

Prisoners' Right to Sexual Privacy and Pornography in Prison

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Abstract

Masturbation with pornographic material in prison. The blanket prohibition on introducing pornographic material into prisons in Israel as well as in other places, is not grounded in substantive considerations but instead rests on archaic and/or conservative worldviews. Allowing inmates access to pornographic material for the purpose of masturbation may reduce rates of violence in general, and rape in particular, by improving the physical and mental health of the prison population [2]. The article examines four core questions: (1) whether masturbation with pornographic material constitutes a fundamental right protected under freedom of expression; (2) whether permitting conjugal visits for partnered inmates while prohibiting solitary sexual expression for single, separated, or divorced inmates violates the right to equality; (3) whether denying prisoners the ability to masturbate with the aid of pornographic material infringes upon their physical and mental health; and (4) whether the introduction of pornography into prison presents a meaningful risk to inmate conduct and institutional security, as prison administrators claim, or whether this assertion lacks empirical support.

Keywords: Prisoners; Sexual Privacy; Pornography; Masturbation; Conjugal Visits; Prison Law; Israel Prison Service; Human Rights

Introduction

This article integrates legal, criminological, psychological, and social perspectives on masturbation with pornographic material in prison. It argues that, contrary to the position of the Israel Prison Service (IPS) and the courts, the prohibition on introducing pornographic material into prisons does not stem from substantive considerations but is grounded in archaic and/or conservative worldviews. We further contend that allowing prisoners access to pornographic material for the purpose of masturbation would reduce rates of violence in general, and rape in particular, by improving the physical and mental wellbeing of the prison population [2]. The article also addresses questions of fundamental rights and the discriminatory treatment between prisoners who are permitted conjugal visits and those who are not.

The article raises four principal questions. First, does masturbation by prisoners with the aid of pornographic material (printed or digital) constitute a fundamental right as part of freedom of expression (the right to receive information), or does their status as prisoners preclude this right? Second, does granting conjugal visit rights to married or cohabiting prisoners, while prohibiting solitary sexual expression through pornographic material for single, separated, or divorced prisoners, constitute a violation of the right to equality? Third, does denying prisoners the ability to masturbate with the aid of pornographic material constitute a violation of their physical and mental health, thereby infringing upon their basic right to protection of body and mind? Fourth, does the introduction of pornographic material

into prisons pose a meaningful risk to prisoner morality and behaviour, as prison administrators claim, or is this claim without empirical foundation?

This article focuses on prisoners convicted of offences in general, excluding sexual offences. The research literature on the general prison population indicates a negative correlation between exposure to non-violent pornography and rates of rape [6]. With respect to sex offenders specifically, it cannot be ruled out that exposure to pornographic material may actually increase their sexual dangerousness [54,23].

In addition, the authors propose several practical solutions to bridge the gap between the prohibition on consuming pornographic material within prison walls and prisoners' desire and right to do so.

Prisoners' rights: An overview

Human rights are defined as rights conferred upon a person by virtue of their humanity. The prevailing principle in Israel is that every person, not only citizens, enjoys these rights, including the right to physical integrity, preservation of human dignity, liberty, property, privacy, freedom of expression, and more [18]. The fundamental rights of every person also apply to prisoners and detainees. Imprisonment and the deprivation of liberty do not, in themselves, strip the prisoner of basic rights as enshrined in Basic Law: Human Dignity and Liberty. Accordingly, even when a person is sentenced to imprisonment, they must be held in conditions that permit a civilized human existence, and only exceptional circumstances may justify some infringement of the right to basic conditions of detention [39,46]. In other words, the point of departure is that every right is worthy of protection and must be respected. The denial, limitation, or infringement of a right is permitted only on the basis of substantive grounds rooted in law [41,47].

Goffman [8] addressed the concept of "total institutions," including prisons, in which residents are subject to external control over all aspects of their lives and suffer a loss of personal identity. Residents are issued special clothing, assigned an identification number, and required to share their room or cell with others, to sit together in the dining hall, and so forth. These arrangements restrict the exercise of a range of fundamental rights and generate conditions of high stress throughout the day. Various criminologists, like Sykes, have termed this "the pains of imprisonment" [27], which include, among other things, the loss of the sexual relations the prisoner enjoyed outside prison prior to incarceration.

Israeli courts generally do not intervene directly in the substantive considerations underlying the denial or granting of prisoners' rights. Rather, they ask whether the decision of the Commissioner is reasonable [44,45,52]. Accordingly, a court will not interfere with the Commissioner's discretion except in exceptional cases where grounds for intervention arise under public law, such as arbitrariness, bad faith, or extreme unreasonableness [49,50]. From this perspective, the judge must ask whether prison authorities considered all relevant factors and balanced them appropriately. If the answer is affirmative, the judge must not substitute the authorities' discretion for their own, even if in their view a different balance would have been warranted [42,48]. However, where a human right is at stake, the relevant tests are those set out in the limitation clause of the Basic Law [46].

In the present context, the relevant question is whether the IPS Commissioner's blanket decision to prohibit the introduction of pornographic material fails the tests of the limitation clause, such that the court should annul this blanket decision and permit certain prisoners, under defined conditions, to possess such material.

Freedom of expression

According to the petitioner, the IPS Commissioner's blanket prohibition on his ability to view pornography infringes his freedom of expression [51, para. 5].

Even prior to the enactment of Basic Law: Human Dignity and Liberty, freedom of expression was recognized as a protected value [38] and was described as “the soul of democracy” [53]. Following the enactment of the Basic Law, freedom of expression was accorded supra-legislative constitutional status, on the understanding that it is included within the protected human dignity enshrined in the Basic Law [43,55]. Nevertheless, the scope of protection afforded to freedom of expression may vary according to the type of expression and in light of the countervailing rights and interests. Thus, only in a situation of “near certainty” of harm to public safety will infringement of this right be permitted [51].

In the present case, the petitioner seeks permission to engage in pornographic expression, which forms part of personal freedom of expression, as it concerns the right to express one’s sexuality in any manner one chooses, provided the act does not constitute an offence. As such, it merits broad protection.

There is considerable debate regarding the protection of pornography under the rubric of freedom of expression [1]. In Israel, Supreme Court jurisprudence has, in principle, recognized that pornographic expression falls within the scope of freedom of expression. At the same time, it has been held that, because the social value of pornographic material is low in terms of conveying positive social messages, the scope of its protection is narrower than that afforded to other forms of expression [55]. The Court has ruled that, while it acknowledges an infringement of freedom of expression, possession of pornographic material lies at the margins of the right, since pornography does not enrich the person intellectually or spiritually and does not convey positive social messages [51].

The social and legal treatment of pornography is highly contested. There is an ongoing debate between the conservative camp, which opposes pornography on moral or religious grounds, and the liberal camp, which supports it in the name of freedom of expression and individual liberty [21, p. 7]. In the present case, the Court appears to have preferred the conservative approach, emphasizing the protection of women’s dignity and the prevention of the exploitation of marginalized groups for profit by those involved in the pornography industry [51, para. 10].

In our view, the Court’s conclusion that pornography does not enrich a person intellectually or spiritually and does not convey positive social messages is insufficient to justify infringement of this right. Since pornography has been recognized as part of a person’s freedom of expression-and, as such, encompasses the capacity to express sexual fantasies through the viewing of pornographic material-a blanket prohibition disproportionately infringes the limitation clause of the Basic Law. As noted, the IPS’s contention that the introduction of pornographic material into prisons may generate violence and endanger the safety of prisoners and guards does not withstand practical, theoretical, or empirical scrutiny.

Conjugal visits compared to the right to consume pornography in prison

Conjugal visits between prisoners and their partners are recognized under the IPS Order “Conjugal Visits of Prisoners or Detainees with Their Partners” [35].

Until 1996, conjugal visits were authorized solely for the purpose of fulfilling the religious commandment to “be fruitful and multiply” and were therefore permitted only between a married male prisoner and his wife. From 1996 onward, however, visits were also permitted with a common-law partner, and from 1999, with a prisoner’s girlfriend. The justification for these changes stemmed not only from the need for procreation but also from the need for sexual satisfaction and the psychological need to maintain intimate relations with a close person. Research in this area has shown that such visits reduce the sexual and emotional frustration arising from the prisoner’s separation from significant others and that they also reduce hostility among prisoners [31].

From the mid-1990s, a revolution in the recognition of same-sex partnership rights took place. The right to equality was recognized as a fundamental right arising from Basic Law: Human Dignity and Liberty. Accordingly, the courts and the IPS recognized the right to conjugal visits for same-sex couples as well, effectively refuting the argument that conjugal visit rights were intended solely for procreational purposes [56,31].

The infringement of the right to equality as expressed in the right to solitary intimacy for single prisoners (Single/separated/divorced/widowed) compared to couples (Married, common-law, partnered).

The appellant's first argument concerns equality before the law. Just as prisoners are given the opportunity to engage in conjugal visits with their partners, he argues that he should be permitted to engage in solitary intimacy through viewing pornographic films.

If the procreational justification has been removed from the basis for conjugal visits, and if the right to sexual pleasure is recognized for couples-with its documented effect of reducing violence among prisoners-then masturbation is equally associated with important physical and psychological wellbeing and may similarly contribute to reducing levels of violence among prisoners [12].

Pornography can serve as a substitute for the experience of coupledness, even if this substitute is perceived as base, artificial, or immoral in the Court's view. Couples who enjoy conjugal visits and sexual satisfaction benefit from mutual physical exposure, facial expressions, the sight of the body, and so forth. This is true of sexual contact between both same-sex and opposite-sex partners. When a prisoner has no partner, their sexual pleasure is derived from fantasy. The use of pornography serves as a substitute for sexual enjoyment in the absence of a "real" partner. Therefore, the prohibition on consuming pornography in prison exacerbates the discrimination between coupled and single prisoners without any substantiated justification. In other words, this judicial approach is grounded in an archaic and conservative conception according to which sexual intercourse is legitimate within a couple but unworthy when pursued solely for solitary pleasure [12,14,15].

Consumption of pornography as a right to freedom of expression

Pornography has acquired a "bad reputation" and, in some contexts, is considered a form of social deviance [9]. Traditionally, the term pornography has been associated with "obscenity" [19] and was originally described as material intended to arouse sexual desire. According to the conservative camp, pornographic publication corrupts morality and arouses illicit carnal desire [62]. Pornography has been viewed as an immoral and harmful phenomenon, on the assumption that it encourages immoral and even prohibited activity [21, p. 14]. The prevailing assumption was that sexuality should remain behind closed doors and that the naked body and sexual activity should not be exposed to others [43].

With the growing influence of a liberal Western approach that emphasizes freedom of expression and individual liberty, the consumption of pornography has increasingly been perceived as a matter of personal autonomy. Under this view, individuals enjoy a dual freedom: to view pornography and to publish pornographic material. In parallel, the traditional conception of sex-as an activity intended solely for procreation-has gradually been replaced by the understanding that sex may also serve the purpose of physical pleasure [21].

Over the years, various myths have emerged suggesting that the consumption of pornography causes sexual violence, such as rape, and increased violence more generally. This claim remains prevalent today among prison administrators, who argue that pornography consumption impedes the rehabilitation process and threatens social order in prison [51].

Our argument is that the blanket prohibition on the introduction of pornographic material into prisons infringes freedom of expression and is therefore unconstitutional. This prohibition also infringes the right to dignity.

Not only does pornography fail to increase levels of violence; the opposite appears to be the case. Empirical research has found that viewing pornography and engaging in masturbation are associated with a significant reduction in physical and sexual violence in prisons in jurisdictions that have permitted such practices, including Scandinavian countries and several U.S. states [6].

Pornography as a universal human behaviour

Pornography has accompanied humanity for a long time, although its forms have changed over history and with technological progress. In the past, the pornography industry focused primarily on drawings; with the invention of printing, pornographic literature emerged, and with the invention of cinema, pornographic films began to be produced [1,21, p. 7].

A large and growing number of people prefer sexual substitutes in the form of books, magazines, and sex films [4]. The expansion of the media has been accompanied by a corresponding increase in the use of pornographic material [6].

In the United States, a public opinion poll asked respondents to what extent they would support legislation prohibiting the sale of pornography to adults. Approximately one third expressed support for such legislation. This finding suggests that, overall, pornography consumption is not perceived as deviant behaviour in the United States [9].

A study conducted in Australia [14] similarly found that many Australians view pornography as something positive that enhances their self-image and contributes to their marriages. Pornography may stimulate desire within marital sexual life or, alternatively, may be preferred over a partner. In cases where pornography was preferred, viewers were still able to maintain a healthy relationship without resorting to infidelity. According to McKee, pornographic films can make consumers less judgmental about sex, more relaxed about their own sexuality, and more attentive to their partners' needs. A notable finding was that, contrary to the myth that pornography is consumed only by men, approximately 20% of pornography consumers were women. In McKee's view, young women today are comfortable with visual erotic images. The conclusion, therefore, is that pornography in appropriate doses constitutes a positive phenomenon [14]. Good (2015) similarly argues that pornography is an inseparable and inextricable part of Western society and that it can contribute positively to social life. Moreover, increasing numbers of women are using pornography for their own consumption, a trend that appears to be liberating rather than oppressive [9].

The prevalence of pornography use and the generally accepting public attitude toward it support the conclusion that pornography meets important human needs, and there is accordingly no reason to exclude prisoners from this sphere. Furthermore, the fact that increasing numbers of women use pornography effectively challenges feminist arguments that men use pornography solely to oppress women. It may even be argued that restricting prisoners' possession of pornographic material infringes not only their freedom of expression but also their basic human dignity. By preventing individuals from expressing their sexuality in the manner they desire and given that sexual expression is an integral part of personality-such restrictions amount to an infringement of their basic dignity.

Empirical examination of the arguments for prohibiting pornography in prison

As noted, this article does not address incarcerated sex offenders.

According to the IPS's position (Regulation 37(a) of the Prison Regulations), the introduction of pornographic material may raise the level of tension among prisoners and lead to an increase in rape and other sexual assaults among the general prison population.

Although the IPS is required to consider the needs of prisoners-particularly those serving long sentences-by providing various resources and aids that can serve as sources of interest, means of occupation, tools for intellectual development, and ways of maintaining contact with the outside world [20], when it comes to the use of pornographic material, the IPS justifies its denial of prisoners' freedom of expression in this domain by claiming that its professional experience demonstrates a clear link between pornography and violence [51,para. 14].

In our view, the IPS's claimed experience in this regard is problematic for two reasons. First, since the introduction of pornographic material into prisons has been prohibited to date, it is unclear how the IPS can claim professional knowledge based on direct experience.

Second, the IPS does not rely on established criminological or psychological expertise but instead asserts that experiments conducted in other countries support its position [51, para. 17].

We argue that introducing pornographic material into prisons and allowing prisoners to masturbate while using such material-with orgasm-may reduce sexual drive and aggression, thereby diminishing physical harm, including sexual harm, to other prisoners. For example, Smith [25] contends that permitting prisoners to masturbate while viewing pornography may prevent rape in prison. The research literature on the general population indicates a negative correlation between exposure to non-violent pornography and rates of rape [6]. Moreover, even sex offenders treated in specialized clinics report that pornography helps them satisfy their sexual imagination and, in doing so, refrain from actualizing sexual offending by force. If, for sex offenders, viewing pornographic material appears not only to fail to amplify aggressive impulses but actually to restrain them, then this is all the more likely to be the case for prisoners who are not sex offenders.

It follows that the IPS's security-based justification under the limitation clause-namely, that exposing prisoners to pornographic material may increase sexual tension and endanger security-is undermined. This is true not only with respect to sex offenders but even more so with respect to other categories of prisoners [12].

The absence of heterosexual relations as a significant component of the "pains of imprisonment" and its consequences

The predominant focus in criminology and law enforcement regarding sexual relations in prison has been on coercive homosexual relations, both between prisoners and between staff and prisoners [27]. In some instances, attention has also been paid to consensual homosexual and lesbian relations. However, very few studies have examined the fundamental importance of sexual relations in general and their absence in prison in particular. More troublingly, research has found that the lack of sexual satisfaction in prison has serious consequences, including self-harm, suicidality, violence within prison walls, and recidivism following release [2]. In other words, it is precisely the absence of sexual satisfaction in prison that may generate a range of negative outcomes within the institution and may undermine the prospects of rehabilitating prisoners.

Goffman [8], examined the characteristics of total institutions, including prisons. Subsequent scholars [27,29] linked these characteristics to a system of deprivations experienced by prisoners. One of the most significant deprivations is the absence of heterosexual relations, understood as a component of physical and mental health. Accordingly, their denial may lead to serious emotional and physiological distress [28].

Satisfying sexual relations appear to make a genuine contribution to subjective wellbeing [17], and depriving an adult prisoner of this possibility for an extended period causes serious physical and psychological stress and may severely impair their prospects for rehabilitation [40].

It should be recalled that the punishment of imprisonment is intended to deprive the prisoner of the capacity to harm society, to penalize them through deprivation of liberty, and to deter others from committing offences. The denial of heterosexual relations is not, however, an inherent component of penal theory, but rather a derivative of policy decisions made by the IPS and prison management. As noted, IPS considerations in this sphere are driven by prejudices that lack empirical support and are, in fact, contradicted by existing evidence. Shoham., *et al.* (2009) argue that these "pains of imprisonment"-whether considered separately or cumulatively-are among the central factors in the failure of many prisoners to reintegrate into productive social functioning after release. Accordingly, Western societies seek to minimize these pains to enable prisoners to return to society as productive individuals. As evidence of this trend, over the years conjugal visits have become more common and the IPS eligibility criteria more flexible [56,31].

Studies have found a direct connection between sexual satisfaction and good mental health, whereas the absence of sexual satisfaction has been associated with poorer mental health. These findings have been observed both in the general population and among prisoners, and they effectively refute the IPS's claim that sexuality in prison is likely to generate violence and impair rehabilitation [12,13].

A compelling historical experiment was conducted at Parchman Prison in the state of Mississippi. In 1900, prison authorities sought to increase work productivity among Black prisoners—who were sent daily to perform grueling agricultural labour—and to reduce homosexual relations among prisoners. The prison warden, reflecting the views of the period, believed that Black prisoners had heightened sexual desire. To increase their motivation to work, prisoners were permitted to build makeshift structures near the agricultural areas, known as “the red houses.” In these structures, prisoners received intimate visits from their wives, casual girlfriends, or sex workers. The measure proved extraordinarily successful: prisoners who enjoyed regular sexual relations significantly increased agricultural output, while violence within the prison declined [11]. A similar experiment in various Mexican prisons examined the effect of prisoners' sexual relations on their behaviour. Conjugal visits were introduced, either through furloughs or within-prison visits. It was found that sexual relations substantially reduced quarrels and tensions typical of the prison population and significantly decreased the incidence of homosexual relations [10]. The conclusion is that opportunities for sexual relations actually reduce violent and sexual misconduct, contrary to the IPS's position.

What, then, of masturbation accompanied by exposure to pornographic material? Does it increase or decrease offending in general, and sexual offending in particular? Research indicates that, in the context of non-sexual offending, no connection has been found between pornography consumption and criminal behaviour; similarly, exposure to pornographic material has not been shown to increase violence [15,25,26].

Scholars dispute the IPS's position and argue that the desire to restrict pornography consumption in prison stems from the mistaken assumption that pornography causes sexual violence, with the alleged proof being the presence of pornographic material in the possession of rapists. However, no evidence has been found that pornography consumption causes a person to become a rapist; indeed, the opposite may be true [15]. Furthermore, the IPS's claim is empirically refuted by additional research: access to pornography in the general population has been found to be significantly correlated with an 85% decrease in rape incidents in the United States over recent decades [13].

Continuing to contradict the IPS's arguments, a 2024 study concluded that both an excess and a deficit of sexual activity (including masturbation and pornography consumption) can lead to aggressive tendencies, whereas sexual activity within a moderate range can reduce such tendencies [13]. Most importantly for present purposes, a key study found that permitting masturbation in prison can reduce violent incidents, whereas prohibiting prisoners from masturbating harms them and has serious negative consequences, including increased violence. Accordingly, if the aim is to reduce rates of violence in prison, masturbation should be facilitated and even encouraged through aids such as pornography [12].

Substitutes for the absence of sexual relations

For prisoners who are not in a relationship, three options exist as substitutes for sexual relations: they may abstain from any sexual stimulation or release; they may engage in consensual or coerced homosexual relations; or they may achieve sexual release through masturbation. In the present case, the petitioner seeks to exercise the third option—that is, to engage in solitary sexual activity through masturbation—but wishes to do so while viewing pornographic material.

This raises the question of why a person may require pornographic material in order to masturbate and achieve orgasm. A prominent example of masturbation in an institutional setting is the sperm bank or sperm analysis clinic. Men attend these facilities for the purpose of producing a sperm sample sufficient for quality testing and/or for donation to a woman who wishes to conceive. In such settings,

men are given a collection cup and shown to a private room where they are expected to masturbate and ejaculate into the cup. It is very common for these "privacy" rooms to contain a video player with pornographic films, pornographic magazines, and similar materials in order to facilitate the man's ability to reach orgasm. No public or legal debate has arisen over whether it is permissible to introduce pornographic material into such settings. The reason is presumably quasi-moral: the man is required to masturbate as part of a medical procedure or in order to donate something to another person, and this context is therefore deemed appropriate. It is generally understood that the pressure imposed on the man makes it difficult for him to reach orgasm, and pornographic material assists him in doing so.

Studies conducted in the United States have found that 91% of men and 60% of women of reproductive age consume pornography for the purpose of masturbation [5]. Slightly lower figures were reported in another study, in which 75% of men and 41% of women reported viewing pornography intentionally for masturbatory purposes [16]. Similarly, Smith [25,26], a specialist in sexual behaviour, found that approximately two thirds of individuals who masturbate do so with the aid of pornography, either via the internet or using printed magazines.

International comparative perspective

Is Israel an outlier in the severity of its prohibition on the introduction of pornographic material into prison?

United Kingdom

Similarly to Israel, England adheres to the principle that, while imprisonment naturally restricts a prisoner's liberty and freedom of movement, their remaining rights are not taken from them unless the infringement arises from the nature of the imprisonment itself [61]. Nevertheless, in England, Section 3.2 of Her Majesty's Prison Service Order grants the prison governor discretion as to whether to permit the introduction of material that could breach discipline and security in prison, including pornographic material-in contrast to the blanket prohibition established in Israel. In apparent contradiction to what is stated in the Order, there is recognition in England that the infringement of some prisoners' rights serves a punitive purpose, on the rationale that the person has harmed society and their rights need not therefore be preserved in the same manner as those of a non-prisoner [59].

In the landmark ruling [58], the English Supreme Court established in a precedent-setting decision that the freedom to consume pornography is part of basic human rights, and that its prohibition infringes the European Convention on Human Rights. However, when prisoners are concerned, they may only benefit from access to magazines classified as "soft pornography." Following this landmark ruling, Her Majesty's Prison Service decided to stipulate that the distribution of pornographic magazines would henceforth be subject to the discretion of prison officers [30].

United States

There is an important debate over whether prisoners have rights or merely privileges, the attainment of which depends on prisoner behaviour and their cooperation. The point of departure is that prisoners are entitled to basic rights as a form of privilege, while a higher level of entitlements is granted only on the basis of good behaviour [30].

Smith [25,26] surveyed sexual behaviour occurring in prisons across all fifty states in the United States. In her view, masturbation in prison is very widespread, and no state has the authority to prohibit it. Her research indicates that the prevailing custom in prisons is that masturbation, while not prohibited, should be performed discreetly and not in the sight of other prisoners, in order to maintain order and deter exhibitionism (the exposure of genitals to others).

The answer to whether masturbation while viewing pornographic material is permitted is not unequivocal: there are states in the United States where the Supreme Court has permitted the introduction of pornography, while in other states it has been prohibited. The

basis of the dispute resembles that in Israel: namely, whether the introduction of pornographic material into prison may breach order and discipline in the prison, thereby endangering the security of prisoners [60]. Thus, despite the fundamental infringement of freedom of expression, the justification for the infringement is the prevention of greater harm, and a prohibition is therefore not impermissible. Nevertheless, there are cases in which pornographic material is permitted to be held by prisoners, except for dangerous sex offenders.

Discussion and Conclusion

This article has examined the tension between two sets of rights: freedom of expression versus the right to life and security of prisoners; and the right to consume pornography for purposes of masturbation versus the right of other prisoners not to be harmed as a result.

According to the IPS, the introduction of pornographic material into prisons may endanger the security of other prisoners through violence perpetrated by pornography consumers. This claim is, on its face, a legitimate concern for an organization whose mandate is to incarcerate people for the duration of their sentences and to return them safely to society, with some also emphasizing rehabilitation during the period of imprisonment. The IPS does not frame its position in terms of the right to freedom of expression but rather in terms of fulfilling its statutory mandate, and this perspective is *prima facie* legitimate.

The court, for its part, is expected to balance competing rights. It acknowledges the importance of protecting prisoners' rights but maintains that decisions in this domain should rest primarily with IPS security authorities rather than with the judiciary. Even when the court accepts that a prisoner's right to consume pornography warrants protection, it effectively neutralizes this recognition by holding that the selection and screening of materials should be left to the IPS, and that such screening would require substantial financial resources and constitute a heavy administrative burden. The court further notes that prisons are overcrowded, with multiple prisoners in each cell, and that there is no practical way to create dedicated viewing spaces for pornographic material or to restrict viewing to small cells whose occupants all consent to such viewing. In this manner, the court has effectively exempted itself from a thorough and principled examination of the issue [51, para. 16].

In our view, the IPS's position reflects conservative moral and value-based attitudes that are not genuinely related to prisoner security. Three underlying positions can be identified:

1. **Moralistic position:** Pornography, masturbation, and sexuality are viewed as purely private matters that have no place in a custodial organization, reflecting conservative conceptions of sexuality and masturbation in general.
2. **Punitive position:** Prisoners are deemed undeserving of a right to sexuality and masturbation. Those who have harmed society are to be punished in all respects, particularly in domains that afford them pleasure. A recent study notes: "Even in the twenty-first century, prisons have not succeeded in incorporating the right to intimacy as part of human dignity. It therefore appears that the control and surveillance of sexual relations in prison, including masturbation, effectively constitutes additional punishment" [7].
3. **Organizational position:** The IPS is overburdened and claims to lack the time, resources, and institutional will to develop and supervise arrangements for solitary sexual activity, including allocating private spaces for masturbation.

In light of the theoretical and empirical literature on the importance of sexuality and masturbation for physical and mental health, and given research indicating that masturbation reduces violence and promotes calm within prisons, we recommend the initiation of a pilot programmed to develop and test procedures for the controlled introduction of pornographic material into prisons. For the purposes of this pilot, an ad hoc committee of sexuality experts could be established to select a number of films classified as "soft pornography," to be loaded onto tablets without internet access. Alternatively, magazines classified as "soft pornography," such as *Playboy*, could be used. The pilot would include clear procedures for appropriate conduct and designated times for solitary intimacy. The locations for solitary intimacy would be determined in accordance with the needs and logistical capacities of each prison. The pilot should be accompanied by systematic empirical research, and the findings should be reported to the IPS Commissioner to inform evidence-based policy.

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