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A STUDY INTO CONJUGAL VISITS **OF UNDERTRIAL PRISONERS**

AUTHORED BY - RAINA ANAND

INTRODUCTION

The battle between the government and human rights organisations could be regarded as the most notable of the most recent conflicts. All living and legal individuals must have access to human rights; no group should be given preference over others. In a time when animal rights are a hot topic, it's time to acknowledge that prisoners' rights cannot be disregarded. A person's fundamental rights and needs are not violated just because they were found guilty of a crime. In general, prisoners are housed in prisons.

A jail is simply a location where people who have been found guilty of a crime are imprisoned and deprived of their freedom and access to the outer world to a certain extent.

When the idea of imprisonment was first proposed, its main goal was to put the offender under lockdown in order to protect society from crime. The concept of imprisonment and societal perceptions of convicts have both evolved along with society. Prisoner reform is a component of the criminal justice system's corrective system. When talking about reforming a prisoner, it is a very difficult task because we are talking about changing the mindset of the criminal, which will require additional efforts from the side of the prison authorities and the state. Correctional methods of treatment of prisoners alone cannot achieve the goal of reformation.

We cannot completely disregard the victim or the reason the accused was imprisoned in the first place in the name of the prisoner's human rights. In order to protect the prisoner's human rights, it is important to maintain the element of punishment; therefore, it is important to ensure that punishment is both legal and actual.

The bond between a man and a woman that is the most socially, culturally, and legally acknowledged is marriage. Marriage may also be referred to as a covenant, relationship, or a holy union between a man and a woman for the purpose of cohabiting.

Hence, matrimony is defined as a connection between a man and a woman that is either based

on a legally binding implied or express contract or a spiritual belief. When we examine the origins of marriage, we quickly come to the conclusion that the primary motivation for its introduction must have been to legitimise the husband and wife's sexual relations in order for them to create children who are morally and legally deserving of existence. Legitimate offspring are granted complete rights, whereas illegitimate children must forfeit some of their rights by virtue of specific rules that are recognised by even modern laws as valid and giving substance to the concept of marriage.

If permitted, conjugal visits may help to lower recidivism and may also be used as a tool to inspire inmates to change for the better and become better members of society. Conjugal visits can also be used as a strategy to maintain positive relationships between the prisoner and their family so that they do not find themselves in an unfamiliar environment where they are unable to relate to anyone upon their release. Conjugal Visits may also be utilised as a reward for inmates who behave well in jail and respect the regulations of the prison throughout their time there.

This could encourage the inmates to abide by the laws and the rules and regulations of the prison authorities and pay attention.

It may be argued that the idea of conjugal visits protects the human rights of those who are detained and also alleviates the suffering of the wives of such detainees who have committed no wrongdoing themselves. As stated in the Indian constitution, prisoners should be permitted to have children while they are detained. Additional to India While conjugal plays a crucial role in maintaining the family ties of the prisoners and may also be utilised to lessen the prisoners' propensity to violate the laws and regulations of the jail, all nations are gradually coming around to the idea that it cannot be disregarded any longer.

The idea of conjugal visits for inmates has been supported and agreed upon by psychologists, psychiatrists, and jail reformists who support a correctional and rehabilitation model. This is because it can assist them transition seamlessly into life after prison.

One may very simply and widely divide prisoners in Indian prisons into two groups: those who have been convicted and those who are awaiting trial. Conjugal visits should be permitted for prisoners while also respecting their human rights. Conjugal visits should also be permitted for those who are still awaiting trial as these are essential freedoms that cannot be denied to the innocent.

RIGHT TO FUNDAMENTAL RIGHTS:

In India, the jurisprudence surrounding the idea of conjugal rights is still in its infancy, and few lawyers have come up to express their opinions. Another significant issue the Indian state faces when addressing delicate subjects like conjugal visits and prisoner rights is the lack of legislation. There is no legislative law that grants inmates the ability to get married. So, the only option left for the inmates is to rely on the legal system to uphold their human rights and interests as guaranteed by Article 21 of the Indian Constitution.

According to Article 21 of the Indian Constitution, nobody's right to free speech can be violated unless they follow specific legal procedures.

The inmates are also included in its scope. The Supreme Court denied the safeguarding of fundamental rights in the matter of *D Bhuvan Mohan Patnaik and Others v. State of Andhra* (AIR 1974 SC 1992).

When someone is found guilty of a crime and given a prison sentence, they do lose some of their rights, such as the freedom to move around or the ability to pursue any line of work they choose, but they should not lose any other rights, as those rights are protected by article 21 of the constitution. The majority of fundamental rights are merely extensions of the universally recognised, "Fundamental" human rights that are guaranteed by the constitution.

Fundamental right to life does not get suspended when a person the right to life includes right to create life" and "procreate and this fundamental right does not get suspended when a person is sentenced and awarded punishment.

As long as the first petitioner, the husband, is alive and as long as the legal process is followed, the law under which the petitioners are condemned and tried does not terminate their rights under Article 21. The right of the petitioners to a decent existence under the given conditions is not violated by any explicit or implicit provisions of any penal legislation or the Constitution. Hence, it shouldn't be denied to the petitioners who are trying to exercise their fundamental right to "live and procreate."

As a sign of a developing society, rising standards of decency must result in a broader interpretation and application of Article 21 when read in conjunction with Articles 19(1)(d) and 19. (5).

The core and essence of article 21 is fair procedure.

The heart of article 19(5) is that the restriction must be reasonable, and article 14 is inimical to

broad discretion that degenerates into arbitrary discrimination.

The Honorable Supreme Court ruled that the conditions of detention cannot be expanded to include depriving of fundamental rights, and that no rights of the prisoners will be lost that can be enjoyed by a normal citizen of the country aside from those that will be lost inescapably as a result of the punishment awarded to them in the form of imprisonment.

Understanding Conjugal visits

Conjugal Visits, to put it mildly, are times set aside when an inmate in a prison or jail is allowed to spend a few hours or days with a visitor in privacy, who is typically their spouse. Conjugal visits are based on the fundamental principle that if one partner is incarcerated, the family bonds shouldn't be severed as a result. The couple may also have sexual interactions while such. Allowing the prisoners to visit their family or spouse on occasion will aid in their moral reform and may to some extent aid in their adjustment to society.

First, we must establish what true conjugal rights are in order to comprehend conjugal visits.

Conjugal rights are those that a married couple has in regard to society, such as the right to procreate, the right to build a home together, and the right to live separately and in close proximity to one another. Simply put, a prisoner's conjugal rights are their marital rights.

Prabhakar Pandurang Sanzgir v. State of Maharashtra, AIR 1966 SC

Conjugal Visits, which demanded that detainees and their married partners have the right to conjugal visits in jail. The petition requested conjugal visitation rights for convicts, taking into account that the majority of prisoners were older and belonged to an age group that was sexually active.

Although it came with some restrictions, the Punjab and Haryana High Court's approval of conjugal visits and artificial insemination for inmates is a significant step towards recognising their demands and human rights.

The Court determined that the right to life and personal liberty guaranteed by Article 21 of the Constitution includes the right of prisoners to have conjugal visits and artificial insemination. The court stated that this right will be the sole prerogative of the state and must be governed by a legally established procedure.

It may be claimed that the judiciary has not yet forgotten the rights of prisoners because following the precedent-setting case of *Jasvir Singh*, the judiciary gave a lengthy list of prisoners' rights that all authorities must abide by until new law is passed for the same. Nevertheless, in reality, these rules and rights only exist on paper and are barely observed by the prison administration. Unless we have relevant laws, the situation won't change. In addition, prisoners are unaware of these rights or how to exercise them.

In *Jasvir Singh & Anr v State of Punjab & Ors* (2014)

The righteous statement made by Justice V.R. Krishna Lyer was that "in our world, jails are still laboratories of torture, warehouses in which human commodities are stored in sadistic fashion, and whose detainees range in character from driftwood youths to courageous dissenters."

A report from the All India Prison Reform Committee 1980–1983 details various prisoners' rights and standards for jail discipline. This demonstrates that the purpose of imprisonment has changed from being deterrent to being more rehabilitative and reformative.

This was the beginning of a new, gradual trend to enforce discipline among the prisoners, and they were motivated by things like the ability to write letters and conduct interviews with friends and family members, as well as the remission of punishment for good behaviour and payment of wages for labour performed.

It must be highlighted that these were once regarded as benefits but have now been recognised by the judiciary as fundamental components of inmates' rights. The Supreme Court of India has very clearly stated that even while incarcerated, a person still retains their legal or natural status; only after being found guilty of a crime that they committed does not take their legal and natural personality.

So, it has been established in a very clear manner that a criminal conviction alone does not deprive a person of all of their legal rights or turn them into a non-person. However, because prisoners do not have unrestricted rights and are subject to certain legal limits, we cannot treat prisoners and non-prisoners equally or in a similar ways.

Conjugal visits in prisons in India

All prisoners will retain all of the human rights and fundamental freedoms outlined in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and

Cultural Rights, the International Covenant on Civil and Political Rights, and the Optional Protocol, where the State concerned is a party, with the exception of any limitations necessitated by the imprisonment, according to the United Nations Basic Principle for the Treatment of Prisoners, 1990.

As a signatory to the Covenants and the Universal Declaration of Human Rights, India has incorporated these rights into the Indian Constitution as essential rights and guiding principles for public policy.

In the case of *Jasvir Singh and Another v. State of Punjab*

The petitioners in this case were a husband and wife who had been found guilty of murdering and kidnapping a 16-year-old for ransom. Within eight months of getting married, the husband and wife were implicated in the criminal case. Both of them were given the death penalty by the trial court, which the high court confirmed and sustained after hearing their appeal. The wife's death sentence was modified to life in prison after another appeal to the Supreme Court upheld the conviction. They were both placed in separate cells within the same prison.

The couple in this instance sought that the jail authorities order them to be let to be together and resume their conjugal rights so they might conceive a child. They asserted that they were amenable to artificial insemination because their demand was only focused on having a child and not on satisfying their sexual desires.

The Court ruled that the right to procreate endures impounded property. When read in conjunction with the International Declaration of Human Rights, Article 21 of the Indian Constitution covers such a right.

The court further ordered the prison administration to build facilities that would allow prisoners to enjoy their right to procreation while they were incarcerated and prevent a direct contradiction between reproduction and incarceration. All of this, meanwhile, was subject to the court's reasonable limitations, social order, and security considerations.

"Convicts are not by mere reason of the conviction denuded of all the fundamental rights which they otherwise hold," Judge V.R. Krishna Lyer wrote in a landmark decision.

Many increasingly believe that criminal behaviour is solely a result of social, economic, and environmental factors thanks to the emerging rehabilitative and reformatory ideology of punishment in modern correctional systems around the world. According to this notion,

permitting conjugal visits would be a better method to humanise the prison environment and aid in a convict's rehabilitation.

The Punjab and Haryana High Court made history with its decision in *Jasvir Singh and Ors v. State of Punjab and Orso*. Judge Majumdar noted that a prisoner's physical needs cannot be disregarded and urged the government to investigate the idea of offering a separate space for a prisoner and taking preventive steps.

Not allowing the convicts and Instead of fully abolishing the idea of conjugal visits, one solution could be to require that spouses only be admitted after thorough screening, with such visits being contingent on the prisoner's character, behaviour in the jail, attitude towards other inmates, and his punishment terms.

Only within the confines of the jail can such unique cells or houses be established in order to further strengthen security and certainty. The issue of "homosexuality" is one of the main issues that prisoners deal with. The fact that prisoners engage in unprotected intercourse inside the prison is well known, and it has frequently been observed.

One of the most straightforward solutions to this issue would be to give them access to a closer relationship with someone to whom they can truly relate. The incidence of male rape, which is a serious worry for jails across the nation, can be significantly reduced by allowing conjugal visits. The detrimental effects of the unisex prison environment can be lessened by letting inmates to spend a significant amount of time with their family.

It is past time for us to acknowledge that we are a culture that is currently debating LGBT rights or rights for non-binary people, and it is past time that we also talk about the romantic rights of prisoners.

Right to Conjugal Visitation in Different Jurisdictions

We might as well borrow a page from other nations' books as the Indian judiciary and society go forward and recognise the rights of the convicts.

Every three months, Belgium's open jail convicts are permitted a three-night house stay. Conjugal visits are legal in Brazil for same-sex male partners as well as heterosexual couples. Every two months, spouses or partners are permitted to see convicts in private for up to 72 hours.

In order to allow prisoners who have been incarcerated for more than eight years to periodically spend private time with their partners, Denmark not only permits conjugal visits but also provides apartments for couples.

Prisoners in Germany can ask for romantic visits, and if accepted, couples are given private time.

Families, companions, and even spouses have long been permitted to visit prisoners in jail in Mexico.

In Saudi Arabia, a spouse is permitted to see a prisoner once per month for a conjugal visit. Also, male bigamous inmates are permitted two separate visits each month. Prisoners in Spain are permitted to have intimate encounters lasting up to three hours in private rooms. Couple visits are permitted in the UK if they take place in the same

California, Connecticut, Mississippi, New Mexico, New York, and Washington are the six US states that permit romantic getaways.

Conclusion

Since the idea of conjugal visits is still in its infancy and there aren't many laws or court rulings to support it, we were unable to locate anything about it in India. For years, we have lived with the mentality that we should do as much harm to the prisoners as we can because they are the wrongdoers of the society, but the fundamental fact that we overlooked was that since imprisonment was already a sentence imposed by the court, the convict cannot receive additional punishment simply because he is at our mercy.

Whether a person is an ordinary law-abiding citizen or a criminal imprisoned in a jail, there are some things that cannot be taken away from them.

According to Article 21 of the Indian Constitution, every citizen has the right to life and freedom. The right to survive encompasses the ability to reproduce and the ability to live in dignity. The importance of the inmates' marital rights makes it imperative that we acknowledge the need for legislation or at the absolute least, discussion of the issue.

Some of the suggestions are:

Some of the recommendations include: The state should employ parole and furlough laws liberally and without interference from the federal government in order to ensure that prisoners build relationships with their families.

It's important to thoroughly research the idea of romantic visits in jails. Such a concept falls under the purview of lawmakers or policymakers, and it is their responsibility to acknowledge this urgently approaching requirement and create an efficient implementation method. A jail reforms committee can be established to draught laws or a report recommending allowing couples and family members to visit prisoners in order to make the process clearer and less time-consuming for policymakers.

Such a committee should be formed as soon as possible so that the data collection can start right away.

The committee should decide which prisoners should be eligible for such visits, how a prisoner should be judged, and what resources are required to facilitate such visits and the visitation procedure.

To ensure that issues encountered in this programme are resolved along the way, the process should be carried out in stages, beginning with smaller jails and moving up as necessary.

Before implementing this concept fully, study should be done in specific prisons to determine the effectiveness of conjugal visits, their benefits and drawbacks, and whether or not this system has a favourable impact on the convicts. Although the State must initially prioritise conjugal visits and be mindful of its limited resources, the option to reproduce artificially can nevertheless be maintained as a viable alternative.

