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## Substantive Equality in Child Marriages: Bridging the Gap Between Law and Lived Realities in India

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### ABSTRACT:

This paper takes a closer look at how child marriage is addressed in India's legal system. While the law sets a standard minimum age for marriage, aiming for formal equality, it often overlooks the deeper social and economic realities that continue to push girls—especially those from marginalized communities—into early marriages. Although the Prohibition of Child Marriage Act, 2006 was a step forward, unclear provisions and inconsistent court rulings have weakened its impact. The 2021 proposal to raise the legal age of marriage for girls from 18 to 21, though seemingly progressive, may unintentionally tighten patriarchal control and limit young women's freedom instead of supporting their choices. This paper argues that there's a pressing need to go beyond surface-level reforms and move towards substantive equality—where laws are shaped by the actual lived experiences of those they aim to protect. True reform should prioritize support, not punishment, and focus on real empowerment over symbolic change. Only then can justice be truly transformative in the fight to end child marriage.

### I. Introduction

**Child marriage in India** in Indian Law is a marriage in which the bride is less than 18 years of age<sup>1</sup>. **Child marriage is a grave violation of human rights** that not only harms the individual but also hinders the social and economic progress of society as a whole. It robs girls of their childhood, education, and opportunities, often trapping them in cycles of poverty and dependency. Factors such as **religious beliefs, educational attainment, and community norms** play a significant role in increasing the likelihood of girls being married off at an early age. Financial transactions around marriage contribute to the practice.<sup>2</sup> In circumstances where dowry is practiced (the bride's family provides assets to the groom's family), a younger and less educated bride may require a lower dowry, which would incentivize parents to marry.

India's fight against child marriage dates back to the **Child Marriage Restraint Act of 1929**, also known as the **Sarda Act**, which first set legal age limits—14 for girls and 18 for boys—though it didn't apply to princely states like Hyderabad and Jammu & Kashmir. After independence, the minimum age was gradually raised: first to 15 for girls in 1949, and eventually to 18 for girls and 21 for boys in 1978. A major step forward came with the **Prohibition of Child Marriage Act, 2006**, which gave children married before adulthood the right to annul their marriage—up to age 20 for girls and 23 for boys. While these legal reforms mark important progress, their real impact depends on how well they're understood and enforced on the ground.

### II. Formal Equality vs. Substantive Equality

Formal equality, also known as “equality before the law,” is a principle that asserts that all individuals are to be treated the same by the law, irrespective of their background, status, or circumstances<sup>3</sup>.

**Formal equality** means treating everyone the same under the law, no matter what their caste, religion, financial background, or gender is. This idea is protected by **Article 14 of the Indian Constitution**, which ensures that everyone is equal in the eyes of the law. For example, a flat tax rate that applies to everyone—regardless of how much money they earn—is a reflection of formal equality in practice

A substantive equality approach in reforming child marriage laws involves not only legal prohibition but also proactive measures to address the socio-economic factors that contribute to child marriage, thereby ensuring true equality and empowerment for young girls in India<sup>4</sup>. Substantive equality isn't

<sup>1</sup>Wikipedia Article *Child Marriage in India*, available at: [https://en.wikipedia.org/wiki/Child\\_marriage\\_in\\_India](https://en.wikipedia.org/wiki/Child_marriage_in_India) (last visited Aug. 2, 2025).

<sup>2</sup>Taylor & Francis Journal Article Annu Mundkur and Antonia Porter, *Child Marriage in India: A Law for the Powerful and a Right for the Child*, 23 J. Gender, Soc. Pol'y & L. 273 (2015).

<sup>3</sup>LawBhoomi Article *Formal and Substantive Equality*, LawBhoomi, available at: <https://lawbhoomi.com/formal-and-substantive-equality/> (last visited Aug. 2, 2025).

<sup>4</sup>Yahoo Search Result (Compass Rau IAS) *A Substantive Equality Approach in Reforming Child Marriage Laws*, Compass Rau IAS, available

just about giving everyone the same rules—it's about making sure the outcome is fair for everyone, especially those who start off at a disadvantage. While formal equality treats everyone the same on paper, it often ignores the reality that people come from very different backgrounds and face very different obstacles. Substantive equality recognizes this gap. It focuses on removing those deeper barriers—be it poverty, caste, gender bias, or social exclusion—so that everyone gets a genuine shot at success.

Rather than pretending that equal treatment is always fair, this approach asks us to look at people's real-life situations. It understands that for justice to be meaningful, the law must respond to the lived experiences of those who are most vulnerable. This could mean offering extra support where it's needed most, whether through affirmative action or tailored legal protections. At its core, substantive equality is about turning equality from a legal concept into something people can actually feel and benefit from in their daily lives.

In the context of child marriages, the gap between **formal** and **substantive equality** is stark. **Formal equality** sets the same legal marriage age for all, assuming equal treatment ensures fairness. But this ignores the ground realities—many girls, especially from marginalized backgrounds, face social pressure, poverty, and lack of access to justice, making the law ineffective for them. **Substantive equality**, on the other hand, looks beyond uniform rules and focuses on real-life circumstances. It calls for targeted support to address systemic barriers, ensuring that all children—regardless of background—can genuinely benefit from legal protections.

### III. Legal Framework on Child Marriage in India

The fight against child marriage in India began with the **Child Marriage Restraint Act of 1929**, also known as the **Sarda Act**, which marked a significant step forward by legally setting the minimum marriage age at 14 for girls and 18 for boys, although it excluded some princely states like Hyderabad and Jammu & Kashmir. After independence, India gradually raised the legal age to offer better protection—in 1949, the minimum age for girls was increased to **15**, and in 1978, it was revised to 18 for girls and 21 for boys, reflecting changing social and health standards.

A major reform followed with the enactment of the **Prohibition of Child Marriage Act, 2006 (PCMA)**. This law gave minors—both boys and girls—the right to void their child marriage within two years of reaching adulthood: up to age **20 for girls** and **23 for boys**. While progressive, this provision has led to legal ambiguity. Section 3(1) of the Indian Majority Act, 1875 clearly states that every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before<sup>5</sup>. This creates a conflict between the PCMA and the Majority Act, especially in defining the timeline within which a person may seek annulment of a child marriage. The inconsistency has resulted in divergent judicial interpretations, highlighting the urgent need for legal clarity and harmonization. Despite these legislative efforts, awareness and effective implementation remain key challenges in combating child marriage in India.

The conflicting provisions of the **Prohibition of Child Marriage Act, 2006** and the **Indian Majority Act, 1875** have created serious legal ambiguity, especially around the age of majority and the time frame for seeking annulment. This inconsistency not only confuses the courts but also denies vulnerable minors, particularly girls, a fair and effective legal remedy. Coupled with weak enforcement, lack of awareness, and procedural delays, the law often fails the very children it was meant to protect—highlighting the urgent need for legal clarity and stronger implementation.

### IV. Judicial Interpretation and Inconsistencies

#### Case Study 1:

*Sanjay Choudhary v. Guddan (2024)* – Annulment timelines and interpretation of “minor”

In a striking case that highlights the complexities of India's child marriage laws, a couple who had married as children—when the boy was just 12 and the girl only 9—found themselves in court years later. At the age of 20 years, 10 months, and 28 days, the husband initially sought a divorce, but later changed his plea, asking for annulment under the **Prohibition of Child Marriage Act (PCMA), 2006**.

Every child marriage, whether solemnised before or after the commencement of this Act, shall be voidable at the option of the contracting party who was a child at the time of the marriage<sup>6</sup>. This right, however, must be exercised within two years of reaching adulthood—meaning until the age of 20 for men and 18 for women. Despite this, the husband sought annulment just weeks before turning 21.

The Allahabad High Court took a firm stance, holding that the law applies equally to both men and women. It emphasized that being a “**child**” at the time of marriage does not absolve one—especially in cases like this where the individual was well-informed—from the responsibility of acting within the prescribed time limit. The Court pushed back against gendered assumptions that often frame boys as rational decision-makers and girls as helpless dependents. These outdated views, the Court said, only reinforce systemic inequality.

at: <https://in.search.yahoo.com/search?fr=mcafee&type=E210IN885G0&p=substantive+equality+in+child+marriage> (last visited Aug. 2, 2025).

<sup>5</sup>Indian Kanoon The Prohibition of Child Marriage Act, 2006, § 3(1), available at: <https://indiankanoon.org/doc/1422776/> (last visited Aug. 2, 2025).

<sup>6</sup>UNICEF Report (via Yahoo) UNICEF, *India Country Profile: Child Marriage*, available at: <https://www.unicef.org/media/172896/file/India.pdf.pdf> (last visited Aug. 2, 2025).

Much of the confusion in such cases stems from a brief remark made by the Supreme Court in **Independent Thought v. Union of India** (2017), which casually suggested that boys could seek annulment until age 23. Though the case mainly dealt with the issue of marital rape, this offhand observation has led some to misinterpret the law, including allowing annulments beyond the legally defined age limit for boys.

The problem with this approach is that it quietly builds a gender bias into a law meant to protect children—especially girls—from early and forced marriages. By giving boys a longer window to walk away from a child marriage, the law risks sidelining girls' rights and weakening the very protections it was designed to provide.

This case reminds us that laws must be applied fairly and consistently. Equality before the law cannot be achieved if legal timelines and protections differ based on gender.

#### Case Study 2:

*Shiva Kumar v. Inspector of Police (2011, Madras HC)* – Extension of annulment rights up to 23 years for males

In this case, the Madras High Court spotted a major flaw in the law. Under the Prohibition of Child Marriage Act, girls can annul a child marriage until they turn 20, since they become adults at 18. But for boys—who are considered minors until 21—the two-year deadline to file for annulment would oddly expire before they even reach adulthood.

To fix this, the Court said that boys should also get two years after turning 21, allowing annulment until age 23. The judges stressed that laws should be applied in a way that makes sense and truly protects children, regardless of gender. They also urged lawmakers to formally fix this loophole to avoid confusion in the future.

#### Case Study 3: *Independent Thought v. Union of India* – Striking down the marital rape exception; implications for child marriage laws

In **Independent Thought v. Union of India**, the primary question before the **Supreme Court** was the constitutional validity of the marital rape exception in cases where the wife is under 18 years of age. The Court struck down this exception, holding that it violated the fundamental rights of minor girls, thereby criminalizing non-consensual intercourse within child marriages. While doing so, the Court incidentally observed that a male could seek annulment of a child marriage until the age of 23. However, this observation was made without a detailed engagement with the provisions of the Prohibition of Child Marriage Act (PCMA). As a result, the ruling, though progressive in spirit, contributed to further ambiguity in the legal framework—revealing inconsistencies in how substantive legal protections are interpreted and applied across gender lines.

Different court rulings in cases like **Sanjay Choudhary v. Guddan (2024)**, **T. Sivakumar v. Inspector of Police (2011)**, and **Independent Thought v. Union of India** reveal a troubling lack of consistency in how the Prohibition of Child Marriage Act (PCMA) is applied—especially when it comes to gender equality. In the **Sivakumar** case, the Madras High Court tried to fix gaps in the law by allowing boys to annul child marriages until the age of 23. But this unintentionally created an unequal system, giving boys more time than girls, and reinforcing outdated ideas that boys are more mature and girls are passive. The Allahabad High Court took a more balanced view in **Sanjay Choudhary**, pointing out how such gendered assumptions weaken the protective purpose of the law. Meanwhile, the Supreme Court's passing remark in **Independent Thought**—suggesting a longer time frame for boys—only added to the confusion, with no clear legal backing. While these judgments may have been well-intentioned, they risk watering down the law's goal: to shield all children, especially girls, from child marriage. If we're serious about achieving real gender equality, the law needs to be applied fairly and consistently—without giving special privileges based on gender.

## V. The Lived Realities of Girls in Child Marriages

Child marriage is a global issue rooted in gender inequality, poverty, harmful social norms, and insecurity. It is not confined to one region or culture but spans across continents, affecting millions of girls each year.

India alone accounts for one third of the world's child brides<sup>1</sup> – the highest total number globally according to UNICEF Report<sup>7</sup>. Today, 222.4 million girls and women living in India were married before the age of 18, including nearly 90.5 million who were married before age 15<sup>8</sup>. Over half of the girls and women in India who married in childhood live in five states: Uttar Pradesh, Bihar, West Bengal, Maharashtra and Madhya Pradesh. Uttar Pradesh is home to the largest number<sup>9</sup>.

Child marriage robs young girls of their chance to learn, grow, and make decisions about their own lives. It cuts short their education, puts their health at risk, and takes away their freedom—often locking them into cycles of poverty, abuse, and lost opportunities. Despite ongoing global efforts, child marriage still thrives in vulnerable communities where girls are treated as financial burdens or used to settle family and social disputes. The impact goes far beyond the individual—it holds back entire communities by deepening inequality and slowing progress. Ending this harmful practice isn't just a legal or policy

<sup>7</sup>Child Marriage Data Portal Child Marriage Data Portal, *India Country Profile*, available at: <https://childmarriedata.org/country-profiles/india> (last visited Aug. 2, 2025).

<sup>8</sup>UNICEF 2023 Progress Report UNICEF, *Ending Child Marriage – A Profile of Progress in India* (2023), available at: [https://data.unicef.org/wpcontent/uploads/2023/05/Ending\\_Child\\_Marriageprofile\\_of\\_progress\\_in\\_India\\_2023.pdf](https://data.unicef.org/wpcontent/uploads/2023/05/Ending_Child_Marriageprofile_of_progress_in_India_2023.pdf) (last visited Aug. 2, 2025).

<sup>9</sup> PRS Legislative Research (Prohibition of Child Marriage Amendment Bill, 2021) PRS Legislative Research, *The Prohibition of Child Marriage (Amendment) Bill, 2021*, available at: <https://prsindia.org/billtrack/the-prohibition-of-child-marriage-amendment-bill-2021> (last visited Aug. 2, 2025).

challenge; it's a moral one. We need urgent, united action that focuses on empowering girls, reforming outdated laws, and shifting harmful social norms—so that every child has the chance to live with dignity, freedom, and hope for a better future.

## VI. The 2021 Amendment Bill and Debate on Marriage Age

The Prohibition of Child Marriage Act, 2006 provides that the minimum age of marriage is 21 years in case of males, and 18 years in case of females. The Bill increases the minimum age of marriage for females to 21 years, bringing it on par with that for males<sup>10</sup>

According to the statement of objects and reasons (SOR) of the Bill, increasing the age of marriage will help in achieving various goals including improvement of maternal and infant mortality rates (IMR and MMR), nutrition levels, sex ratio at birth (SRB), female labour force participation, and gender equality, and will lead to empowerment of women.<sup>11</sup>

Raising the minimum age of marriage for girls to 21, while intended to protect them, could actually create more problems than it solves. Girls between 18 and 21 are already legal adults—they can vote, sign contracts, and make decisions about their own lives. Denying them the right to choose when and whom to marry sends a confusing message: that they are adults in some ways, but not in others. Instead of empowering young women, this change could increase control by parents or the state over their personal choices, especially in cases of love marriages, and end up reinforcing traditional, patriarchal norms.

Worse still, labelling such self-chosen marriages as crimes would turn young adults into offenders for making their own decisions. This blurs the line between protecting someone and punishing them. It could lead to unnecessary court cases, break apart families, and place even more pressure on an already stretched criminal justice system. What seems like a protective measure on the surface may actually limit the freedom and agency of the very girls it aims to support.

## VIII. Conclusion

To truly put an end to child marriage and move toward real equality, India must look beyond symbolic legal changes and commit to justice that transforms lives—especially for girls from marginalized communities. Laws like the **Prohibition of Child Marriage Act, 2006** and the proposed 2021 Amendment were created with the intent to protect, but their impact is often weakened by inconsistent court decisions, rigid rules, and approaches that can end up limiting young women's choices instead of supporting them.

What's needed now is a shift toward **substantive equality**—an approach that not only ensures fairness on paper, but also tackles the root causes of child marriage, like poverty, gender discrimination, and lack of access to education or justice. Legal and policy efforts must listen to and reflect the lived experiences of those most affected, making sure that protection doesn't turn into punishment or control.

India urgently needs thoughtful, unified legal reforms that value both equality and autonomy—reforms that see children not just as subjects of protection, but as individuals with rights, voices, and dreams. It's time to move beyond promises and paper laws, and work toward justice that genuinely empowers and uplifts the most vulnerable.

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<sup>10</sup>PRS Legislative Research Statement of Purpose PRS Legislative Research, *Statement of Objects and Reasons – Prohibition of Child Marriage (Amendment) Bill, 2021*, available at: <https://prsindia.org/billtrack/the-prohibition-of-child-marriage-amendment-bill-2021> (last visited Aug. 2, 2025).

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