

Contemporary Implementation of Conjugal Visits as a Guideline for Prison Policies in Malaysia

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Abstract

Conjugal visit is a visitation granted to prisoners in the form of a meeting between legally recognized spouses. The visits are limited and have a short duration. Conjugal visit allows for private physical contact and overnight stay. The practice of conjugal visits is observed in contemporary societies in certain countries such as Saudi Arabia, the United States, and Thailand. However, the concept of conjugal visits has not been implemented in Malaysia. Therefore, the purpose of this writing is to raise questions regarding conjugal visits in Malaysia. This qualitative study utilizes content analysis as the research design. Data collection involves primary source documents from the basic principles of the Malaysian Prison Department. Additionally, structured interviews were conducted with officials from the policy division of the Malaysian Prison Department. The data will be analyzed using a comparative method between the primary sources, and subsequently, triangulation with interview data. The study found that currently, there is no significant implementation or development regarding conjugal visits in Malaysia, despite ongoing discussions. Hence, this study serves as a catalyst for renewed discussions on any potential needs for implementing conjugal visits.

Keywords: Conjugal Visit, Prisoner, Prison, Policy, Malaysia

Introduction

The term "conjugal visit," or as it can be suggested in Malay as "lawatan konjugal," is a right granted to legally married couples under the law, including the right to spend time together, build a family, and enjoy intimate relations (Hensley et al., 2002). Additionally, conjugal visits also represent a form of right extended to incarcerated individuals to meet in a private setting, typically with their legal spouses, and engage in any lawful activities, including sexual relations, in accordance with the law (Thompson & Loper, 2005).

However, in the implementation context, the definition and forms of conjugal visits vary among prisons. Kajawo (2021) documented differences in the United States regarding the timing of visits, facilities, and other aspects. Apart from the United States, conjugal visits are also practiced in Islamic countries. Nancy (2012) recorded that in Saudi Arabia, there is a prison named al-Haer where conjugal visits are allowed, typically for a duration of 24 hours once a month.

Overall, it can be concluded that conjugal visits are a visitation right granted to inmates in prisons to meet their legally married partners in a private setting, in accordance with the law. Additionally, these visits are also practiced in countries worldwide, including the United States, Brazil, Thailand, Saudi Arabia, and others.

The Basics of Conjugal Visits

Scholars from around the world have offered both positive and negative perspectives on research related to conjugal visits. Studies by Sumardiono et al (2018); Fausia (2012) have concluded that the need to implement conjugal visits is a requirement for social justice. However, it's important to note that these studies were conducted in Indonesia, which had not yet implemented conjugal visits at the time.

Meanwhile, Stewart et al (2012), who conducted research in the United States, found that conjugal visits have led to a reduction in sexual violence within prisons. The study states: "The rate of sexual violence in states that allow conjugal visitation is 57 incidents per 100,000 inmates, whereas in states that do not allow conjugal visitation, the rate is 226 per 100,000 inmates." In addition to Stewart et al., other studies have provided justification for the need to implement conjugal visits based on factors such as inmates' rights, emotional stability, mental health, productivity, and more.

However, on the negative side, as noted in the study by Kajawo (2021), the cessation or reduction of conjugal visits in some countries is related to inmates' productivity, facility management, and implementation costs. Therefore, the basis for implementing conjugal visits is interconnected with various aspects of life. Some of the foundations that can be explored beyond the Malaysian Prison Department include the cost of program implementation, public perception, and government policies.

Implementation in Selected Countries

Brazil

Brazil is one of the countries that has implemented conjugal visits for inmates in detention. The practice is carried out in many prisons in Brazil and is considered an effort and policy by the state to support inmates in prison. The freedom granted to inmates to have conjugal visits must adhere to the conditions set by the prison and detention centers where they are held. According to Krahn (2019), "The main purpose of conjugal visits is to strengthen the prisoner's family relationships, and to have this right guaranteed, the following conditions are imposed." The implementation of conjugal visits in Brazil aims to strengthen the familial relationships of inmates. To ensure the rights of inmates, certain conditions have been established by the prison authorities to prevent fraud and ensure the well-being of the incarcerated individuals and their partners.

The conditions that have been established include the following (Krahn, 2019)

1. Married couples must present their marriage certificate and are not required to provide proof of their ongoing relationship according to the law. However, for couples under the age of 18, only one spouse can be registered at a time.
2. For replacement visits, an individual must comply with a minimum waiting period of two months.
3. Both partners must sign a statement of responsibility related to information about the risk of sexually transmitted diseases.
4. The couple must participate in a campaign related to the risk of sexually transmitted diseases. Couples planning a conjugal visit must attend counseling sessions on the prevention of sexually transmitted diseases and HIV or AIDS.
5. Conjugal visits will be prohibited when the designated facilities within the prison are insufficient, and permission will be granted when there is availability in these facilities.

Therefore, the conditions set by the prison authorities in Brazil place a strong emphasis on providing evidence of marriage and ensuring that visiting partners have knowledge about sexually transmitted diseases. This is done with the goal of safeguarding the health of inmates in detention to prevent the spread of sexually transmitted diseases. The health and well-being of inmates in detention are the responsibility of the prison authorities to ensure that no diseases that could harm the inmates are contracted while in prison.

Europe

According to Cavan (1958), *"Provisions for family visiting in our institution are flexible to permit the fullest use of this privilege as an integral part of the inmates' treatment. The needs of the individual are of primary importance in determining the duration and supervision of visits and when children or other family are allowed to visit. Supervision is of a general nature, except in cases requiring unusual security precautions"*.

She explained that the provision of allowed visits in Europe is a privilege granted to inmates. Individual needs are the top priority for the prison authorities according to prison policy. Family visits are a common type of visit that does not require strict procedures, but for conjugal visits, there is a stringent process in place to prevent the spread of diseases. Additionally, the practice of conjugal visits helps maintain emotional bonds between partners and normalizes their relationship, even if only for a short time and under the limitations imposed by the prison due to the punishment imposed on one of the partners. There are several conditions that must be adhered to by inmates who wish to have a conjugal visit with their partner. Some of these conditions include (Casadevall, 2015)

1. A convict is an individual who has been convicted with a final decision.
2. Convicts are not under investigation or involved in other criminal cases.
3. The duration of implementing the conjugal visit practice is two hours, depending on the number of requests and available space.
4. It is only allowed a maximum of four times per month.

Therefore, every rule and condition must be adhered to by the convict and their partner to prevent any issues from arising. The implementation carried out aims to ensure a more enduring relationship between partners. Furthermore, their rights will be upheld, and there

will be no neglect of the basic rights of the convict. Each stipulated condition is certainly based on the reasons and procedures of the prison policy itself. Convicts must take responsibility for complying with all the rules set by the prison authorities.

Philippines

Furthermore, the implementation of the conjugal visit practice in the Philippines is influenced by European culture. Therefore, the prison policy in the Philippines is a result of the fusion of European cultures. The procedures for implementing conjugal visit practices in the Philippines are very detailed. Among the conditions are (Angelo, 2019)

1. Conjugal visits are only permitted for legally married inmates, and the condition is that the husband and wife must cohabit. The couple needs to submit their marriage certificate before scheduling the visit.
2. Visits are allowed only once a month and are scheduled from Tuesday to Sunday, starting from 1:00 PM to 5:00 PM. On Saturdays and Sundays, conjugal visits commence from 8:00 AM to 12:00 PM and from 1:00 PM to 5:00 PM.
3. The visits are limited to a duration of two hours, and visitors are allowed to enter one hour before the scheduled time.

If issues arise regarding security and safety, the prison warden has the authority to revoke the granted permission. Furthermore, for couples where both partners are inmates, special privileges are granted with the condition that the male and female dormitories are adjacent. Only one of them is allowed to be sent out for conjugal visits.

Furthermore, the implementation of this is highly justified due to the complaints from inmates that *"Seeing their families lifts their spirits in the way that conjugal visits for men can lift theirs."* Welfare officer (Baker, 2015). The statement explains that family relationships are crucial for incarcerated individuals to boost their spirits and provide motivation for their lives after the mistakes they have made. Moral support is essential, even if it involves just interactions between spouses or family members. This demonstrates that the right to meet one's spouse, whether both are inmates or not, is a privilege extended to them. Thus, the principle of justice, namely equality, is granted to these couples. The implementation of conjugal visit practices can contribute to resolving marital issues and improving relationships.

Israel

Israel is a country that also implements conjugal visit practices in its prison policy. The conjugal visit practice was introduced in 1994 and began in most male prisons and the country's only female prison. Among the conditions for conducting conjugal visits are (Einat & Rabinovitz, 2012)

1. The couple has visited the prison at least three consecutive times within a two-year period.
2. Visits are allowed seven days a week in two daily sessions, starting from 08:30 to 19:30 and from 20:00 to 08:00.
3. Each couple is allowed only 45 minutes.
4. Reservations are required for room usage, and children are not allowed. A knock on the door indicates the end of each visitation period.

Various facilities are provided by the prison authorities for couples participating in conjugal visits. Among them is the conjugal visit building, located 300 meters outside the prison but within a larger complex. Furthermore, a two-story building contains eight bedrooms with en-suite showers. The provided rooms are equipped with dining tables and beds, along with amenities such as television, air conditioning, and a telephone for internal use only.

Therefore, the provided facilities aim to offer comfort to both the inmates and their spouses. This underscores the importance of upholding the fundamental rights of human life. Every facility within the prison premises is the responsibility of the prison authorities to maintain, ensuring that the basic rights of inmates in custody are not neglected. Despite inmates being distant from society and leading lives vastly different from those outside, their essential rights must be provided by the prison authorities.

United States

Federal prisons in the United States do not allow conjugal visits for inmates. However, for inmates in state prisons, conjugal visits for the inmates and their partners are governed by state laws (Yakubu, 2018). Where prisoners and spouses are allowed to make such visits, but the inmates must meet specific conditions. Among the conditions are (Cavan, 1958)

1. Inmates with good behavior are allowed to have visits up to four times a month. If there is severe misconduct, the prison authorities will cancel all visits.
2. Visits take place on Sundays.
3. The allowed duration is from 12 to 24 hours, and inmates are permitted to return home, but with the condition that they are serving a life sentence, have no pending punishments, and exhibit good behavior.
4. It has been established that visits usually occur in designated rooms or structures provided by the prison authorities.

There are several facilities provided by the prison authorities to ensure the comfort of inmates engaging in conjugal visits. These include trailers or small cabins, along with supplies such as soap, condoms, lubricant, bedding, linen, and towels (Yakubu, 2018).

The implementation of conjugal visit practices in the United States is aimed at reducing issues of sexual crimes within prisons. According to Wyatt (2016), the occurrence of rape within prisons has become a common practice among inmates.. *"I go through nightmares of being raped and sexually assaulted. I can't stop thinking about it. I feel everyone is looking at me in a sexual way"*.

Some prison wardens also acknowledge incidents that occur but do not report cases of prison rape. Even though they believe it happens, as they have not been properly trained on how to handle such situations, they may choose to ignore the problem. A former prison warden, after careful observation, realized that certain inmates were being raped and were in dangerous situations. However, there was nothing they could do; they simply pretended not to be aware of the issue.

Sometimes, they actually witness sexual acts between two inmates but avoid intervening to find out what is happening because prison wardens feel embarrassed by such behavior. Other prison wardens also refrain from getting involved because they believe the inmates deserve it, and they would mock any inmate who comes forward for help by insulting and making derogatory remarks about their situation.

This indicates that the practice of conjugal visits can have a positive impact on sexual crimes that occur within prisons. As demonstrated by the stories that have unfolded, it proves that biological needs are necessary for inmates, and the best way for incarcerated individuals is through conjugal visits. Furthermore, this practice also aims to maintain family bonds and enhance the chances of successful reintegration into society for inmates once they are released from prison.

Basics of Discussion on Conjugal Visit in Malaysia

The idea of Conjugal visits is not a new concept in Malaysia. The granting of this right was first questioned in the Dewan Rakyat (Parliament) in 1969 by the Member of Parliament for Batu, Dr. Tan Chee Khoo. He asked the Minister of Justice whether he would allow "Conjugal Visit" for prisoners serving long jail terms, and if not, whether he would consider studying such a proposal with the intention of implementing this practice in Malaysia. The statement was responded to by the Minister of Justice at that time, Tuan Bahaman Samsudin, with the following statement

I regret I am unable to allow such a practice at the present time as there are hardly any facilities available for this modern reform in the present penal establishments. However, I shall cause a study to be made on the proposal and if as a result of this study it is thought desirable to introduce the practice of "conjugal visits" for prisoners, consideration will be given to provide such facilities in the new prison building programme"

(DR-16011969)

Furthermore, in the parliamentary session on January 7, 1972, this matter was raised once again by Tuan Haji Abdul Wahab Yunus, the Member of Parliament for the Dungun constituency. The question was formulated as follows:

"bila-kah di-jalankan rancangan untuk membolehkan isteri banduan bermalam dengan suami mereka dalam penjara; dan bagaimana-kah chara-nya yang ditetapkan untuk menjalankan rancangan ini". The response from Tuan Mohamed Yaacob was: Tuan Speaker, perkara tersebut maseh dalam kajian dan belum lagi ada sa-suatu keputusan di-buat [When will the proposal to allow inmates' wives to stay overnight with their husbands in prison be implemented, and what are the procedures set for the execution of this proposal?" The response from Tuan Mohamed Yaacob was: "Mr. Speaker, the matter is still under consideration, and no decision has been made yet]

(DR-07011972)

The statement above indicates that conjugal visits were difficult to implement at that time due to existing facility constraints. However, in 2019, the Malaysian Prison Department acknowledged that conjugal visits had not been implemented due to facility constraints and the absence of a comprehensive study regarding it from both a policy and public perception standpoint.

The statements from the 1970s until 2019 indicate that conjugal visits have not been implemented in the Malaysian Prison Department and observed that constraints in implementation arise from prison facility limitations, public readiness, and the need for a

comprehensive system. These factors need emphasis before a decision on the implementation of conjugal visits can be determined.

In 2009, the meeting by the Committee of the National Fatwa Council for Islamic Religious Affairs in Malaysia, in its 86th meeting held on April 21-23, 2009, discussed the Reunification Program for Inmates' Families. Although this program does not fully align with the concept of conjugal visits, it is considered part of the efforts toward the goals of conjugal visits. The fatwa council's decision indicates that "providing good services to inmates in terms of spiritual and physical welfare is demanded by Islam, and any elements of abuse or torture to inmates are prohibited."

Fundamentally, discussions on the practice of conjugal visits in Malaysia involve aspects such as

1. **Eligibility and Requirements:** Determining the eligibility of inmates for participating in conjugal visits, including marital status, inmate behavior, and other required conditions.
2. **Duration and Frequency:** Specifying the allowed duration of visits and how often these visits can occur.
3. **Facilities and Necessities:** Determining the type of facilities provided for visits, such as special rooms or other amenities, and outlining rules and requirements during visits.
4. **Safety and Supervision:** Establishing safety measures to ensure visits occur without incidents and outlining supervision regulations during visits.
5. **Compliance with Etiquette and Behavior:** Setting guidelines for etiquette and behavior to ensure visits occur respectfully and safely.
6. **Conflict Management Procedures:** Determining how to manage any conflicts or issues that may arise during or after conjugal visits.
7. **Objectives and Social Impact:** Evaluating the social objectives of the conjugal visit practice and how it might have a positive impact on inmates and their families.
8. **Education and Awareness:** Ensuring there is education and awareness about the conjugal visit practice, among inmates, families, the judiciary, and the community.

Conclusion

Conjugal visits, fundamentally, represent a form of privilege granted to inmates. However, their implementation varies by country and comes with specified conditions. Past implementations by various countries provide early findings that Malaysia can consider emulating.

In theory, conjugal visits should be implemented. Based on previous studies, they serve as an indicator for the rehabilitation of inmates and act as a platform for their reintegration into the community post-release. However, the implementation in Malaysia requires further research. This aligns with various factors that need to be considered in the Malaysian context.

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