

# The Unsafe Environment in Prisons in England and Wales Underlines the Failure of the UK's Criminal Justice System: The Breach of Various Prisoners Human Rights

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## Abstract

Human law accepts that parties to an armed conflict will need to use force to 'win the war' and that this will likely result in some death and destruction. To minimise this likely harm, human law regulates how wars are fought. At its essence, human law seeks to strike a balance between two fundamental principles: military necessity and humanity. International humanitarian law, also known as the law of war, law of armed conflict or the jus in Bello, is the body of international law that applies in armed conflict.

**Keywords:** Public; Criminal Justice; Fundamental Human Rights; Prisoners; Violation; Law

## Introduction

What mainstream media often overlooks is the abuse inflicted upon prisoners, and consequently it is easy to buy into what the Government says about what happens inside the prisons. One obvious example is the publication by Minister of Justice (MoJ) showing a rise of record of assaults on prison staff by 247 percentages in 10 years' time in the news. This number would naturally cause some misunderstanding regarding the matter in the public. On the contrary, there is little reports about the same abuse on prisoners by prison officers. That is often sadly because prisons know how to cover-up or simply ignore the complaints because of a lack of interest by the public as mentioned above. Violation of prisoners' human rights, hence, is often not the topic of human rights issues. Breach of prisoners' human rights leads to their degrading physical and mental health which fundamentally threatens the foundation of the Criminal Justice System. Likewise, this essay thinks the Criminal Justice System in this country is not fulfilling its purpose because prisoners' fundamental human rights cannot be protected [1]. This essay does not intend to discuss issues surrounding the prospect of life of ex-prisoners after prisons where many have had gone through unnecessary suffering or mental collapse due to the treatments falling short of what laws require of the Criminal Justice System.

The essay will start by laying out the laws, detailing the conditions inside the prisons, and finally explains the cause of the failing Criminal Justice System, which unjustifiably breaches the prisoners' human rights [2].

## The Law

It is necessary to understand the purpose of Criminal law and relevant Human Rights law before we look at the prison condition. Accordingly, there are three main objectives Criminal law is made is for as to orchestrate the functions of the Criminal Justice System in the UK : 'by incapacitating offenders, by punishing and thereby deterring others who would commit crimes, and by rehabilitating offenders. Consequently, the purposes of prisons are to protect the publics from crime and to prevent prisoners from reoffending through rehabilitation schemes provided to them [3]. But as this essay will illustrate, the purpose of Criminal law tends to be the obstacle to the purpose of human rights law. There are another set of laws governing the prisons' management and administration. These are the Prison Rules 1999, Prison Service Instructions (PSIs) and Prison Service Orders (PSOs). The body which these rules govern is the Prison Service. Here these laws

are most relevant to prisoners' legal matters but due to several reasons including the deteriorating prisons condition and legal aids cut, there is little guarantee that prisons would be held accountable for violation of prisoners' human rights. As to the human rights law, the European Convention on Human Rights (the Convention) is the backbone legislation for human rights to countries belong to the Council of Europe. The UK is a member state to the Council of Europe albeit Brexit [4]. The importance of the Convention lies in that limitations place on human rights guaranteed under the Convention by the public bodies must be proportionate to the affecting human right challenged in front of the Court. The rights most relevant to prisoners are the right to respect private and family life and prohibition of torture. That means prisons should allow prisoners to contact or receive visits from their families and significant others and have the right to their own body's integrity [5]. It is worth noting that international law, such as the Basic Principles for the Treatment of Prisoners (the Principle), which the UK is a ratified nation, further strengthens the Convention right in relation to prohibition of torture -maintenance of dignity and respect towards their personal characteristics. Furthermore, it also addresses the rehabilitation purpose that prisons are obliged to do. It says '[prisons]' condition shall be created enabling prisoners to undertake meaningful remunerated employment which will facilitate their reintegration into the county's labour market to contribute to that of their families [6]. The purpose of Human Rights law seems to be straightforward enough but having it in place is often not enough to achieve its purpose; hence, there remains scepticism towards the prison's functions because of the prisoners' human rights abuse. The next paragraph will be discussing this problem.

## The Prisons Condition and Violation of Prisoners' Human Rights

As mentioned above, rehabilitation is a function of prisons.

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Academic research shows that rehabilitation helps to reduce recidivism. It is believed that by redirecting the psychological cause of criminal behaviours, reoffending can be reduced. However, this function does not seem to be working. One reason is due to the overcrowding condition in the prisons of England and Wales because it means rehabilitation schemes may only be limited to some. Yet expanding such schemes is not easy because funding the prisons is a contentious issue in the UK's society because of the stigma that often are associated with prisons: such as punishing the wrongdoers. This, thus, hampers the effectiveness of rehabilitation schemes [7]. Moreover, the overcrowding condition creates violence, and prison staff shortage only worsens this problem. This explains why prisoners would turn to drugs or illicit sources. Accordingly, three-quarters of prisoners are likely to rely on drugs to overcome crushing despair, isolation and boredom inside the prisons. It is truth that many prisoners ending up having mental health problems because of the cycle inside the prison – lack of resources to rebuild life, illegal drugs and violence. These mental health problems range from self-harm to suicidal thoughts. Interestingly, a criminology theory describes that more serious crime and disorder create an environment that further encourages crime and disorder [8]. This unsafe environment, thus, becomes a breeding ground for human rights abuse by prison staff. Therefore, it is not hard to see how vulnerable those already mentally unwell could be to abuses inside the prisons. Under the Prison Rules, prisons are required to record those developing mental health problems, and this mechanism is known as Assessment Care in Custody and Teamwork (ACCT). Interviews and reviews are carried out as the measure to handle the matter in question. However, the reality is that even with ACCT in place, self-harm and abuse still are rampant inside prisons. One example of that can be drawn on from my first-hand experience as a caseworker for Intervene Project, a charity based in Bromley, funded for the purpose to provide free legal advice for prisoners not able to access to justice in England and Wales. Abuses reported are such as stripped search in a degrading manner in a female prison, damage to property or property lost due to negligence by the prison staff/ officers when carrying out cell search or transferring inmates from one to another prison, ignorance and indifference to prisoners physical and mental health that leads to unnecessary suffering and threats and assaults for fear of retaliation, etc[9]. All of this is violation of prisoners' human rights mentioned in the Convention and the Principle. The Criminal Justice System is further challenged by the legal aids cut since 2013 in crime. This means that most prisoners cannot access to legal advice, and that an increasing risk to subject a prisoner to a much severe mistreatment throughout the cycle of a case is likely to happen [10]. In fact, Intervene Project was

funded solely for the purpose to cover the unrepresented prisoners who otherwise would have no way to access justice.

## Conclusion

The failing Criminal Justice System is the only answer to the prevailing and hidden violation of prisoners' human rights mentioned above because punishment takes the priority over dignity and/or respect prisoners ought to be given under the human right laws discussed here. This problem cannot be solved if rehabilitating objective cannot be fulfilled. This is sadly resulting from the social stigma of imprisonment that prisoners are in nature violent and dangerous. This essay concludes that there is not enough justice done to protect the human rights of the prisoners within the Criminal Justice System.

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## Conflict of Interest

None

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