

Prisoners' Right to Conjugal Visits in Ethiopia: An Insight into Laws

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Abstract

The right to Conjugal visit is recognized inherent right of married prisoners that extends up to the right to have sex and procreation. There are numerous arguments for and against conjugal visits. The arguments in favor of it are based on the human rights' approach and its advantages for the reintegration of inmates, while the arguments against it are based on the difficulty in administering it and the lack of resources. Despite the debates against it, 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 prisoners behavior and rehabilitation in prisons. Doctrinal legal research methodology is employed to assess the legal status of conjugal visits under Ethiopian laws. Accordingly, the research finding shows that, in Ethiopia, the jurisprudence on the concept of conjugal rights is in its infancy stage. The Federal Democratic Republic of Ethiopia (FDRE) Constitution neither clearly allows nor prohibits the rights of the prisoners to conjugal visits. No interpretation is also made to clarify whether the constitution intends to deny the rights of the prisoners to conjugal visits or otherwise. Further, no other subsidiary legislation has conferred right to conjugal visit to prisoners. Hence, it is recommendable for Ethiopia to recognize prisoners' conjugal visits via integration into its domestic legal framework.

Keywords: Human rights, conjugal rights, prisoners, family visits

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1. Introduction

Conjugal rights are the sexual rights or privileges implied by, involved in, and regarded exercisable in law by each partner in a marriage.¹ It refers to the mutual rights between two individuals arising from being married. These rights include mutual rights of companionship, support, sexual relations, affection, and the like. The act of a husband or wife staying separately from the other without any legal cause is a subtraction of conjugal rights.² Conjugal visits in prison are private meetings between a male or a female inmate with their spouses, whereby the couple may engage in whatever legal activity they desire.³ Conjugal visits haphazardly started in the 1900s in Mississippi before becoming official programs in 1989.⁴ There is no consensus on the importance of granting conjugal rights for prisoners.⁵ Those who support the idea claim that it will aid in addressing homosexual orientation and changing the prisoner's conduct while those who disagree with this claim that variables such as custody and security issues, single parenting, the smuggling of illegal products from outside, etc. counteract the beneficial effect.⁶

It is a truism that international human rights documents like the International Convention on Civil and Political Rights, the African Charter on Humans and Peoples Rights, American Convention on Human Rights, and the European Convention on Human Rights accord various rights to prisoners. Yet, none of these instruments explicitly recognize the right to conjugal visits of the prisoners.⁷ All of

¹ Busari Halimat Temitayo. (2018). *Conjugal Rights for Prisoners: To Be Or Not To Be?..* <https://unilaglawreview.org/2018/01/21/conjugal-rights-for-prisoners-to-be-or-not-to-be/>

² Ibid.

³ 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>

⁴ Samson C. R. Kajawo. (2021). Conjugal Visits in Prisons Discourse: Is it Even an Offender Rehabilitation Option in Africa? *Advanced Journal of Science*, 8(1), 67.

⁵ Shruti Goyal. (2018). Conjugal Rights Of Prisoners. *Bharati Law Review*, April-June, 57.

⁶ Ibid.

⁷ 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, the

the international human rights instruments provide the general principles and absence of clear provision may not be taken as though the right to conjugal visit is prohibited. Taking it that way seems to violate both the minimum basic principle and the general human rights limitation system that restrictions to these rights must be lawful, serve a legitimate aim and be necessary. Because, the fundamental premise that people retain all of their human rights after being convicted, except their right to liberty, only permits restrictions that are inescapable in a closed environment or required for security and maintaining order. In principle, conjugal visits concern private life, the family, and the possibility of begetting children.⁸ More importantly, denying such visits infringes the human rights to private life, family life, and the possibility of founding a family. Therefore, the legal starting point is an obligation on the authorities to present every prisoner with the opportunity to enjoy conjugal visits.⁹

From the perspective of the human rights-based approach and other benefits of allowing conjugal visits for prisoners, conjugal visits have been provided in many penitentiary facilities in America, Europe, Asia, and Africa.¹⁰ The idea is being gradually adopted by countries worldwide on the widely agreed grounds that conjugal visits are essential in preserving family bonds and reducing tendencies in prisoners to break prison rules and regulations.¹¹ In modern-day countries like Canada, Germany, Russia, Spain, Belgium, Spain, Denmark, Pakistan, and, to

ECHR, the ACHR, and the AfChHPR. In *Prison policy and prisoners' rights* (Vol. 42, p. 38). Wolf Legal Publishers. http://www.antoniocasella.eu/archica/Kempen_2008.pdf

⁸ Ibid.

⁹ Ibid.

¹⁰ Samson C. R. Kajawo (n 4).

¹¹ Geordon Omand. (2016). *Conjugal visits help Canadian inmates reintegrate into society* [Press]. The Canadian Press. <https://www.thestar.com/news/canada/2016/10/30/conjugal-visits-help-canadian-inmates-reintegrate-into-society-experts-say.html?rf>

some extent, the U.S.A, Brazil, and Israel even allow same-sex conjugal visits for prisoners.¹²

In the Ethiopian context, the jurisprudence of allowing conjugal visits for the prisoner is at an infancy stage. It is a truism that Ethiopia's Constitution and other subsidiary laws have recognized that prisoners have the right to be visited by their spouses or partners. Not only this, the international human rights instruments ratified by Ethiopia have explicit provisions for the issues of family visits. Though the domestic laws and international instruments that are ratified have recognized family visits, the issue as to whether this visit includes prisoners' conjugal visits or not is not clear under both domestic laws and international human rights instruments. Further, the pardon and parole system as an alternative for allowing conjugal visits in other countries is not correctly working in Ethiopia. Various studies have proved that Ethiopia's pardon and parole system has a limitations due to the absence of pertinent organs that implement the program.

Therefore, this article examined and assessed the legal status of prisoners' conjugal visits under Ethiopian laws and the need for integrating conjugal visits into the Ethiopian legal framework. To this end, the article investigated all pertinent provisions of Ethiopia's domestic laws that deal with prisoners' rights in general and conjugal rights in particular. Besides, the article examined the experiences of Canada and Pakistan as they shared the chalices of allowing conjugal visits for prisoners. Canada and Pakistan were purposefully chosen because both nations have had success in ensuring that inmates are rehabilitated and that the rate of homosexuality is reduced by including a clear provision on prisoners' conjugal visits in their domestic legal frameworks. Additionally, an attempts made by African nations to permit conjugal visits for prisoners are purposefully taken to

¹² *Ibid*

demonstrate how strongly the subject is desired and gaining attention on our continent. In doing so, the paper employed doctrinal legal research methodology.

The remaining parts of this article are classified into five sections. The second section uncovers the general overview of historical development and theoretical debates against and in favor of conjugal visits. The third section provides the prisoners' conjugal visits and the obligation of the states to make provisions for conjugal visits under international human rights law. The fourth section presents Canada and Pakistan's experiences on conjugal visits of prisoners. The fifth section critically analyzes conjugal visits and the need for recognizing it under the Ethiopian legal framework. The sixth section provides conclusions and recommendations.

2. General Overview of Historical Development and Theoretical Debates *against and in favor of Conjugal Visits*

2.1. Historical development of conjugal visits

As mentioned above, a conjugal visit is a scheduled period in which an inmate of a prison or jail can spend several hours or days privately with a visitor, usually their legal spouse.¹³ The parties may engage in sexual activity. The Mississippi State Penitentiary at Parchman was the first jail in history to permit conjugal visits.¹⁴ Hopper traced the first instances of conjugal visits at this jail facility in 1900.¹⁵ Hopper claims that the conjugal visits program got off to a rough and dishonorable start without adequate planning. In the 1930s, visits were only permitted on Sundays, and such trips included the use of prostitutes' services.¹⁶ Around 1940,

¹³ Busari Halimat Temitayo(n1).

¹⁴ Samson C. R. Kajawo (n 4) 68.

¹⁵ 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/10.2307/1141470>

¹⁶ Ibid.

there was some movement toward the program's credibility. In the neighborhood of the jail, the inmates constructed their visiting structures out of leftover lumber and gave them the nickname "red homes" since they were painted the easily accessible color of red. The program was made available to all prisoners, regardless of race, in the 1940s.¹⁷ A conjugal association can be developed nowadays when a prisoner is allowed to spend some private time with his spouse or family. If the state permits "conjugal visits" in jails, the prisoner can exercise their conjugal rights while they are incarcerated.¹⁸ Depending on the policy of the relevant state, this visit could last for hours or even days.¹⁹

Parole, also known as a "furlough," is another way for inmates to exercise their conjugal rights.²⁰ When prisoners are temporarily released out of custody, they spend time with their spouses or other family members. Nearly every State has established regulations for releasing people on parole or furlough. Contrary to "furlough" or "parole," which involves unsupervised journeys away from the correctional facility for various ill-defined activities, including possible conjugal intercourse, conjugal visits are not permitted.²¹ When a prisoner is on parole or furlough, he or she returns home, where the atmosphere is more hospitable, welcoming, and conducive to forging family relationships. However, many inmates who do not meet the requirements for parole or furlough (because of the length of their sentences or failure to comply with other terms like posting a bail bond) may also forfeit their right to engage in conjugal relations.²² It is important to remember that all governments around the world have laws governing parole or furlough.²³

¹⁷ Samson C. R. Kajawo (n 4) 68.

¹⁸ Shruti Goyal (n 5) 60.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Norman Elliot Ken. (1975). The Legal and Sociological Dimensions of Conjugal Visitation in Prisons. *New England Journal on Prison Law*, 2, 47–68

²² Norman S Hayner. (1972). Attitudes towards Conjugal Visits for Prisoners. *Federation Probation*, 36, 48–53.

²³ Ibid.

Moreover, "procreation" is one of the fundamental aspects of marital rights.²⁴ With the advancement of science and technology, artificial insemination has become a possible alternative to ensure the right to procreation. The male provides sperm for artificial insemination when the female and male are not in physical touch, and the female becomes pregnant through it using the tools of artificial insemination.²⁵ Recently, inmates have pounded on the doors of courts to gain access to artificial insemination clinics for conception, notably when the state lacks conjugal visits programs, or the prisoner is ineligible to claim this right or to be temporarily released on parole or furlough.²⁶

2.2.The Theoretical Debates *against* and *in favor* of Conjugal Visit

As it is mentioned in other parts of the paper, the issue of conjugal rights for prisoners remains controversial with two distinct points of argument. The detailed scholarly debates on the conjugal visits are presented in the following sections.

2.2.1. Arguments *in favor* of conjugal visits

Arguments favoring conjugal visits in prisons have generally been based on the benefits of conjugal rights to the inmates, spouses, and prison facilities.²⁷ The first argument in favor of conjugal visits is that "it can help to lessen the issues associated with homosexuality in prisons."²⁸ Many studies have shown that conjugal visits can help to reduce the problems related to homosexuality in prisons.²⁹ For instance, Hopper, a pioneer in the study of extended family visits in

²⁴ Shruti Goyal (n 5) 60.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Shruti Goyal. (2018). Conjugal Rights Of Prisoners. *Bharati Law Review*, April-June, 70

²⁸ Ibid.

²⁹ Samson C. R. Kajawo (n 4).

jail, found that these visits drastically decreased homosexuality at the Mississippi State Penitentiary.³⁰

The second argument favoring allowing conjugal visits for a prisoner is that conjugal visits can reduce the incidences of sexual assaults and rape in prisons.³¹ 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.³² Accordingly, allowing conjugal visits for the prisoners can reduce and prevent male rape, which has become a grave concern for many states.³³

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.³⁴ By allowing prisoners to spend a significant amount of time with their spouses, the negative effect of the unisex prison environment can be diminished.³⁵

The fact that conjugal visits in prison can be used to change offenders' conduct is another argument in its favor.³⁶ 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 after release.³⁷ 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 behavior than those who did

³⁰ 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>

³¹ Samson C. R. Kajawo (n 4)70.

³² Ibid.

³³ James E. Robertson. (2003). A Clean Heart and an Empty Head: The Supreme Court and Sexual Terrorism in Prison. *North California Law Review*, 81, 433–481

³⁴ Samson C. R. Kajawo (n 4).

³⁵ Shruti Goyal (n 5) 58.

³⁶ Ibid.

³⁷ Ann Goetting. (1982). Conjugal Association in Prison: The Debate And Its Resolutions. *New England Journal On Prison Law*, 8, 141–154

not.³⁸ 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 not.³⁹ Therefore, conjugal visiting privileges would serve as a reward for a detainee's behavioural improvement and prisoner rehabilitation.⁴⁰ 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 that support the rehabilitative philosophy.⁴¹

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, is the one who broke the law. Therefore, denying spouses of the perpetrators their conjugal rights could result in punishing an innocent victim.⁴² To this end, refusing a spouse who requests conjugal visits should be viewed as denying that person's civil and human rights.⁴³ Losing a partner to incarceration can lead to financial difficulties, marital issues, and increased childcare responsibilities.⁴⁴ 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 spouse.⁴⁵

2.2.2. Arguments against Conjugal Visits

Despite the justifications for conjugal visits listed above, some academics have argued against allowing it to take place in prisons. The first is the expense of

³⁸ 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

³⁹ 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>

⁴⁰ Samson C. R. Kajawo (n 4).

⁴¹ Ibid.

⁴² Donald P. Schneller. (1976). *The prisoners' families: A study of the effects of imprisonment on the families of prisoners*. R and E Research Associates.

⁴³ Shruti Goyal (n 5) 57.

⁴⁴ Russil Durrant. (2017). *An introduction to criminal psychology* (2nd ed.). Routledge

⁴⁵ Samson C. R. Kajawo (n 4) 68.

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.⁴⁶ Besides, rooms would need to be built for such visits in addition to the funding needs to address prison overcrowding.⁴⁷ For instance, due to the country's ongoing problems with overcrowding and basic needs, the Ugandan parliament rejected the legislative revision that called for allowing conjugal visits in jail.⁴⁸

Another solid objection to the legalization of conjugal visits programs is that their administration is prone to abuse by both prisoners and prison staff.⁴⁹ Some scholars have argued that “allowing conjugal visits for prisoners may turn the prisons into prostitution brothels at government expense.”⁵⁰ 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 favors from fellow inmates.⁵¹ 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 viewpoint.⁵² 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 powerlessness. The second argument is that the frequency of heterosexual

⁴⁶ Anamica Singh and Anupal Dasgupta. (2015). Prisoners' conjugal visitation rights in India: Changing perspectives. *Christ University Law Journal*, 4(2), 73–88. <https://doi.org/10.12728/culj.7.5>

⁴⁷ Shruti Goyal (n 5).

⁴⁸ Ssentongo Yakubu. (2018). The rights of inmates to conjugal rights: Uganda in perspective. *Unilag Law Review*, 2(1), 169–182. <https://unilaglawreview.org/james/wp-content/uploads/2018/09/the-rights-of-inmates-to-conjugal-rights-yakubu-ulr-2018-vol-2-ed-1.pdf>

⁴⁹ Samson C. R. Kajawo (n 4).

⁵⁰ Anamica Singh and Anupal Dasgupta. (2015). Prisoners' conjugal visitation rights in India: Changing perspectives. *Christ University Law Journal*, 4(2), 73–88. <https://doi.org/10.12728/culj.7.5>

⁵¹ Ibid.

⁵² Ann Goetting(n37)142

activity is so limited that it will have only minimal or negligible effect.⁵³ 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. Whatever the arguments against and in favor of conjugal visits, there is a need to change the attitude towards prisoners with the changing times and sensitization of society towards human rights.⁵⁴

3. Prisoner's Right to Conjugal Visits and States Obligation under International Human Rights Law

Human rights are the primary and inalienable guarantees that describe specific standards of human behavior and are regularly protected as legal rights in municipal and international laws.⁵⁵ Various international human rights' instruments have provided a number of rights for all human beings in general and for prisoners in particular. Saving for the right to liberty which would inevitably be restricted as a matter of imprisonment, other human rights as envisaged under the international human rights instruments are equally applicable for prisoners.

Human rights do not end at prison gates since correctional facilities like prisons are designed to correct and rehabilitate inmates.⁵⁶ This is reaffirmed under various international and regional human rights' instruments. Prominently, the ICCPR under article 10 expressly provides that detained persons should be treated with their dignity. Moreover, the respective supervisory organs of the international and regional human rights' instruments make it clear through their jurisprudence that deplorable detention conditions constitute a violation of torture, cruel, inhuman, or

⁵³ Ibid.

⁵⁴ Shruti Goyal (n 5) 60.

⁵⁵ Busari Halimat Temitayo(n1).

⁵⁶ Ibid.

degrading treatment or punishment.⁵⁷ This approach broadens the horizon of protection of human rights' abuses in detention places as torture in all its forms is prohibited in many human rights' instruments such as U.D.H.R., ICCPR, A.C.H.P.R., ECHR, and A.C.H.R.⁵⁸

Furthermore, the 1996 Kampala Declaration on Prison Conditions in Africa and Plan of Action recommend that prisoners' rights should always be upheld and that their rights shall not be taken away by reason of being in imprisonment. Besides, it provides that prisoners' living conditions should respect their human dignity and that prison regulations must not "aggravate the suffering already caused by the detention."⁵⁹ One of the declaration's important statements in paragraph one No. 2 recognizes that prisoners should keep all of their rights that aren't expressly taken away by the fact of their detention.⁶⁰

Unfortunately, no international human rights treaties, principles, or minimum requirements for inmates have established clear requirements or norms that specifically address the right to conjugal visitation. They only laid down fundamental rights and means of treatment that may ultimately be important for recognizing such rights of prisoners. The absence of explicit provisions that recognize a right to conjugal visits under the human rights treaties would inevitably take us to the interpretation. As it is mentioned above, saving for the right to liberty that would inevitably be restricted as a matter of imprisonment, other human rights of prisoners do not end at prison gates and prisoners' human dignity should not be ignored. Further, it is a minimum basic principle and the general human rights limitation system that restrictions to rights must be lawful, serve a legitimate

⁵⁷ Addisu Gulilat. (2012). *The Human Rights Of Detained Persons In Ethiopia :Case Study In Addis Ababa* [Master's Thesis]. Addis Ababa University.

⁵⁸ Ibid.

⁵⁹ 'THE KAMPALA DECLARATION ON PRISON CONDITIONS IN AFRICA'

<<https://www.penalreform.org/wp-content/uploads/2013/06/rep-1996-kampala-declaration-en.pdf>> accessed 25 June 2021.

⁶⁰ Ibid.

purpose and should be necessary. Accordingly, the fundamental premise that people retain all of their human rights after being convicted, except their right to liberty, only permits restrictions that are inescapable in a closed environment or required for security and maintaining order.⁶¹

Moreover, the ability of prisoners and their relatives to exercise their rights to privacy, family life, and procreation is significantly impacted by the restriction of their liberty. The right to procreation is expressly recognized by human rights instruments like the ICCPR, UDHR, European Convention on Human Rights (ECHR), and the A.C.H.R.⁶² Hence, limiting the ability of prisoners to enjoy conjugal visits with their legal spouse due to state action implies limiting the right to family life and possibly the right to have a family.

Furthermore, denying prisoners to enjoy conjugal rights has a negative implication on the right to health. As provided under the United Nations general comment no.14 on article 12 of CESCR, the right to health includes the right to control one's health and body, including sexual and reproductive freedoms, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment, and experimentation and by contrast, the opportunity for people to enjoy the highest attainable level of health.⁶³ The right to health is clearly recognized under international and regional human rights instruments like

⁶¹ Piet Hein van Kempen, 'Positive Obligations to Ensure the Human Rights of Prisoners: Safety, Healthcare, Conjugal Visits and the Possibility of Founding a Family under the ICCPR, the ECHR, the ACHR and the AfChHPR', *Prison policy and prisoners' rights*, vol 42 (Wolf Legal Publishers 2008) <http://www.antoniocasella.eu/archica/Kempen_2008.pdf>.

⁶² 'See Article 16 of UDHR, Article 23 of the ICCPR, Article 18 of ACHPR, and Article 12 of the European Convention on Human Rights.'

⁶³ Office of the higher commission for Human rights, 'CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)' <<https://www.refworld.org/pdfid/4538838d0.pdf>> accessed 23 June 2022.

ICESCR, CEDAW, CRC, and ACHPR.⁶⁴ Limiting the ability of prisoners to enjoy conjugal visits is limiting the right to health of the prisoner.

In a nutshell, the absence of an explicit provision that recognizes a right to conjugal visits under the human rights treaties seems to violate both the minimum basic principle and the general human rights limitation system that restrictions to rights must be lawful, serve a legitimate purpose, and should be necessary.⁶⁵ Therefore, the legal starting point is an obligation on the states to present every prisoner with the opportunity to enjoy conjugal visits.⁶⁶ In State Reports to the UN Human Rights Council of the Committee on Economic Social and Cultural Rights, the allowance of and provision for conjugal visits has been presented as a fulfillment of the obligation to secure humane living conditions and treatment of prisoners.⁶⁷ More importantly, considering articles 7 and 10 of ICCPR, the UN Human Rights Council of the Committee on Economic Social and Cultural Rights holds that state parties must ensure that the rights of persons deprived of their liberty are protected on equal terms for men and women.

As provided under General Comment No. 22 on article 12 of the International Covenant on Economic, Social, and Cultural Rights, it was the stand of the committee that state parties are under immediate obligation to eliminate discrimination against individuals and groups and to guarantee their equal right to sexual reproductive health.⁶⁸ To this effect, states are required to repeal or reform laws and policies that nullify or impair certain individuals and groups' ability to realize their right to sexual and reproductive health and the state party has the

⁶⁴ 'See Article 12 of ICESCR, Article Art.11(1)(f),12, and 14(2)(b) of CEDAW, Article 24 of CRC, and Article 16 of ACHPR.'

⁶⁵ Piet Hein van Kempen, (n 61)39.

⁶⁶ Ibid.

⁶⁷ Piet Hein van Kempen, (n 61).

⁶⁸ United Nations Economic and Social Council, 'General Comment No. 22 (2016) on the Right to Sexual and Reproductive Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)' <https://digitallibrary.un.org/record/832961/files/E_C.12_GC_22-EN.pdf> accessed 25 June 2022.

obligation to mobilize all available resources, including those made available through international assistance and cooperation, with a view to comply with its obligations under the International Covenant on Economic, Social, and Cultural Rights.⁶⁹ Again, according to the general comments made by the UN Committee on article 23 of the ICCPR, state parties shall take legislative, administrative, or other actions to guarantee protection of a family.⁷⁰ States parties' reports should explain how the State and other social institutions provide the necessary protection for the family, whether and to what extent the State provides financial or other support for the activities of such institutions, and how it ensures that these activities are compatible with the Convention.⁷¹ Therefore, it is the responsibility of states that are signatories to international human rights treaties to ensure that the right to family and the right to reproductive health are protected. This should be true both inside and outside the prisons.

4. Comparative Experiences on conjugal Visits

Despite arguments for and against conjugal visits mentioned above, societies around the world have tended to support it legally through constitutions and other subsidiary legislation. In this regard, Canada and Pakistan have successful experiences. Besides, the efforts made by several African governments are encouraging, albeit not yet successful. Accordingly, the experiences of Canada and Pakistan as well as initiatives from African countries will be presented as follows:

4.1.Canada

The Private Family Visiting program for prisons and other detention centers was established in Canada in 1980. Until then, only a few regional and sporadic

⁶⁹ Ibid.

⁷⁰ 'UN Human Rights Committee General Comment No.19 on Article 23 of ICCPR.', paragraph 3 <<https://www.refworld.org/pdfid/45139bd74.pdf>> accessed 23 June 2022.

⁷¹ Ibid.

municipal facilities with sentences of less than two years had used this kind of action.⁷² The execution of these programs is consistent with creating a correctional ideology that bases punishment on offenders' social rehabilitation.⁷³ The 1970s saw growth and expansion of this mindset, which then blossomed within the Canadian Security Service (C.S.C.) in the 1980s and 1990s.⁷⁴

Currently, the Correctional Service of Canada bases much of its philosophy on the notion that punishment is meted out to protect society by facilitating offenders' social rehabilitation. As provided under Article 71(1) of the Act on the correctional system and parole release, inmates have the right to pursue relationships with their family, friends, or other people to strengthen their ties to the community.⁷⁵ In Canada, all prisoners aside from those under disciplinary measures or in danger of family violence are allowed to have "private family visits" of up to 72 hours every two months.⁷⁶ The goal of this is to help offenders build positive relationships with society so that their release will be more accessible.⁷⁷ Article 3 of the Correctional and Conditional Release Act suggests that "the federal correctional system aims to contribute to preserving a just, peaceful, and safe society by supporting criminals in their rehabilitation and community reintegration."⁷⁸

Family relationships significantly influence successful social rehabilitation, according to a study done in Canada in 1998–1999 on the topic.⁷⁹ Families are

⁷² T.Foran. (1995a). A descriptive comparison of demographic and family characteristics of the Canadian and offender populations. *Forum on Corrections Research*, 7(2), 3–5

⁷³ Marion Vacheret. (2005). *Marion Vacheret, Private Family Visits in Canada, Between Rehabilitation and Stricter Control: Portrait of a System*. <https://journals.openedition.org/champpenal/2322#tocto2n1>

⁷⁴ Ibid.

⁷⁵ Corrections and Conditional Release Act of Canada, Pub. L. No. S.C. 1992, c. 20 (1992).

⁷⁶ Busari Halimat Temitayo(n1).

⁷⁷ Marion Vacheret. (2005). *Marion Vacheret, Private Family Visits in Canada, Between Rehabilitation and Stricter Control: Portrait of a System*. <https://journals.openedition.org/champpenal/2322#tocto2n1>

⁷⁸ Corrections and Conditional Release Act of Canada, Pub. L. No. S.C. 1992, c. 20 (1992).

⁷⁹ Marion Vacheret. (2005). *Marion Vacheret, Private Family Visits in Canada, Between Rehabilitation and Stricter Control: Portrait of a System*. <https://journals.openedition.org/champpenal/2322#tocto2n1>

portrayed as essential to successful social rehabilitation by virtue of their sheer presence and their involvement in private family visitation programs during the prison term. They uphold and strengthen the prisoner's connections to the outside world.⁸⁰

4.2.Pakistan

Pakistan is one of the few countries in the world that allows couples to engage in sexual activity while incarcerated as a punitive measure. According to a ruling by Pakistan's Supreme Court on April 6, 2010, inmates must have access to opportunities for conjugal relationships inside prison.⁸¹ According to a Federal Shariat Court ruling, married convicts must be permitted conjugal visits at the authorized facilities inside the jail complex. Alternatively, they should be given brief parole so they can see their spouses.⁸² After the decision, Sindh Province was the first to pass legislation allowing married inmates to visit each other within the prison. Accordingly, the Sindh Home Department allowed convicted inmates' meetings with their spouses for one day or night in 3 months.⁸³ Given the facts above, we can conclude that prisoners who have the opportunity for conjugal meetings are more likely to follow the rules while they are in custody, are more likely to be successfully rehabilitated in their post-release lives, and that prison administrations can better achieve the goal of prisoners' rehabilitation by giving them more opportunities for conjugal meetings.⁸⁴

⁸⁰ T.Foran. (1995b). The Family Side of Corrections. *FORUM on Corrections Research*, 7(2).

⁸¹ Rais Gul. (2018). Prisoners' Right to Fair Justice, Health Care and Conjugal Meetings: An Analysis of Theory and Practice (A case study of the selected jails of Khyber Pukhtunkhwa, Pakistan). *Pakistan Journal of Criminology*, 10(4), 42–59.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Busari Halimat Temitayo(n1).

It should be highlighted that the Pakistani Supreme Court has protected and stressed the application of detainees' conjugal rights in all of the nation's prison centers.⁸⁵ In light of the supreme court orders, the rules that recognize the rights of conjugal visits of the prisoner are inserted into Pakistan's domestic statutes. Accordingly, under rule 545-A of PPR, the prisoners can avail the facility as a right (excluding a few exceptions). The said provision was inserted on the directions issued by the Federal Shariat Court in 2010 in *Dr. Muhammad Aslam Khaki and others vs. The State and others case*.⁸⁶ Despite having already been inserted by an adjustment termed "special meetings" under rule 544 in 2005 and Punjab under rule 545-A in 2007, the right was finally recognized at the federal level through this verdict.⁸⁷

In a nutshell, the Federal Shariat Court's (F.S.C.) primary defense for ruling in favor of conjugal visits is that doing so might be the most effective way to curtail married criminals' propensity for drug misuse and sexual assault of other inmates. Further, his family should not suffer because only the criminal should be held accountable for his crime.⁸⁸ The Federal Shariat Court recommended two sets of possibilities while dealing with Aslam Khaki's case: the first was to create private family gathering spaces inside prison walls; the second was to send suitable inmates on conjugal parole for a few days every four months.⁸⁹ Through PPR Rule 223, the quick-release on parole process is already in place nationwide. To make the right actually usable, it is more simple and more practical to introduce a specific category of "conjugal parole" into the system. Such parole would be used

⁸⁵ Ibid.

⁸⁶ Aisha Tariq. (2019). *Rights Of Prisoners: A Comparative Study of Sharī'Ah & Law with Special Reference to Pakistani Statutes and Case Law* [Ph.D. thesis]. international Islamic university

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ Ibid 119.

as a chance for the offender's parents and other family members and their spouses.⁹⁰

4.3. Initiatives taken by African countries toward Conjugal visits

Numerous African nations have begun to introduce conjugal visits for inmates after realizing the benefits of doing so, however, it has not yet been done well. The provision of conjugal visits to prisoners has long been a contentious topic in many African nations, with implementation meetings with little to no success, primarily because of a lack of funding.⁹¹ To mention some of the initiatives, with the primary purpose of reducing sexual abuses among the inmates prevalent in prison, in 2012, the Tanzanian government announced plans to grant conjugal rights to prisoners.⁹² However, the program, which was eventually introduced, was short-lived in Tanzania since the new President of the country directed an end to it in 2018.⁹³ Further, with the primary purpose of rehabilitating prison inmates and reducing prison homosexuality and HIV spread, in 2003, Kenya announced its plan to introduce conjugal visits for prisoners.⁹⁴ The government was even given a direction for the prison administration to make available suitable facilities within

⁹⁰ Ibid.

⁹¹ Samson C. R. Kajawo (n 4) 71.

⁹² Christopher Majaliwa, 'Tanzania: Conjugal Rights to Be Granted to Prisoners' *Tanzania Daily news* (Tanzania, Dere salaam, 2 November 2012) <<https://allafrica.com/stories/201211030279.html>> accessed 22 April 2022.

⁹³ Samson C. R. Kajawo (n 4) 71.

⁹⁴ Ibid.

prison premises in readiness for this program.⁹⁵ However, the conjugal visit's introduction plans in Kenyan prisons were still in limbo in 2019.⁹⁶

Again, Zambia has also chosen a wise course in allowing couples to visit prisons. The government was advised to consider establishing inmates' conjugal visitation rights in 2016 during the review of prison acts by the then-Commissioner General of Zambia Correctional Services, who noted that it was a good practice.⁹⁷ Conjugal visits were not included in the prison statute, but the topic is still active since some activists, including the Prison Care and Counseling Association, are still pushing for further revisions to the prison regulations to permit prisoners' conjugal rights.⁹⁸

Swaziland is the other African nation that has taken a significant step toward allowing conjugal visits for prisoners. By citing the government's plan to introduce conjugal visits in prisons, Swaziland was reported to be the first African country and the only 16th country worldwide to introduce conjugal visits for inmates in 2012.⁹⁹ Beyond the plan to allow conjugal visits, the Swaziland correctional service had plans to construct two-bedroomed houses at every prison facility in the country for the well-behaving eligible inmates to enjoy their conjugal rights.¹⁰⁰ Though the government responded to the critics and objections against allowing conjugal visits for the prisoners, the program is not yet implemented. Other African

⁹⁵ Rachel Wyatt, 'Male Rape in U.S. Prisons: Are Conjugal Visits the Answer?' (2006) 37 Case Western Reserve Journal of International Law 579.

⁹⁶ Wachira Mwangi, 'Kenya: Inmates Demand Conjugal Rights, Balanced Diet and Right to Bury Kin' *Nairobi news* (kenya, Nairobi, 5 April 2019) <<https://nairobi.news.nation.co.ke/life/inmates-demand-conjugal-rights-balanced-diet-and-right-to-bury-kin>> accessed 5 April 2022.

⁹⁷ Kelvin Mbewe, 'Prisons Conjugal Visits on Cards' *Zambia Daily Mail* (zambia, 28 May 2016) <<http://www.daily-mail.co.zm/prisons-conjugal-visits-on-cards/>> accessed 22 April 2022.

⁹⁸ Samson C. R. Kajawo (n 4) 72.

⁹⁹ Mantoe Phakathi, 'Swaziland: Allowing Conjugal Visits - a Premature Adjudication?' *Think Africa Press* (12 October 2012) <<https://allafrica.com/stories/201210150018.html>> accessed 23 April 2022.

¹⁰⁰ Samson C. R. Kajawo (n 4) 72.

countries like Zimbabwe, Egypt, and South Africa also took some initiatives though it is not yet fully implemented.¹⁰¹

5. Prisoners' Right to Conjugal visits in Ethiopia

Like other legal systems, the FDRE. Constitution (herein after Constitution) has a separate chapter that is exclusively dedicated to the Human Rights. Chapter three of the Constitution is divided into "Human Rights" ¹⁰² and "Democratic Rights."¹⁰³ Everyone is entitled to the rights entrenched in the Constitution. Accordingly, detained persons are entitled to these Constitutional rights, except those limited explicitly as a natural consequence of deprivation of liberty. Under its title that deals with the Rights of Persons Held in Custody and Convicted Prisoners, the constitution has reaffirmed that detained persons are entitled to the rights guaranteed by the Constitution and all persons held in custody and persons imprisoned upon conviction and sentencing have the right to treatments respecting their human dignity.¹⁰⁴ Under the same provision, all persons shall have the opportunity to communicate with and be visited by their spouses or partners, close relatives, friends, religious councilors, medical doctors, and legal counsel.¹⁰⁵ From this, it is clear that the Constitution has recognized the right to contact with the outside world or family visits for the prisoners. This provision is open for interpretation and it is possible to argue that the right to family visits as envisaged under the Constitution extends to prisoners. Again, article 34 of the FDRE Constitution has recognized the right to marital and family rights.¹⁰⁶ Specifically,

¹⁰¹ Ibid 71–72.

¹⁰² The Federal Democratic Republic of Ethiopia Constitution, Pub. L. No. Neg. Gaz. year 1, No 1, proc. No 1 (1995, article 15-29

¹⁰³ Ibid, article 29-44

¹⁰⁴ Ibid, article 21(1)

¹⁰⁵ Ibid, article 2 1(2)

¹⁰⁶ The Federal Democratic Republic of Ethiopia Constitution 1995, article 34.

Article 34(3) of the same constitution provides that “the family is the natural and fundamental unit of society and is entitled to protection by society and the State.”¹⁰⁷ It is apparent from this article that the state has a commitment to defend the family as the natural and fundamental unit of society. This protection should not end at the prison gate, and prisoners should be allowed to have conjugal visits in order to maintain their constitutionally guaranteed right to the family.

Further, the FDRE Constitution has adopted the monist approach to incorporation of international law.¹⁰⁸ Accordingly, all international agreements ratified by Ethiopia are integral part of the law of the land.¹⁰⁹ Hence, international instruments that Ethiopia ratifies are subject to enforcement before domestic courts without further act for domestication.¹¹⁰ Accordingly, the general international human rights instruments and those exclusively dedicated to detained person's rights can be invoked by detainees so long as they are ratified by Ethiopia. As it is discussed under section three of the paper, though the international human rights instrument does not clearly provide the right to conjugal visits, the UN Human Rights Council of the committee's general comments no.22 on article 12 of the International Covenant on Economic, Social, and Cultural Rights has clarified the issues and imposed an obligation on member states to ensure the right to sexual reproductive health which cannot be implemented unless we allow conjugal visits for prisoners.¹¹¹ The same position is reflected by the general comments of the UN Human Rights Committee on article 23 of ICCPR.¹¹² Ethiopia has already ratified

¹⁰⁷ Ibid, article 34(3).

¹⁰⁸ Sisay Alemahu Yeshanew. (2008). The Justiciability of Human Rights in the Federal Democratic Republic of Ethiopia. *African Human Rights Law Journal*, 8(2).

¹⁰⁹ The Federal Democratic Republic of Ethiopia Constitution, Pub. L. No. Neg. Gaz.year 1,No 1, proc.No 1 (1995)

¹¹⁰ Sisay Alemahu Yeshanew. (2008). The Justiciability of Human Rights in the Federal Democratic Republic of Ethiopia. *African Human Rights Law Journal*, 8(2).

¹¹¹ United Nations Economic and Social Council (n 69).

¹¹² ‘UN Human Rights Committee General Comment No.19 on Article 23 of ICCPR.’ (n 70).

both conventions¹¹³, and hence, from the cumulative interpretation of the international human rights instruments in which Ethiopia is a party and domestic laws, we can argue that conjugal visit is allowed under the Ethiopian legal system. Though we may argue in favor of conjugal visits by citing domestic laws and international instruments ratified by Ethiopia, the country has neither clearly allowed nor prohibited the prisoners' conjugal visits. No interpretation is also made to clarify whether the Constitution intends to deny conjugal rights of prisoners or otherwise. Furthermore, the parliamentary debates and other technical notes are not clear enough on the issues of conjugal visits of the prisoners.¹¹⁴ Accordingly, the minutes of debate during the adoption of the constitution, as well as the commentary by the Constitution's drafters did not unequivocally provide whether the right to family visits includes extended visits or conjugal visits. The explanatory notes on the Constitution provide that the right to be visited by a close family or legal partner, as stated in article 21(2) of the Constitution, is the right to be in the same room to share a secret with each other.¹¹⁵ Beyond this, nothing is provided as to whether the right to conjugal visit is within the ambits of the right to family visit or not.

Another relevant law on the protection of prisoners, the Federal Prison Commission Establishment Proclamation of Ethiopia No.365/2003, has provided that prisoners are given the right to communicate with their spouses, close

¹¹³ Abiyou Girma Tamirat, 'ETHIOPIA'S HUMAN RIGHTS TREATY REPORTING TO THE UN TREATY BODIES' <<https://www.abbyssinialaw.com/blog-posts/item/1483-ethiopia-s-human-rights-treaty-reporting-to-the-un-treaty-bodies#:~:text=.>> accessed 23 June 2022.

¹¹⁴ 'The 1995 Ethiopian constitution Explanatory Note'

<<https://www.abbyssinialaw.com/laws/constitutions/constitutions/the-1995-ethiopian-constitution-explanatory-note-amharic-version>>,p.48, accessed 13 July 2022.

¹¹⁵ Ibid.

relatives, friends, medical doctors, legal counselors, and religious leaders.¹¹⁶ This implies that prisoners have a right to be visited by their spouses and other close relatives/friends, doctors, and religious leaders. Yet, like that of the FDRE Constitution, The Federal Prison Establishment Proclamation is not clear as to whether the right to be visited by spouses extends to conjugal visits or not. Besides, no other administrative rules or directives provide prisoners right to conjugal visits.

As the FDRE Constitution and other subsidiary laws neither clearly allows nor prohibits the prisoners' rights to conjugal visits, the issue as to whether the prisoners should be allowed to enjoy conjugal visits or not may create a confusion. Yet, one may wonder whether the probation and parole system, and using artificial insemination may serve as an alternative for allowing conjugal visits for the prisoners. Ethiopia's criminal law has recognized the probation and parole system. Probation is the release of a convicted offender under the supervision of a probation officer subject to revocation upon breach of the conditions attached to his/her release.¹¹⁷ The Ethiopian criminal code recognizes the idea of probation. The court is given a discretionary power to order probation if it believes that it will promote the reform and reintegration of the criminal.¹¹⁸ In addition, the Ethiopian criminal law also recognizes parole, whereby a prisoner is conditionally released before completing the term of imprisonment.¹¹⁹ The court may grant parole after receiving recommendations from the prison's administration and having regard to the criminal's behavioral reform, provided this process helps the offender at an earlier stage to reintegrate with his family and the community.¹²⁰ Like probation, parole is subject to certain conditions, and non-compliance with these conditions

¹¹⁶ Federal Prison Commission Establishment Proclamation, Pub. L. No. Fed. Neg.Gaz., Proclamation No.365/2003, (2003),article 29

¹¹⁷ Endalew Lijalem. (2014). The Space for Restorative Justice in the Ethiopian Criminal Justice System. *Bergen Journal of Criminal Law and Criminal Justice*, 2(2), 236.

¹¹⁸ Federal Democratic Republic of Ethiopia Criminal Code, Pub. L. No. Neg.Gaz, proc. no.414/2004 (2004),article 190

¹¹⁹ Ibid,article 201

¹²⁰ Ibid,article 202(1)

may lead to the revocation of the parole, whereby the prisoner is sent back to prison to serve the remainder of the sentence.¹²¹

Although the parole and probation systems are recognized by the FDRE. Criminal code, it is extremely difficult to use them as a substitute for permitting conjugal visits. According to studies, even though Ethiopia has some laws governing the pardon and parole system, they are useless as there are no institutions in place to monitor parolees and probationers.¹²² The studies further demonstrate that Ethiopia's criminal justice system's most neglected components are the parole and probation systems.¹²³ Concerning the parole system, it is even challenging to justify parole for not allowing conjugal visits for the prisoners. Because the parole is applicable for specific groups of eligible prisoners based on the conditions specified under article 202 of the Ethiopian criminal code.

Besides, artificial insemination is another option that the international communities are using as a substitute to at least compromise the right to found a family or procreate, which may not be accomplished without permitting conjugal visits for prisoners. Yet, the country's economic status and the existing technological infrastructure will never enable Ethiopia to use artificial insemination in all prison centers across the country. Let alone facilitating artificial insemination for the prisoners, other necessary basic facilities like education, health services, and other related services are not being given properly. Hence, there is a pressing need for Ethiopia to recognize the right to conjugal visits for the prisoners. The author is of the opinion that only legal spouses/partners should be permitted to have conjugal

¹²¹ Ibid, article 206

¹²² Shewit khasey. (2017). Community based rehabilitation of offenders: an overview of pardon and parole in Ethiopia. *Hawassa University Law Journal*, 1(1), 23

¹²³ Ibid.

visits, as allowing such visits for all convicts would turn the prison administration or facilities into a passageway for prostitution.

5.1. The Need to Recognize Conjugal Visits under Ethiopian Law

As it is mentioned above, Ethiopia's existing legal framework does not recognize the right to conjugal visits for prisoners. This could inevitably be an obstacle for Ethiopia to share from the chalices of allowing conjugal visits for prisoners. Canada and Pakistan have recognized conjugal visits for prisoners by inserting an explicit provision into their domestic laws. By doing so, they successfully prevent homosexuality, rape, or physical violence by the same sex and ensure prisoners' rehabilitation.

Coming to the context of Ethiopia, there is a pressing need for the explicit recognition of conjugal visits for the prisoners. The prominent reason that necessitates Ethiopia to recognize conjugal visits for prisoners is the prevalence of homosexuality in different prison centers. Various reports and studies have proved that homosexuality is rampant in many prison centers of Ethiopia.¹²⁴ One of the driving factors for such perplexity is attributed to a non-recognition of conjugal visits for legally married couples. One of the research conducted on the treatment of prisoners in the Bale zone reveals that homosexuality and physical violence or rape by the same-sex have become a regular day-to-day activity of the prisoners.¹²⁵ Though homosexuality is recognized in different countries as legal right, under the new criminal code of Ethiopia, it is punishable by simple imprisonment.¹²⁶ Hence, to reduce such illegal activities, Ethiopia must take a lesson from Canada and Pakistan and give clear recognition to conjugal visits of the prisoners.

¹²⁴ Sailaja Busi and Zewdie Oltaye, 'Assessment of Magnitude of Sexually Transmitted Infections, Sexual and Reproductive Health Status among Prisoners Aged Between 18-49 Years in Tabor Prison, Hawassa, Ethiopia' (2016) 8 *Momona Ethiopian Journal of Science* 89.

¹²⁵ Zakarias Admasu and Alemu Balcha. (2018). *Treatment of juvenile offenders in law and practice: The case of Bale Zone* [Unpublished research]

¹²⁶ Federal Democratic Republic of Ethiopia Criminal Code, Pub. L. No. Neg.Gaz, proc. no.414/2004 (2004),article 629.

The second reason that necessitates recognizing conjugal visits for the prisoner is related to the prisoner's rehabilitation. One of the primary purposes of Ethiopian criminal law is rehabilitation. The reformation and rehabilitation objective of the criminal law is best provided under the preface of the FDRE Criminal code of 2004.¹²⁷ Allowing conjugal visits has multidimensional advantages for the prisoners in particular and society in general. If the conjugal relationships between the spouses remain intact, it will make the reintegration of the prisoners easy. By allowing conjugal visits, Canada and Pakistan have achieved rehabilitation of the prisoners.

It is a truism that homosexuality is immoral and punishable in Ethiopia.¹²⁸ Accordingly, the reaction of the society against such a practice is not favorable. Such negative perception of the community toward the prisoner's behavior could inevitably lead to the social exclusion of the prisoners when they are released from the prison centers. This would, in turn, affect the "reintegration of the prisoners into the society"¹²⁹, which is the primary purpose of the criminal law of Ethiopia. Besides, conjugal visits can serve as an incentive for good conduct in prison since inmates strive to avoid any misconduct which might disqualify them from having a conjugal visit.¹³⁰ Accordingly, Ethiopia and other countries claiming to have embraced rehabilitation need to seriously consider conjugal visits as a social support program activity.

The third reason that necessitates allowing conjugal visits in Ethiopia is related to the protection of the human rights of the spouses. If a conjugal visit is not allowed

¹²⁷ Ibid, preface, paragraph 8.

¹²⁸ Federal Democratic Republic of Ethiopia Criminal Code 2004, article 629.

¹²⁹ Ibid, preface, paragraph 8.

¹³⁰ Shruti Goyal (n 5).

for the prisoners, it negatively affects the rights of the spouses of the prisoners. It is just punishing one of the spouses for the crime committed by their wives or husbands. Besides, procreation is one of the constitutionally guaranteed rights of every person. This right may not be realized unless we allow conjugal visits for the prisoners. What makes things cumbersome in Ethiopia is that the pardon and parole system serving as an alternative for ensuring the right to procreation is unsuccessful. Studies have proved that Ethiopia's pardon and parole law is the most neglected area of law. Its implementation is stumbled due to the absence of pertinent organs that work on its implementation.

Moreover, artificial insemination that could be serving as an alternative for allowing conjugal visits may not be successful. The country's awareness and economic status may not qualify for using artificial insemination in all prison centers of Ethiopia.

Finally, allowing conjugal visits can be justified from a psychological dimension. Those scholars who argued infavor of allowing conjugal visits advocate that the practice has both emotional and biological benefits. Accordingly, they propose that conjugal visitation could be instituted in many prison settings without disruption of proper procedures and with a lessening of tension and frustration.¹³¹ They went on to say that it is utterly unreasonable to forbid men and women from engaging in societally accepted sexual practices; for doing so leads to hostile, aggressive, and occasionally dangerous behavior toward other convicts and staff members. Additionally, they revealed that the high rate of divorces that follows a spouse's imprisonment would be significantly reduced, if the inmate was present with his wife and children and maintained some level of family communication and

¹³¹ Ronald G .Turner, 'Sex In Prison' (2000) 36 Tennessee Bar Journal 6.

integrity.¹³² Hence, nothing will make it an exception for Ethiopia and there is a need for Ethiopia to recognize conjugal visits for legal spouses.

6. Conclusion

Prisoners' conjugal rights exist when their spouses or family makes conjugal visits to their places of confinement. There are fierce arguments in favor of and against allowing conjugal visits for prisoners. Despite the debates, the international community has tended to support conjugal visits for inmates by enshrining it in constitutions and other subsidiary legislation. This is attributed to the advantages of allowing conjugal visits in deterring homosexual orientation and managing physical violence in prisons. Its role is to achieve the rehabilitation of the prisoners, and it has favorable implication on other human rights concerns including the right to procreation. Therefore, the international community has come to the conclusion that allowing legally married convicts and their spouses to have conjugal visits cannot harm anyone. Countries claiming to have embraced rehabilitation need to seriously consider conjugal visits as a social support program activity . If properly provided, conjugal visits can serve as an incentive for good conduct in prison since inmates strive to avoid any misconduct, which might disqualify them from having a conjugal visit. The experiences of Canada and Pakistan are good in this respect. Both countries have allowed conjugal visits and shared from the chalices of allowing the practice. These countries found it important that allowing conjugal visits contribute to prevent homosexuality and promote rehabilitation of the prisoners .

In the Ethiopian context, the FDRE constitution has not conferred conjugal visits for the prisoners. The same is true for other subsidiary laws of Ethiopia. Despite

¹³² Ibid.

this, the studies reviewed revealed that homosexuality, rape, and physical violence have been observed rampant in Ethiopia's prison centers. Besides, the major goal of Ethiopian criminal law, which is prisoner rehabilitation, is at its crossroads. Further, though the criminal justice system of Ethiopia has recognized the pardon and parole system, which may be used as an alternative for conjugal visits, its implementation has limitations. Studies have shown that Ethiopia's pardon and parole system is the most neglected area of law and its implementation was futile due to the absence of organs that works on its implementation. Hence, there is a need for Ethiopia to take a lesson from Canada and Pakistan and use Conjugal visitation as the rehabilitation option and prevention of homosexuality in prison centers.

Based on the above conclusion, the following way forward could be suggested for Ethiopia. First, the right to conjugal visits and procreation is a component of the right to live with dignity, entrenched in the right to life and liberty as envisaged under articles 15 and 17 of the FDRE constitution. Besides, it could be an option for Ethiopia to manage homosexuality and ensure the rehabilitation of the prisoners. Hence, Ethiopia should recognize the right to conjugal visits for legally married prisoners by introducing it into its domestic laws. Further, the mere existence of a law does not guarantee its implementation. Accordingly, Ethiopia should put the pardon and parole system into effect as it is intended under the criminal code. This could help to ensure the convicts' rehabilitation, which is the principal goal of Ethiopia's criminal code.