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ABSTRACT

In this modern world, the penal system of every country is almost similar as far as imprisonment is concerned as a feature the penal system followed by them and its usage has also been growing with the increasing crime in society. There are more than 10.35 million people imprisoned throughout the world according to the World prison population List/ Eleventh Edition¹ and there are 1,306 prisons in India which further consists of 565 Sub-jails, 413 District jails, 145 Central jails, 88 Open Jails, 44 Special Jails, 29 Women Jail, 19 Borstal Schools and 3 Other than the above jails according to the Prison Statistics India-2020². There are 1,339 jails in India, with over 4,66, 084 inmates. Similarly, albeit limited, the rights granted to prisoners under Articles 14, 19, and 21 to advocate for human rights when under duress. The health of convicts is an essential issue that the prison administration must address. Correction is a scientific way for achieving a more positive attitude toward punishment. The focus is on the inmates and on the methods and techniques towards enhancing the behavioral approach of the prisoners, so they can fit in the society and become law-abiding citizens of society after their release. The economic condition doesn't permit pushing the modes of prison management due to the Indian Prison System. Hence, rebuilding the price of the system and management in India needs urgent attention. Every human is equal in the eyes of law, and all are given some basic rights which may include the right to life and liberty but if anyone doesn't abide by the norms and laws of society then that person will be restrained from using such rights and will be awarded suitable punishment. The main goal of prisons and laws related is to bring back the prisoner on the right track and make them capable enough to go back and live in society. If we talk about the conditions of the prisoners around 300 years back, then the situation was so worse that it's unexplainable as they were brutally treated even for minute

¹ Roy Walmsley, *World prison population List, Eleventh Edition* (2015)

² National Crime Records Bureau, Government of India, "*Prison Statistics India*" (Ministry of Home Affairs, 2020).

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offenses never needed rigorous punishment because of the absence of provisions for them. After so many reforms and struggles society accepted the fact that even if they are prisoners who have committed certain offenses, they still have certain basic rights from which they cannot be restrained from those certain aspects which include moral human dignity as committing a crime doesn't mean that one isn't a human being anymore.³

Keywords: Prisoners, Prison, Imprisonment, Rights,
Humans.

I. INTRODUCTION:

The evolution of Prisoners' rights has been evolving for time. A country with such a rich history as India yet lacks a defined law on the Rights of Prisoners. Furthermore, India currently lacks legislation that addresses inmates' rights or that regulates prisoners' behaviour and conduct behind bars. However, the judicial system has always intervened, giving the convicted fair consideration and making sure that their basic rights were always upheld. Despite a lack of explicit legislation, the Indian judicial system has established a number of standards, principles, and precedents protecting prisoners' rights. These not only serve as a guide but also bind all Indian courts.

1.2 HISTORY OF PRISONERS' RIGHTS IN INDIA:

As was already mentioned, prisoners' rights have been evolving. The change has been gradual, starting with a leading case of the U.S.A. where the courts ruled that they could not intervene in prison administration or the establishment of rules and regulations, and concluding with another landmark decision where the courts recognised the inmates' entitlement to certain rights. The Indian judicial system has regularly used the Fundamental Rights guaranteed by the

³Paridhi Verma, *Rights of Prisoners under Indian Law*, available at: <http://www.penacclaims.com/wp-content/uploads/2018/08/Paridhi-Verma.pdf> (last visited on 10/01/2024)

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Indian Constitution to free inmates. The Supreme Court's Justice Krishna Aiyar ruled in the well-known case of Charles Sobraj through Marie Andre's vs. The Superintendent, Tihar Jail,⁴ that:

Even though India's history in supporting the advancement of prisoners' rights has not been very long, it had an impact on how the prisoners' rights movements in England and the United States were framed. Statutory developments in this area did not provide a comprehensive picture of their welfare, and the Indian judiciary has frequently surpassed the statutes' crowded bounds by acting by the guidance provided by British and American decisions. To "*use sudden force*" or "*to cage*" is not what the word "prison" means. Prisons are built for the sole purpose of holding criminals in secure custody while they await trial or punishment. Once merely a holding cell for criminals awaiting trial and sentence, prisons eventually came to be recognised as a category unto itself.⁵ "Imprisonment is the punishment to which we must chiefly trust," wrote Lord Macaulay in his book "*Minutes of 1835*." He advocated for the establishment of such norms and laws, the primary goal of which was to eliminate criminal propensities among ex-convicts. In Manusmriti, It is claimed that the monarch should have control over all prisons where the bad and wrongdoers are housed. Prisoners in ancient India were not treated with the same degree of refinement as they are today, according to the texts of Huein-Tsang and Fa-Hein. Our prison system underwent a significant change after we gained our independence. The government showed particular interest in it.⁶ Around 1951, the United Nations reportedly asked prison specialists to review the system and made some changes to better protect inmates' rights. It is shocking to learn that many developed nations, including China and India, do not currently have codified prisoner rights. However, our Supreme Court has established a wide

⁴ AIR 1975 SC 164, 1975 Cri LJ 182, (1975) 1 SCC 192, 1975 (7) UJ 50 SC

⁵ "Jaytialak Guha Roy, *Prisons & Society-A study of the Indian Jail System*, 2 (Gian Publishing House, 1989)".

⁶ "A. Mohanty and N. Hazary, *Indian Prison System*, 26 (Ashish Publication House, New Delhi, 1990)".

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range of protection for inmates, and the government keeps pushing forward with initiatives to improve their lives behind bars.

1.3 THE ISSUES FACED BY PRISONERS IN PRISON:

Every human being is endowed with certain fundamental rights. Prisoners have similar rights to some degree of their fundamental rights. Even though a person is an offender, no one has the right to take away their human rights in the majority of the world's countries when they are incarcerated. This is an attempt to start a conversation about the rights of prisoners in a small way. To put prisoner's rights back on the political agenda,⁷ To accomplish this, we must work to increase visibility for the many groups who are invested in and educated about different aspects of criminal justice. It helps people feel safe enough to speak up, be heard by those in their social networks, and have their unique identities and concerns acknowledged. Although prisoners' rights aren't mentioned anywhere in the Indian Constitution, a recent case⁸, *State of Andhra Pradesh vs. Challa Ramakrishnan Reddy*, that people in jail are still people; they retain all their basic rights. Following a unanimous decision by the Supreme Court, "*Prisoners, whether convicted, on trial, or detained, do not cease to be human beings, and while confined to a jail cell, they are still entitled to all of their constitutional rights, including Article 21's right to life.*"

The efficient prison system in India has several visible and invisible problems. The following are the main issues, problems, and trends in prisons today:

- **Overcrowding:** Because there are fewer jails and more inmates, overcrowding is a major issue in India's incarceration system. The United Nations' 2010 Global Report on Crime and Justice⁹, studies in Asian nations have shown that over 30% of prisoners are being held

⁷ "David Brown, *Prisoners as Citizens: Human Rights, Stimulating Prisoners Voice*, 21 (Federation Press, Australia, 2002)".

⁸ AIR 2000 SC 2083, (2000) 5 SCC 712.

⁹ Gurbuneet Singh Randhawa, Dr. D.J Singh, "*Analysis of Challenges faced by IPS*", 1, International Journal of Research (2016)

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pending trial or on remand, and in many Asian nations, this percentage is over 50%. The report also notes a 52.6 percent increase in the prison population between 1997 and 2007. Because the jail population expanded by such a significant amount throughout the aforementioned time period, the institutions' infrastructure, facilities, and staffing levels should have increased in proportion to meet the influx of new convicts.

- **Mental Infirmary:** More than half of all inmates have some type of mental illness. In addition to substance abuse, anxiety, depression, and other problems, the majority of prisoners suffer from a range of additional ailments. According to research conducted by the Government Medical College in Amritsar and the MM College in Haryana¹⁰, it was discovered that 23.8 percent of the 500 prisoners housed there had psychiatric disorders. It was considered that the statistics and data presented in this study from Amritsar's Central Jail were representative of those in prisons across the country.
- **Racism:** Is one of the issues in prisons. Discrimination against inmates occurs based on their age, gender, race, religion, and disability. The most frequent justification for claims of discrimination was verbal abuse¹¹. Being excluded from the regime, regular favoritism, where white prisoners allegedly received preferential treatment or more benefits.
- **Gang activity:** This is a frequent prison activity that regulates social and economic activities, including the black market, and provides safety in a dangerous environment. Prisoners do this because they feel vulnerable, and joining a gang is a way to safeguard oneself from other prisoners.
- **Inmate Rehabilitation:** The primary objective of modern penal policy is to reintegrate ex-offenders into society in an effort to reduce criminal recidivism.

¹⁰Editorial, "Punjab govt finally shuts down Chintpurni Medical College, withdraws essentiality certificate, Hindustan times, 2017.

¹¹ Dr Kimmett Edgar and Khatuna Tsintsadze, "Tackling Discrimination in Prison: still not a fair response"¹⁰, Prison Reform Trust (2017).

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- **Private prisons:** This form of inequality between the wealthy class and the underprivileged members of society. As a result, Repeated prison offences are encouraged by a combination of a high employee turnover rate and weak prison security..

1.4 RIGHTS OF PRISONERS IN INDIA: CONSTITUTIONAL AND

OTHER STATUTORY PROVISIONS:

Any inhumane, cruel, or degrading treatment of any person (citizen or non-citizen) is prohibited by our Article 21 of Indian Constitution, and violators will be punished. Similar to this, the 1984 Prisoners Act dealt specifically with inmate cruelty. The prison official is in charge of any excesses committed against a prisoner. In recent years, The Indian judicial system, and the Supreme Court in particular, have kept a close eye out for abuses of the convicts' human rights.

- **Right to Legal Aid:** Despite the fact that the right to legal representation is not guaranteed by the Indian Constitution, lawyers in India frequently assist destitute clients and those who seek them voluntarily. Article 39-A of the Indian Constitution, as amended by the 42nd Amendment Act of 1976, includes free legal aid as one of the Directive Principles of State Policy. Even though the Constitution's article on free legal aid is the most important and explicit, courts do not always have the authority to enforce it. However, following these rules is essential to applying the right laws. Article 37 of the Indian Constitution requires the government to adhere to specified norms. Article 38 of the Indian Constitution, on the other hand, mandates the government to encourage individual assistance by preserving and ensuring a social order in which justice (social, economic, and political) would guide all institutions and national legislation. Parliament passed the Legal Services Authorities Act, 1987, which provides for legitimate Aid, and various state governments have established legal advisory boards and plans for Free Legal Aid and unexpected issues in order to give effect to the constitutional command of Article 39-A of the Indian Constitution. The Indian Human Rights Act prioritises the provision of legal representation, which is not limited to

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criminal cases but also covers issues of compliance with minimum wage and other income requirements and with government regulations. According to Madhav Hayawadan Rao Hosket v. the State of Maharashtra, (1978) 3 SCC 544, The Supreme Court's three-judge panel (V. R. Krishna Iyer, D. A. Desai, and O. Chinnappa Reddy, JJ.) concluded that the government must provide lawful forms of assistance to the accused as required by Articles 21 and 39-A of the Indian Constitution, as well as Article 142 and Section 304 of the Code of Criminal Procedure, 1973.:

If a prisoner is unable to exercise his constitutional and statutory right to appeal, including special leave to appeal, the Court has the implied jurisdiction under Article 142 read in conjunction with Articles 21 and 39-A of the Constitution to appoint counsel for the prisoner in order to ensure full justice. This is an essential component of the right to appeal granted by Article 136 of the Constitution and the Code. One can safely draw the conclusion that this is a legal requirement on the part of the state, not an act of charity on the part of the government. Although the recipient should not have to pay for legal representation, the attorney should receive enough payment for his time and effort. Even though individuals of the profession clearly care about the general public, their ability to make a difference through straightforward acts of charity is restricted. When working on behalf of the state, they should be paid for their time. Naturally, to provide the prisoner with legal representation, the State in question must pay a fair amount that the court may determine. Of course, the court may assess the circumstances and take into account all factors to determine whether providing legal aid in a specific case is necessary for justice. In every nation where free legal aid is provided, it is only done in situations where it would otherwise harm public justice. The Court is the one with that authority.

The provision of legal machinery is expected to address poverty, destitution, and illiteracy even though our nation has a complex economic structure, and these problems frequently arise. Equal protection under the law, the right to counsel, and the right to a fair trial are all

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guaranteed by legal aid. The Indian judicial system was instrumental in creating and popularising the concept of free legal representation.¹² so that incarcerated people were treated fairly in court. The process includes the right to legal representation, as established by a ruling in the matter of *M.H. Wadanrao Hoskot vs. the State of Maharashtra*¹³.

- ***Right to Speedy Trial-*** Article 21 of the Constitution guarantees all prisoners the right to a speedy trial. It ensures that everyone involved in the process will be treated fairly¹⁴. Additionally, it ensures that the prosecutor cannot arbitrarily postpone a criminal suspect's trial to advance the state's social welfare and provide justice for the victims of crimes. Initially, the Magna Carta—a seminal work of English law—discussed the right to a speedy trial. The right to a speedy trial is a nebulous idea that relates with both the execution and disposal of justice. According to the main landmark case, a speedy trial for an accused person is his fundamental right under Article 21 *Hussainara Khatoon vs. Home Secretary, State of Bihar*¹⁵. If anyone had their right to a speedy trial denied, they may directly file the petition in Supreme Court under Article 32 to have their rights upheld. The case of *A. R. Antulay vs. R. S. Nayak & Anr.*¹⁶ gives critical context for understanding India's entitlement to a quick trial Because Article 21 of the Indian Constitution provides that no one may be deprived of life or liberty without due process of law, many people believe that the right to a speedy trial is a fundamental human right. The Supreme Court's directives to protect inmates' rights will be carried out. Following this line of reasoning, the
- The Supreme Court determined that Article 21's right to a quick trial applies to all phases of a criminal proceeding: examination, request, trial, bid, modification, and retrial.

¹²Mohd Haris Usmani, “Public Interest Litigation” Legal Services India, available at: <https://www.legalserviceindia.com/> (last visited on 10/01/2024)

¹³ AIR 1978 1548, 1979 SCR(1) 192

¹⁴ Dr. Durga Das Basu, *Introduction to the Constitution of India*, (Lexis Nexis, Butterworths Wadhwa Publication, Nagpur, 20th ed,2009).

¹⁵ AIR 1979 SC 1360.

¹⁶ AIR 1988 SC1531

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- ***“Right against Solitary Confinement, Handcuffing and Bar Fetters, and Protection from Torture”*** – According to Black's Law Dictionary, "Solitary Confinement" means that a prisoner is kept in isolation, with no other inmates allowed to visit unless at the jail's discretion and only for brief periods at a time. Strict solitary confinement means that a prisoner is kept in a cell where he has no means of communicating with, seeing, learning from, or interacting with any other human beings. In ***Sunil Batra vs. Delhi Administration***¹⁷, A prisoner's behaviour must be considered extremely dangerous before he can be placed in solitary confinement, it was completed. Solitary confinement is cruel and dehumanizing to prisoners. The most harmful abnormal environment that inmates encounter is constant, unbroken isolation. Physical and mental health sufferers of long-term isolation are in for a world of hurt. Courts have consistently concluded that solitary confinement is unconstitutional and has profoundly corrupting and demeaning impacts on convicts. Although the courts generally discourage isolating criminals, they have made an exception for extreme situations in which the offender poses a direct threat to fellow inmates. The Supreme Court debated the legality of such detention in the Sunil Batra case. The Supreme Court has also stuck rigidly to the prisoners being placed in bar shackles. The court determined that using bar chains was against the spirit of the law because it reduced a prisoner from an individual to a creature when they were kept in shackles constantly throughout the day and night.¹⁸
- ***Right to reasonable wages***: In cases where inmates are required to labour while in detention, they should be compensated fairly for their time and effort. No one should be paid less than the bare minimum. Union of India v. Peoples Union for Democratic

¹⁷ AIR1980 SC 1579, 1980 SCR (2) 557

¹⁸Dinesh Singh Chauhan, “Rights of Prisoners under Indian Law”, available at: <https://www.legalserviceindia.com/legal/article-6228-rights-of-prisoners-under-indian-laws.html> (Last visited on 10/01/2024)

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Rights¹⁹. When convicts are forced to work while incarcerated, they must be paid a living wage. The pay rate shall not be the same as or less than the minimum wage. In *Mohammad Giasuddin vs. State of Andra Pradesh*,²⁰ The State has been ordered by the Supreme Court to take this into account when finalising the regulations for paying convicts' wages and to make the wage policy retroactive. The Kerala High Court ruled in the case of Prison Reforms Enhancement... It is Unknown,²¹ that labor performed on prisoners that were not properly compensated was forced labor and therefore in violation of Article 23 of the Constitution of India.

- ***Right to live with human dignity:*** The Indian Constitution guarantees every person the right to a life of dignity. Since their conviction does not automatically make them inhuman, the prisoners are also granted this right. This right is a crucial component of the Indian constitution. Everyone deserves to be treated with respect so that they can continue living, because every life is precious. Article 21 of the Indian Constitution has been interpreted broadly by the courts to include this protection. There were several recorded occurrences of it. The following list includes a few of them:

"The Supreme Court of India introduced a new interpretation of Article 21 of the Indian Constitution in the case of Maneka Gandhi vs. Union of India"²², where it was decided that having a decent standard of living is part of having the right to life or to right to live with dignity.

Additionally, in ***Francis Coralie Mullin vs. The Administrator, Union Territory of Delhi & Ors.***²³, The Supreme Court expanded on this concept, holding that the term "*life*" encompasses everything that comes with it, including the necessities of life, such as

¹⁹ AIR 1982 SC 1473

²⁰ AIR 1977 SC 1926

²¹ AIR 1983 Ker. 261

²² AIR 1978 SC 597

²³ AIR 1981 SC 746

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adequate nutrition and food, clothing, and a roof over one's head, facilities for reading and writing (education), the ability and opportunity to express oneself in a variety of ways, freedom to move around, and so on. The Supreme Court of India then issued a judgement in which it ***Pandit Parmanand vs. Union of India***,²⁴ existence persists even after physical death. When a person is sentenced to death (as in this instance) but the dead body is not lowered for half an hour or more, the Supreme Court of India ruled that this constitutes a breach of the right to life under Article 21 of the Indian Constitution. This was true even though the doctor had already issued the death certificate. Conclusion: The right to life includes the obligation to handle one's affairs in a dignified manner after passing away or the right to a decent burial.

The Supreme Court ruled in the State of Andhra Pradesh v. Challa Ramakrishna Reddy that everyone has the fundamental human right to life, which is protected by Article 21. Even the State is not permitted to violate it because it is so fundamental. Even when incarcerated, a prisoner retains their humanity. He still qualifies as a human being and has the right to all fundamental freedoms, including the right to life.

- ***Right to meet with friends and their legal counsel:*** Prisoners receive both physical and mental protection. People have a right to gather information, so it is necessary. As their legal representatives, consult attorneys make decisions that directly impact the case of the convicted person. The visits from friends and family members give them the mental stability they need to endure such a terrible situation where no one knows each other. The Supreme Court ruled in Francis Coralie Mullin v. The Administrator, Union Territory of Delhi and others that prisoners were permitted to leave the jail but were not permitted to interact with people outside of it or have interviews with family, friends, or lawyers.

²⁴ AIR 1989 SC 2039

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1.5.LEGAL FRAME-WORK RELATED TO RIGHTS OF PRISONERS IN INDIA:

The national authorities have full responsibility for managing and overseeing prisons. State authorities hold the top position and authority in managing all aspects of jail control, and they also have the authority to enforce jail rules and laws as necessary. Prison is a national subject under List II [state list] of the Seventh Schedule of the Indian Constitution. The Prisons Act of 1894 and the respective national governments' prison manuals serve as the legal framework for prison administration.²⁵

Currently, one statute that controls the law and management of prisons in India is:

- ❖ Bhartiya Nyaya Sanhita, 2023
- ❖ The Prisons Act, 1894.
- ❖ The Prisoners Act, 1900.
- ❖ The Identification of Prisoners Act, 1920.
- ❖ Constitution of India, 1950.
- ❖ The Transfer of Prisoners Act, 1950.
- ❖ The Representation of People's Act, 1951.
- ❖ The Prisoners (Attendance in Courts) Act, 1955.
- ❖ The Probation of Offenders Act, 1958.
- ❖ Bharatiya Nagarik Suraksha Sanhita, 2023.
- ❖ The Mental Health Act, 1987.
- ❖ The Repatriation of Prisoners Act, 2003.

²⁵ Jatin Verma, *National Crime Records Bureau's Prison Statistics India*, Available at: <https://www.jatinverma.org/national-crime-records-bureaus-prison-statistics-india-2017/> (last visited on 10/01/2024)

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❖ Model Prison Manual (2003).

The following layouts are responsible for a good prison system which is discussed under:-

• **Constitution:**

The Part III of the Indian Constitution provides prisoners with certain rights. Like things should be treated like, according to Article 14, as well as the principle of reasonable classification. Prison does not have access to the following fundamental rights:

- freedom of movement
- freedom of residence
- freedom of settlement, and
- freedom of expression.

THE PRISON ACT OF 1894:

This act established India's first statute overseeing jail regulation. The provisions of the clause are as follows:

- Housing and hygiene conditions for prisoners.
- There must be a medical officer present.
- Some provisions deal with the physical and mental health of prisoners.
- The separation of criminal, civil, convicted, and prisoners awaiting trial into male and female inmates.

THE PRISONERS ACT 1990:

Any prisoner who is being held by a court order or sentence and who is mentally ill must be transferred to a lunatic asylum or another facility where he will receive the necessary care. This is the government's responsibility.

THE TRANSFER OF PRISONERS ACT OF 1950:

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By passing this law, legislators paved the way for the transfer of detainees between states for the purposes of rehabilitation and vocational training, as well as within states to relieve overcrowding in prisons.

THE PRISONERS (ATTENDANCE IN COURTS) ACT OF 1955:

Inmates can be transferred to a civil or criminal court to give testimony or mount a defence under the rules of this statute.

1.6 CONCLUSION:

In the decision Manna vs. People of Illinois, The United States Supreme Court ruled that life is more than just animal existence. The souls behind the bar cannot be denied the same. No one can be denied the rights protected by A21, cle 21; not even the government. All the rights that apply to a free man apply to prisoners as well, with some limitations. Their fundamental rights are not taken away from them just because they are in prison. One of the worst groups of people to experience a fundamental right being violated is prisoners. The Supreme Court has reaffirmed the core principle that the loss of fundamental rights does not result from imprisonment. Accordingly, The Supreme Court has said unequivocally that a prisoner's constitutional rights are both genuine and enforceable, even if they are limited by the prison environment. It might be argued that inmates retain all of their constitutional rights even while they are in prison. Articles 14, 19, and 21 of the Indian Constitution provide conceptual frameworks for the protection of prisoners' rights even when they do not do so directly. The Prisons Act of 1894 also has safeguards in place to ensure inmates' safety and well-being. When convicts' constitutional or statutory rights are violated, the Supreme Court has concluded that it may intervene with prison officials. The Supreme Court has frequently stated that a prisoner, in addition to being a human being, is a natural and legal person. Even though he or she is imprisoned, he or she is still considered a person under the law. Given that a person's rights do not cease to exist following conviction for a crime, the imposition of any substantial sentence inside the prison system is premised on the absence of procedural safeguards. Inmates are no

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longer confined to their cells for 24 hours a day in a dungeon-like environment. These days, correctional facilities are used for more than just meeting out punishment as a means of deterrent and retribution. Inmates are now housed in prisons not as abandoned or forgotten members of society, but as living, breathing humans who must behave properly when they return to their communities. Given that incarceration is already a penalty, adding further punishment in jail would be a violation of prisoners' human rights, and prisons are therefore intended to be places of rehabilitation rather than punishment. Life is not a game. Life is more than just existing. The significance of affirming each person's human rights is a concept that should be understood in depth.

