

**DISSERTATION
ON**

Health Rights of Prisoners in the Perspective of Bangladesh

Course Title: Supervised Dissertation

Course Code: LAW 406

Submitted to

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2019-1-66-003

Date of Submission

25 May 2023

N>B – External Addition



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The dissertation titled **Health Rights of Prisoners in Bangladesh**, prepared by Md. Hasib Chowdhury; ID-2019-1-66-003 submitted to Farzana Rifat Siddique (Lecturer, Department of Law, East West University) for the fulfillment of the requirements of Course 406 (Supervised Dissertation) for the LL.B. (Hons.) degree offered by the Department of Law, East West University, is approved for submission.

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ACKNOWLEDGEMENT

I consider myself extremely lucky to have benefited from the support and advice of several people throughout the course of my studies. I would like to take this opportunity to offer my thanks and acknowledge those people without whom I could not have written this paper.

My profound appreciation goes to my supervisor, Farzana Rifat Siddique (Lecturer, Department of Law, East West University), for all her constant guidance, time, and effort throughout the preparation of this thesis. This would not have been possible if she hadn't shown her inspirational support to me when I was about to give up almost in the process of writing. I am thankful to her for the instructions she provided me in the last phases of the paper to give it a proper phase.

I would also like to take the opportunity to thank my fellow senior and mates of my department for their immense support in the fulfillment of this thesis.

Finally, I am grateful to my family members for their unconditional support throughout the whole journey.

DECLARATION

I do hereby declare that this thesis paper, titled “**Health Rights of Prisoners in the Perspective of Bangladesh**” represents my own work. To the best of my knowledge, it contains no materials previously published by another person. But the contents, as taken from other sources, are duly acknowledged in reference. I also declare that no part of it has been submitted anywhere for any degree and/or diploma.

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Health Rights of Prisoners in the Perspective of Bangladesh

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LIST OF ABBREVIATIONS

CEDAW	Committee on the Elimination of All Forms of Discrimination Against Women
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, and Cultural Rights
LMIC	Lower Middle-Income Countries
mhGAP	Mental Health Gap Action Programme
SMR	United Nations Standard Minimum Rules for the Treatment of Prisoners
UN	United Nations
UDHR	Universal Declaration of Human Rights
WHO	World Health Organization

Abstract

In Bangladesh, the state and international mechanisms still do not recognize the inmates' health rights in the same way that they do other rights. The jail system in Bangladesh continues to operate according to the antiquated laws and rules imposed by the British colonial authorities. The topic of prisoners' health rights is examined in the following paper. The Prisons Act of 1894, the ensuing Rules, and a number of internally issued circulars, notifications, and instructions collectively make up the Bengal Jail Code of 1920, which governs prisons in Bangladesh along with other regulations. Here, I am attempting to educate the reader about the most marginalized group of people and their legal rights to health care. Furthermore, in order to address more broad matters such as a prisoner's legal standing and a prisoner's rights lawsuit, the later issues include recommendations and some ethical thought. I also discuss the prison system's mental health issues in Bangladesh and describe the current mental health services available to inmates who require them. I contextualize this within the body of knowledge on the Indian subcontinent and, more widely, in low- and middle-income nations, on the topic of mental health problems in situations of custody. I propose recommendations for research, policy, and practice after adding data from informal talks with some journalists and experts in this sector to the literature's results. Finally, the paper will end with the aim of pointing out the actual effectiveness of practicing law for prisoners in Bangladesh, along with a discussion of international laws and prisoners' sentiments of injustice, and assisting them in establishing their health rights, which is one of the fundamental human rights.

Keywords: Prison, Prisoners' Rights, Health Rights, Law, Fundamental Rights, Constitution and International Instruments.

Chapter 1

Introduction

1.1 Statement of the problem

Every human being has their own rights to life, health rights, and to live with minimum dignity. Even if the person is being punished for his offense. The history regarding prisoners' health rights in prison is not very positive. The death rate in prison also needs attention. The violations of health rights of prisoners increasing day by day in Bangladesh are now becoming an alarming situation. The statistics produced by several NGOs as well as the individual activists who work for the rights of prisoners show the current situation. In the prisons of Bangladesh, the irregularity, and the negligence regarding the better treatment of the inmates are in a critical situation. Their basic constitutional rights as well as their human rights have been violated deliberately. Prisoners are sent to prison as punishment, not for punishment. If we think about the motive or goal of prison, the purpose of sending a person to jail for violation of any local law is to reform the person in an ethical manner. But as usual, these theories are not followed in practice. However, the practice should be changed for the improvement of the prison administration to ensure the rights of the prisoners given by the law. In the national legislation, the health rights of prisoners are highly recognized and discussed in international instruments as well. Though in International instruments the rights of the prisoners, which include the health rights, have been ensured and protected. The obligations of the states are highly noticeable to follow the instruments.

1.2 Scope of the Research

The thesis will primarily bring to light the situation of the prisoner's rights regarding health, along with the role of legislation and authorities. However, the thesis will reflect the judicial decisions about the health rights of the prisoners with domestic and international case laws. Furthermore, this thesis will state the current role of the government's policy in maintaining international instruments and what else is required to be done for their betterment.

1.3 Research Question

- 1) How much of the existing national laws are being implemented in Bangladesh?
- 2) Whether the International principles are followed properly or not?

1.4 Objective of the thesis

The objectives of this thesis are given below:

1. To portray the current situation of the Prisoner's practicing health rights in Bangladesh.
2. To discuss comparatively between laws of Bangladesh and international laws.

1.5 Research Methodology

In this thesis, a qualitative will be applied, which will be based on primary as well as secondary sources such as legislation, policies, and judicial decisions of the national and international arenas, textbooks, national and international journals, articles, research, and news reports. Relevant literature has also been assembled from different secondary sources.

1.6 Literature review

One of the remarkable works regarding prisoner health rights in Bangladesh was done in 2022, the article titled 'The State of Prison in Bangladesh: Disparities between Law and Practice'¹ by Nelufar Yesmen. The situation of current legislation and its implementation have been described. In this paper, the author focuses on the practice of law practically and discusses a real scenario in Bangladesh. The author tried to portray the inside problems of the prison and the prisoners, such as; overcrowding, corruption, administrative failure, drug dealing issues, treatment and rehabilitation, health and hygiene, and all other aspects possible to represent the prison environment. The author also discusses laws compared with practice in real to exercise the rights of the prisoners as according to the given title. The end of this paper concluded with some very effective recommendations for the objectives of the paper.

Even though this paper covers so many things about prisoners' right still there are so many things to do, and research part by part to find out the actual problems and solutions. This paper

¹Nelufar Yesmen. The State of Prison in Bangladesh: Disparities Between Law and Practices. Science, Technology & Public Policy. Vol. 6, No. 1, 2022, pp. 23-28 <[The State of Prison in Bangladesh: Disparities Between Law and Practices :: Science Publishing Group](#)> accessed on 18 March,2023

mainly discusses the prisoner's rights in general however there are many different aspects of rights that should also be needed to be explored but in this paper that particularly is missing.

This study has been accurate according to the objectives of this paper but did not cover up the health rights of the prisoners of Bangladesh by analyzing the and its practice. However, my thesis is based on the health rights of prisoners in Bangladesh and a comparative analysis on existing national laws and international laws therefore I undertake and acknowledge that my thesis will add an excellent portrait of the health rights of the prisoners and their enforcement.

There is another very impactful paper published in 2021, a paper titled '*Mental health services in the prisons of Bangladesh*'² by Al Aditya Khan, Howard Ryland, Tayeem Pathan, Helal Uddin Ahmed, Amir Hussain, and Andrew Forrester is trying to portray the mental health issue of the prisoners. which is a less discussed matter. This paper discussed the establishment of mental health care in prisons.³ It is very rare to get recognition for mental health but the recovery from mental health is as important as physical health. In this given paper the authors discuss mental health in prison with some legal reference from Indian law and their practice for the prisoners who are suffering from mental illness. At the conclusion they also refer to some of the recommendations for the betterment of the prison mental health system in Bangladesh.

The mentioned study is very useful for the society but there is something very important is missing that, this paper only mentioned one particular law from the prospect of Bangladesh even though there are many laws that also can be interpreted for the establishment of mental health rights for the prisoners of Bangladesh.

The discussed study on mental health is one of the worthy works for recognizing the importance of mental health but this paper is not fully covered under the practicing laws of Bangladesh. Mental health is as important as physical health so that it should also be established as any other basic right, but these given discussed paper does not fulfill the demand to be recognized by law and practice. In my thesis, I would like to light up the discussion of health rights that are included in mental health under existing Bangladeshi laws with the analysis of International laws.

²Khan AA and others, "Mental Health Services in the Prisons of Bangladesh" (2021) 18 *BJPsych International* 88 <[Mental health services in the prisons of Bangladesh - PMC \(nih.gov\)](#)> accessed on 18 March 2023

1.7 Structure of the Thesis

This thesis will appear with an introduction chapter. Afterward, in its second chapter will discuss the National Law, and draw a link between the previous timeline and the current situation. Thereafter, the third chapter there will be a discussion of international instruments regarding prisoners and their health rights with case references. In chapter four I will try to shed light on critical comparisons and reflections on Bangladesh. The conclusion chapter will contain the findings and recommendations.

1.8 Limitations of the thesis

I was not able to find sufficient documents concerning these issues for doing this research. Case laws in Bangladesh and resources are not well enough for doing this research which is one of the limitations for this research. So the research is based on the articles found on the internet and book in my own collection related to this topic. Another limitation is shortage of time. The Better outcome could have been possible, if I had enough time to make a critical assessment of this research and followed quantitative research methodology, so that I have accurate statistics from in -person surveys with the concerned authorities. However being a student it would be expensive and have the access restriction for on field research.

Chapter 2

Legal Frameworks of Prisoner's Health Rights in Bangladesh

2.1 Introduction

Health rights are considered as one of the basic rights of human beings. This right cannot be discriminated against by any race, sex, ethnicity, political belief, or social status. The state has an obligation to protect this human right. The practicing laws are still not seen to be well executed. However, there are acts and other provisions regarding this issue.

2.2 Concept of Health Rights and Prisoner

The state must ensure the rights of the people. Health rights also include being free from interference and harmful practices, the right to govern one's body and health, the right to participate, and the right to take part in decision-making processes relating to one's health. Health rights have been recognized in several international instruments. It has been mentioned under the Universal Declaration of Human Rights (UDHR) and the International Covenant on the Economic, Social, and Cultural Rights (ICESCR).

A person who is currently incarcerated as a result of a court order or another legal requirement to be detained in custody is referred to as a "prisoner" under Section 1 of the Prison Security Act of 1992.⁴ It is also important to notice that we regularly hear the terms "KOYEDEE" and "HAJOTI" to refer to two different categories of inmates.

First off, Hajoti refers to those who are currently incarcerated, and Koyedee refers to those who have been found guilty and have received a fixed-term sentence under any criminal legislation.

A prisoner's legal claims are considered to be legally enforceable and demand that the prison service fulfill or refrain from doing particular actions. In a legal system devoted to the preservation of human rights, the principles of human rights, legality, and proportionality influence the understanding of a prisoner's legal status. The idea of a prisoner's legal status must openly and consistently maintain the crucial distinction and make it visible the circumstances surrounding the limitations placed on prisoners' rights to achieve these goals.

⁴ The Prison Security Act of 1992, s1.

2.3 Rights of Prisoners under National Law

The rights, responsibilities, and powers of prisoners are outlined in essentially acts in Bangladesh. Discussions are given below.

1. *The Constitution of the people's Republic of Bangladesh*
2. *The Prisons Act of 1894, previously known as the Bengal Jail Code of 1864,*
3. *The Prisoners Act, 1900*
4. *The Special Benefit for Women Convicted in Prisons Act 2006*
5. *The Identification of Prisoners Act, 1920*

The Bengal Jail Code of 1864 developed over time into a collection of guidelines that were regularly produced for the supervision and management of all prisons, including subsidiary jails, throughout the entire region. The Prisons Act (No. IX of 1894 as amended), the Prisoners Act (No. III of 1900 as amended), and the Identification of Prisoners Act of 1920, all of which seek to regulate the supervision of jail establishments, the custody, and well-being of the prisoners inside of them, as well as ensuring the upkeep of rigidity among those people, are heavily referenced in the Bengal Jail Code of 1864, which is still in use in Bangladesh today. The beginning of jail administration according to a complete statute may be documented as far back as 1864 when the Government of Bengal drafted a detailed jail code. Before 1864, jail administration was carried out through occasional circular letters and general directives. The consequence was that there was no consistency in the incarceration procedure. The Bengal Jail Code explicitly states that the provisions of the Penal Code 1860, the Criminal Procedure Code 1898, and the Civil Procedure Code 1908 that are associated with the confinement of prisoners, execution of sentences, prisoners' appeals, lunatics, and such matters are also required to be obeyed in addition to being observed.

2.3.1 The Constitution of the People's Republic of Bangladesh

The Constitution's Part III specifies basic human rights. According to Article 35(2), no person shall be given a second sentence for an infraction for which he has already been found guilty and punished.⁵ The accused cannot also be subjected to a punishment greater than or different from what was stipulated in the law in force at the time the offense was committed. According to

⁵The Constitution of the people's Republic of Bangladesh A.35(2)

Article 35(3), a criminal defendant has the right to a speedy and impartial trial in front of a court an institution that is acknowledged by the law.⁶ The court's rulings must be free from outside interference and must be unbiased and independent. The court must also be established by legislation or other authority. Everyone who is subject to its jurisdiction shall have access to the court. According to Article 35(5), no one should be made to endure torture or other cruel, barbaric, or degrading punishment or treatment.⁷ These are some of the legal rights of the prisoners given by the Constitution.

2.3.2 The Prisons Act of 1894

According to Section 4, the government has an obligation to provide adequate accommodations in prisons in accordance with the law, particularly as per the Act's desire to take the prisoners' split into consideration.⁸

According to Section 7 of this Act, every jail must have a hospital or a suitable facility for the medical treatment of sick convicts.⁹ The Medical Officer is required under Section 13 of the Prisons Act of 1894 to assess each prisoner and decide what kind of job the prisoner is capable of doing in the event that he is given a rigorous jail sentence.¹⁰ Any of the prisoners sentenced to solitary confinement will be examined by a medical officer afterward. If an emergency occurs, prisoners must be kept at work for more than nine hours in order to report on their employment. This penalty is definitely brutal and inhumane.

Female prisoners must be housed separately from male prisoners in order to prevent them from interacting with them, meeting them, or engaging in sexual activity, as stated in Section 27(1).¹¹ Male inmates must be kept apart from other prisoners according to Section 27(2) if they are under the age of 21 or have not reached that majority. The rest of the convicts are divided among those who have reached puberty and those who have not. The prison administration is in charge of dividing criminals from civil inmates.¹² In accordance with Section 29, a cell may only be used for solitary confinement if it has a device that allows convicts to contact a security guard or other

⁶ Ibid, a 35(3)

⁷ Ibid, a 35(5)

⁸ The Prisons Act of 1894, s4.

⁹ *ibid*,s7

¹⁰ *Ibid*, s13

¹¹ *Ibid*, s 27(1)

¹² The Prisons Act of 1894, s 27(2)

authorities at any time. If an inmate is placed in solitary confinement for more than 24 hours, the medical officer or another member of the medical staff must visit them at least once every day, whether or not it is a punishment.¹³

Under Section 31 of the Prisoners Act of 1894, a civil prisoner or a criminal prisoner who has served their sentence may be allowed to help themselves and obtain food, clothing, bedding, or other necessities from private sources when necessary, but only after passing an inspection and adhering to any rules that the Inspector General may deem appropriate. However, it is yet to be implemented in Bangladesh's penal system.¹⁴

According to Section 33(1), the superintendent is responsible for providing all civil detainees and criminal convicts who haven't been found guilty with the appropriate clothing and bedding. But only those who are unable to give him suitable clothing and bedding are granted this opportunity.¹⁵ According to Section 33(2), the expense of the clothing given to offenders belongs to that person or his representative.¹⁶

2.3.3 The Prisoners Act, 1900

In section 30(1) of the act the government must order the transfer of anyone who is being held or imprisoned due to a court order or sentence to a lunatic asylum or any other trustworthy place within Bangladesh where they will remain under government supervision if the government has reasonable grounds to believe that person is mentally ill or insane.¹⁷ According to section 30(3), The Lunacy Act, 1912 shall apply to the detainees who are confined in a lunatic asylum.¹⁸

2.3.4 The Special Benefit for Women Convicted in Prisons Act 2006

In accordance with this Act, a prisoner who has served more than half of their term is eligible for special privileges, including concessions.¹⁹ Any prisoner's conditional release, the Department of Social Services' aftercare services for the social rehabilitation of a select few who received training in a variety of trade courses while incarcerated, and vocational training in block or

¹³ Ibid, s 29

¹⁴ Ibid,s31

¹⁵ Ibid,33(1)

¹⁶ Ibid,33(2)

¹⁷ The Prisoners Act,1900, s 30(1)

¹⁸ Ibid, s 30(3)

¹⁹ The special benefit for women convicted in prison act 2006, s 4.

batik²⁰, embroidery, haircutting, bamboo and cane work, tailoring science, fabric production, etc²¹ will be regarded as special benefits for women prisoners.²²

2.4 The Current State of Health Rights of Prisoners in Bangladesh

The following are only a few of the many issues that exist in prison brutal physical and mental abuse, punishment administered by jail staff that conflicts with their court-ordered penalties, corruption and other misconduct on the part of jail staff, criminally inclined detainees, deaths in detention, kids who stay in jail with their detained mothers, detention of the prisoners without trial, improper budget implementation for the detainees, improper recreation arrangements, insufficient access to food, and other factors all contribute to the suffering of prisoners.²³ The Bangladesh Society for the Enforcement of Human Rights provided numbers showing that on any given day, between 1,150 and 1,200 inmates enter, and exit the system. However, statistics don't always tell the whole story.²⁴ Breakfast for the prisoners consists of 87 grams of bread and 14 grams of jaggery, which is cruel to a person. For lunch, you can have 247 grams of rice, one piece of fish or meat, and vegetables. For dinner, you can have rice, vegetables, and lentils. These foods are not sufficiently cooked, served, or consumed for a person to live a healthy life, especially when pregnant.²⁵ Also, there is mental harassment for money in every prison. If new inmates do not approach jail security through a financial deal, they are given a little chance. In prison, money is a significant influence. Without having money, they are targeted to inhumane treatment, mental and physical abuse, and threats of being implicated by prison security or authorities. The cost of the bare essentials is higher than it should be. Anyone who makes an effort to object lives in a constant state of misery. Additionally, the dominant prison gang abuses and tortures the new prisoners using its illegitimate power. Male authority figures regularly abuse women. Torture and sexual assault against women are more frequent. The recent data

²⁰ *ibid*, s 3 (a).

²¹ *ibid*, s 3(c).

²² *ibid*, s 3(b).

²³ Hossain, R. (2020) "Prisoners' Rights and the Reality in Bangladesh," *Lawyers Club*, 11 October. <https://lawyersclubbangladesh.com/en/2020/10/15/prisoners-rights-and-the-reality-in-bangladesh> (Accessed: May 5, 2023).

²⁴ *ibid*

²⁵ *ibid*

shows that 234 deaths of the prisoners have been recorded, in which 3 cases of suicides till September 2022.²⁶

2.5 Implementation of Health Rights in Prison

Prisoners in Bangladesh rarely get fundamental rights when incarcerated. The right to health care, which is a basic human need and is protected by the Bangladesh Constitution regardless of a person's identity, is one of the rights that inmates are most frequently denied. The Constitution of the People's Republic of Bangladesh lists two unalienable rights for citizens: the right to life in Article 32 and the right to be protected from degrading or brutal treatment in Article 35.²⁷ Under Article 18 (1) of the Constitution of the People's Republic of Bangladesh, it was stated that it is the state whose primary duties are to improve public health and raise the level of nutrition.²⁸ The jails in Bangladesh are severely short on medical facilities. There are very few doctors in positions in charge of providing care for the thousands of prisoners in the nation. The lack of physicians and other medical services affects everyone in jail, not just the common inmates. There are just four doctors for the 83,000 prisoners in jails around the nation. While VIP detainees receive medical care from facilities outside the jail, the majority of regular convicts do not receive adequate medical attention.²⁹ Methodological mental health monitoring is not being conducted in jails. People are directed to the nearby psychiatric hospital if a mental health assessment is required, typically in cases of serious illness. Prisoners are sent to the National Institute of Mental Health Hospital by the authority for treatment in Dhaka.³⁰ Due to the fact that all teaching hospitals contain a psychiatric department, there are comparable arrangements for assessment and treatment in different regions of the country. In areas without a teaching hospital, mentally ill inmates are moved to a nearby region so they can receive care. People with physical or mental health issues can be admitted to the police's own general hospital

²⁶Muktadir Rashid, 'One prison inmate dies daily', *The New Age*, (Dhaka 29 Jan 2023) <<https://www.newagebd.net/article/192965/one-prison-inmate-dies-daily>> accessed on 12 May 2023

²⁷ The Constitution of the People's Republic of Bangladesh Art 32,35

²⁸ Ibid, A.18(1)

²⁹ Rozina Islam (2022) 'Healthcare in jail Only four physicians for around 83,000 inmates', *Prothom Alo*, 9 October. <<https://en.prothomalo.com/bangladesh/2sw4r2cj3f>> accessed on 20 May, 2023

³⁰ Khan, A.A. *et al.* (2021) "Mental Health Services in the prisons of Bangladesh," *bjpsych International*, 18(4), pp. 88–91. Available at: <https://doi.org/10.1192/bji.2021.34>.

in Dhaka. Services for substance abuse maintain their hospital and, upon request, offer advice to courts or prisons.³¹

Prisoners are always escorted to assessments by two police officers because psychiatrists do not visit prisons to evaluate prisoners. Prisoners are typically evaluated by a medical board composed of psychiatrists and other medical experts before a decision is reached on whether or not they have a serious or minor psychiatric disorder.³² Then, depending on the situation, either outpatient or inpatient treatment can be provided. Prisoners may be admitted for review at any stage of the criminal justice system, even though, in practice, admissions are usually brief and only made in the most severe situations. After being cured or having their medication stabilized, they are returned to prison with the option of continuing their medicines there.³³ After being released from prison, there are procedures for referral to a hospital or an outpatient service, but there is no probation service, so there are no provisions for community sanctions. The same Evaluation and treatment processes for mentally ill offenders are applied to both male and female convicts.³⁴

Courts may refer defendants to neighboring psychiatric hospitals if there are concerns about the existence of mental disease. Getting psychiatric reports is rarely an option because sentences are typically carried out during the same hearing once guilt has been confirmed. Although a psychiatric evaluation is not always necessary in cases involving the death penalty, judges may choose to spare the lives of criminal defendants who are severely psychotic based on psychiatric evidence.

2.6 Case Studies

Bangladesh's constitution strictly safeguards the human rights of those who have been found guilty. According to the Constitution, essential liberties and rights are inalienable. Even if someone has been convicted of a crime, they need to be accorded the same fundamental human rights as everyone else. The Constitution cannot be discouraged by jail authorities, and when a

³¹Ibid

³² Khan, M.J. and Molla, S. (2019) '9 prison doctors for 90,000 inmates', The Daily Star, 17 September. <<https://www.thedailystar.net/frontpage/9-prison-doctors-for-90000-inmates-in-bangladesh-1801108>> accessed on 1 May 2023

³³Ibid

³⁴ Ibid

criminal invokes Part III of the Constitution whenever a prisoner is affected by trauma, the Constitution is outraged.

In *Dr. Mohiuddin Farooque V Bangladesh*³⁵ case, The High Court Division observed that it is the duty of the government to protect the health rights of the prisoners and also stated that failing to fulfillment of this duty would be breach of public trust along with the disrespect of the rule of law. In another case *ASK v Bangladesh*³⁶, Where Ain o Salish Kendra (ASK) and Bangladesh Legal Aid and Services Trust (BLAST) filed a case against the government due to the failure of ensuring the accommodation, education and rehabilitation of the juvenile and children across prison of Bangladesh, Which is the violation of Children Act, 1974 and the Constitution of Bangladesh. The High Court Division directed government to ensure the facilities for the juveniles regarding health, medicine by appointing social welfare officers.

The High Court Division addressed the inmates' condition with a decision on September 21, 2021, in which a bench of Justice M. Enayetur Rahim and Justice Mustafizur Rahman requested the authorities in charge to hasten the appointment of 29 physicians in jails across the country.³⁷ This High Court Division judgment reveals that the authorities concerned were unable to ameliorate the inmates' suffering. The government's capacity to maintain international human rights standards for detainees became more challenging as cells became overcrowded and healthcare services became scarce.

In the case of *Bazlul Huda v. The State (2000)*, the Appellate Division of the Supreme Court of Bangladesh makes a significant statement regarding the human rights of prisoners, emphasizing that "the question of the basic human rights of a prisoner inside the jail ought not to be lost sight of as his conviction of a crime does not reduce him into a non-person."³⁸

2.7 Conclusion

The Prison Service is heavily burdened by prisoners with mental illnesses, and these conditions are by far the most common cause of morbidity in prisons. Prisons in Bangladesh are governed by laws that date back to the 19th century. The goal of delivering justice through incarceration is

³⁵ 50 DLR (HCD) (1998) 84

³⁶ 63 DLR (2011)

³⁷ Siddique, F.B. (2021) "We should be concerned about the prisoners' human rights in Bangladesh," *The Business Standard*, November 24. Available at: <https://www.tbsnews.net/thoughts/we-should-be-concerned-about-prisoners-human-rights-bangladesh-333892> (Accessed: May 5, 2023).

³⁸ *ibid*

to rehabilitate offenders. However, the way that jails are currently run in Bangladesh is so poor that, as a result of a lack of necessities, some inmates go on to commit heinous crimes after being released. The way that Bangladesh's jail system now operates does not adhere to the laws, regulations, and standards of our country. Prisons are state property, and from the perspective of the law, inmates are treated more like people than like animals.

Chapter 3

International Legal Framework on Prisoner's Health Right

3.1 Introduction

International law is a collaborative system that is based on treaty law. When a state ratifies a human rights convention, it makes a commitment to uphold, respect, and implement the rights it protects as well as to take part in the systems of impartial oversight and decision-making that the treaty lays out.³⁹ There are a broad number of existing international instruments whose goals are to ensure the rights of all human beings. The prisoner's rights are not excluded from these. Though the rational thought is removing or isolating the offenders or convicts from society by keeping them in prison to prevent society from further criminal activity. But the prisoners are also human beings and they have their rights during prison life.

3.2 Universal Declaration of Human Rights (UDHR)

The United Nations General Assembly adopted the Universal Declaration of Human Rights in 1948. The "inherent dignity"⁴⁰ Every human being serves as the foundation for human rights. According to Article 3 of the Declaration every person has equal rights before the law and there will be no discrimination regarding race, sex, language, creed or any other factor.⁴¹ Article 5 discourages the inhuman torture or any cruel treatment as punishment.⁴² Article 8 proclaims remedies against violation of rights. It stated that the violations of the rights which are given by the constitution or by law are subjected to effective remedies.⁴³ Article 25(1) set out the adequate standard of living for every person in terms of health and well-being of himself. This article also covered the security during unemployment, in bad health, widowhood and other lack of livelihood which is beyond his control.⁴⁴ The motherhood and child protection right has been entitled in article 25(2). It states all children shall enjoy the same social protection.⁴⁵

³⁹Lines, Rick. (2008).The right to health of prisoners in international human rights law. International journal of prisoner health. 4. 3-53.10.1080/17449200701862145.

⁴⁰ The Universal Declaration of Human Rights, 1948, Preamble.

⁴¹ Ibid, Article 3

⁴² Ibid, Article 5

⁴³ Ibid, Article 8

⁴⁴ Ibid, Article 25(1)

⁴⁵ Ibid, Article 25(2)

3.3 International Covenant on Civil and Political Rights (ICCPR)

The covenant was adopted to deal with the practical problems of protecting rights.⁴⁶ Article 7 of the ICCPR ensures that in the matter of torture or to cruel, degrading treatment or punishment no one shall be subjected.⁴⁷ Article 10 of the ICCPR, states all prisoners shall be treated with humanity and with respect to the inherent dignity of the human person.⁴⁸ In Article 10(2) (b) the separate accommodation arrangements of juvenile accused is a must from the adults.⁴⁹ ICCPR plays a vital role to protect the unborn child and the mother. Article 6(1) state the right to life and no one shall be arbitrarily deprived of his life.⁵⁰ The protection for the pregnant woman has been also mentioned in Article 6(5) of the covenant where the imposition of sentence of death has been restrained for the woman who is with child.⁵¹

3.4 International Covenant on Economic, Social and Cultural Rights (ICESCR)

The International Covenant on Economic, Social and Cultural Rights (ICESCR), this covenant stated that prisoners also have their own right to practice though they are punished and as punishment, they are getting imprisonment in prison.⁵²

3.5 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

This covenant is to end torture and to criminalize all the acts of torture within the territorial jurisdiction of the signatory parties. In article 1 the term “Torture” has been defined which any act whereby a person is intentionally subjected to great pain or suffering, whether physical or mental, in order to obtain from him or a piece of third party information or a confession, punish him for an act he or they have committed or are suspected of having committed, intimidate or coerce them, or for any other reason based on any form of discrimination, when such pain or suffering is inflicted by or at the instigation of or wit It excludes any suffering thats is solely

⁴⁶ Ibid.

⁴⁷ International Covenant on Civil and Political Rights (ICCPR), Article 7

⁴⁸ Ibid, Article 10

⁴⁹ Ibid, Article 10(2)

⁵⁰ Ibid, Article 6(1)

⁵¹ Ibid, Article 6(5)

⁵² The International Covenant on Economic, Social and Cultural Rights (ICESCR)

brought on by, inherent in, or incidental to legal sanctions.⁵³ This convention was adopted to recognize torture as a criminal offence and it is the duty of the state to take step to prevent acts of torture in respective state jurisdiction.

3.6 Case Studies

The health rights of the prisoners have been recognized internationally and it also has execution of the instruments. In the *Mouisel V France*⁵⁴ case , The European Court of Human Rights addressed the violation of Article 3 of the European Convention of Human Rights which is about the prohibition of inhuman treatment.⁵⁵ In *Dudko v Australia*⁵⁶ Case article 14(1) of the ICCPR which is right to human treatment, everyone is equal before law has been violated. The fact was a prisoner was held in solitary confinement for more than six years without any justification or final trial. The Supreme Court of the United States of America upheld a judgment in *Brown v Plata*⁵⁷ a case regarding reducing the prisoners for the overcrowding in prison which caused lack of medical care and mental health was disturbed. In *Sheela Barse v State of Maharashtra*⁵⁸ case the journalist, Sheela Barse filed a writ petition against the custodial violence and the violation of women prisoner's rights under article 32 of the Constitution of India. Here court directed to ensure the rights of the women prisoners with all the necessary requirements such as hygiene, legal remedies, health care etc.

3.7 Conclusion

Along with the above discussed treaties and conventions there are more instruments which are relevant to the protection of the rights of the prisoner in all sorts of basic and health rights. In General Assembly resolution 45/111 which was adopted on 14 December 1990, the first basic principle for the treatment of prisoners is “All prisoners shall be treated with respect due to their

⁵³ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Article 1

⁵⁴ Chamber judgment *Mouisel v. France* 14.11.02 . ECHR <<https://hudoc.echr.coe.int/eng-press?i=003-651691-657425>> accessed on 22 May 2023

⁵⁵ European Convention on Human Rights, 1950 , Article 3

⁵⁶ *Dudko v Australia*, HRC, UN Doc CCPR/C/90/D/1347/2005 (29 August 2007) <[Human Rights Committee Considers Scope of the Right to Equality before the Courts | Human Rights Law Centre \(hrlc.org.au\)](https://www.humanrights.org/en/articles/consider-scope-right-equality-before-courts-human-rights-law-centre-hrlc-org-au)> accessed on 22 May 2023

⁵⁷ *Brown, et al. v. Plata, et al.*, 563 U.S. 493 (2011) <[Brown, et al. v. Plata, et al. :: 563 U.S. 493 \(2011\) :: Justia US Supreme Court Center](https://www.supremecourt.gov/opinions/11-504/summary11-1523.html)> accessed on 22 May 2023

⁵⁸ 1983 SC 378 <[Sheela Barse v. State of Maharashtra \[1983 SC 378\]](https://www.mca.gov.in/SupremeCourt/SCJudgments/1983/378/1983SC378.htm) » [Law Faculty](https://www.lawfaculty.com)> accessed on 22 May 2023

inherent dignity and value as human beings.”⁵⁹ The United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR) which is also known as the Nelson Mandela Rules contains the standard to provide health care in custody in 1957. In rules 28 and 29 women prisoners and their child’s health were discussed.⁶⁰The health care providers are from Rule 24 to 35.⁶¹

⁵⁹General Assembly resolution 45/111,14 December 1990

⁶⁰ United Nations Standard Minimum Rules for the Treatment of Prisoners 1957.

⁶¹ Emily Richards, ‘The Nelson Mendela Rules’, (Prisoners Abroad 31 December 2018)<[The Nelson Mandela Rules | Prisoners Abroad](#)> accessed on 20 May 2023

Chapter 4

The Critical Analysis of National Laws and International Instruments

4.1 Introduction

The way that Bangladesh's jail system now operates does not adhere to the laws, regulations, and standards of our country. The legal frameworks which has been established and settled to reform the prisoner are now in a critical situation to its execution. The legislations the country follows were enacted in the British period. The health care of the prisoners is not up to the marked. From the reports of the news agencies and other researchers reflects the initial scenario of the ongoing system. Bangladesh is a signatory state in some international instruments to which the obligations need to be followed.

4.2 Analysis of the Implementation and Real Scenario

The scenario of inside of the prison is not like same how it seems from outside. The following are only a few of the many issues that exist in prison brutal physical and mental abuse, punishment administered by jail staff that conflicts with their court-ordered penalties, corruption and other misconduct on the part of jail staff, criminally inclined detainees, deaths in detention, kids who stay in jail with their detained mothers, detention of the prisoners without trial, improper budget implementation for the detainees, improper recreation arrangements, insufficient access to food, and other factors all contribute to the suffering of prisoners. Trial proceedings of Bangladesh are so lengthy that sometimes the parties pass away before the verdicts. It also could happen that the parties could not get the fair trial. With these consequences the accused or the parties have to suffer physically and also mentally. India's Court also ordered to uphold human rights, even for inmates, not just in Bangladesh but about that country's prisoners' rights. In this regard, the Indian Apex Court's statement in the case *State of Andhra Pradesh v. Challa Ramakrishna Reddy and Ors* [2000] state that even if a person being convicted for a crime does not make him less human and the constitution still ensures his basic fundamental rights.⁶²The current situation of the health of the prisoners can be noticed by the recent hearing of the High Court Division of a writ petition on the current number of health

⁶²*State of Andhra Pradesh v. Challa Ramakrishna Reddy and Ors*, AIR 2000 SC 2083 <[State Of Andhra Pradesh vs Challa Ramkrishna Reddy & Ors on 26 April, 2000 \(indiankanoon.org\)](http://www.indiankanoon.org)

workers in prison. The High Court Division observed that there were not enough doctors in prisons of Bangladesh. The reports of the concerned authorities portray that, in 2019 there were only 10 doctors against 141 posts in 68 prisons. After the High Court Division order, in December 2022 the number of appointed doctor's was 93 out of 141 posts. The court further ordered to recruit the rest of vacant posts but the authority didn't implement the order⁶³.

According to Ain O Salish Kendra, 133 prisoners died in jail custody in 2019–2020. Meanwhile, the rights body Odhikar has recorded a total of 14,392 deaths in jail custody in the past two decades. In that report, it was mentioned that the prison authorities have been requesting the Home Ministry to fill the 141 vacant doctor's posts in prisons. Due to the lack of adequate numbers of doctors and health care services, sick and seriously ill prisoners are often taken to hospitals at the very last moment.⁶⁴In June 2022, there are several deaths in the prison such as in Narayanganj a 35 year old inmate has died after taking to the hospital.⁶⁵By this scenario it shows the negligence of the Health and prison's authority. Where according to section 13-14 of the Prisons Act, 1894, the duties of the medical officers have been described.⁶⁶.

The World Health Organization's Mental Health Gap Action Programme (mhGAP) and psychological first aid are two examples of interventions that may be adapted for use in prison settings when there are limited resources. Both prisoners and prison personnel may benefit from increased awareness of mental illness and instruction on how to recognize, prevent, and treat it.⁶⁷ There are several incidents of suicide in jails out of frustration, losing hope to live, because of the internal environment of the prison. Though prisoners are referred to psychiatric ward for the treatment. In January 2023 a convicted named Nazrul Islam who has been sentenced to death. He hanged himself with the ceiling in the psychiatric ward.⁶⁸Overcrowding is another threat for the health of the prisoners. The prisoners are living a kind of subhuman life in the overcrowded

⁶³ "People in prisons have rights to health care: HC observes", The Business Standard, 24 January, 2023 <<https://www.tbsnews.net/bangladesh/court/people-prisons-have-rights-health-care-hc-observes-573314>> access on 18 May 2023

⁶⁴Worrying violation of health rights of prisoners,NEW AGE,(June,2022) <<https://www.newagebd.net/article/174023/worrying-violation-of-health-rights-of-prisoners>>accessed on 10 May 2023

⁶⁵ Ibid

⁶⁶ The Prisons Act, 1894

⁶⁷ Khan, A.A. *et al.* (2021) "Mental Health Services in the prisons of Bangladesh,"*bjpsych International*, 18(4), pp. 88–91. <https://doi.org/10.1192/bji.2021.34> accessed on May 2023.

⁶⁸ Md Raihanul Islam, 'Inmate with mental health issues dies by suicide in Kashimpur jail, *Dhaka Tribune* (26 January 2023) <<https://www.dhakatribune.com/nation/2023/01/26/prisoner-commits-suicide-in-kashimpur-jail>> accessed on May 2023

prisons. According to the report of ‘world prison brief’, till 2022 in Bangladesh 68 jails are functioning in 55 district prisons and 13 central prisons.⁶⁹ Though the total capacity of the prison is 42,626 but according to the National Prison Administrations report the current population in prison is 81,156.⁷⁰ This states the occupancy level 190.4%.⁷¹ In an interview the former inspector general of prisons Md Liaquat Ali Khan shared that in the prisons there are still 80% inmates who are on under-trial.⁷² This overcrowding issue is causing a huge disturbance for the health of the prisoners. In an earlier discussion of this paper’s chapter 2.4 it has been shown that in the Ministry of Home Affairs in February 2020, the official capacity of the jail system is 40944. With this increasing number of the inmates in the prisons it is noticeable how the jails are getting crowded but the accommodation and others remain the same because of lack of enough space. But under the state laws, each prisoner is supposed to have enough space in the prison. The international responsibilities which are given by international instruments need to be discussed here for comparison. In the Universal Declaration of Human Rights, which was adopted by the United Nations General Assembly in 1948, there is specific mention of the health rights of the prisoner in the basic principles for the treatment of prisoners. The other two covenants, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), also state that prisoners have rights, even when they are deprived of liberty in custody. Bangladesh is under obligation to the International Covenant on Civil and Political Rights (ICCPR) to treat all persons deprived of liberty with humanity and with respect for all mankind with human dignity.⁷³ In The United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR) it was stated to separate the prisoners according to their status e.g The on trial prisoners should not be with the convicted prisoners in one cell and the juvenile needs to get separate

⁶⁹ World prison Brief Report 25.11.22 <<https://www.prisonstudies.org/country/bangladesh>> accessed on 18 May, 2023

⁷⁰Ibid

⁷¹ Ibid.

⁷² M Moneruzzaman, ‘Inmates live subhuman life in overcrowded jails across Bangladesh’, *New Age* (Dhaka 25 November, 2023) <<https://www.newagebd.net/article/187750/inmates-live-subhuman-life-in-overcrowded-jails>> accessed on 20 May.

⁷³Nazia Wahab, “women prisoner’s rights in Bangladesh and Bangladeshi rules and regulations: a critical analysis of international standards”, *Commonwealth Law Review Journal (CLRJ)* Volume 5 2019, <https://thelawbrigade.com/wp-content/uploads/2020/01/Kshitij_Nazia-Wahab_Women-Prisoner%E2%80%99s-Rights-in-Bangladesh-and-Bangladeshi-Rule-and-Regulations-A-Critical-Analysis-of-International-Standard.pdf> accessed on 18 May 2023

accommodation.⁷⁴ In terms of Women Prisoners condition in prison, the standard has been provided in United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders also known as the Bangkok Rules. From rule 6 to 18 discussed the health care services of women prisoners which are also supplement rules of the Standard Minimum Rules for the Treatment of Prisoners (SMR).⁷⁵ The UN Convention, Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted to uphold the rights of women, recognizing the discrimination against women. Bangladesh as a state ratified CEDAW. It has a reservation on Article 2 and 16(1). Article 2 is about the state having to condemn all the discrimination against women and to take steps on the other hand article 16(1) deals with equality of men and women. The reason behind Bangladesh's this reservation has been stated that these are conflicting with the Sharia law.⁷⁶ This is a blockage to ensuring the rights of women in some context.

4.3 Conclusion

The health rights for a human being are a fundamental right. To ensure this right for the human being the government is bound to the people of the country. It has been mentioned in the constitution as well as in the other national laws of Bangladesh. But the implementation of these is in question now. The prisoner's health right is a concerning matter because this is a human right under the international instruments. The application of these legislations and instruments are need to be recognized more. Though the prisoners are offenders who are convicted but as a human being, no law can curtail their human rights in that margin. Every state has separate policy to treat the prisoners. But the international instruments have been established to set a minimum basic guideline. Bangladesh needs to notice the crisis of the situation.

⁷⁴United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR)

https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf

⁷⁵ United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders.

<https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf>

⁷⁶BLAST, UN WOMEN, “*CEDAW and Access to Justice for Women in Cases of Violence: Bangladesh Perspective*” December 2016

Chapter 5

Concluding Remarks

5.1 Findings

- 1) The availability of sufficient medical officers is the biggest concerning issue of the prison system in Bangladesh. The enacted laws and other instruments are not properly followed by the responsible authorities.
- 2) In Bangladesh, overcrowding in prisons is a common problem. The present institutions unequal population distribution causes overcrowding in jails. On the other hand, the number of convicts awaiting trial has increased dramatically. Issues with the structure worsen congestion. The buildings are antiquated, dark, and unhygienic because many jails in Bangladesh were built by the British in the 1800s and have not yet been updated. As a result, it is difficult to adhere to the UN's requirements. Prisoners usually share sleeping quarters, making it difficult to preserve privacy.
- 3) The scarcity of essential medications, the lack of full-time physicians, and their frequent use negate the effectiveness of that effort.
- 4) Since the inception of this system, the prison situation in Bangladesh has been a serious issue. However, the issue has grown more serious recently. There are a few causes, such as bad conservation and ventilation. The inadequate drainage system, lack of sufficient clothes, lying on the ground to sleep, inadequate personal hygiene, terrible and insufficient water, extraction of labor from unqualified individuals, inadequate medical examination, and absence of wholesome and clean food.
- 5) The availability of clean drinking water in jails is questionable, and all of the nation's prisons likely utilize regular tap water. Additionally, the sanitation system falls short of expectations.
- 6) The issue with mental health of the inmates is concerning now. The number of suicidal cases is increasing.
- 7) Following the minimum international guidelines is being compromised in maximum. Whether due to lack of opportunity or crisis of the system.

5.2 Recommendations

To respect convicts' fundamental rights and needs and minimize crime, it is crucial to overhaul the criminal justice system as well as the surrounding society.

- 1) The Probation of Offenders Ordinance, 1960, and the enforcement plan from the Ministry of Law, Justice, and Parliamentary Affairs may be approved and put into effect. By putting this ordinance into effect, there will be a chance to solve the prisoners' concerns.
- 2) If we take a look at Section 4 of the Act, which is concerned with the conditional discharge of those who have been convicted but have not served more than two years in jail, the authority may take into account the offender's age, character, history, and physical or mental condition.
- 3) A legislative framework may be created for this purpose if the government wants to set up community service as a substitute for jail. Alternatives to jail include bail, conditional discharge, suspension of the sentence, probation, binding-over, fines, community service requirements, compensation, restitution, etc.
- 4) By ensuring that detainees have easy access to venues for cultural stimulation and public forums where they can voice their thoughts, the state may make it simpler for people to exercise their right to free speech. This practice is needed for the betterment of the prison environment, which will improve psychological conditions.
- 5) Training of the prison officers needs to be more upgraded. To prevent the internal ragging and other offenses, this makes prison more dangerous for the on trial prisoners and other new convicts.
- 6) It is likely that mental illnesses are prevalent in Bangladeshi jails since the percentage of inmates having mental disorders is significantly greater than that of the population as a whole in other comparable Lower Middle Income Countries (LICS) To better comprehend any treatment gaps in mental health and to direct the development of services, we advise using two first inquiry paths. A thorough

survey of professionals with ties to prisons and mental health practitioners may be done with the goal of better understanding the current level of service provision, requirements for training, and perceived needs.

- 7) The prevalence of mental illness in Bangladeshi prisons must also be determined by urgent epidemiological research. This should employ screening techniques that are both culturally appropriate and permitted for use in criminal settings. If administrators in Bangladesh wish to provide better treatment for their mentally ill prisoners; they would want to consider scalable, economical alternatives. These could be developed from the ground up to suit the needs of the local populace or adapted from successful solutions employed in other countries, particularly comparable LMICs. Modern technology, such as digital delivery techniques for mental health therapy, may be used in this.
- 8) In terms of women prisoner's health, there are specific provisions regarding their health care services. The cleanliness of the female prisoners is a must by UN's resolutions. But the existing national laws only provide sanitary treatment in general. Not only the general women but also in question of inmates who are with children. Pregnancy is a positive experience for all women and getting the proper health care in respect of dignity.
- 9) Due to the high prevalence of mental illness in the general population and the lack of community mental health facilities may present a chance to treat individuals who would not otherwise have access to care. If these treatments ultimately result in cost savings, that might be determined via a health economic analysis. The protection of inmate human rights who suffer from mental illness has to be improved.

5.3 Concluding Note

Prisoner rights are one of Bangladesh's less-known topics. The government of Bangladesh and the people of our society have never attempted to acknowledge the rights of prisoners protected by state and international institutions. Prisoners' rights must be enforced in accordance with the law. It is hoped that it will help to maintain appropriate order inside the jail system by lowering

Convicts' perception of unfairness and meeting the state's legal duties. Because every human being deserves to exercise basic human rights. However, there are many national laws and international conventions and treaties, but executing them in real prison is very rare, especially in countries like Bangladesh, which are counted as low-income countries, even though there are many recommendations for this problem to be solved. Though considerable work has to be done on the particular rights of prisoners, whether completely or partially preserved, it should be acknowledged that the state bears responsibility for ensuring those inmates' retained rights. Develop the attention of the government to the fact that some of the most hated people in the community may be among the prison population. Similarly, in contemporary conflicts, the treatment of prisoners with respect is crucial for legitimacy, and international human rights standards are viewed as important assurances of good medical care. Rights ought to have nothing to do with virtue because their fundamental feature is that they are accessible to every person, including those who may perceive themselves to be less deserving than others based on their actions. It may be claimed that illegal behavior robs prisoners of all rights. One of the primary reasons for utilizing legal sanctions is to reduce criminal crimes. But access to the courts must be ensured in order to defend a prisoner's rights and advance the concept that those serving time for a crime also have a right to fundamental liberties. *BLAST & Another v Bangladesh & Others 55 DLR (2003) 363* case the judgments ensures the safety during arrest, fair trial, instructions against torture, remand policy in police custody. These are the basic rights in the context of prisoner's rights too.⁷⁷

Let's start with a brief review of the global plan for guaranteeing prisoners' access to the legal system and the preservation of their rights. A prisoner could be more likely to obey the law if they can demonstrate their nationality by making a rights-based claim. Lastly, it is anticipated that it will diminish inmates' perceptions of unfairness inside the penal system, assisting in the maintenance of law and order. It could also satisfy any criteria that the law places on the state.

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