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CONSENT IN THE AGE OF DIGITAL INTIMACY

~ By Ranjani Priya

Intimacy was once a sacred aspect of human relationships, destined to disappear into memory. Secrets shared in whispers, private photographs exchanged in trust, moments of vulnerability between two people, these were fleeting expressions of human connection that carried no expectation of permanence. Today, however, intimate experiences no longer fade on their own. They are deliberately preserved, replicated, monetised, circulated without restraint, and stored indefinitely across servers around the world.¹ This transformation did not occur because technology demanded it; it occurred because individuals, corporations, and institutions chose to build systems that treat human vulnerability as a commodity. What should have remained an expression of personal dignity has instead become data to be collected, exploited, and traded.

The expansion of digital spaces appears to have widened personal autonomy. We now possess more opportunities than ever to decide with whom we share ourselves, from dating applications and encrypted messaging services to artificial intelligence, virtual environments, and cloud storage. Yet these technologies have been designed and governed by institutions that reduce one of the most complex expressions of human autonomy to a mechanical act of clicking a button or ticking a checkbox. The problem is not that machines understand consent as a binary operation; the problem is that those who design, regulate, and profit from these systems have chosen to define consent in precisely those simplistic terms. Human consent is never merely a "yes" or "no"². It is negotiated through trust, vulnerability, dependence, fear, affection, exhaustion, coercion, hesitation, and the continuing ability to withdraw permission.

¹ Shoshana Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power* (Profile Books 2019).

² Neil M Richards and Woodrow Hartzog, 'The Pathologies of Digital Consent' (2019) 96 Washington University Law Review 1461.

The consequences of this deliberate reduction fall disproportionately upon women because digital spaces reproduce the same patriarchal structures that have historically treated women's bodies as objects of possession rather than subjects of autonomy.

*“According to UN Women (2025), millions of women and girls face digital abuse and technology-facilitated violence (TFGBV) each year.”*³

A woman's body is transformed into information to be acquired, exchanged, archived, and weaponised against her.⁴ The perpetrators who distribute intimate material without consent, the corporations that profit from engagement while failing to meaningfully prevent abuse, and the legal systems that continue to privilege contractual formalities over lived experiences of coercion all participate in the same structure of exploitation. What is protected is liability; what is sacrificed is dignity⁵.

The common legal failure underlying these forms of abuse is the assumption that consent can be captured as a static piece of evidence, stored, transferred, or indefinitely relied upon. Consent is not property.⁶ It is not a licence. It is not a permanent waiver of bodily autonomy. Consent is a continuous exercise of agency that belongs exclusively to the person giving it and may be limited, withdrawn, or redefined at any moment.

The crisis before us is therefore not simply one of technological regulation. It is the consequence of patriarchal power adapting itself to digital infrastructures and of legal systems that continue to privilege property, efficiency, and contractual certainty over bodily autonomy and human dignity. By refusing to recognise the dynamic nature of consent, the law has enabled perpetrators to transform women's most vulnerable experiences into permanent, searchable, transferable records⁷. In the age of digital intimacy, the greatest threat is not technology itself. It is the willingness of individuals, corporations alike, and the failure of the legal institutions to prevent the use of technology to facilitate the longstanding subordination and dehumanisation of women.

³ UN Women, *Technology-Facilitated Violence Against Women and Girls* (2025).

⁴ Kalpana Kannabiran, *Tools of Justice: Non-Discrimination and the Indian Constitution* (Routledge 2012).

⁵ Carole Pateman, *The Sexual Contract* (Stanford University Press 1988).

⁶ Clare McGlynn, Erika Rackley and Ruth Houghton, 'Beyond "Revenge Porn": The Continuum of Image-Based Sexual Abuse' (2017) 25 *Feminist Legal Studies* 25.

⁷ Mrinal Satish, *Discretion, Discrimination and the Rule of Law: Reforming Rape Sentencing in India* (Cambridge University Press 2016).

The Indignity of “Copyrighting” One’s Own Body

Perhaps no phenomenon illustrates the violence of digital dehumanisation more starkly than non-consensual intimate media (NCIM), commonly but misleadingly referred to as "revenge pornography."⁸ The expression itself obscures the true nature of the abuse by suggesting that the conduct is merely an act of personal retaliation. In reality, NCIM constitutes a broader pattern of gendered violence in which intimate images are distributed, or threatened to be distributed, without consent in order to humiliate, control, silence, extort, or punish victims. The harm, therefore, lies not merely in the initial disclosure of intimate material but in the deliberate and continuing exercise of power over another person's bodily autonomy.

Women bear the overwhelming burden of this abuse because NCIM does not emerge in isolation⁹; it reproduces a longstanding “stain” due to patriarchal practices of policing female sexuality and asserting control over women's bodies. Perpetrators exploit the usage of digital infrastructures to ensure that violations become persistent rather than momentary. The permanence of the abuse is therefore not an inherent feature of technology but the consequence of repeated human decisions to reproduce, circulate, and profit from another person's violation.

The impact extends far beyond reputational harm. Research consistently demonstrates that survivors of NCIM experience profound psychological, social, and economic consequences, including anxiety, depression, post-traumatic stress symptoms, social isolation, loss of educational and employment opportunities, and, in severe cases, self-harm and suicide¹⁰. Unlike many offline violations, the abuse remains constantly capable of resurfacing. Every subsequent download, repost, or rediscovery renews the original violation, denying survivors the possibility of closure and compelling them to live with the continuing uncertainty that their most intimate moments may again become objects of public consumption.

Despite the severity of these harms, existing legal responses frequently fail to reflect the lived reality of survivors. Criminal law, where available, often operates through a patchwork of offences, non-consensual image disclosure statutes, voyeurism provisions, cyberstalking and harassment offences, extortion laws, and, in some jurisdictions, intimate image abuse legislation. Yet these provisions are typically retrospective and fragmented. They depend on

⁸ Clare McGlynn, Erika Rackley and Ruth Houghton, *'Beyond "Revenge Porn": The Continuum of Image-Based Sexual Abuse'* (2017) 25(1) Feminist Legal Studies 25.

⁹ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press 2001)

¹⁰ Vaibhav Yadav, *'Tackling Non-Consensual Dissemination of Intimate Images in India's Contemporary Legal Framework'* (2023) 61 International Annals of Criminology 355–383.

the willingness of the police to investigate, prosecutors' assessment of public interest, and proof that is often difficult to assemble once images have been copied, anonymised, or hosted offshore.¹¹ Survivors may therefore be asked to satisfy evidentiary thresholds before any meaningful protective action is taken, even where the immediate risk lies in further circulation rather than in the original upload.

Civil remedies are no less constrained. Claims in breach of confidence, misuse of private information, public disclosure of private facts, intrusion upon seclusion, or intentional infliction of emotional distress can sometimes secure injunctions or damages, but they are unevenly recognised across jurisdictions and poorly adapted to the speed and multiplicity of online dissemination.¹² Even where data protection law or equitable relief is available, the practical problem remains the same: once intimate material has been replicated across platforms, anonymous forums, and private messaging networks, traditional doctrines struggle to restore control to the survivor.¹³

The inadequacy of these remedies has produced a striking legal paradox. In several jurisdictions, survivors have increasingly relied upon copyright law, particularly notice-and-takedown mechanisms modelled on the Digital Millennium Copyright Act, to secure the removal of intimate images from online platforms. These mechanisms often prove more effective than privacy or dignity-based claims because platforms have developed efficient procedures to minimise intellectual property liability, whereas complaints grounded in autonomy, humiliation, or psychological injury frequently receive slower or less effective responses.

This reveals a deeper structural flaw within contemporary legal governance. Women are often compelled to frame violations of bodily autonomy as violations of property in order to obtain meaningful institutional action.¹⁴ Their injury is recognised not because their dignity has been violated, but because an identifiable proprietary interest can be asserted. The legal system thus rewards the language of ownership while marginalising the language of human harm.

¹¹ Vaishnavi Sharma, *'Understanding Non-Consensual Dissemination of Intimate Images Laws in India with Focus on Intermediary Liability'* (2021) 14 NUJS Law Review.

¹² Vaibhav Yadav, *'Tackling Non-Consensual Dissemination of Intimate Images in India's Contemporary Legal Framework'* (2023) 61 International Annals of Criminology 355–383.

¹³ Esha Anand and Tarun Kumar Kaushik, *'From Privacy Breach to "Virtual Rape": Analysing Revenge Porn as an Emerging Contour of Cybercrime against Women under the Indian Legal Framework'* (2025) National Journal of Criminal Law.

¹⁴ Julie E Cohen, *Between Truth and Power* (Oxford University Press 2019).

The irony is difficult to ignore. A survivor seeking the restoration of her dignity must first establish proprietary control over the very images through which she has been violated.¹⁵ In effect, legal recognition becomes contingent upon translating intimate human suffering into the vocabulary of commerce, ownership, and economic entitlement. The law thereby privileges market-oriented interests over personal autonomy, despite the fact that the underlying harm is fundamentally neither commercial nor proprietary.¹⁶

This exposes the central socio-legal failure surrounding NCIM. The problem is not simply the absence of adequate legislation but the persistence of legal frameworks that continue to conceptualise intimate images as transferable objects rather than manifestations of embodied autonomy. Intimate images derive their significance not from economic value but from relationships of trust, vulnerability, and consent. When the law protects them primarily as property instead of recognising them as extensions of bodily integrity, it fails to confront the true nature of the violation. What is taken from survivors is not merely privacy or control over data; it is their security, agency, and personhood. A legal system that requires women to commodify their own abuse before acknowledging their suffering ultimately reproduces the very structures of domination that enabled the abuse in the first place.¹⁷

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Rather than pitying survivors after the fact, the law must hold perpetrators accountable and impose stronger restrictions on the conduct itself through swift removal duties, meaningful sanctions, and proactive limits on circulation.¹⁸ What is taken from survivors is not merely privacy or control over data; it is their security, agency, and personhood. A legal system that

¹⁵ Danielle Keats Citron, *Hate Crimes in Cyberspace* (Harvard University Press 2014).

¹⁶ Vaishnavi Sharma, 'Understanding Non-Consensual Dissemination of Intimate Images Laws in India with Focus on Intermediary Liability' (2021) 14 NUJS Law Review.

¹⁷ Martha Albertson Fineman, 'The Vulnerable Subject and the Responsive State' (2010) 60 Emory Law Journal 251.

¹⁸ Department-related Parliamentary Standing Committee on Communications and Information Technology, *Twenty-Second Report on "Social Media, Algorithms and Fake News/Misinformation"* (18th Lok Sabha, 2025).

requires women to commodify their own abuse before acknowledging their suffering ultimately reproduces the very structures of domination that enabled the abuse in the first place.¹⁹

Smart Contracts and the Contractualisation of Consent

If non-consensual intimate media illustrates how digital technologies can facilitate the commodification of intimacy after trust has been violated, emerging forms of "consent technology" reveal a different, but equally significant, socio-legal concern. Here, the objective is no longer to document abuse retrospectively but to transform consent itself into a form of legally verifiable evidence before intimacy even begins. Applications requiring users to record verbal consent, execute pre-sexual agreements, or generate blockchain-based records are increasingly promoted as mechanisms capable of reducing evidentiary uncertainty in sexual relationships.²⁰ Their underlying premise is deceptively simple: if consent can be documented with sufficient certainty, disputes surrounding sexual autonomy may be minimised.

The attraction of such technologies lies in their promise of legal certainty. Contemporary legal systems frequently struggle to establish what occurred within private intimate encounters, particularly where consent is disputed, and corroborative evidence is limited. Consent-recording applications, therefore, present themselves as technological solutions to evidentiary problems. Yet these framing mistakes the nature of the legal question itself. The difficulty does not arise because consent is insufficiently documented; it arises because consent is not a static event capable of permanent verification²¹. It is a continuing manifestation of personal autonomy that may evolve, diminish, or be withdrawn throughout an intimate encounter.

This distinction carries particular significance for women. Feminist legal scholarship has long demonstrated that sexual consent cannot be understood independently of unequal social relations.²² Decisions made within intimate settings are often shaped by fear, emotional dependence, coercion, economic inequality, or entrenched gendered expectations regarding

¹⁹ United Nations Human Rights Council, *Report of the Special Rapporteur on Violence against Women and Girls, its Causes and Consequences: Online Violence against Women and Girls from a Human Rights Perspective* (2024).

²⁰ John Danaher, 'Could There Ever Be an App for That? Consent Apps and the Problem of Sexual Assault' (2018) 12(1) Criminal Law and Philosophy 143–165.

²¹ Neil M Richards and Woodrow Hartzog, 'The Pathologies of Digital Consent' (2019) 96 Washington University Law Review 1461.

²² Vanessa E Munro, 'Constructing Consent: Legislating Freedom and Legitimizing Constraint in the Expression of Sexual Autonomy' (2008) 41 Akron Law Review 923.

accommodation and compliance.²³ A digitally recorded agreement cannot capture these relational dynamics, nor can it account for the subtle forms of pressure through which apparent agreement may subsequently cease to represent genuine autonomy.

The danger therefore lies not in the existence of digital records themselves, but in the legal and cultural authority that such records may gradually acquire. A pre-existing record of consent risks becoming privileged evidence against subsequent expressions of hesitation or refusal, encouraging courts, investigators, or even intimate partners to regard later withdrawal as inconsistency rather than as the ordinary exercise of continuing autonomy.²⁴ The result is a subtle but significant shift in legal reasoning: consent begins to resemble contractual assent, capable of being proved through documentary evidence, rather than an ongoing exercise of bodily self-determination.

This assumption fundamentally departs from contemporary understandings of sexual consent. Across many jurisdictions, the judicial institutions, as well as the criminal law, increasingly recognise that consent must exist throughout the sexual encounter and remain capable of withdrawal at any moment²⁵. Digital consent technologies do not formally deny this principle.²⁶ Nevertheless, by encouraging participants to generate immutable records of prior agreement, they risk reinforcing social expectations that earlier consent possesses continuing normative force. The evidentiary architecture thereby begins to shape the meaning of consent itself.

The implications extend beyond doctrine. Consent technologies externalise moral responsibility by encouraging participants to treat ethical communication as a procedural requirement, which is supposedly capable of technological verification. Instead of cultivating attentiveness to another person's changing wishes, discomfort, or withdrawal, these systems invite reliance upon documentary certainty. The question gradually shifts from whether continuing consent exists to whether sufficient evidence of prior consent has already been secured. In this way, technology does not create coercion; rather, legal and institutional reliance upon technological evidence risks legitimising forms of coercion that feminist jurisprudence has long sought to expose.

²³ Justice J S Verma Committee, *Report of the Committee on Amendments to Criminal Law* (Government of India, January 2013).

²⁴ John Danaher, 'Could There Ever Be an App for That? Consent Apps and the Problem of Sexual Assault' (2018) 12(1) Criminal Law and Philosophy 143–165.

²⁵ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

²⁶ Neil M Richards and Woodrow Hartzog, 'The Pathologies of Digital Consent' (2019) 96 Washington University Law Review 1461.

Artificial Intelligence, Synthetic Identity, and the Limits of Existing Legal Doctrine

Artificial intelligence presents a different, but closely related, challenge. Whereas consent-recording technologies seek to preserve evidence of purported agreement, generative AI enables the creation of entirely fabricated intimate representations without any participation by the individual depicted.²⁷ Through deepfake pornography, synthetic voice generation, digital avatars, and increasingly sophisticated image-generation models, a person's likeness may be appropriated and placed within sexually explicit contexts that never occurred in reality. The violation no longer depends upon access to intimate photographs or participation in any sexual act.

*“Identity itself becomes the object of appropriation.”*²⁸

This phenomenon is profoundly gendered. Empirical research consistently demonstrates that the overwhelming majority of non-consensual sexually explicit deepfakes depict women, reflecting broader patterns in which emerging technologies reproduce existing inequalities rather than creating new ones.²⁹ Public figures, journalists, professionals, students, and private individuals alike have become targets, often through the manipulation of a small number of publicly available images. The harm, therefore, cannot be explained as an accidental by-product of artificial intelligence; it reflects deliberate human decisions to weaponise technological tools against women within already unequal social structures³⁰.

Existing legal frameworks remain poorly equipped to respond because they continue to organise legal protection around concepts that precede synthetic identity. Criminal law traditionally centres upon physical conduct, identifiable perpetrators, or direct participation in the prohibited act. Civil remedies similarly rely upon established causes of action such as defamation, privacy, misuse of personal information, copyright, or data protection. While these doctrines occasionally provide partial relief, none were developed to address the autonomous creation of fabricated sexual identities capable of indefinite digital circulation.

²⁷ Robert Chesney and Danielle Keats Citron, 'Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security' (2019) 107 California Law Review 1753.

²⁸ Danielle Keats Citron, *The Fight for Privacy: Protecting Dignity, Identity, and Love in the Digital Age* (W W Norton 2022).

²⁹ Henry Ajder, Giorgio Patrini, Francesco Cavalli and Laurence Cullen, *The State of Deepfakes: Landscape, Threats and Impact* (Deeprace Labs 2019).

³⁰ Danielle Keats Citron, *The Fight for Privacy: Protecting Dignity, Identity, and Love in the Digital Age* (W W Norton 2022).

This doctrinal gap is compounded by the legal position of online intermediaries. In many jurisdictions, intermediary liability regimes have historically limited platform responsibility for user-generated content³¹ while encouraging notice-and-takedown procedures as the primary regulatory response.³² Although these protections have evolved in several legal systems and are increasingly subject to statutory qualification, the practical burden of identifying, reporting, and repeatedly seeking removal of synthetic intimate material frequently remains with survivors. Platforms thus continue to benefit from engagement generated by harmful content while victims assume responsibility for policing its circulation.

More fundamentally, synthetic sexual imagery challenges the conceptual foundations upon which legal protection has traditionally been constructed. A common response to deepfake pornography is that no physical assault occurred and that the depicted image is not "real." Such reasoning misunderstands the nature of the injury. The legal interest at stake is not the authenticity of the image but the unauthorised appropriation of identity. Reputation, bodily integrity, autonomy, and social existence are shaped not only by physical interactions but also by the ways in which individuals are represented and perceived within society. A fabricated image may therefore produce genuine violations of dignity notwithstanding its artificial origin.

Taken together, consent-recording technologies and synthetic sexual media expose complementary weaknesses within existing legal doctrine. One seeks to convert consent into immutable evidence; the other permits identity to be reproduced independently of the individual herself. In both instances, the law struggles because it continues to privilege certainty, documentation, and technological classifications over the relational, embodied, and continuously evolving nature of human autonomy.³³ The central challenge for contemporary legal systems is therefore not merely to regulate emerging technologies, but to ensure that technological innovation does not become the mechanism through which longstanding structures of gendered domination acquire renewed legal legitimacy.³⁴

³¹ *Shreya Singhal v Union of India* (2015) 5 SCC 1.

³² Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

³³ Neil M Richards and Woodrow Hartzog, *'The Pathologies of Digital Consent'* (2019) 96 Washington University Law Review 1461.

³⁴ Catharine A MacKinnon, *Toward a Feminist Theory of the State* (Harvard University Press 1989).

Reclaiming Dignity as the Foundation of Digital Consent

The preceding discussion reveals that the contemporary crisis of digital consent cannot be reduced to deficiencies in individual technologies. Whether through the non-consensual dissemination of intimate images, the contractualisation of sexual consent, or the synthetic reproduction of personal identity, the underlying problem remains remarkably consistent: legal systems continue to privilege certainty over autonomy, proprietary interests over dignity, and administratively manageable categories over lived human experience.³⁵

A sustainable legal response, therefore, requires more than incremental regulatory reform. It demands a normative reorientation in which consent is recognised not as a document, a digital record, or a technological artefact, but as a continuing exercise of embodied autonomy. Equally, intimate images, voices, and likenesses must be understood not merely as information capable of ownership or circulation, but as expressions of personhood whose protection is indispensable to substantive equality. Until legal institutions begin from these premises, technological innovation will continue to outpace legal doctrine, while women will remain disproportionately burdened by legal frameworks that recognise the evidence of violation more readily than the violation of autonomy itself.³⁶

³⁵ Julie E Cohen, *Between Truth and Power: The Legal Constructions of Informational Capitalism* (Oxford University Press 2019).

³⁶ Justice J S Verma Committee, *Report of the Committee on Amendments to Criminal Law* (Government of India 2013).