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# Protection vs. Tradition: The Clash between Indian Child Marriage Laws and the POCSO Act

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## ABSTRACT

*India stands at a complex crossroads where long-standing cultural traditions often collide with modern child protection laws. This article critically examines the legal tension between the Prohibition of Child Marriage Act, 2006 (PCMA) and the Protection of Children from Sexual Offences Act, 2012 (POCSO). While PCMA seeks to discourage and penalize child marriages, it still recognises them as voidable rather than void. In contrast, POCSO criminalizes all sexual activity involving individuals below 18 years of age—irrespective of marital status or consent. This doctrinal contradiction raises serious concerns about legal enforcement, judicial interpretation, and the child's right to bodily autonomy.*

*Drawing on legislative texts, judicial decisions, and socio-cultural analysis, the article explores how courts have responded inconsistently, particularly in cases involving underage consensual relationships. It also highlights the systemic enforcement challenges faced by institutions like the police, Child Welfare Committees, and Child Marriage Prohibition Officers. Comparative perspectives from neighboring countries and international legal obligations under CRC and CEDAW further underscore the urgency of reform.*

*Ultimately, the article argues for the harmonization of Indian child protection laws by rendering child marriages void ab initio, repealing the marital exception under criminal law, and ensuring that child rights prevail over regressive customs. The conclusion advocates for a rights-based legal regime—one that prioritizes the safety, dignity, and development of every child above tradition or community sanction.*

## I. INTRODUCTION AND BACKGROUND

Child marriage, though legally discouraged, continues to be practiced in various parts of India, often under the influence of deeply rooted customs, religious beliefs, and socio-economic pressures. In many communities, early marriage is still viewed as a social safeguard—protecting family honor, preserving cultural identity, or reducing economic

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burden.<sup>2</sup> Despite these traditional justifications, child marriage has long-lasting and damaging consequences, especially for girls, including early pregnancy, denial of education, and heightened vulnerability to domestic and sexual abuse.<sup>3</sup>

In response to these harms, India has enacted progressive legislation aimed at safeguarding children's rights, bodily autonomy, and development. Two major statutes form the core of this legal framework: the *Prohibition of Child Marriage Act, 2006* (PCMA) and the *Protection of Children from Sexual Offences Act, 2012* (POCSO). While the PCMA aims to prohibit child marriages and provide remedies for minors forced into such unions, POCSO criminalizes all forms of sexual activity involving individuals under the age of eighteen, regardless of marital status or consent.<sup>4</sup>

This legal coexistence has created a significant conflict: on one hand, the law may permit a marriage involving a minor as voidable; on the other hand, the consummation of that very marriage could constitute a serious criminal offence under POCSO. The contradiction becomes particularly problematic when enforcement authorities, prosecutors, and courts are faced with cases where social customs clash with statutory obligations.

This article seeks to examine this complex intersection between tradition and protection. Using a doctrinal and socio-legal methodology, the analysis will focus on the interpretative inconsistencies, enforcement challenges, and broader implications of maintaining conflicting laws within a constitutional democracy committed to child rights. By drawing on statutory texts, case law, institutional practices, and comparative international experiences, the article aims to offer a roadmap for legal harmonization that prioritizes the best interests of the child.

## II. STATUTORY OVERVIEW AND DOCTRINAL CONFLICT

The Indian legal landscape concerning child protection is governed primarily by two significant statutes: the *Prohibition of Child Marriage Act, 2006* (PCMA) and the *Protection of Children from Sexual Offences Act, 2012* (POCSO). While both laws are intended to safeguard minors, they operate with different definitions, objectives, and enforcement mechanisms, which at times lead to profound doctrinal contradictions.

Under the PCMA, a child is defined as a female below the age of eighteen and a male below

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<sup>2</sup> UNICEF, *Child Marriage in India: An Analysis of Available Data* (2019), at 5, <https://data.unicef.org/resources/child-marriage-in-india/>.

<sup>3</sup> Committee on the Rights of the Child, *General Comment No. 20 (2016) on the Implementation of the Rights of the Child During Adolescence*, U.N. Doc. CRC/C/GC/20, ¶¶ 19–21 (Dec. 6, 2016).

<sup>4</sup> The Prohibition of Child Marriage Act, No. 6 of 2007, § 3, India Code (2007); The Protection of Children from Sexual Offences Act, No. 32 of 2012, § 2(d), India Code (2012).

the age of twenty-one.<sup>5</sup> Child marriages are not deemed void ab initio but are voidable at the instance of the minor party, who may seek annulment within two years of attaining majority.<sup>6</sup> The Act further empowers the appointment of Child Marriage Prohibition Officers (CMPOs), who are tasked with preventing child marriages, advising affected children, and initiating legal proceedings.<sup>7</sup> Despite these provisions, the law stops short of criminalizing the act of marriage itself, especially when solemnized with social or familial approval.

In contrast, the POCSO Act adopts a strict liability framework for all sexual offences involving individuals under the age of eighteen.<sup>8</sup> Under POCSO, consent is legally irrelevant if the child is a minor.<sup>9</sup> The statute criminalizes all forms of sexual activity, including penetrative and non-penetrative acts, regardless of the nature of the relationship between the parties. This means that even if the child is married—legally or socially—the law views any sexual act with that minor as a punishable offence.

This divergence creates a doctrinal conflict. While the PCMA allows for child marriages to be recognized (albeit discouraged), POCSO effectively criminalizes the consummation of such marriages. This contradiction places law enforcement, child protection agencies, and the judiciary in a difficult position, especially in cases involving community-sanctioned unions with minors.

A critical turning point in this debate came with the landmark decision in *Independent Thought v. Union of India*.<sup>10</sup> The case challenged Exception 2 to Section 375 of the Indian Penal Code (IPC), which had previously exempted a man from being prosecuted for raping his wife if she was above fifteen years of age. The Supreme Court held that this exception violated the constitutional rights of minor girls and read down the provision, declaring that sexual intercourse with a wife below eighteen years of age would amount to rape, regardless of marital status.<sup>11</sup> This judgment brought IPC in closer alignment with POCSO but simultaneously widened the rift with PCMA, which still permits the existence of such marriages unless proactively challenged.

Thus, the Indian legal framework is caught between recognizing a harmful social practice under one statute and criminalizing its consequences under another. Without harmonization,

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<sup>5</sup> The Prohibition of Child Marriage Act, No. 6 of 2007, § 2(a)–(b), India Code (2007).

<sup>6</sup> Id. § 3(3).

<sup>7</sup> Id. § 16.

<sup>8</sup> The Protection of Children from Sexual Offences Act, No. 32 of 2012, § 2(d), India Code (2012).

<sup>9</sup> Id. §§ 3–10; see also Ministry of Law and Justice, Handbook on POCSO Act and Rules (2019), <https://wcd.nic.in>.

<sup>10</sup> *Independent Thought v. Union of India*, (2017) 10 SCC 800.

<sup>11</sup> Id. at ¶ 105–113.

this tension not only complicates enforcement but also risks undermining the constitutional promise of child protection and dignity.

### III. JUDICIAL INTERPRETATION AND CASE LAW

The Indian judiciary has played a central role in interpreting and mediating the tensions between traditional social practices and modern child protection laws. One of the most defining moments in this legal journey came in the case of *Independent Thought v. Union of India*,<sup>12</sup> where the Supreme Court took a significant step toward recognizing the rights and bodily autonomy of minor girls, even within the context of marriage.

In this 2017 landmark decision, the Court examined Exception 2 to Section 375 of the Indian Penal Code, which allowed a husband to have sexual intercourse with his wife—without it being considered rape—if she was not under fifteen years of age. This provision effectively legitimized marital rape of girls aged 15 to 18, creating a glaring inconsistency with the Protection of Children from Sexual Offences Act, 2012 (POCSO), which treats all sexual activity with individuals under eighteen as an offence. The Court held that this exception was unconstitutional, as it violated Articles 14, 15, and 21 of the Indian Constitution, and read down the provision to make all sexual activity with a wife under eighteen years punishable as rape.<sup>13</sup> The ruling marked a progressive shift in judicial thinking, affirming that marriage cannot be a license to violate a minor's right to bodily integrity.

Despite this advance, High Courts across the country have issued conflicting rulings in cases involving consensual relationships between minors, or between a minor and an adult claiming to be the spouse. In some cases, courts have granted bail or quashed criminal proceedings under POCSO, recognizing the agency of adolescents in romantic relationships or giving deference to community-recognized child marriages.<sup>14</sup> In contrast, other decisions have adopted a strict interpretation of POCSO, treating all sexual contact with a minor—regardless of context—as a non-compoundable and cognizable offence.<sup>15</sup> These divergent decisions reflect the judiciary's struggle to navigate between the protective intent of the law and the complex realities of adolescent agency and cultural norms.

Courts have increasingly found themselves balancing three competing principles: the constitutional obligation to protect children from exploitation, the evolving understanding of

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<sup>12</sup> *Independent Thought v. Union of India*, (2017) 10 SCC 800.

<sup>13</sup> *Id.* at ¶¶ 105–113.

<sup>14</sup> *Satish Kumar v. State of Haryana*, CRR No. 4549 of 2015 (P&H HC); *Shahid v. State of UP*, 2022 SCC OnLine All 1577.

<sup>15</sup> *Karnail Singh v. State of Punjab*, 2019 SCC OnLine P&H 2044; *Rakesh v. State of Madhya Pradesh*, 2020 SCC OnLine MP 2922.

adolescent autonomy, and the societal values that continue to legitimize early marriage in certain communities. This balancing act is particularly delicate when the court must decide whether the law should punish a consensual relationship involving minors or acknowledge their developmental and emotional maturity.

The judiciary's role in interpreting these grey areas is thus both critical and challenging. Judges must constantly walk the line between enforcing a child-centric statutory mandate and recognizing the societal contexts in which these relationships occur. However, continued inconsistency in judicial interpretation can undermine the deterrent effect of laws like POCSO and dilute the protective aims of both statutes. A consistent, rights-based jurisprudence is essential to ensure that children are not further victimized by legal ambiguity or institutional hesitation.

#### IV. SOCIAL REALITIES AND ENFORCEMENT GAPS

Despite a well-intentioned legal framework, the practice of child marriage in India continues to persist—rooted not only in tradition, but also in complex social hierarchies and structural inequalities. Laws alone cannot dismantle the enduring influence of caste norms, religious beliefs, poverty, and patriarchy, all of which play a significant role in sustaining early marriage, particularly among marginalized communities.

For many families, marrying off a girl child early is seen as a practical and moral obligation. In communities where caste honour or religious purity are prioritized, delaying marriage is viewed as a risk to a girl's social acceptability.<sup>16</sup> Economic hardship further reinforces this logic—poor families often consider marriage as a way to reduce financial burden or protect daughters from sexual violence and social stigma.<sup>17</sup> This perception, although misplaced, reinforces patriarchal norms and strips girls of their agency, often resulting in severe consequences for their health, education, and psychological development.

Enforcement of the Prohibition of Child Marriage Act (PCMA) and the Protection of Children from Sexual Offences Act (POCSO) faces serious challenges on the ground. Law enforcement officials, including the police, Child Marriage Prohibition Officers (CMPOs), and Child Welfare Committees (CWCs), often lack adequate training and resources.<sup>18</sup> In rural areas, officers are reluctant to intervene in what are seen as “family matters” or “community

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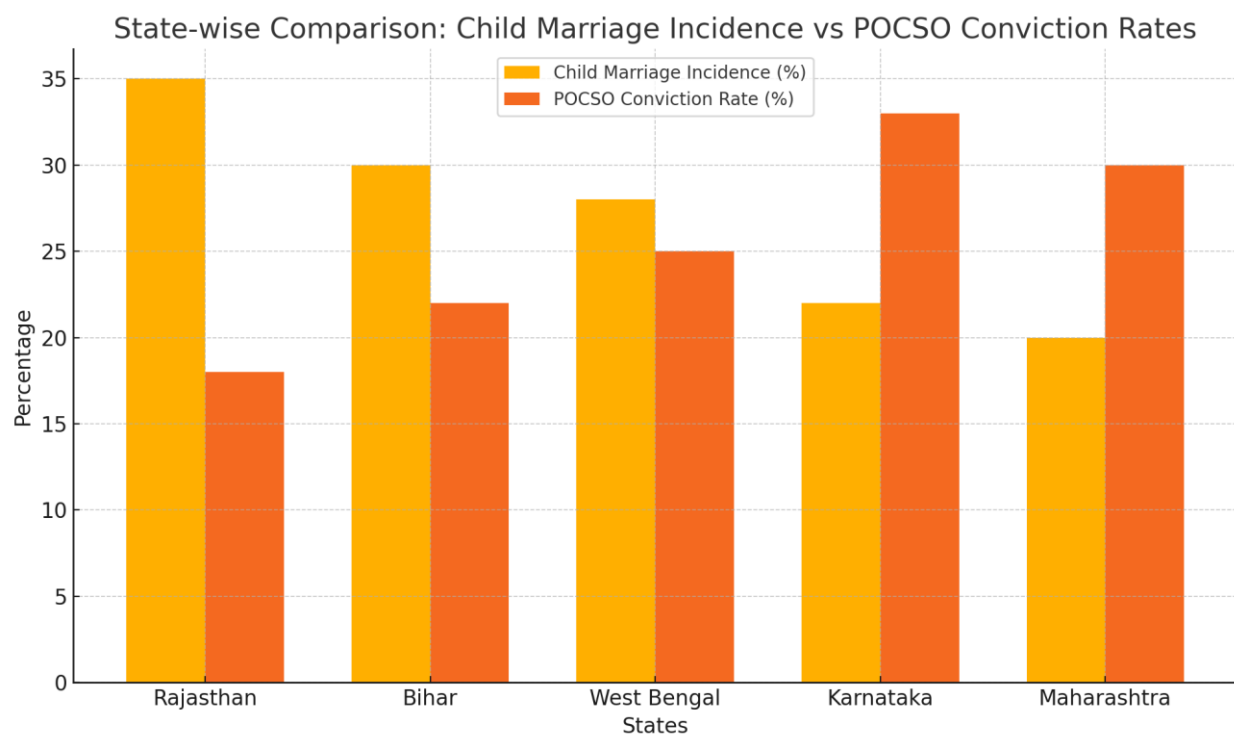
<sup>16</sup> UNICEF India, *Ending Child Marriage: A Guide for Parliamentarians* (2019), <https://www.unicef.org/india/reports>.

<sup>17</sup> Girls Not Brides, *India Child Marriage Atlas: State Profiles* (2020), <https://atlas.girlsnotbrides.org>.

<sup>18</sup> Ministry of Women and Child Development (India), *Annual Report 2021–22*, at 45, <https://wcd.nic.in>.

customs,” fearing backlash or social ostracization.<sup>19</sup> Even when violations are reported, there is often pressure to suppress complaints, especially if the marriage was arranged with community approval.

Moreover, data from various states reveal a troubling disparity in how these laws are implemented. For instance, while states like Karnataka and Maharashtra have reported increasing numbers of prosecutions under POCSO linked to child marriage, other states—particularly in northern and northeastern India—show negligible reporting, suggesting under-detection rather than absence of the problem.<sup>20</sup> There is also a marked tendency to recast POCSO complaints as consensual relationships, particularly when the girl and boy belong to different castes or communities, leading to misuse or dilution of protective provisions.

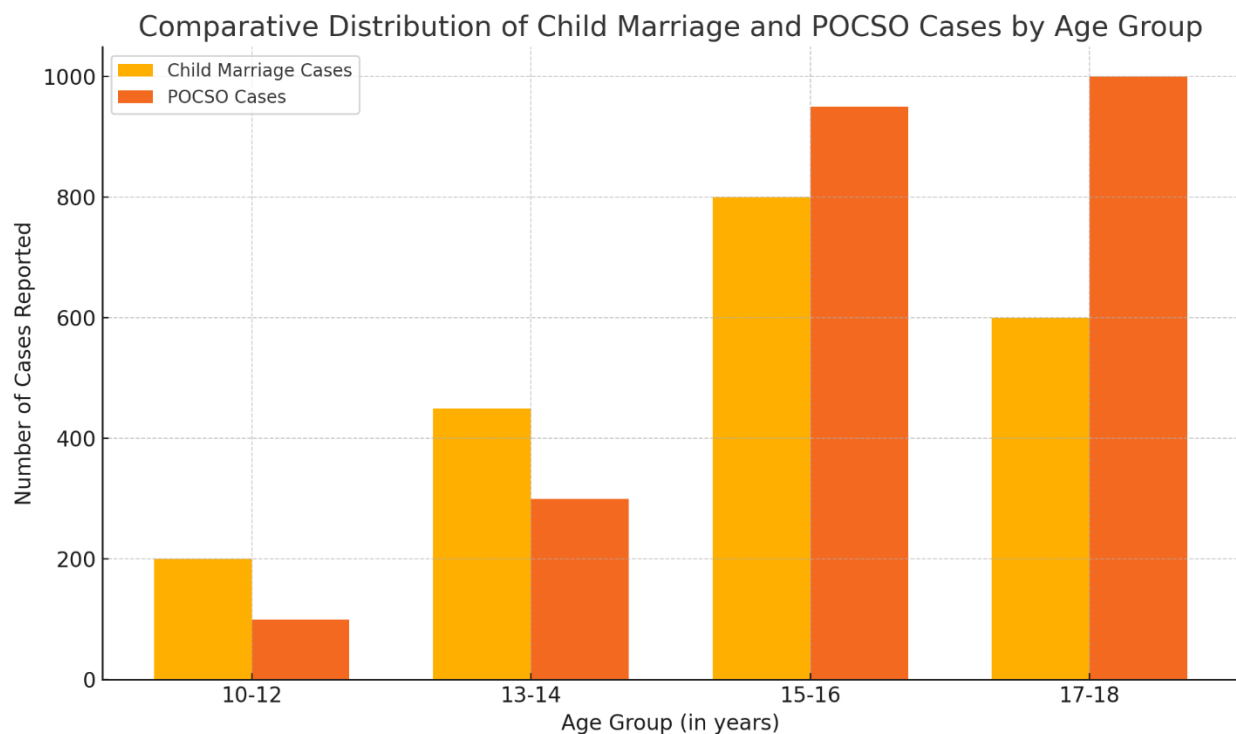


**Figure 2:** State-wise Comparison of Child Marriage Incidence and POCSO Conviction Rates (Illustrative Percentages).

<sup>19</sup> Shanta Sinha, *Preventing Child Marriages in India: A Law in the Making*, 42(14) Econ. & Pol. Wkly. 1153, 1156–57 (2007).

<sup>20</sup> National Crime Records Bureau (NCRB), *Crime in India 2022*, Chapter on Crimes Against Children, <https://ncrb.gov.in>.

**Figure 1:** Comparative Age-wise Distribution of Reported Child Marriage and POCSO Cases (Illustrative Data).



These gaps highlight that enforcement is not just a legal issue but a deeply social and institutional challenge. Unless accompanied by widespread awareness, community sensitization, and systemic reform, laws alone will continue to fall short in preventing child marriage or protecting victims effectively.

## V. COMPARATIVE AND INTERNATIONAL PERSPECTIVES

The legal conflict between child marriage and child protection is not unique to India. Many countries with plural legal systems or strong customary practices have faced similar challenges in reconciling tradition with the rights of the child. A comparative analysis reveals that while approaches vary, a growing international consensus is emerging in favor of unambiguous legal prohibitions on child marriage and a strong emphasis on the child's consent and autonomy.

In Nepal, the government has criminalized all forms of child marriage without exception.<sup>21</sup> The Marriage Registration Act, as amended in 2017, declares all marriages below the age of twenty for men and eighteen for women as void and punishable. The law also penalizes guardians, marriage registrars, and priests who facilitate such unions, signaling a robust institutional stance against the practice. Notably, Nepal's legal reform was propelled by its

<sup>21</sup> Marriage Registration Act (Nepal), No. 10 of 1971, as amended in 2017.



obligations under the Convention on the Rights of the Child (CRC) and mounting pressure from civil society to address early marriage as a human rights violation.

Bangladesh, on the other hand, presents a cautionary example. While it enacted the *Child Marriage Restraint Act, 2017*, setting the legal marriageable age at eighteen for girls, it controversially introduced a “special provision” allowing marriages under 18 in “exceptional circumstances” with parental and judicial consent.<sup>22</sup> This exception has been widely criticized for creating legal ambiguity and offering a loophole for legitimizing child marriage under the guise of social necessity. Critics argue that such provisions undermine the protective spirit of the law and contradict Bangladesh’s international commitments under CRC and CEDAW.

In many African nations, such as Ethiopia and South Africa, child marriage laws coexist with customary or religious laws, leading to conflicts and selective enforcement. Efforts to unify statutory and customary law have seen mixed success. In South Africa, the *Children’s Act, 2005* mandates eighteen as the minimum legal age for marriage and considers child consent essential, even when parental or religious approval exists.<sup>23</sup> These legal standards reflect the country’s post-apartheid constitutional commitment to dignity, equality, and children's rights.

India, as a signatory to major international instruments like the Convention on the Rights of the Child (CRC)<sup>24</sup> and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), is obligated to ensure that its domestic laws are aligned with international standards. The UN Committee on the Rights of the Child has repeatedly expressed concern about the persistence of child marriage in India and the legal inconsistencies that permit it to continue. The coexistence of PCMA with laws that implicitly legitimize child marriage, such as marital rape exceptions or vague annulment procedures, weakens India’s compliance with its treaty obligations.

In sum, international best practices and treaty bodies favor unequivocal prohibitions on child marriage, along with comprehensive child protection frameworks that center the child’s autonomy and well-being. India’s partial reforms, though important, fall short of these global benchmarks. A rights-based, harmonized legal framework—free of exceptions—is increasingly seen as not just desirable but necessary to meet international human rights standards.

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<sup>22</sup> Child Marriage Restraint Act, No. 6 of 2017 (Bangladesh), § 2(2).

<sup>23</sup> Children’s Act, No. 38 of 2005 (South Africa), §§ 17–18.

<sup>24</sup> Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3; Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

## VI. RECOMMENDATIONS AND CONCLUSION

The legal and social conflict between the *Prohibition of Child Marriage Act, 2006* (PCMA) and the *Protection of Children from Sexual Offences Act, 2012* (POCSO) illustrates a critical dilemma at the heart of India's child protection regime. On one hand, the law seeks to acknowledge and accommodate cultural practices surrounding marriage. On the other, it imposes a constitutional obligation to protect children from sexual exploitation, early motherhood, and loss of agency. Bridging this contradiction requires not just legislative reform, but a reorientation of how the law understands tradition, consent, and childhood.

First, there is an urgent need to harmonize PCMA and POCSO with the Indian Penal Code (IPC). The legal recognition of child marriage under PCMA as merely “voidable” is fundamentally incompatible with the strict liability provisions under POCSO. To uphold the spirit of both laws, all child marriages should be declared void ab initio, leaving no room for legal or cultural ambiguity.<sup>25</sup>

Second, the marital exception under Section 375 of the IPC—even though read down in *Independent Thought*—must be comprehensively repealed.<sup>26</sup> As long as remnants of this exception exist, it continues to signal social approval for child marriage and marital rape, thereby diluting the protective intent of POCSO and violating the constitutional rights of minor girls.

Third, there is a pressing need to train police officers, Child Marriage Prohibition Officers (CMPOs), judicial magistrates, and Child Welfare Committees (CWCs) to sensitively and uniformly apply these laws.<sup>27</sup> Capacity-building must be coupled with stronger accountability mechanisms to prevent underreporting, victim intimidation, and procedural delays.

Fourth, the government should invest in public awareness campaigns, especially in rural and marginalized areas, to educate families about the legal and developmental harms of child marriage. Engagement with community leaders, religious institutions, and school systems is essential to shift entrenched attitudes and create an enabling environment for enforcement.

Finally, India must fully honor its international obligations under the Convention on the Rights of the Child (CRC) and CEDAW by adopting a child-rights-centric legal regime. This includes centering the voices of minors in judicial proceedings, upholding their right to bodily autonomy, and removing any legal provisions that create exceptions based on marital status or

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<sup>25</sup> See The Prohibition of Child Marriage Act, No. 6 of 2007, § 3, India Code (2007).

<sup>26</sup> *Independent Thought v. Union of India*, (2017) 10 SCC 800, ¶ 113.

<sup>27</sup> Ministry of Women and Child Development (India), Model Guidelines for the Functioning of CMPOs (2019), <https://wcd.nic.in>.

cultural custom.<sup>28</sup>

In conclusion, the clash between protection and tradition in India's legal treatment of child marriage is not merely a statutory inconsistency—it is a constitutional concern. It affects the very core of how the State views its children: as rights-bearing individuals or as subjects of parental and communal control. The law must firmly choose the former. Reforms that prioritize the safety, dignity, and autonomy of the child are not just desirable—they are non-negotiable in a society that claims to uphold justice and equality for all.

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<sup>28</sup> Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, arts. 3, 12; CEDAW, Dec. 18, 1979, 1249 U.N.T.S. 13, arts. 1–5.