

Theoretical Justification and Local Construction of the View on Inmates' Right to Visitation

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Abstract: *At present, the visitation with the nature of a “privilege” in practice has exposed many problems, such as prison dominance, goal alienation, right restriction, and inadequate protection. These issues have turned visitation — originally intended to be an effective means of correcting inmates — into a more stringent control measure, which is not conducive to the realization of penal purposes or the maintenance of penal functions. In essence, the nature of visitation should return to that of a “right,” endowing all parties involved in visitation with equal right to visitation. To reconstruct prison visitation as a fundamental right, we should be guided by the goals of helping inmates improve their re-socialization capabilities and promoting their reintegration into society. Specifically, we must effectively safeguard inmates’ rights to know about visitation, to initiate visitation, and to engage in substantive communication during visitation. Furthermore, the right to visitation should be systematically regulated by revising relevant laws such as the Prison Law, the Criminal Procedure Law, and the Law on Community Corrections, thereby giving play to its positive effects in reforming inmates, preventing recidivism, and curbing intergenerational crime.*

Keywords: inmate visitation ♦ privilege ♦ right to visitation

Inmate visitation refers to the meeting and conversation between inmates and visitors. For a long time, inmate visitation in China’s prisons has not

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received sufficient attention, whether in theoretical research or penal execution practice. Basic theoretical research on visitation is still a void, and its role in practice is also extremely limited.¹ Article 48 of China's current *Prison Law* stipulates that a prisoner may, in accordance with the relevant regulations, meet with his relatives and guardians during the service of his sentence. In 2016, the Ministry of Justice issued the *Regulations on Inmate Visitation and Communications* (hereinafter referred to as the "Regulations"), but the *Regulations* only defined the concept of visitation² and did not clarify the nature of visitation. At the practical level, it is generally believed that visitation falls under the category of a special privilege. However, the theory of visitation as a privilege has already highlighted the challenge in its development, and the definition of the nature of visitation directly influences its developmental direction. Therefore, it has become urgent and necessary to rationally analyze and define the nature of inmate visitation and, with this as a guide, revise relevant laws and regulations concerning inmate visitation.

I. Negation of Visitation as a Privilege

The concept of "privilege" comes from the English term "earned privilege," meaning a special, unique interest or benefit not enjoyed by other citizens but enjoyed by a specific individual, organization, social stratum, or class.³ Inmate privilege refers to special treatment granted by prisons to some inmates based on their rehabilitation performance and the needs of re-socialization. According to the theory of inmates' privilege, visitation is an administrative power held by the prison. Granting inmate privilege is an act of administrative authority by the prison, and this power and obligation are unilaterally set by the prison according to laws or policies, generally without requiring the consent of the inmate.⁴ Therefore, whether inmates can have a visit, when they can visit, the frequency of visits, the duration of visits, the visitation procedures, etc., are all decided by the prison.

¹ An Wenxia, "The Allocation of Prison Visitation Work Forces in China: Difficulties and Countermeasures," *Chinese Criminology Review* 4 (2024): 70.

² "Visitation" in the *Regulations* refers to conversations between inmates and visitors. Visitation methods include telephone meetings through a transparent barrier, face-to-face meetings, video meetings, etc. See Article 2 of the Ministry of Justice's *Regulations on Inmate Visitation and Communications*.

³ Shao Mingzheng, *On Criminals* (Beijing: China University of Political Science and Law Press, 1989), 207.

⁴ Liu Zhongwei, "On the Special Rights of Criminals — Taking the Right of Criminals to Cohabit with Their Spouses as the Object of Analysis," *Studies in Law and Business* 4 (2008): 70.

A. Factors influencing visitation as a privilege

Visitation as a privilege has taken root and developed in China due to both its historical origins and the profound influence of prison security concepts and management systems, among other factors.

First, the origin of inmate visitation is characterized by its privileged nature. In China, prison inmate visitation has undergone a development process from non-existence to existence, and from unregulated to regulated, possessing a privileged nature from its very inception. In a slave society, when prisons first emerged, they were synonymous with detention and served no other purpose beyond depriving inmates of their personal liberty. Inmates merely served as passive objects, lacking basic rights. For instance, the *Book of Changes* stated, “The third SIX, divided, shows its subject straitened before a frowning rock. He lays hold of thorns. He enters his palace and does not see his wife.”⁵ This indicates that at that time, inmates were not allowed to meet their wives. However, with the development of society, in the feudal era, the ruling class, in order to protect its own interests, granted visits as a favor to officials involved in crimes. The purpose remained to protect the collective interests of the ruling class. For instance, the legal codes of the Ming Dynasty (1368-1644) stipulated, “Any meritorious official or official of the fifth rank or higher who commits a crime warranting imprisonment shall be permitted to have relatives visit. For those sentenced to penal servitude or exile, relatives shall also be allowed to accompany them... Violators shall be given sixty strokes with a rod.”⁶ Thus, it is clear that the initial privilege of prison visitation was class-based, meaning only those who were officials before their imprisonment were eligible for family visits. From the perspective of the inmate population, incarcerated officials obtained rights that were unequal to those of others. Subsequently, the ruling class expanded its application to special female inmates. Thus, it is evident that visitation has been privileged since its inception, constituting special treatment granted to specific groups.

Second, the theory of visitation as a privilege is constrained by the concept of prison security. The security and stability of prisons are the

⁵ Zhang Qian and Huang Kangxuan, “A Historical Review of Family Visitation for Criminals in Chinese Prisons,” *China Prison Journal* 2 (2023): 126.

⁶ The clause “relatives of meritorious officials are prohibited from visiting” in the *Great Ming Code: New Prisons*.

prerequisite and foundation for inmate rehabilitation, and an important factor in measuring social security. China's prison system has always attached importance to prison security, which is closely related to the nation's emphasis on security and stability. In China, with the development of the prison system and changing perceptions of inmates, the nature of visitation as a privilege has become generalized, and in principle, all inmates have the opportunity to earn visitation through their own efforts. However, constrained by a bottom-line security mindset, prisons screen all factors that might pose security risks. Prison risks can be divided, based on their source, into internal and external prison risks. Internal risks mainly originate from inmates and correctional staff, while external risks primarily originate from members of society. Whether viewed from the perspective of prison practice or theoretical analysis, external risks are far greater than internal risks. The prison system has always attached importance to preventing external risks, and visitation is undoubtedly a primary factor that can bring external risks to prisons. Prison visitation is actually a regulated activity in which members of society enter a closed prison to meet with inmates. Prisons often view the family members of inmates who come for visits more as risk factors, rather than solely as sources of support for inmates. Therefore, prisons naturally choose to impose substantive and procedural regulatory restrictions on visitation to prevent risks.

Third, the theory of visitation as a privilege developed within the prison management system. The traditional view of treating visitation as a privilege largely satisfies the needs of prison management. Defining visitation as a privilege provides prisons with a behavioral management mechanism to ensure the maintenance of good discipline within the prison, while also using these means to incentivize inmates to reform. It fosters a disciplinary culture within prisons that affects the right to visitation of inmates and their families. For prison administrators, inmates' compliance with prison regulations is an important foundation for achieving prison safety and stability; for inmates, apart from regaining personal freedom, meeting and communicating with family members is the most important need for the vast majority of them. The characterization of visitation as a privilege makes the fulfillment of prison visitation requirements relative, meaning that even if inmates meet basic requirements, their ability to have visits still needs to conform to various

considerations of prison management. Taking the graded treatment system as an example,⁷ in the regulations of many of China's graded treatment prisons, inmate visitation can be interpreted as a privilege, with different visitation frequencies and duration given to inmates of different grades.⁸ In practice, some inmates with higher treatment levels (e.g., those under lenient management) may have more visitation opportunities than those under general management, while visitation opportunities for inmates under strict management are severely restricted. The underlying reason is that prisons unconsciously regard restrictions on visitation as part of supervision, and supervision is inherently a form of punishment. However, if supervision is already considered a form of punishment, then there should be no differentiation in visitation, unless there is a need for inmate reform in a special sense.⁹

In summary, it is evident that the nature of visitation as a privilege is the result of the interaction of multiple factors, such as the social governance model, the traditional custom of granting power as a favor, and the concept of prison security. The privilege for inmates is not a universal right; not all inmates can enjoy it. Consequently, administrative organs are not obligated to grant the privilege to certain inmates but rather act flexibly according to practical needs.¹⁰ However, we must recognize that although visitation as a privilege has played a certain role in stimulating motivation for rehabilitation

⁷ The graded treatment system is a new type of administration system implemented in China's prisons, based on the progressive treatment system of Western countries and adapted to China's specific conditions. Its basic content is that, within the scope permitted by laws and policies, inmates are divided into different grades based on standards such as the duration of their sentences and their performance in rehabilitation, and are given lenient, general, and strict treatments, respectively. See Wang Tai, ed., *New Edition of Prison Administration Studies* (Beijing: China Market Press, 2005), 361.

⁸ For example, the *Implementation Rules for the Management of Inmate Visitation by the Guangdong Provincial Prison Administration* explicitly stipulate that if the regulations on graded treatment management for inmates have provisions regarding the frequency, number of people, and duration of visits, these shall be executed according to the graded treatment management regulations. The *Implementation Rules for Inmate Visitation and Communications by the Shanghai Municipal Prison Administration* specify that inmates under strict management shall not have each visit exceed 20 minutes; inmates under other types of treatment shall not have each visit exceed 30 minutes. For inmates not under strict management who meet the following conditions, upon approval by the deputy warden in charge, the duration of visits may be appropriately extended, but shall not exceed 40 minutes.

⁹ Liu Chongliang, *Empirical Study on Prison Sentence Enforcement Reform Guided by Recidivism Risk Control* (Beijing: China University of Political Science and Law Press, 2020), 151.

¹⁰ Zhao Yunheng, "A Probe into the Origin of a Criminal's Right," *Law Science* 5 (2000): 66.

among inmates during specific periods, they have already revealed numerous problems in penal execution practice.

B. Major problems with visitation as a privilege

The first problem is the dominance of visitation and goal alienation. First, in the penal execution practice, visitation is dominated by the prison. In the visitation characterized as a privilege, supervisors are in the dominant position, while inmates are largely in a passive position. The manner in which inmates receive correction and the balance between prison security and correction all depend on the comprehensive judgment of the supervisors. The actual control supervisors have over the detention space alienates the original inmate-centered approach into a supervisor-centered approach, thereby providing supervisors with a basis for adopting more stringent control measures over inmates. Prisons can grant inmates preferential visitation treatment based on their good reform performance or deprive them of the right to visitation as a disciplinary measure based on their poor reform performance. Similarly, in the process of applying visitation, the dominant-subordinate relationship between supervisors and inmates is evident. Even if inmates object to restrictions on visitors, frequency, etc., they are usually not given channels to object or seek redress. Thus, inmates can only obtain visitation opportunities after receiving permission from supervisors. And the permission itself strengthens the supervisory and management authority of the supervisors, while the space for inmates' self-correction is restricted. Second, there is a goal orientation that prioritizes visitation security. In the visitation characterized as a privilege, supervisors will consider the inmate's situation and comprehensively assess whether he or she can have visitation, as well as the duration, form, scope of visitors, and frequency. If inmate visitation conflicts with prison security, then visitation generally gives way to prison security and is restricted or canceled. For example, during the COVID-19 pandemic prevention and control period, it was not uncommon for some to interpret the suspension of in-person visits as a complete suspension of all prison visits. Clearly, this view is misguided. Even during the pandemic prevention and control period, although in-person visits could be suspended based on considerations for life, health, and safety, it is also possible to consider changing the method of visits to video visits,

expanding the scope of video visits, and not canceling all visits outright.¹¹ Visitation, characterized as a privilege, creates a strange cycle in prison development: prisons have always tried to open up to society and introduce social forces, but always encounter inexplicable obstacles, causing any exploration of open practices to bounce back to its original position once it encounters a risk event, or even compress the existing open space. For example, in 2000, a notorious incident occurred in a prison in Hunan Province where an inmate exploited management loopholes and engaged in prostitution in a family visitation room. This caused a huge uproar in society and attracted close attention from the highest central leaders and competent authorities, who issued instructions for serious handling of the incident. This incident exacerbated the already controversial conjugal visitation system for inmates, and the Ministry of Justice later explicitly notified that the system allowing inmates to cohabit with their spouses was to be suspended and rectified. Nationwide, the vast majority of prisons in provinces, autonomous regions, and municipalities have since discontinued the practice of allowing inmates to cohabit with their spouses.¹² Similarly, the white paper *Custody, Care, and Justice* issued by the UK aimed to improve prisoners' living conditions, foster constructive activities during incarceration, enhance the quality of staff-prisoner relationships, and facilitate visits to strengthen family bonds.¹³ However, the implementation of this white paper was weakened following a series of prison break incidents. The *Learmont Report*, which investigated these escapes, stressed the necessity of enforcing stricter control and security measures within prisons.¹⁴ One concrete outcome was the imposition of limits on the number of visits (excluding those with lawyers) that inmates could receive. The potential consequence of such a measure, however, was the undermining of inmates' prosocial outcomes, including their relationships with family members. Yet whether escape incidents are actually related to family

¹¹ An Wenxia, "A Brief Discussion on the Countermeasures for Prison Visit Models During the Pandemic Prevention and Control Period," *Crime and Correction* 11 (2020): 27.

¹² Shao Mingzheng, *On Criminals* (Beijing: China University of Political Science and Law Press, 1989), 207.

¹³ Alison Liebling, "Incentives and Earned Privileges Revisited: Fairness, Discretion, and the Quality of Prison Life," *Journal of Scandinavian Studies in Criminology and Crime Prevention* 9(1) (2008): 25-41.

¹⁴ Daniel McCarthy and Maria Adams, "Prison Visitation as Human 'Right' or Earned 'Privilege'? The Differing Tales of England/Wales, and Scotland," *Journal of Social Welfare and Family Law* 39 (2017): 403-416.

visits — and, if so, in what way — remains uncertain. The investigative reports did not establish any causal connection between the two. If no such causality exists, can restrictions on visitation be considered justified? Clearly, these measures are shaped by an orientation that prioritizes visitation security.

The negative outcome of this security-oriented approach is that it is detrimental to the realization of the purpose of punishment, that is, it is detrimental to preventing recidivism and preventing crime. On the one hand, regarding the prevention of recidivism, the main reason why inmates commit crimes again after release from prison is their inability to effectively integrate into society. To enable inmates to reintegrate into society, they need to learn more skills for resolving various social disputes and establish strong social support systems upon their release from prison. This also means that adequate preparations for their re-socialization should be made from the very first day of their incarceration. The period of incarceration is also a process of helping them re-socialize. This further requires inmates to live within more diverse social relationships, because it is only within social relationships that they can effectively acquire the ability to handle social disputes and deal with various problems. Visitation is an important channel for inmates to maintain contact with society. This contact can sustain the emotional dependence that inmates develop due to their isolation and detachment from society. If inmate visitation is arbitrarily canceled or restricted based on prison security, it will inevitably affect the emotional connection between the visiting parties. The inmate's emotional dependence on family members and others will thus decrease or even disappear, making it very difficult for them to reintegrate into society. Even if they return to society and their families, it will be more of a physical return than a psychological integration. In reality, psychological integration is the true measure of an inmate's reintegration into society; otherwise, the family or society will merely gain another potential risk or burden factor. This is not only unhelpful for maintaining social relationships but may also add new pressure and burdens to existing social relationships. On the other hand, from the perspective of crime prevention, family members of inmates often face difficulties such as financial challenges, broken relationships, serious illnesses, and the pressure of shame brought by the stigmatization of crime due to the inmate's incarceration. If inmates' right to visitation is improperly restricted or

deprived, it is tantamount to an implicit punishment for their families. The inmate's family members are also highly susceptible to being induced into new crimes due to a lack of emotional connection and family support, especially intergenerational crime among the inmate's minor children.

The second problem is the curtailment of the right to visitation. A privilege possesses dual attributes of power and rights: from the inmate's perspective, it is a special right or treatment that can only be obtained through good conduct during rehabilitation while incarcerated; from the prison's perspective, it is the power authorized by the state to the prison to decide whether to grant inmates the right to visitation. From the perspective of the law of conservation of total power and rights, there is an inverse relationship between the prison's punitive power and the inmate's rights. The key issue is that the prison's punitive power is essentially a form of power, and the expansive nature of power is its inherent characteristic. Therefore, the prison's punitive power always tends to easily curtail the scope of the inmate's rights.¹⁵ The curtailment of the right to visitation, characterized as a privilege, is mainly reflected in the legislative and institutional support for visitation. Specifically, the following problems exist:

First, the regulations on inmate visitation in the *Prison Law* are too general. China's *Prison Law* contains only one provision regarding visitation, namely, Article 48, which states that "a prisoner may, in accordance with the relevant regulations, meet with his relatives and guardians during the service of his sentence." The expression "may meet" in this sentence is different from "shall meet." "Shall" is absolute and unconditional, while "may" is flexible and conditional. "May meet" implies that, in some cases, visits may not be arranged, meaning it is not mandatory to arrange them.¹⁶ Consequently, inmate visitation, as a privilege, is essentially a favor bestowed upon inmates. It is based on the tolerance and goodwill extended by society beyond the inmates themselves, involving discretion. Therefore, this favor can be granted or revoked and does not possess absolute legal status. Moreover, the *Prison Law* does not clearly define the nature of visitation. Article 48 regarding visitation is

¹⁵ Liu Chongliang, *Empirical Study on Prison Sentence Enforcement Reform Guided by Recidivism Risk Control* (Beijing: China University of Political Science and Law Press, 2020), 115.

¹⁶ Wang Ping et al., "Forum: Prison Act Enforcement under the National Emergency," *China Prison Journal* 3 (2020): 6.

stipulated in the chapter on “Prison Administration.” In practice, the internal functional division of prisons has always treated visitation as a routine administrative task of the prison administration department, without thoroughly exploring its functional advantages in inmate rehabilitation and recidivism prevention. At the same time, this article limits the scope of visitors to “relatives and guardians” but does not clearly define the scope of relatives and guardians. In penal execution practice, different prisons have different specific approaches; some interpret it broadly, while others interpret it narrowly, limiting it only to direct relatives, which makes the scope too narrow. Furthermore, since the *Prison Law* does not explicitly address visits by non-relatives, most prisons exclude non-relatives from the scope of visitors. In reality, however, the positive role of non-relative visitation for inmates is significant. An increase and diversification of visitors can bring inmates more comfort in terms of family affection, hometown bonds, and friendships, as well as social acceptance, expanding the scope of social assistance and education, which is conducive to the inmates’ re-socialization. For inmates who are widowed, orphaned, or living alone, it can better satisfy their longing for affection and help them maintain their lives and social relationships after release.¹⁷

Second, the *Regulations* of the Ministry of Justice tend to tighten the provisions regarding the basic elements of visits. The basic elements of visitation include methods, duration, frequency, etc. For example, concerning visitation methods, the *Regulations* only include three types: phone calls through a transparent barrier, face-to-face visits, and video visits. Currently, in China’s prison practice, non-contact visits, specifically those through a glass barrier, are the predominant method. This, to some extent, affects the quality of visitation. Compared to contact visits, non-contact visits further restrict inmates’ right to visitation. Another example is visitation duration: the *Regulations* stipulate that each visit lasts 30 minutes, with the duration for juvenile offenders’ visitation potentially extended appropriately. As a crucial window connecting inmates with society, the length of visits undoubtedly becomes a primary factor influencing the effectiveness of inmates’ social

¹⁷ Li Cheng, “Thought and Idea of Non-relatives Meeting of Criminals,” *Journal of Henan Judicial Police Vocational College* 4 (2015): 26.

connections. The longer the duration, the stronger the inmate's communication with others; conversely, overly brief interactions may not create new connections, consolidate existing ones, or even establish a link between inmates and society. Furthermore, in practice, many inmates' family members already face significant challenges coming for visits due to factors such as long travel distances, financial difficulties, or mobility issues, and with only one monthly visit lasting 30 minutes, many visiting relatives are deterred from coming to the prison, leading to a significant reduction in visitation frequency. The negative impacts this causes are often overlooked but objectively exist, such as an increase in inmates' rule-breaking behavior within the prison, continuous deterioration of family relationships, and greater difficulty in resettlement and rehabilitation upon release, which in fact also exacerbates the inmate's experience of punishment.

Third, relevant regulations, such as the graded treatment system, objectively restricted the right to visitation. The theory of visitation as a privilege suggests that the primary purpose of prison visitation is to motivate inmates' rehabilitation efforts and thereby improve rehabilitation outcomes. In practice, however, based on China's graded treatment system regulations, prisons often classify newly admitted inmates as being at the strict management level. Correspondingly, inmates under strict management face more stringent restrictions on visitation duration and frequency, among other aspects, compared to those under lenient or general management, based on existing laws and relevant regulations. In reality, inmates' psychological fear of prison and strained relationships with correctional officers upon initial admission particularly need to be alleviated through family visitations. Prison visitation itself has the function of inspiring inmates' motivation for rehabilitation. Research indicates that inmates' psychological well-being is closely related to the frequency and quality of family contact.¹⁸ Through visitations and connecting with their family members, inmates can be motivated to continue serving their sentences and rekindle hope. Emotional support from family helps to calm inmates' minds, aids them in repenting and reflecting on their crimes, and ensures the orderly operation of correctional

¹⁸ Barnardo's, "Locked Out: Children's Experiences of Visiting a Parent in Prison," <https://www.barnardos.org.uk/sites/default/files/2020-12/Locked-out-childrens-experiences-of-visiting-a-parent-in-prison.pdf>, (2015), page 8.

work. However, according to advocates of the theory of visitation as a privilege, inmates' privilege manifests in the form of their treatment or entitlements during penal execution, and the primary basis for enjoying such treatment is the inmate's performance during their sentence. Inmates with good performance have a broader scope of privilege, while those with poor performance have a narrower one. The essential basis for inmates' privileges is also their personal dangerousness; the lower an inmate's personal dangerousness, the more privileges they receive, and the better their treatment during sentence execution.¹⁹ Therefore, prison visitation, defined as a privilege, severely restricts visits for inmates with higher personal dangerousness during their initial admission or strict management periods. This, however, precisely hinders the achievement of rehabilitation effectiveness for these inmates who are in a critical period for correction or have higher rehabilitation needs. According to the evidence-based correctional philosophy, prisons should invest more correctional resources in high-risk inmates. With newly admitted inmates or those under strict management, their risk level is relatively high, and their need for family contact should be greater, not restricted based on management needs. Therefore, visitation, defined as a privilege, may constrain inmates from demonstrating their proper rehabilitation enthusiasm.

The third problem is the inadequate support and safeguards for visitation. From a normative perspective, prison visits are considered key elements and important conditions for helping inmates cope with prison life, instilling hope for their release, and providing support for their resettlement and rehabilitation after release. However, in practice, visitation, characterized as a privilege, has not demonstrated its due efficacy, neither for the rehabilitation of inmates nor for the safeguarding measures provided to their relatives.

First, there is a weak allocation of personnel for visitation work. In visitation characterized as a privilege, prisons tend to devote most of their police resources and energy to maintaining security and supervision, while paying insufficient attention to staffing for visitation services. In some prisons, the officers responsible for visitation are often those approaching retirement. Having long been engaged in monotonous tasks, these officers frequently lack

¹⁹ Liu Zhongwei, "On the Special Rights of Criminals — Taking the Right of Criminals to Cohabit with Their Spouses as the Object of Analysis," *Studies in Law and Business* 4 (2008): 71.

a sense of professional achievement and value, showing little enthusiasm for visitation duties. As a result, they may exhibit impolite, indifferent, or unstandardized behavior when receiving the inmate's visiting relatives. Consequently, some family members complain about the poor service attitude of prison officers, and many even develop fear or reluctance toward visiting, deliberately reducing the frequency of their visits. Moreover, although many regions have recognized the importance of on-site police deployment in visitation practices — some provincial and municipal implementation guidelines even specify ratios and methods for supplementing police forces — these measures still fail to meet the professional requirements of visitation work. According to these normative documents, prisons tend to increase the number of on-site officers mainly by adding auxiliary police and additional personnel to handle fragmented, transactional tasks. The goal remains to maintain order and ensure safety and smoothness during visits, rather than to enhance the efficiency and quality of the visitation process. As a result, in practice, it is often difficult for visiting family members to obtain information about an inmate's performance evaluations, sentence commutation status, or reform progress. Most officers are unable to provide answers or offer other legal consultation services. This is because the officers stationed at visitation centers generally do not directly participate in inmate management and are unfamiliar with details of penal reform, while the prison administration fails to provide them with professional training. Consequently, they cannot meet the consultation needs of the visitors. Furthermore, there is a lack of specialized guidance and support for both parties before, during, and after the visitation process.

Second, there is insufficient systematic support for both parties involved in the visitation. The effectiveness of visitation support is not only reflected in the support provided during the prison incarceration stage; in fact, inmates require continuous family support or professional guidance during the criminal prosecution stage before their incarceration, and during the resettlement and rehabilitation stage after their release from prison, among other stages. During the criminal prosecution stage, the psychological support, emotional comfort, and material assistance provided by family members during the criminal proceedings are crucial for persons involved in criminal cases; at this stage, the

family members of persons involved in criminal cases also require relevant support. For example, when a person involved in criminal cases is arrested, which is the early stage of their separation from family members, their minor children may suffer severe psychological trauma, making it necessary to provide timely follow-up emotional support and assistance. However, in the context of visitation characterized as a privilege, China's current legal regulations concerning family visits are limited solely to the criminal execution stage, and during the criminal prosecution stage, there is still a lack of support for family visitations for persons involved in criminal cases.

II. Conceptual Interpretation and Underlying Logic of the View on the Right to Visitation

Prison visitation from a privilege-based perspective regards inmates as objects of rehabilitation, with rehabilitation administrators often viewed as the subjects of rehabilitation. This creates a dualistic opposition between the rehabilitating subject and the rehabilitated object, where the rehabilitating subject typically holds the center of power, and the rights of the rehabilitated object are accordingly restricted. Inmate visitation concerns the interests of multiple stakeholders, including inmates, prisons, and visitors. The positive realization of visiting functions relies on the collective efforts of these various parties. It is necessary to revert to the rights-based nature of visitation and interpret the fundamental concepts and underlying logic of the view on the right to visitation.

A. Conceptual interpretation of the view on the right to visitation

Visitations based on the view on the right regard inmates as the subjects of rehabilitation. Visitations are an action by various parties involved in rehabilitation — including inmates, their relatives, and prisons — using language as a medium to achieve mutual understanding between these subjects, thereby improving the effectiveness of visitation. This kind of interaction “is not merely the mutual influence between interacting subjects oriented toward success, but rather communicative action between interacting participants whose actions are oriented toward understanding. It must acknowledge that norms and value orientations also possess a rational core, and accordingly

expand the concept of rationality.”²⁰ In the realm of prison visitation, the parties involved in rehabilitation are diverse, and the rehabilitative relationships are reciprocal. The view on the right to visitation holds that inmates are far more important than the mere fact of their crime and incarceration; it places greater emphasis on the intrinsic value of individuals. The relationship among subjects such as inmates, prison administrators, and visitors is not one of opposition and exclusion, but rather one of equality and interaction.

The view on the right to visitation starts from the social nature of human beings and focuses on human social value. Although inmates are punished for their past criminal acts, they remain, in essence, members of society and will eventually return to and reintegrate into it. Visitation is undoubtedly an important institution that revitalizes inmates' social relationships. The relationship between correctional staff, inmates, and their significant others is not one of opposition. Although prison administrators bear supervisory and management duties, they, together with inmates and their significant others, form a community of shared destiny with regard to the crucial goal of reintegration. For all of them, the fundamental objective — helping inmates return to society — is the same. Centered on this goal, an inmate's existence and future within the prison setting depend on the harmony and unity of the following three relationships: The first one is the relationship between inmates and correctional staff. The view on the right to visitation emphasizes negotiation and communication among the parties involved. For correctional staff, sincere, equal, and voluntary communication with inmates is a prerequisite for obtaining authentic feedback. Only when staff receive timely and accurate information about an inmate's real condition can they make reasonable decisions. For inmates, genuine and effective communication with staff helps them understand that the state establishes prisons not merely to punish, but to assist them in rehabilitation and reintegration. Through such understanding, inmates can express their genuine inner needs rather than simply vent instinctive desires for freedom or endless complaints about supervision. The second one is the relationship among inmates themselves.

²⁰ Jürgen Habermas, *Between Facts and Norms*, Tong Shijun trans. (Shanghai: SDX Joint Publishing Company, 2003), 422.

Within the prison environment, inmates form various relationships with one another. Their daily lives are governed by two evaluative perspectives: self-evaluation and evaluation by others. Self-evaluation is realized through one's own perception, while the evaluation by others — constrained by the special conditions of prison life and limited communication — mainly manifests through observable behaviors. A key criterion in this external evaluation is whether an inmate is behaviorally excluded by others. These two evaluative perspectives alternate and influence inmates to varying degrees. By observing the crime types and rehabilitative performance of their peers, inmates can reflect on their own behavior and recognize their true state. The similarity of circumstances that brings inmates together allows them to assess themselves as observers, thereby discovering their own potential for goodness and improvement. The third one is the relationship between inmates and their visitors. Visitation serves as a window or channel through which the outside world enters the closed space of incarceration. The ways and content of interaction between inmates and their visitors become important factors shaping the inmates. During visitation, inmates repeatedly reassess their self-worth based on the events described by visitors, their tone of voice, and their gestures. Effective visitations can inspire inmates, fostering hope and motivation for the future. This affirmative recognition — both from within themselves and from their relatives — can influence other inmates who share similar hopes, stimulating self-correction and the drive for reform. The relatives of inmates, together with correctional staff, can form an inner-outer synergy in education and correction, jointly contributing to the shared goal of helping inmates reintegrate into society.

Therefore, visitations are key to connecting the three crucial relationships of inmates, and also a trigger for fostering positive group relationships and relationships with supervisory staff. The streamlining and coordination of internal relationships within the prison environment depend on the intervention of external social connections. More specifically, visitations serve as a lubricant and converter for inmates to achieve a given self-orientation and to transcend it toward a self-determined orientation. The consensus among multiple stakeholders regarding inmates' successful reintegration into society makes visitations a necessary element of inmate rehabilitation, and therefore,

they should not be arbitrarily denied. For an individual, that which cannot be arbitrarily deprived or restricted is a right. In other words, visitations based on the view on the right inherently possess the nature of a right, and this right is characterized by its multi-subjectivity, involving inmates, their relatives, and other parties.

B. Underlying logic of the view on the right to visitation

Visitation is a fundamental right of inmates. Regarding visitation as an inmate's basic legal right, from the perspective of prisons, as long as the inmate possesses this right, then state institutions such as prisons have the legal obligation to satisfy this basic right of the inmate; and from the inmates' perspective, inmates' right to visitation should be a legal right explicitly protected by law. The state's power to execute punishment restricts the actual possession of inmates' rights, representing a force that forcibly deprives and limits the rights of specific individuals. The power to execute punishment must actively protect the parts of inmates' rights that have not been deprived.²¹

Visitation possesses the attribute of a multi-subject right. It is not only a right of the inmates but also a right of the visitor. Initially, the privilege of visitation was enjoyed by officials and dignitaries; the ruler's design intended it as a class-based personal favor for inmates who were formerly officials, not a right for relatives. Although relatives gained emotional satisfaction during visitations with inmates, this was merely a collateral effect of the visitation, not an actively pursued value objective. However, with the development of the visitation, its accompanying objective effects became increasingly apparent, transforming a visitation from being based on a singular value to being based on a pluralistic one, thereby demonstrating its attribute of a multi-subject right. The view on the right to visitation has made the rights of all parties reciprocal. Rights are no longer exclusively enjoyed by a single subject, though their form and content may differ for various subjects. Taking visitations by minor children of inmates as an example, visitations are not only an important need for inmates' self-reformation but also a crucial condition for the healthy growth of their minor children. In other words, minor children, as important relatives of inmates, should also enjoy the right to visit. Numerous cases indicate a close

²¹ Wang Lirong, *Studies on the Function of Laws of the Punishment Executions* (Beijing: Law Press • China, 2001), 121.

relationship between perpetrators' serious criminal acts and the failure to develop a healthy psyche during childhood. Furthermore, the formation of a healthy psyche during childhood is closely related to the family of origin. Child psychology research shows that the formation of a healthy psyche in children requires prolonged and effective parental companionship. With the visitation as a privilege, minor children of inmates similarly cannot obtain additional visitations, and coupled with restrictions on visitation duration and frequency, this is undoubtedly detrimental to the formation of their healthy psychological development. Continued restrictions or deprivation of visitations will inevitably exacerbate this harm. If children's psychological well-being cannot develop healthily, it will inevitably affect the formation of their healthy personalities in adulthood. Under the influence of other unfavorable factors, the likelihood of intergenerational crime among inmates' children significantly increases. A UK study found that among male minors separated from their parents due to parental incarceration before the age of 10, 48% were convicted as adults. In contrast, only 25% of boys separated from their parents for other reasons were convicted.²² The purpose of imprisonment is crime prevention, which here refers not only to preventing inmates from re-offending but also to preventing crime among other social groups, such as inmates' children. Prison visitation from a privilege-based perspective has undoubtedly failed to play its due role in this regard; instead, to some extent, they have facilitated the emergence of intergenerational crime. Therefore, granting the right to visitation to important relatives, represented by family members, helps achieve the general deterrent purpose of punishment and reduces intergenerational crime. In practice, China has also recognized the important function of visits by minor children of inmates and has explored launching such public welfare visitation projects. For example, in 2014, the "Red Apple" public welfare organization, voluntarily founded by prison police officers in Fujian Province, used the "Thread Through the Wall" program as a key to expand traditional family visitations, allowing minor children of inmates to enter the prison area to participate in a series of courses and activities such as parent-child interaction, peer support, life event review, legal education, and outdoor exploration,

²² Joseph Murray and David P. Farrington, "Parental Imprisonment: Effects on Boys Antisocial Behavior and Delinquency through the Life-course," *Journal of Child Psychology and Psychiatry* 46 (12) (2005): 1269-1278.

achieving remarkable results. In the 10 years since its establishment, the organization has assisted over 64,562 minor children of inmates from 31 provinces and 451 counties (districts) nationwide. A scientific sampling of 1,000 released inmates (of whom 100 were sampled) whose minor children received “Red Apple” public welfare assistance found that their recidivism rate was only 4%, significantly lower than the national average for re-offending among released inmates. Furthermore, 4,651 minor children of inmates who received long-term assistance had almost no records of dropping out of school or committing crimes.²³

From an international perspective, the right of relatives to visitation has also become a global development trend. Numerous international treaties, children’s rights movements, and certain countries and regions recognize relatives’ visitation — especially children’s visitation — as a right, and have established various protective measures. On September 30, 2011, the United Nations Committee on the Rights of the Child held an in-depth discussion on the issue of children with incarcerated parents, designating this day as an inmates’ family experience awareness day. One of the Committee’s main recommendations was to ensure that children’s needs are considered from the moment their parents are arrested until they are fully reintegrated into society. The *United Nations Convention on the Rights of the Child (UNCRC)* explicitly states that every child has the right to be with their parents and to enjoy family life and a social environment conducive to their development. The *European Convention on Human Rights* has not only influenced legislation in certain countries and regions but also reinforced its connection with the *UNCRC* to advocate for the necessity of protecting children’s rights. The Committee on the Rights of the Child considers children of incarcerated parents to be a highly vulnerable group; therefore, prison visitation should serve as a central mechanism for maintaining family ties, and incarcerated parents should be able to sustain their relationships with their children.

The Scottish government has consciously incorporated the *European Convention on Human Rights* into the *Scotland Act 2012*; the Scottish National Party even believes that, although the *European Convention on Human Rights*

²³ Sun Chang’an, Zhao Wenping, and Chen Liangya, “Innovative Practices and Exploration in Preventing Recidivism and Intergenerational Crime in Fujian Province — A Case Study of ‘Red Apple’ Public Welfare,” *Chinese Rule of Law* 1 (2025): 36-38.

has no legal effect, human rights violations under the Convention could still be considered unconstitutional.²⁴ To strengthen family ties, Scottish prisons, through the family contact policy, regard family visitations as a right rather than a privilege.²⁵ The family contact policy formally recognizes the right of inmates' minor children to visit their parents.²⁶ Scottish legislation emphasizes that children's visitations are a right, and the focus on responding to the needs of inmates' families provides support for this right. In 2012, the Scottish Prison Service (SPS) published an important report highlighting prison-family connections and visitations, titled *Unlocking Potential and Transforming Lives*.²⁷ In 2013, the new chief executive of the SPS pointed out that the focus of Scottish prisons is on unlocking inmates' potential and promoting active civic responsibility... This includes strengthening family and social networks and providing opportunities for real-world contact. The creation of visitor centers and support centers in Scottish prisons reflects this change.²⁸ In November 2015, the Scottish government announced that the region would invest £1.8 million to support inmates' families. This investment primarily aims to improve the quality of services at visitor centers so that trained staff can better assist and support inmates' families in the community in addressing their various potential social needs.²⁹

III. Reconstruction of Inmate Visitation from the View on the Right

Reconstructing inmate visitation based on the view on the right requires both clarifying the overall objectives of visitation and detailing specific types

²⁴ Scottish Parliament, SPICe briefing, "The European Convention on Human Rights in the United Kingdom," accessed April 4, 2016, http://www.scottish.parliament.uk/ResearchBriefingsandFactsheets/S4/SB_15-59_TheEuropeanConventiononHumanRightsintheUnitedKingdom.pdf.

²⁵ Scottish Prison Service, SPS policies, accessed April 5, 2016,

<http://www.sps.gov.uk/Families/FrequentlyAskedQuestions/Families-Policies.aspx>.

²⁶ Daniel McCarthy and Maria Adams, "Prison Visitation as Human 'Right' or Earned 'Privilege'? The Differing Tales of England/Wales, and Scotland," *Journal of Social Welfare and Family Law* 39 (4) (2017): 403-416.

²⁷ Scottish Prison Service, *Unlocking Potential, Transforming Lives* (Edinburgh: Scottish Prison Service, 2012), https://www.sps.gov.uk/sites/default/files/2024-02/StrategyForWomenInCustody_2021-2025_CorporateReports.pdf.

²⁸ McConnell, C, "Address to the international futures forum. Pathways to improvement: Re-thinking our conception of the offender" accessed April 1, 2016, 13, www.sps.gov.uk/nmsruntime/saveasdia-log.aspx?

²⁹ Scottish government, "£1.8 million support for prisoners' families (2015)," accessed April 5, 2016, <http://news.scotland.gov.uk/News/-1-8-million-support-for-prisoners-families-1f81.aspx>.

of the right to visitation, while concurrently providing corresponding legal frameworks to holistically enhance the quality and effectiveness of visitation.

A. Goal orientation of inmate visitation

From the perspective of historical development, the goal orientation of inmate visitation has constantly been evolving, and its forms and content are closely related to social governance models under the mainstream philosophy. From a privilege-based perspective, public power becomes the dominant force in the legislative, judicial, and enforcement domains. Criminal justice adopts the principle of legality, emphasizing the adversarial nature of parties. However, as society advances, the field of criminal justice is undergoing unprecedented changes. The introduction and establishment of criminal reconciliation and the plea leniency system, along with the rapid expansion of non-prosecution categories, all indicate that the era of restorative and flexible justice has arrived. In the field of penal execution, restorative justice has been quietly underway. Restorative penal execution and restorative practices are no longer confined to academic discussion; the mature approaches in community correction legislation and practice attest to the necessity and effectiveness of social forces participating in social governance. The profound transformation in the field of criminal justice is closely linked to the rise of social forces and the interaction among different subjects.

Efficient interaction among subjects not only allows stakeholders to reach a consensus but also continuously expands the scope of that consensus, substantially changing the form and content of things. Regarding visitations, from a privilege-based perspective, correctional officers merely view visitations as an emotional need between inmates and significant others, aimed at encouraging inmates to obey prison rules and accept re-education and rehabilitation. However, according to the view on the right, satisfying the emotional needs of relevant parties during visits is merely superficial; effective communication among various subjects can reveal more fundamental issues beyond the surface and achieve more long-term goals. This perspective believes that an isolated individual cannot be fully evaluated, and only by placing an individual within complex social relationships can he or she be correctly understood and judged. For inmates, visitations hold two levels of significance: first, through visitations, emotional and relevant information

needs are met, reducing psychological stress; second, through visitations, inmates can correctly understand the form and meaning of their deprivation of personal liberty. The latter is more fundamental and important for inmates and relevant subjects.

Modern criminal penalties primarily involve the deprivation of personal liberty. Inmate visitations are also mainly for those deprived of personal liberty. Generally speaking, the suffering of those sentenced to imprisonment stems from two points: one, the deprivation of personal liberty, and two, the severance of important social relationships, preventing free communication with significant others. Freedom includes physical freedom and spiritual freedom. Imprisonment can only deprive inmates of their physical freedom; spiritual freedom can only be indirectly affected through the deprivation of personal liberty. From a privilege-based perspective, the purpose of imprisonment is to make inmates reflect on their criminal behavior through the suffering caused by the deprivation of their personal liberty, thereby achieving the goal of preventing them from re-offending. However, according to the view on the right, the above imprisonment goal is too singular. Tracing back to the essence of crime, we find that the perpetrator has violated important social relationships protected by criminal law. The goal of restoring these social relationships is difficult to achieve solely through punitive imprisonment. Through visitations, inmates can gain a sense of the harm caused by their criminal acts to social relationships, and consequently reflect on how to improve the handling of these social relationships. More importantly, the perpetrator's criminal act itself also caused harm to their own important social relationships. For inmates, visitations are their first time directly confronting the social relationships harmed by their own criminal behavior, which is not an easy task. The same applies to the inmates' significant others. Out of instinct, inmates hope that their significant others can forgive their actions. Similarly, inmates should, through the forgiveness of their significant others, understand the suffering and needs of the victims, constantly adjust themselves for self-reconciliation, and generalize this optimization and improvement to the handling of general social relationships, thereby laying the groundwork for a smooth reintegration into society after release from imprisonment.

More specifically, according to the view on the right, the critical significance of visits lies in generalizing empathy and appropriate behavior. However, this is extremely challenging for inmates and their significant others. This is because most of them not only lack basic knowledge and skills but also, due to the limited time, can only manage emotional expression, preventing them from engaging in standardized interactive communication. This necessitates the visitation staff providing standardized guidance for these interactions. An effective standardized visitation guidance manual, in turn, must be based on the visitation staff's thorough understanding of the comprehensive factors, including the needs, past experiences, and personality traits of both inmates and their significant others. Visitation staff must clearly understand the aforementioned dual significance of these visitations, provide exemplary guidance to inmates and their significant others, and subsequently conduct a neutral evaluation of the visitation's effectiveness by integrating the self-feedback from both parties. Based on this evaluation, they should dynamically adjust the format and content of the visitation guidelines.

Essentially, incarceration reshapes inmates' cognition of (spiritual) intangible freedom by depriving them of their (physical) tangible freedom. As the saying goes, chains are everywhere. In the realm of real life, suffering arises when we fail to form a correct understanding of the complex social relationships we are part of. To alleviate this so-called suffering, some individuals resort to desperate measures, trampling on social norms, and committing crimes. Thus, suffering is not exclusive to inmates. Suffering originates from an incorrect understanding of intersubjective social relationships. In this regard, reforming inmates and correcting the erroneous understanding of ordinary members of society are not essentially different. Inmate visitations not only carry the emotional needs of important stakeholders but also serve as a crucial bridge for fostering meaningful communication between those inside and outside the prison. In short, the goal of inmate visitations should be guided toward normative changes in social relationship cognition, rather than being limited solely to the transmission and expression of emotions, thereby truly helping inmates successfully reintegrate into society.

B. Categorization of the inmates' right to visitation

The view on the right to visitation emphasizes interaction among subjects, and the driving force for subject interaction derives from the clear definition of the right of the interacting subjects. Differentiating various types of the right to visitation according to different standards is an effective way to put the concept of the right to visitation into practice.

First, there is the right to information for visitors. The realization of the right to visitation is influenced by multiple factors. To ensure that inmates fully enjoy their right to visitation, it is necessary to grant visitors the right to information — specifically, that visiting family members have the right to know the inmate’s current status. When an inmate is transferred to another prison, the original prison or the new prison should promptly inform the visitors of the relevant information, enabling them to decide whether to apply for a visitation based on a full understanding of the circumstances. The *Correctional Services Act 111 of 1998* of the Republic of South Africa makes clear provisions regarding the right of family members to be informed about prison transfers. According to this Act, if an inmate is transferred from one correctional facility to another, the inmate, with the assistance of the prison authorities, should promptly inform their next of kin of their current prison location. If the inmate is unable to inform their next of kin, they have the right to inform other relatives. However, if the inmate is unwilling to inform any relatives, the inmate must report this situation to the prison staff, who will then escalate it to the prison leadership.³⁰ Future legislation can draw upon the provisions of this Act to establish a visitation oversight system. To ensure strict adherence to these notifications, a specialized oversight body can be established. This oversight body must be responsible for supervising the aforementioned notification process, and if necessary, oversight personnel shall deliver notification on behalf of the inmate. When the inmate is a minor, the oversight body must notify the state agency responsible for the education and care of minors or their parents. However, if the minor has no parents, this information should be conveyed to their legal guardian; if there is no legal guardian, then other next of kin or relatives must be notified. Minors do not have the right to refuse notification from the oversight body. If a spouse,

³⁰ Crime Prevention Research Institute, Ministry of Justice, ed., *A Compilation of the Latest Extraterritorial Laws and Regulations on Criminal Execution II* (Beijing: China Legal Publishing House, 2020), 452.

partner, or other relatives request this transfer information, the oversight body must urge the inmate to promptly sign a consent form to inform the aforementioned individuals of the specific place of incarceration.

Second, there is the right to initiate visitations. Whether a privilege-based perspective or the view on the right is adopted determines which party has the right to initiate visitations. Although the privilege mindset also focuses on the realization of others' interests or rights, it is self-centered and struggles to grasp the true intentions of others. When interests such as security and stability conflict with those of emotional communication, rights or interests in a vulnerable position are more easily overlooked. Therefore, the parties initiating visitations under the guidance of a privilege mindset are relatively singular, generally being correctional staff. The view on the right to visitation, however, is premised on full communication and exchange; any party can express their own demands under genuinely voluntary circumstances, and when one party's demand is part of a consensus among multiple stakeholders, visitations can naturally be initiated. Therefore, inmates, inmates' significant others, and correctional staff can all initiate visitations. However, this does not mean that the initiation of visitations by the aforementioned personnel is without any restrictions. As previously stated, the goal of visitations is to enable inmates to form a correct understanding of social relationships, enhance their capacity for re-socialization, and further help them integrate smoothly into society. Those initiating visitations need to clarify the form, content, and desired objectives of the visitation, and when other requirements for visitations are met, the visitation can be initiated.

Last, there is the right to substantive communication. The view on the right to visitation emphasizes substantive communication during the visitation process. The experience of communication, as the term reveals, originates from the relationship of interactive behavior that brings at least two subjects together, occurring within a framework among subjects established through language for understanding stable meaning. The fact of incarceration greatly hinders emotional interaction between inmates and their family members. The lack of communication among family members makes individual inmates more prone to being confined within their own spiritual world. Prison visitations, however, help to enhance the emotional connection between inmates and their family

members and strengthen their emotional ties. The realization of substantive communication within the visitation setting requires emotional interaction achieved by family members through emotional exchange, spiritual communication, and moral encouragement. Substantive communication between inmates and their significant others is an important way to evaluate the effectiveness of prison rehabilitation. However, all parties involved in the visitation can truly enter the context of multi-faceted communication and achieve understanding and communication in a truly equal sense only by possessing professional knowledge and the ability and qualifications for equal dialogue. This means that the realization of the right to substantive communication during visitations requires the full participation of professionals as a prerequisite. In the future, it is necessary to enhance the professionalism, vocational development, and diversity of the visitation workforce and to improve the selection and training mechanisms for visitation staff. Specifically, resident social workers can be assigned to prison visitation centers, which can address the current shortage of police personnel and further solidify the professional support for visitations. Resident social workers can leverage multiple role advantages: First, they can more easily establish trust relationships with inmates, facilitating connections with external social organizations and public welfare institutions to provide joint support for inmates and their relatives. At the same time, the functions of the visitation staff should be optimized. Visitation functions should not be limited to maintaining order at the visitation site, but more importantly, should also involve providing dynamic information, systematic support, and strengthening communication and collaboration between departments for both parties of the visitation, to maximize the function of visitations. With the support of professional staff, participants in the visitation can engage in self-reflection and evaluation, and provide feedback on the matters discussed. During the visitation, when participants are unable to handle certain matters correctly, they can promptly seek help from neutral professionals. After the visitation, the professionals can help inmates review the events that occurred during the visitation, assisting in optimizing and adjusting emotional expression methods and the reasonableness of event arrangements during communication. They can also comprehensively evaluate the current visitation in conjunction with the overall situation of the previous visitations, providing a reference for future

communication. Based on the conditions required for the right to substantive communication, it can be further detailed into the right to apply for an extension of visitation time, the right to receive assistance during visitations, the right to apply for evaluation of visitation outcomes, the right to apply for changes in visitation form or location, etc. Furthermore, clarifying the right to substantive communication means that inmates and their visitors, with ample time guaranteed, can have in-depth communication about the facts that shape the inmate's understanding of social relationships.

C. The legal support for inmate visitation

The ultimate realization of the right to visitation depends on explicit legislation and cannot be implicitly derived from legal provisions or merely confined to academic discussions. The visitation as a right is based on the genuine expression and exchange of demands from diverse subjects and concerns multiple branches of law. Although inmate visitation primarily involves prison law and its related regulations, it is also relevant to other laws, such as the *Criminal Procedure Law* and the *Law on Community Corrections*, necessitating the improvement of corresponding supporting legal systems.

The first improvement is to amend the provisions regarding visitations in the *Prison Law*. First, the nature of visitations as a right should be clarified. It is suggested that the general principles of the *Prison Law* explicitly state, "The state guarantees and respects the basic rights of inmates." Explicitly stipulating the protection of inmates' basic rights in the general principles can highlight China's high regard for safeguarding inmates' legitimate rights, including the right to visitation. However, the guarantee of the right to visitation should not be limited to declarations in the general principles but should also focus on the realization and protection of inmates' rights. Clarifying the nature of visitation as a right in the specific provisions can effectively prevent it from being alienated into a revocable privilege in law enforcement practice due to factors such as prison security and social stability. For instance, the *French Prison Act* explicitly states that visitations are a right of inmates. According to this Act, incarcerated individuals have the right to maintain relationships with family members, which can be exercised through family visitations or, if the circumstances of the sentence permit, by being allowed to leave the

correctional institution.³¹ The *Correctional Services Act 111 of 1998* of the Republic of South Africa grants inmates the right to visitation. According to this Act, the Department of Correctional Services must encourage inmates to maintain contact with society so that they can keep pace with social development. The Department of Correctional Services must provide inmates with opportunities to communicate and meet with their spouses or partners, immediate family members, chosen religious counselors, and medical practitioners.³² Based on this, we suggest creating a separate chapter titled “Basic Rights and Obligations of Inmates” in the specific provisions of the *Prison Law*, moving “Inmate Visitation and Communication” as a section into this new chapter instead of the “Prison Administration” chapter. This section should explicitly state: “Visitations are a basic right of inmates. Prisons should encourage inmates to maintain contact with society so that they can keep pace with social development. Prisons should provide inmates with opportunities to communicate and meet with relatives, friends, and other individuals. Inmates have the right to apply for visitations and to have substantive interactions with visitors.” Furthermore, based on the guaranteed principle of the right to visitation, exceptions to the exercise of this right should also be clearly defined. The issue of inmate visitation actually involves two aspects: one is prison security management and order maintenance, and the other is the protection of inmates’ other basic rights beyond the right to personal liberty and rehabilitation. These two aspects involve a trade-off between different values, namely, the issues of security and order versus rights protection. Maintaining good prison security and order is a prerequisite and foundation for ensuring the protection of inmates’ rights. The root cause of the shortcomings of prison visitations being characterized as a privilege lies in its overemphasis on maintaining absolute prison security by leveraging the prison power mechanism, thereby implicitly enforcing disciplinary compliance and thus tipping the balance between order and rights toward order, neglecting the protection of inmates’ right to visitation. Correspondingly, the practice of the view on the right to visitation should not swing to the opposite extreme of

³¹ Crime Prevention Research Institute, Ministry of Justice, ed., *A Compilation of the Latest Extraterritorial Laws and Regulations on Criminal Execution II* (Beijing: China Legal Publishing House, 2020), 178-179.

³² Liu Wanting, “The Institutional Predicaments and Constitutional Regulation of Detainees’ Right to Communicate in China,” *Political Science and Law* 3 (2024): 452.

disregarding prison security, but rather seek a reasonable balance between the two. In times of emergency, inmates' right to visitation is inevitably subject to restrictions, such as changes in visitation methods or temporary suspension. Under such circumstances, the state may promulgate special decrees or impose exceptional control measures to address the exigencies of the situation, thereby imposing certain limitations on citizens' rights. In legal theory, this is referred to as the restriction or curtailment of rights, a practice widely recognized in the international community. From the perspective of international human rights law, it is considered reasonable and legitimate for a state to suspend the fulfillment of certain obligations under international human rights law in the event of a public emergency, natural disaster, or war.³³ For example, Article 85 of the *Criminal Execution Code of the Russian Federation* stipulates: In cases of natural disasters, the declaration of a state of emergency, extraordinary situation, or state of war in the area where the correctional facility is located, mass riots, or collective disobedience by inmates, a special regime of custody may be introduced in correctional institutions. During this period, the exercise of certain rights of convicted persons may be suspended; enhanced security and supervision measures may be implemented; special procedures may be applied to regulate contact with certain objects; daily routines may be modified; and restrictions may be imposed on production, living arrangements, cultural and educational activities, healthcare, and other institutional operations.³⁴ Accordingly, we suggest adding an exceptional provision to this article on the basis of the principle of the right to visitation: "In the event of a public emergency, natural disaster, war, or other circumstances affecting prison security and order, prison visitation may be suspended."

Second, the scope of individuals allowed to visit should be expanded. It is suggested that "may meet with his relatives and guardians" be amended to "can visit his relatives, guardians, lawyers, and any other individuals who are beneficial to the rehabilitation of inmates." The specific reasons are as follows: First, visitation by relatives and non-relatives can achieve the same effect. Inmates not only need kinship support but also support from other social

³³ Feng Weiguo, "Prison Act Enforcement and Prisoner Rights under the National Emergency," *China Prison Journal* 3 (2020): 34.

³⁴ *Criminal Execution Code of the Russian Federation*, Huang Daoxiu and Li Guoqiang trans. (Beijing: China University of Political Science and Law Press, 1999), 85.

relationships. For anyone living in modern society, their social relationships are extremely complex. Different social relationships involve different interests and can satisfy various demands. Although kinship relationships, as the core of social relationships, play an irreplaceable role, they cannot replace other social relationships. For inmates to smoothly reintegrate into society, they need to sort out various complex social relationships. Second, there is no evidence yet to prove that non-relative visitation poses greater security risks to prisons. The risks associated with non-relative visitation have not been verified. Therefore, excluding non-relatives from visitation lacks justification. Prisons can fully avoid unnecessary risks by strengthening security monitoring of visitors. Last, expanding the scope of inmate visitation to include general individuals is feasible. Prisons only need to conduct a background check and a review of the supporting relationship for visitors. A background check refers to conducting an in-depth investigation of visitation applicants to ascertain their relationship with the inmate. A review of the supporting relationship refers to examining whether the applicant's visitation can positively contribute to the inmate's rehabilitation.

The second improvement is to refine the *Regulations* of the Ministry of Justice. Based on clearly defining the nature of visitation as a right in the *Prison Law*, the *Regulations* should be revised and refined regarding basic elements such as the method, frequency, and duration of visitations, as well as visitation procedures, including initiation, approval, preparation, search, monitoring, and suspension, to fully guarantee the right to visitation of both parties. Take the optimization of visitation methods as an example. The *Regulations* should clarify the important role of contact visitations in the overall visitation scheme, define the conditions for contact visitations, and establish a visitation model primarily based on contact visitations, supplemented by video visitations. For instance, for minor visitors, contact visitations should generally be permitted. For special visitor groups such as pregnant women, the elderly, and the sick, contact visitations with inmates should also be allowed when relevant safety conditions are met; for other inmates who exhibit good conduct during their sentence and meet the corresponding criteria, they should be permitted contact visitations with their visitors. However, for those who violate the regulations for contact visitations,

contact visitations may be suspended or terminated. Take visitation frequency as another example. In this case, China can adopt the statutory model of combining a legally prescribed number of weekly visitations with the exceptional visitation time. That is, while guaranteeing the inmates' fundamental right to visitation, those who show good reform performance or for whom increased visitation frequency would contribute to their education and rehabilitation could have their visitation frequency moderately increased. In other words, all inmates should be guaranteed a visitation frequency of once per week. Prison visitations, as a fundamental right of inmates, should not differ based on their reform performance or their graded treatment level, but should be equally guaranteed for all. Based on guaranteeing the basic visitation frequency, the visitation frequency for specific inmates should be moderately increased according to their graded treatment. That is, building upon the basic visitation frequency, increased visitation frequency should serve as an incentive and preferential measure for inmates with good reform performance.

The third improvement is to amend the provisions on visitation for detainees³⁵ in the *Criminal Procedure Law*. The current *Criminal Procedure Law* only stipulates the right of defense counsel to meet with detainees in Article 39,³⁶ interpreting visitation for detainees merely as a means for defense counsel to exercise their defense rights. It fails to construct a comprehensive system guaranteeing the right to visitation of detainees.³⁷ We suggest explicitly recognizing the detainee's right to visitation for the following reasons: First, it helps establish the detainee's subject status in visitation. The detainee is the direct bearer of the consequences of criminal proceedings; therefore, procedural rights protection should be institutionally designed with the detainee as the subject of rights. Defense counsel merely assists in safeguarding those rights. As the detainee directly bears the outcome of

³⁵ The detainee's right to visitation does not fall within the scope of inmate visitation during the criminal execution stage, but because the systematic construction of the right of persons involved in criminal cases to visitation is conducive to achieving optimal effectiveness in such visitations, we will therefore elaborate on improving the provisions in the *Criminal Procedure Law* concerning the detainee's right to visitation.

³⁶ Article 29 of the *Criminal Procedure Law* stipulates that defense lawyers may meet and correspond with the defendant in custody. Other defenders, when permitted by the people's court, may also meet and correspond with the defendant in custody.

³⁷ For the purpose of this article, "detainees" refer to criminal suspects and defendants who are held in detention houses due to criminal detention or arrest before being legally convicted by a people's court.

investigation and adjudication, the protection of the defense counsel's rights in criminal procedure is, at its core, meant to safeguard the detainee's procedural interests.³⁸ Second, it facilitates the realization of the practical needs of detainees and their families. "In practice, once a person is detained, not only the accused but also their family members are eager to meet each other."³⁹ A sudden criminal proceeding is a major social event for both the accused and their close relations, greatly affecting their psychological state, daily life, and work. Accordingly, existing judicial interpretations and State Council regulations explicitly provide the protection of detainees' visitation rights. For example, Articles 28 and 29 of the *Regulation on Detention Houses* stipulate that during detention, upon approval by the investigating authority and the public security organ, detainees may meet with close relatives; when a detainee's spouse, parents, or children are critically ill, except in cases of serious offenses, the detainee may be allowed to visit home under strict supervision with proper authorization. The *Implementation Measures for the Regulations on Detention Houses* further specify the visitors, timing, frequency, and procedures for such visitations.⁴⁰ Article 370 of the *Provisions on the Procedures for Handling Criminal Cases by Public Security Organs* also provides for the right to visitation of foreign criminal suspects: "During investigation and detention by public security organs, upon approval, foreign criminal suspects may meet with their close relatives or guardians." However, in law enforcement practice over the years, pretrial detainees are typically deprived of the opportunity to see their families. Often, their first meeting

³⁸ Liu Wanting, "The Institutional Predicaments and Constitutional Regulation of Detainees' Right to Communicate in China," *Political Science and Law* 3 (2024): 137.

³⁹ Xiao Shiwei, "How Should Criminal Procedure Treat the Family?" *Tsinghua University Law Journal* 2 (2015): 40.

⁴⁰ Article 35 of the *Implementation Measures for the Regulation on Detention Houses* stipulates that detainees may not be visited more than once a month, each visit shall not exceed half an hour, and the number of immediate family members per visitation shall not exceed three. During visitations, investigating officers and detention house guards must be present for supervision. For foreign detainees, ethnic minority detainees, and deaf and mute detainees, the investigating authority must also arrange for an interpreter to be present. During visitations, it is strictly forbidden to discuss the case or communicate using coded language, and private transfer of items is prohibited. If the regulations are violated and warnings are not heeded, the visitation shall be immediately ordered to stop. Article 36 stipulates that with the consent of the investigating authority and the approval of the head of the public security bureau or division at or above the county level, detainees may temporarily leave the detention house to visit a critically ill spouse, parent, or child. Detainees involved in major cases or those who cannot return to the detention house on the same day are not permitted to have visitations. Visitations must be escorted and supervised by two or more investigating officers, and detainees are not allowed to stay outside the detention house overnight.

occurs only at the opening of the first trial. Such prolonged separation — lasting months or even years — constitutes a serious violation of the detainee's human rights and inflicts deep harm on their human dignity.⁴¹ Without explicit provisions in the *Criminal Procedure Law* as the superior law, administrative regulations or judicial interpretations alone cannot effectively safeguard the detainee's right to visitation. Conflicts between norms further exacerbate practical obstacles, making it even harder to meet the needs of both parties in the visitation. Third, it contributes to the systematic improvement of the right to visitation for persons involved in criminal cases.⁴² A sound visitation system should not be confined to the prison stage but should encompass the entire criminal justice process. Enhancing inmate visitation measures in the criminal execution stage should go hand in hand with optimizing visitation arrangements during all stages of criminal proceedings for persons involved in criminal cases. Only in this way can the optimal effectiveness of such meetings be achieved in preventing recidivism and intergenerational crime. For example, granting the right to visitation to persons involved in criminal cases can mitigate the social disruption caused by criminal proceedings, prevent offending, and allow judicial authorities to better understand the important information about the persons involved in criminal cases and their family members, providing valuable reference for the application of probation and other leniency measures. Moreover, the transfer of visitation records from the criminal procedure stage provides a necessary foundation for optimizing rehabilitation programs during imprisonment and for facilitating relationship restoration and social reintegration after the completion of the sentence. Based on the above, we propose adding a provision to the *Criminal Procedure Law* recognizing the detainee's right to family visitation: "Criminal suspects and defendants (including foreign nationals) shall, in principle, have the right to meet with their close relatives or guardians. Visitations may take the form of phone conversations through transparent barriers, face-to-face meetings, or video calls. However, for suspects or defendants who have seriously violated administration rules, visitation may be temporarily suspended." At the same

⁴¹ Cheng Lei, "Pre-trial Detention Center and Detainees' Rights Protection," *Human Rights* 2 (2015): 44.

⁴² For the purpose of this article, "persons involved in criminal cases" refer to individuals who have been incorporated into the criminal justice system due to alleged criminal offenses. They include both criminal suspects and defendants during the criminal litigation process, as well as convicted criminals during the criminal execution stage.

time, the relevant clauses should be revised to explicitly grant detainees the right to meet with their defense counsel: “Criminal suspects and defendants in custody have the right to meet with their defense lawyers or other defense representatives.”

The fourth improvement is to amend the relevant provisions of the *Law on Community Corrections*, clearly stipulating that the effectiveness of visitations should be used as a reference for applying probation, parole, etc. The effectiveness of visitations⁴³ can serve as an objective measure for considering whether an inmate poses “no danger of recidivism” when making parole decisions. This is because inmates with good visitation results mean they have more stable family and social support systems, and also means that the inmate may receive stronger potential support after returning to society. These strong support systems can provide inmates with necessary emotional attachment and financial support, helping them to enhance their pro-social behavior and smoothly integrate into society; these support systems can also demonstrate a non-social control function, thereby effectively curbing inmates’ motivations to re-offend after release and increasing their likelihood of abiding by the law. Researchers in the United States examined over 1,000 inmate cases randomly sampled from Pennsylvania and found that, compared to inmates who had never received visitations, and after controlling for other variables, each visitation an inmate received increased the probability of parole by 1%, while a one-unit increase in the visitation rate raised the aforementioned probability by 33%. The study suggests that prison visitations can be used by parole decision-makers as a proxy indicator to predict an inmate’s potential social support and additional informal control after release.⁴⁴ Although China’s current *Law on Community Corrections* specifies the educational and supportive obligations of family members, guardians, etc., toward community correction subjects, there is a lack of specific, targeted, and systematic education and assistance. For parolees, key stakeholders can fully understand the inmate’s incarceration and rehabilitation status through prison visitations, and evaluate, through the effectiveness of visitations, the positive impact of visitors on the inmate’s

⁴³ The effectiveness of inmate visitation can be assessed from multiple dimensions, including visitation intensity, the category of visitors, and the relationship between the inmate and the visitor.

⁴⁴ E. Rely Vilcićă, “The Influence of Inmate Visitation on the Decision to Grant Parole: An Exploratory Study,” *Journal of Criminal Justice* 43 (6) (2015): 498-509.

rehabilitation and the significant role of visitations in restoring family relationships. When evaluations show that visitation has a two-way positive effect on both the inmate and key stakeholders, it can be used as an important reference factor for applying parole. For inmates intended for probation, by assessing the effectiveness of visitations during criminal proceedings, it can be determined that if community correction is applied, and the family members or guardians can provide more effective education and assistance to the persons involved in criminal cases, then this can be considered a factor indicating lower social risk. In summary, incorporating the effectiveness of visitations during criminal proceedings and incarceration into social investigation and evaluation is more conducive to leveraging the positive role of family members and guardians in educating and assisting community correction subjects.

(Translated by *SU Yilong*)