

Prisoner rights: How the failure to enforce rights threatens to undermine social justice.

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Abstract

In recent years, prisoner rights have been a major point of contention amongst both the state and the public. Prisoners are entitled to several rights during their detainment, yet there is growing evidence that suggests these rights are not respected in practice, which poses a significant threat to social justice. This paper examines the current hardships and setbacks ingrained in the prison system that are preventing prisoners from enjoying their rights to the fullest potential. I will explore how prisoner disenfranchisement, IPP sentences, remand and prison conditions all come together to threaten prisoners' citizenship, equality of opportunity and their overall quality of life.

Introduction

The prison population is at the highest level it has ever been in England and Wales, with 87,334 as of June 2025, making prisoner rights a more prominent issue than ever.¹⁷⁶ The approach of being 'tough on crime' in attempt to deter first time offenders and re-offenders has placed strain on an already overwhelmed system. This has worsened an already dire situation such as reported poor prison conditions and prisoner education, placing more people at risk of rights being breached.¹⁷⁷ This article will detail how prisoner rights litigation has been limited in its pursuit of bettering the prison system and considering how the broader themes of social justice tie in with these limitations. It will consider the social justice themes of citizenship, equality of opportunity and fairness, paying particular attention

¹⁷⁶ Ministry of Justice, *Offender management statistics quarterly: January to March 2025*, (2025) (Accessed 9/10/2025).

¹⁷⁷ Ministry of Justice, *Independent Sentencing Review Final report and proposals for reform*, (2025) 13 (Accessed 23/07/2025); HM Inspector of Prisons, *HM Chief Inspector of Prisons for England and Wales Annual Report 2024-2025*, (2025) (Accessed 13/10/2025) 24-30.

to citizenship and how this has been neglected for prisoners. Citizenship provides people with a ‘right to have rights’.¹⁷⁸ This extends to prisoners as they remain citizens during their imprisonment, hence maintaining their legal rights.¹⁷⁹ It is important that we do not ‘lose interest in their fate’ because they are still entitled to their human rights and they are at risk of being neglected.¹⁸⁰ However prisoner rights are routinely breached when it comes to disenfranchisement, imprisonment for public protection sentences, remand and prison conditions, limiting any potential improvements litigation has attempted to make, in the process of bettering prisons. The discussion in this piece will suggest that the government’s withholding of access to rights contravenes principles such as the rule of law and fundamental rights such as article 3 of the ECHR, which raises significant implications for social justice principles such as citizenship, fairness and equal opportunity.

Prisoner Disenfranchisement

Prisoner disenfranchisement is the removal of the right to vote for convicted prisoners whilst detained, which was introduced by the Representation of the People Act 1983, s.3.¹⁸¹ The struggle to improve prisoner disenfranchisement is one of the many ways rights litigations has been stunted in its attempt to better prisons. Progression appeared achievable after the successful decision of *Hirst*.¹⁸² In this case a prisoner challenged the blanket ban imposed by the Representation of the People Act 1983, s.3.¹⁸³ It was held that this was a violation of Article 3 Protocol 1 and despite the legitimate aim of the ban being to impose punishment, this was not a proportionate way of doing so.¹⁸⁴ This led the European Court of Human Rights to call

¹⁷⁸ Hannah Arendt, *The Origins of Totalitarianism* (2nd edn, Harcourt Brace Jovanovich 1973) ch9, 296.

¹⁷⁹ Halsbury’s Laws (5th edn, 2024) vol 85 A, para 4.

¹⁸⁰ UNHRC, ‘Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’ (Human Rights Council, 9 February 2010) A/HRC/13/39, 7.

¹⁸¹ Representation of the People Act 1983, s.3.

¹⁸² *Hirst v UK* (No 2) (GC) (2006) 42 EHRR 41.

¹⁸³ Representation of the People Act 1983, s 3.

¹⁸⁴ Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (1954) ETS 9, art 3.

for the UK to amend its legislation and provide some prisoners with the right to vote.¹⁸⁵ The success of this decision was not carried forward, being met with strong resistance as the UK refused to comply with this ruling for 12 years, deliberately taking no action when holding consultations. This was because the UK Government wanted to maintain a punitive approach to punish prisoners for their ‘moral failings’.¹⁸⁶¹⁸⁷ When they could resist no longer, the ‘Lidington Compromise’¹⁸⁸ was reluctantly introduced, providing prisoners released on temporary licence with the right to vote. Whilst this may seem like further success, this is limited by the fact that this compromise would only affect approximately 100 prisoners at once.¹⁸⁹ When comparing this to the prison population of 87,900, this compromise seems insignificant.¹⁹⁰ This highlights how the UK Government has implemented minimal action whilst still complying with the *Hirst* judgement, solely to appease the European Court of Human Rights.¹⁹¹

These delays and minor changes suggest that there is a reluctance to support progression with prisoner rights. Jones and Davies debate this topic well, highlighting that despite granting the vote, there is a clear failure to follow up and ensure that prisoners are able to enforce this right.¹⁹² This also suggests that social and political attitudes are influencing the enforcement of fundamental rights, which raises implications surrounding the neutrality of the enforcement of rights by the UK Government.

¹⁸⁵ Greens and MT v UK; [2010] ECHR 1826.

¹⁸⁶ Susan Easton, *The Politics of the Prison and the Prisoner* (Routledge 2018) 103.

¹⁸⁷ HC Deb 3 November 2010, vol 517, col 921.

¹⁸⁸ C.R.G. Murray, ‘Prisoner Voting and Devolution: New Dimensions to an Old Dispute’ (2021) 25 Edinburgh L. Rev. 291.

¹⁸⁹ HC Deb 2 November 2017, vol 630.

¹⁹⁰ House of Commons Library, *UK Prison Population Statistics* (8 July 2024).

¹⁹¹ *Hirst* (n 5).

¹⁹² Robert Jones and Gregory Davies, ‘Prisoner Voting in the United Kingdom: An Empirical Study of a Contested Prisoner Right’ (2023) 86 (4) MLR 654.

Further problems have arisen for the minority of prisoners that are entitled to vote. Although cases such as *Hirst* purportedly offered an opportunity to tackle the issue Jones and Davies raise (bridging prisoner rights to social justice such as a sense of citizenship) little progress has been made.¹⁹³ Jones and Davies successfully portray these difficulties, highlighting the lack of knowledge prisoners have regarding their voting rights, the inconsistent application of rules and the poor communication and lack of support, resulting in incompetence when completing forms.¹⁹⁴ They also highlight how the dispersal of prisoners has caused confusion as to what address and postcode to put on applications, especially for prisoners that have been transferred to different prisons.¹⁹⁵ These problems discourage prisoners from voting, resulting in low participation and rendering an already limited compromise ineffective. This further highlights the reluctance to progress prisoner-rights enforcement agendas as these are issues that could be easily remedied if adequate support and guidance was made available. The UK Government providing as little leeway as possible only serves to emphasize the reluctance mentioned above. There has been an attempt to exclude prisoners from voting entirely and when this was not possible, the UK endeavoured to make voting rights accessible and effective, without legally doing so. Despite the original success of *Hirst*, no statutory change has been made and there has been minimal progression, limiting the impact.¹⁹⁶ As a result, disenfranchisement, whether this be legal or through barriers preventing voting, ‘reinforces the exclusion’ of prisoners, contributing to a loss of citizenship for prisoners and further compromising principles such as neutrality and equality of state enforcement of rights.¹⁹⁷ The UK government has not only

¹⁹³ *Hirst* (n 5); Robert Jones and Gregory Davies, ‘Prisoner Voting in the United Kingdom: An Empirical Study of a Contested Prisoner Right’ (2023) 86 (4) MLR 654.

¹⁹⁴ Robert Jones and Gregory Davies, ‘Prisoner Voting in the United Kingdom: An Empirical Study of a Contested Prisoner Right’ (2023) 86 (4) MLR 654.

¹⁹⁵ *Ibid.*

¹⁹⁶ *Hirst* (n 5).

¹⁹⁷ Susan Easton, *The Politics of the Prison and the Prisoner* (Routledge 2018) 88.

departed from the social justice-oriented judgement of *Hirst*, but the opportunities of increased democratic engagement opened by *Hirst* have not been followed. In doing so, this suggests that the system has been manipulated to reflect the pre-*Hirst* stance and specifically designed to reinforce disenfranchisement.

Imprisonment for Public Protection Sentences

Imprisonment for Public Protection Sentences were introduced by the Criminal Justice Act 2003 and they consisted of a fixed term sentence for the original offence committed, followed by indefinite imprisonment until the prisoner was able to prove that they were no longer a threat, by completing rehabilitation courses.¹⁹⁸ These sentences were supposed to be reserved for ‘serious offences’ or for people that posed a ‘significant risk’ to the public.¹⁹⁹ However, they were used for less serious offences that do not align with the severity of the sentence.²⁰⁰ Whilst imprisonment for public protection sentences can no longer be awarded, litigation regarding these sentences remains of the utmost importance for the prisoners still serving this sentence.²⁰¹ This is because there has been concern for the mental health of prisoners serving this sentence due to rising rates of self-harm and suicide, highlighting the necessity for betterment.²⁰² In recent years, there has been a growing trend in suicide amongst prisoners serving IPP sentences, with 2023 being the highest figure seen in the last decade. Even with the recent increase, the figures have always been significant in comparison to the population.²⁰³ There has been an even more drastic increase in self-harm rates, with the rate increasing by 50% alone between 2017 and 2018.²⁰⁴ The abolishment suggested that the situation was improving for prisoners serving

¹⁹⁸ Criminal Justice Act 2003, s 225.

¹⁹⁹ CJA 2003, s 225.

²⁰⁰ House of Commons Library, *Sentences of Imprisonment for Public Protection* (SN 6086, 2024) 11.

²⁰¹ Legal Aid, Sentencing and Punishment of Offenders Act 2012, s 123.

²⁰² Justice Committee, *IPP Sentences: Government and Parole Board Responses to the Committee’s Third Report* (HC 2022-23, 266).

²⁰³ HM Prison & Probation Service, ‘HMPPS Annual Report on the IPP Sentence 2024/25’ (HC 1155 2025).

²⁰⁴ Prison Reform Trust, ‘The indeterminate sentence of Imprisonment for Public Protection (IPP)’ (2021)

https://prisonreformtrust.org.uk/wp-content/uploads/2021/11/IPP_sentences_the_facts.pdf2.> accessed 27 July 2025.

IPP sentences, but this abolition was not retrospective, meaning anyone already detained would have to continue serving this sentence.²⁰⁵ As of March 2025 this continues to affect over 2,000 prisoners remaining on this sentence, some of whom were released and later recalled.²⁰⁶ The rehabilitative courses that are required before release can occur are not always offered, with many prisoners having difficulty accessing them.²⁰⁷ A group of prisoners in the case *Jame, Wells and Lee* challenged their imprisonment after not being provided with access to courses.²⁰⁸ As they had completed their original tariff and were not provided with access to rehabilitative courses, it was held that their imprisonment was unjustified and in breach of Article 5(1).²⁰⁹ This was a successful ruling in that it underlined that rehabilitation courses must be provided, but it failed to answer questions about delays in access or limited access to the courses, as seen in *Haney*.²¹⁰ In this case, the courts refused to follow the above judgement, stating that Article 5(1) was not the correct legal basis of such a duty because applying this basis would result in prisoners being released when they have not been deemed safe to do so. However, in this case, the court said that there was an ‘ancillary duty’ to facilitate the necessary rehabilitation courses, implicit within Article 5. This would result in damages if breached and breach of Article 5 was found here, with two of the prisoners making the claim receiving damages. However, in *Brown v Parole Board*, the UKSC realigned its approach with the one taken in *James*, providing some more coherence. However, the clear contrasting rules despite the similar facts further reinforces the reluctance to provide prisoners with the rights they are entitled to, deepening social justice concerns. These concerns are reinforced because the situation remains the same, with continued detention of IPP prisoners not violating Article 5, despite an abundance of litigation. Despite the original success of *James* and *Haney*’s success on Article 5, no case since has succeeded, limiting the impact of what could have potentially been a series of progressive cases for prisoner rights.²¹¹ The clear contrasting rulings despite the similar facts further reinforces the reluctance to provide prisoners with the rights they are entitled to, deepening social justice

²⁰⁵ LASPO Act 2012, s 123.

²⁰⁶ HM Prison & Probation Service, ‘HMPPS Annual Report on the IPP Sentence 2024/25’ (HC 1155 2025) 5.

²⁰⁷ Justice Committee, *IPP Sentences: Government and Parole Board Responses to the Committee’s Third Report* (HC 2022-23, 266).

²⁰⁸ *James, Lee and Wales v UK* (2013) 56 EHRR 12.

²⁰⁹ European Convention on Human Rights 2001, art 5 (1).

²¹⁰ *R (Haney) v Secretary of State for Justice* [2015] AC 1344.

²¹¹ European Convention on Human Rights 2001, art 5 (1).

concerns. It can be suggested there is a consistent theme for there to be a minimal amount of success, immediately followed by setbacks. The ‘high’ threshold for a violation has left many IPP prisoners stuck in the same situation, still awaiting rehabilitative courses.²¹² This leads to potential concerns regarding equality of opportunity and a lack of access resulting in a failure to remove ‘obstacles to personal development’.²¹³ Failure to provide all IPP prisoners with the necessary rehabilitative course discriminates against prisoners because of their ‘social circumstance’.²¹⁴ Their rights appear to be treated with less importance simply because they are in prison. In not providing all prisoners with access to these courses, prisoners are being denied the chance of equal footing, limiting any potential litigation has had. This raises the issue of whether underlying government incentives undermines the enforcement of rights, further raising questions as to the neutrality and enforcement of the rule of law. Indeed, this has been reflected in recent UK government plans to ‘evolve’ the ECHR’s application in the UK in pursuit of ‘public confidence in the rule of law’.²¹⁵

Remand

Remand remains an important aspect of the prison system, but problems continue to plague this issue. As of June 2025, there are 17,701 prisoners on remand in England and Wales, contributing to the overcrowding problem.²¹⁶ This is the highest amount recorded of prisoners on remand. The Bail Act 1976 provides that there is a right to bail unless a serious offence has been committed.²¹⁷ However, remand is increasingly being used for less serious offences, with the Act often not being mentioned at

²¹² *Brown v Parole Board for Scotland* [2018] AC 1.

²¹³ Andrew Heywood and Clayton Chin, *Political Theory: An Introduction* (5th edn, Macmillan 2023) 277.

²¹⁴ *Ibid* 275.

²¹⁵ Shabana Mahmood ‘ECHR “must evolve” to restore public confidence in rule of law, says Lord Chancellor’ (GOV.UK press release) <<https://www.gov.uk/government/news/echr-must-evolve-to-restore-public-confidence-in-rule-of-law-says-lord-chancellor>> (Accessed 10 October 2025).

²¹⁶ Ministry of Justice, *Offender management statistics quarterly: January to March 2025* (31 July 2025) <<https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-january-to-march-2025/offender-management-statistics-quarterly-january-to-march-2025>> (accessed 10 October 2025).

²¹⁷ *Bail Act 1976*, sch 1.

all when deciding whether to grant bail.²¹⁸ This has led to the Act not being diligently applied.²¹⁹ Everyone who is refused bail has a right to a trial ‘within reasonable time’²²⁰, but the European Court of Human Rights has been reluctant to give a definitive answer to what this means, opting to make their decision on a case-by-case basis. This allows judges to apply their discretion and leaves the area without set guidelines, meaning that people awaiting trial have no indication as to how long they will be waiting and making it that much harder for them to pursue a claim. The current custody time limit is 6 months, but this limit is being continuously breached.²²¹ As of September 2022, 770 people on remand faced delays exceeding 2 years.²²² These delays are caused by court backlogs, increasing arrests for serious offences and most recently, the pandemic. Even though these delays are out of the control of the prisoners awaiting trial, this is not sufficient for the court to find a violation of Article 5.²²³ This leaves prisoners facing an unknown length of pre-trial detention.²²⁴ Despite the UK’s failure to properly remedy this issue, there has been success in other countries. The European Court of Human Rights held that there was an Article 5 violation after a Moldovan prisoner’s pre-trial detention was exceeded multiple times, ruling that a trial must be prompt, which strengthened the protections awarded to prisoners and provided them with a stronger basis for bringing claims.²²⁵ It is important for the UK to follow suit, but despite growing concerns, they have not yet introduced a test case.

Regardless of fault, these delays can have negative impacts on the presumption of innocence, with remand already going against innocent until proven guilty by imprisoning people before guilt is established. 1/10 people and more than 1/3 children held on remand are later acquitted and found not guilty, with the amount of people given non-custodial sentences higher again.²²⁶ Even though there is a presumption of innocence, they have been ‘deprived of their liberty’ and exposed to the harsh realities

²¹⁸ Prison Reform Trust, *Bromley Briefings Prison Factfile* (February 2024), 21.

²¹⁹ Justice, *Remand Decision-Making in the Magistrates’ Court: A Research Report* (November 2023).

²²⁰ European Convention on Human Rights 2001, art 5 (3) (1) (c).

²²¹ Prosecution of Offences Act 1985.

²²² Prison Reform Trust, *Bromley Briefings Prison Factfile* (February 2024), 21.

²²³ DPP v Tesfa Young-Williams [2020] EWHC 3243.

²²⁴ Luke Marsh, ‘The Wrong Vaccine: Custody Time Limits and Loss of Liberty During Covid-19’ (2021) 41 Legal Studies 693, 1.

²²⁵ *Buzadji v Moldova* App no 23755/07 (ECHR, 5 July 2016).

²²⁶ Prison Reform Trust, *Bromley Briefings Prison Factfile* (February 2024), 21.

of prison and conditions.²²⁷ Not only is prisoner rights litigation failing to better prisons for prisoners regarding remand, but it is also affecting the citizenship of innocent people and vulnerable children, raising the question about fairness. Rawls explains that fairness is about putting rights ‘prior to that of the good’.²²⁸ Refusing to grant bail in less serious offences has placed the good of protecting the public above the right to bail, going against the principle of fairness, and sometimes punishing the people the courts have set out to protect.

Prison Conditions.

‘Absolute’ rights are purported to hold the most protection yet are commonly breached, as a certain ‘level of suffering or humiliation ‘seeming to be allowed.²²⁹ Prison conditions are protected by Article 3, which is an absolute right, meaning that there is no justification for state interference. It states that ‘no one shall be subjected to torture or to inhuman or degrading treatment or punishment’.²³⁰ Prisoners most often make a claim for a violation based on degrading treatment, however inhuman treatment (a higher threshold) has also become a claimed basis.²³¹ Imprisonment alone does not constitute inhuman or degrading treatment, but the conditions prisoners are subject to will if the ‘minimum level of severity’ is met.²³² One of the conditions raising major concern is sanitation, with ‘slopping out’ still being practiced in 5 UK prisons and infestations running rife.²³³ In *Napier*, an Article 3 violation was found after a prisoner was forced to practice slopping out, resulting in a worsening of his eczema.²³⁴ This led to the Scottish Government investing a large amount of resources to phase out this practice.

²²⁷ UNHRC, ‘Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’ (Human Rights Council, 9 February 2010) A/HRC/13/39, 11.

²²⁸ John Rawls, *A Theory of Justice* (2nd edn, Harvard University Press 2020) 31.

²²⁹ Isobel Renzulli, ‘Prison Abolition: International Human Rights Law Perspectives’ (2022) 26 *Intl J Hum Rts* 100, 105.

²³⁰ European Convention on Human Rights 2001, art 3.

²³¹ *Kudla v Poland* (2002) 35 EHRR 11.

²³² *Mursic v Croatia* (2017) 65 EHRR 1.

²³³ Jack Sheard, ”Britain’s Worst Prison” is Far from an Outlier in a ‘Nasty, Cruel, Violent’ System’ (The Justice Gap, 26 June 2024) <[‘Britain’s worst prison’ is far from an outlier in a ‘nasty, cruel, violent’ system – The Justice Gap](#)> accessed 29 November 2024.

²³⁴ *Napier v Scottish Ministers* (2005) 1 SC 229.

Whilst this appears to be a positive change, it can be suggested that the Scottish Government's motivation was to prevent incurring more legal costs with successful claims, rather than to improve prisoner's lives. It must also be noted that of 3000 similar claims post *Napier*, only 670 were successful.²³⁵ Vitally in comparing this case to the outcome in others, its success is not reflected. The failure to find an inherent violation of right to human dignity in *Grant* highlights the lack of success.²³⁶ *Grant* was distinguished from *Napier* because slopping out was rare and had not caused any physical harm. There should not be inconsistencies in decisions and the frequency with which it occurs should be irrelevant when it is a practice that was supposedly abolished in the late 1970s. Wandsworth is one of the many examples of abysmal conditions in prisons, with issues such as mould and grime occurring too often to warrant comment and prisoners co-existing with vermin.²³⁷ The vermin infestations are so out of control that 2 prisons have been relying on cats to handle the problem, despite the ECtHR's requirement to take precautions against this.²³⁸ This is another example of how litigation has failed to better the sanitation in prisons, with the situation seemingly deteriorating. This also demonstrates the recurring issue that the lack of compliance and enforcement of prisoner rights is steered by an underlying stance that prisoners should not have access to fundamental rights such as article 3.

Combatting overcrowding issues via litigation has proven more successful, with violations of Article 3 being easier to obtain.²³⁹ This is due to the rebuttable presumption of a violation where a prisoner has less than 3 square metres of personal space, but no rebuttable presumption is available for anything

²³⁵ Sarah Armstrong, 'Securing Prison Through Human Rights: Unanticipated Implications of Rights-Based Penal Governance' (2018) 57(3) Howard Journal of Crime and Justice 401, 414.

²³⁶ *Grant v Ministry of Justice* (2011) EWHC 3379.

²³⁷ Jack Sheard, "Britain's Worst Prison" is Far from an Outlier in a 'Nasty, Cruel, Violent' System' (The Justice Gap, 26 June 2024) <['Britain's worst prison' is far from an outlier in a 'nasty, cruel, violent' system – The Justice Gap](#)> accessed 29 November 2024.

²³⁸ Jack Sheard, 'Are Prisons Beyond the Reach of the Law?' (Legal Action Group, 20 June 2024) <[Legal Action Group | Are prisons beyond the reach of law?](#)> accessed 21 November 2024.

²³⁹ *Ananyev v Russia* (2012) 55 EHRR 18.

exceeding this size.²⁴⁰ However, there are mitigating factors that will be applied wherever possible, such as time out of cells and the duration spent in confined cells. These mitigating factors limit any potential success this rebuttable presumption has had. Solitary confinement is another problem plaguing prisoner life. In *AB*, the UK Government reached a friendly settlement, conceding an Article 3 violation, after a 15-year-old was held in solitary confinement for 23 hours a day for 55 days.²⁴¹ Whilst this is successful for the individual prisoner, the lack of case law and unwillingness to go to court highlights a reluctance to formally award Article 3 violations and fails to invoke widespread change throughout prisons. Despite being an absolute right, these issues prove that there is narrow opportunity for claims regarding Article 3, highlighting the limitations of this right in upholding social justice pillars such as fairness and citizenship.

Conclusion

In theory, citizenship and litigation are structured to dualistically protect prisoners however this article has demonstrated their rights are not being upheld to a sufficient standard. To say that prisoner rights litigation is any more than limited would be unfounded and unsupported by the treatment of voting, IPP sentences, remand and most prominently, prison conditions. Despite these aspects requiring review, successful litigation has not produced meaningful change. Court successes are consistently followed by further setbacks with continued attempts to strip prisoners of their 'right to have rights' and in turn, their citizenship. The discussion in this article crucially suggests that political and social attitudes affect the realization of prisoner rights, calling into question foundational legal principles such as neutrality and the rule of law. The discussed cases and state responses show that although rights such as human rights are fundamental and even 'absolute', government incentive and attitudes towards prisoners undermines the integral nature of rights. This raises crucial questions around social justice particularly citizenship, equal opportunity and fairness. It is important that these failures do not serve as a deterrent, but rather as a motivator to do better in the future. If the same amount of effort given to diminishing prisoner

²⁴⁰ *Mursic* (n 50).

²⁴¹ (*R on the Application of AB*) v SOS for Justice (2021) UKSC 28.

rights was applied to strengthening them and bettering prisons, progression would move at a much faster rate.