



Conjugal Rights of Prisoners: An Analysis¹

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Abstract : In society, conjugal rights are an inherent right of married couples. This right includes the ability to build a home together, have a sexual relationship, and have children. There is disagreement surrounding the value of offering conjugal rights to prisoners, either in the form of helping to reduce homosexuality or to improve the behavior of inmates. Some argue that the potential positive effects are diminished by security and custody issues, single parenting, and the potential for smuggling of contraband. In India, there is no statutory law that grants conjugal rights to prisoners, so they must appeal to the courts under Article 21 of the Constitution for a ruling especially under the umbrella of Right to Privacy. This article looks at the decisions made by the courts in such cases, as well as the laws of other jurisdictions concerning conjugal rights.

Key words: prisoners, conjugal rights, Right to Privacy, homosexuality, conjugal visitations, artificial insemination

1.1 Introduction

“Law is the king of all mortal and immortal affairs which ought to be the chief, the ruler and leader of the Novel and the base and thus the standard of what is just and unjust, the commander to animals naturally social of what they should do, the forbidden of what should they not do”²

Jail is an established penalty system used for the detention of inmates. Those held in captivity are divided into two classes: convicts and detainees. Conjugal rights of prisoners refer to matrimonial privileges for those behind bars. Allowing prisoners to visit with their spouses and spend quality time with them is the essence of this concept which is essentially part of their privacy. The article examines the notion of conjugal rights for prisoners, both for and against, and the ways in which they can be exercised within the prison walls. It then investigates the legal facets of this right in India and other nations.

1.2 Concept of conjugal rights of prisoners

The term 'conjugal' is used to describe the officially accepted rights of married couples in our society. These rights provide the opportunity for couples to associate, form and home and benefit from the mutual advantages of a relationship, including sexual and procreative activities.

At the very outset it is necessary to consider the pros and cons of allowing conjugal rights to prisoners. Different opinions exist on this matter. One of the major issues of the prison system is 'homosexuality'. Some authors believe that if prisoners have more intimate relationships, it can lessen this problem and the tension it produces. Also, it can help decrease the number of male rape cases, an issue that has recently become a serious

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² Justinian, <https://www.infomania-zee.com/2022/06/definitions-of-law-according-to.html>

concern in many states. By permitting prisoners to spend a greater amount of time with their families, the ill effects of the single-sex prison environment can be lessened. This would enable them to reaffirm their masculinity and reduce the need to prove themselves by victimizing other inmates. It is suggested by some authors that if prisoners can build closer relationships, then the issue of homosexuality and the associated tension can be lessened significantly.³ It is being argued by a number of people that this approach can be used to lessen and impede the occurrence of male rape, a problem that has become a major worry for many states⁴.

In contrast to this opinion, two principal arguments have been presented. It has been argued that prison homosexuality is not a consequence of a lack of heterosexual contact but rather a manifestation of those who have been deprived of power seeking control. Additionally, it is thought that the amount of heterosexual activity is so rare that it will have no notable impact. The quality of a person's life can be improved by having meaningful relationships with others. Connecting with individuals on a personal level helps to build strong bonds that can last a lifetime. Having close friends and family members to rely on when times get tough is essential for a fulfilling existence.⁵

Advocates of conjugal association assert that it has the potential to modify the behavior of inmates. This is posited to be done by providing them with a connection to their family, which in turn has a normalizing effect. This is thought to reduce the amount of violence in prisons and help prepare the released prisoners to better integrate back into society. On the other hand, those who oppose this notion claim that there is a lack of data to back up these statements and the results are simply conjectures. It has been noted that issues like the control and safeguarding of goods, illicit transfer of items from other places, etc. can nullify any potential benefit.⁶ Regarding the moral aspect of conjugal visits in prisons, those who support this idea emphasize the value of humanism and that prisoners should be able to spend time with their families in private. They also stress the potential frustration of the innocent partner who is deprived of intimacy and sexual relations due to the imprisonment. Nevertheless, the opposing view contends that society does not have a moral obligation to grant inmates the privilege of sexual license, as it is an implied consequence of incarceration that they are not allowed to have conjugal visits or procreate. Conjugal visitations can create a one-parent family dynamic for extended periods of time prior to an inmate's release. This brings up a social issue which has to be taken into consideration when permitting conjugal meetings. The problem is further intensified when both spouses are in prison and are allowed conjugal visits. The key question in these situations is what is in the best interests of the unborn baby⁷

Evidenced by the discussion, there is a divergence of opinion about permitting conjugal visits for prisoners. However, because of the current progressive attitude towards human rights, there should be a shift in the way prisoners are viewed. Since society is currently debating on matters such as 'gay rights' and 'third gender rights', it is essential to also consider the rights of prisoners when it comes to conjugal visits.

1.2.1 Conjugal Association

When a convicted individual is granted the opportunity to have a private meeting with their spouse or family, the connection of marriage can be formed. If the state has allocated resources for such an allowance, the prisoner can take advantage of their conjugal rights during their sentence. Inmates in prisons are sometimes given the opportunity to have a conjugal visit with their spouse and other relatives. This involves providing specific infrastructure, such as rooms or cottages in a designated area of the jail, where the prisoner and their family can have private time. The duration of this visitation can be for a few hours or a number of days,

³ Eugene Zemans and Ruth Shonle Cavan, "Marital Relationships of Prisoners", *The Journal of Criminal Law, Criminology and Police Science*, Vol. 49, No. 1, 1958, pp. 50- 57, at p. 54.

⁴ James E. Robertson, "A Clean Heart and an Empty Head: The Supreme Court and Sexual Terrorism in Prison," *North California Law Review*, Vol. 81, 2003, pp. 433-481, at p. 434.

⁵ Ann Goetting, "Conjugal Association in Prison: The Debate And Its Resolutions", *New England Journal On Prison Law*, Vol. 8, 1982, pp. 141- 154, at p. 142.

⁶ Ann Goetting, "Conjugal Association in Prison: The Debate And Its Resolutions", *New England Journal On Prison Law*, Vol. 8, 1982, pp. 141- 154, at p. 144.

⁷ See *R.P. Upadhyay vs. State of Andhra Pradesh and Others*, AIR 2006 SC 1946.

dependent on the regulations of the state. Additionally, separate washrooms, as well as other linens, are supplied by the state for use during the visit. Therefore, if conjugal visits are permitted, an inmate can exercise their right to intimacy in a prison environment. It is important to note that many states do not have these programs in place for a range of reasons, which will be outlined in a later section.

A different approach to allowing prisoners to be with their spouses or families is parole or furlough, where they are released from jail for a short period of time. Most states have established regulations for these types of releases. In contrast to conjugal visits, 'furlough' or 'parole' refers to unmonitored, temporary leave from a correctional facility for a variety of reasons, which could include spending time with one's partner.⁸ The pros and cons of conjugal visits must be taken into account. A potential drawback of this system is the unequal treatment of inmates. As this type of visitation would only be available to married prisoners whose marriages are still valid, unmarried prisoners or those with broken marriages would not be able to benefit from it. No resemblance to "equal opportunity" can be seen in the provision of such visits for all inmates.⁹ Therefore, the benefits of conjugal visitations can only be accessed by those inmates with a valid marriage, unlike parole or furlough that do not necessitate a partnership. One large argument against the introduction of conjugal visitation programs is that these programs impose an additional fiscal responsibility upon the state. The state must create infrastructure in order to make these visits possible and expenses would be taken from an already strained budget. Parole and furlough do not necessitate additional infrastructure and, with the other interests in mind such as overcrowding and lack of basic facilities like toilets, it is unlikely that the state would invest money in the construction and development of conjugal visitations. A prisoner's home environment is more conducive and warm in comparison to jail, which makes it easier to cultivate family ties. However, there is a risk of the prisoner absconding during parole or furlough. For those that cannot meet the conditions for parole or furlough (due to the length of the sentence or other conditions like bail bond), they may forfeit their right to family visits.¹⁰

The concept of conjugal rights encompasses 'procreation' as a fundamental element. With the progress of science, it is now feasible to conceive without male and female coming into physical contact. This can be accomplished through artificial insemination, where a sperm is provided for the process and the female is impregnated with the help of artificial insemination facilities. Recently, inmates have gone to court to demand the right to use artificial insemination for reproducing, particularly when the state does not have any family-visitation programs or the prisoner is ineligible to receive those rights or for a temporary release through parole or furlough.¹¹

It is of great significance to be aware that all areas have regulations concerning parole or furlough. What we must discuss is the program of conjugal visits and procreation with the help of artificial insemination.

1.3 Conjugal Rights of Prisoners in India : Legal dimensions

Once the rationale and means of granting conjugal rights to prisoners had been studied, the next concern was to evaluate the legal implications of such a right in India. This part of the research was dedicated to analyzing the juridical principles that have been applied to the conjugal rights of prisoners in India.

1.3.1 Constitutional framework

According to the United Nations Basic Principles for the Treatment of Prisoners, 1990, prisoners are allowed to keep their human rights and fundamental freedoms as outlined in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, plus the International Covenant on Civil and Political Rights and its Optional Protocol, along with any other rights stated in other United Nations

⁸ Norman Elliot Ken, "The Legal and Sociological Dimensions of Conjugal Visitation in Prisons", *New England Journal on Prison Law*, Vol. 2, 1975, pp. 47-68, at p. 47.

⁹ Donald R. Johns, "Alternatives to Conjugal Visiting", *Federal Probation*, Vol.35, 1971, pp.47-51, at p. 47

¹⁰ Norman S Hayner, "Attitudes towards Conjugal Visits for Prisoners", *Federation Probation*, Vol. 36, 1972, pp, 48- 53, at p. 48.

¹¹ Temporary release like parole or furlough depends upon various factors like conduct of accused, severity of sentence, fulfillment of conditions like furnishing of bail bond etc. Each state has its own rules for temporary release of prisoners. Similarly, the states which have programs for conjugal visitation have Rules for accessing it.

covenants, unless there is a clear and unavoidable reason for their removal.¹² The Universal Declaration of Human Rights and Covenants is something India is part of. These rights have been implemented in our Constitution in the form of fundamental rights and directive principles of state policy.

The Constitution guarantees in Article 21 that no one can be deprived of their life or freedom without following the procedures set by law - even prisoners.

The Supreme Court, in the matter of *D. Bhuvan Mohan Patnaik and Others v. State of Andhra Pradesh and Others*¹³, made the ruling that those who have been convicted cannot be barred from holding the fundamental rights that they possess. It was also stated that although a convict may not be able to exercise their right to travel freely or have certain professions, they can still cling to the other constitutional rights, especially the one given by Article 21 of the Constitution. In *Sunil Batra v. Delhi Administration*¹⁴ (popularly known as *Sunil Batra I*), the Supreme Court held it to be its responsibility to ensure, to the fullest extent possible, that persons in detention did not suffer any torture, in compliance with the Constitution. The Court's ruling sought to bring about social justice through the re-examination of strategies for prisoners. Moreover, the decision stated that those under a capital punishment should not be obligated to labor in the same manner as those who got a sentence of rigorous imprisonment. The Court concluded that prisoners should be provided with the same privileges as other inmates, including access to recreational activities, books, newspapers, decent meals, and an opportunity to express themselves through art, and appropriate clothing and bedding.

In a momentous event two years later, the Supreme Court made a ruling in the *Sunil Batra v. Delhi Administration* (more commonly known as *Sunil Batra II*) case which dramatically improved the situation for inmates in prison. This ruling saw a range of changes, such as the separation of under-trials from convicts, the ability of inmates to invoke Article 21 of the Constitution, the separation of young inmates from adults, more liberal visits for prisoners from family and friends, a ban on confinement in irons, the duties and obligations of the Courts with respect to rights of prisoners, and the re-definition of the duties of District Magistrates. Additionally, this ruling also highlighted a myriad of issues in jail precincts, including the victimization of young inmates by adults.

The Supreme Court, in the case of *Francis Coralie Mulin v. The Administrator*¹⁵, Union Territory of Delhi, broadened the understanding of "personal liberty" as outlined in Article 21 of the Constitution when discussing the rights of a detainee. It was determined that while in custody, a prisoner is still entitled to the same fundamental and legal rights as a free person, with the exception of those that are not able to be exercised due to imprisonment. The Court declared that any law conferring power to inflict cruel, inhumane, or degrading treatment and any procedure which could result in such treatment is unreasonable and unjustified, and thus would be in violation of Articles 14 and 21. Moreover, there have been a number of groundbreaking rulings in which prisoners' rights inside prison are given a broad interpretation. In the case of *State of Maharashtra v. Prabhakar Pandurang Sangzgiri and Another*¹⁶, the Supreme Court determined that the detained individual was entitled to the publication of his books; the ruling in *Sheela Barse v. State of Maharashtra*¹⁷ stressed the necessity of providing legal aid to persons in trial and those convicted, with instructions to expedite this process and to protect women in lock-ups. Whilst these decisions are important steps in recognising the rights of prisoners, they did not touch upon conjugal rights. It was only in *Sunil Batra II* that the Court recognised the issues of homosexuality and the sexual abuse of minors in prison, yet even then, the question of conjugal rights was not raised.

¹² Principle 5 of the Basic Principles for the Treatment of Prisoners (1990).

¹³ AIR 1974 SC 2092

¹⁴ AIR 1978 SC 1675

¹⁵ AIR 1981 SC 746

¹⁶ AIR 1966 SC 424

¹⁷ (1983) 2 SCC 96.

1.3.2 Statutory framework

India does not have any laws or regulations that discuss or provide married inmates with conjugal rights. Furthermore, there is no system in place for conjugal visits in prisons. The decision to grant parole or furlough lies with the individual state governments; there is no overarching law that governs this. For example, in Punjab, the release of inmates on parole and furlough is managed by the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 along with the Rules established under it. The State Policy and Instructions issued by the state government also govern the release of prisoners on parole and furlough.

The Act (Section 3(1)) permits the State Government to grant temporary parole for a certain period to a prisoner, if they find that one of the following conditions are met: (1) a family member has died or is critically ill; (b) the prisoner's son or daughter is getting married; (c) the prisoner is necessary to do agricultural work on their land and there is no one to do it in their absence; or (d) it is suitable for any other sufficient reason. The State Government has the ability, as per Section 4 of the Act, to temporarily release inmates, provided they demonstrate good behavior and have a suitable sentence or offense. As outlined in Section 6, a prisoner cannot be released if it could potentially compromise the safety of the State or cause a disturbance in public order. Failure to surrender after the release period is established will result in penalties, as outlined in the Act.¹⁸ It is important to be aware that spouses' rights or visitations are not a justifiable cause for granting parole or furlough. The Supreme Court, in different decisions, has expressed that parole is an idea to prevent re-offending and has exhorted the broad utilization of it.¹⁹

1.4 Judicial decisions

In recent years, several high courts have been approached by prisoners to enforce their conjugal rights, as no legal framework exists in this regard. In 2012, an effort to pass a PIL in the Andhra Pradesh High Court on behalf of Ms. G. Bhargava, President of M/s. Gareeb Guide (Voluntary Organisation),²⁰ to direct the State of Andhra Pradesh to take immediate steps to enable conjugal visits for spouses of prisoners, was unsuccessful. The Court dismissed the petitioner's claim, citing the following reasons: firstly, allowing conjugal visits to prisoners with good behavior could potentially create disturbances in the prison environment, which would have a detrimental effect on other inmates who are not given the same benefit. Secondly, Chapter-IV of the Andhra Pradesh Prison Rules, 1979 provides for the release of prisoners on furlough/parole, enabling them to spend time with their spouses during this temporary freedom. Thus, the High Court refused to grant any type of conjugal visit privileges to prisons. It also noted that such a question of permitting conjugal visits in jails is a policy matter that lies in the sole jurisdiction of the state.

In 2014, the Punjab and Haryana High court received a petition from Jasvir Singh and another individual.²¹ Both petitioners were husband and wife, and they were facing prosecution and conviction for abducting and killing a 16 year old minor and demanding ransom. The verdict of the trial court, which was endorsed by the High Court and upheld by the Supreme Court, granted the death penalty to the couple. The wife's sentence, however, was commuted to life imprisonment and the two were placed in different cells in the same jail. They were apprehended in a criminal case only eight months after their nuptials. Consequently, they requested the jail authorities to enable them to remain in each other's company and to exercise their conjugal rights in order to have children. The petitioners argued that their request was not for personal carnal pleasure and as such, they were willing to settle for artificial insemination. This case raised significant legal questions about the conjugal rights of inmates and thus an amicus curiae was also appointed by the court. The petitioners argued that their request was not for personal carnal pleasure and as such, they were willing to settle for artificial insemination.

¹⁸ Section 8 of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962.

¹⁹ see the case of Suresh Chandra vs. State of Gujarat, 1976 CriLJ 1890. Also see Krishan Lal vs. State of Bihar 1976 Cri LJ 854..

²⁰ PIL No. 251 of 2012 decided on 16th July, 2012

²¹ 2015 Cri LJ 2282

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A question arises if Article 21 of the Constitution, which guarantees 'right to life' and 'personal liberty', encompasses the right of convicts or prisoners to have conjugal visits or resort to artificial insemination in lieu thereof. The state of Punjab and the father of the deceased victim objected to the petitioners' plea, as they had been kidnapped and murdered for ransom. The primary reason for the opposition was that the Rulebook or Statutes held no reference to the right to procreation. It was argued that the Prisons Act, 1894 and the Punjab Jail Manual did not include any regulations for 'conjugal visitation'. Furthermore, there was no allowance for artificial insemination in the aforementioned Acts.

The Prisons Act of 1894, in its Section 27, requires that men and women be kept separate in prison.²² The amicus curiae presented two main points; firstly, the Constitution's Principles are of great significance and have been purposely designed to have a broad understanding, allowing the courts to not be restricted by a narrow interpretation.

Secondly, he argued that it is unfair to deny the right to procreate simply because this right is not spelled out in any Rule-books or Statutes. The petitioners suggest that, since this right does not break any laws, its refusal is unreasonable and violates Article 21 of the Constitution. Thus, the denial of the right to procreate is considered by the petitioners to be a massive infringement of the aforementioned article.

The third point addressed was that the 'right to life' includes the rights to 'create life' and 'procreate' and this fundamental right cannot be taken away when someone is in prison. No law or constitution states that prisoners must be deprived of a dignified existence, which is a requirement of Article 21 of the Constitution. It was asserted that while the husband had been given a death sentence, his 'right to life' could not be taken away until his execution was carried out. Furthermore, he stated that the court had sufficient authority under writ jurisdiction to guarantee fundamental rights, and thus could command the prison authorities to permit conjugal visits for the goal of reproduction in this particular case. The court, after being attentive to both parties and the amicus curiae presented in the case, responded to the queries in the following way. It was decided that the right to procreate is maintained during imprisonment, as it is a right that is identified in Article 21 of the Indian Constitution and the Universal Declaration of Human Rights.

The court concluded that it is in the State's best interest to provide inmates with the opportunity to exercise their right to procreation while incarcerated, as there is no inherent conflict between the two. Nevertheless, there are rational limitations that must be applied, along with considerations of public order and safety. The court determined that the resources could be provided gradually. In their response to the third query, the court pronounced that the right to life and personal liberty, defined in Article 21 of the Constitution, comprise the right of prisoners to have conjugal visits or assisted reproductive technology (alternatively). Nevertheless, the court was aware of the complexities involved and declared that the exercise of such rights should be monitored by a procedure established by law and is the sole discretion of the State.

The Court acknowledged that ordinarily all prisoners have the right to procreate while in jail, unless they can be reasonably classified. It was the Court's decision that the state should be responsible for creating a policy that outlines reasonable classification, as the right is not absolute and is subject to the state's penological interests. Therefore, the Court directed the State of Punjab to form a Jail Reforms Committee to draft a scheme that creates an atmosphere where conjugal visits are possible in prison. The court mandated that until the matter is managed in an appropriate way by the state, parole and furlough should be used and should consider the conjugal visits of a married and eligible convict as a legitimate and sufficient justification for his/her short-term release on parole or furlough, though still subject to all the conditions set out in the statute.

²² Section 27(2) of the Prisons Act, 1894 states 'separation of prisoners': The requisitions of this Act with respect to the separation of prisoners are as follow: (1) XXX XXX XXX (2) in a prison where male prisoners under the age of twenty-one are confined, means shall be provided for separating them altogether from the other prisoners and for separating those of them who have arrived at the age of puberty from those who have not; (3) un-convicted criminal prisoners shall be kept apart from convicted criminal prisoners

The claim of the petitioners was refused due to the severity of the offense that had been committed. Both of them were judged guilty, and thus the plea of an 'innocent spouse' was not accepted. Additionally, the court felt that the current situation and circumstances did not warrant any immediate action.

1.5 Law in other jurisdictions

1.5.1 United States of America

Conjugal visitations are not authorized in US federal prisons, but certain states do permit such programs. The regulations and restrictions for the visits are based upon the specific state's guidelines. In the United States, conjugal visits are prohibited in federal prisons. Mississippi State Penitentiary in Parchman is believed to have the oldest conjugal visiting program, with records dating back to 1918. Although it is not certain, many penitentiary staff suspect that the program has been in place since the prison was established in 1900.²³ The Mississippi's conjugal visitation program originally was limited to just black inmates, but eventually it was made available for all prisoners. This program was not legally enacted; it developed over time. Every two weeks, these visits take place and last for up to three days. Inside the prison grounds, cottages are provided for the prisoners and their families, which come with beds and tables.²⁴ Apart from allowing conjugal visitation, prison authorities in the USA also have a home furlough program in place. Additionally, other states also have programs intended to facilitate conjugal visits.²⁵ In California, the implementation of conjugal visits was started in 1968 and has been developed since then. Inmates are allowed to spend time with their children, spouses, siblings, and parents in special dwellings on the prison premises.²⁶ In New York New Mexico, Washington and Connecticut., one can also take advantage of conjugal visitation programs In contrast, the initiatives in New Mexico and Mississippi have been concluded.²⁷

On artificial insemination:

The Ninth Circuit of the United States Court of Appeals dismissed the appeal in the case of William Gerber v. Rodney Hickmen, wherein the petitioner sought to be given consent to provide his own sperm for his wife's artificial insemination.²⁸ The husband was condemned to a century to life in addition to 11 years of jail time, and he desired to have a child. Since his parole date was uncertain, he argued that he should be permitted to provide his spouse with sperm for in vitro fertilization, and that denial of this request would be a violation of his constitutional entitlement.²⁹ In a 6-5 decision, the Court of Appeals determined that the constraints of incarceration override certain key aspects of a civil marriage, such as living together, sexual intercourse, and raising children. Furthermore, the Court noted that it would be an extraordinary reading of the Constitution to suggest that a warden must enable Gerber's request to impregnate his wife as a right.

1.5.2 Europe

In Europe, the European Convention on Human Rights grants individuals the right to conjugal visits and artificial insemination. Article 8 of the Convention states that everyone has the right to privacy and family life, and public authorities may not interfere with this right, except in accordance with law or for certain specified purposes. Furthermore, Article 12 of the Convention guarantees that individuals of marriageable age have the right to wed and start a family, in accordance with the laws of the state.

²³ Michael Braswell and Donald A. Cabana, "Conjugal Visitation and Furlough Programs for Offenders in Mississippi", *New England Journal of Prison Law*, Vol. 67, No. 2, 1975, pp. 67-72, at p. 67.

²⁴ Christopher Hensley et al, *Conjugal Visitation Programs: The Logical Conclusion: From Prison Sex: Practice and Policy*, 2002, pp. 143- 156, at p.144.

²⁵ Carolyn Simpson, "Conjugal Visiting in United States Prisons", *Columbia Human Rights Law Review*, Vol. 10, 978-79, pp. 643-671, at p. 662..

²⁶ Rachel Wyatt, "Male Rape in U.S. Prisons: Are Conjugal Visits the Answer", *Case Western Reserve Journal of International Law*, Vol. 37, Issue 2, 2006, pp. 579-614, at p. 600.

²⁷ New Mexico to eliminate conjugal visits for prisoners, 16 April 2014 available at <http://www.reuters.com/article/us-usa-prisons-newmexicoidUSBREA3F21220140416>.

²⁸ 291 F. 3d 617 (2002).

²⁹ Brenda V. Smith, "Analyzing Prison Sex: Reconciling Self-Expression with Safety", *Human Rights Brief*, Vol. 13, Issue 3, 2006, pp. 17-22, at p. 18

The Council of Europe's member countries are obligated to abide by the Convention, which has caused numerous European nations to permit prisoners conjugal visits. For instance, Spain, France, Sweden, and Denmark, are among the countries that endorse these visits.³⁰ In the Spanish prison system, inmates are offered monthly conjugal visits that can include members of their family or close friends.³¹ Inmates in Sweden's prisons can be visited by family members for an extended period of time, with the visits being able to last up to nine hours.³² It is significant to take into account that the European Court of Human Rights has not yet declared that Contracting States are obligated to provide for such visits through the interpretation of the Convention.³³ The Contracting states have significant flexibility when it comes to this issue and it is up to them to decide which measures should be taken to assure adherence to the convention.

On artificial insemination:

Rejecting the appeal, the European Court of Human Rights pointed out that over half of the nation's allow for conjugal visits, therefore extra facilities for artificial insemination are not needed. The Supreme Court of Judicature in the United Kingdom in *R v. Secretary of State for Home Department*³⁴ also rejected the prisoner's petition for artificial insemination, opining that the refusal to permit the petitioner the facilities to provide semen for artificial insemination of his wife was neither in violation of the Convention nor unlawful or irrational. Three reasons were cited for sustaining the policy that restricts the provision of facilities for artificial insemination. These reasons were that it is an explicit result of incarceration that prisoners should not have the chance to become parents while serving their sentences except when they are allowed to take temporary leave; that there is a probability of significant and legitimate public concern if prisoners continue to have the possibility of conceiving children while serving sentences; and that there are disadvantages of single parent families.

1.6 Conclusion

The concept of conjugal rights has not yet been thoroughly established in Indian jurisprudence. Article 21 of our Constitution guarantees the right to life and liberty, and therefore includes the right to conjugal visits and procreation as part of the right to live with dignity. Raising some rights to the status of fundamental rights that are guaranteed is intended to shield their practice from the contempt of majorities, whether they be popular or legislative. The protection of constitutional rights is not contingent on majoritarian opinion favorably regarding their exercise. Discriminating against someone based on their sexual orientation is incredibly upsetting to their sense of value and dignity. Every member of society must have their sexual orientation protected on an equal footing in order to ensure equality. The fundamental rights protected by Articles 14, 15, and 21 of the Constitution are centered on the right to privacy and the protection of sexual orientation. Prisoners' marital rights are important, and now is the moment for all parties involved to get together and discuss the matter. Among the recommendations are:

- To enable inmates to maintain relationships with their families, the state ought to make wide use of the parole and furlough laws.
- Allowing conjugal visits in prisoners is a notion that needs to be thoroughly, meticulously, and methodically investigated. The Punjab and Haryana High Court also acknowledged that policy makers should be the ones to develop an efficient system for putting laws like the one permitting conjugal visits in jails into reality. In this case, the court gave the state government instructions to organize a prisoners Reforms Committee in order to devise a plan for permitting family and conjugal visits to prisoners. The creation of a Jail Reforms Committee ought to happen as soon as possible.

³⁰ Rachel Wyatt, "Male Rape in U.S. Prisons: Are Conjugal Visits the Answer", *Case Western Reserve Journal of International Law*, Vol. 37, Issue 2, 2006, pp. 579-614, at p.602.

³¹ Dirk Van Zyl Smit, Frieder Dunker (eds.), *Imprisonment Today and Tomorrow: International Perspective on Prison Rights and Prison Conditions*, Kluwer Law International, Hague, 2001, at p. 612.

³² *Ibid*, at p. 635.

³³ *Jasvir Singh vs. State of Punjab* 2015 Cri LJ 2282 (2293).

³⁴ [2001] EWCA Civ 472

- The Committee should specify which types of prisoners are eligible for these visits, what facilities are needed to make them possible, and how the visitation procedure works.
- The Model Jails should be the starting point for a progressive adoption of the plan
- The establishment of facilities for conjugal visits should be funded by governmental funds.
- The effects of conjugal visits as well as parole or furlough on the behavior of the inmates should be studied in this field.
- One should consider the option to supplement natural reproduction with artificial insemination. Nevertheless, the state will first concentrate on creating facilities for conjugal visitation in jails due to the limited resources at its disposal, and this strategy needs to be included in long-term planning.

