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Diverging Legal Definitions of Sexual Consent and Their Impact on Justice: A Comparative Analysis of India, the United Kingdom, Canada, and Australia

OVERVIEW: This manuscript compares how India, the United Kingdom, Canada, and Australia define sexual consent and shows how those differences shape legal clarity, judicial outcomes, and public understanding. It argues that more explicit, autonomy-based definitions tend to support more consistent enforcement and a clearer understanding of rights and responsibilities.

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SUMMARY

Legal definitions of sexual consent play a central role in shaping judicial outcomes and broader social understandings of autonomy. However, these definitions are not uniform across jurisdictions and differ in scope, language, and application. This paper examines the legal frameworks governing consent in India, the United Kingdom, Canada, and Australia. Indian law provides a formal definition of consent, but its application remains uneven because of overlapping statutory provisions, age-based restrictions, and exceptions within marital contexts (Indian Penal Code, 1860; Protection of Children from Sexual Offences Act, 2012). By contrast, the United Kingdom, Canada, and Australia adopt clearer, more autonomy-focused approaches that emphasise voluntary and informed agreement (Sexual Offences Act 2003; Criminal Code of Canada, s. 273.1; Crimes Act 1900 NSW). The comparative analysis suggests that these divergences may affect access to justice and public perceptions of consent, highlighting the need for greater conceptual consistency within legal frameworks.

INTRODUCTION

The concept of consent lies at the foundation of legal and ethical discussions surrounding personal autonomy and bodily integrity. Within the context of sexual offences, it functions as a key criterion for distinguishing lawful interaction from criminal conduct. Despite its central

importance, the meaning and application of consent are not always consistent and can vary significantly across legal systems.

In India, consent is formally defined under Section 375 of the Indian Penal Code as an unequivocal and voluntary agreement communicated through words or conduct (Indian Penal Code, 1860). In practice, however, this definition operates alongside other provisions, including the Protection of Children from Sexual Offences Act, which establishes that individuals below the age of eighteen cannot provide valid consent (Protection of Children from Sexual Offences Act, 2012). This interaction between laws can create a complex and at times inconsistent framework.

By contrast, the United Kingdom, Canada, and Australia have developed more explicit and structured definitions of consent, placing greater emphasis on individual choice, capacity, and active agreement. These differences are not merely technical; they also shape how consent is understood in practice. This paper explores these variations through a comparative analysis of the four jurisdictions.

RESULTS

A comparative analysis reveals several important distinctions. While all four jurisdictions recognise consent as a form of voluntary agreement, the clarity and consistency of the legal definition vary. The United Kingdom, Canada, and Australia present relatively coherent frameworks, whereas India's framework appears more fragmented because of the interaction of multiple statutory provisions (Indian Penal Code, 1860; Protection of Children from Sexual Offences Act, 2012).

One of the most significant divergences lies in the treatment of marital rape. The United Kingdom, Canada, and Australia recognise marital rape as a criminal offence (R v R, 1991; Criminal Code of Canada; Crimes Act 1900 NSW), whereas Indian law has historically retained exceptions that limit the application of consent within marriage (Exception 2, Section 375 IPC). This creates a notable tension within the Indian legal definition of consent.

Differences in the age of consent further highlight variation across jurisdictions. India sets the age at eighteen (Protection of Children from Sexual Offences Act, 2012), while the United Kingdom, Canada, and Australia generally set it at sixteen (Sexual Offences Act 2003; Criminal Code of Canada), often with additional safeguards in specific contexts.

These variations are likely to have practical implications for both judicial outcomes and societal understanding. A clear and consistent legal framework may contribute to more predictable

interpretations in court, whereas ambiguity can lead to differing applications in similar cases (Beres, 2014). Where consent is defined in more explicit and affirmative terms, individuals may have a clearer understanding of legal boundaries and expectations, which may support more effective reporting and enforcement.

DISCUSSION

The analysis suggests that while the principle of consent is widely recognised, its implementation differs in meaningful ways. India's legal framework reflects a complex interplay of statutory provisions that do not always align seamlessly in practice. By contrast, the United Kingdom, Canada, and Australia demonstrate a shift towards more clearly articulated and autonomy-centred models of consent.

At the same time, it is important to recognise that legal systems are shaped by broader social and cultural contexts. As such, variations in legal definitions should not be viewed solely as deficiencies, but also as reflections of differing legal traditions and developmental trajectories. Taken together, the findings indicate that greater clarity in consent law may improve both legal predictability and public understanding.

MATERIALS AND METHODS

This paper used a doctrinal comparative legal analysis of statutory provisions and leading cases from India, the United Kingdom, Canada, and Australia. Primary legal materials were reviewed to identify how each jurisdiction defines consent, the age of consent, and the treatment of marital rape. The analysis then compared the structure and wording of the relevant laws to assess differences in legal clarity, autonomy, and practical application. Because the study was comparative and conceptual rather than empirical, no primary data collection, participant recruitment, or experimental procedure was undertaken.

CONCLUSION

Consent remains a fundamental principle in the legal regulation of sexual conduct, yet its definition and application vary significantly across jurisdictions. This paper has shown that while India provides a formal legal definition, its framework includes inconsistencies that contrast with the more structured and explicit approaches observed in the United Kingdom, Canada, and Australia.

These divergences may influence both access to justice and societal understanding, underscoring the importance of clarity and coherence in legal definitions. Strengthening

conceptual consistency within consent laws may contribute not only to more effective legal protection but also to a clearer and more unified public understanding of individual rights and responsibilities.

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