



PRISONER'S CONJUGAL RIGHTS IN INDIA: RECENT SCENARIO

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Abstract-- The right to conjugal relationships while in incarceration presents a unique intersection of fundamental rights, prison reforms, public morality, and state control. In India, despite progressive constitutional jurisprudence under Article 21, the recognition and implementation of conjugal rights for prisoners remain fragmented, sporadic and largely discretionary. This paper critically examines the recent legal, administrative, and societal developments surrounding conjugal visitation rights in Indian prisons. It analyzes constitutional interpretations, highlights key judicial precedents, discusses systemic and legal obstacles, and compares international practices. The paper argues that ensuring such rights through structured, gender-neutral and security-conscious schemes can promote prisoner rehabilitation and uphold human dignity, aligning India's prison jurisprudence with evolving global human rights standards.

Keywords: *Conjugal Rights, Article 21, Prisoner's Rights, Jail Manual, Human Dignity, Prison Reforms, Judicial Interpretation, India, Comparative Law.*

1. INTRODUCTION

Conjugal rights traditionally refer to the legal entitlement of spouses to sexual relations, companionship, and procreation. Within matrimonial law, this is enshrined in Section 9 of the Hindu Marriage Act, 1955, which allows for the “restitution of conjugal rights.” However, this principle assumes a unique constitutional character when applied to incarcerated individuals.

In the context of imprisonment, conjugal rights refer to the facility granted to a prisoner to meet their spouse in a private setting for the purpose of maintaining marital and emotional bonds, including sexual intimacy. The need for such rights stems from the recognition that incarceration is not equivalent to the extinguishment of all fundamental rights, especially those intrinsic to human dignity, as affirmed by Article 21 of the Constitution of India.

Prison reforms in India have been slow and inconsistent, reflecting the colonial legacy of the Prisons Act, 1894, which views incarceration primarily through a punitive lens.¹ However, modern penology emphasizes reformative and rehabilitative models, and the concept of conjugal rights fits into this paradigm by fostering psychological well-being, encouraging discipline, and maintaining familial ties. Several Indian High Courts have in recent years responded positively to petitions seeking conjugal visitation rights. However, the absence of any comprehensive central legislation or uniformly binding jail regulations has rendered this right sporadic and uncertain, depending largely on the discretion of prison authorities and the judiciary.

2. CONSTITUTIONAL INTERPRETATIONS OF PRISONER'S CONJUGAL RIGHTS

The constitutional foundation for prisoners' conjugal rights stems from Article 21, which guarantees “life and personal liberty”. In *Maneka Gandhi v. Union of India*,² the Supreme Court held that this right must be interpreted broadly to include the right to live with dignity, privacy, and moral autonomy.

In *Sunil Batra v. Delhi Administration*,³ the Court established that fundamental rights do not end at the prison gates, and the treatment of prisoners must be humane, respecting their personhood. Building on this, High Courts have read conjugal visitation into Article 21 as a facet of human dignity.



The Punjab & Haryana High Court in *Jasvir Singh v. State of Punjab*⁴ was the first to decisively rule in favor of prisoners' conjugal rights. It held that the right to procreation is a fundamental aspect of Article 21 and that prisoners should not be denied the opportunity to preserve family life unless a clear security threat is demonstrated.

In *Kundan Singh v. State (Govt. of NCT of Delhi)*,⁵ the Delhi High Court extended this rationale by allowing a prisoner's temporary release for IVF treatment, again reaffirming reproductive autonomy under Article 21.

Similarly, in *Meharaj v. State of Tamil Nadu*,⁶ the Madras High Court permitted conjugal visits for a life convict, emphasizing that the right to cohabitation does not perish upon incarceration.

The constitutional argument thus balances two competing imperatives: the reformation and dignity of the individual, and the maintenance of prison security and public order. The judiciary has so far tended to favor the former, provided adequate safeguards are in place.

3. INTERPRETATION OF RESTITUTION OF CONJUGAL RIGHTS U/S 9 OF THE HMA, 1955

1. *Statutory Provision:*

Section 9 of the Hindu Marriage Act, 1955 provides:

"When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply... for restitution of conjugal rights..."

The remedy of restitution is aimed at preserving the sanctity of marriage and ensuring cohabitation between spouses.

2. *Application in Custodial Context:*

When a spouse is incarcerated, their physical withdrawal from the marital relationship is involuntary. However, courts have not conclusively addressed whether imprisonment amounts to 'withdrawal from society' under section.

In *T. Sareetha v. T. Venkata Subbaiah*,⁷ the Andhra Pradesh High Court struck down Section 9 as unconstitutional for violating privacy and dignity. However, this decision was overruled by the Delhi High Court in *Harvinder Kaur v. Harmander Singh*,⁸ and the Supreme Court in *Saroj Rani v. Sudarshan Kumar Chadha*,⁹ upheld its constitutionality.

The restitution of conjugal rights under Section 9 presumes voluntary cohabitation. However, in prison, forced enforcement of this provision may conflict with the fundamental right to bodily autonomy and dignity. Thus, any interpretation of Section 9 must be harmonious with Article 21, especially in custodial contexts.

Courts have refrained from mechanically enforcing restitution where the practical consequence may lead to custodial sexual coercion or infringe on privacy. The emphasis is on facilitating voluntary and dignified interaction, consistent with constitutional morality.

3. *Obstacles in Prisoners' Conjugal Rights:*

Despite favorable judicial pronouncements, several systemic and socio-legal barriers hinder the realization of conjugal visitation rights in Indian prisons:

a. **Legislative Vacuum:** The Prisons Act, 1894 and the Prisoners Act, 1900 lack any provision concerning conjugal rights. This legislative gap leads to over-dependence on judicial discretion and results in policy fragmentation across states.

- b. Administrative Resistance: Prison authorities often oppose conjugal visitation on the grounds of operational burden, security concerns, and staff shortages.¹⁰ The absence of clear SOPs and infrastructure (e.g., private rooms) makes implementation practically difficult.
- c. Societal and Cultural Attitudes: Conservative social norms view the provision of conjugal access to prisoners as “pampering criminals,” ignoring the reformative purpose of incarceration.
- d. Gender Disparity: Existing practices (where allowed) are skewed toward male prisoners. Female inmates are rarely offered similar opportunities, reflecting systemic gender bias.
- e. Inconsistency Across States: Since prisons are a State subject, there is wide disparity in prison rules. For example, Delhi allows temporary release for IVF, while many other states do not even mention conjugal rights in their jail manuals.

4. HOW TO REMOVE THE OBSTACLES

- a. Comprehensive Legislation: A central law on prisoners’ rights should be enacted under Article 246 read with Entry 1 (Criminal Law) and Entry 14 (Union List), outlining eligibility, frequency, and safeguards for conjugal visits.
- b. Clear Standard Operating Procedures (SOPs): The Model Prison Manual must be upgraded with binding SOPs for all states. These should include visitor screening, health checks, room infrastructure, and grievance redressal mechanisms.
- c. Judicial Oversight: Courts should continue to monitor implementation through Public Interest Litigations (PILs) and frame guidelines similar to those in *Vishaka v. State of Rajasthan*.¹¹
- d. Infrastructure and Budgetary Allocation: Funds from the Nirbhaya Fund or CSR programs can be directed to build family visitation suites in prison complexes.
- e. Sensitization of Staff: Prison staff should be trained to understand the constitutional and reformative goals of conjugal rights, avoiding moralistic attitudes.
- f. Gender-Neutral Implementation: Policies must be equally accessible to female prisoners, including provision of childcare facilities for mothers in prison.

5. ANALYSIS OF JAIL MANUALS PERTAINING TO CONJUGAL UNIONS

The Model Prison Manual 2016, developed by the Ministry of Home Affairs, recommends “long-duration family visits” in open and semi-open prisons. However, this remains non-binding, and only a few states have operationalized it.

Highlights from Select State Manuals:

- a) Delhi Prison Rules (2018): Rule 628 permits special parole for fertility treatment.¹²
- b) Punjab “Mulakat Scheme” (2022): Allowed two-hour private meetings every two months (now suspended).
- c) Tamil Nadu Prison Rules: Allows temporary parole under medical certification for IVF or family needs.
- d) Kerala and Maharashtra: Largely silent or ambiguous on conjugal visitation.
- e) The *Model Prison Manual 2023*, which aims to align Indian prison law with international human rights obligations, still stops short of recognizing conjugal rights as a fundamental prison entitlement.

In India, however, the absence of uniform guidelines and dependence on parole and furlough mechanisms governed by state-specific prison rules makes the realization of conjugal rights a matter of administrative discretion rather than legal entitlement. The parole system is generally not conceived for this purpose and often fails to cover under-trial prisoners or those with life sentences.



The denial of conjugal rights is not merely a legal issue but also a social, psychological, and ethical concern. Studies suggest that allowing conjugal visitation can help reduce recidivism, stabilize family bonds, and improve inmate mental health, ultimately serving the goals of correctional jurisprudence. As the Indian criminal justice system aspires to align itself with the reformative ideals enshrined in the Constitution, the time has come to recognize and regulate conjugal rights as a component of prisoners' fundamental rights. Not as a privilege, but as a matter of constitutional dignity.

6. INTERNATIONAL PERSPECTIVES

- a) United States: In the USA, federal prisons do not allow the conjugal visitations. However, many states allow conjugal visitation programs. These visitations are subject to various restrictions provided by the concerned state. The oldest conjugal inmate visiting program is at the Mississippi State Penitentiary in Parchman. In addition to conjugal visitation, the prison authorities also use the program of home furloughs. Various states in the USA also have the programs for conjugal visitations.¹³ For example, in California, the first conjugal program was instituted in 1968 and has been extended since then. The California inmates can visit their children, spouses, siblings and parents in modular homes on the prison grounds.¹⁴ Similarly, conjugal visitation programs are also available in New York¹⁵ New Mexico, Washington and Connecticut.
- b) Pakistan: In Muhammad Aslam v. State,¹⁶ the Federal Shariat Court ruled that the denial of conjugal rights to prisoners violates Islamic principles. This prompted policy reforms in Punjab province to allow conjugal visits under certain conditions. The Federal Shariat Court (2009) recognized conjugal visits as integral to Islamic principles. Sindh province allows monthly family meetings.
- c) Spain: Recognizes "family units" inside prisons, where prisoners live periodically with spouses and children.
- d) Europe: Countries like Germany, Spain, Denmark, and the Netherlands offer extended family visits, viewing conjugal relations as integral to prisoner rehabilitation. These visits are allowed in private, furnished family rooms and are scheduled periodically.¹⁷ In Khoroshenko v. Russia¹⁸, the ECHR ruled that banning long-term family visits violates Article 8 (Right to Private Life) of the European Convention.
- d) UN Mandela Rules (2015): Rule 58 encourages "as frequent as possible" contact with family members, implicitly supporting conjugal visits as part of humane incarceration.¹⁹ India's jurisprudence, especially post-Jasvir Singh, aligns with these progressive standards in theory, but implementation remains insufficient.

7. SUGGESTIONS

- 1) Enact a Central Prisoners' Rights Act recognizing conjugal visits as a fundamental rehabilitative right.
- 2) Upgrade Prison Infrastructure using central funds and CSR allocations.
- 3) Develop Technology-Aided Screening for security during visits.
- 4) Issue Gender-Neutral, Uniform Guidelines through binding executive directions.
- 5) Form Prison Oversight Boards involving retired judges, psychologists, and rights advocates.
- 6) Empirical Research: Conduct studies to assess the impact of conjugal rights on recidivism, mental health, and family welfare.
- 7) Regular Review Mechanism: Mandate states to submit annual reports on the implementation of conjugal visitation.



8. CONCLUSION

The evolving understanding of Article 21, supported by Indian courts and international human rights instruments, demands the legal and institutional recognition of prisoners' conjugal rights. These rights are not luxuries but necessities for a rehabilitative justice system.

The absence of codified laws, fragmented jail manuals, and administrative apathy continue to hinder progress. With judicial backing, public education, and political will, India can transform its carceral approach to align with democratic ideals of dignity, equality, and family life.

Recognition of conjugal rights will mark a significant step in transforming Indian prisons from punitive cages into reformatory institutions, where inmates are treated not as criminals but as citizens capable of rehabilitation and reintegration.

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