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**CRITICAL ANALYSIS ON RIGHTS OF INMATES TO CONJUGAL VISITS
UNDER RWANDAN LEGAL FRAMEWORK**

**Dissertation submitted in partial fulfilment of Academic requirements for the Award of
a Bachelor's Degree with Honours in Law (LLB).**

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Kigali, August/2024

DECLARATION

I, MUGISHA JEAN VIANNEY, to the best of my knowledge, do hereby declare that this dissertation entitled “***CRITICAL ANALYSIS ON RIGHTS OF INMATES TO CONJUGAL VISITS UNDER RWANDAN LEGAL FRAMEWORK***” for the Award of a Bachelors’ degree with Honours in the faculty of Law (LLB) is original and has never been submitted for any academic Award in any University or high learning institution as whole or its part.

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CERTIFICATION

This is to certify that the present dissertation entitled “***CRITICAL ANALYSIS ON RIGHTS OF INMATES TO CONJUGAL VISITS UNDER RWANDAN LEGAL FRAMEWORK***” was conducted by MUGISHA JEAN VIANNEY, under my supervision and guidance.

Names: NKUNDUKOZERA Emmanuel

Signature: _____

Date: 26/08/2024

DEDICATION

I DEDICATE THIS BOOK TO:

My lovely family

All my lecturers

All my classmates

All friends and siblings

THANK YOU VERY MUCH!!!

ACKNOWLEDGEMENT

I would like to take this gigantesque opportunity to thank all people who, in their different capacities, either morally or materially contributed to the completion of this academic journey, which is also a true definition of my endless efforts, commitment and hard work.

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MUGISHA Jean Vianney

Dated, August 26th, 2024

Signature: _____

ABBREVIATIONS AND ACRONYMS

Art: Article

CV: Conjugal visit, or Conjugal visitation

CVP: Conjugal visits program

ECHR: European Court of Human Rights

FRP: Family Reunion Program

GoR: Government of Rwanda

HR: Human rights

HRF: Australia's Human Rights Framework

Ibid: Ibidem

ICCPR: International Covenant on Civil and political rights

Id: Idem

N^o: Number

O.G: Official Gazette

P: Page

PIL: Public Interest Litigation

RCF: Rwandan Correctional Facilities

RCS: Rwandan Correctional Services

RLF: Rwandan Legal Framework

RLS: Rwandan Legal System

RoR: Republic of Rwanda

STD: Sexual Transmissible Diseases

UDHR: Universal Declaration on Human Rights

UN: United Nations

USA: United States of America

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GENERAL INTRODUCTION

In pre-modern and modern societies alike, a family has been seen as the most basic unit of social organization; in other words it is termed as a cornerstone and natural foundation of the society at large; which as per its formation, two adults of the opposite sex, male and female form an integral part of the household and commit to fulfil their respective role and conjugal obligations such as mutual support, companionship¹.

If any one of the spouses is displaced for one reason or another, the family will run the risk of being non-functional, and this in turn will adversely affect the achievement of individuals and social goals. One of the things that can separate spouses is the imprisonment².

Even though this punishment is served by the person who transgressed the laws, and whom has to bear the weight of its consequences, it is very true that he or she may be serving the prison sentence alone but almost all family members, spouse and children also are affected. However, while prisoners experience the primary effects of incarceration their families are subjected to the secondary effects³.

The impact of incarceration on families has been conceptualized as a form of family crisis, loss, demoralization, stigmatization and victimization of family members. Even the most cursory examination of the effects of imprisonment reveals a range of difficulties and challenges which the loved ones (left behind on the outside) of those incarcerated have to experience.

Broadly, these include financial, emotional and social difficulties. Families of prisoners also often have to cope with the manifold post-release and community re-entry challenges⁴. Michael Foucault mentioned the way back in the early 18th century in Europe, that imprisonment was the dominant form of punishment.

¹ Babbie, E. R. (2021). *The Practice of Social Research*. In *Contemporary Sociology* (15 th edit). Cengage Learning, Inc. <https://doi.org/10.2307/2062956>

² Bowlby, J. (1973). *Attachment and loss: Volume II: Separation, anxiety and anger*. In *Attachment and loss: Volume II: Separation, anxiety and anger* (pp. 1–429). London: The Hogarth press and the institute of psychoanalysis.

³ SHEREEN SADIQ, *Imprisonment and family, dimensions and consequences*, *International Research Journal of human resources and sciences*, Vol-1, Issue-2 (July, 2014) IISBN (2349-4085).

⁴ Idem, 3

However, imprisonment was used for inflicting suffering to the body of those who wronged the society⁵. In contrast to this, today's imprisonment is no longer simply intended as an acute form of corporal punishment but a means of working on a person's mind as well as his body through three distinct areas which include punishment, deterrence and rehabilitation⁶.

These three unique areas are interlinked into a single process with the objective to remove offenders from a position where they may continue to offend, place them into an institution that satisfies the masses who desire some form of retribution, discourage others from indulging in further criminal activities and in time sculpt them into productive and law abiding citizens who may later be re-integrated into society⁷.

Therefore, the purpose of punishment is not only viewed in the reflective mirror of deterrence and retribution, but mostly it is viewed in the mirror of rehabilitation and restoration. In essence, the significant object of incarceration is to curtail the freedom of movement and freedom of initiative as a consequence of the violation of established law of the land but it doesn't mean farewell to fundamental rights.

This is a defensive argument on inmates' rights that are denied to enjoy including the right to conjugal visits, which are believed to reduce the frustration of the prison to inmates, build the family bonding and also motivate them towards good behaviour and rehabilitation.

In summary, the elaboration of this research tends to define the concept of conjugal visits, analyze advantages and disadvantages, pertinent challenges and have a profound review on its adoption, legalization and applicability under Rwandan legal framework.

⁵ MICHAEL FOUCAULT, *Discipline and Punishment, The Birth of Prisons*, Random House, inc., New York, 1979

⁶ Bales, W. D., & Mears, D. P. (2008). Inmate social ties and the transition to society: Does visitation reduce recidivism? *Journal of Research in Crime and Delinquency*, 45(3), 287–321.

<https://doi.org/10.1177/0022427808317574>

⁷ Idem, Note 6.

1. BACKGROUND OF THE STUDY

The Constitution of the Republic of Rwanda stipulates that the human person is sacred and inviolable⁸, thus the State has the obligation⁹ to respect, protect and defend him or her without any discrimination whatsoever.

Among those to be protected include also inmates because the law did not exclude¹⁰ them reason why their right to life has to be guaranteed. Although they committed crimes and now serving the worthwhile punishment, they are not left aside as the Government does its utmost to protect and guarantee their rights by adopting different programmes and policies¹¹ helping them through their correction and rehabilitation's journey so that when they complete the sentences and return to normal life in their respective families it doesn't happen for them to become a heavy burden to the society which at some extent may lead them to commit other crimes¹². Moreover, the law stipulates how their basic human rights are still respected, including the right to legal Counsel, food, shelter, medical care, worship, visits from family and friends, etc¹³.

In Rwanda, inmates enjoy those rights under some limitations as consequences resulting from the wrong they committed against the society and for which they have to bear the weight on their shoulders¹⁴.

Back to the rights above mentioned, there is a certain gap I want to talk about in this study which is in relation to the inmate's rights of being visited by legal spouse and have intimate relations¹⁵; in other words, this refer to the rights of conjugal visits or having sexual intercourses.

⁸ Art. 13, paragraph 1 of the Constitution of the Republic of Rwanda of 2003 as revised and amended to date. See Official Gazette No. Special of 04/08/2023.

⁹ Ibidem, paragraph 2

¹⁰ Idem, Art. 10 Paragraph 5

¹¹ Art. 8 of the Law No. 021/2022 of 29/09/2022 governing Rwanda Correctional Services (RCS). See official Gazette No. 42/Bis of 17/10/2022

¹² <https://web.archive.org/web/20140618133250/http://www.abc.net.au/news/2009-06-08/conjugal-visits-support-inmates-relationships/1707438/accessed> online on 12/09/2024 at 9:05 AM.

¹³ <https://rcs.gov.rw/en/all-inmates-in-rwanda-are-enjoying-human-rights-provided-for-by-the-laws/> Accessed online on 12/09/2024, at 9:05 AM.

¹⁴ Art. 8 of the instructions of the Minister of Internal security relating to the conditions of detentions, the provision of food and detainee visits (No. 09/08, of 16/06/2008).

¹⁵ <https://www.newtimes.co.rw/article/122478/Lifestyle/debate-should-prisoners-be-accorded-conjugal-rights/accessed> online on 12/09/2024 at 9:05 AM

A conjugal visit, also known as a family visit or a private family visit, refers to a scheduled visitation for inmates in prison to spend time with their legal spouses and have sexual intercourse or intimate relations, within certain guidelines and regulations set by the authorities of correctional facilities¹⁶.

The purpose of conjugal visits is often to maintain family bonds, support the mental and emotional well-being of inmates, and encourage positive behaviour and rehabilitation¹⁷.

Around all over the world, not all prisons or correctional facilities offer conjugal visits, and eligibility criteria and visitation rules can vary widely depending on the jurisdiction and the specific policies of the correctional facility.

In Rwandan correctional facilities, inmates are not allowed to be visited by their wives or husbands and have sexual intercourse. This is not only because there is no law providing for it (Legal vacuum) but also it is a strange practice in Rwandan society¹⁸.

That is why, this study seeks to advocate for inmates' rights in Rwanda to be allowed to conjugal visits program, (CVP) because the researcher finds it appropriate and reasonable as there are other countries allowing such visits¹⁹, and even in Rwanda foreign inmates who are serving their sentences under the international conventions are permitted to be visited by their legal spouses and have sexual intercourse²⁰.

¹⁶ Michigan Law Review, *Conjugal Visitation Rights and the Appropriate Standard of Judicial Review for Prison Regulations*, 73 MICH. L. REV. 398 (1974).
Available at: <https://repository.law.umich.edu/mlr/vol73/iss2/3>

¹⁷ EYOB YIMER, *The relationship between conjugal visitation and family bonding among incarcerated people*, Addis Ababa University, October, 2014 pp.41-42.

¹⁸ <https://www.newtimes.co.rw/article/83100/should-prisoners-have-conjugal-rights/Accessed> online on 12/09/2024 at 9:05 AM.

¹⁹ <https://www.quora.com/What-countries-allow-conjugal-visits-in-prison-And-why/accessed> online on 12/09/2024 at 9:05 AM.

²⁰ Pastor Jean UWINKINDI, made a request for revocation of order transferring him to Rwanda by the ICTR in 2012, in the Case No. ICTR-2001-75-R11/ and addressed it to the Honourable Judge Theodor Meron, President of the UN MICT, claiming to be denied his fundamental rights, inter alia the right to conjugal visit, stating the following: 23. *I do not enjoy the same visiting privileges as those accorded to the Sierra Leonean prisoners. The only positive point is that we live together.* 24. *Since my arrival to Mpanga prison in March (23 March 2016) until early June, I can personally attest to the fact that the Sierra Leonean prisoners receive conjugal visits.* 25. *The Sierra Leonean prisoners receive conjugal visits and spend the day with their spouses in their cells in the so-called Delta Wing of Mpanga prison, without being disturbed by the prison guards. When these couples wish to go outside, they sit in the Delta Wing enclosure.* Statement Available online at: <https://ucr.irmct.org/LegalRef/CMSDocStore/Public/English/Motions/NotIndexable/MICT-12-25-R14%233/MS9306R0000513014.pdf/> accessed on 12/09/2024 at 9:05 AM.

2. INTERESTS OF THE STUDY

The present study aims to define what conjugal visit is all about, determine its advantages and disadvantages without leaving behind the challenges that may arise from it and make a comparative study on how the conjugal visit program would promote the rights of inmates, in order to protect and preserve the Rwandan family, the natural foundation of the Rwandan society²¹.

2.1. Personal interests

This study helped to ensure that inmates in Rwandan correctional facilities are fully enjoying their rights as human beings including the right to conjugal visit, which can be considered to be part of right to life²². It also contributes a lot to the protection and promotion of their rights and helped them throughout their rehabilitation journey²³.

The rights to conjugal visits are of a tremendous importance not only for inmates or their spouses they left in the outside life, but also to the society as whole because it helps inmates to maintain family bonds with their soul mates and regain credibility within the society. This also helps them (inmates) to have positive feelings in their minds that the society still valorizes their humanity and usefulness regardless the wrong they committed against it²⁴.

2.2. Academic interests

In the academic context, the present study can contribute to legal scholarship and reform because it allows a critical examination of an existing practice, and thus open doors for new legal perspectives on the applicability of conjugal visits under Rwandan legal framework. This study also helped the researcher to get acquainted with the skills and knowledge to make and submit petitions to the concerned organs for the sake of a legal reform, or elaboration of a certain mechanism or policy.

²¹ Art. 18 paragraph 1, of the Constitution of the Republic of Rwanda.

²² Right to life has two essential ingredients: Preservation of cells and propagation of species of which sex life is a vital part and is termed as right to life.

²³ BUSARI HALIMAT TEMITAYO, Conjugal rights for prisoners: To be or not to be?/UNILAG Law Review, January, 2018 available online at: <https://unilaglawreview.org/2018/01/21/conjugal-rights-for-prisoners-to-be-or-not-to-be/#:~:text=This%20means%20that%20granting%20conjugal, rehabilitation%20and%20reformation%20of%20prisoners./accessed> on 12/09/2024 at 9:05 AM.

²⁴ J.Q BURSTEIN, Conjugal visits in prison-psychological and social consequences, California, 1977

2.3. Scientific interest

This study is of scientific interests to scholars in the legal field, in the sense that it can explore legal dynamics that can influence the adoption, elaboration and the implementation of conjugal visit programme in Rwandan correctional facilities. In this perspective, understanding those legal dynamics can help identifying strategies for enhancing the legitimacy and acceptance of conjugal visits within Rwandan legal framework.

3. DELIMITATION OF THE STUDY

This study is delimited in space, domain and in time

3.1. Delimitation in space

From the domestic space, this study was conducted in the Republic of Rwanda, as a country that so far didn't yet legalize the applicability of conjugal visits in its legal system.

3.2. Delimitation in domain

The present study is delimited in domains of family law and criminal law.

3.3. Delimitation in time

This study covered the period of four (4) months, from April, when it kicked off up to August, 2024 when it was completed.

4. PROBLEM STATEMENT

The law allows inmates to access and enjoy their basic human rights such as rights to food, accommodation, medical treatment²⁵. Those rights are enjoyed either fully or partially, and there is no question about it because there must be certain guidelines, and restrictions based on the situation inmates are living in.

Therefore, those inmates should learn that being denied to have access to full rights as provided for by Rwandan constitution and other related instruments is not a form of revenge from the society which they wronged against, instead they must know that this is one of the factor of deterrence, rehabilitation and reintegration within the society²⁶.

In the present study, by stating the rights inmates are limited to, The researcher refers to the right of conjugal visit, which is, as previously defined the act of having sexual intimacy between inmates and his or her legal spouse.

²⁵ <https://rcs.gov.rw/en/service/accessed> online on 12/09/2024

²⁶ EYOB YIMER, Op.cit, p.4

The Rwandan legal framework currently does not provide provisions for conjugal visits for incarcerated individuals. Conjugal visits, which allow inmates to spend private time with their spouses or partners, are recognized in several legal systems worldwide as a means to uphold the right to family life, reduce recidivism, and promote the rehabilitation of offenders. However, the absence of such a policy in Rwanda raises significant concerns about the balance between punitive measures and human rights within the penal system.

The main problem lies in the potential conflict between the preservation of family relationships for inmates and the existing legal and cultural norms in Rwanda. While introducing conjugal visits could have positive social and psychological effects on inmates, including reducing violence within prisons and supporting reintegration efforts, it also presents challenges.

These challenges include concerns about the security of prison facilities, the moral and cultural acceptability of such visits in Rwandan society, and the potential legal implications of implementing such a policy.

Moreover, the introduction of conjugal visits requires careful consideration of the infrastructure, funding, and regulatory frameworks necessary to ensure that these visits are conducted in a safe, humane, and dignified manner. Without proper planning and regulation, the implementation could face significant opposition or fail to achieve its intended goals.

Therefore, the key problem is how to effectively integrate the concept of conjugal visits into the Rwandan legal framework in a way that respects cultural values, ensures the safety and security of prison institutions, and promotes the human rights and rehabilitation of inmates. This requires a thorough examination of the potential benefits, risks, and implementation strategies, as well as a broad-based dialogue involving legal experts, policymakers, civil society, and the general public.

In essence, the present research tends to find out and suggest possible ways and procedures through which the applicability of conjugal visit programs can be efficiently performed within Rwandan correctional facilities.

5. RESEARCH QUESTIONS

Throughout the study, the researcher seeks to know the impacts of the conjugal visit programme once adopted and applicable in Rwandan Legal framework, and find out legal and institutional measures that can be applied for the effectiveness of the said programme in Rwandan legal system. It is in this perspective that the present study tends to answer the following questions:

- 1. At what extent can the conjugal visit impact on inmate's rights, family preservation and rehabilitation scheme under Rwandan legal framework?**
- 2. What are legal and institutional measures that contribute to the effectiveness of the conjugal visit program under Rwandan legal framework?**

6. RESEARCH HYPOTHESES

Once inmates are allowed to have rights to conjugal visits, id est being visited by their legal spouses and have sex, this can help in the following:

1. The conjugal visit program will help in ensuring inmate's right to life, contribute to inmate's mental and emotional integrity, maintaining family bonds between inmates and their legal spouses, get time to discuss family issues and find out solutions together, have a common orientation on the development of the household, and reshaping the inmate's inner person to come back in the society he or she wronged against.
2. Legal and institutional measures that can contribute to the effectiveness of conjugal visit under Rwandan Legal system are, but not limited to the elaboration of a legal framework which tends to legally define the roadmap of the conception, adoption, legalization and the implementation of the CVP in Rwandan correctional facilities, Creation of a State's fund reserved to finance the CVP as well as ensuring security concerns by installing monitoring systems, training of RCS staff and providing modern security apparatus, without leaving behind the raising of the public awareness and perception through community sensitization and engagement towards the implementation of the CVP in Rwandan legal framework.

7. OBJECTIVES OF THE RESEARCH

This study seeks to influence Rwandan law makers to elaborate the law permitting conjugal visits in Rwandan correctional facilities as one of mechanisms in place to protect and promote inmates' rights. Therefore, it has both general and specific objectives as below explained.

7.1. General objectives

This study defined what conjugal visits are referred to, tackled its historical background, aspects, forms, advantages, disadvantages, and assessed various legal theories and principles that tend to make it have a legal ground under Rwandan Legal framework.

7.2. Specific objectives

The present study contributed in advocating for the protection, promotion and respect of inmate's rights in the sense of preserving the bond with their families especially their spouses.

This study also aimed at finding out an alternative way of working on inmate's rehabilitation and re-integration into the society through the programme of allowing them the right to conjugal visits by analyzing and examining its applicability and outcome under Rwandan Legal framework.

8. RESEARCH METHODOLOGY AND TECHNIQUES

This part tends to highlight methodologies and techniques that have been applied to collect, analyze and interpret data used in the elaboration of this research project.

8.1. Research techniques

The present study used the doctrinal research technique where the books, legal texts such as laws, legal scholars' publications, related domestic and international instruments and pertinent cases from different jurisdictions around the globe have been entailed in order to assess the applicability of adoption and legalization of conjugal visits with the intent to protect and promote inmates' rights under Rwandan legal framework.

8.2. Research methods

The researcher concretely demonstrated which methods to be used in order to interpret data and information collected, briefly by stressing out the importance of those methods, and their contribution to the research and at which extent they have been used.

So far, the following are the methods applied in the elaboration of this work:

8.2.1 Analytical method

The analytical method was used to analyze books and other legal texts in order to assess the effectiveness and the fairness of the adoption, legalization and the applicability of conjugal visits within Rwandan correctional facilities as well as the pertinent perspectives of Rwandan society as a whole.

8.2.2 Exegetic method

The exegetic method was used while conducting this study to help the researcher have a critical interpretation on certain legal texts, journals or even other articles in relation to the rights of inmates to conjugal visits.

This method also helped the researcher have a contextual analysis on a legislative history, societal norms and judicial interpretations which was of great use to interpret the intent behind the adoption and legalization of conjugal visits under Rwandan legal framework and determine the purpose they are meant to serve.

8.2.3 Comparative method

This method was used in order to have a profound review on the applicability of the conjugal visit programs from countries which have successfully applied them in their legal system with the intention to learn from them the best practices worthy to be applied in Rwandan legal system.

9. SUBDIVISION OF THE STUDY

Apart from the General introduction which summarizes the topic in general, starting from the background of the study, interests of the study, delimitation of the study, problem statement, research questions, research hypotheses, objectives of the research, research methodology, and the subdivision of the study; the present study is also divided into the following chapters:

Chapter one entitled **“Conceptual and theoretical framework”** covered the concept of conjugal visit, its aspects and historical background, defined the related terms, legal theories and principles, as well as tackling the necessity of conjugal visits under Rwandan legal framework; Chapter two entitled **“Impacts of Conjugal visit on inmate’s rights, family preservation and rehabilitation Scheme under Rwandan legal Framework”** dealt with advantages, disadvantages, challenges, and circumstances under which inmates would not beneficiate the CVP; Chapter three entitled **“Legal and institutional measures on the effectiveness of Conjugal Visit Programme under Rwandan Legal Framework”** covered the proposed solutions such as the elaboration of a legal framework helping in the CVP having a legal ground, and the institutional guidelines which help in the creation of a workable environment such as through which the CVP are State’s fund to finance the CVP, ensuring security concerns as well as raising the public awareness and perception; Then the part of conclusion and recommendation, where in the conclusion the researcher summarized the findings whereas in the part of recommendations the present study suggested some standpoints supporting the idea of the CVP implementation in Rwandan correctional facilities and seek to convince the concerned States’ organs to react accordingly.

CHAPTER ONE: CONCEPTUAL AND THEORETICAL FRAMEWORK

The elaboration of the present chapter mainly based on deep understanding of the concept of conjugal visits, its aspects, forms and historical background, without leaving behind legal theories and principles that have to govern the adoption, legalization and applicability of conjugal visits under Rwandan legal framework.

I.1 THE CONCEPTUAL FRAMEWORK

The concept of conjugal visitation refers to the scheduled and well organized visitation that aims to allow inmates in prison to spend time with their legal spouses and have sexual intercourses under some guidelines and regulations set by the authorities of the correctional facilities²⁷.

Conjugal visits occur when an inmate is allowed a private visit outside the scrutiny of guards with their partner, usually a spouse, typically to have sex. This practice was originated and evolved from the United States of America in the following circumstances:

Primo, the idea of conjugal visit informally started long time ago around 1904 at the Mississippi State Penitentiary called Parchman farm, which was a place where black men under slavery were kept captive and perform forced labour in the plantation of cottons, sugar cane, vegetables and fruits²⁸.

This time, inmates who had worked hard and finish their tasks on time, were given the permission to have sexual relations with their wives or prostitutes on Sunday as a reward or incentive for the work done in the fields and the aforementioned visits were taking place in “Red houses” built by the prisoners²⁹.

Therefore, this is the first documented case of conjugal visits in America and around the world which the guards organized, to increase productivity and exercise control over Parchman’s black convict workforce.

²⁷ <https://www.criminaldefenselawyer.com/resources/criminal-defense/state-felony-laws/states-that-allow-conjugal-visits/Accessed> online on 25/07/2024.

²⁸ <https://www.levelman.com/the-origin-of-conjugal-visits-in-america/Accessed> online on 22/07/2024

²⁹ Idem,28

In essence, the reason behind this kind of visit was conceived as a reward given to hard working inmates in order to calm down their sexual urges and encourage them to increase their productivity in the fields³⁰.

Secundo, conjugal visits were officially allowed as a right to inmates in 1965 following the case of Mildred Carter who, in 1960 arrived at Parchman Penitentiary in Mississippi to visit her husband George Carter, who was serving an imprisonment of ten years after conviction of assault and battery.

After driving up the long road to the prison and being searched by guards, she greeted her husband, and the couple walked to a small, rundown cabin in the prison yard. The guards gave the couple privacy, so what happened in the cabin is not known.

The couple may have held hands, George may have asked Mildred about their two daughters, and then they likely had sex. It was, after all, a conjugal visit, and thus Parchman Penitentiary was the sole prison in the United States that allowed conjugal visit rights in the 1960's.

In the United States, federal prisons don't allow conjugal visits, except four States namely California, New York, Connecticut and Washington which do recognize conjugal visits as rights to inmates, each in its own way and perspective to the extent that in California and New York conjugal visits are allowed even for same sex partners whereas Mississippi only was permitting conjugal visitations for married, opposite-sex partners.

Tertio, there was a controversy arguing whether conjugal visits are in forms of reward, right or privilege and this ended up abolishing conjugal visits in Mississippi in 2014 after the Supreme Court in America ruled out that conjugal visits are not a right, and by the decision of Chris Epps, the commissioner of the Mississippi Department of corrections who said it doesn't even require legislative action to abolish conjugal visitations³¹.

In essence, wherever such kind of visitation is still practicable, it is conceived as a privilege given to those inmates who showed good conduct and sometimes in form of furlough, this being short visits that prisoners are allowed to be outside the prison and visit their families.

³⁰ Ibidem, 29

³¹ <https://nation.time.com/2014/01/13/mississippi-ending-conjugal-visits-for-prisoners/> Accessed online on 23/07/2024

I.1.1 Rights

Rights are entitlements or permissions, typically granted by law, ethics, or social contracts, that individuals or groups possess. They are fundamental principles that underpin the functioning of societies and legal systems, ensuring that individuals can live with dignity, freedom, and equality. In summary, rights are fundamental principles that provide individuals and groups with entitlements and protections. They form the basis of freedom, justice, and peace in the world and are essential for ensuring that everyone can live with dignity and equality³².

I.1.2 Human Rights

Human rights are basic rights and freedoms that belong to every person in the world, from birth until death, such as rights to life, rights to freedom from torture, freedom of speech, rights to education, etc....They are universal and inalienable³³.

I.1.3 Inmates

Inmate refers to an individual who is held in a correctional facility due to being convicted of a crime or while awaiting trial or sentencing.

I.1.4 Correctional facility

Correctional facility is a place of conviction where the convicts serving their term of imprisonment or where a person is provisionally detained as per the execution of a court decision³⁴.

I.1.5 Prison

Prison also known as jail, penitentiary, detention centre, correction centre, correctional facility refers to the place of confinement reserved for lawbreakers who have been remanded (held) in custody by a judicial authority or who have been deprived of their liberty following conviction for a crime³⁵.

³² https://www.collinsdictionary.com/dictionary/english/rights#google_vignette/ Accessed on 25/07/2024.

³³ The International Bill of Human Rights, Resolution 217 A(III), December 10th 1948

³⁴ Law No. 021/2022 of 29/09/2022 governing correctional services in Rwanda. See OG No. 42 Bis of 17/10/2022

³⁵ MICHEL FOUCAULT, Discipline and punishment: The birth of the prison (1995).

I.1.6 Marriage

Marriage is a legally and socially recognized union between two individuals of different sex; male and female typically involving a commitment to live together and form a family. It is an institution that varies across cultures, religions, and legal systems³⁶.

I.1.7 Spouse

A spouse is a partner in a marriage or similar legal or social union. The term "spouse" applies to both husbands and wives and encompasses a variety of roles and responsibilities within the relationship.

I.1.8 Marital bond

A marital bond refers to the emotional, psychological, and legal connection between married partners. It encompasses the various elements that contribute to a stable and committed marital relationship³⁷.

The emotional connection in a marital bond involves love, affection, and deep care for each other. It can include feelings of trust, respect, and emotional support, which are crucial for maintaining a healthy relationship.

Marital bond engages also a commitment which is a fundamental aspect of signifying the dedication and willingness of both partners to work through challenges and remain together through various life circumstances³⁸.

Marital bond is also fuelled by physical intimacy, id est including sexual relations, which is its important component; and it helps to strengthen the emotional connection and fosters a sense of closeness and unity between partners.

I.1.9 Conjugal visit

Conjugal visitation refers to the scheduled and well organized visitation that aims to allow inmates in prison to spend time with their legal spouses and have sexual intercourses under some guidelines and regulations set by the authorities of the correctional facilities³⁹.

³⁶ <https://www.britannica.com/topic/marriage/> Accessed on 25/07/2024

³⁷ Monica Mouer, *The marital bond: Defining and describing attachment in marriage*, Center for family transformation, January 9th 2022.

³⁸ Ibidem, Note 37

³⁹ https://en.wikipedia.org/wiki/Conjugal_visit/ Accessed on 25/07/2024

I.1.10 Intimacy

Intimacy is the feeling of being in close personal, emotional and physical association with another person⁴⁰.

I.1.11 Furlough

Furlough conjugal visits, also known simply as conjugal visits, refer to temporary releases from a correctional facility granted to inmates, allowing them to spend private time with their spouses or partners. These visits are typically aimed at maintaining family relationships and providing emotional support to inmates⁴¹.

I.1.12 Conjugal obligation

Conjugal obligations refer to the duties and responsibilities that spouses have toward each other in a marriage such as fidelity, support, respect, intimacy, and cooperation

These obligations can vary based on cultural, religious, and legal contexts. In some places, certain aspects of conjugal obligations might be legally enforceable, while in others, they are more guided by personal and societal expectations⁴².

I.1.13 Reward

In the context of a conjugal visit, a reward refers to the privilege granted to an incarcerated individual to spend private time with a spouse or partner. This privilege is often given as a reward for good behaviour, adherence to prison rules, and participation in rehabilitation program. It is also meant to encourage positive behaviour among inmates and support their emotional and psychological needs through the maintenance of close family relationships, typically marital bonds with their spouses.

I.1.14 Privilege

In the context of a conjugal visit, a privilege refers to the special right or benefit granted to an incarcerated individual, allowing them to spend private time with their spouse or partner. This privilege is not automatically available to all inmates and is often subject to specific conditions and eligibility criteria. It serves as an incentive for positive behaviour and

⁴⁰ Brittany Loggins, *The importance of intimacy in a relationship and how to cultivate it*, May 23rd 2024. Available at: <https://www.verywellmind.com/what-is-intimacy-in-a-relationship-5199766/Accessed> on 25/07/2024

⁴¹ <https://www.ojp.gov/ncjrs/virtual-library/abstracts/conjugal-visitation-and-furlough-programs-offenders-mississippi/Accessed> on 25/07/2024

⁴² In Rwandan legal framework, conjugal obligations are determined by the Art. 203 of the Law No. 32/2016 of 28/08/2016 governing persons and family. See official gazette No. 37 of 12/09/2016.

rehabilitation, while also addressing the emotional and psychological needs of inmates and their families⁴³.

I.1.15 Criminal rehabilitation

Criminal rehabilitation refers to the process of helping inmates to grow and change, allowing them to separate themselves from the environmental factors that made them to commit a crime in the first place. Therefore, it means a process of education, training or therapy with the aim of assisting an offender's re-entry into the society⁴⁴.

I.1.16 Sexual urge

Sexual urge, in other words known as sexual desire or libido, refers to a person's drive or inclination towards sexual activity and intimacy. It is a natural and fundamental aspect of human biology and psychology, influenced by various factors including hormones, physical health, emotional state, and environmental context⁴⁵.

I.1.17 Sexual satisfaction

Sexual satisfaction refers to the fulfilment and contentment that individuals experience after they enjoyed sexual activity and calm down their sexual desire. This plays a critical role in personal happiness and the health of intimate relationship.

I.2 THEORETICAL FRAMEWORK

The present part entitled theoretical framework encompasses applicable legal theories, applicable principles, applicable rights as well as legal doctrines in regard to the legalization and applicability of the CVP.

I.2.1 ASPECTS OF CONJUGAL VISIT

Aspects refer to a particular part or feature describing something such as a situation, problem, or subject, in order to differentiate it from something else⁴⁶.

I.2.1.1 Conjugal visit as a reward

Conjugal visits as rewards to inmates involve allowing inmates to spend private time with their spouses or partners as an incentive for good behaviour and compliance with prison rules. This practice aims to promote positive behaviour within correctional facilities and

⁴³ SCHNELLER, Conjugal visitation-Prisoner's privilege or spouse's right, New England Journal of criminal Law, Volume:2, Issue-2, 1976.

⁴⁴ Madison, Elisha (November 18, 2021). "[Criminal Rehabilitation: Programs, Statistics & Definition](#)". Accessed on 23/07/2024.

⁴⁵ Mobbs, Anthony (2020-01-04). "[An Atlas of Personality, Emotion and Behaviour](#)". Accessed on 23/07/2024.

⁴⁶ <https://dictionary.cambridge.org/dictionary/english/aspect> Accessed on 24/07/2024

provide additional benefits for the inmates and their families⁴⁷. This helps inmates to maintain good behaviour because it encourages them to adhere to prison rules and regulations without leaving behind that it helps them to engage in educational, vocational and other useful programs designed to aid in their rehabilitation⁴⁸. In summary, offering conjugal visits as a reward for good behaviour can be an effective tool in promoting positive behaviour, maintaining family bonds, and providing emotional support to inmates. While there are challenges to implementing such programs, the potential benefits for rehabilitation and reintegration into society make it a valuable consideration for correctional systems⁴⁹.

I.2.1.2 Conjugal visit as a privilege

In the context of privilege, the CVP serves as an opportunity given to prisoners or inmates who showed good behaviours in order to motivate and encourage them and others to adhere to prison rules and keep maintaining good conduct. The CVP can also impact on the mental health and well-being of inmates, providing emotional support and reducing feelings of isolation or loneliness⁵⁰.

I.2.1.3 Conjugal visit as a right

The CVP as inmates' rights involve the idea that incarcerated people should be guaranteed access to private time with their spouses or intimate partners in the context of fulfilling basic human needs for intimacy, companionship, and emotional support which should not be entirely forfeited by incarceration⁵¹. Note also that, beside the fact that the CVP invoke inmates' rights as part of rights to life, it also extends its scope to the protection of the rights of inmates' spouses who, in principle should not suffer the pain resulted from the incarceration of his or her partner⁵². In essence, denying the CVP to inmates just because of the wrong he or she committed against the society, on the other hand this would be termed as violation of human rights and punishing an innocent partner. In brief, the CVP is beneficial towards the inmate's rights to life and towards the inmate's spouse⁵³.

⁴⁷ Vladu, Alexandra, Kalebic, Natasha, Audley, Jody, Stevens, Alisa and Taylor, Pamela J. 2021. Benefits and risks of conjugal visits in prison: A systematic literature review. *Criminal Behaviour and Mental Health* 31(5), pp. 343-361. 10.1002/cbm.2215 Publisher page: <https://doi.org/10.1002/cbm.2215>

⁴⁸ Idem, 44

⁴⁹ Idem, 45

⁵⁰ *New England Journal on Prison Law, Conjugal Visitation-prisoner's privilege or spouse's right*, Boston, Volume 2, Issue: 2, 1976, pp. 165-171

⁵¹ https://www.unodc.org/documents/justice-and-prison-reform/GARESOLUTION/E_ebook.pdf/Accessed on 25/07/2024.

⁵² Idem, 51

⁵³ *Supra*, 53, 52

I.2.1.4 Conjugal visit as a favour

The CVP as favour to inmates implies that those visits are granted as a discretionary benefit rather than a guaranteed right or earned privilege. In this context, the CVP are framed as special allowances that can be given or withdrawn based on the discretion of prison authorities or other governing organs⁵⁴.

I.2.2 FORMS OF CONJUGAL VISIT

Even though this study focussed on the conjugal visit, which is understood in the sense of a spouse who is free in the outside world going to visit his or her partner incarcerated, it can also be understood in a reciprocal sense, where an incarcerated person can be allowed to visit his or her partner who is free in the outside world and have sexual intimacy. Both acts can be termed as conjugal visit, id est depending on who visits who.

I.2.2.1 Inward conjugal visit

This type of conjugal visitation occurs when an inmate is allowed to be visited by his or her spouse and have sexual intercourse in the premises of the correctional facilities⁵⁵.

I.2.2.2 Furlough conjugal visit

This type of visitation occurs when an inmate is allowed to go outside the correctional facility, mainly to his or her home to visit the spouse or partner and have sex⁵⁶.

I.2.3 APPLICABLE LEGAL THEORIES

Legal theory refers to the supposition or set of ideas intended to explain a certain concept based on general principles or practices which are independent of the thing to be explained. In the following section, retributive theory, restorative theory, deterrence theory, and rehabilitation theory, all were defined and linked to the applicability of the CVP in Rwandan legal framework.

I.2.3.1 Retributive theory

In penology, retributive theory refers to the philosophical concept arguing that offenders deserve to be punished proportionally to the severity of the offences they committed. This

⁵⁴ BUSARI H. TEMITAYO, Conjugal rights for prisoners: To be or not to be?/UNILAG Law Review, January 21, 2018

⁵⁵ Editorial, "Court Moot Panel to Consider Conjugal Visits for prisoners", [https://www.thehindu.com/news/national/tamil-nadu/court-moots-panel-to-consider-conjugal-visits-for-prisoners-madurai-hc/](https://www.thehindu.com/news/national/tamil-nadu/court-moots-panel-to-consider-conjugal-visits-for-prisoners-madurai-hc/article22522011.ece) article22522011.ece, July 23, 2024.

⁵⁶ M. BRASWELL, Conjugal visitation and furlough programs for offenders in Mississippi/New England Journal on Prison Law, Volume 2, Issue-1(1975).

theory draws its roots in the principle of just deserts, where the primary focus is on the past actions of the offender rather than on the future benefits such as deterrence and rehabilitation⁵⁷. Retributive theory advocates for punishment that fits the crime but does not endorse cruel or inhumane treatment. In this sense, Conjugal visits can be seen as a way to balance the need for punishment with the recognition of inmates' human rights and dignity by ensuring humane treatment, including the possibility of maintaining marital bonds between spouses or partners, which aligns with the principles of a just and fair penal system because in case such visit is denied to an inmate, then it will be a violation of his or her partner's rights who is innocent⁵⁸.

I.2.3.2 Restorative theory

Restorative theory in penology refers to an approach to criminal justice that emphasizes repairing the harm caused by criminal behaviour through inclusive and collaborative processes involving the victim, the offender, and the community. The goal is to restore relationships, promote healing, and reintegrate the offender into society⁵⁹. In summary, Restorative justice aims to reintegrate offenders into the community by addressing underlying issues that contributed to their criminal behaviour and providing support for positive change; to which conjugal visit can contribute because once accorded to them, this will be creating into their inner-person the spirit and feelings that they still have value in the society despite the offences they committed against it⁶⁰.

I.2.3.3 Deterrence theory

Deterrence theory in penology refers to the concept that punishment should prevent future crimes by discouraging both the individual offender and the society as whole from committing similar offenses. The primary aim of this theory is to reduce crime through the fear of punishment⁶¹. In the context of deterrence, considering the past pain suffered by being denied the right to conjugal visit program, one will take in his or her mind not to offend

⁵⁷ Journal of Philosophy, *Retribution and the theory of punishment*, Volume:75, Issue:11, November,1978 Available at: <https://www.ojp.gov/ncjrs/virtual-library/abstracts/retribution-and-theory-punishment#:~:text=HART'S%20RETRIBUTIVE%20THEORY%20INVOLVES%20A.OF%20RETURNING%20SUFFERING%20FOR%20MORAL/Accessed> on 25/07/2024

⁵⁸ H.L.A. Hart, *Punishment and Responsibility: Essays in the Philosophy of Law* (2nd ed., Oxford: Oxford University Press 2008) | doi: 10.1093/acprof:oso/9780199534777.001.0001

⁵⁹ The locus classicus of the argument (not cited by Hart) is A.M. Quinton 'On Punishment', *Analysis* 14 (1954), pp. 512–17.

⁶⁰ *Idem*,60

⁶¹ Alex Raskolnikov, *Deterrence Theory: Key Findings and Challenges*, CAMBRIDGE HANDBOOK OF COMPLIANCE, BENJAMIN VAN ROOIJ & D. DANIEL SOKOL (EDS.), CAMBRIDGE UNIVERSITY PRESS (2021). Available at: https://scholarship.law.columbia.edu/faculty_scholarship/2576/ Accessed on 25/07/2024.

anymore for the fear of being taken back into the previous situations where he or she will be deprived the right to enjoy romantic intimacy with his or her partner⁶².

I.2.3.4 Rehabilitation theory

Rehabilitative theory in penology emphasizes on the transformation of offenders into law-abiding citizens through therapeutic and educational programs, inter alia conjugal visits. The primary goal herein is to address the underlying causes of criminal behaviour and facilitate the reintegration of offenders into society⁶³. In this context, conjugal visits can play a vital role in helping inmates reintegrate into the society by providing emotional support, reinforcing family bonds, and promoting positive behaviour and mental health.

I.2.4 APPLICABLE LEGAL PRINCIPLES

Legal principle refers to a basic idea or rule that tends to explain and control how something happens and pre-determine the outcome of a certain situation in legal context. In line with the present study, the principle of home grown solution, the principle of legality, the principle of equality, and the principle of fairness will be applicable in order to make the study meaningful.

I.2.4.1 Principle of home grown solution

The constitution of the Republic of Rwanda in its article 11 stipulates that in order to build the nation, promote national culture and restore dignity, the people of Rwanda, based on their values, initiate mechanisms for home-grown solutions to their problems, and that Law may establish different mechanisms for home-grown solutions. It is in this context that, if found useful and necessary, conjugal visits can be adopted and legalized in order to serve the interests of the incarcerated people, their spouses and the society as whole⁶⁴.

I.2.4.2 Principle of legality

The principle of legality is a fundamental concept in criminal law and legal theory, emphasizing that no one can be punished under a law unless it is clear, ascertainable, and not retrospective. This principle ensures that individuals have fair warning of what constitutes criminal behaviour and that laws are applied consistently and predictably⁶⁵. Legality in Law-making and Enforcement requires that laws be made by legitimate authorities following

⁶² Op.cit, 61,60

⁶³ <https://www.britannica.com/topic/punishment/Rehabilitation/Accessed> on 27/07/2024.

⁶⁴ Rwanda Governance Board Review, *The assessment of the impact of home grown initiative*, Vol. IV, Special issue, November, 2014.

⁶⁵ DAN MEAGHER, *The common Law principle of legality in the age of rights*, April, 2010 available at: https://law.unimelb.edu.au/_data/assets/pdf_file/0008/1703492/35_2_5.pdf/accessible on 17/07/2024.

established procedures and that these laws are enforced in a manner consistent with legal standards and protections⁶⁶. In summary, the principle of legality is a cornerstone of a fair and just legal system, ensuring that individuals are only held accountable for their actions under clear, established laws and protecting against arbitrary and retrospective application of criminal law. This principle is in connection with the CVP to ensure rights of inmates and those of their partners are legally respected and protected⁶⁷.

I.2.4.3 Principle of equality

The principle of equality is a foundational concept in law and ethics, asserting that all individuals should be treated equally under the law and have equal access to opportunities and resources. This principle is essential for ensuring fairness, justice, and the protection of individual rights within a society⁶⁸. In summary, the principle of equality is vital for ensuring that all individuals have the same legal protections, opportunities, and access to resources. It promotes fairness, justice, and the overall well-being of society by addressing and eliminating systemic barriers and discrimination. This principle is invoked here to respond to the question of identifying inmates deserving conjugal visits between married and unmarried people⁶⁹.

I.2.4.4 Principle of fairness

The principle of fairness is a core concept in ethics, law, and social justice, emphasizing the importance of just and equitable treatment for all individuals. This principle is fundamental to ensuring that systems and processes operate impartially and that individuals receive what they deserve based on consistent and unbiased criteria⁷⁰.

⁶⁶Dan Meagher, 'The Common Law Principle of Legality' (2013) 38 *Alternative Law Journal* 209; *Monis v The Queen* (2013) 249 CLR 92, 209 [331] (Crennan, Kiefel and Bell JJ) cf *Tajjour v New South Wales* (2014) 313 ALR 221, 235 [30] (French CJ), 276–7 [224] (Keane J). See also *Australian Communications and Media Authority v Today FM (Sydney) Pty Ltd* (2015) 317 ALR 279, 296 [67] (Gageler J), regarding ch III of the Constitution.

⁶⁷ Philip Sales, 'A Comparison of the Principle of Legality and Section 3 of the Human Rights Act 1998' (2009) 125 *Law Quarterly Review* 598, 600, citing Rupert Cross, John Bell and George Engle, *Cross: Statutory Interpretation* (Oxford University Press, 3rd ed, 1995) 165. See also *R v Secretary of State for the Home Department; Ex parte Pierson* [1998] AC 539, 587 (Lord Steyn).

⁶⁸ <https://www.equalrightstrust.org/ertdocumentbank/comentary.pdf> Accessed on 25/07/2024.

⁶⁹ *Idem*, Note 67

⁷⁰ *Canadian Journal of Philosophy*, Volume 36, Issue-1, March 2006, pp.95-116.

I.2.5 APPLICABLE LEGAL RIGHTS.

This part aims at defining and determining the rights that inmates are entitled to either basing on the legal provisions such as those provided for by the national constitution and other laws or in terms of their behavioural conduct for which the right to conjugal visits is subjected to the discretion of the correctional facilities administration such as the rights that the RCS administration can allow to inmates.

I.2.5.1 Constitutional rights

In the context of the right to the inviolability of the human person, The Constitution of the RoR in its Article 13 provides that *“The human person is sacred and inviolable, from that reason The State has the obligation to have respect for, protect and defend the human person”*.

Despite other legal instruments that may generate an exception to the above provision, and taking into account the hierarchy of the Constitution over those other instruments, the present study found out that the constitution did globalize and never excluded inmates from those who fall under State’s obligation of being protected and respected⁷¹.

In regard to the Rights to physical and mental integrity, Article 14 of the Constitution stipulates that every person has the right to physical and mental integrity, thus no person shall be subjected to torture or to abuse or cruel, inhuman or degrading treatment. In the context of CVP, it is understood that denial of conjugal visits to inmates would be regarded as mental torture and infringement to their mental integrity, yet the constitution by the term “every person” did not make any exception to those who have not to be subject to torture or to abuse or cruel, inhuman or degrading treatment and mention inmates.

In line with the principle of equality before the Law, The Art. 15 of the Constitution stipulate that all human beings are equal before the Law, and they enjoy equal protection of the Law. Here again the Law did not exclude inmates from all human beings who have to be equal before the law and enjoy its protection. In the context of the right to marry and found a family, Article 17 of the Constitution provides that the right to marry and found a family is guaranteed by Law.

⁷¹ Art.3 Constitution,2003

Again, this provision did not exclude inmates from the list of people who are entitled to the right herein provided for; Article 18 stipulating for family protection provides that, *“The family, being the natural foundation of the Rwandan society, is protected by the State. Both parents have the right and responsibility to raise their children. The State puts in place appropriate legislative and organs for the protection of the family, particularly the child and mother, in order to ensure that the family flourishes”*.

I.2.5.2 Institutional rights

These privileges refer to the ways in which correctional institutions exercise control over the lives of those incarcerated with the intent to maintain order and security within the correctional facility but also significantly impacts the freedom and autonomy of inmates⁷².

In this context, institutional rights refer to the privileges that inmates can benefit from the administration of the correctional facility based on different reasons in connection with their behavioural conducts such as the furlough conjugal visit, which refers to the right that inmate can be entitled to, based on the assessment made by the Correctional facility over his or her conduct and in accordance with the regulations set out to govern that correctional facility⁷³. In essence, by allowing such a kind of privilege to inmates, Correctional institutions must balance the need for security and order with respect for inmates' rights and human dignity. Efforts to reduce excessive control and provide opportunities for personal growth, education, and rehabilitation can help improve the overall well-being of inmates and support their reintegration into society upon release⁷⁴.

⁷²Richard Ekins and Jeffrey Goldsworthy, ‘The Reality and Indispensability of Legislative Intentions’ (2014) 36 Sydney Law Review 39, 41; Potter (1908) 7 CLR 277. See also Murray Gleeson, ‘Legal Interpretation: The Bounds of Legitimacy’ (Speech delivered at the Sydney University Law School, 16 September 2009)

⁷³Ekins and Goldsworthy, above n 64. See further in response to the notion that legislative intention is a fiction or metaphor: Goldsworthy, Parliamentary Sovereignty, above n 5, 229–66; Richard Ekins, The Nature of Legislative Intent (Oxford University Press, 2012); Jeffrey Goldsworthy, ‘Legislative Intention Vindicated?’ (2013) 33 Oxford Journal of Legal Studies 821; Oliver Jones, Bennion on Statutory Interpretation: A Code (LexisNexis, 6th ed, 2013) 441–6. See also the discussion in Stephen Gageler, ‘Legislative Intention’ (Speech delivered at the 20th Lucinda Lecture, Monash University, 15 September 2014).

⁷⁴See, for example, X7 (2013) 248 CLR 92, 109 [24] (French CJ and Crennan J): ‘clear words or necessary implication’, 603 [119], 604 [125] (Hayne and Bell JJ): ‘by express words or necessary intendment’, 612 [158] (Kiefel J): ‘irresistible clearness’. See also in recent instances, where majority or unanimous joint judgments have been given: Lacey v Attorney-General (Qld) (2011) 242 CLR 573, 582–3 [17]–[20] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ): ‘clear language’; Lee v R (2014) 308 ALR 252, 259 [31] (French CJ, Crennan, Kiefel, Bell and Keane JJ): ‘clear words or those of necessary intendment’; Attorney-General (NT) v Emmerson (2014) 307 ALR 174, 196 [86] (French CJ, Hayne, Crennan, Kiefel, Bell and Keane JJ): ‘clear and unambiguous’.

I.2.6 APPLICABLE LEGAL DOCTRINES

Legal doctrine refers to a framework, set of rules, procedural steps and practice, often established through precedents in the common law, through which judgement can be determined in a given legal case. A doctrine comes about when a judge makes a ruling where a process is outlined and applied, and allows for it to be equally applied to like cases. When enough judges make use of the process, it may become established as the de facto method of deciding similar situations.

I.2.6.1 Doctrine of family preservation

In the context of conjugal visits, the doctrine of family preservation reflects the importance of maintaining and strengthening familial relationships during incarceration. This doctrine is rooted in the belief that preserving family bonds is of paramount importance for the emotional well-being of both the incarcerated individual and their family members, and it can play a crucial role in the rehabilitation and reintegration process. This doctrine further argues that even when a person is incarcerated, he or she should not be entirely deprived of his or her right to maintain a family life. Conjugal visits are one mechanism through which this right can be realized⁷⁵.

The doctrine of family preservation also considers the impact of incarceration on the family members of the inmate, including spouses and children. Conjugal visits are seen as a way to mitigate the negative effects of separation, such as emotional distress and the breakdown of family units.

Courts in various jurisdictions have occasionally invoked the doctrine of family preservation when ruling on cases related to conjugal visits. These rulings may highlight the importance of balancing the state's interest in security and order with the inmate's right to maintain familial relationships⁷⁶. In summary, It is supported by legal principles related to the right to life, and it aligns with broader goals of rehabilitation and reintegration. However, its application varies widely depending on legal, cultural, and policy considerations in different jurisdictions⁷⁷.

⁷⁵ 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.

⁷⁶ Donald R. Johns, "Alternatives to Conjugal Visiting", *Federal Probation*, Vol.35, 1971, pp.47-51, at p. 47.

⁷⁷ Section 8 of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962.

I.2.6.2 Doctrine of Human Rights protection

The doctrine of human rights protection of conjugal visits is grounded in the broader framework of international human rights law, which focuses on the protection of personal dignity, the right to family life, and the humane treatment of prisoners. While not all legal systems explicitly recognize a right to conjugal visits, this doctrine supports the idea that such visits can be an essential part of respecting and fulfilling the human rights of incarcerated individuals⁷⁸.

This doctrine further reflects the principle of non-discrimination and equal treatment which generate the idea of equality before the Law where human rights law demands that all individuals, including prisoners, be treated equally without discrimination; this includes equal access to family visits and the ability to maintain family relationships, regardless of gender, sexual orientation, or other status⁷⁹.

The doctrine of human rights protection of conjugal visits is based on the principle that maintaining family ties and ensuring the humane treatment of prisoners are essential aspects of respecting their fundamental rights⁸⁰. While not universally recognized or implemented, this doctrine supports the view that conjugal visits can play a crucial role in upholding the dignity, family life, and rehabilitation of incarcerated individuals. It also emphasizes the need for non-discriminatory access to such visits, where they are allowed, as part of a broader commitment to human rights within the penal system⁸¹.

I.2.6.3 Doctrine of right to life

The "doctrine of the right to life" is a fundamental principle in human rights law that asserts the inherent right of every person to live and be free from arbitrary deprivation of life. When discussing conjugal visits within the context of this doctrine, the focus shifts toward understanding how conjugal visits might be considered an aspect of upholding the dignity, emotional well-being, and overall quality of life of incarcerated individuals. While conjugal visits are not typically framed directly under the right to life, arguments can be made that they contribute to preserving the dignity and psychological integrity that are essential

⁷⁸ 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.

⁷⁹ 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.

⁸⁰ Application No. 44362/04 decided on 4th December, 2007 by European Court of Human Rights.

⁸¹ 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.

components of a meaningful life⁸². The doctrine of the right to life, when applied to conjugal visits, highlights the importance of maintaining the dignity, emotional well-being, and overall quality of life of incarcerated individuals. While conjugal visits are not typically framed as a direct component of the right to life, they can be seen as contributing to the broader aspects of this right, particularly in terms of ensuring that prisoners live with dignity and maintain their mental and emotional health⁸³.

However, the implementation of this doctrine must balance these considerations with practical concerns such as security and resources, leading to variations in how conjugal visits are handled across different legal systems⁸⁴.

I.2.6.4 Doctrine of rehabilitative approach of penology

The doctrine of the rehabilitative approach to conjugal visits is centred on the idea that maintaining family connections, including intimate relationships through conjugal visits, plays a crucial role in the rehabilitation and reintegration of incarcerated individuals. This doctrine emphasizes that the purpose of imprisonment should not only be punitive but also rehabilitative, aiming to prepare inmates for successful reintegration into society after their release⁸⁵.

The doctrine of the rehabilitative approach to conjugal visits underscores the importance of maintaining family ties and emotional connections as part of the broader goal of rehabilitating incarcerated individuals. By supporting inmates' psychological well-being, reducing recidivism, and incentivizing positive behaviour, conjugal visits are seen as a valuable tool in the rehabilitative process. However, the successful implementation of this doctrine requires balancing these rehabilitative benefits with security concerns and resource limitations, as well as adapting the approach to fit the cultural and legal context of each jurisdiction⁸⁶.

⁸² According to Justice Surya Kant's directives, The Court held that the right to procreation survives incarceration, and that the penological interest of incarceration has no power to undermine the right to procreation, which is termed as the right to life.

⁸³ Bonnie E. Carlson, "Inmates and their Families: Conjugal Visits, Family Contact and Family Functioning", *Criminal Justice and Behavior*, Vol. 18, No. 3, 1991, pp. 318-331, at p. 319.

⁸⁴ Christopher Hensley et al, *Conjugal Visitation Programs: The Logical Conclusion: From Prison Sex: Practice and Policy*, 2002, pp. 143- 156, at p.144.

⁸⁵ According to Justice Krishna Iyer's directives during the Samil Batra judgement of 1978 by Madras High Court, "*Imprisonment does not mean farewell to fundamental rights*"

⁸⁶ Shruti Goyal, conjugal rights of prisoners: *Bharti Law review*, April-June, 2018.

I.2.6.5 Doctrine of non-absolute right

The doctrine of the non-absolute right of conjugal visits recognizes that while conjugal visits may be permitted or encouraged in some legal systems, they are not an absolute right and can be subject to limitations.

This doctrine is rooted in the understanding that the rights of incarcerated individuals, including the right to conjugal visits, must be balanced against other legitimate interests, such as prison security, public safety, and the administration of justice⁸⁷.

The doctrine of the non-absolute right of conjugal visits emphasizes that while incarcerated individuals may have certain rights, including the possibility of conjugal visits, these rights are not absolute and can be subject to reasonable limitations⁸⁸.

This doctrine requires a careful balance between the rights of prisoners and the legitimate interests of the state, including prison security, public safety, and societal values. Courts and legal systems apply this doctrine by setting conditions for eligibility, deferring to prison authorities' discretion, and ensuring that any restrictions are necessary, proportionate, and non-discriminatory⁸⁹.

⁸⁷ Carolyn Simpson, "Conjugal Visiting in United States Prisons", *Columbia Human Rights Law Review*, Vol. 10, 978-79, pp. 643-671, at p. 662.

⁸⁸ According to Justice SURYA KANT of Punjab and Haryana High Court, 2015 held that: "***Such a right, however, is to be regulated as per the policy established by the State which may deny the same to a class or category of convicts as the aforesaid right is not an absolute right and is subject to the penological interests of the State***".

⁸⁹ *Jasvir Singh vs. State of Punjab* 2015 Cri LJ 2282 (2293).

CHAPTER TWO: IMPACTS OF CONJUGAL VISIT ON INMATE’S RIGHTS, FAMILY PRESERVATION AND REHABILITATION SCHEME UNDER RWANDAN LEGAL FRAMEWORK.

The issue of inmates’ rights to conjugal visits remains controversial with two polemical argumentative standpoints, where on one side, the adoption and legalization of the CVP have gigantesque positive impacts on physical, emotional, societal and legal arena whereas on another side it is conceived as having a negative impact in the public perception, and related difficulties in its administration and lack of resources⁹⁰.

In the physical context, conjugal visits help inmate and his/her partner to quench their sexual desire as such visits are exclusively for sexual intercourse, which result into sexual enjoyment and procreation.

In the emotional context, Conjugal visits allow inmates to spend private time with their spouses or partners; and this can have significant emotional impacts on both inmates and their families by providing them with intimate and personal connection, which helps in alleviating feelings of loneliness, depression and anxiety⁹¹. In addition, these visits help maintain and strengthen familial and marital relationships as regular contact can help couples sustain their marital bond, which is crucial for the inmate’s emotional stability and motivation for rehabilitation.

In the social context, conjugal visits touch inmate’s inner feeling that the society for which he or she wronged against still valorize him or her, and this helps to get reintegrated successfully into society upon release⁹². Furthermore, conjugal visits can also serve as a stress relief, whereby the opportunity to connect physically and emotionally can reduce stress levels and promote a sense of normalcy and hope.

In essence, once conjugal visits are legalized, can contribute to the stability and cohesion of the family unit, by providing a sense of continuity and mutual support for spouses and children, who are also affected by the incarceration in one way or another⁹³. The right to Conjugal visit is recognized inherent right of married prisoners that extends up to the right to

⁹⁰ Piet Hein van Kempen, (2008). Positive obligations to ensure the human rights of prisoners: Safety, healthcare, conjugal visits, and the possibility of founding a family under the ICCPR.

⁹¹ Carlson & Cervera, 1991 a&b; Hensley et al, 2000

⁹² Idem, 92

⁹³ Clear, T. R. (2008a). The effects of high imprisonment rates on communities. *Crime and Justice*, 37, 97–132.

<https://doi.org/10.1086/522360>

have sex and procreation⁹⁴. There are numerous arguments for and against conjugal visits. Mostly, the arguments in favour of it are based on the human rights' approach and its advantages for the reintegration of inmates, while the arguments against it, as seen above, are based on the public perception, difficulty in administering it and the lack of resources. However, despite the debates against it such as being a tool or opportunity favouring the offenders, studies have revealed that allowing conjugal visits for prisoners can reduce the problems of homosexuality, sexual assaults, and physical violence in prisons. Further, denial of conjugal rights to the prisoners' spouses could be a form of punishment for innocent victims. In addition, conjugal visits can incentivize good prisoner's behaviour and rehabilitation in prisons⁹⁵. The present chapter tends to tackle both sides of the coin and give clear insight into the necessity of the CVP in Rwandan Legal system, its legalization and applicability, as well as challenges therein associated.

II.1 CONJUGAL VISITS IN RWANDA

In Rwanda, conjugal visits are not permitted nor prohibited in its correctional facilities; not only because there is no law providing for it, but also because it seems to be a strange practice in Rwandan culture and towards its criminal justice orientation⁹⁶. However, its adoption, legalization and applicability is quite possible because of the following reasons:

1. International prisoners in Mpanga prison (case of Sierra Leoneans nationals) are allowed to be visited by their legal spouses and have sex⁹⁷.
2. The constitution of the Republic of Rwanda, gives a space or room to be able to welcome the adoption and legalization of the CVP in the context of family preservation and human rights protection.
3. The aim of Rwandan criminal justice is not limited to punishment, but goes beyond that scope and aims or projects at the rehabilitation of the inmate and his or her reintegration into the society. So treating them humanely despite the wrong they committed against the society, it's the government's obligation.

In principle, the determination of the necessity of the CVP depends on the purpose of the penalty of imprisonment, which in Rwanda can be understood through several interrelated

⁹⁴ Supra, Note 93,92

⁹⁵ Clear, T. R. (2008b). The effects of High Imprisonment Rates on Communities. *Crime and Justice*, 37, 97–132. <https://doi.org/10.1086/522360>

⁹⁶ <https://www.newtimes.co.rw/article/83100/should-prisoners-have-conjugal-rights/Accessed> on 25/07/2024

⁹⁷ <https://www.justiceinfo.net/en/23951-en-en-031111-rwandasierra-leone-rwanda-denies-ill-treatment-claims-by-sierra-leonean-prisoners-1477814778.html/Accessed> on 25/07/2024.

key objectives. These objectives aim to balance the needs of society, the rights of victims, and the rehabilitation of offenders⁹⁸.

In summary, the penalty of imprisonment serves multiple purposes, including retribution, deterrence, incapacitation, rehabilitation, restoration, reintegration, and denunciation. These objectives aim to protect society, ensure justice, and promote positive behavioural changes in offenders⁹⁹.

In the same line with India, Rwanda follows a reformatory system of punishment which aims at reforming a criminal with the concept of individualization, based on the humanistic principle that even if someone has committed a crime; he or she doesn't cease to be a human being¹⁰⁰.

II.2 NECESSITY OF CONJUGAL VISITS PROGRAM IN RWANDAN CORRECTIONAL SERVICES.

The determination of the necessity of legalization of conjugal visits goes hand in hand with the purpose of the penalty of imprisonment which can be understood through interrelated objectives which seek to balance the needs of the inmate's family and the society at large, the rights of victims, and the rehabilitation of offenders, for the latter, taking into account that a man is by nature a social animal that needs the society as well as the family to live in¹⁰¹.

In fact, denying the CVP to inmates would also be qualified as violation of his or her spouse's human rights because it is penalizing an innocent victim yet in principle, the pain of punishment must be inflicted to the wrongdoer in accordance with the legal provision stipulating that criminal liability is personal¹⁰².

⁹⁸Christian J, *Riding the bus: Barriers to prison visitation and family management strategies*, Journal of Contemporary Criminal Justice, 2005, pp. 31–48. <https://doi.org/10.1177/1043986204271618/> Accessed on 25/07/2024.

⁹⁹ <https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-6/key-issues/1--introducing-the-aims-of-punishment--imprisonment-and-the-concept-of-prison-reform.html/> Accessed on 25/07/2024

¹⁰⁰ Tamu Priya, Reformatory Theory of punishment, Available at:

<https://www.lawctopus.com/academike/reformatory-theory-of-punishment/>, Last visited on 16/07/2024

¹⁰¹ Aristotle. Aristotle in 23 Volumes, Vol. 21, translated by H. Rackham. Cambridge, MA, Harvard University Press; London, William Heinemann Ltd. 1944.

¹⁰² Art. 83 of the Law No. 68/2018 of 30/08/2018 determining offences and penalties in general. See. Official Gazette No. special of 27/09/2018.

II.3 ADVANTAGES OF CONJUGAL VISITS

Arguments supporting conjugal visits in prisons or in correctional facilities have generally been based on the benefits of conjugal rights to the inmates, spouses, families, society and prison facilities.¹⁰³

The first argument supporting conjugal visits is that “It can help to lessen the issues associated with homosexuality in prisons¹⁰⁴”. Many studies have shown that conjugal visits can help to reduce the problems related to homosexuality in prisons. For instance, Hopper, a pioneer in the study of extended family visits in jail, found that these visits drastically decreased homosexuality at the Mississippi State Penitentiary¹⁰⁵.

The second argument favouring allowing conjugal visits for a prisoner is that conjugal visits can reduce the incidences of sexual assaults and rape in prisons¹⁰⁶. Several studies in some States in the U.S.A., such as Tennessee and New York, found that many prison officials believed that conjugal visits alleviate male rapes among prison inmates and that allowing conjugal visits for the prisoners can reduce and prevent male rape, which has become a grave concern for many States.

The third argument favouring conjugal visits for a prisoner is that it can reduce physical violence in prisons. Some scholars believe that conjugal visits can lessen physical violence in jails and prisons, and allowing prisoners to spend a significant amount of time with their spouses, the negative effect of the unisex prison environment can be diminished¹⁰⁷.

The fact that conjugal visits in prison can be used to change offenders' conduct is another argument in its favour, and building relationships with the family has a normalizing effect that can lessen instances of violence in jails and prepare the inmate for re-entering society, termed as social integration after release¹⁰⁸.

¹⁰³ Shruti Goyal. (2018). Conjugal Rights Of Prisoners. *Bharati Law Review*, April-June, 70

¹⁰⁴ *Ibid*, 102

¹⁰⁵ Columbus B. Hopper. (1962). The conjugal visit at the Mississippi State Penitentiary. *Journal of Criminal Law, Criminology and Police Science*, 53(3), 340-44. <https://doi.org/10.2307/11414>

¹⁰⁶ Samson C. R. Kajawo (n 4)70.

¹⁰⁷ *Ibid*,105

¹⁰⁸ *Supra*, Note 106,105

According to a 1983 research by HOWSER et al., male inmates who took part in family-reunion programs in New York, which included conjugal visits, displayed better behaviour than those who did not¹⁰⁹.

In his research, CLEMMER also found that convicts who keep in touch with their families have a considerably better chance of recovery than those who do not¹¹⁰.

Therefore, conjugal visiting privileges would serve as a reward for a detainee's behavioural improvement and prisoner rehabilitation¹¹¹. Thus, it has been determined that giving lawfully married inmates and their spouses the opportunity to have conjugal visits is beneficial for everyone, especially in jurisdictions or countries that support the rehabilitative philosophy¹¹².

Last but not least, several academics supported conjugal visits from the standpoint of the rights of the prisoner's spouse. Not a spouse, but the prisoner, the latter is the one who broke the law. Therefore, denying spouses of the perpetrators their conjugal rights could result in punishing an innocent victim; yet the criminal liability should be personal. To this end, refusing a spouse who requests conjugal visits should be viewed as denying that person's civil and human rights¹¹³.

Losing a partner to incarceration can lead to financial difficulties, marital issues, and increased childcare responsibilities. Hence, one of the possible steps to easing the suffering of jail on their families can be to grant conjugal visits to the prisoner's spouse¹¹⁴, because during the visits, parents will have enough time to discuss about household issues¹¹⁵.

¹⁰⁹ James Howser, Jody Grossman, & Donald MacDonald. (1983). Impact of family reunion programs on institutional discipline. *Journal of Offender Counseling Services and Rehabilitation*, 8(1-2), 27-36. https://doi.org/10.1300/J264v08n01_04

¹¹⁰ Donald Clemmer. (1950). Observations on imprisonment as a source of criminality. *Journal of Criminal Law and Criminology*, 41(3), 311-319. <https://doi.org/10.2307/1138066>

¹¹¹ Samson C. R. Kajawo (n 4).

¹¹² Pierce, M. B., Freiburger, T. L., Chapin, J. R., Epling, B., & Madden, T. J. (2018). Assessing the impact of visitation on inmate misconduct within a county jail. *Security Journal*, 31(1), 1- 20. <https://doi.org/10.1057/s41284-016-0086-6>

¹¹³ Vladu, Alexandra, Kalebic, Natasha, Audley, Jody, Stevens, Alisa and Taylor, Pamela J. 2021. Benefits and risks of conjugal visits in prison: A systematic literature review. *Criminal Behaviour and Mental Health* 31(5), p.343-361. 10.1002/cbm.2215

¹¹⁴ Idem, 113

¹¹⁵ Carcedo, R. J., Perlman, D., López, F., Orgaz, M. B., & Fernández-Rouco, N. (2015). The relationship between sexual satisfaction and psychological health of prison inmates: The moderating effects of sexual abstinence and gender. *The Prison Journal*, 95(1), 43-65. <https://doi.org/10.1177/0032885514563271/> Accessed on 04/08/2024.

II.4 DISADVANTAGES OF CONJUGAL VISITS

Despite the supporting reasons for conjugal visits as listed above, some academicians have argued against allowing it to take place in prisons. The first is the expense of romantic outings. According to some studies, it might be difficult, especially in developing nations, to reform prison legislation so that offenders can be granted the right to conjugal visits. Besides, rooms would need to be built for such visits in addition to the funding needs to address prison overcrowding¹¹⁶. Another solid objection to the adoption and legalization of conjugal visits programs is that their administration is prone to abuse by both prisoners and prison staff. Some scholars have argued that ***“allowing conjugal visits for prisoners may turn the prisons into prostitution brothels at government expense.”*** Since most prison officers in developing countries are underpaid, they may fall prey to offers of setting up prostitutes for jail inmates, while others may even prostitute their family members to earn favours from fellow inmates¹¹⁷. Finally, though it has been discussed that allowing conjugal visits has a significant role in reducing homosexuality, two main arguments are advanced in opposition to this viewpoint¹¹⁸.

The first argument is that prison homosexuality is not related to heterosexual deprivation but instead it is an expression of the urge for mastery by people who have been placed into a position of powerlessness¹¹⁹.

The second argument is that the frequency of heterosexual activity is so limited that it will have only minimal or negligible effect. To this effect, it has been argued that allowing conjugal visits may not reduce homosexuality as it is attributed to other reasons than the absence of conjugal visits for the prisoners.

In summary, whatever the arguments against and in favour of conjugal visits, there is a need to change the attitude towards prisoners with the changing times and sensitization of society towards human rights¹²⁰.

¹¹⁶ De Claire, K., & Dixon, L. (2017). The effects of prison visits from family members on prisoners' well-being, prison rule breaking, and recidivism: A review of research since 1991. *Trauma, Violence, & Abuse*, 18(2), 185-199. <https://doi.org/10.1177/1524838015603209/> Accessed on 04/08/2024

¹¹⁷ Bennett, L. A. (1989). Correctional Administrators' Attitudes Toward Private Family Visiting. *The Prison Journal*, 69(1), 110-114. <https://doi.org/10.1177/003288558906900114/> Accessed on 04/08/2024.

¹¹⁸ Ann Goetting (n37)142

¹¹⁹ Idem,118

¹²⁰ Bakker, L. J., Morris, B. A., & Janus, L. M. (1978). Hidden victims of crime. *Social Work*, 23, 143-178

II.5 CHALLENGES UNDERLYING THE CONJUGAL VISIT PROGRAMME.

The applicability of the CVP is possible in Rwanda, though it may face different challenges as other programs do, and the remaining task would be to find out solutions towards those impedimenta in order to make the CVP more efficient and successful. This study tackled the following challenges, and proposed pertinent solutions as follows:

II.5.1 Financial related challenges

Based on the experiences where conjugal visits are allowed, the government of Rwanda will need a lot of money to build appropriate apartments and cabins, avail and cover all necessary facilities such as soaps, towels, condoms, lubricants, bed linens, cleaning activities, security apparatus, etc...

II.5.2 Security related challenges

Normally, conjugal visits will take place in private; and it will be hard to monitor what is happening inside, because at some extent putting on monitoring and surveillance cameras would also be violating their rights to privacy¹²¹. This will be a probable security concern because according to a certain example, there was a case of murder during a conjugal visit in SAVAS Prison where in 2015 March, a twenty nine years' old male prisoner killed his same age wife by a knife¹²², and it can also facilitate inmate to evade the Justice or to bring in the correctional facilities prohibited substances or drugs.

II.5.3 Health related challenges

Among the inmates interviewed where conjugal visits are permitted, they are worried that those left outside may be cheating on them and when it happens to be allowed to be visited and have sexual intercourses, there would be probability to infect them with sexual transmissible diseases¹²³.

¹²¹ <https://www.ohchr.org/sites/default/files/Documents/Issues/Privacy/RwandaNHRC.pdf> accessed online on 12/09/2024 at 9:05 AM.

¹²² March, 2015 in Sivas Prison/Turkey a 29 years' old male prisoner killed his lover of the same age during a conjugal visit, available online: <https://www.jurix.com.tr/article/11625> accessed on 12/09/2024 at 9:05 AM.

¹²³ Ssentongo YAKUBU, The rights of inmates to conjugal rights, Uganda perspectives, UNILAG Law Review, Vol 2 No.1(2018).

II.5.4 Legal related challenges

Firstly, according to the experience learnt from where conjugal visits are allowed, only legal spouses are allowed to the CVP. This will be regarded as inequality before the law by those who were not legally married before their incarceration yet they are all inmates and their claims would have a legal basis because it's their right to be treated in the same manner as other inmates are treated and benefitate the same right or favours accorded by the law.

Secondly, another related legal challenge that the present research found out is that those visits can contribute to the commission of other crimes if not well controlled, such as bringing in the correctional facilities prohibited substance and drugs or even facilitate inmates from evading the Justice.

II.5.5 Public perception related challenges

The public perceives the CVP as a tool that infringes victim's rights and protect offender's ones. In this context, the public further says that if the CVP is inmate's rights, then this can also fuelling the increment of criminality because the prospective offender will have in mind that even if he or she commits offences and get punished, still he or she will be always enjoying his or her rights as usual. Brief, the legalization of the CVP contravenes the criminal theory of deterrence.

II.6 CIRCUMSTANCES UNDER WHICH INMATES CANNOT BE ALLOWED THE RIGHT TO CONJUGAL VISIT

If it happens for the CVP to be legalized in Rwanda, inmates would be allowed to be visited by their spouses in the correctional facilities and have sex. However, there would be a derogation or restriction based on the nature of criminal background of inmates, disciplinary and behavioural conduct of the inmates, practical feasibility of the programme within the facility centre and the insight of the spouse who is in the outside world. Therefore, inmates who fall under the following circumstances would not be eligible to the CVP scheme.

II.6.1 Conviction of sexual torture

Sexual torture refers to the act of causing damage to genital organ of another person, and the convicted is liable to a term of life imprisonment¹²⁴. A person convicted of this offence would not be eligible to the CVP because that attitude may lead him or her to commit a similar crime during the conjugal visitation.

¹²⁴Art. 114 Rwandan Criminal law,2018

II.6.2 Conviction of child defilement

Child defilement refers to any of the following acts committed on a child:

1. Insertion of a sexual organ into the sexual organ, anus, or mouth of the child
2. Insertion of any organ of the human body into a sexual organ or anus of a child.
3. Performing any other act on the body of a child for the purpose of bodily pleasure¹²⁵.

II.6.3 Conviction of rape

Rape refers to the act of causing another person to perform any of the following acts without consent by use of force, threat, trickery or by use of authority over that person or who does so on ground of vulnerability of the victim¹²⁶.

II.6.4 Conviction of violence against a spouse

Violence against a spouse refers to the physical and sexual violence on one's spouse. This offence is punishable to imprisonment of a term of not less than three (3) years but not more than five (5) years¹²⁷.

II.6.5 Conviction of harassment of a spouse

Harassment of a spouse refers to any act committed to prevent one's spouse from living a peaceful life. This offence is punishable to imprisonment for a term of not less than one year and not more than two (2) years¹²⁸.

II.6.6 Conviction of sexual harassment

Sexual harassment refers to repeated remarks or behaviour of sexual overtones towards a person that either undermine, violate his or her dignity because of their degrading or humiliating character which create against him or her intimidating, hostile or unpleasant situation¹²⁹.

II.6.7 Conviction of offences against State security

Offences against the State security are those falling in the categories of treason, terrorism, subversion, armed attacks or threats of violence with intention to annex Rwanda or its part to a foreign country¹³⁰.

¹²⁵ Ibidem, Art. 133

¹²⁶ Idem, Art.134

¹²⁷ Idem, Art.137

¹²⁸ Ibidem, Art.147

¹²⁹ Ibidem,Art.149

¹³⁰ Idem, Art.191

A person convicted of such offences would not be eligible to the CVP because there is a constant probability that he or she can plot to threat National security and disturb public order.

II.6.8 Sentence of life imprisonment

The penalty of life imprisonment implies a jail term for the rest of the convict's life¹³¹. It has gigantesque effects on the person of the prisoner, his or her family, and the society at large. When a person is sentenced to life imprisonment, is deprived of so many rights and at some extent they are being imprisoned in isolation because they have nothing to learn about rehabilitation.

The rationale of life imprisonment is to influence the public perception of the justice system's fairness and effectiveness, by either reassuring the public that serious crimes are being dealt with severely or raise concerns about the potential for miscarriage of justice and excessive punishment¹³².

II.6.9 Recidivism

Recidivism refers to the tendency of a convicted criminal to reoffend or relapse into a criminal behaviour¹³³. The person who is in this situation would not be eligible for the CVP because he or she never learnt a lesson of rehabilitation from the previous sentence, and there is no hope that for this turn he or she may change.

II.6.10 Non compliance with good and disciplinary behaviour.

There is a couple of things that inmates differ one another including their respective criminal background, level of criminality and punishments they are serving which at a certain extent make some of them violent and insolent, especially those who were sentenced to severe punishments¹³⁴. Inside the correctional facilities, as it is in the outside world, inmates can get into quarrels and conflicts between them which can also lead to the commission of other crimes such as murder, assault, battery, violence¹³⁵, etc....

¹³¹ Art. 29 of the Law No. 68/2018 of 30/08/2018 determining offences and penalties. See Official Gazette No. Special of 27/09/2018.

¹³² G. Abraham, *Prisoners serving sentences of life without parole: A qualitative study and survey*, University of Kentucky, 2011. Available at: <http://search.proquest.com/docview/1547367706?accountid=14553%5Cn>

¹³³ <https://www.merriam-webster.com/dictionary/recidivism/Accessed> online on 24/07/2024

¹³⁴ Caitlin Thomson&Ann.B.Loper. (2005). Adjustment patterns in an incarcerated woman: An analysis of differences based on sentence length. *Behavioral Sciences & the Law*, 32, 714–732. <https://doi.org/10.1177/0093854805279949> /Accessible on 15/07/2024.

¹³⁵ Idem, 134

In order to solve these problems and to prevent others from happening and for the sake of a healthy environment, peace and harmony between inmates, inside the prison there are administrative entities and leaders elected among and by other prisoners as well as the establishment of rules governing behavioural conduct, and inmates known as policing, brigadiers, or security officers who are in charge of enforcement of those rules. Therefore, an inmate who has been found guilty of misconduct and disobeys prison discipline should not be eligible for the conjugal visit program¹³⁶.

II.7 A COMPARATIVE REVIEW ON THE RIGHT TO CONJUGAL VISITS FROM OTHER JURISDICTIONS.

Following the practice of Mississippi State to adopt and legalize conjugal visits in 1965, most of the countries around the world started accepting Conjugal visit gradually as the right of prisoners¹³⁷. Conjugal visit as a modern-day concept was adopted by countries like Canada, Germany, Russia, Spain, France, Mexico, Saudi Arabia, Belgium, Pakistan, Saudi Arabia, Denmark, etc... to some extent USA, Brazil and Israel even allow same-sex conjugal visits. The experience learnt from each of the countries below detailed helped in shaping the image of the CVP, id est the reason of being adopted and legalized, and in determining its applicability in Rwandan Legal system.

II.7.1 Conjugal visits in the United States of America

Conjugal visits are allowed in the USA, in the name of extended family visits. As per now, four States allowing Conjugal visits are California¹³⁸, Connecticut, New York and Washington. Mississippi is not counted here because it abolished the conjugal visits in 2014 after the High court has ruled that conjugal visits are not rights that the State owes to prisoners. Conjugal Visit happens only in States and not in Federal prisons, and its governing rules vary from State to State, for which a common denominator bases on the past 6 months' The rules for the conjugal visits vary from State to State but one of the conditions of eligibility their conjugal visits will be allowed based on their past 6 month's behaviour in the prison.

Conjugal visits are allowed in 3 types of schedule, 6 hours, 12 hours and 24 hours, the inmates have to apply for the conjugal visit which suits him or her and they will be granted one or two conjugal visits in a year. The conjugal visits happen inside the prison in an

¹³⁶ Ibidem, 135

¹³⁷ Molly Hagan, Controversy and conjugal visits: American Prison Newspaper, 2023.

¹³⁸ 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.

apartment-style setting where some States charge for that visit and some States do not. In 2007 California allowed same sex couples to have conjugal visits with the inmates. Before conjugal visit system started, the prostitutes were brought inside the prisons Sunday evening for their service.

This system forces the inmates in the prison to maintain good behaviour inside the prison, this also allows other family members along with children for a conjugal visit. This also helps children to create a personal connection with the inmate¹³⁹. In the United States of America, States which allow conjugal visits believe that such visits are not Rights, but privileges.

II.7.2 Conjugal visits in Australia

In Australia, conjugal visits also termed as conjugal prison visits, are pre-arranged private prison visits whereby an inmate in prison, either a male or a female is allowed to spend private time with his or her spouse or partner for sexual affairs. Those visits are only allowed in Victoria and Australian Capital Territory, whereas other States and territories do not. The main purpose of a conjugal visit is to allow and maintain an inmate's family connections, which also assists in reintegration back into the community upon release from custody and ultimately reducing the chances of reoffending (recidivism). The overall impact of this is meant to make the community a safer less violent place.

Section 38 of the Corrections Act of 1986 (Victoria) permits these sorts of visits for prisoners within Victoria prisons such as Tarrengower, Marngoneet, Loddon, Fulham and Beechworth prisons, but subject to the following conditions¹⁴⁰.

1. The prisoner is either of a medium or minimum security concern;
2. The prisoner is serving an imprisonment sentence of 18-months or more;
3. The visitor has been screened and put on the prison's approved visitor list.

Section 37 allows a relative or friend who visits a prisoner to see and speak with the prisoner but is not allowed to touch the prisoner unless the visit is part of a contact visiting programme or residential visiting program.

There are two main types of conjugal visits in Victoria, namely, the first is for an intimate partner relationship between the prisoner and his/her spouse or partner, whereas the second is

¹³⁹ Victoria Cavaliere, How Conjugal Visits Work, <https://www.vocativ.com/underworld/sex/conjugal-visitswork/index.html>, Last Visited on 17/07/2024.

¹⁴⁰ The ACT(Australian Capital Territory) authorizes conjugal visits through the Corrections Management (Private Family Visits) Policy 2009, Notifiable instrument NI2009-155 made under the Corrections Management Act 2007, section 14(1)(corrections policies and operating procedures)

centred around the prisoner's children and other relatives. In summary, conjugal visits are permitted only in Victoria and the Australian Capital Territory whereas other jurisdictions, including Western Australia and Queensland do not.

II.7.3 Conjugal visits in Turkey

In the correctional facilities frame, conjugal visitations is a practice of awarding or permitting prisoners to maintain intimate and sexual relations with their spouses during their incarceration. Turkey is one of the countries allowing conjugal visitation to inmates as a reward for compliance with certain types behaviours enumerated by the relevant laws which provide that prisoners are requested to satisfy certain requirements before they were allowed to have the privilege of the conjugal visitation which could be extended or withdrawn from prisoners based on their behaviours and cooperation while they are incarcerated. The CVP in Turkey prisons has been allowed since 2013 by acceptance of the amendments of the Law on the Execution of sentences and security measure¹⁴¹. There has been controversy regarding on benefits and value of conjugal visit, as some were supporting it while others were against it each side bringing in its insights and finally through the studies conducted for this end, they concluded saying and suggesting that benefits of such visits overweighs the adverse aspect. Thus, it is from this perspective that Turkey opted to the adoption and legalization of conjugal visitation¹⁴².

In regard to the Legal framework or current legal status of the CV in Turkey, it is important to talk about the constitutional basis that led to the adoption of the concept of CV in Turkey. It sounds very obvious that the Turkish constitution puts a huge emphasis on family values. First, this is because it defines family as the foundation of the Turkish society; Second, The Constitution protects family and marriage stating *“The State shall take the necessary measures and establish the necessary organization to protect peace and welfare of the family, especially mother and children, and to ensure the instruction of family planning and its practices¹⁴³”*; Third, Art. 20 of the Turkish Constitution rules *“Everyone has right to demand respect for his/her private and family life. Privacy of private or family life shall not be violated”*.

¹⁴¹ CEZA H. DERGISI, Reconstruction of the privilege of conjugal visitation in Turkey's prison, 2017 Available at:

<https://www.jurix.com.tr/article/11625?u=0&c=0#:~:text=In%20the%20prison%20frame%2C%20conjugal,while%20they%20are%20incarcerated%20%20./Accessed> on 14/07/2024.

¹⁴² Idem, 141

¹⁴³ Supra, Note 186

These all are legal constitutional principles that have framed the development of the idea of CVP in TURKEY's prisons. In addition to the above mentioned Constitutional triggers, strong traditional family relationship and moral values of Turkish society puts a responsibility on the Government to save and keep such family and social intimacy among nation¹⁴⁴. Furthermore, as a contracting party to the significant international covenants and documents such as the international covenant on Civil and political rights (ICCPR) and the conventions against torture and other cruel, inhumane or degrading treatment or punishment, The 2013 amendments of the law on the execution of sentences and security measures has allowed the implementation of Conjugal visits in TURKEY'S prisons. Article 51(3) (a) of the law rules that " Married prisoners in close prisons may be allowed to be in touch with their spouses in the institutions or its annexes from three hours to 24 hours, at least once every three months, without the close supervision of the staff of the penitentiary institution".

The main purpose to be achieved with the award of inmates is to encourage them to become respectful to both human rights, legal and social principles by enabling them to socialize again. Therefore, the language of law is important in its recognition that a CV is a privilege rather than a right, similarly to the United States of America. This recognition however, can be argued on Constitutional and international human rights grounds alleging that incarcerated people are entitled to CV rights such as argument may based on prohibition against inhumane or degrading punishment right to respect for private and family life, and protection of the family¹⁴⁵. The law on the execution of sentences and security measures itself, however does not provide clear and adequate guiding principles in conjugal visitation process; rather it only does recognize visitation as a privilege for married inmates by describing very limited conditions of the process such as frequency or place of visit. Turkish law makers solved this deficiency by specifically regulating the process of conjugal visit in the By-Law on the promotion of convicted and imprisonment people¹⁴⁶. Art. 11 of the By-law states that "Married convicted or imprisonment people may be rewarded with private and confidential meetings with their spouses in the areas of the penitentiary institution that reserved for such meetings from 3 hours to 24 hours, at least once every three months without the close

¹⁴⁴ Supra, Note 187

¹⁴⁵ <https://www.dailysabah.com/turkey/2013/04/02/turkish-penitentiaries-to-begin-allowing-conjugal-visits-for-inmates/> Accessed on 27/06/2024.

¹⁴⁶ Ruth S., Marital Relationships of prisoners in Twenty eight countries, Journal of criminal law and criminology, Volume 49-Issue2,(1958

supervision of the staff of the institution. As it seems obvious, this provision is in complete harmony with Art 51(3) (a) of the law on the executive of sentences and security measures.

Art 5(1) (c) of the By-law stipulates that “While awarding convicted or imprisonment people, it should be considered that such rewards are not a right of inmates, but a privilege based on encouragement. One of the more obvious issues is how to select the appropriate inmates for CV, and inmate’s eligibility for participation in the program is somewhat more restricted.

Art. 8 of the By-law sets up general principles for being awarded without making any distinction between the types of award. Therefore, art 8 conditions that will be mentioned here apply to each type of award, including CV visitation. First of all, according to the above Article, an “*appropriate inmate should not be received any disciplinary punishment or his punishment should be revoked*”. Second, the inmate is required to behave in certain manners which are enumerated as follows:

1. To be of a good example with his attitude and behavior for other inmates, Showing personal improvement by participating in improvement activities continuously and effectively without a valid excuse;
2. Showing outstanding success by participating in business, education and training activities continuously without a valid excuse;
3. Giving maximum care to the cleanliness, order and protection of both the personal and common usage areas of the institution and the goods in these places;
4. Showing personal improvement by participating in the social, cultural or sport activities continuously and effectively in and out of the institution.

In addition to the above, we can also mention the following:

1. Being willing and showing a max effort to fulfill the internal services required to maintain the functioning of the institution;
2. Showing improvement in getting rid of dependences on drugs, alcohol or nicotine by participating in institutional training or treatment program, and revealing an unlawful action that may jeopardize the security and order of the institution¹⁴⁷.

¹⁴⁷ <https://www.dailysabah.com/turkey/2013/04/02/turkish-penitentiaries-to-begin-allowing-conjugal-visits-for-inmates/Accessed> on 28/06/2024.

In summary, CV are allowed in TURKEY having a legal basis from the Constitution, The Law on the execution of sentences and security measures, from International Conventions on Civil and Political Rights in the sense that CV are not conceived as a right, but as a privilege accorded to an inmate who meets a certain criteria¹⁴⁸. Turkish penitentiaries began to allow the CV for inmates on 31/03/2013, and the new legislation considers it to be a reward reserved to inmates who exhibited good behaviours. MUS prison was the first to implement this new legislation¹⁴⁹.

II.7.4 Conjugal Visits in Pakistan

Pakistan also granted Conjugal rights to prison inmates, Since Pakistan doesn't recognise same sex marriage, and this provision is allowed only to straight couples. The spouse of the convict can stay any one night in the three months in jail. For this purpose, separate rooms were constructed inside the jail premises. This right is not available to criminals who are convicted of plotting against the government or for terrorism¹⁵⁰.

II.7.5 Conjugal Visits in India

Currently, there are no laws in India that expressly allow conjugal visits to inmates. However, in 2015, Punjab and Haryana High Court, while hearing a case, allowed conjugal visits and artificial insemination for inmates. The court had ruled that it will be the sole prerogative of the State to regulate a legally established procedure for the same. Justice Surya Kant had held in 2015 that unless reasonably classified, inmates were entitled to the right to procreate while incarcerated and that it was a fundamental right. According to Justice SURYA KANT; “***Such a right, however, is to be regulated as per the policy established by the State which may deny the same to a class or category of convicts as the aforesaid right is not an absolute right and is subject to the penological interests of the State***”.

In the present case, the authorities had argued before the court that the jail manuals did not allow granting of leave for such requests. The court had, however, noted that as per Rule 20 of Tamil Nadu suspension of Sentence Rules, 1982, the seventh ground for suspension is mentioned as “*any other extraordinary reason.*” It held that the case fell within that scope since there was no law or regulation laid down for such cases, adding that even devoid of the provision, the court will have available Article 21 to consider the plea of the wife-petitioner.

¹⁴⁸ Idem,147

¹⁴⁹ <https://www.dailysabah.com/turkey/2013/04/02/turkish-penitentiaries-to-begin-allowing-conjugal-visits-for-inmates/Accessed> on 25/07/2024.

¹⁵⁰ Aroosa Masroor, Prisoners Granted Conjugal Rights,<https://tribune.com.pk/story/11618/prisoners-grantedconjugal-rights/>, Last visited on 11.05.2024.

It noted that *“since the wife was not incarcerated and was a suffering person outside the prison, she cannot be denied her legitimate expectation to have a child”*.

The petition demanding leave for the incarcerated to assist his wife in her fertility treatment was disposed by the Court which said it may also consider granting additional leave if the treatment required so. An inmate at a Central prison in Tamil Nadu’s Tirunelveli district was recently granted a two-week conjugal visit for the *“purpose of procreation”*. The Madras High Court granted leave to the convict who is serving a life term by invoking laws in several countries that allow such a visit, as well as a resolution by the Centre that conjugal visits are a right and not a privilege.

In the Sumil Batra Judgement of 1978, Justice Krishna Iyer had held that *“imprisonment does not mean farewell to fundamental rights¹⁵¹”*.

II.7.6 Conjugal Visits in Saudi Arabia

In Saudi Arabia, prison Visitation rights are considered one of the constructive methods of reform and correction as they are known to have positive psychological impacts on inmates. Visits not only enhance prisoners’ responsiveness to rehabilitation programs but they also help them improve their behaviour and dread returning to prison life¹⁵².

According to prison rules, Thursday is the day for conjugal visits for married prisoners; and Inmates who have served half of their prison term can spend 24 hours with their spouses. Jamaan Abu Abshaa, Director of public relations at Asir prison, said families were pressing to increase visitation days but had not made this demand officially to the authorities. He said ideal prisoners who have served half of their jail term will be allowed to receive their spouses in private rooms in the Prison. The Shariah-compliant seclusion in prisons takes place on Thursdays. In addition, to this, the ideal prisoners can spend up to 24 hours with their wives outside the prison, he said¹⁵³. In a Kingdom where the punishments are deterrent conjugal visits with the family are allowed every month. If an inmate has a single-family he is allowed to visit his family every month. In case if he has two marriages then is allowed to have two separate conjugal meetings with each family every month. Even the Jihadis were allowed to have conjugal visits during their rehabilitation program¹⁵⁴.

¹⁵¹ I. KRISHNA, Sumil Batra Judgement, 1978

¹⁵² Idem, 152

¹⁵³ Saudi Gazette Report, 2013

¹⁵⁴ Hanna Kozłowska, Saudi Arabia is rehabilitating Jihadis in a lavish prison, July, 2017 Available at: <https://qz.com/1028597/saudi-arabia-terrorism-rehabilitation-plan-includes-a-lavish-prison-with-family-time/accessed> online: 14/07/2024.

II.7.7 Conjugal Visits in Israel

The Israel Prison Service Israel (IPS) allows standard CV to inmates who are married or are in a common-law relationship or if their partner has been visiting them frequently for at least two years, and have a record of good behaviour. Inmates who receive prison furloughs are not eligible for conjugal visits. Conjugal visits can be withheld on security grounds or as a means of punishment for misbehaviour; and IPS guidelines were clarified in July 2013 to allow conjugal visits of same-sex partners. Note also that Israel only extends this right to citizens of the State, while non-citizens imprisoned in Israeli jails are denied conjugal visits¹⁵⁵.

II.8 CASE LAWS RELATED TO CONJUGAL VISITS

In this part, the present study learnt a lot from case-laws ruled out by different countries such as India and Turkey because their constitutional standpoints look similar to Rwandan one, so learning from their experience and best practices can help in shaping the CVP under Rwandan legal system, and those ruled out by the European Court of Human Rights can help the Rwandan system to comply with the international standards minimum for the protection of inmates.

II.8.1 JASVIR SINGH AND ORS V. STATE OF PUNJAB AND ORS/INDIA.

The petitioners were Husband and wife convicted for the offence of kidnapping, and brutally murdering a 16-year-old boy for ransom, charged under section 302, 364A, 201 and 120B under the Indian Penal Code. The trial court awarded the death sentence and the Supreme Court dismissed their criminal appeal and commuted the death sentence of the wife to life imprisonment; the petitioners sought enforcement of their perceived right to have conjugal life within the jail premises seeking for the directions to be given to the jail authorities for the sake of progeny and asked to make all arrangements in this regard. They were also open to “Artificial Insemination”¹⁵⁶.

1. Whether the procreation survives the concept of incarceration? And if so, whether such a right is traceable within the Indian Constitutional framework?
2. Whether the penological interest of the State permits or ought to permit the creation of facilities for the exercise of the right to procreation during incarceration?

¹⁵⁵ <https://www.timesofisrael.com/prison-allows-homosexual-conjugal-visit-for-first-time/Accessed> on 28/07/2024.

¹⁵⁶ Jasvir Singh and Ors Vs State of Punjab and Ors, 2015 (1) R.C.R (Criminal) 509.

3. Whether “Right to Life” and “Personal Liberty” constituted under Article 21 of the Constitution includes the rights of convicts or jail inmates to have conjugal visits or artificial insemination?

4. If question no. (3) is answered in the affirmative, whether all categories of convicts are entitled to such rights?¹⁵⁷

Justice J. Surya Kant observed that,

1. Right to procreation survives incarceration. Such a right is traceable and squarely falls within the ambit of Article 21 of the Constitution read with Universal Declaration of Human Rights, 1948.

2. The penological interest of the State ought to permit the creation of facilities for the exercise of the right to procreation during incarceration, maybe in a phased manner, as there is no inherent conflict between the right to procreate and incarceration. However the same is subject to reasonable restrictions, social order and security concerns.

3. The “Right to Life” and “Personal Liberty” guaranteed under article 21 of the Constitution, including the right of convicts are jail inmates to have conjugal visits or artificial insemination as an alteration. However, the exercise of these rights has to be regulated by the procedure established by the law and it is the sole prerogative of the State.

4. Ordinarily, all Convicts, unless reasonably classified, are entitled to the right to procreation while incarcerated. Such a right, however, is to be regulated as per the policy established by the State; which may deny the same to the class or category of convicts, as the aforesaid right is not an absolute right and it is subject to the penological interest of the State.

5. Finally, the establishment of the jail reforms committee was ordered which will suggest methods to implement ‘conjugal visitation’ in prisons and also suggest any reasonable classification that needs to be considered while granting such rights to the prisoners.

However, in this case petitioners were denied mainly due to the ground that the offence committed by them was grave in nature; moreover both were convicted and the justification of innocent spouse does not hold any ground in this case.

¹⁵⁷ Ibidem, 157

II.8.2 P. MUTHUMARI V. THE HOME SECRETARY (PRISON).

Perumal Muthumari was arrested in 2008 by Manoor police, Tirunelveli. In 2010, An Additional Court convicted him and sentenced him to life imprisonment. Initially, he was lodged in Palayamkottai prison then transferred to Vellore Central Prison and then to Cuddalore Central Prison. Perumal Married Muthumari on May 2, 2018, when he was on parole.

1. The Madras High Court stated that The Madurai Bench of this Court in Mehraj Vs The State and others observed that, A Man is a social animal that needs a family as well as a society to live in and needs to share both his emotions and feelings. Being Human Beings, the prisoners also would like to share their problems with their life partner as well as with the society as whole. Just because they are termed as prisoners, their right to dignity cannot be deprived¹⁵⁸.

2. Conjugal visits lead to strong family bonds and keep the family functional rather than the family becoming dysfunctional.

3. India has observed the reformatory theory, as it says that human beings to be reformed would become a productive member of society. If that is to be done, prisons have to be transformed as homes for the purpose of giving training morally as well as intellectually so that the prisoners are denuded of the qualities of the criminal.

4. The psychologist and psychiatrist believe that the frustration, tension, the ill feelings, and the heart-burnings can be reduced and human beings can be better construed if they are allowed conjugal relationship even rarely.

5. Being in agreement with the observations herein, they considered it as appropriate to grant leave for 2 weeks to petitioner's husband for conjugal visitation to his home. The Petitioner's husband has to be escorted by the jail authorities and he is bound to follow the conditions imposed by the jail authorities.

¹⁵⁸ Madras High Court, Case Muthumari V. The Home Secretary (Prison), November 26th, 2018.

Madras HC

26/11/2018

H.C.P No. 2447 of 2018

About/from the Judgment:

The High Court ordered parole of two weeks to a life-convict in light of exercising his conjugal rights.

In the present case, the petitioner is the wife of the life convict, who sought leave for her husband for the purpose of the exercise of conjugal rights. Petitioner's husband is an undertrial prisoner and is a convict under two cases, on the file of Principal District and Sessions Court, Pudukottai, jail authorities are said to be precluded from granting leave to detenu under Section 35 of Tamil Nadu Suspension of Sentence Rules, 1982.

While placing reliance on the decision of Madras High Court, Madurai Bench in *Meharaj v. State*, 2018 1 HCC (Mad) 150 in which it was stated that:

“Conjugal visit leads to strong family bonds and keep the family functional rather than the family becoming dysfunctional due to prolonged isolation and lack of sexual contact.”;

The High Court considered the above-stated decision to be appropriate and concluded to grant leave to the petitioner's husband for the purpose of conjugal visit for a period of two weeks subject to certain conditions¹⁵⁹.

II.8.3 CASE VARNAS V. LITHUANIA

The ECHR has held that prisoners in general continue to enjoy all the fundamental rights and freedoms guaranteed under the Convention in the name of right to liberty. For example, in addition to being protected from ill-treatment, prisoners continue to enjoy the right to respect for family life, the right to freedom of expression, the right to practise their religion, the right of effective access to a lawyer or to court for the purposes of Article 6, the right to respect for correspondence and the right to marry. Any restrictions on these rights require to be justified (although such justification is frequently to be found in considerations of security).

The Court is developing case-laws in this field which emphasises that the protection of prisoners' fundamental rights, particularly those which tend to maintain or create links for the prisoner with the outside world, can be seen as assisting the prospects for prisoners to

¹⁵⁹ <https://www.daaman.org/jd/p-muthumari-vs-home-secretary/conjugal-visit%E2%80%93parole-granted-to-life-convict---man-is-a-social-animal%2C-he-needs-a-family-as-well-as-a-society-to-live-in/Accessed> on 28/07/2024.

reintegrate into society following release such as in the case of Varnas V. Lithuania whose below details:

VARNAS sued Lithuania in the ECHR claiming discrimination based on a baseless difference in treatment of remand prisoners compared to convicted prisoners as regards conjugal visits, which he considers to be a violation of his rights¹⁶⁰. In his application to the European Court, Varnas claimed that he was held more than three years in pre-trial detention, complaining that he had been denied conjugal visits from his wife, despite repeated requests, whereas convicted prisoners were allowed such visits¹⁶¹. Article 14 in conjunction with Article 8: At the relevant time, the duration of visits for remand prisoners, such as the applicant, was shorter (two hours) than that which the law allowed in respect of a convicted person (four hours). Above all, remand prisoners had no right to conjugal visits at all, while convicted prisoners could receive long-term visits, including conjugal visits, lasting up to forty-eight hours (48) once every three months, on special separate premises without surveillance.

Moreover, the frequency of visits and the type of contact (short-term or conjugal) to which convicted prisoners were entitled differed according to the security level both of the prisoner and of the facility in which he was being held. In contrast, the restrictions on the visiting rights of remand prisoners were applicable generally, regardless of the reasons for their detention and the related security considerations. However, International instruments such as the International Covenant on Civil and Political Rights and the European Prison Rules of 1987 stressed the need to respect the remand prisoner's status as a person who was to be presumed innocent, while the European Prison Rules 2006 provided that unless a specific reason to the contrary untried prisoners should receive visits and be allowed to communicate with family and other persons in the same way as convicted prisoners.

That approach was supported by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in its report on its visit to Lithuania, which considered that any restriction on a remand prisoner's right to receive visits should be based on the requirements of the investigation or security considerations, applied for a limited period and be the least severe possible. In that regard the Court had already had occasion to hold that, inasmuch as it concerned restrictions on visiting rights, the aim of protecting the

¹⁶⁰ Varnas v. Lithuania, [2013] (no. 42615/06). ECHR Strasbourg

¹⁶¹ Idem, 160

legitimate interests of an investigation could also be attained by other means, such as the setting up of different categories of detention, or restrictions adapted to the individual case.

As to the reasonableness of the justification for the difference in treatment between remand prisoners and convicted prisoners, security considerations relating to any criminal family links were absent in the instant case. The applicant's wife was neither a witness nor a co-accused and there was no indication that she had been involved in criminal activities. Accordingly, the Court was not persuaded that there was any particular reason to prevent conjugal visits. The Government, like the Lithuanian administrative courts, had in essence relied on the relevant statutory provisions, without any reference as to why the restrictions had been necessary and justified in the applicant's specific situation¹⁶². Lastly, although the applicant had received short-term visits and so had not lost all contact with his wife, the physical contact available during those visits appeared to have been especially limited, as the couple had been separated by wire netting, except for a 20 centimetre gap used for passing food. Such limited physical interaction had further been compounded by the fact that they had been under the constant observation of a guard. The particularly long period of the applicant's pre-trial detention (two years) had reduced his family life to a degree that could not be justified by the inherent limitations involved in detention. The remand prison authorities' refusal to grant the applicant a conjugal visit had also been based on a lack of appropriate facilities. However, that reason could not withstand the Court's scrutiny. The authorities had therefore failed to provide reasonable and objective justification for the difference in treatment of remand prisoners compared to convicted prisoners and had thus acted in a discriminatory manner.

“The court unanimously ruled out that this was discrimination and ordered the prison authorities to grant conjugal visit to the applicant”¹⁶³.

II.8.4 CASE LESLAW WOJCIK V. POLAND

Pursuant to the Article 34 of the convention for the protection of Human Rights and fundamental Freedoms, on November 2nd, 2009 Mr. LESLAW WOJCIK, a polish prisoner (herein referred to Applicant) sued the Republic of Poland (Herein referred to defendant of Government) in the European Court of Human Rights over allegations of unjustified and disproportionate restrictions on his rights to receive private conjugal visit in prison, breaching Art. 8 of the foresaid convention and the Court registered the application under (No.

¹⁶² Supra, Note 213

¹⁶³ Supra, Note 215

6642/09); which was communicated to the Government of Poland on 13/12/2021 and on 17/04/2012 the Court granted a request for third-party intervention lodged by the Helsinki Foundation for Human rights based in Poland (article 36&2 of the convention and Rule 44&3)¹⁶⁴. The European Court of Human Rights (First Section), having deliberated in private on 8 June 2021, delivered the following judgment, which was adopted on that date based on the facts herein summarized as follows¹⁶⁵: The applicant was deprived of his liberty in connection with two sets of criminal proceedings against him. On 19 January 2007 the Tarnobrzeg Regional Court convicted the applicant of a number of offences, including robbery, currency counterfeiting and destruction of property and sentenced him to five years' imprisonment. On 6 March 2009 the Tarnobrzeg District Court convicted him of robbery and battery and sentenced him to three years and six months' imprisonment. From 11 September 2009 until 22 November 2010 and from 24 January until 14 June 2011, the applicant served his prison sentence, alternating between Rzeszów Prison and Cracow Remand Centre's hospital. Between these two periods and on the latter date, the applicant was granted a licence for temporary leave in view of cardiological ailments from which he was suffering¹⁶⁶. From 15 July until 21 December 2011 the applicant resumed his prison sentence; he was subsequently moved to Wrocław and Rzeszów Prisons and Katowice Remand Centre. On the latter date he was again granted a licence for temporary leave on health grounds. On 13 June 2012 the applicant was moved to an open-type prison in Chmielów¹⁶⁷. In 2008 the applicant got married; he had a child with his wife. From the beginning of his post-conviction detention he lodged regular requests for visits from his wife, his child, his parents, his two brothers and his sister. In addition, the applicant lodged requests for private conjugal visits (*widzenie małżeńskie*), otherwise known as "intimate visits", which take place in a private room without a guard being present¹⁶⁸.

During the first term of his detention after conviction (between September 2009 and November 2010) the applicant received on average three supervised visits per month, which added up to thirty-seven visits (thirty in Rzeszów Prison and seven in Cracow Remand Centre). That number included seven unaccompanied visits from the applicant's wife¹⁶⁹. It appears that in October 2009, the prison administration lodged five requests for the applicant

¹⁶⁴ *Supra*, Note 215

¹⁶⁵ ECHR, Case Application number 6624/09, Strasbourg, 2021

¹⁶⁶ *Idem*, 166

¹⁶⁷ *Supra*, 167, 166

¹⁶⁸ *Op.cit*, Note 217

¹⁶⁹ *Ibidem*, 169

to be punished for various disciplinary infractions. On 14 October 2009 the applicant was punished by being placed for fourteen days in a solitary-confinement cell.

On 9 November 2009 the applicant's supervisor (*wychowawca*) granted a request lodged by the applicant for a conjugal visit, in view of the latter's improving behaviour. On 23 November 2009 the prison governor decided not to allow the visit and instead to issue an official commendation (*pochwała*), pending a consolidation of the applicant's good conduct; On 19 January 2010 after asking the guards escorting him to the hospital on 12 January 2010 to set him free in exchange for future payment, the applicant was given a disciplinary punishment: for fourteen days he was not allowed to receive any visitors or to make phone calls; On 26 February 2010, when taken to the dentist, the applicant made unauthorised contact with his family. These incidents were reported to the prosecution service. As can be seen from the documents submitted to the Court, throughout the applicant's first term of detention he was at times insolent and uncooperative (thirteen requests for disciplinary punishment were issued in the first ten months of his detention in Rzeszów Prison); however, at times the standard of his behaviour was adequate. He lodged frequent requests to be rewarded by a conjugal visit for his voluntary involvement in prison work and activities¹⁷⁰.

During the second term of his imprisonment, from January until June 2011, the applicant was granted thirteen supervised family visits, including three unaccompanied visits from his wife. According to the applicant's submission to the Court, four requests for a conjugal visit and two requests for an additional family visit were refused¹⁷¹.

During the third term of his imprisonment, from July until December 2011, thirteen requests for family visits lodged by the applicant were granted, including three unaccompanied visits from his wife. Two requests for a conjugal visit were refused and, according to the Government's submission to the Court, two were granted (requests lodged on 12 and 21 November 2011). According to the applicant's submission to the Court, only one unsupervised conjugal visit to him in Wrocław Prison was granted during his third period of imprisonment¹⁷². The supervised visits described below, which are otherwise known as "visits at the table" (*widzenie przy stoliku*), took place in a common room where the applicant was

¹⁷⁰ Op.cit, Note 169,168,167

¹⁷¹ Op.cit, Note 166,165

¹⁷² <https://hudoc.echr.coe.int/eng/?i=001-210764/Accessed> on 15/08/2024.

allowed to see his visitors in person and in the presence of a prison officer. The applicant was not allowed to kiss or hug his wife during those visits¹⁷³.

During the first term of his detention after conviction, (between September 2009 and November 2010), requests lodged by the applicant or his wife for a conjugal visit were refused fourteen times. It appears that the applicant lodged his first request for a conjugal visit on 25 September 2009. It was refused four days later (See paragraph 25 below). Requests for additional family visits were refused nine times during his first period of his detention¹⁷⁴.

In his numerous requests for a conjugal visit, including requests lodged on 17 March 2010 and 19 September 2011, the applicant stated that intimate contact was necessary for him and his wife to maintain their marriage bonds. They also wanted to conceive another child. Contact during supervised family visits was too limited and his relationship with his wife had suffered. In a number of his subsequent requests, the applicant also mentioned the advanced state of his rehabilitation and his good conduct, his work on a prison Internet site, his preparation of information posters, his helping to clean his prison wing and his organising religious meetings. This, in the applicant's opinion, constituted outstanding conduct and justified granting him a reward. The applicant submitted to the Court that the refusal to grant his requests for a conjugal visit had not been properly reasoned and had been communicated to him only orally by his prison supervisors¹⁷⁵.

The Government submitted to the Court that each of the applicant's requests for conjugal visits had been refused by means of a handwritten note added (by the governor or deputy governor of the prison in question) to the applicant's written request¹⁷⁶. The grounds for each such refusal had been the applicant's reprehensible attitude and behaviour (*naganna postawa i zachowanie*). That assessment, in turn, had been made on the basis of written reports concerning the applicant's conduct prepared by prison staff¹⁷⁷.

The Government further submitted to the Court copies of the applicant's fourteen requests for a conjugal visit. They were lodged on the following dates: 25 September and 2 and

¹⁷³ Idem, 172

¹⁷⁴ Ibidem, 174

¹⁷⁵ Supra, Note 225

¹⁷⁶ Idem, 176

¹⁷⁷ Supra, Note 177, 176

18 November 2009, 4 January and 8 and 17 March, 1, 21 and 28 June and 6 July 2010, and 26 and 31 January, 19 September and 7 November 2011 (see paragraph 20 above)¹⁷⁸.

All of those requests were refused. The Government stated that other than for the reason of the applicant's reprehensible behaviour, one request for a conjugal visit (lodged by the applicant on 7 November 2011) had been orally rejected by the Wroclaw Prison Governor because the applicant's wife had not sent a letter of consent in respect of the proposed conjugal visit.

The Government submitted to the Court a copy of the applicant's handwritten request. The document bears an illegible signature and handwritten notes to the effect that the applicant had just been transferred from another prison without his prisoner's records and that his temporary records did not contain his wife's written consent. Two forms were also submitted to the Court, dated 21 November and 12 December 2011, by which the applicant's supervisor at WROCLAW Prison recommended the granting of the applicant's requests for a conjugal visit in view of the latter's good behaviour and his work on an information poster¹⁷⁹.

Therefore, irrespective of the applicant's own requests, his wife lodged a number of requests for a conjugal visit, stating that the couple had only recently been married and that they were trying for another baby. These requests were each refused by means of a written letter of reply signed by the prisoner governor or his deputy and sent to the applicant's wife, with a copy being sent to the applicant in prison¹⁸⁰. Submitted to the Court were letters dated 17 and 28 December 2009 and 12 February, 17 and 23 March 2010 and 28 May 2010 by which the Deputy Governor of Rzeszów Prison refused six requests lodged by the applicant's wife for a conjugal visit.

In addition, five of the six letters stated, without giving any details, that the applicant did not deserve to be so rewarded¹⁸¹. In addition, on 25 March 2010 the Governor of Rzeszów Prison informed the applicant's wife in more elaborated terms that a conjugal visit could only be granted as a reward – for a prisoner's good conduct or by way of motivation if it was justified by a prisoner's exceptional family or personal circumstances¹⁸².

¹⁷⁸ Idem, 173

¹⁷⁹ <https://hudoc.echr.coe.int/Accessed> on 30/07/2024

¹⁸⁰ Idem, 179

¹⁸¹ Supra, Note 230, 227

¹⁸² Supra, 180, 179

The applicant did not qualify for either measure. His prison supervisors unanimously considered that his behaviour had been highly reprehensible. Many requests that the applicant be subjected to disciplinary punishment had been lodged. His conduct had not improved.

For all the reasons above discussed, the court unanimously,

1. Declares the application admissible in so far as it concerns the compliance with the Convention requirements of the two refusals to grant conjugal visits which have been the subject of appeals, and the reminder inadmissible;
2. Holds that there has been no violation of Article 8 of the Convention;
3. Holds that there is no need to examine the complaint under Article 12 of the Convention.

Done in English, and notified in writing on 1 July 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

II.9 CONFLICT OF INTERESTS IN RELATION TO THE CONJUGAL VISIT PROGRAMME.

The adoption, legalization and applicability of conjugal visit programs can create and present a complex web of interests and potential conflicts involving inmates, their spouses or partners, the State and the Society at large, each defending his, her or its position. This part of the present study tends to analyze different perspectives linked to the pertinent concerned areas of interests.

II.9.1 Prisoners' interests

The CVP provides opportunities for inmates to maintain social support and community ties during imprisonment.¹⁸³ The ability to maintain family ties assists in normalizing inmates' lifestyle and maintaining the perception.¹⁸⁴ Indeed, maintaining contact and social support with family members, inmates get successfully linked to reintegration in the society¹⁸⁵, and the continuation of family ties through CVP during imprisonment is the most interest for an inmate's rehabilitation¹⁸⁶.

¹⁸³ Derkzen, Gobeil&Justin,2009

¹⁸⁴ Bales&Meras,Inmates social ties and the transition to society, Florida State University, 2008

¹⁸⁵ Tewksbury & DeMichele,2005

¹⁸⁶ Sitren, Smith, Brandon &Gould, Visitation and post-release outcome among federally-sentenced 2009

II.9.2 Inmate's spouse interests

The denial of CVP to the inmates is not only punishment to them, but it is also a punishment to their spouses and family members. Imprisonment of a person not only affects him, but also affects the family, either emotionally or financially¹⁸⁷. As a consequence of incarceration, the inmate, the spouse, both are forced to undergo sexual frustration, which is a violation of civil and human rights. The imprisonment of the inmate also violates the fundamental rights of his/her spouse, which is nothing but can be seen only in collateral damage¹⁸⁸. This practice clearly violates art 21 of the constitution of india, such as right to life and personal liberty, which extends to the right to procreation and sexual satisfaction. In essence, this study mainly seeks to protect the innocent's rights rather than punishing the guilty, just in conformity with John Adams's argument, that "*Innocent be protected than the guilty be punished*".

II.9.3 State's interests

The CVP aims to bring solutions to some problems affecting the society, and nobody would mind about it. The problem is that once CVP are adopted and legalized in order to be applicable in our legal system, we will also be posed to some challenges such as to be able to ensure the security of the prison system, reducing inmates' recidivism through the maintenance of family bonds, and addressing the humanitarian aspect of incarceration.

II.9.4 Societal interests

Society must be safeguarded against wrongdoers, and the latter must be restrained from doing similar deviant behaviours in the future; significantly others must not become victims of such action and reaction to protect the society as the criminal liability is personal¹⁸⁹.

The societal interests of the CVP is measured is in connection with rehabilitation and reintegration of inmates into society, this will also ensure public safety and promote or uphold human rights as well as improve ethical treatment of prisoners.

Even though this will encounter challenges, such as in terms of public perceptions of the appropriateness of allowing intimate visits for inmates, balancing the rights of inmates with societal views on punishment and justice, and raise concerns about the potential misuse of such visits for criminal activities, the view supporting inmates rights weight over those challenges.

¹⁸⁷ Alexandra V. Et al, *Benefits and risks of conjugal visits in Prison: A synthetic literature review*, October,2021.

¹⁸⁸ Idem,152

¹⁸⁹ <https://doi.org/10.1016/j.jcrimjus.2013.05.001>/Accessed on 30/07/2024

II.9.5 Legal interests

The legal interests in conjugal visits involve a delicate balance of rights and responsibilities across multiple stakeholders. While inmates and their spouses seek to maintain family bonds and personal intimacy, while the State and society aim to ensure security, public safety, and ethical treatment of inmates; legal frameworks must navigate these competing interests in order to create policies that are fair, humane, and effective¹⁹⁰.

II.9.6 Balance of interests

For the CVP to be successful and applicable once adopted and legalized, needs to balance the interests above mentioned.

1. In the context of Security vs. Rehabilitation, The state must balance the need for security within prisons with the rehabilitative benefits of maintaining family connections through conjugal visits.
2. In the context of Public Perception vs. Human Rights, Society's views on punishment can clash with the human rights arguments for allowing conjugal visits, creating tension between punitive and rehabilitative approaches to incarceration¹⁹¹.
3. In the context of resource Allocation, the costs associated with facilitating secure and safe conjugal visits can be significant, leading to debates about whether these resources could be better spent elsewhere within the criminal justice system.
4. In the context of emotional strain, both inmates and their spouses face emotional challenges in maintaining a relationship under such constrained conditions, which can sometimes lead to additional stress and conflicts¹⁹².

In summary, Conjugal visits are a contentious issue, balancing the potential benefits for inmates and their families with the challenges and risks posed to prison security and public perception. Each stakeholder; be it the inmate, their spouse, the state, or society has valid concerns and interests that need to be carefully considered to create a fair and effective policy¹⁹³.

¹⁹⁰ Idem,189

¹⁹¹ Supra, Note 190,189

¹⁹² Idem, 188

¹⁹³ Op. Cit, 187,186

II.10 ADOPTION OF CONJUGAL VISIT PROGRAMME IN RWANDAN LEGAL SYSTEM.

According to different perceptions, findings, practices and experiences, it is obvious that in Rwanda, there is possibility to adopt, legalize and institute conjugal visits programme in its correctional facilities because of the following reasons.

II.10.1 Constitutional provisions

The constitution of the RoR shows clearly that the adoption and legalization of the CVP in its correctional facilities can be possible, having legal basis in the following provisions:

1. In connection with Art. 12 stipulating that everyone has right to life, this reflects the idea that sexual intimacy is part of right to life¹⁹⁴.
2. In connection with Art. 14 paragraph 1 stipulating that everyone has right to physical and mental integrity, and paragraph 2 stipulating that no person shall be subjected to torture or to abuse or cruel, inhumane or degrading treatment, it reflects the idea that denying conjugal visits to inmates would be qualified as violating their indispensable rights and treating them inhumanely¹⁹⁵.

Taking into account that the family is a natural foundation of the Rwandan society, and that the State has obligation to protect, preserve and ensure its stability, this can also be one of the reasons why the CVP has to be adopted and implemented in order to serve the intended purpose.

II.10.2 Legal vacuum

The fact that there is no legal instrument providing for conjugal visit in Rwandan correctional facilities, either by permitting or prohibiting them, this makes it simple and understandable that there is a breach through which the legislative can use to pass a legal bill authorizing the CVP in Rwandan correctional facilities.

II.10.3 Rationale of penology in Rwandan criminal Justice.

It is reasonable that upon commission of an offence, the offender must pay for the wrong he or she committed by inflicting upon him or her proportionate punishment with the aim to sanction the criminal act, deter him or her from committing other crimes (individual deterrence), and deter the society in general from committing crimes (Collective deterrence), in order to eradicate the culture of impunity.

¹⁹⁴ Constitution,2003 Revised in 2023

¹⁹⁵ Idem,196

However, the Rwandan criminal justice orientation goes beyond that perception and extends its scope by believing in other possible alternatives to be applied instead of punishment in prison, which at some extent seems to be a destructive tool of people's lives and of their families.

It is also in this perspective that the Rwandan criminal Justice policy proposes the imprisonment as the last resort as a policy option and that all institutions of criminal justice be encouraged and trained to play their part in it. This will be done by asking investigators, prosecutors and the judges to always consider alternatives to detention and prison, because there is emerging evidence globally that an offender 's propensity to commit crimes in the future is not decreased by the experience of prison.

Furthermore, the policy actions contain proposals for legislation to provide the alternative sentences to imprisonment for the court, in cases where the offender does not pose a serious risk to the public and is likely to respond to a rehabilitative or therapeutic regime. In essence, the rationale of criminal justice prioritize rehabilitation over punishment¹⁹⁶.

II.10.4 Practices by correctional services in Rwanda

In Rwanda, an incarcerated person is allowed to go out of the correctional facility due to different reasons, such as to appear before the Court, to seek medical treatment, to carry out works approved by the administration of the correctional facility, When he or she is summoned by a competent governmental organ and in case there is any other reason not contrary to the standard operating procedures of the organ as approved by the administration of correctional facility.

The law continues stipulating that in such a situation the administration of a correctional facility provides enough correctional officers to escort incarcerated person allowed to go out of the correctional facility¹⁹⁷. This legal provision indicates that it can be possible to apply for the getting out of the correctional facility for specific reasons and then use that opportunity to have a romantic intimacy with the spouse who is in outside world¹⁹⁸. (when this happen, it is a sort of visit we refer to furlough visit).

¹⁹⁶ Rwanda Criminal Justice Policy, September, 2022

¹⁹⁷ Art. 27 of the Law No. 022/2022 of 29/09/2022 governing correctional services in Rwanda. See Official Gazette of the Republic of Rwanda, No. 42 Bis of 17/10/2022.

¹⁹⁸ Idem, 199

CHAPTER THREE: LEGAL AND INSTITUTIONAL MEASURES ON THE EFFECTIVENESS OF CONJUGAL VISIT PROGRAMME UNDER RWANDAN LEGAL FRAMEWORK.

For the CVP to be applicable in Rwandan correctional facilities, needs to have a legal basis or ground as so far there is no legal text providing for it either by permitting or prohibiting it.

In the previous chapter, the findings of the study showed that it is a necessary practice for inmates, their spouses and families at large¹⁹⁹; though there are also challenges that impede its applicability. Therefore, the present chapter seeks to examine each obstacle raised and propose a suitable legal and mechanisms framework that intends to curb the obstacle therein.

The following are the proposed legal and strategic mechanisms that can be put in place in order to efficiently adopt, legalize and apply the CVP in Rwandan correctional facilities.

III.1 LEGAL MEASURES

This reflects the approach of legality, which in the context of adopting mechanisms for conjugal visits in Rwandan correctional facilities would ensure that any policies or regulations permitting such visits are established through a clear, transparent, and lawful process. The purpose of a Legal Framework holds that any mechanism allowing the CVP in Rwandan correctional facilities must be grounded in existing legal statutes or regulations, which would involve amending or enacting laws that explicitly provide for the CVP in Rwanda²⁰⁰.

III.1.1 Perspective of clarity and precision

In the context of clarity and precision, these legal statutes or regulations must clearly define the conditions as well as the procedures to be applicable for conjugal visits such as including eligibility criteria, application processes, duration of visits, and any other guidelines so that inmates should not face penalties or adverse consequences based on actions that were legal prohibited before the new rules were enacted.

¹⁹⁹ Carcedo, R. J., Perlman, D., López, F., Orgaz, M. B., & Fernández-Rouco, N. (2015). The relationship between sexual satisfaction and psychological health of prison inmates: The moderating effects of sexual abstinence and gender. *The Prison Journal*, 95(1), 43-65. <https://doi.org/10.1177/0032885514563271/Accessed> on 28/07/2024.

²⁰⁰ Katja Hujo, Et al “*Reflecting on the human right to social security*”, Volume 70, Issue 4, October-December (2017), pp. 5-12.

III.1.2 Perspective of the Human Rights Consistency

In the context of consistency with Human Rights, The legal framework should be applied in a manner consistent with international human rights standards including respecting the dignity and privacy of inmates and their families, as well as ensuring that the regulations do not discriminate based on gender, marital status, or other protected characteristics as defined by the Universal declaration of Human rights and other related international instruments in relation to the practice of the CVP²⁰¹.

III.1.3 Perspective of Rule of Law

In the context of the Rule of Law, The implementation and enforcement of conjugal visit mechanisms must be carried out in accordance with the rule of law. This means that decisions should be made impartially and fairly, without arbitrary or discriminatory practices. Moreover, there should be mechanisms in place to monitor and review the implementation of conjugal visit regulations, including regular audits, the availability of complaint procedures for inmates and their families, and oversight by independent bodies to ensure compliance with the law.

In summary, Rwanda can ensure that the introduction of conjugal visits in correctional facilities is conducted in a fair, transparent, and lawful manner, protecting the rights and interests of all parties involved. To this end, the following are legal measures which can help in adopting and effectively enhance the applicability of conjugal visit programme under Rwandan Legal framework.

- 1. The enactment of the law governing conjugal visit in Rwanda**
- 2. The review of the existing laws inter alia the law governing correctional services, the law determining offences and penalties, law governing criminal procedure, etc..**
- 3. The compliance to international standards in regard to prisoners' treatment**

²⁰¹ 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.

III.2 INSTITUTIONAL MEASURES

Institutional mechanisms refer to all sorts of action plans, decision making, guidelines, training, workshops, seminars, community sensitization and practices to be undertaken by all stakeholders, such as public institutions, private institutions, international organizations and other non-governmental organizations which have to work hand in hand for the efficient success of the CVP²⁰².

III.2.1 Financial or resources allocation

The applicability of the CVP in Rwandan correctional facilities would require allocation of resources to ensure the effectiveness and the sustainability of the programme.

III.2.2 Security concerns

In the context of security concern, there is a need to plant a monitoring system in order to implement appropriate security measures to monitor visits while respecting privacy such as discreet surveillance systems²⁰³.

In addition, the correctional facilities will ensure safety protocols to ensure the safety of both inmates and visitors during conjugal visits, preventing entering prohibited items and drugs or narcotics, or even facilitate the evasion by providing adequate training to the security personnel and avail all security apparatus needed to serve that cause²⁰⁴.

III.2.3 Health

In the health context, the GoR must allocate resources for regular health check-ups and providing access to medical services to address any health concern that may arise from conjugal visits. In addition to this, the GoR must ensure the availability of hygiene supplies, such as clean beddings, towels, and toiletries for both inmates and visitors.

²⁰² 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.

²⁰³ Davis, R. (1988). Education and the impact of the family reunion program in a maximum security prison. *Journal of Offender Counseling Services Rehabilitation*, 12(2), 153-159.
https://doi.org/10.1300/J264v12n02_12/Accessed on 28/07/2024.

²⁰⁴ https://www.unodc.org/documents/justice-and-prison-reform/UNODC_Handbook_on_Dynamic_Security_and_Prison_Intelligence.pdf/Accessed online on 28/07/2024.

III.2.4 Public perception or awareness

In legal context, related strategies and mechanisms are seen in a twofold angle, id est one of the policy developments which includes investing in the development of clear policies and procedures to govern the CVP, including eligibility criteria, application processes, and rules of conduct, and the other being the legal Aid services in providing access to legal aid for inmates and their families to navigate the process and understand their rights²⁰⁵.

In the context of public awareness, the GoR must organize and conduct awareness campaigns to inform the public and stakeholders about the benefits and procedures of the CVP and seek continuous provision of resources and expertise to ensure the sustainability of the programme.

In summary, as above discussed, the following are institutional measures that can help in harmonizing and effectively contribute to the adoption and implementation of the conjugal visit under Rwandan legal framework.

- 1. Raise the public awareness about the CVP through community sensitization**
- 2. Creation of a specific fund and allocate the budget to maintain and sustain the program;**
- 3. Building cabins inside the correctional facilities and equip them with hygienic items to be used during the CVP;**
- 4. Training of the RCS staff for the effective service delivery;**
- 5. Modernized security apparatus to deal with security concerns that can arise from the course of the CVP**

²⁰⁵ Carlson, B. E., & Cervera, N. (1991a). Inmates and their Families: Conjugal Visits, Family Contact, and Family Functioning. *Criminal Justice and Behavior*, 18(3), 318-331.
<https://doi.org/10.1177/0093854891018003005/Accessed> on 28/07/2024.

GENERAL CONCLUSION

A conjugal visit refers to a scheduled period in which an inmate is permitted to spend several hours or days with a visitor, usually their legal spouse for sexual intimacy. Tracing back its historical background, conjugal visit informally started in 1918 at Parchman farm where black prisoners were working in gardens of cotton, fruits and vegetables.

Inmates were allowed to sleep with their wives after work (for those who had them) especially in the week-ends while singles were given opportunity to bring in prostitutes in order to quench their sexual urges. This was considered as a privilege accorded to inmates who were working hard in order to motivate and encourage them to be more productive at work place for the sake of an effective productivity²⁰⁶.

Furthermore, this practice continued and in 1968, id est after 47 years, conjugal visits were officially recognized and allowed in Mississippi prison. Later on, in accordance with the evolution of the society and mindsets, and with the urge to comply with the modernization dynamics, conjugal visits were considered as a right that the States owe to the prisoners; and other States such as Canada, Brazil, Turkey, India, Pakistan, Saudi Arabia, Israel, France, Denmark, Germany, etc....started permitting conjugal visits to inmates in different styles and perceptions according to their respective cultures, mindsets, and experience²⁰⁷.

In Rwanda, conjugal visits are not permitted nor prohibited in its correctional facilities, as there is no law providing for it in one way or another, though there is a practical exception in regard to Sierra Leoneans prisoners imprisoned in Mpanga prison under international agreement between Rwanda and United Nations Special Court for Sierra Leone, who are allowed to be visited by their wives and have sexual intercourse, and the correctional facility provides all the needful including meals, security, transport of prisoners' wives, etc...

²⁰⁶ <https://www.ojp.gov/ncjrs/virtual-library/abstracts/conjugal-visitation-american-prisons-today/>
Journal of family law, volume:19 issue 2 (1980-1981).

²⁰⁷ <https://www.ojp.gov/ncjrs/virtual-library/abstracts/conjugal-visiting-united-states-prisons/> Accessed on 24/07/2024.

In this perspective, taking into account both polemics in regard to the qualification of conjugal visit as of being termed right or privilege, the Researcher concluded this study affirming that for those who are perceiving it as a privilege are right in the sense that it tends to be given to those inmates who proved acceptable and model behavioural conducts.

Again, the Researcher also concluded this study that conjugal visits are inmate rights in the sense that, as stipulated in different legal instruments such as the Constitution of the Republic of Rwanda, where it indirectly reflects the concept of family preservation and promotion of human rights²⁰⁸.

Both short and long term imprisonment differently influence marital relationships. Accordingly, long-term convicted prisoners and their marital relation are highly vulnerable in terms of emotional attachment and relation difficult as compared to short term imprisonment. These years of incarceration also accentuated the gap between prisoners and their spouses by causing feelings of separation due to less time spent together, denial of sexual relationships resulting in a decline in love for spouses and infidelity, and missing each other. Refutations of access to spouses, as usual, result in loneliness and affect the psychological wellbeing of both prisoners and their spouses.

The presence of an intervention programs for the rehabilitation and correction of incarcerated individuals makes the detention centre the place of adjustment for wrongdoers. Many correctional institutions focus on developing prisoners with a high quality of ethical conduct. Thus, the prison institution needs to move beyond its normal routine to protect the legal rights of prisoners; especially for married couples, it is important to set aside a separate room for the wife to meet her husband.

Furthermore, Ever stakeholders should work to save the marriage and family from breaking up. Although there are weighty interests on both sides of the issue, a strong argument can be made that a court must find that married prisoners and their spouses have constitutional right to participate in a program of conjugal visitation. Whether the balance will be struck in the prisoner's favour will depend primarily on the relative importance of the conflicting purposes of imprisonment.

²⁰⁸ Op.cit, Constitution,2003

Therefore, If rehabilitation remains the favoured goal, as it now seems to be, the benefits of conjugal visiting should tip the scale in prisoner's favour. In any case, the implementation of a conjugal visitation program makes sense because the rehabilitative benefits of such a program can be gained at little expense to the goal of retribution and deterrence.

As a result, given the fact that conjugal visits would play an important role in maintaining and strengthening marital relationships during imprisonment, there is a strong conviction that even though this program may be disturbed or hindered by any sort of problems in connection with the space suitability, the absence of private rooms, the overcrowding of visitors, less time given to both inmate and his or her spouse, and the lack of privacy to discuss marital issues that tend to hinder the effectiveness of the CVP, as a response the GoR would opt to apply the propositions herein referred as recommendations.

In essence, the research sums up ascertaining that conjugal rights to inmates is one of the indispensable and fundamental rights that they have to enjoy and hereby call upon the GoR to adopt, legalize and institute this practice in its correctional facilities in order to always take the lead in the advancement of human rights respect, promotion and maintenance of the rule of law, as well as protecting and preserving the family, which is constitutionally regarded as the natural foundation of Rwandan society²⁰⁹.

²⁰⁹ Op.cit, Constitution,2003

RECOMMENDATIONS

Maintaining marital relations during imprisonment through visitation is the most vital aspect in the rehabilitation process of prisoners. The basic belief of imprisonment is to punish the wrongdoer, keep society from anti-social behaviour, and rehabilitate the prisoners²¹⁰.

The present study discovered that the practice of marital visitation does not only serve to stabilize marital relationships and marital attachment between married partners, and ensure continuity of marital relationship, but also it is beneficial to inmates' rehabilitation and reintegration into the society²¹¹.

In this perspective, based on the findings from the present study, the following recommendations should be made and submitted to the concerned organs of the GoR for further action taking²¹².

Primo, the government of Rwanda should adopt and legalize the Law permitting conjugal visits in its correctional facilities, set out and develop rules and procedures governing the applicability of CVP to ensure consistency and fairness in order to efficiently serve the purpose it was established for.

In governing the applicability of CVP in Rwandan correctional facilities, the law has to determine who can apply for the CV scheme, the length of CV, competent organ and authority to give the permission²¹³, conditions of eligibility, and set out all other guidelines necessary for the best practice and outcomes of the CVP, brief this law tends to provide a legal basis or ground to the CVP.

Secundo, The GoR should collaborate with countries that have successfully implemented CVP and puts efforts in adhering to International standards in order to learn from them the best practices which can fit its cultural and legal context in order to ensure that its applicability is sensitive and effective.

²¹⁰ Bales, W. D., & Mears, D. P. (2008). Inmate social ties and the transition to society: Does visitation reduce recidivism? *Journal of Research in Crime and Delinquency*, 45(3), 287–321. Available at: <https://doi.org/10.1177/0022427808317574>, Accessed on 08/07/2024.

²¹¹ Samson C.R.KAJAWO, *Conjugal visits in Prison discourse: Is it Even an offender rehabilitation option in Africa?*, *Advanced Journal of social science*, Volume 8, Issue 1, pp.67-76,2021 Available at: <https://doi.org/10.21467/ajss.8.1.67-76>, Accessed on 08/07/2024.

²¹² The Rwandan Parliament is the State's organ in charge of passing laws. It legislates and exercises control over the Executive in accordance with procedures determined by the Law. Available online at: <https://www.parliament.gov.rw/legislation>, Accessed on 08/07/2024.

²¹³ Rwanda Correctional Services is the State organ in charge of Correctional facilities in Rwanda: <https://rcs.gov.rw/en/responsibilities-of-rcs/Accessed> on 08/07/2024.

Tertio, The GoR should allocate and provide sufficient budget to implement CVP such as building apartments and small cabins inside the correctional facilities, training the RCS staff, tightening security, buying hygienic items such as soaps, beddings, towels, lubricants and condoms²¹⁴, etc...

Quarto, the GoR needs to raise the public awareness about conjugal visits, as essential part of the package of inmates' rights to life and freedom of privacy²¹⁵. This will be done through Media houses and channels, different meetings, symposiums, and community sensitization, with the intent to build strong understanding and support for the CVP so that the public may trust its outcomes.

Quinto, the GoR should train prison staff to handle CVP with sensitivity and professionalism, ensuring they respect privacy and dignity of inmates and their families and equip with staff skills to manage any potential conflict or crisis that may arise during visits.

Finally, the GoR should put in place regular strategies to monitor and evaluate the implementation of CVP, assess its impacts on inmates' behaviour, their spouses and family as well as on the public perceptions.

²¹⁴ Armstrong, S. and Jefferson, A. (2017) Disavowing 'the' prison. In: Moran, D. and Schliehe, A. K. (eds.) *Confined Places, Secure Spaces: The Spatialisation of Studies of Confinement*. Series: Palgrave studies in prisons and penology. Palgrave Macmillan: Basingstoke. ISBN 9781137560575 (doi:10.1057/978-1-137-56057-5_9)

²¹⁵ Adlam et Al, Memory for active sequences in semantic dementia, Vol 51, Issue-8, July, 2013

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