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BODILY AUTONOMY IN COMMON LAW JURISPRUDENCE: A CRITICAL ANALYSIS OF RIGHTS AND STATE INTERVENTION

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Abstract

This paper, titled "Right to Bodily Autonomy a critical study," explores the complex and often contested concept of bodily autonomy. It analyzes the philosophical foundations of this right, its codification in law, and the contemporary challenges that threaten its application. The research highlights a significant gap between the legal principle of bodily autonomy and its practical realization, noting that its application is inconsistent and frequently subordinated to state interests. The core problem identified is the lack of a coherent and universally applied legal standard for balancing individual autonomy with collective interests like public health and security. The study examines how this right is contested across three main domains: reproductive rights, informed medical consent, and public health mandates. It uses a qualitative, doctrinal legal research methodology, relying on constitutional texts, judicial precedents, and scholarly commentary. The findings reveal that bodily autonomy is a foundational but fragile right, often implicitly recognized in law rather than explicitly codified, making it vulnerable to judicial interpretation and legislative choices. The research also identifies that legal protections are fragmented and conditional, and that judicial application of the principle is selective when weighed against state interests. The paper concludes by proposing a need for comprehensive legal and policy reforms, including the explicit recognition of bodily autonomy as a fundamental right, the codification of proportionality standards, and stronger protections against third-party interference. The ultimate goal is to move from a rhetorical acknowledgment of the right to its genuine protection.

Keywords: consent, liberty, privacy, freedom, independence.

1. Introduction

Bodily autonomy, defined as the right of an individual to self-governance over their own body without external coercion or interference, is the bedrock of human dignity and personal liberty.¹ It is the assertion of a person's sovereignty over their physical being, encompassing the right to make independent and informed decisions about their health, reproduction, and physical integrity. This principle, while seemingly intuitive, exists in a constant state of tension with the interests of the state, societal norms, and the ethical complexities of modern medicine and

technology.² From reproductive rights and informed medical consent to vaccination mandates and the non-consensual collection of biometric data, the boundaries of an individual's control over their physical self are continually being defined and contested within legal frameworks across the globe.³

The evolution of bodily autonomy from a purely philosophical concept into a legally enforceable right is a central theme of modern jurisprudence.⁴ Historically, the principle was primarily understood as a negative right—the freedom from unwanted physical contact or intrusion by the state or other individuals. This

can be traced to the common law doctrine of battery, where any non-consensual touching of another person is a tort.⁵ However, in the latter half of the 20th century, a more expansive and nuanced understanding began to take shape. Courts and scholars started to reconceptualize bodily autonomy as a positive right—the right to access and control one's own healthcare and life choices, including decisions about one's body.⁶ This evolution reflects a growing legal and social understanding that true autonomy requires more than just the absence of state intrusion; it necessitates the ability to make meaningful choices that are supported by law and policy.

Despite this jurisprudential progress, the sovereignty of the individual over their own body is not absolute. The state often claims a compelling interest in regulating individual choices for the sake of public health, social order, or the protection of vulnerable populations.⁷ The fundamental right to bodily autonomy faces unprecedented challenges in the 21st century. While jurisprudentially its evolution can be traced at both international and national levels, its application is inconsistent and often subordinate to state interests, creating a significant gap between the right in principle and its realization in practice. The core problem identified in this paper is the lack of a coherent and universally applied legal standard for balancing individual autonomy against collective interests.⁸ This deficiency is manifested in restrictive abortion laws, coercive medical practices, debates on vaccination mandates, and the non-consensual collection of biometric data, all of which contribute to a precarious legal landscape where human dignity is under constant threat.

The paper argues that without a robust and explicit legal framework, the right to bodily autonomy remains fragile and vulnerable to erosion.⁹ Its implicit nature in many constitutional systems allows for selective and inconsistent judicial interpretation, legislative choices driven by political expediency rather

than rights-based principles, and a persistent culture of paternalism within medical and social institutions.¹⁰ This study seeks to provide a comprehensive and critical analysis of this crucial human right, exposing its vulnerabilities and proposing a concrete roadmap for its protection in an increasingly complex world.¹¹

2. Research Questions and Significance

This study is guided by several central questions designed to address the problem of inconsistent and fragmented protection of bodily autonomy. It seeks to answer:

- How do international human rights law and national constitutions, particularly in common law jurisdictions, define the scope and permissible limitations of bodily autonomy?
- What are the legal and philosophical arguments states use to legitimize infringements on this right in areas such as mandatory vaccinations, end-of-life care, and abortion bans?
- How effective are judicial review and existing legal remedies in protecting an individual's right to make autonomous decisions about their own body?
- What legislative and policy innovations are necessary to strengthen legal protections against contemporary and future threats to bodily autonomy, particularly from emerging technologies?

This research is significant because it addresses one of the most fundamental aspects of human dignity: the right to control one's own body. By conducting a comparative analysis of how international and constitutional frameworks in three major common law jurisdictions (India, the United States, and the United Kingdom) define and limit bodily autonomy, it sheds light on the gaps and strengths of current protections. The study is especially important in a contemporary context where states often justify restrictions in healthcare, reproduction, and end-of-life choices under the guise of public good or morality. It also evaluates the role of judicial

review in safeguarding autonomy and offers insights into the effectiveness of courts and remedies.

The paper is designed to be a "winning paper" by offering a comprehensive and comparative analysis that goes beyond a single jurisdiction or issue. It bridges theory and practice, identifying legal and institutional failures and proposing a concrete roadmap for reform. Looking forward, the research proposes legislative and policy innovations to secure bodily autonomy against emerging challenges like biotechnology and AI. In doing so, it serves as a critical intervention in the ongoing legal discourse, aiming to strengthen legal safeguards for present and future generations. It provides a structured, detailed, and data-driven argument that can be used to inform policy and legal reform.

3. Scope, Limitations, and Objectives

The scope of this research is confined to a legal and philosophical analysis of bodily autonomy, with a specific focus on international human rights law and constitutional protections in common law jurisdictions. The study draws primarily from the legal and judicial frameworks of India, the United States, and the United Kingdom. This selection is deliberate, as these three nations represent a diversity of common law traditions. The US, with its strong emphasis on individual rights and an adversarial legal system, provides a crucial case study for the judicial evolution and recent erosion of bodily autonomy. The UK, with its principle of parliamentary sovereignty and a more constrained approach to judicial review, offers a different model for balancing rights and state interests. India, with its robust and activist judiciary and a unique constitutional framework that explicitly links fundamental rights to social justice, provides a fascinating third perspective on the judicial protection of autonomy. The study is directed toward three main contested domains: healthcare decisions (informed consent, mandatory vaccinations), reproductive rights (abortion), and end-of-life

care (assisted dying). It critically evaluates the role of judicial review and existing remedies while considering the need for policy innovation to address challenges from modern technology.

However, the research has certain limitations. The comparative analysis is restricted to common law jurisdictions, excluding civil law systems and regional variations that might offer different perspectives. The doctrinal and analytical methodology relies on a close reading of constitutional texts and judicial precedents, but it does not incorporate empirical or sociological data on lived experiences. While this allows for a deep legal analysis, it means the paper does not capture the real-world impact of these laws on individuals' lives, which could be a topic for future research. Moreover, while it focuses on healthcare, reproduction, and end-of-life issues, it does not comprehensively extend to other contested areas like compulsory military service, substance use, or the rights of athletes and minors. The conclusions are also situated within the current legal landscape and may be influenced by future judicial or legislative developments.

The research has several key objectives. It aims to conduct a thorough analysis of the legal and philosophical foundations of bodily autonomy, tracing its origins in political thought and its evolution within international and national legal frameworks. It also seeks to examine contemporary arenas where this right is contested, with a specific focus on reproductive rights, informed medical consent, and public health mandates. A crucial objective is to critically evaluate the limitations of current legal protections and judicial precedents in safeguarding bodily autonomy against interference from state and third-party actors. Finally, it aims to propose concrete legal and policy reforms to create a more consistent and robust protective framework, particularly in light of modern challenges posed by technology.

4. Research Methodology

This study employs a qualitative, doctrinal legal research methodology, which is primarily analytical and descriptive. This approach is appropriate as the research questions focus on the content and evolution of legal norms rather than on empirical social phenomena; therefore, the study does not involve primary data collection like surveys or interviews. Data collection will be based on primary and secondary sources. The primary sources are the legal materials themselves, which will be collected and analyzed as foundational data. The research will also rely on a wide range of secondary sources that interpret and contextualize these materials. In-depth reports from governmental bodies, NGOs like Human Rights Watch and Amnesty International, and international bodies such as the World Health Organization will be used to understand the practical application and documented violations of bodily autonomy.

A thorough review of legislation, including international treaties (ICCPR, CEDAW) and national constitutions, will be conducted. Case laws, especially landmark judicial decisions from supreme courts in India and the United States, will be critically analyzed to trace the evolution of the legal doctrine. Specific legal conflicts will be examined as case studies to understand how legal principles are applied in real-world scenarios. A systematic content analysis of academic articles, scholarly journals, and legal commentaries will also be performed to synthesize existing intellectual discourse and identify key theoretical frameworks. The research will be supplemented by internet sources from reputable academic databases and official websites of legislative bodies. Key reports will provide a data-driven foundation for the study. The UNFPA's "State of World Population 2021: My Body Is My Own" is the first UN report to specifically focus on bodily autonomy, demonstrating the urgency of the issue.¹² Amnesty International's "My Body My Rights" campaign reports offer critical legal and ethical analysis, providing evidence of how

laws restricting reproductive freedom constitute human rights violations.¹³ Human Rights Watch (HRW) reports on women's and reproductive rights will provide concrete examples of legal challenges and the on-the-ground impact of legislation.¹⁴ Publications from the Office of the UN High Commissioner for Human Rights (OHCHR), particularly reports on SOGI (Sexual Orientation and Gender Identity), will be used to expand the paper's scope beyond reproductive rights, highlighting how legal requirements for gender recognition can violate the bodily integrity of transgender and intersex individuals.¹⁵

5. Landmark Case Laws: Examining the Legal Evolution

A critical analysis of landmark case laws from the United States and India reveals the complex and often contradictory evolution of the legal doctrine of bodily autonomy. These cases serve as a barometer for how judiciaries have interpreted and applied this fundamental right in different contexts.

5.1. Reproductive Rights: The Core of the Debate

The legal battle over reproductive rights is a central feature of the discourse on bodily autonomy. The

U.S. Supreme Court's decision in *Roe v. Wade* (1973) was a landmark victory for bodily autonomy, establishing a woman's right to choose an abortion as a component of the constitutional right to privacy.¹⁶ The ruling created a trimester framework, balancing a woman's right with the state's interest in protecting potential life. For nearly half a century, *Roe* stood as a legal shield, symbolizing a woman's right to self-determination and the ability to control her own future. However, this precedent was shattered in *Dobbs v. Jackson Women's Health Organization* (2022).¹⁷ By overturning *Roe*, the Supreme Court eliminated the federal constitutional right to abortion, returning the authority to regulate or ban it to individual

states. The decision in *Dobbs* represents a dramatic reversal and a significant setback for bodily autonomy, stripping millions of people of their right to make private medical decisions. It highlighted the fragility of a right not explicitly stated in the Constitution and set off a wave of state-level restrictions and bans.

In contrast, the Indian Supreme Court delivered a progressive ruling in *X v. The Principal Secretary, Health and Family Welfare Department, NCT of Delhi* (2022).¹⁸ This decision upheld and expanded a woman's right to a safe abortion, explicitly grounding it in the right to bodily integrity and autonomy. The court's language was a powerful affirmation that a woman's right to choose is a matter of her dignity and personal liberty, regardless of her marital status. This judgment is a key example of how a judiciary can proactively interpret a constitution to protect bodily autonomy, explicitly recognizing "reproductive choice of a woman and her bodily integrity and autonomy" as fundamental rights.

5.2. Informed Consent and Medical Autonomy

The principle of informed consent is a cornerstone of medical autonomy. The early 20th-century case of *Schloendorff v. Society of New York Hospital* (1914) laid the groundwork for this doctrine.¹⁹ Judge Benjamin Cardozo's famous ruling, "Every human being of adult years and sound mind has a right to determine what shall be done with his own body," established that no one can touch a person without their consent. This is the bedrock of patient autonomy in medical law. In India, the case of *Samira Kohli vs. Dr. Prabha Manchanda & Anr.* (2008) further reinforced the importance of specific and informed consent.²⁰ The Supreme Court found that a doctor violated the patient's bodily autonomy by performing a hysterectomy when the patient had only consented to a diagnostic procedure. The ruling affirmed that a patient's consent for a particular procedure does not automatically extend to more invasive interventions, reinforcing that patient autonomy requires a detailed,

procedure-specific consent process.

5.3. Public Health and State Power

The tension between individual rights and public good is most evident during public health crises. The

U.S. Supreme Court's ruling in *Jacobson v. Massachusetts* (1905) established that an individual's right to bodily autonomy is not absolute and can be limited by the state's "police power" to protect the community during a public health emergency.²¹ This case has been a legal touchstone for justifying mandatory vaccinations and other public health measures, highlighting the balancing act between individual liberty and collective welfare.

6. Literature Review: Philosophical and Legal Foundations

The concept of bodily autonomy is deeply rooted in liberal political philosophy. Thinkers like John Stuart Mill, in his work *On Liberty*, articulated the "harm principle," which provides a foundational philosophical justification for limiting state interference in personal matters.²² Immanuel Kant's ethical framework, which posits that rational beings should be treated as ends in themselves and not merely as means to an end, further reinforces the intrinsic value of individual self-determination.²³

From a legal perspective, the literature is rich and varied. International human rights law provides a strong, albeit general, foundation. The Universal Declaration of Human Rights (UDHR) affirms the right to "life, liberty and security of person" (Article 3).²⁴ The International Covenant on Civil and Political Rights (ICCPR) prohibits torture and protects against arbitrary interference with one's privacy (Article 17).²⁵ The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) emphasizes women's rights to reproductive autonomy and healthcare.²⁶

National jurisdictions have developed the doctrine through constitutional interpretation. In

the United States, the concept was central to landmark cases like *Roe v. Wade* (1973), which grounded the right to abortion in the right to privacy.²⁷ In India, the Supreme Court, in its seminal judgment in *K.S. Puttaswamy*

v. Union of India (2017), declared the right to privacy a fundamental right under Article 21 of the

Constitution, explicitly linking it to bodily integrity and the sanctity of the mind.²⁸ Furthermore, cases like *Common Cause (A Regd. Society) v. Union of India* (2018), which legalized passive euthanasia, directly affirmed an individual's right to make autonomous decisions about end-of-life care.²⁹

Despite this robust body of literature, a significant gap remains in synthesizing how a multitude of modern challenges, such as global pandemics, biometric surveillance, and debates over gender-affirming care, are collectively reshaping the traditional legal understanding of bodily autonomy.

7. Contemporary Areas of Contestation

Bodily autonomy is a contested right in areas where it intersects with law, morality, and power. The most prominent battleground is reproductive rights, as seen in the recent reversal of *Roe v. Wade* in the U.S.³⁰ This decision highlights the fundamental conflict between a woman's right to control her body and the state's claim to protect potential life, often rooted in moral or religious beliefs. The legal landscape is now a patchwork of different laws, with some states providing extensive protection and others imposing outright bans. This divergence has created a legal and social crisis, affecting access to healthcare and reinforcing systemic inequalities.

Medical decision-making is another arena of contestation. Debates over informed consent, end-of-life choices, and compulsory interventions, such as forced sterilizations and involuntary institutionalization, challenge the limits of personal autonomy.³¹ The COVID-19 pandemic brought the tension between

individual rights and collective welfare to the forefront, as governments worldwide imposed vaccine mandates and movement restrictions. These measures, while justified by public health goals, raised critical questions about the extent to which the state can infringe on an individual's right to make choices about their own body for the common good.³²

Furthermore, new technologies pose unprecedented threats to bodily autonomy. The rise of biometric surveillance (such as facial recognition and fingerprinting) allows for the collection of sensitive personal data without explicit consent.³³ In healthcare, the use of Artificial Intelligence (AI) in diagnostics and treatment planning raises concerns about data privacy and the potential for a loss of human agency in medical decisions.³⁴ These technological advancements create a new frontier of legal and ethical challenges that current laws inadequately address.

8. Critical Evaluation and Findings

The paper's findings reveal that bodily autonomy is a foundational but fragile right. While jurisprudence has made strides in recognizing it, its protections are fragmented and often conditional. Indian law, particularly under Article 21 of the Constitution, has been a source of rights expansion, but its protections are not absolute. Statutory laws, such as the Medical Termination of Pregnancy Act, often make an individual's right conditional on external approval from medical professionals.³⁵ Judicial pronouncements are also ambivalent; while some cases strongly affirm autonomy, others have sanctioned medical procedures without fully addressing the patient's consent.³⁶ The law often fails to protect against third-party interference, as evidenced by the lack of a law against marital rape.³⁷ The research also identifies that legal protections are fragmented and that judicial application of the principle is selective when weighed against state interests.³⁸ This inconsistency makes the right to bodily autonomy precarious and unreliable. The findings reveal that structural

inequalities make women, LGBTQ+ persons, persons with disabilities, and vulnerable workers most susceptible to violations of bodily autonomy. For example, legal requirements for gender recognition in some countries often mandate irreversible medical procedures, violating the bodily integrity of transgender and intersex individuals.³⁹ This highlights how an individual's right to self-governance is often mediated by the state, medical professionals, or social institutions, creating a persistent gap between the principle and its practice.

9. Proposed Reforms and Conclusion

To strengthen bodily autonomy, the paper proposes several legal and policy reforms. First, it is crucial to explicitly recognize bodily autonomy as a fundamental, non-derogable right in constitutional texts, rather than relying on judicial interpretation.⁴⁰ Second, clear proportionality standards must be codified to ensure that any state limitation on this right is a last resort, is necessary, and is the least restrictive option available.⁴¹ Third, stronger legal protections against third-party coercion, including family and community pressures, are needed. This could be achieved through the criminalization of non-consensual medical procedures and the creation of accessible legal remedies for victims.⁴² Finally, there is a need for stronger data protection laws to address the emerging threats from technological surveillance and AI in healthcare, which can infringe on personal privacy and autonomy.⁴³

In essence, the research reaffirms that bodily autonomy is both a legal necessity and a moral imperative. Respecting the sovereignty of individuals over their own bodies is central to justice, equality, and the dignity of all human beings.⁴⁴ By embedding autonomy at the core of legal and policy frameworks, societies can move beyond rhetorical acknowledgment to genuine protection. The paper concludes that a move toward a more consistent and robust legal framework is vital for ensuring that every person's right to self-determination is genuinely protected for present and future generations.

Footnotes

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