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UNDERSTANDING CONSENT: INTERSECTIONS BETWEEN MARITAL RAPE EXCEPTION AND DATA PROTECTION FRAMEWORKS

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ABSTRACT

This study provides an evaluative review of consent and bodily autonomy law in two contexts: marital relations and data protection. The study contends that although consent is an important dimension of human dignity and a human right, it remains nebulous and compromised by imbalances of structural power. The central argument is that the traditional legal doctrine of implied marital consent, which historically diminished a person's autonomy within marriage, has a modern-day counterpart in the concept of digital consent that is often a "fiction of autonomy" due to the unclear terms of service. By reviewing the evolution of judicial interpretations in India, including landmark cases that upheld and limited bodily autonomy, and by comparing with international law that has abolished the defence of marital rape, this paper demonstrates the urgent need for reform of the legal doctrine. In conclusion, a complete shift in relation to consent jurisprudence is necessary by reimagining consent not as a formality but also as a fundamental principle regarding protecting individual dignity and autonomy in all aspects of life.

Keywords: *Bodily Autonomy, Consent, Marital Rape, Jurisprudence, Data Protection.*

1. Introduction

Consent is a legal requirement in the legal framework, but it is also a fundamental idea which shapes human freedom, dignity and justice. Consent has been traditionally conceptualized as an expression of free will, a voluntary action in which someone gives another person grant to act in a certain way. Natural law theorists (Locke, for example)⁸⁰⁰ viewed consent as the basis for legitimate authority, both in regards to social governance and in regards to personal relationships among people. Consent expressed moral agency and the right of individuals to determine the limits of the obligations that bind them. More recently, legal positivists, (such as H.L.A. Hart)⁸⁰¹ have shown more concern about the notion of

consent as a construct of a legal system, in which the validity of consent relies more on process than pre-legal moral values. This dualism—between moral legitimacy and legal formality—has made consent the basis of a number of difficult and contested notions within jurisprudence.

A significant legal aspect of consent is its relationship to bodily autonomy. Bodily autonomy is the right of individuals to choose what to do with their bodies; it is an important right, one highly integrated with dignity and liberty. The feminist critique of traditional legal ideology has pointed out that marriage operating as a legal institution has often been viewed as a place wherein autonomy is lessened, because a consent advanced by the marriage relationship meant an individual had no choice to consent or withhold consent to sexual activity. Academics like Catharine

⁸⁰⁰ John Locke, *Two Treatises of Government* (Peter Laslett ed., Cambridge Univ. Press 1988).

⁸⁰¹ H.L.A. Hart, *The Concept of Law* (Oxford Univ. Press 1961).

MacKinnon⁸⁰² and Carole Pateman⁸⁰³ illustrate how the "social contract" has functioned historically to obscure a more comprehensive "sexual contract" that placed women's bodily autonomy on marriage. From this perspective, consent is more about not whether consent is understood, but rather whether we are even willing to interrogate the power relations that delegitimize that request for consent when it comes to intimate relationships. In that, the marital rape conversation becomes a proving ground for whether the law can legitimately endorse autonomy in avenues of life that have had little subjectivity.

Simultaneously, the digital age has changed how law approaches consent. The growth of surveillance capitalism and the collection of personal data by digital actors has moved the individual's personal information into a space of power struggle similar to that of the body in sexual autonomy discussions. Consent is acquired formally via checkboxes, terms of service, and digital contracts. Nonetheless, the imbalance of knowledge and bargaining power leads others to question whether the consent is "informed" or "free." Legal theorists have suggested this is a condition of a juridical crisis in which autonomy exists in name only and structural inequality results in the conclusion that consents are nothing more than convenient fictions. Just as marital consent cannot be presumed to override autonomy, digital consent cannot be assumed to legitimize invasive practices when it is extracted under conditions of necessity or ignorance.

Therefore, from a jurisprudential perspective, consent exists at the intersection of freedom, power, and legitimacy. The same tensions arise, from the intimate space of marriage to the abstract category of digital data. Whether consent may qualify as true consent in situations of unequal relationships and whether law can protect autonomy without collapsing consent into simply a ritual stress that consent

is not simply a static legal tool, but rather a dynamic principle that pushes law to balance between individual dignity and social order. In its relevance to bodily autonomy and now through digital rights, consent challenges jurisprudence to reconsider consent and requires justification that not only responds to the formal legalities but to substantive justice.

2. Statement of problem

Despite the existence of several international frameworks and relevant Supreme Court rulings, women are placed in a disadvantaged position in the aspect of sexuality as observed by the Supreme court in the case of *State of Punjab v. Gurmit Singh*⁸⁰⁴ under marriage in India. The idea of consent and bodily autonomy is not uniformly applied across all the laws. Consent is understood to be irrevocable in nature under marital rape laws whereas consent is considered revocable in the cases of digital data protection laws. This research paper would therefore focus on addressing this distorted application of the concept across statutes through analytical methods of reasoning.

3. Research Questions

1. What is bodily autonomy? How does it relate to a marital relationship?
2. Does the jurisprudence surrounding bodily autonomy recognise it as being part of an individual's human rights?
3. Should marital rape be covered under the ambit of the Right to Life and Personal Liberty, which protects bodily autonomy?
4. Do other statutes, regulations or laws in India recognise and protect bodily autonomy?
5. What is the judicial evolution of bodily autonomy and consent in marriage in India?

4. Research Objectives

1. To clarify the concept of bodily autonomy and analyse its relationship with the legal and social constructs of a married relationship.

⁸⁰² Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (Harvard Univ. Press 1989).

⁸⁰³ Carole Pateman, *The Sexual Contract* (Stanford Univ. Press 1988).

⁸⁰⁴ *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384 (India).

2. To examine both Indian and international legal cases on bodily autonomy to see whether it is a fundamental human right.
3. To trace the judicial evolution of the concepts of consent and bodily autonomy within the context of marriage in India through an analysis of landmark case law.
4. To critically evaluate the legal arguments for including marital rape within the scope of the Right to Life and Personal Liberty (Article 21) as a violation of bodily autonomy.
5. To compare the legal standards of consent and bodily autonomy in Indian marital law with those in other statutes, such as data protection frameworks, to identify and analyse legal inconsistencies.

5. Research Methodology

It is doctrinal research using analytical methods of reasoning. My research will analyse statutes, relevant judgements, international frameworks and works related to the area to substantiate my points. It would also include comparative research with that of the common law system and criminal law statutes of other nations. This method would help me in understanding the shortcomings of the system that is followed in our country today.

6. Literature Review

The legal discussion surrounding consent and bodily autonomy is a complicated and changing matter, involving criminal law, family law, and new emerging digital rights. Natural law theorists, like John Locke⁸⁰⁵, view consent as a basis of moral agency and of individual liberty. According to legal positivists, such as H.L.A. Hart⁸⁰⁶, the validity of consent is determined by legal and procedural rules and is not based on moral considerations. Moral legitimacy is a key component in understanding consent's role in modern jurisprudence as it applies in relation to legal formality.

In the area of criminal law, the term consent has moved beyond a simple factual analysis of a victim's will to establish a more complicated standard of being "free, voluntary, and informed", as an expression of autonomy, rather than acquiescence⁸⁰⁷. This has become most apparent in the context of sexual offenses, where consent determines the dividing line between lawful intimacy and unlawful violence⁸⁰⁸. Consent and bodily autonomy are a developing thread, especially in the context of intimate relationships. Feminist critiques and scholars such as Catharine A. MacKinnon and Carole Pateman have argued that the "social contract" has historically disguised a deeper "sexual contract," which has subordinated women's bodily integrity to the expectations of marriage⁸⁰⁹. This notion raises the point that a marriage, as a legal institution, has often been treated as a zone of decreased autonomy, where spousal consent would negate an individual's right to refuse consent to sexual activity⁸¹⁰.

The marital rape debate becomes a test case for whether jurisprudence can meaningfully uphold autonomy in spaces traditionally insulated from scrutiny. This issue is examined in *People v. Liberta*⁸¹¹, a seminal American case, to which there are parallels in it as well - it also struck down marital rape exemptions. As Bhattacharya points out, there is a current tension in India's Pateman through this lens, thereby continuing the tension between personal liberty and institutionalized marital responsibilities⁸¹². The State of Punjab v. Gurmit Singh case acknowledges the vulnerability of women in sexual assault cases, while *Independent Thought v. Union of India* addressed consent in the context of minor wives, showing a gradual judicial evolution⁸¹³. Bodily autonomy is also a central tenet of

⁸⁰⁷ V. E. Cornell, *Consent in Data Protection: A Comparative Legal Study*, 16(2) Int'l J. L. & Tech. 113 (2020).

⁸⁰⁸ Catherine MacKinnon, *Rape Redefined*, 121(2) Harv. L. Rev. 437 (2006).

⁸⁰⁹ Catherine A. MacKinnon, *supra note 3*

⁸¹⁰ Carole Pateman, *supra note 4*

⁸¹¹ *People v. Liberta*, 64 N.Y.2d 152 (1984) (USA).

⁸¹² Sudipto Bhattacharya, *Marital Rape and the Indian Legal Scenario*, 13(1) NUJS L. Rev. 45 (2020).

⁸¹³ *Independent Thought v. Union of India*, (2017) 10 SCC 800 (India).

⁸⁰⁵ H.L.A Hart, *supra note 2*

⁸⁰⁶ John Locke, *supra note 1*

human rights law. In *M.C. v. Bulgaria*⁸¹⁴, the European Court of Human Rights described consent as an exertion of free will, which is necessary for sexual self-determination. A similar method of conceptualizing consent has been accepted by the Indian Supreme Court, especially in *Suchita Srivastava v. Chandigarh Administration*⁸¹⁵, where reproductive self-determination was recognized as a fundamental right, and in *Bodhisattwa Gautam v. Subhra Chakraborty*⁸¹⁶, where a connection was affirmed between dignity and bodily self-determination. The Right to Life and Personal Liberty within Article 21 of the Indian Constitution provides a much-needed scaffolding to protect these rights furthermore.

In the EU, the General Data Protection Regulation (GDPR) and in India, the DPDP Act of 2023 establish consent as a matter of law for data protection^{817/818}. However, as scholars argue, including V. E. Cornell, the asymmetries of knowledge and bargaining position between the individual and corporations are questionable for informed and free consent in the digital context. This has resulted in a "jurisprudential crisis" because although autonomy preserves itself, the consent itself is a pretense due to structural inequality. The landmark *Justice K.S. Puttaswamy (Retd.) v. Union of India*⁸¹⁹ case formally put privacy as part of Article 21, which not only linked bodily autonomy to data protection but recognized an individual right of management of one's personal identifiable information. Legal scholars are finding this model of consent increasingly fictional, in the same manner as the fiction of agreed consent within marriage. The ICCPR⁸²⁰ and CEDAW⁸²¹ also provide international frameworks for protecting bodily integrity and

combating discrimination. The digital age has introduced a new frontier for this debate, where personal information has become a site of power struggle akin to the body in sexual autonomy debates.

In summary, Nussbaum's work on capabilities approach and Atrey's work on intersectional discrimination open wider lenses and show that the law's ability thus far to support consent and autonomy is still context-specific and vulnerable to systematic power structures and forms of social inequality⁸²². While even in jurisdictions where doctrines, such as implied marital consent, persist, like the Malaysian Penal Code; chronicling changes in definitions of consent, as in the new German Criminal Code (StGB)⁸²³, show that tensions remain between traditional legal definitions and bodily integrity. As mentioned in the UN Declaration on the Elimination of Violence against Women, the issue is whether jurisprudence can adequately support autonomy in the intimate and digital realms, without allowing consent to become an empty legal formality.

7. Scheme of study

1. The Jurisprudence of Bodily Autonomy as a Human Right

1.1. Defining Bodily Autonomy: Conceptual Foundations

Bodily autonomy refers to the right of the individual to have control over their physical beings, a right closely connected with dignity and liberty. In law, bodily autonomy is more than simply a legal norm, it is part of the bedrock that creates human freedom and justice within the boundaries of a legal framework. Bodily autonomy relates to the moral agency of individuals and the existence of the right to even limit obligations binding upon them. Bodily autonomy serves as a foundational principle in law, and it arises in several ways; in criminal law, we see an evolution of the meaning of consent: most

⁸¹⁴ *M.C. v. Bulgaria*, App. No. 39272/98 (ECHR 2003).

⁸¹⁵ *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1.

⁸¹⁶ *Bodhisattwa Gautam v. Subhra Chakraborty*, (1996) 1 SCC 490.

⁸¹⁷ *General Data Protection Regulation*, Regulation (EU) 2016/679.

⁸¹⁸ The Digital Personal Data Protection Act, 2023, No. 22 of 2023, India Code (2023).

⁸¹⁹ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (India).

⁸²⁰ *International Covenant on Civil and Political Rights*, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. No. 16, U.N. Doc. A/6316 (Dec. 16, 1966).

⁸²¹ *Convention on the Elimination of All Forms of Discrimination against Women*, G.A. Res. 34/180, U.N. Doc. A/34/46 (Dec. 18, 1979).

⁸²² Martha Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge Univ. Press 2000).

⁸²³ *German Criminal Code (Strafgesetzbuch, StGB)* § 177.

notably, the inquiry was a factual question that sought the will of the victim, whereas now consent needs to be free, voluntary, and informed-consent is now framed in terms of an autonomy, not compliance to circumstance. This shift reflects a slow transition away from patriarchy that understood all relations as some exercise of power relation to one that recognizes the person as an autonomous rights-holder. The example of the debate over marital rape is a good test case for whether law, as a discipline, can meaningfully emphasize bodily autonomy in situations where it has traditionally been protected or off-limits too.

The *Convention on the Elimination of All Forms of Discrimination against Women*⁸²⁴, as well as the World Health Organization (WHO) recommendations⁸²⁵, reinforces bodily autonomy as a key approach to both violence and health. The theoretical foundation of bodily autonomy is apparent in today's digital world, where the collection of personal information presents an opportunity for the redistribution of influence. The tensions around bodily autonomy are somewhat similar to the extent that even though an individual's body has been the subject of that sovereignty in the sexual order, an individual's data, or how their personhood is represented in digital terms, has become contested ground for shared freedom, power, and legitimacy⁸. While consent is subsequently sought through digital contracts, the inherent knowledge and bargaining power gaps call into question whether such consent could, in fact, usefully be defined as "informed" or "free". Legal scholars contend that all of this articulates a jurisprudential crisis in which structural inequalities have rendered consent itself an empty instrument, just as historically implied spousal consent has served to undermine the capacity of a person to refuse consent. Thus, the legal question is not just about identifying or granting consent in isolation, any more than asking if power is exercised in the same

systemic structural manner, both within an intimate relationship context and online. Bodily autonomy and the accompanying analysis of consent remain fundamentally essential to justice in these spaces, as bodily autonomy requires jurisprudence to ensure substantive justice and not just formally legal.

1.2. Recognition of Bodily Autonomy in Jurisprudence

The recognition of bodily autonomy as a fundamental human right in Indian and international law continues to gain ground as a core part of personal freedom and dignity. In Indian jurisprudence, bodily autonomy is embedded within the Constitution. The Supreme Court has recognized individual liberty to include control over one's own body in a number of its landmark cases. The case of *Suchita Srivastava v. Chandigarh Administration*⁸²⁶ is a salient example, where the Court has specifically understood reproductive autonomy as a fundamental right. This decision also opened the door to an expansive reading of respect for bodily integrity.

Similarly, in *Bodhisattwa Gautam v. Subhra Chakraborty*⁸²⁷, the Court reiterated the link between dignity and bodily autonomy by awarding compensation in a rape case. They recognized the immense sense of violation of a person who is also bodily their self. The Court's use of such reasoning is consistent with the human rights perspective offered by Upendra Baxi⁸²⁸ and others, who placed dignity at the centre of the good future of human rights.

However, the most critical evolution comes from the *Justice K.S. Puttaswamy (Retd.) v. Union of India*⁸²⁹ case, which held that the right to privacy is part of the Right to Life and Personal Liberty under Article 21 of the Constitution of India. The Court's decision fused bodily autonomy and data protection by recognizing that control of one's personal data amounts to

⁸²⁴ *Convention on the Elimination of All Forms of Discrimination against Women*, *supra* note 22

⁸²⁵ WHO *Guidelines on Sexual Violence and Health* (2013).

⁸²⁶ *Id.* at 6

⁸²⁷ *Id.* at 6

⁸²⁸ Upendra Baxi, *The Future of Human Rights* (Oxford Univ. Press 2002).

⁸²⁹ *Id.* at 6

a form of individual liberty. The Court's reasoning makes clear, for instance, that "consent" cannot be assumed to justify invasive acts that were undertaken in an environment of necessity or ignorance. This is very much related to the ongoing discussion around marital rape, which compels the law to determine whether an idea of an institutionalized marital obligation is sufficient to displace a person's bodily autonomy.

Although Indian legislation has been reluctant to completely criminalize marital rape, the Independent Thought v. Union of India case—which did criminalize sexual intercourse with minor wives—shows a more progressive judicial inclination to recognize consent issues in marital relationships. The recognition that bodily autonomy is a fundamental right is settled and accepted in other jurisdictions. The European Court of Human Rights, for example, held in *M.C. v. Bulgaria*⁸³⁰ that consent is a free act of will and is key to sexual autonomy. This shift is also visible in common law jurisdictions, such as the United Kingdom, where the case of *R v. R* abolished the immunity of marital rape, unequivocally affirming that individuals do not give up their bodily integrity when they marry.

Similarly, in the US case *People v. Liberta*⁸³¹, the court rejected the marital rape exception, emphasizing that the liberty and dignity of individuals are paramount regardless of marriage status. Numerous international treaties, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)⁸³² and the International Covenant on Civil and Political Rights (ICCPR)⁸³³, highlight the commitment of the international legal community to protect bodily integrity and personal freedom. CEDAW calls for the elimination of discrimination against women on the basis of bodily autonomy in the context of marriage and family. The ICCPR seeks to protect a person's

privacy and bodily integrity in its provisions relating to privacy and inhumane treatment. These international legal frameworks are an important vehicle for protecting autonomy. Autonomy is a universal human right, and must be honoured and protected in all legal contexts.

The Jurisprudence of Consent in Marriage

2.1. The Legal Status of Consent in Marriage

The jurisprudence of spousal consent has long been a controversial topic with the continuation of the doctrines such as implied consent. Traditional perception especially the patriarchal legal systems tended to perceive marriage as a field of reduced autonomy in which there was implied spousal consent which overrode the ability of an individual to refuse sexual intercourse. This view is criticized by other scholars such as Catharine MacKinnon and Carole Pateman who point out the historical way in which the social contract masked a more underlying sexual contract that subordinated the body of women to the demands of marriage. This implied that consent was not concerning choice of action but a prior obligation of marriage. Although the classical criminal jurisprudence contemplated consent as the mere factual question about the state of the will of the victim, contemporary jurisprudence is categorical that consent has to be free, voluntary, and informed in order to be a genuine manifestation of autonomy. Nevertheless, the continued existence of implied marital consent doctrines in certain jurisdictions goes to show that there is still a conflict between the traditional legal constructs and the tenet of bodily integrity.

2.2. Judicial Evolution in India

Historical experience of the judiciary in India on bodily autonomy and consent in marriage suggests that individual rights are slowly but gradually getting accepted in the society as a fact with a few doubts still remaining. Although the law recognizes and punishes non-consensual sex in the general case, it has hesitated to come to terms with non-

⁸³⁰ *M.C. v. Bulgaria*, App. No. 39272/98 (ECHR 2003).

⁸³¹ *Id.* at 5

⁸³² *Convention on the Elimination of All Forms of Discrimination against Women*, *supra* note 22

⁸³³ *International Covenant on Civil and Political Rights*, *supra* note 21

consensual sex in marriage or, put more simply, non-consensual sex. This enacts a jurisprudential tension between bodily liberty on one hand, and an institutionalized conception of marital duty. However, some pronouncements have starting to break down the traditional notion.

In the opinion of the Supreme Court in *State of Punjab v. Gurmit Singh*, women are in a special position with regard to sexual assault, which is an important step toward recognizing and protecting women from sexual violence. In *Independent Thought v. Union of India*, the law was advanced again when the Court criminalized sexual intercourse with minor wives, which recognized the issue of consent in marriage, albeit in a limited signal. Although these cases may not directly abolish the marital rape exception, they indicate a judicial openness to evaluate the legitimacy of implied consent to sex in marriage and to affirm the right of people to bodily integrity in marriage.

2.3. Marital Rape and the Right to Life (Article 21)

Positioning the marital rape exemption as a violation of the Right to Life and Person Liberty under Article 21, it is a major point of analysis. The judiciary has interpreted the Right to Life broadly to include the right to life with dignity and personal liberty, which means the right to control one's body. According to feminist criticism, such exemption of marital rape erodes this right in that a presupposition of consent to have a sexual relationship is created, and thereby, the autonomy of the wife in the control of her own body is also stolen.

The ruling in *Justice K.S. Puttaswamy (Retd.) v. Union of India*⁸³⁴, which sanctioned the right to privacy as an aspect of Article 21, enriches this argument by establishing a right of persons to control their bodies and personal information. Article 21 protects bodily autonomy, providing a strong constitutional basis for challenging the marital rape exception, and for deeming that

consent is not just an obligation of law, but also a genuine principle of relations. The contest on marital rape is, therefore, an example of how jurisprudence can consistently preserve autonomy in spaces that have historically been safeguarded from assessment.

A Comparative Analysis: Consent Across Legal Frameworks

3.1. The Inconsistent Application of Consent

Consent is an important idea in criminal law that distinguishes between lawful and unlawful behaviour. In the example of sexual crimes, the distinction here would be between lawful intimacy and violence rather than one of force or coercion. In reality, although there are regulations that penalize sexual acts without consent, the law is still ambivalent about grappling with the question of marital rape. This presents a legal tension between personal liberty and institutional definitions of marital obligations. This could be contrasted to legislation around digital privacy.

Legislations, like GDPR or the DPDP Act, 2023 in India, clearly gives priority to consent when regulating the collection and use of personal information. While individuals are required to consent for use of their personal data, unlike marriage law the underlying notion of consent is universally presumed revocable. This is a departure and inequitable transformation of the concept of consent across other areas of law.

3.2. Digital Consent as a "Fiction of Autonomy"

The consent received within digital data protection systems may be regarded as a sort of a fiction of autonomy, which, in turn, resembles the fiction of implied marital consent. Consent is now achieved in the digital age by formal means of checkboxes and opaque terms of service in spite of the overwhelming asymmetry of information and bargaining power between a person and a corporation⁸³⁵. Law academics claim that this is an indication of a jurisprudential crisis in which the facade of

⁸³⁴ *Id.* at 6

⁸³⁵ Graham Greenleaf, *Global Data Privacy Laws 2017: 120 National Data Privacy Laws, Including Indonesia and Turkey*, 145 *Privacy L. & Bus. Int'l Rep.* 10 (2018).

autonomy is maintained, though the existence of structural inequalities makes consent a hoax. This is the same scenario as when the traditional marital contract described by theorists such as Carole Pateman⁸³⁶ simply concealed a deeper sexual contract that undermined the bodily integrity of women to the demands of the marital contract⁸³⁷.

In the same way that no one can make the assumption that marital consent prevails autonomy, the same cannot be said about the digital consent and its ability to legalize invasive practices in case it is obtained under the pretext of being needed or not knowing about it. The model, according to criticisms of the legal literature, does not preserve the actualization of choice and therefore consent is a degraded notion unless the jurisprudence works with the forces of power that not only nullify its genuineness but also its authenticity.

3.3. International and Common Law Perspectives

Reviewing the criminal law statutes of other common law states show that the Indian system is not fully engaging these protections for the non-consenting person in the context of marital rape and consent. While Indian law takes a position contrary to the common law jurisdiction's protections, many of the significant cases looking into the notion of marital rape essentially eliminated the defence of marital rape. *R v. R* in the UK, for example, was a substantial case that did away with the defence of marital rape, and, in the United States, *People v. Liberta*⁸³⁸ eliminated the defence of marital rape under the law of New York. Both jurisdictions then began a completely different trajectory, evolving from a husband-based conception of marriage to one that uses the individual as an autonomous rights holder. The fact that the defence of marital rape continues to be enforceable law in certain jurisdictions in India, is by extension perpetuating the

continuing struggle between a traditional legal conception of marriage to that of bodily integrity. German law too shows this evolution in how it makes legal changes; in 2016, the German Criminal Code⁸³⁹ incorporated a broader definition of consent. These instances show that Indian law could easily move toward a more robust and consistent application of the concepts of consent and bodily autonomy, in line with the world trend.

Conclusion

This paper examines the complicated, and frequently inconsistent, meaning of consent across different areas of law, exposing a central tension in legal theory. One notable conclusion is that while consent is a normative concept that is important for an individual's autonomy, it is conceptualized differently in the concrete world of intimate relationships and in the abstract world of digital data. The analysis shows a deep-seated inconsistency: consent is a core, yet revocable, principle in data protection laws like the General Data Protection Regulation (GDPR)⁸⁴⁰ and India's DPDP Act of 2023⁸⁴¹, while it has historically been treated as diminished or irrevocably granted in the context of marriage. This duality represents a fundamental problem: even though jurisprudence has asserted that it has made "legal" progress in acknowledging the individual as her own rights-bearer, established legal paradigms—such as the marital rape exception—are still at odds with the principle of bodily autonomy. The analysis of "implied marital consent" as an instrument of women's subordination of bodily integrity finds a counterpart in the digital realm as an increasing number of people view consent as a "fiction of autonomy" that fails to facilitate real choice owing to key power differentials. In both spheres, the authenticity of consent is strained by systemic inequalities that jurisprudence must actively confront to ensure a just and equitable legal system.

⁸³⁶ Carole Pateman, *supra note 4*

⁸³⁷ Carole Pateman, *supra note 4*

⁸³⁸ *Id. at 5*

⁸³⁹ *German Criminal Code, supra note 24*

⁸⁴⁰ General Data Protection Regulation, *supra note 18*

⁸⁴¹ The Digital Personal Data Protection Act, 2023, *supra note 19*

The jurisprudence surrounding bodily autonomy in India increasingly recognizes it as a core component of an individual's human rights. Bodily Autonomy is now based on the broad reading of the Right to Life and Personal Liberty found in Article 21 of the Indian Constitution⁸⁴², and is considered the right of a person to govern their physical being, and is closely tied to dignity and liberty. The Supreme Court has repeatedly sustained that connection in landmark rulings, in which the Court ruled that reproductive self-determination is a fundamental right, and linked dignity to the proposed right to be free from sexual assault. This judicial development has evolved progressively, albeit slowly. Although not fully decriminalized, especially in regard to spousal rape, the law has recognized the plight of women in the sexual assault context.

The Court even acknowledged the situation of vulnerability women were often in when they were assaulted. It went even further and criminalized sexual intercourse with a minor wife, giving scrutiny to a spousal exception in the definition of consent in the marital relationship. Putting the rulings together, they argue that the right to bodily autonomy, a right to human being, does not cease to exist upon the event of marriage; thus, the marriage exemption for rape would per se contravene Article 21 protecting a person's life and liberty by taking away the fundamental right to control their body. Other statutes in India, such as the DPDP Act of 2023 deploys some provisional recognition of bodily autonomy at least in the use of personal data, although inconsistently with the marital rape, access based on affirmative consent.

This dual standard underscore the urgent need for legal reform to ensure a uniform application of the principle of consent across all legal domains. To fill the gaps between jurisprudence and ensure that consent is found to be a substantive justice and not just a legal formality, certain important reforms should be

undertaken. The most urgent of these reforms is to abolish the marital rape exception. This would advance Indian law to be consistent with the progressive jurisprudence of other common law countries like the UK or the United States. This is not simply a legalistic reform; it is a justice of an important step towards actually recognizing and upholding individual dignity and autonomy inside of marriage. The law should not only conceptualize consent as a "box to check," but it should also engage with even deeper structural power imbalances that make real choice-making difficult. It implies a commitment to a jurisprudence that continuously asks if consent is legitimately free and completely informed, in all settings, whether in a marriage or the digital realm. This paper comes to the conclusion that consent is not a fixed legal tool, but a dynamic principle that challenges the law marriage individuals' freedom with collective order. By implicating consent into a broader context of bodily autonomy and human rights, jurisprudence asks that we re-formulate the foundations consent and for us defend not merely formal legality but substantive justice for all people.

⁸⁴² INDIA CONST. art. 21.