely because of incarceration.

Rights of Prisoners came into focus recently when their plight and the deplorable conditions that they live in, forced the Supreme Court and High Courts to comment on the pitiable state of prisoners in their judgements.

In a number of judgements on prison administration, the Supreme Court has laid down three broad principles:

- (i) A person in prison does not become a non-person.
- (ii) A person in prison is entitled to all human rights within the limitations of imprisonment.
- (iii) There is no justification in aggravating the suffering already inherent in the process of incarceration.”<sup>3</sup>

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<sup>3</sup>Manual, M. P. (2003). For the Superintendents and Management of Prisons In India, Formulated By Bureau of Police Research and Development Ministry of Home Affairs Government of India New Delhi.

The Supreme Court ruled that the compulsion to live in a prison entails by its own force the deprivation of certain rights, like the right to move freely or to practice a profession of one's choice, a prisoner is otherwise entitled to the basic freedoms guaranteed by the Constitution.<sup>4</sup>

It is also essential for one to understand that a convicted person goes to prison *as* punishment and not *for* punishment.<sup>5</sup> Hence, the person cannot be inflicted with extra punishment and the orders of the court have to be followed.

But this is not usually the case. Rights of prisoners are mostly overlooked or not bestowed. This is due to the deep rooted belief among people that the prisoners do not deserve any rights as they have committed crimes and wronged the society.

There are national and international laws governing and ensuring rights of prisoners.

Apart from various National and International laws, Rights of prisoners are enumerated in the Model Prison Manual and the report of the All India Committee on Jail Reforms 1980-1983. These rights have been discussed in detail below.

### **1. Right To Human Dignity**

Right to Human Dignity is a basic right. Prisoners must be treated as human beings and not as non-persons. "All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person."<sup>6</sup>

The rights of a prisoner may be curtailed but some of his fundamental rights continue to be valid even while in prison.

### **2. Right To Equality**

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<sup>4</sup> Charles Sobhraj v. Superintendent, Tihar Jail, AIR 1978, SC 1514.

<sup>5</sup>Vagg, J. (1994). *Prison systems: A comparative study of accountability in England, France, Germany, and the Netherlands*. New York: Clarendon Press.

<sup>6</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, United Nations General Assembly, 1998, Principle 1.

Every prisoner has a fundamental right to equality. But there have been cases in which prisoners have alleged that other prisoners with money got better food, clothing and cells to stay in. They were better taken care of and were provided with better medical care as compared to a prisoner with lesser or no money to spare.<sup>7</sup> This is a gross violation of the prisoners' fundamental right to equality.

**3. Right To Freedom Of Speech And Expression** - The prisoners must be allowed to voice their opinions including the conditions of the prisons or the treatment meted out to them.

In *Charles Sobraj v. The Suptd., Central Jail, Tihar*, it has been stated that “Imprisonment does not spell farewell to fundamental rights” and “Prisoners retain all rights enjoyed by free citizens except those lost necessarily as an incident of confinement. Rights enjoyed by prisoners under Arts 14, 19 and 21 though limited are not static and will rise to human heights when challenging situations arise.”

#### **4. Right To Life And Personal Liberty**

No person shall be deprived of his life or personal liberty except according to procedure established by law. In *Sheela Barse v. State of Maharashtra*<sup>8</sup> on 18 September, 1987, Justice M. Ranganath stated that “The term 'life' in [Article 21](#) covers the living conditions of the prisoners, prevailing in the jails. The prisoners are also entitled to the benefit of the guarantees provided in the Article subject to reasonable restrictions.”

#### **5. Right To Speedy Trial**

In the case of *Hussainara Khaton & Ors v. Home Secretary, State of Bihar*<sup>9</sup>, the Supreme Court has stated that “The State is under a constitutional mandate to ensure speedy trial and whatever is necessary for this purpose has to be done by the State. It is also the constitutional obligation of

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<sup>7</sup> Report based on the proceedings on the workshops organised at Bhopal by the Commonwealth Human Rights Initiative (CHRI) in collaboration with the Madhya Pradesh Human Rights Commission (MPHRC)- Prisons and Human Rights, 1998.

<sup>8</sup>*Sheela Barse v. State of Maharashtra*, JT 1988 (3) 15.

<sup>9</sup>*Hussainara Khaton & Ors v. Home Secretary, State of Bihar*, 1979 AIR 1369 : 1979 SCR (3) 532.

this Court, as the guardian of the fundamental rights of the people as a sentinel on the qui-vive, to enforce the fundamental right of the accused to speedy trial by issuing the necessary directions to the State which may include taking of positive action, such as augmenting and strengthening the investigative machinery, setting up new courts, building new court houses, appointment of additional judges and other measures calculated to ensure speedy trial.”

To ensure that speedy trial takes place, the Supreme Court directed that:

“On the next remand dates when the under-trials are produced before the Magistrates or the Sessions Courts the State Government should provide them a lawyer at its own cost for the purpose of making an application for bail and opposing remand provided that no objection is raised to such a lawyer on their behalf.

It is however seen that trials are usually prolonged since the jurisdictional police are unable to provide escort parties to the prisoners who have to be taken to the courts. This results in unnecessary adjournments of cases. It is worthwhile considering setting up of courts in the premises of the prison itself. A number of high profile cases have been heard in makeshift courts within the jail premises itself. On the other hand, it may also be worthwhile to have a separate cadre of Prisoners’ escorts created in the State Police force.

## **6. Right To Humane Treatment In Prisons**

In *Sunil Batra v. Delhi Administration*<sup>10</sup>, the Supreme Court opined “It behoves the court to insist that, in the eye of law, prisoners are persons not animals, and to punish the deviant ‘guardians’ of the prison system where they go berserk and defile the dignity of the human inmate. Prison houses are part of Indian earth and the Indian Constitution cannot be held at bay by jail officials ‘dressed in a little, brief authority’. When a prisoner is traumatized, the Constitution suffers a shock.” It also goes on to say that “Protection of the prisoner within his rights is part of the office of Article 32.” and “A prisoner wears the armour of basic freedom even behind bars”.

The Court has the power to intervene and enforce prisoners’ rights and protect the prisoner from “mayhem” with the help of the writ of Habeas Corpus<sup>11</sup>.

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<sup>10</sup>*Sunil Batra v. Delhi Administration*, 1980 AIR 1579 : 1980 SCR (2) 557.

<sup>11</sup> Habeas corpus is a Latin term meaning "you [shall] have the body". It is a writ (court order) which directs the law enforcement officials who have custody of a person to appear in court with the person in order to determine the

“No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.\*No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.”<sup>12</sup>

### **7. Right Not To Be Handcuffed, Fettered Or Put In Solitary Confinement**

Unless a prisoner is dangerous to him or to those around him/ her, he must not be handcuffed, fettered or put in solitary confinement.

In *Prem Shankar Shukla v. Delhi Administration*<sup>13</sup>, the Supreme Court said, “Handcuffing is prima facie inhuman and, therefore, unreasonable, is over harsh and at the first blush, arbitrary. Absent fair procedure and objective monitoring to inflict "irons" is to resort to zoological strategies repugnant to [Article 21](#).” The court also goes on to say “Since there are other ways of ensuring safety as a rule handcuffs or other fetters shall not be forced on the person of an under-trial prisoner ordinarily..... It will be unreasonable so to do unless the State is able to make out that no other practical way of forbidding escape is available, the prisoner being so dangerous and desperate and the circumstances so hostile to safe keeping.”

Among others.<sup>14</sup>

### **8. Right Against Custodial Violence And Doctors Assistance**

Right to Human Dignity can also be interpreted as right to integrity of body and mind. This involves freedom from mental and physical torture and abuse of the prisoner by any person which includes the other inmates and the prison personnel. In *Sunil Batra v. Delhi Administration*, the Supreme Court states that “The most important right of a prisoner is to

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legality of the person's confinement. Habeas corpus petitions are commonly used when a prisoner claims illegal confinement, such as holding a person without charges, when due process obviously has been denied.

<sup>12</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, United Nations General Assembly, 1998, Principle 6.

\*The term “cruel, inhuman or degrading treatment or punishment” should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time.

<sup>13</sup> *Prem Shankar Shukla v. Delhi Administration*, 1980 AIR 1535, 1980 SCR (3) 855.

<sup>14</sup> Singh, G. (1996). *Commentary on the Protection of Human Rights Act 1993*. New Delhi: Dominion Law Depot.

integrity of his physical person and mental personality. No prisoner can be personally subjected to deprivations not necessitated by the fact of incarceration and the sentence of court.”

Unfortunately this is one right which usually gets trampled upon inside prisons, not only in India but elsewhere too. Any number of cases have been cited to show that the prisoners are subjected to violence like sodomy, physical assault and other inhuman acts by their fellow inmates and the jail authorities do precious little. There was a case in which a prisoner was murdered by his fellow prisoner after taking “supari” or contract and the murdered was hushed up by the prison authorities. When the Post Mortem Report of the murdered prisoner reached National Human Rights Commission, some suspicion arose and this resulted in a CID enquiry. It was later established to be a clear case of murder in which jail authorities had colluded. It is therefore very necessary that an independent body is entrusted with visiting prisons every week, inspect the living conditions of prisoners and also hear the grievances of prisoners.

### **9. Right To Basic And Minimum Needs**

Right to Basic and Minimum Needs connotes “Right to fulfilment of basic minimum needs such as adequate diet, adequate potable water for drinking, bathing and cleaning purposes; recreation facilities; health and medical care and treatment, access to clean and hygienic conditions of living accommodation, sanitation and personal hygiene, adequate clothing, bedding and other equipment; and recreation.”<sup>15</sup>

Unfortunately this is one of the rights that does not gets its due. There have been a number of rights in Prisons over the quality and quantity of the food served to the inmates. Supervisory authorities need to check the distribution of food to the prisoners regularly.

It is a prisoner’s right to receive proper accommodation.. But this is not the case in many Indian prisons. Overcrowding is a very pressing issue in India today.

The following bar graph and table very accurately show the extent of overcrowding of prisons in India.<sup>16</sup>

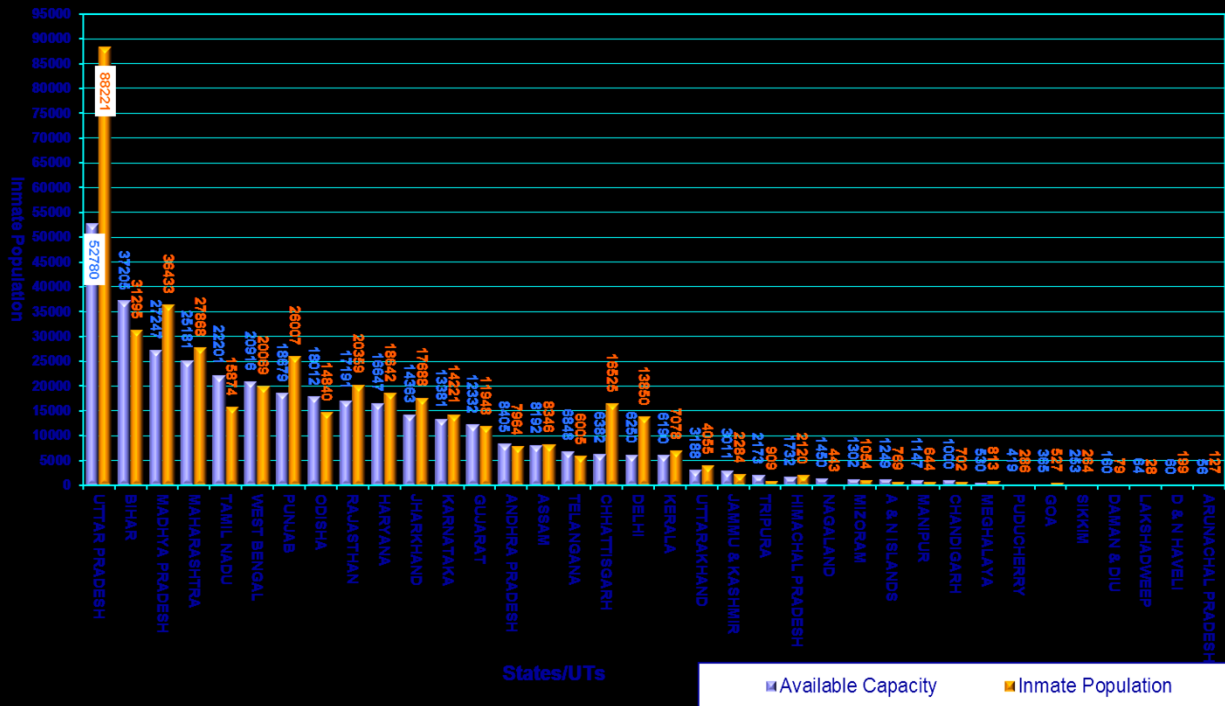
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<sup>15</sup>National Human Rights Commission of India. (2013) Living Conditions and Human Rights of Inmates, Volume I.

<sup>16</sup> Prison Statistics of India 2014.

Available Capacity vs Inmate Population in the States/UTs  
 at the end of the year 2014

Chart  
 2.3





**Capacity of Jails, Inmate Population and Occupancy Rate at the end of 2014<sup>17</sup>**

Sl. No	State/UT	Available Capacity			Inmate Population			Occupancy Rate (In %)		
		Male	Female	Total	Male	Female	Total	Male	Female	Total
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1	Andhra Pradesh	7607	798	8405	7601	363	7964	99.9	45.5	94.8
2	Arunachal Pradesh	44	12	56	123	4	127	279.5	33.3	226.8
3	Assam	7606	586	8192	8052	294	8346	105.9	50.2	101.9
4	Bihar	35916	1289	37205	30204	1091	31295	84.1	84.6	84.1
5	Chhattisgarh	5848	534	6382	15726	799	16525	268.9	149.6	258.9
6	Goa	340	25	365	500	27	527	147.1	108	144.4
7	Gujarat	11359	973	12332	11426	522	11948	100.6	53.6	96.9
8	Haryana	15179	1468	16647	17858	784	18642	117.6	53.4	112.0
9	Himachal Pradesh	1594	138	1732	2043	77	2120	128.2	55.8	122.4
10	Jammu & Kashmir	2840	171	3011	2202	82	2284	77.5	48	75.9
11	Jharkhand	13646	717	14363	16823	865	17688	123.3	120.6	123.1

<sup>17</sup>Ibid.

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12	Karnataka	12188	1193	13381	13632	589	14221	111.8	49.4	106.3
13	Kerala	5773	417	6190	6907	171	7078	119.6	41	114.3
14	Madhya Pradesh	25597	1650	27247	35283	1150	36433	137.8	69.7	133.7
15	Maharashtra	23562	1619	25181	26438	1430	27868	112.2	88.3	110.7
16	Manipur	1037	110	1147	607	37	644	58.5	33.6	56.1
17	Meghalaya	485	45	530	810	3	813	167	6.7	153.4
18	Mizoram	1102	200	1302	994	60	1054	90.2	30	81.0
19	Nagaland	1290	160	1450	433	10	443	33.6	6.3	30.6
20	Odisha	16371	1641	18012	14302	538	14840	87.4	32.8	82.4
21	Punjab	17091	1588	18679	24703	1304	26007	144.5	82.1	139.2
22	Rajasthan	15982	1209	17191	19665	694	20359	123	57.4	118.4
23	Sikkim	206	47	253	258	6	264	125.2	12.8	104.3
24	Tamil Nadu	19760	2441	22201	15266	608	15874	77.3	24.9	71.5
25	Telangana	6169	679	6848	5559	446	6005	90.1	65.7	87.7
26	Tripura	2051	122	2173	881	28	909	43	23	41.8
27	Uttar Pradesh	49642	3138	52780	84649	3572	88221	170.5	113.8	167.1
28	Uttarakhand	3065	123	3188	3893	162	4055	127	131.7	127.2
29	West	19393	1523	20916	18752	1317	20069	96.7	86.5	96.0

	Bengal									
<b>Total (States)</b>		<b>322743</b>	<b>24616</b>	<b>347359</b>	<b>385590</b>	<b>17033</b>	<b>402623</b>	<b>119.5</b>	<b>69.2</b>	<b>115.9</b>
30	A & N Islands	1209	40	1249	764	5	769	63.2	12.5	61.6
31	Chandigarh	940	60	1000	670	32	702	71.3	53.3	70.2
32	D & N Haveli	50	10	60	198	1	199	396	10	331.7
33	Daman & Diu	120	40	160	78	1	79	65	2.5	49.4
34	Delhi	5850	400	6250	13248	602	13850	226.5	150.5	221.6
35	Lakshadweep	64	0	64	28	0	28	43.8	0	43.8
36	Puducherry	373	46	419	279	7	286	74.8	15.2	68.3
<b>Total (UTs)</b>		<b>8606</b>	<b>596</b>	<b>9202</b>	<b>15265</b>	<b>648</b>	<b>15913</b>	<b>177.4</b>	<b>108.7</b>	<b>172.9</b>
<b>Total (All-India)</b>		<b>331349</b>	<b>25212</b>	<b>356561</b>	<b>400855</b>	<b>17681</b>	<b>418536</b>	<b>121</b>	<b>70.1</b>	<b>117.4</b>

As can be seen that the number of prisoners in the prisons far exceeds the number of prisoners the prisons are actually allowed to hold. This is a clear violation of the rights of prisoners as it is a prisoner's basic right to have proper accommodation but in most jails, that there are so many prisoners that this right is not realised.

Even during times of outbreaks of epidemics in prisons, the required medical attention cannot be given to each individual prisoner as there are too many prisoners and not enough medical staff and resources to take care of the needs of all the prisoners. The condition of the prisoners' hence becomes deplorable.

Health care and mental and medical facilities must be available to all prisoners without any discrimination. It is their right to receive medical attentions and check-ups on a periodic basis. The prisoner has to be fully examined on admission into the jail and has to be periodically examined after. In case of any medical ailment, steps have to be taken to allow the prisoner to live in the premises in a dignified manner.

Due to overcrowding or negligence of the prison staff, the prisoners live in highly unhygienic conditions

### **10. Right To Communication**

It is imperative that the prisoners are well informed about their families and in turn, their families are also informed about the whereabouts of the person in prison. Neither one of the parties is supposed to be kept in the dark about the other.

Meeting people is a form of communication. Hence prisoners must be allowed to meet their family members as per the prison regulations. In *Sunil Batra v. Delhi Administration*, the Supreme Court states that “Visit to prisoners by family and friends are a solace in insulation: and only a dehumanised system can derive vicarious delight in depriving prison inmates of this humane amenity. Subject, of course, to search and discipline and other security criteria, the right to society of fellow-men, parents and other family members cannot be denied in the light of Article 19 and its sweep.”

Prisoners must also be able to gain knowledge about the affairs of the country through various communication media such as newspapers. They must be allowed to keep in touch with the current affairs of the country and the world, if they so please.

### **11. Right To Access To Law**

The Right to Access to Law is the right to receive information regarding the legal provisions pertaining to a prisoner’s imprisonment. This also includes their legal right to receive information regarding the appeal, revision and review of their conviction or sentence. In *Madhav Hayawadanrao Hoskot v. State of Maharashtra*<sup>18</sup>, the Supreme Court held that “Where the

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<sup>18</sup> *Madhav Hayawadanrao Hoskot v. State of Maharashtra*, 1978 AIR 1548 : 1979 SCR (1) 192.

prisoner seeks to file an appeal or revision every facility for exercise of that right shall be made available by the jail administration.”

Secondly, the prisoners have the right to consult a lawyer and the right to access legal aid. The Supreme Court in the above cited case held that “provision of free legal services to a prisoner who is indigent or otherwise disabled from securing legal assistance where the ends of justice call for such service” is a State responsibility under Article 21.

Manner that corresponds to the needs of illiterate persons, minorities, persons with disabilities and children and should be in a language that the person in need of legal aid understands. Information provided to children should be provided in a manner appropriate for their age and maturity. The information material should be supported by visual aids prominently located in those parts of the facilities to which prisoners have regular access”<sup>19</sup>

### **12. Right Against Arbitrary Prison Punishment**

In case of any violation of prison rules by any prisoner(s), he/she must be informed of the nature of violation of Prisons Act and Rules. They must be heard in fair and impartial manner. The decision of this hearing must be communicated to them and an appeal as provided by the rules under the Act can be filed.

### **13. Right To Meaningful And Gainful Employment**

Prisoners who volunteer and are given work, must be paid wages as per the rules. It is their right to be paid for the work they do in prison while serving time.

No prisoner can be made to do any form of domestic work for any prison official and “No prisoner shall be employed, in the service of the institution, in any disciplinary capacity.”<sup>20</sup>

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<sup>19</sup> United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, prepared by the United Nations Office on Drugs and Crime, Guideline 6, Section 47(a).

<sup>20</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted by First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1955, Section 28(1).

#### **14. Right To Be Released On The Due Date**

Prisoners must be released exactly on the due date. It is imperative that this is done as the prisoners have served their time in prison as per their conviction and they do not deserve to stay in prison even a minute longer than the minimum requirement. Even the slightest delay in the release of the prisoners on the due date is a violation of their rights.

“The petitioner's detention in the prison after his acquittal was wholly unjustified.”

#### **CONCLUSION**

Prisoners are human beings and their rights can be curtailed but not completely taken away from them. Awareness of ‘rights of prisoners’ is necessary to protect the rights of the prisoners which they deserve as a part of their basic human rights. However, conditions of prisoners in many jails in the country are very deplorable. It is very much necessary that the directives by the Supreme Court must be enforced in a stringent manner.

Also, prisoners need to be aware of their rights so that they can exercise them. Not only the prisoners, but also their families need to be aware of the laws and the various rights that a prisoner is entitled to. Only then can these rights be exercised properly.

The frequency of jail inspections must be increased so as to keep a check on the proper maintenance of prisoners in the prisons and all the rules in the Prison Manual must be followed properly.

