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**Natura, diritti e religioni:
analisi comparate**

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Child abuse and child marriage among Hindus

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ABSTRACT

Various forms of child abuse among Hindus, in homes and workplaces, have remained largely hidden, while the mainly historically-focused literature on

such problems does not capture recent changes and challenges. The resulting “blind spots” require a critical overview of such writing to identify how plain (in)human evil-mindedness, greed and various socio-economic pressures continue to result in grave violations of children’s rights and bodies among Hindus. Linked to this, the final part focuses particularly on recent Indian socio-legal and ethical dilemmas regarding child marriages and the agency of young people.

SUMMARY

1. Introduction: Methodological challenges – 2. The hidden phenomenon of child abuse – 3. Child marriages and legal responses – 4. Concluding analysis: A new socio-legal development.

1. Introduction: Methodological challenges

First, it is important to raise ethical issues of research about child abuse and underage marriages. A detailed early overview identified «no end to the types and forms of child abuse that the human mind can devise to control and exploit a vulnerable child»¹, exploding assertions that abuse is rare in India and/or among Hindus². Decades ago, statistics and relevant studies were rare, but detailed raw data are now available. Already in 1991, a Regional UNICEF Director acknowledged swift, positive Indian responses to international calls for

¹ S. BHAN, *Child abuse. An annotated bibliography*, Northern Book Centre, New Delhi, 1991, p. xxvii.

² S. BHAN, *Child abuse*, 1991, cit., p. xxxiv.



action, reflecting the country's recognition of children's vulnerability³. However, recent studies by activist scholars of women's and children's rights also strongly identify the need to take culture-specific, reality-focused approaches⁴.

Such differentiated comments raise several important methodological issues related to positionality. Earlier orientalist and colonially-influenced fascination with certain abuses often displays somewhat unhealthy, dramatized interest in actual and perceived abuses. Sadly, more recent work still contains harrowing accounts of abuse in India⁵. However, emotionally-grounded disgust tends to decontextualise the lived realities of the victims, risking simplistic portrayals of child abuse, particularly regarding child labour and child marriages. Failure to account for situation-specific socio-psychological and economic realities includes silence about the ubiquitous presence of "family arrangements". These cannot be fully trusted to protect "the best interests of the child". Thus, in specific circumstances where the mere survival of a child, especially female children, may be at stake, it remains tricky to define "abuse" from an outsider perspective, reflecting the privileged activist's dilemma. In this regard, emotive discourses over child labour are a case in point⁶.

Necessary socio-legal critiques further highlight methodological tripwires when they indicate that simplistic blind reliance on state-centric laws overlooks that pertinent international conventions and national statutes are not the only "law"⁷. Since the state's formal authority extends into every Indian hut and bedroom only on paper, the lived reality is often quite different, for good ethical reasons, too. Importantly, this includes reference to cultural principles of self-controlled ordering, for Hindus as an aspect of the polysemic term for duty (*dharma*). This pious expectation evidently fails when children are

³ S. BHAN, *Child abuse*, 1991, cit., p. VI. Details of such actions, including India's first National Policy on Children of 1974, are found in S.D. GOKHALE, N.S. SOHONI (edited by), *Child in India*, Somaiya, Bombay and New Delhi, 1979. See generally A.K. CHAKRABARTI, M.K. NAG, S.S. CHATTERJEE (edited by), *Law and child*, R. Cambay & Co., Kolkata, 2004.

⁴ F. AGNES, *Family laws and constitutional claims*, vol. 1, OUP, New Delhi, 2011.

⁵ P. VIRANI, *Bitter chocolate. Child sexual abuse in India*, Penguin Books, New Delhi, 2000.

⁶ For example, M. BOURDILLON, 2006, *Children and work: A review of current literature and debates*, in *Development and Change*, 37(3), pp. 1201-1226 questions, from a human rights perspective, whether discourses on "abolishing" child labour actually work in the children's interest.

⁷ W. MENSKI, *Plural worlds of law and the search for living law*, in W. GEPHART (edited by), *Rechtsanalyse als Kulturforschung*, Vittorio Klostermann, Frankfurt am Main, 2012, pp. 71-88.



violently abused. However, state-centric westocratic criteria for assessing child abuse in India, even if supported by principles of international law, which are also eurocentric, overlook local ethical and justice-focused principles, which often protect child rights. As shown further below, recent policy debates and judicial pronouncements in India regarding child marriages highlight important new ethical questions about the boundaries of childhood and the limits of state-centric intervention in what young individuals themselves consider to be their basic rights. Ethically disparate visions of justice are visible here, reflecting new moral complexities in 21st century India that require analysis.

Purely in demographic terms, of course, South Asia figures prominently in international abuse statistics⁸. Multiple definitional problems arise, however, since indicators for identifying and assessing child abuse differ in various cultural contexts and jurisdictions. Despite ambitious assertions, no universal standards exist in lived reality. One tricky issue remains the fuzzy boundaries between child neglect and child abuse⁹. Notably, contradicting claims that child abuse is encouraged by traditional Hindu texts, an early detailed field study rejected a direct relationship of child abuse with religion or caste¹⁰. Evidence of specific “traditional” socio-cultural efforts to promote early marriage of girl children exists, but neither proves nor justifies a right to complicity in sexual abuse of children among Hindus¹¹.

This article also seeks to identify to what extent abuses implicate religious authorities and/or involve scenarios of normative or factual imbalance within the Hindu legal order, posing a different set of interdisciplinary challenges. However, as indicated, it is possible to state upfront that a scenario of child abuse by religious authorities as reflected in scandals faced by the Catholic Church and, more hidden, in many known cases involving Islamic religious teachers, does not seem to exist among Hindus¹². Sexual abuse by Hindu spiritual leaders has made headlines, but tends to involve adult victims. Below,

⁸ G.S. KEWALRAMANI, *Child abuse*, Rawat Publications, Jaipur, 1992, pp. 28, 29.

⁹ S. BHAN, *Child abuse*, 1992, cit., p. XVII.

¹⁰ G.S. KEWALRAMANI, *Child abuse*, 1992, cit., pp. 67, 71.

¹¹ See R.G. BHANDARKAR, *History of child marriage*, in *Zeitschrift der Deutschen Morgenlaendischen Gesellschaft*, 47, 1893, pp. 143-156.

¹² However, a case of sexual abuse of young girls by priests is reported by P. VIRANI, *Bitter chocolate*, 2000, cit., pp. 135-136.



the article first problematises the definition of child abuse in South Asia and then turns to specific areas of abuse and counter-actions. The major focus on traditional and more recent discourses on child marriages and resultant risks of child abuse allows finally some surprisingly modern insights into recent ethical discussions about the rights of Indian teenagers over their own bodies.

2. The hidden phenomenon of child abuse

As there is no one globally acceptable definition of “child abuse”¹³, various combinations of multi-disciplinary approaches to tackle specific abuses and consider realistic remedies need to be applied in different societies and cultures, where specific parental standards for care and control of children exist¹⁴. Often, idealised moral judgments are involved in defining good/bad childcare and identifying or hiding abuse. Despite little disagreement about what constitutes grave abuse, developing universally agreed boundaries of tolerable limits regarding inadequate parenting, plain neglect or minor forms of abuse, the latter particularly in scenarios of economic constraints, remains a utopian aim that does not help in crisis situations. What should (often inexperienced) parents do when a young child makes their life hell¹⁵? How should desperately poor parents respond when opportunities arise for their child(ren) to augment a family’s earnings? Many cultures emphasise that inflicting pain on children strengthens discipline and self-control¹⁶. Learning about responsibilities rather than demanding rights can be achieved when children are expected to share family burdens¹⁷.

¹³ S. BHAN, *Child abuse*, 1991, cit., p. XVII. G.S. KEWALRAMANI, *Child abuse*, 1992, cit., p. 10.

¹⁴ D. PATEL, *Cruelty and physical torture against children in family. Socio-legal dimensions*, in S. SHIRWADKAR (edited by), *Family violence in India. Human rights, issues, actions and international comparisons*, Rawat, Jaipur, 2009, pp. 174-186.

¹⁵ S. BHAN, *Child abuse*, 1991, cit., p. XXVII and p. XXII, the latter pointing to the use of narcotics by parents to manage a difficult child.

¹⁶ On punishment within the Hindu family see A.D. ROSS, *The Hindu family in its urban setting*, OUP, Delhi et al., 1961, pp. 121-128. On beating children as an educational strategy and aggressive mothers, see G.S. KEWALRAMANI, *Child abuse*, 1992, cit., pp. 45, 55. On overambitious parents, see S. BHAN, *Child abuse*, 1991, cit., p. XXV.

¹⁷ S. BHAN, *Child abuse*, 1991, cit., p. XVI.



Much of the Indian literature emphasises ideals of love and protection¹⁸, often glorifying them in the context of family and society.¹⁹ Yet deeply misleading assumptions about the functioning of the Hindu family are shattered by clear-cut data on child abuse²⁰, with cases that reflect much brutality²¹. The purportedly protective cocoon of the family is often pierced by complicity, impunity and fears about family honour and loss of status (*izzat*) if the identities of sexual predators and their victims become public knowledge. The Indian Supreme Court clearly identified this problem, noting in a criminal appeal in 1983 that in Indian settings, judicial refusal to act on the testimony of a victim of sexual assault in the absence of corroboration would be adding insult to injury. A girl in the tradition-bound non-permissive society of India would, the judge noted, be extremely reluctant even to admit any incident likely to reflect on her chastity and would be conscious of the danger of being ostracised²².

Among Hindus, too, most sexual abuse occurs by people known to the victims, close relatives, caretakers, employers and acquaintances²³. While more sexual abuse of girls than boys is documented, boys are mainly victimised by employment-related abuse²⁴ and child prostitution, nowadays often linked to tourism²⁵. Not restricted to poor, illiterate people or rural contexts²⁶, the evidence identifies links to socio-economic stress, though not all child labourers face abuse²⁷. Sexual abuse occurs also in residential institutions, involving smaller numbers of children²⁸.

¹⁸ S.D. GOKHALE, N.S. SOHONI (edited by), *Child in India*, Somaiya, Bombay and New Delhi, 1979, p. XVIII.

¹⁹ P.N. LUTHRA, *The child in India: Policy provisions and practices*, in S.D. GOKHALE, N.S. SOHONI (edited by), *Child in India*, 1979, cit., p. 89.

²⁰ S.S. PHANSALKAR-JOSHI, *Child sexual abuse. A violation of human rights?*, in S. SHIRWADKA (edited by), *Family violence in India*, Rawat, Jaipur, 2009, pp. 155-173; S. BHAN, *Child abuse*, 1991, cit., p. xv.

²¹ See deeply distressing evidence in P. VIRANI, *Bitter chocolate*, 2000, cit.

²² B. BHOGINBHAI HIRJIBHAI, *All India Reporter* 1983 SC 753.

²³ G.S. KEWALRAMANI, *Child abuse*, 1992, cit., pp. 36, 50, 153; S. CHANDRA, *Enslaved daughters. Colonialism, law and women's rights*, OUP, Delhi, 1998, p. 18.

²⁴ G.S. KEWALRAMANI, *Child abuse*, 1992, cit., pp. 68-75.

²⁵ See U. RAZDAN, *Child paedophilia and international travel and tourism: An unholy nexus*, in *Journal of the Indian Law Institute*, 48:4, 2006, pp. 540-561.

²⁶ S. BHAN, 1991, *Child abuse*, cit., pp. XV, XX-XXVII.

²⁷ G.S. KEWALRAMANI, *Child abuse*, 1992, cit., pp. 151-152. S. BHAN, *Child abuse*, 1991, cit., pp. XIV-XV, XXIV.

²⁸ S. BHAN, *Child abuse*, 1991, cit., pp. XIV, XXV; G.S. KEWALRAMANI, *Child abuse*, 1992, cit., p. 36.



Calls for state intervention reflect that it is unsafe to leave child protection only to families. Earlier state-driven protection efforts in India gave rise to criticisms during the 1970s that such services tilted towards institution-building and bureaucratisation, neglecting child-centric delivery of protection²⁹. The 1988 International Convention on the Rights of the Child inspired important further initiatives and well-researched studies³⁰. NGOs and national media have, since the 1980s, strengthened activism through public interest litigation, which motivated India's Supreme Court to intervene³¹. It is thus possible to conclude broadly that monitoring and reporting mechanisms have significantly improved. Yet, as everywhere, child abuse remains a latent threat to the well-being and basic rights of many Hindu children.

3. Child marriages and legal responses

Child abuse directly links to concerns over minimum ages in Hindu marriages, where consent to marry and restrictions of choice of marriage partners for young Hindus remain problematic. While in rapidly modernising India infant marriages have become almost obsolete, meaningful discussions need to account for new socio-legal concerns over the agency of Indian teenagers in navigating sexual relationships. As discussed below, this increasingly prominent ethical problem is now faced by Indian courts.

It is unhelpful to simply list here the numerous Indian laws on child marriage³², as India's plurilegal scenario demands judicial respect for situation-specificity to achieve "complete justice" (Article 142 of the Indian Constitution of 1950), rather than blind adherence to state-made laws. A holistic analysis must remain aware of competing expectations of Hindu family norms, which expect children to obey their parents, especially their fathers, without question³³, and assertions of individuality among Indian youngsters. This

²⁹ S. BHAN, *Child abuse*, 1991, cit., p. VI.

³⁰ N.K. CHAKRABARTI, M.K. NAG, S.S. CHATTERJEE, (edited by), *Law and child*, R. Cambay & Co, Kolkata, 2004. S. BHAN, *Child abuse*, 1991, cit., pp. XIX, XXVII, XXXIII.

³¹ See F. AGNES, *Family laws and constitutional claims*, 2011, cit. S. SHIRWADKAR, *Family violence in India*, 2009, cit.

³² For details, see W.F. MENSKI, *Hindu law. Beyond tradition and modernity*, OUP, New Delhi, 2003, pp. 322-373.

³³ A.D. ROSS, *The Hindu family*, 1961, cit., p. 128.



tricky balancing act risks that sexual abuse of children by ruthless predators or within arranged or forced marriages remain hidden and beyond the reach of the state, often to protect family honour.

As noted above, among Hindus child marriage is neither a religious obligation nor a binding requirement. Earlier writing suggests that over time the socio-cultural ideal became pre-puberty marriage of girls, partly as a result of Sanskritisation, copying higher caste practices³⁴. During fierce debates in British India on raising the official marriage age in 1891/2, it was realised that pursuing religious/spiritual arguments was pointless, since obviously «on both sides principles other than religious ones were at stake»³⁵. Traditionalists continued to argue, unsuccessfully, against the minimum age of 14 years for girls under the colonial Child Marriage Restraint Act of 1929³⁶. At that time, child marriages were widely practised in India, often for psycho-social and socio-economic reasons that still partly apply today.

While academic and activist discourses continue to fuss over minimum ages, partly to comply with international norms, it remains more important to monitor at what age Hindu marriages are consummated. Arranging early marriages, even for new-born babies, though obviously problematic, does not mean one condones or encourages sexual violence against child brides. More reality-focused, marriage market-based evidence indicates that when a child bride is too young for sexual relations, Hindu society devised specific methods to allow girls to prepare for running their own household and prevent premature marital sex³⁷. Contrary regional evidence from Bengal, about customs of intercourse with immature girls³⁸, reflects a breakdown of Hindu self-control mechanisms. Traditional Hindu ethics value commitment to chastity, as part of *dharma* or *ācāra*, expectations of appropriate behaviour at any point of one's life³⁹.

³⁴ See W.F. MENSKI, *Geschlechterrollen bei den Hindus*, in J. MARTIN, R. ZOEPFFEL (edited by), *Aufgaben, Rollen und Räume von Frau und Mann*, Verlag Karl Alber, Freiburg, München, 1989, pp. 307-339, and p. 316.

³⁵ D. ENGELS, *The Age of Consent Act of 1891: Colonial ideology in Bengal*, in *South Asia Research*, 3:2, 1983, pp. 107-125 and pp. 116-117.

³⁶ T. MAHMOOD, *Marriage age in India and abroad – A comparative perspective*, in *Journal of the Indian Law Institute*, 22:1, 1980, pp. 38-80, pp. 42, 43.

³⁷ See, with examples, A.D. ROSS, *The Hindu family*, 1961, cit., pp. 48, 49.

³⁸ D. ENGELS, *The Age of Consent Act*, 1983, cit., p. 111.

³⁹ See K. KOKAL, *State law, dispute processing, and legal pluralism. Unspoken dialogues from rural India*, Routledge, London and New York, 2014, pp. 63-65.



Modern perspectives classify early marriages under the loaded term of “forced marriages”, which are «still justified in the name of culture, religion, and morality»⁴⁰. This risks infringements of moral/ethical standards in situations «when no one is looking»⁴¹, as some opportunists will brutally abuse child brides. Kakar insightfully explained that «an individual tends to consider the violations of these codes reprehensible only when it displeases or saddens those elders who are the intimate, personal representatives of his communal conscience»⁴².

After numerous efforts to gradually raise the legal age limits for marriage, the situation became “almost meaningless”⁴³, because since 1978 the official minimum ages of 18 years for girls and 21 for boys have been higher than in many Western countries⁴⁴. While earlier statistics from the 1970s to the 1990s recorded large numbers of young girls becoming pregnant⁴⁵, more than 30 years later, statistics reflect a significant decline.

Clearly, modernising India has found its own culture-specific way. Hindu law is not a classic monotheistic religious order, but part of a plural people’s law⁴⁶, and clearly a non-state legal system (NSLS)⁴⁷. It operates as a socio-legal order through constant negotiation, balancing competing expectations and promoting self-controlled ordering⁴⁸. As the Hindu concept of “religion” strongly emphasises social normativities⁴⁹, it should treat sexual abuse of children as intolerable, but these ideals are often infringed. As a result, the existing literature remains largely mentally imprisoned by outrage over such violence, prominently sparked by the early case of Rukhmabai in 1884⁵⁰. Ob-

⁴⁰ J. SAGADE, *Child marriage in India. Socio-legal and human rights dimensions*, OUP, New Delhi, 2005, p. XXVII.

⁴¹ S. KAKAR, *The inner world: A psycho-analytic study of childhood and society in India*, OUP, Delhi et al., 1978, p. 135.

⁴² S. KAKAR, *The inner world*, 1978, cit., p. 136.

⁴³ W.F. MENSKI, *Hindu law*, 2003, cit., p. 324.

⁴⁴ T. MAHMOOD, *Marriage age in India*, 1980, cit., p. 73; W.F. MENSKI, *Hindu law*, 2003, cit., p. 322.

⁴⁵ J. SAGADE, *Child marriage*, 2005, cit., p. 15.

⁴⁶ W.F. MENSKI, *Hindu law*, 2003, cit., p. 25.

⁴⁷ U. BAXI, *Towards a sociology of Indian law*, Satvahan, New Delhi, 1986, p. 2.

⁴⁸ W. MENSKI, *Hindu law in modern times. How Hindu law continues in Modern India*, in T. BREKKE (edited by), *Modern Hinduism. The Oxford History of Hinduism*, OUP, Oxford, 2019, pp. 244-260.

⁴⁹ W. MENSKI, *Hindu law in modern times*, 2019, cit., pp. 244, 245.

⁵⁰ For details see S. CHANDRA, *Enslaved daughters*, 1998, cit.



viously, anxiety remains over the right time for a young person to enter marriage and one sees here, again, the limits of modern state law and international conventions.

4. Concluding analysis: A new socio-legal development

For contemporary India, the analytical focus needs to shift to a nuanced culture-specific approach, alert to women's and children's rights⁵¹, but also examining situation-specific balances in the psycho-social and socio-economic milieu of a rapidly developing country that still leaves many families destitute, endangering many young girls and women.

To analyse the current predicaments, one first needs to remember that, long ago, a leading Hindu law scholar observed that marriage-related concerns tend to be «in the highest degree practical»⁵². For example, a major ancient Sanskrit text, often still misleadingly depicted as a law code, while it is actually a collection of guidance on *dharma*, was misused by earlier advocates of pre-puberty marriages⁵³. A careful re-reading identifies the underlying dilemmas for making marital connections as early as possible. Most telling are *Manusmriti* (ix. 88-89)⁵⁴:

88. To a distinguished handsome suitor should one give one's daughter, in accordance with the prescribed rules, though she may not have attained (the proper age).

89. A maiden, though she has reached puberty, should rather remain in the house until death, than that her father should ever give her to a man devoid of good qualities.

These verses contain sound advice on the marriage market. Far from demanding child marriage, they advise prudence in spouse selection. In lived reality among Hindus, the age «varies according to the convenience of the families concerned»⁵⁵, while «[p]ractice in India tended markedly towards cementing family alliances by betrothals at very early ages»⁵⁶. The advice to act

⁵¹ F. AGNES, *Family laws and constitutional claims*, 2011, cit., pp. XXVIII-XXX.

⁵² J.D.M. DERRETT, *Religion, law and the state in India*, Faber and Faber, London, 1968, p. 106.

⁵³ D. ENGELS, *The Age of Consent Act*, 1983, cit., p. 111.

⁵⁴ J.D.M. DERRETT, *Religion*, cit, p. 107. W.F. MENSKI, *Hindu law*, 2003, cit., p. 330.

⁵⁵ A.D. ROSS, *The Hindu family*, 1961, cit., p. 245.

⁵⁶ J.D.M. DERRETT, *Religion*, 1968, cit., p. 107.



fast, then, does not mean that families had to send small daughters directly to the husband's family or into the hell of marital rape. Rather, as noted, further rituals would be arranged once the girl reached puberty and after that would the marriage be consummated⁵⁷, still of course risking child abuse in the form of marital rape. By the late 1990s, such puberty rituals were no longer widely observed⁵⁸, but many young girls in India have continued to enter marriages quite early.

More than 20 years ago, a prominent socio-legal activist regarding child marriages critically observed that Indian courts, given continued social approval of early marriages, avoided imposing punishments for violating the law and that, overall, the judiciary did not seem to favour the prevention of child marriages⁵⁹. This critique then gave rise to a number of familiar suggestions for reformatory efforts.

However, while the above comments remain valid, the ethical reasoning for judicial caution about punishing offenders and declaring child marriages void has meanwhile significantly changed, as rapidly developing India experiences a new social phenomenon, which also has an older history. Notably, in India's numerous tribal communities, too, fairly early marriages of teenagers were common earlier on⁶⁰. These, however, were largely self-arranged marriages, often involving elopement of the girl or couple, reflecting efforts to avoid pre-marital sex⁶¹. Feminists have treated such individual strategies to make early sexuality socially respectable as subordination of the young woman's agency. But what is the proper age for young people to consent to sex? The official high minimum ages of 18/21 years have led to the increasing phenomenon of juvenile self-choice marriages, intersecting with more recent concerns about child trafficking and abduction⁶².

⁵⁷ A.D. ROSS, *The Hindu family*, 1961, cit., pp. 245-253.

⁵⁸ J. SAGADE, *Child marriage*, 2005, cit., p. 6.

⁵⁹ J. SAGADE, *Raising female age at marriage: Socio-legal constraints and strategies*, in S.P. SATHE and S. NARAYAN (edited by), *Liberty, equality and justice: Struggles for a new social order*, Eastern book Company, Lucknow, 2003, pp. 195-232.

⁶⁰ B. BHANDARI, *Tribal marriages and sex relations*, Himanshu, Udaipur, 1989, pp. 66, 88.

⁶¹ S. KAKAR, *The inner world*, 1978, cit., p. 71. J. SAGADE, *Child marriage*, 2005, cit., pp. 9-14.

⁶² D. FRANCAVILLA, *Interacting legal orders and child marriages in India*, in *Journal of Gender, Social Policy & the Law*, 19, 2, 2011, p. 101.



Elopement, customary in different tribal groups⁶³, is certainly not new among Hindus, but its modern manifestation as the hotly contested topic of unmarried cohabitation has gained prominence⁶⁴. It violates notions of proper status (*izzat*), since lack of compliance with expected behaviour (*dharma*) is seen as an infringement (*beizzati*)⁶⁵. Parental efforts to control young people's agency, «the ultimate colonisation of the self-world of the individual by the group»⁶⁶, are justified through such lenses as tools to avoid a crime against women⁶⁷. But this often ends up as parental violence against rebellious teenagers.

Modernist research, portraying women as «the sexual property of their communities»⁶⁸, identifies that “love” marriages pose a threat to social order. Indian law permits the use of force when the girl is a minor, has been abducted or has eloped, so that parents may seek to retrieve daughters in *habeas corpus* cases, often through put-up assertions that she is under-age⁶⁹. Yet, are parents justified to unravel their children's love entanglements? Remarkably, India's Prohibition of Child Marriage Act of 2006 made child marriages void if the parties are below 16 years, but voidable thereafter. The grey zone falls between the ages of 16 and 18.

Indian superior courts, recognising that India is both modern and traditional, have cautiously embraced socio-legal realism and may protect the agency of juvenile spouses to decide whom to marry. Since the Hindu personal law of marriage continues to accept that under-age unions are factually valid (*factum valet*), a conflict of cultures exists within the Indian legal system⁷⁰. Many High Court cases have engaged in this judicial activism, some explicitly protecting the right of young people to choose their marriage partner, and even

⁶³ B. BHANDARI, *Tribal marriages*, 1989, cit., pp. 69, 78, 91.

⁶⁴ M. RAJKOTIA, *Intimacy undone. Marriage, divorce and family law in India*, Speaking Tiger, New Delhi, 2017.

⁶⁵ P. MODY, *The intimate state. Love-marriage and the law in Delhi*, Routledge, London, New York & New Delhi, 2008, pp. 225-227; P. VIRANI, *Bitter chocolate*, 2000, cit., p. 156.

⁶⁶ P. MODY, *The intimate state*, 2008, cit., p. 227.

⁶⁷ U. CHAKRAVARTI, *From fathers to husbands to love, death and marriage in North India* (edited by) L. WELCHMAN, S. HOSSAIN, “Honour”. *Crimes, paradigms, and violence against women*, Zed Books, London & New York, 2005, pp. 308-331.

⁶⁸ U. CHAKRAVARTI, *From fathers to husbands*, 2005, cit., p. 311.

⁶⁹ *Ibidem*, p. 320.

⁷⁰ D. FRANCAVILLA, *Interacting*, 2010, cit., pp. 103-104.



the position of their young children, now notably as part of citizens' right to life under Article 21 of the Indian Constitution⁷¹.

The older view, that early marriage is somehow a Hindu religious duty, which was actually never a strictly binding rule, has thus by now given way to contemporary, highly realistic concerns about making appropriate marital arrangements, especially when there are parental attempts of forced marriages⁷². If the young people themselves assert that they want to stay together, the judges will now, when the facts are right, side with them⁷³. Since the 2006 Act only invalidates marriages where the girl is below 16, millions of young Hindus still seem to be married as children today.

Irrespective of the existing formal legal restraints, socio-legal realism of course advises continued monitoring to detect any form of child sexual abuse⁷⁴. Notably, though, India's lawmakers and superior courts, based on the respective situation-specific facts of a case, now support young couples against parental challenges to a self-arranged marriage, provided they are at least 16 years old. The socio-ethical discourse has clearly shifted away from its earlier focus on child abuse. Most remarkably, it is now concerned about assessing the strength of teenage spouses' commitment to each other, as a matter of human rights.

⁷¹ See *Latori Chamar vs. State of M.P and Ors.* in the Madhya Pradesh High Court, decided on 10 January 2007, under Indian Kanoon – <http://indiankanoon.org/doc/701102/> paragraph 20 (consulted 23/02/26).

⁷² See *Sh. Jitender Kumar Sharma vs. State & Another* in the Delhi High Court, decided on 11 August 2010, under Indian Kanoon – <http://indiankanoon.org/doc/1983620/> (consulted 23/02/26).

⁷³ See *Sh. Jitender Kumar Sharma*, cit., paragraph 15.

⁷⁴ M. RAJKOTIA, *Intimacy undone*, 2017, cit.