



Addis Ababa University College of Law and Governance

School of Law

**The Right of Prisoners for Conjugal Visitation in Ethiopia: A Case Study of
Federal Prisons in Addis Abeba**

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**A thesis Submitted to the School of law of Addis Ababa University in Partial
Fulfillment of the Requirements for the Award of Masters of Law (LL.M)
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Declaration

I, the undersigned, hereby declare that this thesis is my original work, has not been presented in any other university or institution and that all sources of materials used for the thesis have been duly acknowledged.

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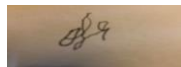
**The Right of Prisoners for Conjugal Visitation in Ethiopia: A Case Study of
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Acronyms

ART: Article

CAT: Convention against Torture

FDRE: Federal Democratic Republic of Ethiopia

ICCPR: International Covenant on Civil and Political Rights

ICESCR: International Covenant on Economic, Social, and Cultural Rights

PDRE: Peoples Democratic Republic of Ethiopia

PPR: Pakistan Prison Rule

STDs: Sexual Transmitted Disease

UDHR: Universal Declaration of Human Rights

UN: United Nations

UNGA: United Nations General Assembly

UNSMR: United Nations Standard Minimum Rules for the Treatment of Prisoners

WHO: World Health Organization

Table of Contents

Titles

Pages

Declaration.....	□
Approval Sheet.....	□
Acknowledgment.....	iv
Acronyms.....	□
Abstract.....	□
List of Tables.....	ix
Chapter One: Introduction	1
1.1. Background of the Study	1
1.2. Statement of the Problem.....	4
1.3. Research Questions.....	5
1.4. Research Objectives.....	6
1.4.1. General Objective	6
1.4.2. Specific Objective.....	6
1.5. Significance of the Study.....	6
1.6. Scope of the Study	7
1.7. Limitation of the Study	7
1.8. Ethical Considerations	7
Chapter Two:- Review of Related Literatures	8
2.1. The Concept of Conjugal Visitation.....	8
2.2. The Historical Development of Conjugal Visitation.....	9
2.3. The Theoretical Debate in favor and against Conjugal Visit	10
2.4. The Nexus between Conjugal Visitation and Other Human Rights of Prisoners.	11
2.4.1. Conjugal Visit and Reproductive Rights	12

2.4.2. Conjugal Visit and the Right to Strengthen Family Bondage.....	13
2.4.3. Conjugal Visit and the Right to Health.....	14
2.4.4. The Impacts of Conjugal Visitation on the Rights of Spouse of the Prisoner ...	15
2.4.5. The Role of Conjugal Visitation for Rehabilitation Purpose of Punishment.....	16
2.5. Types of Conjugal Visitation.....	17
2.6. Legal Frameworks for Conjugal Visitation.....	18
2.6.1 International Human Right Instruments.....	18
2.6.1.2. The International Covenant on Civil and Political Rights.....	19
2.6.1.3. International Covenant on Economic, Social, and Cultural Rights (ICESCR)	20
2.6.1.4. United Nations standard Minimum Rules and Principles for the Treatment of Prisoners..21	
2.6.2. The Right to Conjugal Visit under Regional Human Right Instruments	22
2.6.2.1. The American convention on Human Rights.....	23
2.6.2.2. African Charter on Human and Peoples’ Rights.....	23
2.7. Prisoners’ Right to Conjugal visits in Ethiopia.....	25
2.7.1. Analyzing the Legal place given for Conjugal Visit under Ethiopian Laws.....	25
2.7.2. Proclamation No. 943/2016, A Proclamation for the Establishment of Federal Attorney General	27
2.7.3. Proclamation No. 1174/2019, Federal Prison Proclamation	28
2.7.4. Council of Ministers Regulations No.138/2007, Regulations on the Treatment of Federal Prisoners	29
2.7.5. Directive No. 01/2009, A Directive for the Visitation of Federal prisoners	30
2.8. The Status of International Human rights instruments in the Ethiopian legal system.....	31
2.9. Comparative Experiences on Conjugal Visits.....	32
2.9.1. Canada	33
2.9.2. Pakistan.....	34

2.9.3. Attempts taken by African countries towards Conjugal Visits	35
Chapter Three: Research Methods	37
3.1 Introduction.....	37
3.2 Research Methods.....	37
3.3 Research Design.....	37
3.4 Study Population.....	38
3.5 Sample Size.....	39
3.6 Sources of Data.....	39
3.7.Data Collection tools.....	40
3.7.1 Questionnaire	40
3.7.2 Interview.....	40
3.7.3 Personal Observation	41
3.8 Method of Data Analysis	41
3.9 Ethical Considerations	41
Chapter Four:Result and Discussion	42
4.1. Introduction.....	42
4.2. Socio-demographic Characteristics of the Respondents.....	42
4.3. Correlation between of Conjugal Visitation and Homosexuality	45
4.4. Correlation between Conjugal Visitation and Family bonding.....	47
4.5. Correlation between Conjugal Visits and Inmate Rehabilitation.....	50
4.6.Correlation between Conjugal Visitation and Reproductive right	51
Chapter Five: Conclusion and Recommendation	53
5.1. Conclusion	53
5.2. Recommendations.....	54
<i>Bibliography</i>	<i>55</i>

List of Tables

Table 1: Target populations of the Research 38

Table 2: Response Rate 42

Table 3: Socio-demographic data of the Study population 42

Table 4: Imprisonment Status of the Prisoners 44

Table 5: Correlations between Conjugal Visitation and Homosexuality 46

Table 6: Correlation between Conjugal Visitation and Family bonding 47

Table 7: Conjugal Visit from the Perspective of Health 48

Table 8: Conjugal Visit from the Perspective of Martial Relationship of Inmates 43

Table 9: Correlation between Conjugal visits and Inmate Rehabilitation 50

Abstract

The present study was aimed to evaluate the implementation of the right of prisoners for conjugal visitation in Federal Prisons located in Addis Ababa. The very objectives of the study is to identify the effect of conjugal visitation on prisoners and the intersection that the right has with other human rights.

In order to address the objectives, the study utilizes both qualitative and quantitative research methodology. Data were collected from Families of prisoners, detainees, and Correctional administration staff through questionnaires, survey, observation, in-depth interview and key informant interview. The data obtained were analyzed using Parson Product- Moment Correlation Coefficient and Microsoft excel. These are cross-checked with personal observation of the researcher. Related laws, policies and reform discourses of the country are also reviewed.

The study found gaps and concerns its critique in light of international human right standards, it also identifies issues that need attention by policy makers and implementers for further improvement, which would lead to better treatment of inmates

Key words: Human rights, Prisoners, Conjugal rights, Sexual Rights, Private Family visits

Chapter One: Introduction

This chapter starts with research background to give an idea about the area of research to the readers. This is followed by statement of the problem, research questions, objective of the study, significance of the study, scope of the study, and finally, limitation of the study.

1.1 Background of the study

Conjugal rights are the sexual rights or privileges that are inferred by, associated with, and considered as exercisable in law by each spouse in a marriage.¹It alludes to the rights that two people acquire as a result of their marriage. Mutual rights to friendship, support, intimacy, affection, and other things are included in these rights. The act of a husband or wife staying apart from the other without a valid reason revokes their marital rights.²

Conjugal visits are private encounters between an inmate and their spouse that take place while they are both incarcerated. During these contacts, the couple is free to participate in any legal conduct they choose.³Conjugal visits were clumsily initiated in Mississippi in the 1900s and became official programs in 1989.⁴

No one agrees on the significance of providing inmates the freedom to conjugal visit.⁵ Those in favor of the idea contend that it will help deal with homosexual orientation and change the prisoner's behavior, while those opposed contend that factors like custody and security concerns, single parenting, the smuggling of illegal goods from outside, etc. will offset any positive effects.⁶

¹Busari Halimat Temitayo 'Conjugal Rights of the Prisoners: To Be or Not to Be?'[2018] <https://unilaglawreview.org/2018/01/21/conjugal-rights-for-prisoners-to-be-or-not-to-be/accessed>15 Jun 2022

²Ibid.

³Thompson, C., & Loper, 'A. B(2005)32(6) 'Adjustment Patterns in Incarcerated Women: An Analysis of Differences Based on Sentence Length.'*Criminal Justice and Behavior*714–732

⁴Samson C. R. Kajawo 'Conjugal Visits in Prisons Discourse: Is it Even an Offender Rehabilitation Option in Africa?'(2021) 8(1) *Advanced Journal of Social Science*67–76

⁵Shruti Goyal'Conjugal Rights of Prisoners. *Bharati Law Review*,'[2018] 57.

⁶Ibid.

It goes without saying that many rights are granted to prisoners under international human rights treaties including the European Convention on Human Rights, the American Convention on Human Rights, the African Charter on Human and Peoples' Rights, and the International Covenant on Civil and Political Rights. However, none of these documents specifically acknowledge the prisoners' right to conjugal visits.⁷ .

Due to the fundamental presumption that, aside from the right to liberty, people retain all of their human rights even after being found guilty, limits are only allowed where they are unavoidable in a closed environment or necessary for security and maintaining order. Conjugal visits generally have to do with private life, families, and the potential for procreation.⁸ The right to privacy, family life, and the capacity to start a family are violated more significantly when such visits are denied. The authorities' duty to provide every prisoner with the option to participate in conjugal visits is the law's starting point.⁹

Conjugal visits have been permitted in many prisons across America, Europe, Asia, and Africa due to the human rights-based approach and other advantages of doing so.¹⁰ Countries all over the world are rapidly embracing the concept on the widely accepted grounds that conjugal visits are crucial in maintaining family ties and lowering inmates' propensity to violate prison rules and regulations.¹¹ Even same-sex conjugal visits for inmates are permitted in contemporary nations including Canada, Germany, Russia, Spain, Belgium, Spain, Denmark, Pakistan, and, to a lesser extent, the United States, Brazil, and Israel.¹²

⁷Piet Hein van Kempen, 'Positive obligations to ensure the human rights of prisoners:' (2008) 38
<http://www.antoniasella.eu/archiva/Kempen_2008>accessed 13 Jan 2022

⁸Ibid.

⁹Ibid.

¹⁰Goyal (n 5) 6

¹¹Geordon Omand 'Conjugal visits help Canadian inmates reintegrate into society'(Canadian Press)30 Oct 2016<https://www.thestar.com/news/canada/> accessed 14 Aug 2022

¹² Ibid

The legal precedent for permitting prisoner conjugal visits is still developing in Ethiopia. The fact that convicts have the right to visitation from their spouses or partners is acknowledged by Ethiopia's Constitution and various subsidiary laws. Additionally, Ethiopia has accepted international human rights agreements that specifically address the problem of family visits. Although family visits are acknowledged by domestic laws and ratified international human rights instruments, it is unclear from both of these sources whether or not this includes conjugal visits between prisoners.

Additionally, Ethiopia's pardon and parole system, which other nations use as a substitute for permitting conjugal visits, is not operating as intended. The lack of relevant organs to carry out the program has been shown in numerous studies to be a weakness of Ethiopia's pardon and parole system.

Therefore, the purpose of this thesis is to comprehend how the right to conjugal visits is guaranteed (or not), how it is perceived, how difficult it is to fulfill, as well as the advantages and disadvantages of such visits at Addis Abeba Federal prisons. Additionally, the research looked at Canada and Pakistan's experiences as they shared the issue of permitting prisoner conjugal visits. The countries of Canada and Pakistan were specifically chosen because both have had success ensuring that prisoners are rehabilitated and that the rate of homosexuality is lowered by incorporating a clear provision on prisoners' conjugal visits in their domestic legal systems. Additionally, attempts undertaken by African countries to allow prisoner conjugal visits are deliberately taken to show how strongly the topic is desired and attracting attention on our continent. The researcher used a Mixed-type of legal research methodology.

1.2 Statement of the problem

According to the author, restriction of liberty has a profound impact on the ability of prisoners and their family members to exercise their rights to privacy, family life, and procreation. Human rights treaties and conventions like the UDHR, ECHR, ICCPR, and A.C.H.R. expressly acknowledge the right to procreate.¹³ Hence, restricting prisoners' ability to have intimate encounters with their legal spouse as a result of state action means restricting the right to Family life and maybe the right to have a family. There are women who don't have children because they went through menopause while they were incarcerated and there are husbands who were denied the chance to conceive with their partner who was serving time.

The other concern is that by continuing to forbid married inmates from having sex, homosexuality and HIV/AIDS are spreading faster among prisoners. The current social crisis in our country is homosexuality, which is against the Ethiopian law and immoral. The most welcoming environment for same-sex behavior is in a prison setting. As a result, there may be consenting or un consensual sex between inmates, which ultimately violates a person's right to physical integrity owing to incidents of same-sex rape.

The other issue is one's entitlement to good health. The right to health is crucial to upholding and advancing other human rights. Conditions affecting their psychological and social well-being are included in this group. As a result of susceptibility to several communicable diseases, particularly HIV/AIDS and other STDs, prisoners' right to health necessitates additional effort and monitoring. Thus, ensuring convicts' right to conjugal visitation may greatly lower diseases that may be brought on by dangerous same-sex relationships and sexual abuse among inmates. Additionally, such visits assist in preventing violence and psychological despair in prison.

The preservation of the Family unit is the research's additional justification. Initially, conjugal visits in jail served as a reward for working convicts' increased productivity. It was possible for the prisoner to spend private time with his or her spouse during these pre-arranged visits. Today, keeping the family together is the primary goal of these visits.

¹³See Article 16 of UDHR, Article 23 of the ICCPR, Article 18 of ACHPR, and Article 12 of the European Convention on Human Rights.'

Conjugal visits should be considered from a rehabilitative angle as well. Conjugal visitation has additional tangible benefits such as lowering hostility and tension among inmates, encouraging conformity, encouraging a more normal lifestyle in preparation for re-entering into the society, raising the likelihood of success after release, and promoting Marital stability.¹⁴

Last but not least, allowing Conjugal visit is also respecting the rights of the inmate's spouse since a partner who has not broken the law shouldn't be punished.

1.3.Research Questions

1. What is the status of prisoners' right to conjugal visit in light with international and regional human rights instruments?
2. Do existing policies and laws respond effectively to problems of Prisoners regarding Conjugal Visitation?
3. What are the legal gaps and proposed reforms regarding involvement of the right to conjugal visit in the domestic laws of the country?
4. How is the practice of conjugal visitation at federal prisons in Addis Ababa?
5. What are the nexuses among prisoners right to conjugal visitation, reproductive rights and other relevant human rights of prisoners?
6. What is the effect of conjugal visitation among prisoners?

¹⁴ Goetting Ann, 'Conjugal Association in Prison: Issues and Perspectives:' (1982) 28Crime & Delinquency 52-71

1.4. Research Objectives

1.4.1. General Objective

The general objective of the research was to assess the prisoner's right to conjugal visitation at federal prisons in Addis Ababa, Ethiopia.

1.4.2. Specific Objective

1. To find out the status of prisoners' right to conjugal visit in light with international and regional human rights instruments.
2. To investigate existing policies and laws respond effectively to problems of Prisoners regarding Conjugal Visitation.
3. To investigate the legal gaps and proposed reforms regarding involvement of the right to conjugal visit in the domestic laws of the country.
4. To check the implementation of conjugal visitation at federal prisons in Addis Ababa.
5. To identify the nexuses among prisoners right to conjugal visitation, reproductive rights and other relevant human rights of prisoners.
6. To identify the effect of conjugal visitation among prisoners.

1.5. Significance of the study

The study has the following significance: -

- It helps the prisoners and also a means to protect family bonding.
- It will clarify how the right to conjugal visitation for prisoners intersects with other human rights.
- It helps the person who works with prisoners to have information about the challenges family bonding.
- To create awareness on the prisoner for having of such right.
- It is crucial for the nation's legal system to address some legal shortcomings and gaps based on international best practices.
- It enriches the existing literature in the area of prisoners' right to conjugal visits.
- It helps counselors who work with prisoners to have information about the right of prisoners to conjugal visitation.

- It reminds the concerned bodies who have a close connection with prisoners to emphasize ensuring such right.
- The study is helpful to the government and other stakeholders in helping them recognize that this right of prisoners is a right rather a privilege.
- In the last, the study can serve as a ground work for further researches on studies to be done in this area.

1.6. Scope of the study

Realizing the financial and time constraint that is involved in this type of study, it becomes necessary to limit the scope of the study to Federal Prisons which are located in Addis Ababa. This study is sample survey research i.e., based on the representative sample conclusion for the population will be made. This research is delimited to descriptive and explanatory research design and qualitative and quantitative research approach. Additionally, the main source of this data could be questionnaire and interview.

1.7. Limitation of the Study

Absence of previously undertaken research work at the local level, uncomfortable and crowded environment to collect data, the researcher envisages a number of limitations such as difficulty to find jurisprudential precedents, lack of clear legal provisions are the major limitations of the study. Difficulties to access prisons and detention center also the major expected limitation of the research.

1.8. Ethical considerations

The research strictly adheres to the highest standard of confidentiality as it has a possibility of affecting the interests of the respondents. In addition, the research gave merit and recognition for the response even in situations to which the researcher did not agree. The respondents were reassured of non-disclosure of information other than for academic purposes only and the need not to reveal the identity of informants in whatsoever circumstances.

Chapter Two: Review of Related Literatures

2.1. The Concept of Conjugal Visitation

A conjugal visit is a scheduled occasion when a prisoner (or jailer) is permitted to spend several hours or days with a visitor, often his or her legal spouse, and during which both parties may engage in sexual behavior. This visitation may take the form of a spouse or partner of the prisoner visiting the prisoner within the prison walls, or it may take other forms, such as the prison providing a building where supplies like soap, condoms, lubricants, bed linens, and towels may be provided, or in some situations where prisoners are permitted to leave the prison grounds and visit the outside world under supervision.¹⁵

Another way to put it is that it's a set amount of time that an inmate is allowed to visit his or her spouse and engage in sexual activity with them. Most visits are made with the intention of being provocative. Physical intimacy encompasses any personal conduct they choose, such as holding hands, embracing, kissing, intense stroking, and sexual activity, during conjugal visits.¹⁶

Conjugal visits are intimate contacts between a prisoner and their significant other, who are free to act in any way that is compliant with the law. The term "conjugal" refers to the recognized, unassailable rights of a married couple, including the right to associate, start a family, and enjoy many facets of an intimate relationship. The term "conjugal" refers to the widely accepted inalienable rights of spouses to interact with one another, co-parent, and have intimate sexual relations. However, most countries still do not permit conjugal visits.¹⁷

Discreet visits and sexual intercourse are permitted for prisoners and their wives. Depending on the jurisdiction, conjugal visitation may alternatively be referred to as "conjugal association," "private family visit," or "extended family visit."

¹⁵ Busari Halimat Temitayo (n 1) 6

¹⁶ Bhupal Bhattacharya, 'Prisoner's Conjugal Rights: A Critical Analysis through Humanitarian Approach in Indian Perspectives', (2018) 119 IJPAM 3019-3035

¹⁷ Christopher Hensley, 'Inmate-to-inmate sexual coercion in a prison for women' (2003) 37 Journal of Offender Rehabilitation 77-87

The preceding definition of the word "conjugal visiting" can be used to suggest that prisoners utilize these privileges. The privilege to visitation, the opportunity to stay in private, and the opportunity for intimate sexual interactions must all be given to the prisoner's spouse first.

2.2. The Historical Development of conjugal Visitation

Conjugal visits at Parchman Prison in Mississippi have a long history, dating back to 1904. At that time, Parchman Prison was mostly a cotton plantation, with most prisoners working in the cotton fields. The conjugal visiting program began as an uncultured, disrespectful project with no preparation. Initially, only black prisoners who put in a lot of work and had excellent behavior were eligible for conjugal visits.¹⁸

Prison officials believed that black inmates had superhuman strength and an insatiable sexual appetite that, if not sufficiently controlled, would likely manifest itself in violence even against prison staff. As a result, conjugal visits were used as a way to try to meet their physical and emotional needs. But because the Parchman facility was a plantation run for profit, the program was also made available to prisoners as a perk. Instead of receiving payment for their labor, inmates were granted special privileges like conjugal visits.¹⁹

Conjugal visits weren't allowed back then in Parchman jails. In order to provide privacy, some convicts brought their partners or girlfriends inside their cells and covered their mattresses with blankets, while others preferred to conduct their romantic rendezvous in the nearby tool sheds or storage rooms. Only Sunday visits were allowed, and in the 1930s, prostitutes' services were also used during those visits. Some progress toward the program's credibility was seen in 1940. The inmates built their own visiting buildings in the prison's vicinity out of scrap timber, giving them the moniker "red homes" because they were painted the readily available color red. In the 1940s, the program was made accessible to all prisoners, regardless of ethnicity.²⁰

¹⁸Columbus B. Hopper, 'The conjugal visit at the Mississippi State Penitentiary.' (1962)53J.Crim. and Criminology & policy Sci.340

¹⁹C.B Hopper, 'The evolution of conjugal visiting in Mississippi', (1989) 69 Prison Journal 103-109

²⁰ Hopper, (n 19) 23.

2.3. The Theoretical Debate in favor and against Conjugal Visit

It is imperative to start by addressing the discussion surrounding the merits and viability of granting inmates' conjugal visits. While some authors support prisoner couples getting together, others criticize this arrangement. The following discussion covers the topics of agreement and dispute.

"Homosexuality" is one of the main issues the prison system faces. According to some experts, the issue and stress around homosexuality can be greatly diminished if prisoners have access to more intimate relationships.²¹

Additionally, they promote the idea that it can assist lessen and prevent the prevalence of male rape, which has become a major source of concern for many states.²² It is possible to lessen the harmful effects of the unisex prison environment by letting inmates to spend a significant amount of time with their family. They are able to reinforce their manhood and lessen the desire to harm other prisoners in order to build their own manly self-image. However, there are two main arguments made against this point of view: first, that prison homosexuality is not related to heterosexual deprivation but rather is an expression of people's urge for mastery when they are placed in a position of powerlessness; and second, that the frequency of heterosexual activity is so limited that it will have only a minor or insignificant impact.²³

Another argument in favor of conjugal relationship is that it influences and shapes the prisoner's behavior. Relationships with the family can help to normalize things. This behavioral shift will lessen the likelihood of violence in imprisonment and will help the prisoner get ready for a successful re-entry into society after his release.

²¹Eugene Zemans and Ruth Shonle Cavan, 'Marital Relationships of Prisoners' (1958)49, *J. Crim. and Criminology & policy Sci.*50

²²James E. Robertson, 'A Clean Heart and an Empty Head: The Supreme Court and Sexual Terrorism in Prison,' (2003) 81 *N.C.L.Rev* 433

²³A. Goetting, 'Conjugal Association in Prison: The Debate and Its Resolutions,' (1982)8 *New England Journal on Prison Law*141- 154

However, some who argue against it believe that there is a dearth of evidence to back this view and that the findings are merely conjectures. They make note of the fact that elements like custody and security issues, the smuggling of illegal items from outside, etc. nullify the positive effect, if there is one.²⁴

Additionally, if conjugal visits were permitted, the family would be without a parent until the prisoner was released. In opposition to permitting convicts to form romantic relationships, this societal issue is also brought up. When both spouses are imprisoned and conjugal companionship is legal, this situation is made even more difficult. When this happens, the "best interest of the unborn child" becomes a crucial concern.²⁵

There is dispute regarding enabling convicts to engage in conjugal association, as the discussion above demonstrates. However, with the times changing and society becoming more aware of human rights, it is necessary to alter how we view inmates as well. A society that is now debating "gay rights" or "third gender rights" needs to likewise discuss prisoners' marital rights.

2.4. The Nexus between Conjugal Visitation and Other Human Rights of Prisoners.

One of the most important aspects of human rights is their interdependence and indivisibility. Indivisibility is tied to the concept of interdependence, which means that each human right is only fully experienced when the other rights are also fully enjoyed. In the case of the right to conjugal visitation, the protection and acknowledgment of this specific right is critical for the better protection of inmates' other human rights.

In this section of the study, the researcher focuses on demonstrating how inmates' rights to conjugal visits relate to their ability to exercise their reproductive, health, family-bonding rights and rehabilitation.

²⁴Goetting (n 23)144.

²⁵*R.D. Upadhyay vs. State of A.P.Ors*[SCI 13 Apr,2006]

2.4.1. Conjugal Visit and Reproductive Rights

The right to sexual and reproductive health is a crucial component of the health right guaranteed by ICESCR article 12. Reproductive and sexual health issues were further addressed within the context of human rights with the adoption of the Programme of Action of the International Conference on Population and Development in 1994.²⁶

The physical, emotional, mental, and social elements of a person are all important to sexual health. Paying attention to all these factors and meeting the prisoner's needs holistically rather than piecemeal is necessary to advance sexual health in prisons. Basic needs including food, clothing, bedding, leisure pursuits, one's personal security, and a comfortable living environment all have an impact on one's sexual health. Sexual health is not apart from general living situations. Another delusion of prison systems may be to separate them from sexuality and sexual health.²⁷

The right to sexual and reproductive health is interconnected with and indivisible from other human rights. In the end, it is connected to civil and political rights that support people's autonomy, physical and mental integrity, and freedom from cruel, inhuman, or degrading treatment, such as the right to life, liberty, and security of person, freedom from torture, and respect for family and privacy.²⁸

Therefore, enabling spouse visits while a prisoner is incarcerated gives the prisoner the opportunity to discuss their reproductive rights, including the right to make an informed decision about the number, spacing, and timing of their children and the right to access the best possible sexual and reproductive health. Thus, we can conclude that a prisoner's reproductive right depends on whether they are allowed to have a conjugal visit.

²⁶D. Gomien, D. Harris, L. Zwaak 'Law and Practice of the European Convention on Human Rights and the European Social Charter,'(1 st edi. council of Europe 1996)17

²⁷Kangaude, Godfrey D.' A sexual rights approach to addressing gender-based sexual violence among male prisoners in Malawi'(2014) 14 Afr. hum. rights law j.01-23

²⁸Gomien (n.26) 10

2.4.2. Conjugal Visit and the Right to Strengthen Family Bondage.

A family is made up of two or more people who are committed to one another and who share intimacy, resources, decision-making duties, and values.²⁹

The right to marry and found a family is enshrined in the UDHR (Art.16), the ICCPR (Art.23) and the European Convention on Human Rights (Art.12). It is also recognized under the FDRE constitution Art.34.

If conjugal visits are prohibited while one of the spouses is incarcerated, this safeguard will be useless. As it fosters trust between them despite the fact that one of them works behind the bar, this kind of visit encourages a positive relationship and protects the family link. Since prisoners are unable to exercise their rights, we cannot anticipate this during the period of incarnation like someone who is completely free. But I concur that inmates should be granted the right to conjugal relations in order to keep families together, produce offspring, and continue the marriage.

The family is acknowledged in Art. 23 of the International Covenant on Civil and Political Rights as the natural and essential social unit that has a right to protection from both society and the state. Other covenant stipulations also ensure, either directly or indirectly, the safety of the family and its members.³⁰ The right of men and women of marriageable age to get married and start families is reiterated in Art.23, parag.2 of the Covenant.

Thus, enabling convicts to have conjugal visits strengthens their bonds with their families.

²⁹Ibid.

³⁰ General comment 19 on the right to family life, parag.1

2.4.3. Conjugal Visit and the Right to Health

The right to health is a comprehensive one that covers not only timely and effective health care but also fundamental health determinants like access to clean, safe water, adequate sanitation, and healthy working and living environments, as well as education and information on sexual and reproductive health.³¹

A number of international and regional treaties, including the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, the 1966 International Covenant on Economic, Social, and Cultural Rights, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women, the 1989 Convention on the Rights of the Child, and the African Charter on Human and People's Rights, recognize the right to health.

According to the aforementioned treaties, a person must meet a number of conditions in addition to their physical health in order to be considered to be in good health. These conditions include their Psychological and Social well-being. Prisoners' rights to health require extra attention and care because they are susceptible to several communicable diseases, especially HIV/AIDS and other STDs. By protecting prisoners' rights to conjugal visits, diseases that may result from dangerous same-sex relationships and sexual abuse among convicts could be considerably decreased.

Therefore, conjugal visits aids in reducing prisoner violence and psychological melancholy. Prisoners' health rights are secured and protected in correctional facilities by allowing them access to have Conjugal visits in exchange.

³¹ General Comments No. 2014

2.4.4. The Impacts of Conjugal Visitation on the Rights of Spouse of the Prisoner

The prisoner's spouse ought to be able to and ought to speak on the subject of conjugal visits. Every spouse who desires a visitation schedule should not have their civil or human rights infringed upon. Despite the fact that the majority of authors have tackled the subject from the perspective of the prisoner's rights, it appears that the legal strategy for the question of conjugal visits based on the rights of the prisoner's spouse has been ignored.³²

If a criminal who is married is put in jail, their family will also be punished at the same time. Sadly, societal rejection for the families of convicts is extremely infrequent. However, problems with sexual irritability, financial precarity, and emotional instability are frequent as a result of incarceration. Despite the moral innocence of the victims of this privation, their fundamental rights are being violated.³³

This deprivation alone constitutes punishment. While incarceration is necessary, it might equally be viewed as mere collateral harm. Contrarily, allowing conjugal visits for the prisoner's spouse could be the first step in resolving the issues their family is currently facing. One kind of punishment is depriving the offender's spouse of conjugal rights.³⁴

The freedom to procreate and engage in sexual activity are both protected by the right to life and personal liberty, which is clearly violated by this restriction. The fact that "impotence" is a legal basis for divorce shows the critical role that sexual fulfillment plays in preserving the institution of marriage.³⁵

The State commits a mistake when it denies these rights to the prisoner's spouse without following the due process protections provided by the Constitution.³⁶

³² Donald P. Schenller, 'Conjugal Visitation Prisoner's Privilege or Spouse's Right?'(1975)2 New Eng. J. Prison165

³³ Ibid.

³⁴ Ibid

³⁵ Ibid

³⁶Schenller (n 32) 168.

Conjugal visitation may be perceived as a privilege that must be granted to a prisoner, but it is legitimate to view it as a civil and human right when evaluated from the perspective of the prisoner's spouse. A spouse's visitation rights being denied is the same as their conjugal rights being denied. It should be ruled unlawful to do so without providing the legally innocent spouse with a fair trial.³⁷

In view of the impacts on the prisoner's spouse, as well as the prisoner's rights, the right to conjugal visiting must be protected,

According to the argument made above, from the justification, philosophical argument and from the experience of other countries, the writer of these research's opinion is that only lawfully married spouses in jail should be allowed Conjugal Visits, as allowing such visits for all convict would turn the Prison administration or Facilities into a passageway for prostitution.

2.4.5. The Role of Conjugal Visitation for Rehabilitation Purpose of Punishment

Any accused person is often given a prison sentence in an effort to either dissuade or rehabilitate them from partaking in the same forms of criminal conduct in the future. The seriousness of the crime and the seriousness of the punishment are not related. different approaches to punishment, the intention of the reformatory punishment theory is to prevent the offender from repeating the same offense again.

This point of view claims that a criminal acts when his or her character and purpose are at odds. If the motivation becomes stronger or if one's moral character deteriorates, they may resort to illegal conduct. When that individual succumbs to temptation, they violate the law and do something wrong.³⁸

The visit between a couple is more about the concept of rehabilitation. One of the main objectives of imprisonment is to restrict freedom in order to support healing. Punishment is only employed to reform or rehabilitate offenders in order to aid their integration back into society, even if prisoners are not necessarily criminals and may be able to contribute to society following their release.

³⁷Schenller (n 32) 171.

³⁸ Bhattacharya, (n 11) 9

It is more likely that the prisoner will be rehabilitated if conjugal visits are permitted since they preserve the bond within the family. They are also believed to be less likely to commit crimes again after being released from jail.

2.5. Types of Conjugal Visitation

Recent studies on prisons and crime reveal two popular types of visits that convicts and their families might receive from the penal system. These include mass or general visitations, individual family visits, and conjugal visits, which give inmates a chance to keep up their social networks and relationships to the society while they are incarcerated (Derkzen, Gobeil & Gileno 2009).

The capacity to uphold family links aids in reestablishing the inmate's lifestyle to normal and in preserving the impression that they are still a part of the family (Bales & Mears 2008). In fact, Tewksbury and Demichele (2005) found a correlation between successful offender reintegration to society and maintaining social support and communication with family members while incarcerated. In order to help convicts, establish and maintain family and community links so they can help them become law-abiding citizens, this is the fundamental premise of the visitation program.

Mass or general visitation observed and open to all inmates during the established visiting hours for each institution. The visitation process requires that the visitors undergo security verification, conducted in open environment and closed visits with barrier (Derkzen, Gobeil & Gileno 2009). Mills and Codd (2008), conducted research on correctional administration shows that majority of convicts reported general visitation program had positive effect on prisoner's relationship with their family. However, this open visitation lacks privacy with unfavorable prison environment for inmates and family of the detainees.

In contrast, the Canadian Correctional Service introduced **Private Family Visit (PFV)** to encourage prisoners to develop and sustain relationships with their families and the community in advance of their release. With three completely furnished guestrooms, this type of stay is permitted once every two months for up to 72 hours. The majority of apartments are straightforward two-bedroom buildings with a living room and kitchen combined.

Due to the need for safety precautions, visitors must pass through tight security screening. Numerous guidelines control behavior, such as not making excessive noise, passing out items to visitors, keeping an eye on kids, and cleaning the property after visitors have left. Either the prisoners' families or the institutions expected recompense. Although it can be pricey, a private family visit can provide a safe environment for family members. (Nahom 2016; Derkzen, Gobeil & Gileno 2009).

2.6. Legal Frameworks for Conjugal Visitation

2.6.1 International Human Right Instruments

2.6.1.1. The Universal Declaration on Human Rights

The foundational document, the Universal Declaration on Human Rights, developed comprehensive human rights to carry on the UN Charter's goal of promoting human rights.

The declaration recognizes that all human beings have intrinsic worth and unalienable rights that serve as the cornerstone of global freedom, justice, and peace.³⁹

The declaration guarantees the right to be free from torture or cruel, inhuman, or degrading treatment or punishment.⁴⁰ It also prohibits arbitrary arrest, detention, or exile.⁴¹ Even though the provision incorporated under its declaration has paramount importance for the protection of persons whose liberty is unlawfully deprived, the declaration fails to incorporate provisions regarding prisoner's right in general and Conjugal visit in particular.

³⁹ Preamble of the UDHR, 1948

⁴⁰ Ibid. Art.5

⁴¹ Ibid. Art.9

2.6.1.2. The International Covenant on Civil and Political Rights

The ICCPR, which is binding on all member states, makes a substantial contribution to prisoner's rights protection. For ideological reasons, UN member states failed to approve the UDHR as a binding instrument: the Western focused on civil and political rights and the Eastern attachment to socio-economic rights exclusively.⁴² This debate later culminated with the formation of the ICCPR and ICESCR as binding instruments in 1966. The ICCPR reaffirmed article 5 of the UDHR by stipulating that "No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment".⁴³

As human beings; therefore, prisoners are protected from torture or cruel, degrading, or inhuman treatment or punishment because of their status. In addition, unlike the UDHR, the ICCPR contains a provision that states that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person".⁴⁴

The ICCPR has also expressly adopted that the objective of punishment is reformation and social rehabilitation: it states that the "penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation...".⁴⁵

Moreover, ICCPR contains a provision that states that all persons have the right to private and family life.⁴⁶ As the rights to private life and family life are incorporated under ICCPR they cannot simply be ignored by the prison authorities. The restrictions to these rights must be provided by law, serve a legitimate aim and meet a high standard of necessity. As part of the human person, the prisoner may claim such provision so as to exercise the right to Conjugal visit even in prison centers.

⁴² Frans Viloen, 'Africa's contribution to the development of international human rights and humanitarian law,' (2001) Afr. hum. rights law j 20

⁴³ ICCPR, Art. 7.

⁴⁴ ICCPR, Art. (10)(1).

⁴⁵ Id. Art. (10)(2).

⁴⁶ Id. Art. 17.

2.6.1.3. International Covenant on Economic, Social, and Cultural Rights (ICESCR)

Economic, Social, and Cultural Rights are those rights relating to the workplace, social security, family life, participation in cultural life, and access to housing, food, water, health care, and education.⁴⁷ These rights are human rights. Like other human rights, they contain dual freedoms; freedoms from the state and freedom through the state.⁴⁸

The UN General Assembly established the Covenant on Economic, Social, and Cultural Rights to protect Economic, Social, and Cultural Rights. The International Covenant on Economic, Social, and Cultural Rights (ICESCR) was signed in 1966 and came into effect in 1976.

In the United Nations human rights system, the ICESCR is now the most extensive document that protects and promotes economic, social, and cultural rights. The legally binding covenant recognizes essential rights of the human person such as the rights to social security,⁴⁹ the right of everyone to an adequate standard of living,⁵⁰ the right to health and healthcare⁵¹, and the right to education.

Prisoners, being human beings are entitled to enjoy those rights enshrined under the covenant. These rights include the right to adequate food, clothing, housing, and the continuous improvement of living conditions.

The covenant incorporates a provision that states that all persons have the right to the protection of families and children.⁵² The covenant gives special concern for the protection and well-being of the family, which is the natural and fundamental group unit of society.⁵³ As prisoners are also human beings their rights associated with families must be protected by state parties to the covenant.

⁴⁷ Fact sheet No.33, frequently asked questions on Economic, Social and Cultural Rights, office of the UN High Commissioner for Human Rights.

⁴⁸ Ibid.

⁴⁹ ICESCR, Art.10.

⁵⁰ Ibid Art 11

⁵¹ Ibid Art 12

⁵² Ibid (n 49)

⁵³ Ibid

2.6.1.4 United Nations standard Minimum Rules and Principles for the Treatment of Prisoners

The UNSMR was established primarily to provide standards that may be incorporated into different countries' national penal codes, with adjustments as needed by their political, social, and legal conditions.⁵⁴ The UNSMR stipulates a minimum standard of treatment for all civil and criminal prisoners, including remand and special prisoners, and requires prisoners to be informed of their legal rights. The rules include requirements for the provisions of basic necessities, such as adequate and nutritional food, clean drinking water, and suitable basic clothing.⁵⁵

The UNSMR also requires that prisons be appropriately staffed with a medical officer, whose duties should include inspecting and reporting on the standard of hygiene in areas such as food preparation, sanitation, and quality of heating and lighting.⁵⁶

The Standard Minimum Rules revised as Nelson Mandela Rules the global standards and frameworks relating to the treatment of prisoners cover conjugal rights now. It states that “Prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals: By corresponding in writing and using, where available, telecommunication, electronic, digital and other means; and by receiving visits.⁵⁷ In addition, it incorporates that where conjugal visits are allowed, this right shall be applied without discrimination, and women prisoners shall be able to exercise this right on an equal basis with men. Procedures shall be in place and premises shall be made available to ensure fair and equal access with due regard to safety and dignity.⁵⁸ This rule has been added to the minimum standard for the treatment of prisoners taking into account the developments in the attitude and recognition of conjugal visits that have taken place in 2015.

⁵⁴ Matthew Groves, *International Law and Australian Prisoners*, (2001) 24 *Unsw Law Journal* 17, 25

⁵⁵ *Ibid*

⁵⁶ *Ibid*

⁵⁷ UNMRPTP Rule 58(1)

Even if such a minimum standard explicitly recognized a prisoner's right to conjugal visitation, the question of whether it is binding may be challenged. Minimum standards, principles, declarations, and similar texts established by the United Nations General Assembly or any other international or regional organization are commonly referred to as soft laws because their legal status is non-binding on nations.

Though the instruments are not legally binding, they are important in establishing moral obligations in states. As a source of international law, domestic and international courts and judicial authorities may use them as an indicator of international standards. These Soft laws may also be useful in clarifying ambiguous international law provisions whenever their interpretation is questioned.

2.6.2. The Right to Conjugal Visit under Regional Human Right Instruments

2.6.2.1 The European Convention on Human Rights

The European Convention on Human rights was adopted on 4 November 1950 and entered into force on 3 September 1953.⁵⁹ The provisions of the Convention widely embrace an individual's personal life and the need to enjoy life to the fullest, according to personal desires, as well as those rights that are involved in conflicts with authorities and the law.⁶⁰ Life is to be protected by the law and the European citizen is to be brought up in the privacy of the home surrounded by family and possessions.

The right to private and family life, as well as the freedom to marry, are guaranteed by the Convention. It states that everyone has the right to respect for his or her private life, family life, and home, and that no public authority may interfere with that right unless required by law or as appropriate in a democracy for certain purposes (which include public safety, health or morals).⁶¹ Regarding conjugal visits, the Convention provides that a prisoner of marriageable age has a right to marry and to found a family according to national laws governing the exercise of the right.⁶²

⁵⁹D. Gomien, D. Harris, L. Zwaak (n 26) 17

⁶⁰Ibid.

⁶¹The European Convention on Human Rights, Art. 8.

⁶² Ibid. Art. 12

All parties of the Council of Europe are members of this Convention and are under an obligation to make provisions in accordance with the Convention. In accordance with it, many states in Europe allow conjugal visits of prisoners. For example, conjugal visits are allowed in Spain, France, Sweden, and Denmark to name a few.⁶³

2.6.2.2 The American convention on Human Rights

It was adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, on 22 November 1969.

The Inter-American Convention on Human Rights has incorporated the rights of prisoners. Like the UDHR and ICCPR, the convention prohibits torture or cruel, inhuman, degrading punishment or treatment.⁶⁴ It states that every person has the right to have his physical, mental, and moral integrity respected. And no one shall be subjected to torture or cruel, inhuman, or degrading punishment or treatment.

All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person. The stipulation shows how the convention gives due concern for those persons whose liberty is deprived. However, like the UDHR, ICCPR, and ICSECR, the Convention fails to expressly or impliedly recognize the prisoner's right to conjugal visit.

2.6.2.3 African Charter on Human and Peoples' Rights

Like the universal instruments, the 1981 African Charter on Human and Peoples' Rights (The Charter) sets out fundamental rights and freedoms that apply to individuals in general regardless of their status.

The Charter declares that 'every individual shall have the right to the respect of their human dignity and all forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment, and treatment shall be prohibited.'⁶⁵ The Charter also protects the right to life and integrity of the person, the right to liberty and security

⁶³ Rachel Wyatt, 'Male Rape in U.S. Prisons: Are Conjugal Visits the Answer' (2006) 37 Case W. Res. J. Int'l L. 579

⁶⁴ ACHR 1969, Art.5

⁶⁵ ACHPR, 1981, Art.5

of the person whereby deprivation of liberty should be according to previously laid down laws; and the right to enjoy the best attainable state of physical and mental health.⁶⁶

In Africa in addition to the African Charter on Human and Peoples' Rights, The Kampala Declaration and the Ouagadougou Declaration come up with detailed recommendations for members of the African Union as to the human rights of prisoners. Accordingly, the Kampala Declaration on Prison Conditions in Africa arose out of an international seminar on prison conditions in Africa held in September 1996 in Kampala, Uganda.

The Declaration recommends action to be taken by states and non-governmental organizations on four fronts, prison conditions, remand prisoners, prison staff, and alternative sentencing.⁶⁷

The African Union has also passed a Resolution on the Adoption of the Ouagadougou Declaration and a Plan of Action on Accelerating Prison and Penal Reform in Africa, in addition to the Kampala declaration. This declaration also includes recommendations for reducing overcrowding, making African prisons more self-sufficient, promoting rehabilitation and reintegration programs, holding prison administrations more accountable for their actions, encouraging best practices, promoting the African Charter on Human and Peoples' Rights, and supporting the development of a United Nations charter on the Basic Rights of Prisoners.⁶⁸

The rationale behind the declaration is to support the better implementation of the Kampala Declaration on Prison Conditions in Africa and other international instruments relating to the promotion of the rights of persons deprived of their liberty in general and penal reform in particular.

⁶⁶ Ibid Article 4.6 &16

⁶⁷ Recommendations, given by the participants at the International Seminar on Prison Conditions in Africa, held in Kampala from 19 to 21 September 1996.

⁶⁸General comment No. 9: (which is replaced by General Comment 21) Article 10 (Humane treatment of persons deprived of their liberty, Sixteenth session (1982)

2.7. Prisoners' Right to Conjugal visits in Ethiopia

2.7.1 Analyzing the Legal place given for Conjugal Visit under Ethiopian Laws

By reviewing the 1995 FDRE constitution, the Federal Attorney establishing proclamation, Federal Prison Commission Proclamation No. 1174/2019, Regulation No. 137/2007, and Directive No. 1/2009, the researcher evaluated where the right of prisoners to have a conjugal visit in Ethiopia is accorded.

2.7.1.1. The 1995 FDRE Constitution

Before embracing to see and evaluating the 1995 constitution, regarding prisoner's right to conjugal visit, the researcher prefers to assess the 1931, 1955, and 1987 written constitutions roughly regarding the issue at hand. To begin 1931 constitution is the first written constitution in the history of Ethiopia.

The constitution doesn't include any express provision regarding the general rights of prisoners let alone conjugal visitation. It merely stipulates that every person in the empire has the right to be free from unlawful detention.⁶⁹ When we observe the 1955 revised constitution like the 1931 constitution it simply incorporated that "no one within the empire may be deprived of life, liberty or property without due process of law",⁷⁰. From the stipulation, we can say that both the Empire's constitution doesn't worry about prisoners in general.

When we observe the 1987 Constitution of the Dergue regime, it contains a provision regarding the right to presumption of innocence, the non-retroactivity of criminal law, and the right of the accused to defend him and other rights in relation the right to a fair trial⁷¹.

From the stipulation, we can say that the constitution had not provided prisoner's rights in general and the right to conjugal visits in particular.

⁶⁹ The 1931 Constitution, Art 23

⁷⁰ The 1955 Revised constitution, Art 43

⁷¹ The 1987 PDRF constitution, Art 45

Coming back to the 1995 FDRE Constitution, unlike the previous constitution it devotes more than one-third of its content to provisions on fundamental human and people's rights. The constitution imposes a responsibility and duty to the respect and enforcement of fundamental rights and freedoms at all levels of the federal and state legislative, executive and judicial bodies.⁷²

The Constitution contains a detailed provision regarding prisoner's rights. To mention the constitution states that everyone has the right to protection against cruel, inhuman, or degrading treatment or punishment.⁷³

The constitution under the title of the Rights of Persons Held in Custody and Convicted Prisoners states that all persons held in custody and persons imprisoned upon conviction and sentencing have the right to treatments respecting their human dignity. It states that all persons shall have the opportunity to communicate with, and to be visited by, their spouses or partners, close relatives, friends, religious councilors, medical doctors, and their legal counsel.⁷⁴

Here the constitution entitles prisoners to be visited by their spouses. Such incorporation does have a close connection with the concept of conjugal visitation. However, the constitution failed to answer the extent of such right prisoners to be visited by their spouses. The minute of discussion during the time of adopting the constitution and commentaries by the drafters of the constitution also failed to clarify such issues.

Again, article 34 of the FDRE Constitution has recognized the right to marital and family rights.⁷⁵ Specifically, 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."⁷⁶ 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.

⁷² The 1995 FDRE Constitution, Art 13(1)

⁷³ Ibid Art18(1)

⁷⁴ Id Art 21(1&2)

⁷⁵ The Federal Democratic Republic of Ethiopia Constitution 1995, article 34.

⁷⁶ Ibid, article 34(3)

2.7.1.2. Proclamation No. 943/2016, A Proclamation for the Establishment of Federal Attorney General

One of the responsible governmental institutions regarding the protection of human rights in general and prisoner's right, in particular, is that of the Federal Attorney General. As a result, the researcher chooses to assess its establishment proclamation as to its content regarding prisoner's right to conjugal visit.

The proclamation under the title powers and duties stipulates that pay visit to persons under custody at police stations and correction facilities, ensure their handling and stay is carried out in accordance with the law, cause the unlawful act to be corrected; take measures or cause measures to be taken based on the law against people who are found to have transgressed the law⁷⁷

In addition, the proclamation mandates Federal Attorney General to “perform preparation of draft laws to be promulgated by the federal government; ensure those draft laws prepared by government organs are consistent with the Constitution and federal laws; provide legal opinion to concerned bodies; assist in the preparation of draft laws when so requested by the regional states”.⁷⁸

As we can infer from the above-cited article the Federal General Attorney is mandated to visit persons under custody at police stations and correction facilities, provide legal opinions and initiate and prepare draft laws for the concerned bodies. In this regard the researcher interviewed of National Human Right Plan Action Office in Federal General Attorney, as to whether there exist laws drafted by the General Attorney associated with a conjugal visit for a prisoner or not. The interviewee responded that there are no draft laws on the issue and no request has been provided even if there exist questions from prisoners during prisoner visitation programs and prison related meetings.⁷⁹

The interviewee added that conjugal visit for prisoners is ignored and forgotten area.⁸⁰ The researcher believes that as a responsible organ the institution is expected to take initiative to initiate and prepare legislation regarding prisoners' right to Conjugal visits.

⁷⁷Federal Attorney General Establishment Proclamation No.943/2016 Art 6(8-C)

⁷⁸ Ibid. Art 6(5-A)

⁷⁹ Interview with W/ro Medhanit Tamen, in Ministry of Justice, conducted on 6 Jan 2022

⁸⁰ Ibid.

2.7.1.3. Proclamation No. 1174/2019, Federal Prison Proclamation

The proclamation is enacted by the House of Peoples Representative based on Art.52 of the FDRE constitution which empowers the house to enact legislation. As stated under the preamble one of the major objectives of the proclamation is necessities to put in place a system whereby prisoners are reintegrated into society, prisons respect the human dignity of prisoners, and enforce judicial orders and corrective measures based on the particular circumstances of the prisoners.

The proclamation establishes the Federal Prison Commission which is accountable to the Federal General Attorney.⁸¹

As stipulated under Article 6 of the proclamation the very purpose of the Commission is to respect the rights of prisoners under its care, fulfilling their needs and upholding their human dignity; offer psychological, academic, and vocational training to prisoners so that they are ethically as well as attitudinally rehabilitated which will in turn help in ensuring that they are law-abiding, peaceful and productive citizens.

Section two of the proclamation is devoted to the treatment of prisoners by expressly incorporating prisoner's right which is recognized under international and regional human right instruments. To mention the critical one;⁸²

- ✓ A prisoner shall have the right to be treated during his stay in prison with full respect for his rights, dignity, and health.
- ✓ A prisoner shall have the right to be protected from degrading, inhumane and cruel treatment or from treatment that endangers his health.

When the researcher evaluated the place given for prisoner's right to conjugal visits, like the FDRE constitution the proclamation used vague and general terms. It says "prisoners have the right to communicate in person or in writing with their spouse, relatives, friends, religious counselors, medical advisors, and legal advisors".⁸³ As clearly stated prisoners are entitled to be visited by those individuals giving the commission the power to adopt directives to manage and control such visits. However, the extent of the spousal visit is not expressly addressed.

⁸¹ Federal Prison Proclamation No. 1174/2019 Art 4

⁸² Ibid. Art32

⁸³ Ibid. Art 40(1)

2.7.1.4. Council of Ministers Regulations No.138/2007, Regulations on the Treatment of Federal Prisoners

This regulation is enacted pursuant to Article 5 of Federal Prison Commission Establishment Proclamation No.365/2003. Even if the enabling legislation is repealed by Pro No. 1174/2019 the regulation remains intact. As a result, the researcher prefers to consult the regulation to know whether a prisoner's right to conjugal visit has got a place or not under the regulation.

The regulation incorporates basic principles regarding the treatment of federal prisoners. It states that the treatment of prisoners shall be based on the basic principles of:⁸⁴

- ✓ No discrimination on grounds of gender, language religion, political opinion, nation, nationality, social status, or citizenship;
- ✓ Respect for their human dignity unless restricted by the penalties imposed on them;
- ✓ Ensuring that the executions of penalties are educative and rehabilitative

The provision shows how the regulation gives weight to the human right of the prisoner and the reformatory purpose of punishment.

When we look at the provision regarding visits the regulation used the same word as that of the proclamation. It says "prisoners shall have the right to communicate with their spouses, close relatives and friends, medical officers, legal counselors, and religious fathers. Details shall be determined by a directive to be issued by the administration."⁸⁵ The extent of the spousal visit is also a question with no answer in the regulation.

⁸⁴ Treatment of Federal Prisoners Regulation No.138/2007 Art 3

⁸⁵ Ibid. Art 13(1)

2.7.1.5. Directive No. 01/2009, A Directive for the visitation of Federal prisoners

The directive is issued pursuant to Article 13 of Regulation No.138/2007. Like the regulation, the directive also acknowledged prisoners' right to be visited by their spouses, close relatives and friends, medical officers, legal counselors, and religious fathers⁸⁶.

The directive contains the duration and timing of visitation. Accordingly, prisoners have the right to be visited by their spouses, close relatives, friends, and others on Monday, Tuesday, Thursday, and Sunday from 9:00 AM-12:00 AM in the morning only and on Saturday 9:00 AM-12:00 AM in the morning and from 1:30 PM-4 PM in the afternoon⁸⁷. And the duration of each visit is only 20 minutes.⁸⁸

The regulation contains detailed procedures for how legal counselors and religious fathers visit prisoners starting from Article 11 to 13 of the Directive. However, like the above legislation, the directive fails to answer the question of the extent of spousal visits and the procedures thereof.

⁸⁶ Federal Prisoners Visitation Directive No. 01/2009 Art 5

⁸⁷ Ibid. Art 8

⁸⁸ Ibid. Art 4

2.8. The Status of International Human rights Instruments in the Ethiopian legal system

Ethiopia is party to the key international and regional human rights instruments.⁸⁹the country has ratified the major bill of rights and incorporated them into its own legal framework. These are a few of the measures that the nation has taken to demonstrate at least its political will and desire to further commit to upholding and respecting those basic human rights, including the rights of people who are being held in detention.

Additionally, the FDRE Constitution embraced the monist strategy for incorporating international law.⁹⁰As a result, every international agreement that Ethiopia ratified is a part of the law.⁹¹The writer believes that once Ethiopia ratifies an international agreement, the agreement will automatically become domestic and be enforceable in Ethiopian courts.

The domestication of international human rights instruments is further fortified by article 13(2) of the Constitution, which provides that the fundamental rights and freedoms shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights (Universal Declaration), international covenants on human rights and international instruments adopted by Ethiopia.⁹²

To the extent that the rights protected by these instruments are guaranteed in the Ethiopian Constitution, the provisions of these treaties would supplement them. In relation to rights which are not expressly guaranteed in the Bill of Rights, the provisions of the treaties shall be taken as Ethiopian law.⁹³

⁸⁹ See<<http://www2.ohchr.org/english/bodies/ratification/index.htm> and http://www.achpr.org/english/_info/index_ratifications_en.html> accessed 18 April 2022

⁹⁰Sisay Alemahu Yeshanew,'The Justiciability of Human Rights in the Federal Democratic Republic of Ethiopia' (2008) 8(2) African Human Rights Law Journal

⁹¹The Federal Democratic Republic of Ethiopia Constitution, Pub. L. No. Neg. Gaz.year 1, No 1, proc. No 1 (1995)

⁹² See art 20(2) Proclamation 250/2001

⁹³ Sisay Alemahu Yeshanew (n 78) 284-285

Detailed provisions of the international instruments would also be used to define the content and scope of rights which are protected in very general terms in the Constitution. Although the International Human rights Instrument does not expressly guarantee the right to Conjugal visits, the UN Human Rights Council's general comments no.22 on Article 12 of the International Covenant on Economic, Social, and Cultural Rights has clarified the issues and required member states to ensure the right to Sexual and Reproductive health, which cannot be realized unless we permit conjugal visits.⁹⁴

The same position is reflected by the general comments of the UN Human Rights Committee on article 23 of ICCPR.⁹⁵ Ethiopia has already ratified both conventions.⁹⁶Therefore, the general international human rights instruments ratified by Ethiopia and those exclusively dedicated to detained person's rights can be invoked by detainees so long as they are ratified by Ethiopia.

2.9. Comparative Experiences on Conjugal Visits

In comparative studies, one of the purposes of comparison is to take a lesson from countries that have a better experience on the concerned issue. In this section, the research tried to assess the status of prisoner's right to conjugal visit in Ethiopia by having a look at the constitution and other related domestic legislation.

Besides efforts has been made to assess the place given for conjugal visit in Canada and Pakistan by consulting their constitution and correctional laws. In this regard, Canada and Pakistan are chosen because they 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:

⁹⁴United 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)' accessed 25 June 2022.

⁹⁵Ibid.

⁹⁶Abiyou Girma Tamirat, 'Ethiopia's Human Rights Treaty Reporting to The UN Treaty Bodies' accessed 23 June

2.9.1. Canada

The term "conjugal visit" in Canada refers to a private family visit that takes place in separate buildings inside the institution's perimeter and allows inmates to interact privately with authorized visitors in order to improve daily living skills and uphold positive community and family relationships.⁹⁷

Conjugal visitation was first introduced as a pilot project in 1980, and since then, the country has embraced it as a standard procedure because it has been so effective in helping criminals get well. It is crucial to make this process successful because it is a welfare measure for the prisoners. The effects of granting such a right have been beneficial.⁹⁸

To enable couples and a family member to meet alone and have intimate interactions, regardless of the fact that one family member is in prison, is the exact reason of the establishment of these programs, with the aim of social rehabilitation. The law governing the prison system and parolees provides inmates the right to maintain relationships with their family, friends, or other people in order to strengthen their ties to the community. This seeks to make it possible for offenders to establish positive relationships with the outside world in order to hasten their release.⁹⁹

Private family visits may take place every two months, last 72 hours (a maximum of three days), and are allowed if facilities are available. They take place inside the prison, in a separate area that is isolated from the rest of the building, and are set up as tiny, fully equipped apartments with one or two bedrooms, a kitchen, living room, and bathroom, as well as some outdoor space, such as a courtyard or garden.¹⁰⁰

The private family visit program is accessible to all prisoners incarcerated in a federal prison, regardless of security level, with the exception of those in special detention units, regardless of eligibility or access requirements. However, certain inmates might not be allowed to participate

⁹⁷Commissioner's Directive Number 710-8/2016,

⁹⁸Marion Vacheret, 'Private Family Visits in Canada, Between Rehabilitation and Stricter Control: Portrait of a System' (Open Edition Journals 2005) <https://doi.org/10.4000/champpenal.2322> Accessed on Aug 12 2022

⁹⁹Corrections and Conditional Release Act, 1992) s 71(1)

¹⁰⁰Commissioner's Directive (n 85) Art 19

in the program because they have access to other family-bonding initiatives, particularly unsupervised leaves, or because there is a possibility of domestic or family violence.

Additionally, the inmate loses his eligibility for the program if there appears to be a danger or if he is found guilty of a disciplinary offense endangering facility safety, such as bringing in prohibited items, possessing weapons or tools useful for escaping, or holding a hostage during a previous private family visit.¹⁰¹

2.9.2. 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. With a few restrictions, convicts have a legal right to use the facilities.¹⁰² According to a ruling by Pakistan's Supreme Court on April 6, 2010, inmates must have access to opportunities for conjugal relationship inside prison.¹⁰³

For the first time, through this judgment, the right was appreciated at the federal level, though it had already been inserted through an amendment titled, 'special meetings' in provincial PPRs of Khyber Pakhtunkhw, under rule 544 in 2005 and Punjab, under rule 545-A in 2007.

The Federal Sharia Court ordered to ensure the availability of this right in all prisons of Pakistan essentially to facilitate the rehabilitation of prisoners. The Court observed that the propensity to sexual abuse of fellow inmates and drug addiction in married prisoners might be best controlled by letting them conjugal visits. Because as a matter of fact, only the offender should be held responsible for his offense, and his family must not suffer.

The Court thus proposed the family get-together in the prison compound on auspicious occasions along with providing a parole facility for private family meetings; these meetings might prolong for a week every four months for every married prisoner except lifers and condemned prisoners at the arrangement of satisfactory sureties for his return back to prison.¹⁰⁴

¹⁰¹Ibid Art 9

¹⁰²Pakistan Prison Rule 1978 s 545(A)

¹⁰³Aisha Tariq, 'Rights Of Prisoners: A Comparative Study Of Sharī'Ah & Law With Special Reference To Pakistani Statutes And Case Law' (2019)(Un published) LLD Thesis) 17

¹⁰⁴ Ibid 119

The court while proceeding with Aslam Khaki's Case, proposed two sets of options; one, to provide a conducive atmosphere for private family meetings in separate rooms constructed within the bounds of prisons; second to send eligible prisoners on conjugal parole for some days after every four months. Federal and provincial governments opted for the first one which is far much arduous for the government exchequer, practically less feasible, and is considered socially hazardous.¹⁰⁵

Regarding the time interval in which the conjugal visit took place, the prison rule of Pakistan allowed the spouse of the convict can stay any 1 night in the three months in jail. For this purpose, separate rooms were constructed inside the jail premises. Concerning eligibility issues, the provision of the conjugal visit is allowed only to straight couples who can provide a marriage certificate to the superintendent and who are not convicted of plotting against the government or terrorism.¹⁰⁶

To sum up, Canada and Pakistan granted Conjugal rights to prison inmates within the jail premise considering the importance of allowing conjugal visit enables prisoners to rehabilitate.

2.9.3. Attempts taken by African countries towards Conjugal visits

Numerous African nations have begun to introduce conjugal visits for inmates after realizing the benefits of doing so, but 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 due to a lack of funding.¹⁰⁷ To name a few measures, in 2012, the Tanzanian government announced plans to provide prisoners conjugal rights in order to reduce sexual abuses among inmates.¹⁰⁸

¹⁰⁵ Ibid

¹⁰⁶ Masroor, Aroosa (8 May 2010). 'Prisoners granted conjugal rights' *Express Tribune* (May 8 2010) Tribune.com.pk/story/11618 accessed 12 Aug 2022

¹⁰⁷ Samson C. R. Kajawo (n 4) 71.

¹⁰⁸ Christopher Majaliwa, 'Tanzania: Conjugal Rights to Be Granted to Prisoners' *Tanzania Daily news* (Dere salaam, 2 November 2012) accessed 22 April 2022.

However, the initiative, which was eventually implemented, was short-lived in Tanzania, since the country's new President commanded its discontinuation in 2018.¹⁰⁹ Furthermore, with the primary goal of rehabilitating offenders and minimizing prison homosexuality and HIV spread, Kenya revealed its plan to establish conjugal visits for prisoners in 2003.¹¹⁰ The government has directed the prison administration to provide suitable facilities within prison premises for this program.¹¹¹ Plans to introduce conjugal visits in Kenyan prisons, however, were still pending as of 2019.¹¹²

Zambia, Swaziland and other African countries like Zimbabwe, Egypt, and South Africa also took some initiatives though it is not yet fully implemented.¹¹³

¹⁰⁹ Samson C. R. Kajawo (n 4) 71.

¹¹⁰ Ibid.

¹¹¹ Rachel Wyatt, 'Male Rape in U.S. Prisons: Are Conjugal Visits the Answer?' (2006) 37 Case W. Res. J. Int'l L. 579.

¹¹² Wachira Mwangi, 'Kenya: Inmates Demand Conjugal Rights, Balanced Diet and Right to Bury Kin' *Nairobi news* (Nairobi, 5 April 2019) accessed 5 April 2022.

¹¹³ Ibid 71-72

Chapter Three: Research Methods

3.1 Introduction

This chapter is presented the methodology for the study which includes Research method, Research design, Study population, Sample size determination, Data collection procedures, Data source and types, Method of Data analysis, and Ethical consideration.

3.2 Research Methods

The study used Mixed approach to legal research. Accordingly, the study used qualitative type of research in a sense that it devoted to the reasons, justification or logical argument on legal provisions.¹¹⁴ It is quantitative because the study was depended on certain data and information collected from Prisoners and Prison administrators in Federal Prisons located in Addis Abeba.

Therefore, the researcher used both doctrinal and non-doctrinal type of research methods to answer research questions.

3.3 Research Design

Research design stands for advanced planning of the methods to be adopted for collecting the relevant data and the techniques to be used in the analysis,¹¹⁵ keeping in view the objective of the research and the availability of time, money and one method can be advantage within another method to provide insight into different levels or units of analysis.

Likewise, Kothari (2004) argued that research design is a base line for the reliability of the results and foundation for the entire structure of the research work. To achieve research objective the study employed both quantitative and qualitative approaches. Quantitative approach employed descriptive cross-sectional with approximate longitudinal survey research design to provide numerical description of trends, attitudes of prisoners to inferring the study population (Babbie 1994). Similarly, Dawson (2002) characterized descriptive research design as one that attempted to describe situation systematically, provides and describes attitudes towards an issue.

¹¹⁴ Lune, H. and Berg, L.B., *Qualitative Research Methods for the Social Sciences*, 9th edn, Pearson Education Ltd., 2017

¹¹⁵ Ibid

Whereas, qualitative approach employed case study as research design to understand how personally experience marital relation influenced by confinement of his/her spouses.

Corbin and Strauss (2008) noted that qualitative research design allows the researchers to get an inner experience of participants. A variety of case studies design according to their purposes; single case study, exploratory/descriptive, multiple case studies, intrinsic, Instrumental, collective case study (Yin 2003:41).

Accordingly, case study used as a qualitative study design helps the researcher to gather detailed in-depth data from multiple experiences of information from in-depth interview informant (Beverley 2002). Therefore, multiple case studies selected for this study. This is due to the fact that, multiple-case study is used to find out various problems that affect Marital relation of prisoners and their families.

3.4 Study population

The target population is “the entire aggregation of respondents that meet the designated set of criteria” (Burns & Grove 1997:236). The target population in this study constituted prison administration officials and prisoners which are found in three main prison administration in Addis Abeba namely Kality prison Centre, Klinto prison center and Kality Women Correctional and Remand Centre. The actual population were listed below.

Table 1: Target populations of the research

No.	Federal Prisons in Addis Ababa.	Population Size
1	Kality prison Center	3000
2	Klinto prison Centre	1274
3	Kality Women Correctional and Remand Centre	450
Total		4724

3.5. Sample Size

Sampling is the procedure a researcher uses to gather people, places, or things to study. It was the process of selecting a number of individuals or objects from the population such that the selected group contains elements representative of the characteristics found in the entire group (Orodho & Kombo, 2002). The sample size for the study was determined using Yamane' (1967) method. The formula is given below:

$$n = \frac{N}{1 + N(e)^2}$$
$$n = \frac{4724}{1 + 4724(0.05)^2}$$
$$n = \frac{4724}{12.81}$$
$$n = 369$$

Where; n = Sample size

e = Sample error (Equivalent to 0.05)

N= 4724 (Total number of populations)

By taking the above calculation into consideration, the researcher was selected 369 sample size from the total number of populations at federal prisons in Addis Ababa.

3.6 Sources of Data

The study used both primary and secondary data. The primary data were data collected through interviews, questionnaires and self-observations. The secondary data were collected from laws, foreign literature related with the study. journals, other related publications and internet.

3.7 Data Collection tools

The researcher used the following data collection tools;

3.7.1 Questionnaire

In conducting this study primary data is collected through structured questionnaire with prisoners as they are used in getting the required information directly from the respondents. The questioners consisted three main parts. The first part is background of respondents concerning personal profile designed to get information on socio-demographic condition of the respondent. In the second part, views and attitudes about the law and the practice of conjugal right of prisoners. It includes, not limited to, the challenges and prospects in exercise this right. The last section was questions to respondents what solution they provide. The questionnaires were prepared in English and translated into local language Amharic and back to English to ensure understandability and reliability of information.

3.7.2 Interview

The major data collecting tools used in the study were semi structured interviews and the questions that make up the schedule were usually open-ended to encourage the respondents to elaborate their views about the topic.¹¹⁶ that was conducted with administrator of the institution.

Which in turn helped the researcher to raise appropriate follow up questions that given further understandings.

Interview guide questions developed in accordance with the research questions that need to be explored and analyzed. The key informants of the study administrator of the institution and the semi structure interviews were administered.

¹¹⁶Langdrige, D., Introduction to Research Methods and Data Analysis in Psychology., Pearson Education press, New Zealand, 2004.

3.7.3 Personal Observation

The research has also used observation as an additional way of collecting data. Observation can be defined as a qualitative, non-numerical data collection technique used widely in various areas of research. This technique involves all human senses, where reliability rests on the researcher rather than on other external sources¹¹⁷.

An observation check-list were prepared to collect information focused on the physical infrastructure of the prison facility, admission and registry procedure, meals and the overall physical condition of inmates during the study. The observation has covered all cells of the Maximum-Security Prison at two prisons in Addis Ababa to examine the standard of the prison.

3.8 Method of data analysis

The research employed both quantitative and qualitative methods of data analyses. Quantitative methods were addressed by different statistical techniques for instance, descriptive statistical such as mean, minimum and maximum. The collected data about the benefits and effects of the right of prisoners for conjugal visitation was analyzed using frequency, percentage and Pearson correlation. The analysis was used Statistical Package for Social Science software (SPSS).

Qualitative data were analyzed and transcribed by using thematic and narrative data analysis technique based up on the objective of the study. These techniques were employed because, while the thematic approach was determined to be suitable for identifying the key themes in the data, the narrative method allowed the researcher to convey the findings in a narrative manner (Joffe and Yardley 2004).

3.9 Ethical considerations

The research strictly adheres to the highest standard of confidentiality as it has a possibility of affecting the interests of the respondents. In addition, the research gave merit and recognition for the response even in situations to which the researcher did not agree. The respondents were reassured of non-disclosure of information other than for academic purposes only and the need not to reveal the identity of informants in whatsoever circumstances.

¹¹⁷Fox, Nick. [1998] 'Trent Focus for Research and Development in Primary HealthCare: How to Use Observations in a Research Project' Trent Focus 24

Chapter Four: - Results and Discussions

4.1 Introduction

This chapter discussed the results and findings of the study. It presented the background characteristics of the respondents and the findings of the analysis based on the objectives of the study. The findings of the study presented by using descriptive statistics and diagrams. In this study, 369 numbers of respondents were selected from three Federal Prisoners in Addis Ababa. Therefore, before the analyses of data proceed, valid and invalid questionnaire were identified as represented in table 2 below. Based on Mugenda and Mugenda (2008), the response rate was considered as excellent.

Table 2: Response Rate

Questionnaire validity	Frequency	Percent (%)
Valid	355	96.2
Invalid	14	3.8
Total	369	100

4.2 Socio-demographic Characteristics of the Respondents

The socio-demographic characteristics of the study population which is obtained from the instrument used to assess the right of prisoners for conjugal visitation is summarized by using descriptive statistics such mean, median, mode, standard deviation, frequencies and percentages. Which is summarized in Table 3 as follows;

Table 3: Socio-demographic data of the study population

Characteristics	Variables	Frequency	Percent	Valid Percent	Cumulative Percent
Gender	Male	315	88.7	88.7	88.7
	Female	40	11.3	11.3	100.0
	Total	355	100.0	100.0	
	18-29	69	19.4	19.4	19.4
	30-45	140	39.4	39.4	58.8

Age Group	46-65	146	41.2	41.2	100.0
	Total	355	100.0	100.0	
Educational level	Illiterate	109	30.7	24	
	Elementary	151	42.5	42.5	42.5
	High school	112	31.5	31.5	74.0
	College	92	26	26	100.0
	Total	355	100.0	100.0	
Marital Status	Married and have children	110	31.0	31.0	31.0
	Married and no children	80	22.5	22.5	53.5
	Divorced after conviction	74	20.9	20.9	74.4
	Unmarried	91	25.6	25.6	100.0
	Total	355	100.0	100.0	

Table 3 shows the demographic characteristics or social backgrounds of the study participants. The summary of the demographic profile is shown as follows: 315(88.7%) were male participants who contributed to research and 40(11.3%) were female participants. Hence, it proves that the majority of participants who contributed to the research were male.

The data gathered from the demographic question related to the age group of participants. The study revealed that the majority of participants, i.e., 146(41.2%), were from the age bracket of 46 to 65 years, 140(39.4%) were from the age bracket of 30 to 45 years, and 69(19.4%) were from the age bracket of 18 to 29 years.

The information gathered from the question related to the educational level of the participants. From the table below, it is gathered that the majority of participants, i.e., 151(42.5%), were elementary, 112(31.5%) were high school, 109(30.7%) were illiterate and the remaining 92(26%) were college.

The information gathered from the participants related to marital Status; the majority of respondents, i.e., 110(31%) of participants were married and have children, 91(25.6%) were unmarried, 80(22.5%) were married and no children and the remain 74(20.9%) of the respondents were divorced after conviction.

Table 4: Imprisonment status of the prisoners

Characteristics	Variables	Frequency	Percent	Valid Percent	Cumulative Percent
Sentence of prisoners	1-5	100	28.2	28.2	28.2
	5-10	210	59.1	59.1	87.3
	More than 10	45	12.7	12.7	100.0
	Total	355	100.0	100.0	
Years spent in prison	Less than 1	55	15.5	15.5	15.5
	1-5	154	43.4	43.4	58.9
	5-10	137	38.6	38.6	97.5
	More than 10	9	2.5	2.5	100.0
	Total	355	100.0	100.0	

Table 4 summarized year's sentence of prisoners and years spent in prison in the following way. Data shows that 210 (59.1%) of the prisoners sentenced from 5 -10 years, 100 (28.2) of the prisoners sentenced from 1 -5 years and the rest 45 (12.7%) of the prisoners sentenced more than 10 years.

Regarding the years the incarcerations Spent in the prison, 154 (43.4%) of the prisoners Spent from 1-5 years, 137 (38.6) of the prisoners Spent from 5-10 and the rest 9 (2.5%) of the prisoners Spent more than 10 years.

The relationship between variables was examined using Pearson product-moment correlation analysis and presented in this section. According to Ratner (2014), correlation Values between 0 and 0.3 (0 and -0.3) indicate a weak positive (negative) linear relationship via a shaky linear rule, values between 0.3 and 0.7 (-0.3 and -0.7) indicate a moderate positive (negative) linear relationship and values between 0.7 and 1.0 (-0.7 and -1.0) indicates a strong positive (negative) linear relationship via a firm linear rule. Therefore, in this study all correlation results are interpreted in light of this rule.

4.3 Correlation between of Conjugal visitation and Homosexuality

The prevalence of sexual activity in prisons is largely unknown and thought to be significantly under reported due to denial, fear of stigma and homophobia as well as the criminalization of same sex conduct (Walmsley, 2013). Under reported prevalence of STI's among prisoners were identified in this study.¹¹⁸ Inmate concerns about privacy and fear of stigma. Many inmates do not disclose their high-risk behaviors. because they fear being stigmatized.¹¹⁹ Health care providers should keep inmate's health care information confidential, know the public health confidentiality and reporting laws, and inform inmates about them.¹²⁰

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 also proved that homosexuality is rampant in many prison centers of Ethiopia.¹²¹ One of the driving factors for such perplexity is attributed to a non-recognition of Conjugal visits for legally married couples. Though homosexuality is recognized in different countries as legal right, under the new criminal code of Ethiopia, it is punishable by simple imprisonment.¹²²

¹¹⁸ Interview held with Anonymous expert at Kality Prison Centre on 18/8/2022

¹¹⁹ Ibid

¹²⁰ Ibid

¹²¹ 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

¹²² Art.629 of the criminal code

Table 5: Correlations between conjugal visitation and Homosexuality

		Conjugal Visitation	Homosexuality
Conjugal Visitation	Pearson Correlation	1	-0.725
	Sig. (2-tailed)		0.025
	N	355	355

As indicated in table 5 conjugal visitation and homosexuality were negatively correlated, the calculated value of Pearson correlation coefficient shows that $r = -0.725^*$ ($p < .05$, $N = 355$), which implies strong and negative relationship between conjugal visitation and homosexuality. Thus, when the conjugal visitation increases homosexuality decrease and vice versa. The results generated in the above analysis show that if prisoners are allowed with conjugal visitation right then there will be reduction of homosexuality in prison. The relationship of these two variables was found to be statistically significant at the 0.05 level of significance.

Many studies have also shown that conjugal visits can help to reduce the problems related to homosexuality in prisons.¹²³ 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 Penitentiary.¹²⁴ Conjugal visitation is reported to reduce homosexual activity and because AIDS is often spread by homosexual activity, conjugal visitation may help to attenuate the spread of AIDS in prison (Bates, 1989; Olivero et al., 1992).

¹²³Samson C. R. Kajawo (n 4) 5

¹²⁴Columbos 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>

4.4 Correlation between Conjugal visitation and Family bonding

The right to marry and found a family is enshrined in the UDHR (Art.16), the ICCPR (Art.23) and the European Convention on Human Rights (Art.12). It is also recognized under the FDRE constitution Art.34.

Again, the general comments made by the UN Committee on article 23 of the ICCPR provides state parties shall take legislative, administrative, or other actions to guarantee protection of a family.¹²⁵ 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.¹²⁶

Table 6: Correlation between Conjugal visitation and Family bonding

		Conjugal Visitation	Family Bonding
Conjugal Visitation	Pearson Correlation	1	0.821
	Sig. (2-tailed)		0.012
	N	355	355

Table 6 shows that the correlation between conjugal visitation and family bonding were positive, the calculated value of Pearson correlation coefficient shows that $r = 0.821^*$ ($p < .05$, $N = 355$), which implies strong and positive relationship between conjugal visitation and family bonding. Thus, conjugal visitation strengthens family bond. The relationship of these two variables was found to be statistically significant at the 0.05 level of significance. In agreement of this finding Flanagan (1980) which is conducted to examine the attitudes and perspectives of long-term inmates also demonstrated that loss of relationships with family and friends outside the prison was the single most important or serious problem that prisoners had encountered since being incarcerated.

¹²⁵General comment 19 on the right to family life, parag.1

¹²⁶ Ibid.

Table 7: Conjugal Visit from the Perspective of Health

Some of the Problems resulted from refraining from intimate contact		
Problems	Frequency	Percentage
Low Self Esteem	198	55.8
Anxiety	129	36.4
Aggressiveness	8	2.2
Missed	20	14.1
Total	355	100

As shown in table 7, Convicts suffer from major psychological repercussions, including low self-esteem, melancholy, depression, and difficult treatment, notably hostility. Where there is no respect for the life and physical integrity of human being, where the minimum conditions for a dignified existence are not assured, there will be no room for the dignity of a human person.

As stated in Chapter two of this paper, different International, Regional as well as National Human right law instruments impose authorities to respect for the physical and moral integrity of the convicts. Thus, they are protected as to the fundamental human rights of (life, health, bodily integrity and human dignity),

The study finding show that custodies in Addis Ababa's Federal Prisons, particularly lack of intimate visits cause psychological and emotional suffering to those who are incarcerated there, exposing them to harm that goes beyond mere deprivation of liberty.

Thus, the psychological damage caused by imprisonment and similar conditions, along with sexual abstinence and other rights violations, is undeniably substantial and affects a person's dignity. All of the aforementioned points lead to the conclusion that the appropriate constitutional ideals cannot coexist peacefully. The reality is that frequent restrictions on visiting detainees run counter to fundamental rules of our legal system and, in most circumstances, go beyond the bounds of reasonableness.

Table 8: Conjugal Visit from the perspective of Martial Relationship of inmates

Do you think your marriage will be continued after your release?		
	Frequency	Percentage
No	292	82.3
Yes	63	17.7
Total	355	100.0

As the reported data by respondents' imprisonments of one the spouse affects Martial condition. Accordingly, the statistical data show 292 (82.3%) reply their marriage will not be continued, 63(17.7%) respondents said their marriage will continue. According to the data gathered, lack of Conjugal Visit and lack of spending time together, leads to the breakdown of their marriage. Similarly, qualitative finding also revealed the problems:

As a result, the most widespread acceptance of conjugal visits is a foundation for maintaining family ties and raising the likelihood that a prisoner would succeed upon eventually returning to life outside of jail. Therefore, allowing Conjugal visitation has a strong relationship with Family bondage and marriage continuance.

In line with this, one of my key informants says that,

*She has marriage before imprisonment and having two children. She is sentenced for 8 years. During her stay in prison, the husband already started an affair with someone and the whole family was finally displaced and the marriage was dissolved.*¹²⁷

Here, the study found that the issue of conjugal visitation rights affects more than just the person who is imprisoned; it also has long-term effects on the other spouse's life and sexual needs, which ultimately leads to the dissolution of the marriage and family.

¹²⁷Interview held with Anonymous Prisoners at Kality Women Prison Centre in 15 Jan 2022

4.5. The Correlation between Conjugal visits and Inmate Rehabilitation

The rehabilitation of convicts must be the ultimate purpose of imprisonment, according to provisions in international law.¹²⁸

One of the primary purposes of Ethiopian criminal law is also rehabilitation. The reformation and rehabilitation objective of the criminal law is best provided under the preface of the FDRE Criminal code of 2004.¹²⁹

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.

Table 9: The Correlation between Conjugal visits and Inmate Rehabilitation

		Conjugal Visitation	Inmate Rehabilitation
Conjugal Visitation	Pearson Correlation	1	0.721
	Sig. (2-tailed)		0.013
	N	355	355

Table 8 shows that the correlation between conjugal visitation and inmate rehabilitation were positive, the calculated value of Pearson correlation coefficient shows that $r = 0.721^*$ ($p < .05$, $N = 355$), which implies strong and positive relationship between conjugal visitation and inmate rehabilitation. Thus, conjugal visitation strengthens inmate rehabilitation. Therefore, conjugal visits have a positive impact on inmate rehabilitation.

¹²⁸United Nations Treaty Series. International convention on civil and political rights of prisoners, New York, 1976, p.66

¹²⁹ Federal Democratic Republic of Ethiopia Criminal Code, Pub. L. No. Neg.Gaz, proc. no.414/2004 (2004), preface, paragraph 8.

The relationship of these two variables was found to be statistically significant at the 0.05 level of significance. Robbie (2013) also found that inmates who participated in conjugal visitation programs had a lower rate of violent incidents, were more likely to participate in educational and vocational programs, and were less likely to be placed in solitary confinement.

Another study from 2014 found that inmates who had access to conjugal visits had lower rates of misconduct and disciplinary infractions than those who did not.

4.7. Correlation between Conjugal Visitation and Reproductive rights.

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.¹³⁰ 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. According to the data gathered, 86.5% of the male prisoner's need to have child from their spouse while they are in prison.

Additionally, as it is 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.¹³¹

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 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.¹³²

¹³⁰See Article 16 of UDHR, Article 23 of the ICCPR, Article 18 of ACHPR, and Article 12 of the European Convention on Human Rights.'

¹³¹General Comment No. 22 (2016) accessed 25 June 2022.

¹³² Ibid.

With regard to Women inmates, the researcher poses interview question to six long serving women prisoners in kality prison about whether they think that they have a right to get pregnant and have a child while in prison or not and do they want to use it or not if they think that they have a right in terms of prison conditions. The prisoner was described about the situation in the following way:

*I did not have a child, but I did not think that I had a right to get pregnant and have a child while I am in prison; according to my position even if I have legal right I did not want to give birth in the current state of the prison because the prison is not conducive to having children; for example there is no school for children, there is no place for mothers to put their children when they are working and this prevents mothers from earning enough money to care their children. However, if this is convenient, I wants to have a baby because when I leaves the prison, my age of childbearing will pass, as a result, I will not be able to continue living with my husband and right now when I think about it, I am very frustrated.*¹³³

Related to this I present one interview question for kality prisoner administrator regarding long term women prisoners who have not had a child whether she notice how they felt and their readiness to correct or not;

*“I noticed their feelings of despair and frustration, as a result, I want the Conjugal Visitation right to be allowed and respected in prison especially for those who are married and for those natural Child birth time will pass.”*¹³⁴

¹³³Interview held with Anonymous Women Prisoner at kality prison Centre accessed in 18/8/2022

¹³⁴Interview held with Chief Sergeant Getahun Girma, Kality Women Correctional and Remand Centre, conducted in 12 Jan 2022 in Kality Prison

Chapter Five: Conclusion and Recommendation

5.1: Conclusion

As stated earlier, prisoners are human beings entitled to well-defined human rights, recognized on the international level, regional levels, and national human rights instruments. Among such rights, the right to be visited by their spouses, families, legal counselor and religious fathers are the mentioned. The research examined the extent of visits by spouses i.e., conjugal visits.

Conjugal visitation rights allow prison inmates and spouses to visit privately and have sexual relations. Historically, such a visit is allowed for those who work hard and behave in good character. But now a day states allowed conjugal visits for preserving social, family, and conjugal ties between prisoners and their intimates and thereby achieve the rehabilitative purpose of punishments. Prisoner's right to conjugal visitation has a close connection with other human rights, such as reproductive, health, and family rights of prisoners.

As explored in the research, still now there is no consensus as to the bones and banes of prisoners' right to conjugal visit among scholars in the area.

In Ethiopia, even if there is no express or implies law that contain any formulations concerning the consummation of conjugal visits. one can invoke the right to private life, the right to found a family, and the right to life and liberty which are expressly incorporated under the human rights instruments, to claim conjugal visits for prisoners.

In addition to that, Ethiopia, as a contracting party to the major international and regional human rights treaties and documents, is expected to create a better environment for the protection and safeguard of fundamental human rights and freedom particularly the rights and treatment of prisoners.

5.2: Recommendation

- Conjugal visits for prisoners must be acknowledged in Ethiopia due to their importance in addressing the issue of reproductive rights, family life, the spouses' sexual rights, and their positive effects on achieving the rehabilitative goal of punishment.
- The government of Ethiopia should solve observed problems during conjugal visit by providing sufficient budget and training for prison guard to tackle facilities and service problems.
- Based on this finding, authorities must temporarily take action to reduce the negative impacts of restricting conjugal visitation within the prison until the stakeholders come to an agreement on the importance of such visits. Avoiding prison overcrowding, enforcing stringent rules regarding sexual assault in the facility, offering effective and organized psychological counseling services, improving recreation facilities, providing better educational opportunities and other vocational training that keep inmates occupied and busy, as well as other possible measures, could be some of these measures.
- In order to address this issue and provide a thorough explanation of prisoners' rights, international and regional organizations must develop treaties or other legally enforceable documents that may be structured to include prisoners' rights to conjugal rights.
- International institutions, such as the UN human rights committee, must also address this issue in its general comment, which explains prisoners' rights to contact with their families as well as the parameters and justifications that must be taken into account when allowing family visits, especially marital visits.
- The government of Ethiopia shall consult with and learn from those nations that have previously incorporated the right of prisoners to conjugal visits under their laws, as it has no legislative experience on the subject.

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4. Legal Instruments

4.1 International Instruments

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- International Covenant on Economic, Social and Cultural Rights (ICESCR) adopted 16 December 1966, (enter into force 3 January 1976)
- International Covenant on Economic, Social and Cultural Rights (ICESCR) adopted 16 December 1966, (enter into force 3 January 1976)
- Universal Declaration of Human Rights (UDHR) GA Res 217(III) adopted 10 December 1948

4.2 National Legislations

- Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia Proclamation 1/1995, Federal Negarit Gazette, 1st Year No.1
- Directive for the visitation of federal prisoners, Commissioners Directive No. 01/2009
- Federal Attorney-General Establishment Proclamation, Federal Negarit Gazzetta, Proclamation No. 1174/2019
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6. Interviews

- Interview with Chief Sergeant Amsalu Kassie, Directorate General of Kality higher security prison center, conducted in Addis Ababa
- Interview with Chief Sergeant Getahun Girma, Women Correctional and Remand Centre, conducted in Adiss Ababa
- Interview with Belete Moges, Deputy Chief Sergeant at Kality Prison Centre conducted in Addis Ababa Ethiopia
- Interview with Sisay Debebe, Sergeant at Kality Prison Centre conducted in Addis Ababa Ethiopia.
- Interview with Ebrahim Ahmed, Kilnto Prison Centre, Addis Abeba, Ethiopia

Annex □: -Personal Observation Checklists

Guideline for Researcher Personal Observation at Federal Prisons in Addis Abeba

Instruction

This personal observation checklist is prepared by Yemesrach Yitbarek, a post graduate program student at Addis Ababa University School of Law and Governance, the purpose of this checklist is to collect relevant information on the enforcement of prisoner's rights to Conjugal Visit at Federal prisons in Addis Abeba. This checklist is designed to solicit key information regarding the provision of selected infrastructure at Federal Prisons in Addis Abeba.

Observed problems	Expected	Available
Overcrowding of visitors		
Less time together		
privacy issues		
No room for Married Inmates		

Annex □ Questionnaires for Inmates

PART 1: Personal Information of Inmate

This part consists of six questions. For each question, please tick “√” in the box to the appropriate number and fill the blank space provided, please answer all questions.

- 1) Kindly indicate your gender:
- 2) Please indicate your age group
- 3) Please indicate your education
- 4) Marital status
- 5) How long did you stay imprisoned?
- 6) How long your sentence will stay?

PART 2: Practice of Conjugal Visitation in prisons

1. How much time do you spend with your spouse during the visitation?
2. Are you satisfied by the visit you get from your spouse?
If yes how? _____
3. When your spouse visits you, do you show him/her love like you used before imprisonment?
If no, why? _____
4. Do you think that the time given for conjugal visit is enough?
If no, why? _____
5. Do you think that conjugal visit should get much attention to preserve marital relationship?
If say yes, in what ways conjugal visit could help you to preserve marital relationship?
6. Does correctional center give more freedom and space for prisoners who are visited by their children and spouse?
7. Do correctional facilities are fulfilled during conjugal visit to smooth your relation with spouses? If your answer is yes in what ways?
8. How was your marital relationship before your imprisonment?
9. Do you think your marriage will be continued after your release from prison?
10. After your imprisonment, is there any problem which you observe in your family while they visit you?
11. Does your family suffer from financial difficulty after your imprisonment?
12. Do you think that you have the right to have sex with your spouse and have a child while in prison?
13. If you know you have this right, would you be willing to use it ? and do you think it has pros and cons?

Annex □: - Interview question for prison administrators

1. What kind of problems do you think you mostly face if conjugal visit is allowed?
2. As prison administrator, regarding long term women prisoners who have not had a child, did you notice how they felt and their readiness to correct?
3. Do you think Conjugal Visitation assist for rehabilitation of the prisoners?

Annex □: - Interview questions for Health Experts in Kality Prison Centre

1. What are the health problems that Inmates mostly face with regard Conjugal Visitation?
2. Does the institution respect inmates’ reproductive rights?
3. What do you think of the remedy for these Health Problems?

Annex v: -Close Ended Questions for Prisoners

For the following questions, please tick “√” in the box that best indicates your opinion and fill the blank space provided, please answer all questions using the following scales:

	1	2	3	4
SCALE	Strongly Disagree	Disagree	Agree	Strongly Agree

No.	Relationship between Conjugal visit and family bonding, years spent in prison and inmate rehabilitation	Agreement Scale			
		1	2	3	4
Family boding		1	2	3	4
1	I am fright that my spouse might engage with another person because I failed to have sexual intercourse with him/her				
2	After being imprisoned, I have feared about breaking up with my spouse.				
3	Denial of sexual intimacy influences my emotional attachment with spouses.				
4	Denial of physical contact with my spouse gave space for Marriage break down during visit.				
Years spent in prison		1	2	3	4
1	I feel that my spouse’s separate from me as result of less time together.				
2	Years of imprisonment affect my involvement in family matter.				
Inmate rehabilitation		1	2	3	4

1	I feel I have a right to get pregnant and have a child while I am in prison				
2	I feel I have the right to have sex with my spouse and have a child while in prison				
3	I want to give birth in the current state of the prison				
4	I feel the correction center have enough facilities to having children;				

Thank you for your participation!



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ከሰዳምታ ጋር
Amsalu Kassie
Chief Sergeant
የቃሲቲ ማረጋገጫ ማዕከል



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ለአዲስ አበባ ዩኒቨርሲቲ

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