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REFORMING PRISON VISITATION: CONJUGAL RIGHTS AND POLICY GAPS IN INDIA

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ABSTRACT

The imprisonment of citizens raises serious issues regarding the extent to which punitive action can coexist with the maintenance of essential human rights. Imprisonment necessarily impinges on liberty but does not eliminate prisoners' constitutional and inherent rights, such as the right to dignity, family life, and personal relations. This paper examines the controversial topic of conjugal rights for prisoners in India and its legal, ethical, and rehabilitative aspects.

The paper starts by situating the development of prison systems and the interpretation of prisoners' rights under art. 21 of the Constitution. Pioneering judgments establish that prisoners do not lose their fundamental rights, though with reasonable restrictions justified by imprisonment. The discussion then turns to conjugal rights—understood as the rights flowing from marriage, such as companionship, cohabitation, and sexual relations and their global spread in nations such as Sweden, Denmark, and Mexico. The status of conjugal rights for prisoners in India continues to be highly piecemeal. On its part, the Punjab High Court, in its case relating to Jasvir Singh, has taken a step ahead towards recognizing conjugal rights under art. 21, but the follow-through pilot program has faced suspension owing to security and logistical issues. The paper critically examines the Punjab experiment, its criteria for selection,

and the reformatory penology grounded in it, comparing results against judicial precedents and the legislative silence vis-a-vis the national level.

In addition, the research highlights the rehabilitative payoffs of conjugal visits, such as lower rates of recidivism, better mental wellness, and stronger family ties, supported by data from around the world in correctional systems. It also takes into account counter-arguments, like security issues and gendered vulnerabilities, addressing the need for stringent safeguards.

The paper concludes with policy recommendations, advocating for a single national framework, infrastructure and capacity, and psychological support to be drawn between the rights of the prisoners and institutional control. Overstepping constitutional ideals and human dignity as well as realistic penal reform, the research endorses a reformed penitential system stressing rehabilitation over vengeance, bringing India in the fold of international blueprints of best practices in criminal justice.

Key-Words: Conjugal Rights, Fundamental Rights, Prisoners, Reformatory Justice, Inmates

INTRODUCTION

Jail is the most ancient form of penal institution.¹ Prisons may be understood as “government-sanctioned facilities designed for the long-term confinement of adults as punishment for serious offenses.”² Per Prisons Act, 1894 it “means any jail or place used permanently or temporarily under the general or special orders of a State Government for the detention of prisoners, and includes all lands and buildings appurtenant thereto.”³ It may also be understood as “a place where criminals are kept to punish them for their crimes, or where people accused of crimes are kept while waiting for their trials.”⁴ To a criminal, it may be a dangerous place or an unavoidable dignity; to a law-abiding person, it may serve as the place where the criminal

¹ Alok Kumar Meena, History of Indian Prison System: An Overview, 8 J. Emerging Techs. & Innovative Res. e298 (2021), available at <https://www.jetir.org/papers/JETIR2109545.pdf> (last visited Apr. 30, 2025).

² Ashley T. Rubin, Prison History, Oxford Res. Encyclopaedia Criminology (Apr. 26, 2018), available at <https://doi.org/10.1093/acrefore/9780190264079.013.455> (last visited Apr. 30, 2025).

³ The Prison Act, 1894, § 3(1) (India).

⁴ Jail, Cambridge Dictionary, available at <https://dictionary.cambridge.org/dictionary/english/jail> (last visited Apr. 15, 2025).

offender ends up after committing a crime; to a socially inadequate person, it may be a shelter. To prison officers and psychologists, it may be a place of work or a place of studying behaviour.⁵ Imprisonment has been the customary mode of dealing with offenders since time immemorial.⁶ Lord Macaulay, in his famous 'Minutes of 1835' described that "Imprisonment is the punishment to which we must chiefly trust".⁷ Imprisonment is used as a form of punishment in every country in the world.⁸

That said, do individuals relinquish their fundamental rights when they are incarcerated, or do they still retain these rights?

The constitution of India guarantees to all individuals certain fundamental rights⁹, viz. right to equality, life & dignity, freedom of speech & expression, etc, to place citizens at the centre stage and the state being highly accountable.¹⁰ The object is to ensure the inviolability of certain essential rights against vicissitudes.¹¹ They have two aspects, firstly, they act as a "fetter on plenary legislative powers" and, secondly, they provide "conditions for fuller development of our people, including their dignity."¹² They are intended not only to protect individuals' rights, but they are also based on high public policy. Liberty of the individual and the protection of his fundamental rights are the very essence of the democratic way of life adopted by the Constitution, and it is the privilege and the duty of this Court to uphold those rights.¹³

As the fundamental rights constitute a general limitation on the government, the fundamental issue that the courts have faced in interpreting these rights has been to strike an appropriate

⁵ L. P. Raju, Historical Evolution of Prison System in India, 4 Indian J. Applied Res. 298 (2014).

⁶ Model Prison Manual, 2016, Ministry of Home Affs., Gov't of India, available at https://www.mha.gov.in/sites/default/files/2024-12/PrisonManualA2016_20122024.pdf (last visited Apr. 30, 2025).

⁷ Priya Rao, Indian Prison System: Structure, Problem and Reforms, 10 Res. J. Human. & Soc. Sci. 189 (2019), available at <https://doi.org/10.5958/2321-5828.2019.00032.9> (last visited Apr. 30, 2025).

⁸ U.N. Office on Drugs & Crime, Crime Prevention & Criminal Justice Module 6: Topic 1 – Introducing the Aims of Punishment, Imprisonment and the Concept of Prison Reform, U.N. Educ. for Just. Initiative, available at <https://www.unodc.org/en4j/en/crime-prevention-criminal-justice/module-6/key-issues/1--introducing-the-aims-of-punishment--imprisonment-and-the-concept-of-prison-reform.html> (last visited Apr. 15, 2025).

⁹ India Const. pt. III

¹⁰ People's Union for Civil Liberties v. Union of India, (2005) 2 SCC 436

¹¹ Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694

¹² Society for Un-Aided Private Schools of Rajasthan v. Union of India, (2012) 6 S.C.C. 1, 32 (India).

¹³ Daryao v. State of U.P., A.I.R. 1961 S.C. 1457 (India).

balance between the rights of the individuals and those of the state or society as a whole, between individual liberty and social control.

In the post-Maneka era¹⁴, the Supreme Court in a catena of cases¹⁵, has sought to uphold the rights of the prisoners and ensure humane conditions in jails and safeguard the human rights of the prisoner, be he an undertrial, a convict or a detenu. The judiciary has laid robust jurisprudence with regard to prisoners' legal rights in India through a series of landmark judgments. The following section undertakes a comprehensive examination of the question: Do prisoners continue to enjoy fundamental rights while incarcerated?

JUDICIAL APPROACH TO LIBERTY BEHIND BARS

The Constitution protects life and personal liberty under art. 21.¹⁶ It is the jurisdictional root for legal liberalism.¹⁷ While the imprisonment of an individual unavoidably circumscribes their liberty, it does not convert them into a non-person destitute of human dignity.¹⁸ However, a “person’s liberty must be curtailed with caution and must be proportional to necessity.”¹⁹ The judiciary has developed a well-founded body of legal principles and has maintained a clear and consistent position on the subject matter. Recurrently, it has been observed that art.s 14, 19, and 21 are “available to prisoners as well as free men. Prison walls do not keep out Fundamental Rights.”²⁰ This derives from the principle that life does not mean “mere animal existence. The inhibition against its deprivation extends to all these limits and faculties by which life is enjoyed.”²¹

The Supreme Court in *State of Andhra Pradesh v. Challa Ramkrishna Reddy & Ors*,²² reiterating the fact that the prisoners continue to enjoy all fundamental rights, including the right to life, observed “a prisoner, be he a convict or under-trial or a detenu, does not cease to

¹⁴ Maneka Gandhi v. Union of India, A.I.R. 1978 S.C. 597 (India).

¹⁵ For instance: Sunil Batra v. Delhi Admin., (1978) 4 S.C.C. 494 (India).; Charles Sobhraj v. Superintendent, Cent. Jail, A.I.R. 1978 S.C. 1514 (India) Sunil Batra v. Delhi Admin., (1980) 3 S.C.C. 488 (India).; etc.

¹⁶ *The Constitution of India* art. 21.

¹⁷ Inder Singh v. State (Delhi Admin.), A.I.R. 1978 S.C. 1091 (India).

¹⁸ Central Prison v. State of Kerala, 1993 Cri. L.J. 3242 (India).

¹⁹ Francis Mullin v. Union Territory of Delhi, A.I.R. 1981 S.C. 746 (India).

²⁰ T.V. Vatheeswaran v. State of Tamil Nadu, (1983) 2 S.C.C. 68 (India).

²¹ Kharak Singh v. State of U.P., A.I.R. 1963 S.C. 1295 (India).

²² State of Andhra Pradesh v. Challa Ramkrishna Reddy, (2000) 4 Supreme 741 (India).

be a human being.” Thereby, prisoners and their fundamental rights “do not part ways at the prison gates”²³ however, “they may suffer shrinkage necessitated by incarceration.”²⁴

Similar observations were made in *Sunil Batra v. Delhi Administration (II)*²⁵, when D.A. Desai J noted that the court must balance the dehumanizing prison milieu with institutional discipline, security, and the purpose of rehabilitation. The court highlighted that the implementation of any major sanction inside the correctional system needed to take into account procedural rights. Krishna Iyer J, in *Charles Sobhraj v. Superintendent*,²⁶ declared that “incarceration does not entail a farewell to essential liberties.” The judiciary must ensure that court mandates for detention are neither abused nor subverted. Referring to previous cases like *Rustom Cowasji Cooper v. Union of India*²⁷, the Court decided that prisoners retain their rights under art.s 14, 19, and 21, subject to “justifiable constraints arising from their detention.” It has been observed to an extent that “by reason of conviction and being lodged in jail, the prisoner does not lose his political right or rights to express the views on political matters...”²⁸

In *Sunil Batra II*²⁹ the SC highlighted that prisoner are individuals under the law and must not be considered as just objects of punishment. Krishna Iyer J emphasized that any severe or humiliating treatment of detainees violates the Constitution. itself. The court also issued mandates for prison personnel to ensure that detainees' rights are maintained. The court has routinely intervened to shield captives from maltreatment. In *Sunil Batra I*³⁰, Court stressed that judicial scrutiny is required to combat abuses within the custodial system. It directed prison officials to provide humane treatment and equitable procedures for dispensing disciplinary punishments.

Prisoners are not persons to be dealt with at the mercy of the prison echelons. Art.s 14, 19, and 21 operate within the prisons in the manner explained in *Sunil Batra*.³¹ The SC in *Ramamurthy*

²³ Selvam v. State, 2023 LiveLaw (Mad.) 274 (India).

²⁴ Sunil Batra v. Delhi Admin., (1978) 4 S.C.C. 494 (India).

²⁵ Sunil Batra v. Delhi Admin., (1980) 3 S.C.C. 488 (India).

²⁶ Charles Sobhraj v. Superintendent, Cent. Jail, A.I.R. 1978 S.C. 1514 (India).

²⁷ Rustom Cavasji Cooper v. Union of India, A.I.R. 1970 S.C. 1318 (India).

²⁸ Madhukar B. Jambhale v. State of Maharashtra, 1987 Mah. L.J. 68 (India).

²⁹ Batra, supra note 24, at 4.

³⁰ Batra, supra note 25, at 4.

³¹ Kishor Singh Ravinder Dev v. State of Rajasthan, (1981) 1 S.C.C. 503 (India).

*v. State Of Karnataka*³² has underscored that “a sound prison system is a crying need of our time,” and emphasised that the cases of *Charles Sobraj* and *Sunil Batra* should be considered as “beacon lights insofar as management of jails and rights of prisoners are concerned.”

The recognition of prisoners' rights in India highlights the greater constitutional commitment and furtherance of human dignity jurisprudence.³³ Imprisonment attenuates some privileges, but does not take away anybody's inherent rights. It must be noted that expanding horizons of human rights must be harmonized with enlightened measures of prison discipline and penal interests of the state. Therefore, reasonable restrictions in furtherance of prison security and penal order is justifiable to the extent they are not arbitrary.

This catena of judicial precedents highlights the value of safeguards within the law in ensuring protection against abuse within correctional environments through humane conditions of treatment for safeguarding prisoners' rights. By being watchdogs of the Constitution, courts hold a unique function in reconciling institutional necessities and the compulsions of justice as well as of human rights. The prisoners still have basic rights, with courts guaranteeing humane treatment and procedural protection despite imprisonment.

CONJUGAL RIGHTS OF PRISONERS: A CONSTITUTIONAL AND COMPARATIVE PERSPECTIVE

Per Black Law Dictionary, conjugal rights imply the rights and privileges arising from a marriage relationship, including the mutual relationship of companionship, support, and sexual relations.³⁴ Likewise, the term ‘conjugal rights’ may be understood as rights that are the recognized inherent rights of married couples in society.³⁵ In simpler words, conjugal rights are inherent rights encompassed in the matrimonial relations, which include the rights of companionship, cohabitation, and intimate relations between the spouses.

³² Ramamurthy v. State of Karnataka, A.I.R. 1997 S.C. 1739 (India).

³³ See: Shabnam v. Union of India, A.I.R. 2015 S.C. 3648 (India).

³⁴ Black's Law Dictionary (Bryan A. Garner ed., 11th edn., Thomson Reuters, 2019)

³⁵ Rachel Wyatt, “Male Rape in U.S. Prisons: Are Conjugal Visits the Answer” (2006) 37(2) *Case Western Reserve Journal of International Law* 579, 598

Personal and civil laws have recognised these rights, implying the legal acknowledgement of these matrimonial bonds with emotional, physical, and social needs fulfilment. These rights embrace the rights to associate together or to build a home together to cherish all the moments of interpersonal relations, including the right to have ‘sex’ and procreation.³⁶ In the context of the prisoners, these are the marital or spousal rights of the prisoners as discussed herein. In contemporary times, the debate surrounding the conjugal rights of prisoners gains complexity, as it intersects with human dignity, the right to family life, and the rehabilitative goals of incarceration.

Marriage is often described as a partnership of equals, yet what happens when one partner's equality is stripped away by the criminal justice system disrupting the balance of the matrimonial relation by taking away the freedom of the individuals resulting in the loss of significance of their conjugal rights and transforming them into privileges serving a sentence.

Some Western and non-Western countries, among which are Denmark, Brazil, the Philippines, Kenya, Israel, and five states in the United States (California, Mississippi, New Mexico, New York, and Washington), offer conjugal visitation programs within their prisons.³⁷ Around the globe, many countries have honoured the prisoners with conjugal rights, for instance, Europe, where short home leaves for selected classes of prisoners have been instituted in England, Wales, Sweden, Switzerland, Scotland, Germany, Greece, and Northern Ireland.³⁸ Further, in Latin America, prisoners are granted supervised visits with their spouses within the prisons. These directives are prevalent in Chile, Argentina, Mexico, and Puerto Rico. Additionally, Chile also encourages ever higher laxity where provisions are made available for both private visits in the prisons along with home visits.³⁹

The fundamental nature of humans as social beings is much more significant than mere physical existence. We as humans tend to build deep emotional bonds, maintain intimate relations, and also engage ourselves in meaningful social interactions, shaping one's psychological well-being and helping in our personal growth. This inherent desire for human

³⁶ Dr. Shruti Goyal, “Conjugal Rights of Prisoners” (2018) *Bharati Law Review* 57, 60

³⁷ *id.* at 37

³⁸ Ruth S. Cavan and Eugene S. Zemans, “Marital Relationships of Prisoners in Twenty-Eight Countries” (1958) 49 *Journal of Criminal Law, Criminology and Police Science* 185

³⁹ *id.* at 8.

connection does not abate behind the prison bars, which raises a substantial question about the rights and freedoms of the individuals behind bars to maintain intimate relationships with their spouses. The denial of liberty as a form of punishment for a crime will certainly overshadow some rights, but it remains a debated legal and ethical question within the modern jurisprudence about what extent it should restrict the basic human needs to remain intimate emotionally and physically with their spouses.

The debate on the conjugal rights of the individuals behind bars in India highlights an intricate convergence of the basic fundamental rights, penal reforms, and human dignity. Judicial precedents revolving around the prisoner's conjugal rights in India highlight their implications on prison reforms, have been comprehensively discussed herein.

The right to marry gives rise to a family which also has to be recognised as a fundamental right; hence, taking away these matrimonial rights is a manifestation of a violation of their fundamental right. The right to meaningful family life, which allows a person to live a fulfilling life and helps in retaining her/his physical, psychological, and emotional integrity, would find a place in the four corners of Art. 21 of the Constitution of India.⁴⁰ Further, in the case of *Sarla Mudgal v. Union of India*⁴¹ The Supreme Court emphasized the sanctity of marriage and how it serves various purposes, including procreation, companionship, and mutual support. The right to reproduce as discussed in the case like *Nandlal v. State* is also a backbone to the arguments in support of the conjugal rights, as individuals have autonomy over their bodies, giving them freedom to reproduce.

India does not recognize the conjugal rights of prisoners, though there have been multiple times in for the recognize these rights in the Indian correctional services. In the landmark judgement of *Jasvir Singh v. State of Punjab*,⁴² the Punjab and Haryana High Court addressed the prisoner's conjugal rights in detail by acknowledging that the right of procreation survives imprisonment and conjugal visits might be deemed a fundamental right under art. 21. Moreover, the court observed that the restrictions upon the conjugal visits or conjugal rights

⁴⁰ Lakshmi Bhavya Tanneeru v. Union Of India & Ors. on 16 November, 2021

⁴¹ Sarla Mudgal v. Union of India, 1995 (3) S.C.C. 635 (India).

⁴² Jasvir Singh v. State of Punjab, 2016 SCC Online P&H 2681 (India).

might result in a cruel and peculiar punishment. These directions for the examination of the feasibility of conjugal visits highlighted a significant shift in the judicial approach.

In *Ms. G. Bhargava, President, M/s. Gareeb Guide (Voluntary Organisation) v. State of Andhra Pradesh*⁴³ it was observed that, if conjugal visits are allowed keeping in view the good behaviour of the prisoners, then chances of the environment getting disturbed cannot be ruled out, as it will harm the other inmates of the jail who have not been selected and extended such benefit⁴⁴. It was also highlighted that such a provision, being a policy matter, falls exclusively within the legislative domain. Similarly, the Madras High Court has highlighted that the convicts might go through a strict restriction over certain rights and freedoms upon conviction, but a basic level of rights remains intact⁴⁵. Similarly, in the case of *Nandlal v. State*⁴⁶, The Rajasthan High Court rules that the right to procreate is intrinsic to art. 21, as it upholds familial bonds, human dignity, and also helps in the societal reintegration of the prisoners, safeguarding that incarceration does not inequitably deprive the convict or the innocent spouse of their natural aspiration for progeny. Furthermore, through the case of *Rajeeta Patel Alias Rajita Patel v. State of Bihar*⁴⁷, it was again established that the right to procreate or the right to continue progeny is a part of Art. 21, emphasizing that prisoners should be provided with conjugal visits, as it could lead to the violation of their fundamental right. These precedents are seeds for the plant of conjugal rights for the prisoners, as the family right is a fundamental right under art. 21.

The stepping stone for the support of the conjugal rights of the prisoners arises from the constitutional protection encompassed under art. 21, which includes the right to dignity and family life, procreation rights, and even the reformatory approach to justice⁴⁸.

Conjugal rights provision's triumph in other jurisdictions is clearly evident only by proper planning and implementation, and it not only contributes positively to the prisoners but also maintains prison security and order.

⁴³ PIL No. 251 of 2012 decided on 16th July, 2012.

⁴⁴ *supra* note 38 at 6

⁴⁵ *Meharaj v. State of Tamil Nadu* (2012) (India).

⁴⁶ 2023 INSC 224(India).

⁴⁷ AIR ONLINE 2020 PAT 978 (India).

⁴⁸ *D. Bhuvan Mohan Patnaik*, (1975) 3 S.C.C. 185.

The judiciary has increasingly stressed the punishment system, stating that it should not extend beyond the deprivation of an individual's personal liberty and other fundamental rights unnecessarily. This evolving interpretation connotes a growing judicial acknowledgment of the need to equate security concerns with human rights. Legislation dealing with the provisions of iron bars of the Indian legal sphere needs modernization to address the infrastructure requirements for conjugal visits, security protocols, selection criteria for eligible inmates, duration, and frequency of visits. The hurdle is translating these judicial precedents into practical reality within the Indian prison system.

The implementation faces major challenges in the Indian prison system, like overcrowding, limited resources, inadequate facilities, and security concerns. There exist administrative hurdles too, which include the need for staff training, privacy protocols, medical screening, and risk assessment procedures to get these rights instituted in the Indian legal sphere.

REFORMING PUNJAB: CONJUGAL VISITS ON TRIAL

Background⁴⁹

Subsequent to the directions issued in *Jasvir Singh v. State of Punjab*⁵⁰, in 2022, a pilot project was initiated to implement the conjugal visits program in the Punjab prison system. The Punjab Prison authorities have consistently contended that conjugal visits are not a right exercised by the inmates, but rather a privilege. This stance is reflected and reinforced by the strict eligibility criteria established to enjoy this privilege. A pre-intervention survey was conducted regarding conjugal visits in Punjab prisons, where both quantitative and qualitative data were collected to examine the long-term viability of the project, its impact, and suggestions for the scheme. For this purpose, questionnaires were drafted for both the prisoners and the jail staff.

In pursuit of the program, three prisons were identified to have the basic infrastructure available. The identified jails were Central Jail, Sri Goindwal Sahib, New Jail, Nabha, and Women Jail, Bathinda. These come under the supervision of a separate circle DIG and hence, had the benefit of high-level oversight. For this purpose, Standard Operating Procedures

⁴⁹ Office of the Senior Superintendent, Central Jail, Ludhiana, *RTI Reply Regarding Conjugal Visits under the Punjab Jail Manual, 2005* (Received 25 November 2024).

⁵⁰ *Jasvir Singh v. State of Punjab*, 2016 SCC Online P&H 2681 (India).

(SOPs) were laid down by the special DGP, Prisons, wherein the general guidelines were enshrined for the facilitation of conjugal visits at the prison premises.

Conditions & SOP(s) for the Visit⁵¹

Accordingly, a room was to be designated in the prison at a secure location within/adjacent/adjoining the *deory*⁵² itself. Detailed eligibility criteria for the inmates have been laid down, categorically for the convicts and undertrials. The eligibility criterion is marginally different but fundamentally remains the same.

The rudimentary intent underlying the eligibility criterion is identical. A prisoner seeking to register himself/herself for the project must not be a high-risk category prisoner.⁵³ Gangsters, terrorists, and commercial quantity-level narcotics traffickers are ineligible for registration. A person seeking to access the conjugal rooms should not have committed any jail offense⁵⁴ in the past year. The person ought to have good conduct and be disciplined. The Jail Superintendent shall be empowered to determine the good conduct of the inmate. Prisoners suffering from infectious diseases like TB, HIV, STD, etc, are also excluded from availing conjugal visits.

Convicts seeking to register themselves for the project must not be eligible to avail parole or are unable to avail parole. Furthermore, the convict must be carrying out his/her *mushaqat*⁵⁵ properly for the past 6 months. Death row convicts and prisoners incarcerated for child abuse, sexual crimes, or domestic violence are also excluded from the program. An under-trial prisoner seeking to register him/her must have spent at least three months in prison.

The average time for the visit has been fixed at two hours. Certain conditions have been listed to prioritize the applicants for availing the conjugal visits. It inter alia provides that the prisoner should not have more than one surviving offspring from his/her surviving spouse. Further,

⁵¹ *id.*

⁵² Entry point of the prison complex

⁵³ Ministry of Home Affairs, *Advisory for Ensuring Safety and Security of Women and Children*, No. 14011/04/2022-UTP (Nov. 10, 2023), available at https://www.mha.gov.in/sites/default/files/advisory_10112023.pdf (last visited Apr. 30, 2025).

⁵⁴ *Prisons Act, 1894*, § 45 (India).

⁵⁵ duties

prisoners enrolled in the Sikhya-daat⁵⁶ program and pursuing studies actively will be high on the priority list. Further priority will be given to prisoners actively participating in peer support groups, engaging in positive activities, and assisting prison staff.

Unarguably, the security of the prisons remains the foremost and the fundamental priority. Detailed procedures have also been laid down for security management and to prevent any unrest and disturbance. Effective procedures have been provided to ensure that the prisoners are not able to exploit this opportunity to escape from custody, smuggle any prohibited items, cause any upheaval, or indulge in any unwarranted activity. It has been repeatedly stressed that conjugal visits are not a matter of right but a privilege that is to be earned through good conduct.

Reformative Penalism

The emphasis that these spousal visits are in no manner a right but rather a privilege contingent upon the good conduct of the inmate is indicative of India's traditional reformative and rehabilitative penal/correctional approach. The priority criterion also reaffirms the rehabilitative and reformative intent of the program, which states that priority shall be accorded to prisoners pursuing studies actively and demonstrating a positive attitude.

This is based on the *Indian Jail Committee Report 1919-20*⁵⁷, which stresses reform and rehabilitation in correctional policy. Reformative justice is the core of the Indian concept of rehabilitation, which is rehabilitation, not punishment. This theory of punishment has been affirmed and elaborated upon in multiple judicial pronouncements.⁵⁸

Reformative justice means a prisoner is a human who can be reformed into society, not just an "object of punishment."⁵⁹ The report of the committee suggested a correctional system based on psychological assistance/psychotherapy, vocational training, and an education system to

⁵⁶ Scheme for the jail inmates to allow them to get themselves educated with a minimum fee in any programme by Jagat Guru Nanak Dev Punjab State Open University, Patiala.

⁵⁷ Indian Jail Comm., *Report of the Indian Jail Committee, 1919–1920* (Superintendent, Gov't Cent. Press, Simla 1920), available at <https://jail.mp.gov.in/sites/default/files/Report%20of%20the%20%20Indian%20Jail%20Committee,%201919-1920.pdf> (last visited Apr. 30, 2025)..

⁵⁸ For instance; *Mohammad Giasuddin v. State Of Andhra Pradesh* (1977) 3 SCC 287; *State Of Gujarat And Anr vs Hon'Ble High Court Of Gujarat* 1998 (7) SCC 392; *T.K. Gopal vs State Of Karnataka* 2000 (6) SCC 168, *Rattan Lal v. State of Punjab* AIR 1965 SC 444; *Musa Khan v. State of Maharashtra* (1977) 1 SCC 733; etc.

⁵⁹ *Batra*, *supra* note 24, at 4.

help the inmates in reintegration into society. The fundamental idea is to bring about moral reform of the offender.⁶⁰ Over the years, these ideas have received constant reiteration from the judiciary, advocating the position that the inmate loses their liberty, but they do not lose their human rights. The judiciary maintains that incarceration must afford inmates an opportunity to rehabilitate. Judicial precedents, especially referring to Art. 21 of the Constitution of India, have reiterated the principle that imprisonment should not only be about confinement but that it must also result in the prisoner's reformation. Salmond opined that "if criminals are to be sent to prison to be transformed into good citizens by physical, intellectual, and moral training, prisons must be turned into comfortable dwelling places."⁶¹ Police bullying and prison drill cannot be administered to a diseased mind.⁶² It is driven by the idea that "crime is the outcome of a diseased mind and jail must have an environment of a hospital for treatment and care."⁶³

Therefore, this pilot project seeks to build a correctional system that punishes less and treats more regarding efforts at reform, thus aiming at reducing recidivism while simultaneously upholding the rights of the prisoners.

Security Concerns & Suspension

Notably, the conjugal visits pilot project in the Punjab was withdrawn shortly after its introduction due to a number of issues, primarily security concerns.⁶⁴ Authorities cited the difficulties in thoroughly investigating visitors, particularly female visitors, as a major reason for withdrawing the pilot program. Further detailed reports regarding the suspension of the pilot project remain awaited in the public domain.

⁶⁰ Mahajan, V. D., *Jurisprudence and Legal Theory* 133 (6th ed., Eastern Book Co. 2022) (repr. 2023).

⁶¹ *id.* p.134

⁶² Per Krishna Iyer, J., in *Mohammad Giasuddin v. State of A.P.*, (1977) 3 S.C.C. 287, 291 (India).

⁶³ Permanent Mission of India to the United Nations, *Statement by India Under Annual Panel Discussion on Technical Cooperation and Capacity-Building – Upholding the Human Rights of Prisoners, Including Women Prisoners and Offenders: Enhancing Technical Cooperation and Capacity-Building in the Implementation* (2020, 15 July), available at <https://www.pmindiaun.gov.in/statements/MjEwNw> (last visited Apr. 16, 2025).

⁶⁴ Delhi Govt Reassessing Conjugal Visits in Prisons After Initiative Halted in Punjab, *The Hindu* (Apr. 16, 2025), available at <https://www.thehindu.com/news/cities/Delhi/delhi-govt-reassessing-conjugal-visits-in-prisons-after-initiative-halted-in-punjab/article69020608.ece> (last visited Apr. 30, 2025).

CONJUGAL VISITATION AS A TOOL FOR PRISONER REFORMATION AND REINTEGRATION

An aspect of the conjugal visit policy has been the idea of reformation, which, in India, has long been emphasized as the foundation for formulating policies around the criminal justice system and prison administration.⁶⁵ This approach is reflected in the pilot project undertaken by the Punjab administration, which viewed conjugal visits not as an entitlement but rather a privilege. By conditioning this privilege on good behaviour, discipline, and self-correction, the policy aligns with the long-standing theory of correctional reintegration. In addition to strengthening family bonds, it promotes a humane and rehabilitative criminal justice system, which in turn reduces recidivism and facilitates reintegration into society.

In *Sunil Batra II*⁶⁶, the court delved deeper into the petrifying effects of loneliness of jail inmates and observed that: “visits to prisoners by family and friends are a solace in insulation, and only a dehumanize system can derive vicarious delight in depriving prison inmates of this humane amenity. Subject, of course, to search and discipline and other security criteria, the right to society of fellow men, parents and other family members cannot be denied in the light of Art. 19 and its sweep.” Evidences exist to substantiate the fact that “maintaining contact with one’s family during incarceration in prison facilitates positive adjustment post-release.”⁶⁷ One effective way to meet needs associated with the “stress of incarceration” is through “maintaining contact with loved ones.”⁶⁸ Conjugal visitation rights are no exception, they exist in recognition of the importance of family connections on an inmate's mental health status and subsequent reintegration into society upon release. Such reformation is boosted when combined with positive reinforcements such as good behaviour, active participation in

⁶⁵ For instance: Conditions, Committee on Reforms of Criminal Justice System, *Report, Volume I* (Ministry of Home Affairs, Government of India, 2003), Chairman: Dr. Justice V.S. Malimath. Bureau of Police Research & Development, *Implementation of the Recommendations of the All-India Committee on Jail Reform (1980-83), Volume I* (Ministry of Home Affairs, 2003).

Two Hundred Forty-Fifth Report on Prison – Conditions, Infrastructure and Reforms, presented to Rajya Sabha on September 21, 2023, laid on the Table of Lok Sabha on September 21, 2023.

⁶⁶ *supra* note 27, at 4.

⁶⁷ Folk, J.B., Stuewig, J., Mashek, D., Tangney, J.P. & Grossmann, J., *Behind Bars but Connected to Family: Evidence for the Benefits of Family Contact During Incarceration*, 16 Psychological Services 439, 439–448 (2019), available at <https://doi.org/10.1037/ser0000274> (last visited Apr. 16, 2025).

⁶⁸ *id.*

rehabilitative programs, and demonstrated self-discipline, as is evident hereinabove. It is not merely about physical gratification; it is about preserving companionship and procreation, which are essential for the marital ties of the prisoners. Conjugal visitation promotes family bonding.⁶⁹ It helps to improve the functioning of a marriage by maintaining an inmate's role as husband or wife, improving the inmate's behaviour while incarcerated, countering the effects of prisonization, and improving post-release success by enhancing the inmate's ability to maintain ties with his or her family.⁷⁰ It enables inmates to preserve their family relationships while incarcerated and to facilitate community adjustment.⁷¹

Findings of a study conducted by the Ohio Department of Corrections suggest that "visitation has a positive impact on prisoner behaviour and prison safety."⁷² Based on quantitative data, it concluded that there exists a negative correlation between increased visitations and rule infractions,⁷³ indicative of the fact that such visitations result into better inmate conduct. A similar study conducted by Minnesota Department of Corrections⁷⁴ also concluded with identical findings. Specifically, conjugal visitation has been associated with reduced recidivism rates⁷⁵ augmenting "better disciplinary records, post-release adjustment, and socialization."⁷⁶ Notably, "overnight family visiting program" decreased recidivism rates as much as sixty-seven percent.⁷⁷

⁶⁹ Carlson, Bonnie E. & Nilda Cervera, *Inmates and Their Families: Conjugal Visits, Family Contact, and Family Functioning*, 18 *Crim. Just. & Behav.* 318, 318–331 (1991).

⁷⁰ Hoffmann, H. Christian, George E. Dickinson, & Clark L. Dunn, *Communication Policy Changes in State Adult Correctional Facilities from 1971 to 2005*, 32 *Crim. Just. Rev.* 47, 47–64 (2007).

⁷¹ James Howser, Jeffrey Grossman & Dennis MacDonald, "Impact of Family Reunion Program on Institutional Discipline," *Journal of Offender Counseling Services and Rehabilitation* 8 (1983) 27-36.

⁷² Gary C. Mohr, *An Overview of Research Findings in the Visitation, Offender Behavior Connection* (Ohio Department of Rehabilitation and Correction, 2012) <https://www.asca.net/system/assets/attachments/4991/OH%20DRC%20Visitation%20Research%20Summary.pdf> (accessed 16 April 2025).

⁷³ *id.*

⁷⁴ Grant Duwe & Valerie Clark, "Blessed Be the Social Tie That Binds: The Effects of Prison Visitation on Offender Recidivism," *Criminal Justice Policy Review* 24 (2013) 271-277.

⁷⁵ Christy A. Visser & Jeremy Travis, "Transitions from Prison to Community: Understanding Individual Pathways," *Annual Review of Sociology* 29 (2003) 89-100.

⁷⁶ James Howser, Jeffrey Grossman & Dennis MacDonald, "Impact of Family Reunion Program on Institutional Discipline," *Journal of Offender Counseling Services and Rehabilitation* 8 (1983) 27-27.

⁷⁷ D.G. MacDonald & D. Kelly, *Follow-Up Survey of Post-Release Criminal Behavior of Participants in Family Reunion Program* (National Institute of Justice, 1980) 6.

Sexual behaviour in prisons is a complex phenomenon, especially in instances where the provision of conjugal visits is not made available. In such cases, prisoners often resort to alternate modes of sexual expression. Conjugal visitation influences the consensual sexual activity of prison inmates⁷⁸ and lowers the frequency of prison homosexual activity.⁷⁹ One of the patterns of sexual adjustments in prisons with no conjugal visit facilities are available is homosexuality.⁸⁰ Rose Giallombardo observes that “there is a natural tolerance of sex perversions in the prison community generally, even though this mode of adjustment (with the sole exception of committed homosexuals), is repugnant for most prisoners.”⁸¹ This aligns with the observation that “fantastically high incidence of masturbation or homosexuality among the prison population in general”⁸² is believed to exist. These sexual malpractices today persist in our prisons as ever before.⁸³ In extreme cases, it may lead to forced and coerced sexual relations as an inmate painfully testifies: “I had no choice but to submit to being [an inmates’] prison wife. Out of fear for my life...”⁸⁴ This chilling testimony is reflective of the sexual frustration owing to lack of sexual expression. Conjugal visitation has been perceived as a contributing factor in reduction of male rapes in prison.⁸⁵ Various studies⁸⁶ have similarly suggested that conjugal visits leads to reduced instances of male rapes.

Sexual gratification theory postulates that “conjugal visitation provides inmates with a means of sexual release.” It is evident from a comparative study that “states permitting conjugal visitation have significantly fewer instances of reported rape and other sexual offenses in their

⁷⁸ Stewart J. D’Alessio, Jamie Flexon & Lisa Stolzenberg, “The Effect of Conjugal Visitation on Sexual Violence in Prison,” *American Journal of Criminal Justice* 38(1) (2013) 1-12 <https://doi.org/10.1007/s12103-012-9155-5> (accessed 16 April 2025)

⁷⁹ J. Michael Olivero et al., “A Comparative View of AIDS in Prisons: Mexico and the United States,” *International Criminal Justice Review* 2 (1992) 105-118.

⁸⁰ John H. Gagnon & William Simon, “The Social Meaning of Prison Homosexuality,” *Federal Probation* 32 (1968) 25-25.

⁸¹ Rose Giallombardo, *Society of Women: A Study of a Women's Prison* (John Wiley & Sons, 1966) 98.

⁸² S.P. Srivastava, “Sex Life in an Indian Male Prison,” *Indian Journal of Social Work* 35(1) (1974) 21-33 <https://ijsw.tiss.edu/greenstone/collect/ijsw/index/assoc/HASH9c4c/c9d94296.dir/doc.pdf> (accessed 16 April 2025).

⁸³ Benjamin Karpman, “Sex Life in Prison,” *Journal of Criminal Law and Criminology* 38 (1949) 482.

⁸⁴ Human Rights Watch, *No Escape: Male Rape in U.S. Prisons* (April 2001) <https://www.hrw.org/reports/2001/prison/voices.html> (accessed 21 April 2025).

⁸⁵ R. Turner, “Sex in Prison,” *Tennessee Bar Journal* 36(12) (2000) 26.

⁸⁶ For instance: Barbara E. Carlson & Neil Cervera, *Inmates and Their Wives* (Greenwood Press, 1991). John Mustin, *The Family: A Critical Factor for Corrections* (1980) <http://www.fcnetwork.org/reading/mustin.html> (accessed 21 April 2025).

prisons.”⁸⁷ Furthermore, sexually transmitted diseases, inter alia, AIDS, are often spread by homosexual activity;⁸⁸ conjugal visitation may help to attenuate the spread of AIDS in prison.⁸⁹ Therefore, it can be unarguably stated that conjugal visitation in prisons may not only be in furtherance of a humanitarian basis, but it shall also serve in the reduction of sexual violence and public health considerations.

PRACTICAL REALITIES: BRIDGING THE GAP IN PRISON CONJUGAL VISITATION POLICIES

Discussion around the provision of conjugal visits to prisoners has been prevalent, especially in contemporary times. While the underlying principles, i.e., human dignity, right to family, and rehabilitation advocate for the maintenance of family ties, the Indian justice system has been nonchalant regarding the implementation of such familial rights for ages. It is only after *Jasvir Singh* that conjugal visits could be manifested into practice, that too for a very brief period.

There is no specific statute that provides a prisoner the right to claim statutory conjugal visits. Prison administration being a state subject⁹⁰, it has been left to the whim of each state for the formulation of a policy providing for conjugal visits. The Model Prisons and Correctional Services Act, 2023,⁹¹ It is also devoid of any provision governing conjugal visitation. Ministry of Home Affairs, which “given the significance of prisons in the Criminal Justice System,” provides “regular guidance and support to States/UTs on various issues relating to prison administration.”⁹², has neither recognised conjugal visits in prisons, nor has not issued any guidelines or standing orders to the states for uniform governance of the subject matter.

⁸⁷ *supra* note 77, at 17.

⁸⁸ Thomas M. Bates, "Rethinking Conjugal Visitation in Light of the 'AIDS' Crisis," *New England Journal on Criminal and Civil Confinement* 15 (1989) 121-145.

⁸⁹ *supra* note 78, at 17.

⁹⁰ Constitution of India, Seventh Schedule, List II (State List), Entry 4 ('Prisons; persons detained therein').

⁹¹ Ministry of Home Affairs, Government of India, *Model Prisons and Correctional Services Act, 2023* (12 December 2024) https://www.mha.gov.in/sites/default/files/2024-12/ModelPrisonsCorrectionalServicesAct_20122024.pdf (accessed 21 April 2025).

⁹² Ministry of Home Affairs, Government of India, *Prison Reforms* (2025) https://www.mha.gov.in/en/divisionofmha/Women_Safety_Division/prison-reforms (accessed 21 April 2025)

So far, only Punjab has strived to manifest prisoners' conjugal visits, making it the first state to have such a policy, albeit a pilot project, however, shortly withdrawn. Conjugal rights have not been uniformly legislated, and this lacuna creates inequality among different states, leading to the need for a national policy that balances prisoners' rights and the states' penal interests. A national framework is essential to outline the terms of conjugal visits throughout the country. The Punjab model must be taken as a case study, valuable lessons must be comprehended for the formulation of a national policy which is practically viable and enduring in the long term.

A notable consideration of paramount importance in the implementation of the conjugal visitation policy is the inadequate infrastructure. Substantial evidence⁹³ exists highlighting inadequate infrastructure, viz., overcrowding, prison staff shortage, food quality, prison budget, etc, accompanied by obvious security and logistical issues. For a conjugal visitation programme, all prisons have to be competent in terms of security, privacy, and dedicated infrastructure where visits could take place. Establishing necessary security procedures is a must to ensure that these visits do not turn into a conduit for contraband activities. Dedicated finances for infrastructure development and providing safe, clean visiting rooms will be critical to the effectiveness of such a policy.

Infrastructure does not merely refer to bricks and mortar but also includes social and psychological support systems that are necessary. Counselling sessions, a crucial aspect of mental health, for both inmates and their partners, are essential to facilitate management of their relationship amidst the complexities of the prison.

Yet another issue of significance in this regard is the protection of women in conjugal visitations from physical and sexual abuse. In a study examining the safety of women in "Private Family Visits (PFV)" in Canada, it was found that "most women experienced mental, physical, or sexual abuse from their spouses during these visits," and it concluded that conjugal visits "perpetuate the victimization of women."⁹⁴ This raises serious concerns about the implementation of such policies without adequate safeguards. Therefore, it becomes paramount

⁹³ P. Dutta, *Right to Privacy as a Fundamental Right in India* (Indian Law Institute, 15 August 2022) <https://www.ili.ac.in/privacy-right> (accessed 20 April 2024).

⁹⁴ Rebecca A. Toepell & Lorraine Greaves, *Experience of Abuse Among Women Visiting Incarcerated Partners*, 1 J. Violence Against Women 80, 80–109 (2001).

that any scheme of conjugal visitation in prisons incorporates mechanisms to ensure the safety and autonomy of women. Without these protections, the reformative intent of such programs risks being overshadowed by the potential for harm.

An important factor in the successful implementation of such a policy is constant monitoring and regulation. Given that the idea is rather fresh to the Indian prison system, it would be wise to create a system for evaluating how it affects general prison discipline, rehabilitation results, and prisoner behaviour. A “National Commission for Inmate Family Welfare” must be established and entrusted with superintendence, direction, and control of the effective implementation of conjugal visitation policy. With a collaborative effort of psychologists and human rights organisations, an effective implementation of conjugal visitation is possible.

CONCLUSION

Prisoners' marital rights call for a moral inquiry into human dignity, fundamental rights, and penology's perspective in India. As much as imprisonment takes away the other rights of a person, it cannot take away the basic human rights: the right to family life and to form a family through a legally recognized union. The judiciary upheld these rights through a catena of judgments. These pronouncements reaffirmed that the fundamental rights of prisoners under art.s14, 19, and 21 of the Constitution have to be secured, although reasonably restricted in the light of incarceration.

The right to familial relations, companionship, and procreation is nothing but an extension of the right to life and personal liberty guaranteed under art. 21 of the Constitution. The judiciary's expansion of the right underscores its commitment to the reformative theory of justice, wherein incarceration is less retribution than rehabilitation and reinstatement into society. The Punjab pilot project on conjugal visits was momentary but certainly a purposeful attempt to give effect to these judicial directives. With good behaviour and rehabilitation programs as qualifying factors, the project followed the principles of reformative punishment in India. That said, it was suspended because of security concerns, reflecting hurdles in the implementation of this project, namely overcrowding, suboptimal security, inadequate infrastructure, and other logistical lacunas, which necessitate consideration before any such future endeavors.

In many states, conjugal visits have shown tangible promise in decreasing recidivism, enhancing inmate behaviour levels, and strengthening family ties. Research in the USA and Canada has shown that continuing family connections during a prisoner's incarceration allow for a smoother adjustment after release and help in reducing inmate violence within the prison walls, which includes sexual abuse. These findings underscore the proposition that implementing conjugal visitation will reduce the humanitarian considerations in prison administrations. However, for this system to work in India, a well-balanced approach ought to be adopted. Priority must be accorded to infrastructure development to provide for secure, private areas for visitations, while upholding the highest standards of security measures to avert any possibilities of misuse. Special provisions must be made for the protection of vulnerable groups, such as women, who might be subjected to coercion or abuse during the visitation.

The relationships behind bars are rife with emotional challenges that psychological support can help families and inmates navigate. A National Commission for Inmate Family Welfare could ensure transparency and accountability for individual inmates and their relationships. The debate surrounding conjugal rights covers many senses beyond mere physical intimacy. Acknowledging conjugal visitation rights thus constitutes a part of the larger commitment to a humane criminal justice system, one that recognizes that while liberty can be limited for a prisoner, dignity can never be conceded. With India continuing to reconsider its carceral policies, embracing conjugal visitation is not merely a move towards prison reform but a reaffirmation of its constitutional and moral obligation to human dignity and justice that rehabilitates.