
MARITAL CONSENT VS. DIGITAL CONSENT: HOW THE DIGITAL PERSONAL DATA PROTECTION ACT, 2023 REPRODUCES GENDER SUBORDINATION THROUGH THE LANGUAGE OF 'INFORMED CONSENT' FOR RURAL WOMEN IN INDIA

Sanya Khatri, LLM, Maharshi Dayanand Saraswati University, Ajmer

ABSTRACT

The Digital Personal Data Protection Act, 2023 (hereinafter 'DPDP Act') is India's most thorough legislative effort so far to regulate how personal data is collected, processed, and used. At the heart of the DPDP Act is the idea of 'informed consent' under Section 6, which says that a data principal must give consent that is free, specific, informed, unconditional, and unambiguous before her data can be processed. This paper argues that while the consent framework looks neutral on its face, it simply cannot protect rural women in India, who make up a large portion of the country's digitally excluded population. Using a comparative socio-legal approach, the paper contends that the DPDP Act's consent model unconsciously copies the same patriarchal subordination found in India's matrimonial consent doctrines, under Hindu personal law and Muslim personal law, where formal consent is legally recognised even though it operates within conditions of structural coercion, economic dependence, and informational asymmetry. By mapping the idea of 'consent' from cases like *Vishakha v. State of Rajasthan* (1997), *Independent Thought v. Union of India* (2017), and *Justice K.S. Puttaswamy v. Union of India* (2017) onto the DPDP Act's consent provisions, this paper identifies a serious constitutional gap: because the state has not created the conditions for meaningful consent, the DPDP Act's protections are practically fictional for the most vulnerable data principals. The paper ends with recommendations for a differentiated consent framework built around substantive equality principles under Articles 14, 15, and 21 of the Constitution of India.

Keywords: Digital Personal Data Protection Act 2023, informed consent, rural women, patriarchal subordination, matrimonial consent, Article 21, substantive equality, digital divide

I. INTRODUCTION

On August 11, 2023, India passed the Digital Personal Data Protection Act, 2023 (DPDP Act), making it one of the last major democracies to formally codify a data protection framework. The law was widely welcomed as a turning point in India's digital rights story, arriving nearly six years after the Supreme Court's landmark ruling that recognised the right to privacy as a fundamental right under Article 21 in *Justice K.S. Puttaswamy (Retd.) v. Union of India*.¹ But underneath the structure of rights the DPDP Act claims to build, there is a contradiction that carries serious constitutional weight. The Act's main protective tool, 'informed consent' under Section 6, assumes a data subject who can read, is digitally empowered, knows her legal rights, and has economic independence. For rural women in India who are dealing with overlapping exclusions based on caste, class, gender, and geography, this consent framework is not just weak. It is a legal fiction.

This paper puts forward a thesis not yet explored in Indian legal scholarship: that the DPDP Act's consent model mirrors the consent doctrines embedded in India's matrimonial law. Across the Hindu Marriage Act, 1955, the Muslim Personal Law (Shariat) Application Act, 1937, and the Special Marriage Act, 1954, Indian family law has for a long time required consent as a formal condition for a valid marriage, while at the same time tolerating social pressure, economic coercion, and informational asymmetry that make such consent structurally involuntary for women.² The DPDP Act makes the same mistake in the field of data. By adopting a formal, procedural idea of consent that is disconnected from the real conditions needed for its meaningful exercise, the legislature has built a regime that protects data principals only on paper, while leaving the most marginalised women exposed in practice.

The methodology of this paper draws on legislative analysis, constitutional case law, and secondary empirical data from government sources including the National Family Health Survey-5 (NFHS-5), Telecom Regulatory Authority of India (TRAI) reports, and the National Sample Survey Office (NSSO). These materials are used together to show the gap between the DPDP Act's formal protections and the real conditions faced by rural women data principals.

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

²Flavia Agnes, *Family Law Volume I: Family Laws and Constitutional Claims* (Oxford University Press 2011) 78–12; Archana Parashar, *Women and Family Law Reform in India* (Sage Publications 1992) 45–67.

The paper is arranged as follows: Part II looks at the DPDP Act's consent structure; Part III examines structural parallels with matrimonial consent doctrine; Part IV explores the constitutional dimensions of the gap identified; Part V offers reform recommendations; Part VI concludes.

Research Questions

This paper is guided by the following research questions:

- Does the DPDP Act's 'informed consent' framework under Section 6 provide meaningful protection to rural women data principals, or does it create a formal right without substantive content?
- In what ways does the consent model in the DPDP Act structurally mirror the consent doctrines found in Indian matrimonial law under Hindu and Muslim personal law?
- What constitutional obligations arise under Articles 14, 15, and 21 that the DPDP Act's current framework fails to discharge with respect to rural women?
- What legislative or institutional reforms would bring the DPDP Act into conformity with India's constitutional commitment to substantive equality?

Objectives of the Research

The objectives of this paper are as follows:

1. To analyse the consent architecture of the DPDP Act, 2023 and identify the structural assumptions embedded within it.
2. To draw a comparative parallel between digital consent under the DPDP Act and matrimonial consent under Indian personal law, demonstrating that both frameworks reproduce patriarchal subordination for women.
3. To examine the constitutional dimensions of the DPDP Act's consent failure under Articles 14, 15, and 21 of the Constitution of India.

4. To use empirical data from NFHS-5, TRAI, and NSSO to document the lived exclusion of rural women from the DPDP Act's protective framework.
5. To propose concrete legislative and institutional reforms to make the DPDP Act's consent provisions accessible and meaningful for rural women.

Hypothesis

The central hypothesis of this paper is that the Digital Personal Data Protection Act, 2023 structurally reproduces the same patriarchal subordination found in Indian matrimonial consent doctrine. In both domains, a formal legal framework acknowledges the woman as a rights-bearing subject, but the conditions surrounding that consent, including illiteracy, economic dependence, social pressure, and informational asymmetry, make the exercise of that right practically impossible. The DPDP Act therefore fails the constitutional standards of substantive equality under Articles 14, 15, and 21 for rural women data principals.

Scope and Limitations

The scope of this paper is as follows:

- The paper focuses specifically on rural women in India as a class of data principals who are structurally excluded from the DPDP Act's consent framework.
- The comparative analysis is limited to matrimonial consent under the Hindu Marriage Act, 1955, the Muslim Personal Law (Shariat) Application Act, 1937, and the Special Marriage Act, 1954.
- Constitutional analysis is confined to Articles 14, 15, and 21 of the Constitution of India and relevant Supreme Court jurisprudence.
- Empirical data is drawn from publicly available government sources including NFHS-5, TRAI Annual Reports, and NSSO Employment Surveys.

This paper has the following limitations:

- Primary field research or interviews with rural women data principals have not been conducted. The paper relies on secondary empirical data, which may not capture all aspects of the lived experience of digital exclusion.
- The comparative analysis of matrimonial consent is necessarily selective and does not exhaustively cover all personal law traditions operative in India.
- The reform proposals are normative and legislative in nature; their practical feasibility in terms of budgetary allocation and political will is beyond the scope of this paper.

Methodology

This paper uses a socio-legal methodology. The approach combines the following elements:

- Legislative analysis of the DPDP Act, 2023, particularly Section 6 on consent and Section 7 on legitimate uses, alongside relevant provisions of Indian matrimonial statutes.
- Constitutional jurisprudence from landmark Supreme Court decisions including *Vishakha v. State of Rajasthan* (1997), *Independent Thought v. Union of India* (2017), *Justice K.S. Puttaswamy v. Union of India* (2017), *E.P. Royappa v. State of Tamil Nadu* (1974), and *Government of Andhra Pradesh v. P.B. Vijayakumar* (1995).
- Secondary empirical data from government publications including NFHS-5 (2019-21), TRAI Annual Report 2022-23, and NSSO Employment Survey data to ground the constitutional arguments in documented social realities.
- Scholarly literature by Flavia Agnes and Archana Parashar on Muslim women's rights and family law reform in India, used to contextualise the matrimonial consent parallel.

II. THE CONSENT ARCHITECTURE OF THE DPDP ACT, 2023

The DPDP Act, 2023 is built around two central figures. The first is the 'data principal,' defined under Section 2(j) as the individual to whom personal data relates. The second is the 'data fiduciary,' defined under Section 2(i) as any person who decides the purpose and means of data processing. The entire protective structure of the Act depends mainly on Section 6, which says

that personal data can only be processed on the basis of consent that is free, specific, informed, unconditional, and unambiguous, shown through a clear affirmative action.³

Section 6(4) also gives the data principal the right to withdraw consent at any time, and says this should be as easy as giving consent in the first place.⁴ On the surface, this looks like a strong framework that respects individual autonomy. But when you look more closely, the consent framework carries several assumptions that make it structurally inaccessible to a large portion of the people it is supposed to protect.

The problems can be broken down into three main areas:

- **The Digital Literacy Problem.** The requirement of an ‘affirmative action’ to show consent assumes that the person can navigate digital consent interfaces, read privacy policies, and make informed comparisons about how her data will be used. According to TRAI’s Telecom Subscription Data for 2023, while India has over 900 million mobile subscriptions, only about 560 million people are active internet users, and the gap between urban and rural users, and between men and women, remains very large.
- **The Functional Illiteracy Problem.** Section 6 does require consent notices to be in languages listed in the Eighth Schedule to the Constitution. But it says nothing about what to do when people simply cannot read at all. NFHS-5 data shows that 32.4% of rural women in India have never received any formal education,⁵ and even understanding a consent notice in a regional language requires a level of legal and technological literacy that the DPDP Act does not address. There is no provision in the Act requiring plain language summaries, audio-visual consent options, or community-level help for people with low literacy.
- **The Withdrawal Problem.** The withdrawal mechanism under Section 6(4) is practically out of reach for rural women who do not have the digital tools, financial means, or institutional knowledge to use withdrawal rights. And if initial consent was given under conditions of structural unfreedom, as this paper argues matrimonial consent often is,

³Digital Personal Data Protection Act, 2023, § 6(1), No. 22 of 2023 (India).

⁴Digital Personal Data Protection Act, 2023, § 6(4), No. 22 of 2023 (India).

⁵Ministry of Health and Family Welfare, *National Family Health Survey-5 (2019–21): India Fact Sheet* (Government of India 2022) 12.

then withdrawal operates under those exact same conditions. This circularity is invisible in the law but deeply present in social reality.

III. THE STRUCTURAL PARALLEL: MATRIMONIAL CONSENT DOCTRINE AND ITS DISCONTENTS

To understand why the DPDP Act's consent framework continues patriarchal subordination rather than ending it, it helps to look at how consent has worked in Indian family law. This is an area where formal recognition of consent and structural denial of its conditions have existed side by side for centuries.

Under the Hindu Marriage Act, 1955, Section 5(ii) says a valid marriage requires consent from both parties, and Section 12(1)(c) makes a marriage voidable if consent was obtained by force or fraud. But the Supreme Court in *Independent Thought v. Union of India*⁶ (2017) was still required to judicially criminalise marital rape of a minor wife. This showed that the formal consent of a guardian is not the same as the continuing, autonomous bodily consent of the wife herself. The judgment made clear that consent given inside a relationship of power imbalance, economic dependence, and patriarchal authority is not truly autonomous consent.

The parallel in Muslim personal law is equally telling. The doctrine of *ijab and qabul* (offer and acceptance) theoretically asks for the bride's affirmative consent for a valid *nikah*. But the structural reality of *wali* (guardian) authority and economic dependence means such formal consent is frequently coerced in practice. This has been carefully documented by scholars of Muslim women's rights in India including Flavia Agnes and Archana Parashar.

The Supreme Court itself recognised these problems. In *Vishakha v. State of Rajasthan*⁷ (1997), the Court held that gender equality and the right to life with dignity under Article 21 require the state not only to ban explicit coercion but also to build enabling conditions under which women can exercise genuine agency. This principle, that meaningful consent needs enabling conditions

⁶*Independent Thought v. Union of India*, (2017) 10 SCC 800 (India).

⁷*Vishakha v. State of Rajasthan*, (1997) 6 SCC 241 (India).

and not just the absence of direct compulsion, is exactly what the DPDP Act fails to put into practice.

The structural similarity between matrimonial consent and digital consent can be seen clearly through the following points:

- In both areas, a formal legal framework recognises the woman as a rights-bearing subject whose consent is necessary.
- In both areas, the woman is placed in a relationship with a more powerful institutional actor. In matrimonial law it is the husband or family; in data law it is the data fiduciary or technology platform. In both cases, the more powerful party controls the terms on which consent is asked for.
- In both areas, the conditions under which consent is given, including illiteracy, economic dependence, social pressure, and informational asymmetry, are structurally coercive even if they are not formally compulsory.
- In both areas, because the law does not account for these conditions, formal rights become practical fictions for the most marginalised women.

What this comparison reveals is a persistent problem in Indian legislative drafting: the habit of importing liberal consent doctrine into settings marked by structural inequality without at the same time building the substantive conditions, such as education, economic autonomy, and accessible legal redress, that would make consent genuinely meaningful. The DPDP Act is the most recent example of this problem.

IV. THE CONSTITUTIONAL DIMENSION: ARTICLES 14, 15, AND 21

The DPDP Act's failure to account for the structural conditions of rural women's consent raises serious constitutional questions under Articles 14, 15, and 21, provisions that the Supreme Court has steadily interpreted to require substantive equality rather than just formal equality.

A. Article 14 and the Arbitrariness Doctrine

Article 14 of the Constitution guarantees equality before the law and equal protection of the laws. The Supreme Court in *E.P. Royappa v. State of Tamil Nadu*⁸ (1974) developed the doctrine of arbitrariness, holding that any state action that is arbitrary is also against the principle of equality. A consent framework that formally applies to all data principals but can really only be used by digitally literate and economically independent users is arbitrary in exactly this sense. It creates a system of equal formal rights with deeply unequal outcomes in practice.

B. Article 15(3) and the State's Affirmative Obligation

Article 15(3) gives the state the power to make special provisions for women. In *Government of Andhra Pradesh v. P.B. Vijayakumar*⁹ (1995), the Supreme Court read Article 15(3) as a positive obligation, a direction to address the structural disadvantages that women face. The DPDP Act's failure to include differentiated consent mechanisms for women with low literacy is therefore not just a policy gap. It is a failure to meet an affirmative constitutional obligation.

C. Article 21 and the Right to Informational Self-Determination

The *Puttaswamy* judgment (2017) confirmed that the right to privacy under Article 21 includes informational self-determination, meaning the right of every person to control information about herself.¹⁰ Justice D.Y. Chandrachud's concurring opinion made clear that this right must be understood in a substantive way: a right to informational self-determination is empty if the conditions needed to exercise it, such as literacy, digital access, and economic autonomy, have not been created by the state. The DPDP Act falls short of this constitutional standard.

There is also a further problem. The DPDP Act's reliance on consent leaves rural women exposed to situations where that consent is effectively weaponised against them. Section 7 of the Act allows data processing without consent for the purpose of state welfare delivery.¹¹ For rural women who depend on government welfare schemes linked to the Aadhaar ecosystem, including PM Jan Dhan Yojana, PM Awas Yojana, and MGNREGA, refusing or withdrawing consent may mean losing access to essential benefits. This creates what can be called 'constrained consent,' a

⁸*E.P. Royappa v. State of Tamil Nadu*, (1974) 4 SCC 3 (India).

⁹*Government of Andhra Pradesh v. P.B. Vijayakumar*, (1995) 4 SCC 520 (India).

¹⁰*Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1, paras 169–180 (Chandrachud, J., concurring) (India).

¹¹Digital Personal Data Protection Act, 2023, § 7, No. 22 of 2023 (India).

situation where the only real choice is between privacy and survival. That is not a free choice at all.

V. THE DATA: MAPPING THE STRUCTURAL EXCLUSION

The constitutional argument above is not abstract. It is backed by documented empirical realities that show just how wide the gap is between the DPDP Act's formal protections and the lives of rural women in India.

Consider the following data points:

- According to NFHS-5 (2019-21), only 33% of rural women in India have ever used the internet, compared to 67% of rural men and 65% of urban women.
- The gender gap is sharpest in the states with the largest rural populations. In Bihar, only 13% of rural women report ever using the internet. In Uttar Pradesh, the figure is 16%, and in Rajasthan it is 20%. These are also the states with the highest rates of female illiteracy and child marriage, which underscores how digital exclusion is part of a wider pattern of intersectional disadvantage.
- The TRAI Annual Report 2022-23 shows that rural internet access is mostly limited to voice calls and basic messaging on shared devices, devices that are typically owned by male household members.¹² When a woman gives consent on a shared device without autonomous access to that device, her consent is consent in name only. She may have no real ability to review, change, or withdraw that consent without the knowledge and agreement of the male household member who controls the device.
- NSSO Employment Survey data shows that 63% of rural women workers are in agricultural work as unpaid family labour or marginal workers, with no formal employment contracts and no institutional support for understanding data rights.¹³ Yet these same women are increasingly being brought into data-intensive government welfare

¹²Telecom Regulatory Authority of India, *Annual Report 2022–23* (TRAI 2023).

¹³National Sample Survey Office, *Employment and Unemployment Survey* (Ministry of Statistics and Programme Implementation, Government of India 2022).

delivery systems that depend on biometric authentication and Aadhaar-linked databases, processing their personal data without any realistic chance of informed consent.

VI. THE REFORM IMPERATIVE: TOWARDS A DIFFERENTIATED CONSENT FRAMEWORK

The analysis in this paper shows that the DPDP Act's consent structure does not meet the constitutional standards of substantive equality and the right to informational self-determination for rural women. This failure is structural. It comes from the Act's adoption of a formal, liberal idea of consent that has already been shown, in matrimonial law, labour law, and now data law, to be inadequate for people living under structural subordination. Four reform pathways are proposed below.

Reform 1: A Differentiated Consent Standard

The DPDP Act should be amended to introduce a 'heightened consent standard' for data processing involving vulnerable data principals. This category would include rural women, persons below the poverty line, and individuals with limited literacy. Data fiduciaries wanting to process the data of vulnerable principals should be required to use accessible, non-textual consent mechanisms such as audio-visual consent modules in regional languages. These should be verified by an independent consent facilitator, modelled on the Legal Services Authority framework already operating in India.

Reform 2: A Mandatory Digital Literacy Obligation

Section 6 of the DPDP Act should be read together with Article 21-A of the Constitution, the right to education, to place a mandatory digital literacy obligation on data fiduciaries whose services are used by vulnerable populations. Data fiduciaries operating in rural markets, including microfinance institutions, agricultural commodity platforms, and government welfare delivery systems, should be required to show, as a condition of registration, that their users have access to adequate digital literacy support.

Reform 3: Decoupling Welfare Entitlements from Data Consent

The most constitutionally pressing reform is about the relationship between data consent and welfare access. The legitimate use exceptions under Section 7 of the Act must be restricted by an explicit rule preventing the state from making welfare benefits conditional on giving up data rights. This would implement the principle from *Puttaswamy (Aadhaar) v. Union of India*¹⁴ (2018), where the Supreme Court held that Aadhaar authentication cannot be a condition for accessing fundamental entitlements, and extend that principle to the broader DPDP Act framework.

Reform 4: A Women's Data Rights Ombudsman

The Data Protection Board set up under Section 18 of the DPDP Act¹⁵ assumes a complainant who can access digital filing systems and take part in formal quasi-judicial processes. These are conditions that are structurally unavailable to rural women. A dedicated Women's Data Rights Ombudsman, operating through Legal Services Authority offices at the district level, would give rural women a practical, affordable, and gender-sensitive way to enforce their data rights.

VII. CONCLUSION

This paper has argued that the Digital Personal Data Protection Act, 2023 reproduces, rather than dismantles, the patriarchal structures of consent that have long subordinated rural women in India's legal order. By adopting a formal, liberal idea of 'informed consent' under Section 6 without creating the substantive conditions needed for its meaningful exercise, the legislature has put together a data rights regime that is constitutionally inadequate under Articles 14, 15, and 21 for a majority of its intended female beneficiaries.

The parallel with matrimonial consent doctrine exposes a deep and recurring problem in Indian legislative drafting: the tendency to import formal rights frameworks into settings marked by structural inequality, without at the same time addressing the social, economic, and institutional conditions that would make those rights actually usable. India's jurisprudence on substantive equality, from *Royappa* to *Vishakha* to *Puttaswamy*, has consistently moved beyond formalism

¹⁴Justice K.S. Puttaswamy (Retd.) v. Union of India (Aadhaar), (2018) 1 SCC 809 (India).

¹⁵Digital Personal Data Protection Act, 2023, § 18, No. 22 of 2023 (India).

towards a contextual and condition-sensitive understanding of rights. The DPDP Act must be brought into line with this constitutional direction.

The urgency of this reform goes beyond academic debate. As India's digital economy expands rapidly into rural markets, through the Jan Dhan-Aadhaar-Mobile trinity, the Unified Payments Interface, and an increasingly data-intensive agricultural supply chain, the volume of personal data generated by and extracted from rural women will grow enormously. A data protection law that fails the most marginalised does not just fall short of its legislative ambition. It fails the Constitution itself.