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From *Kanyādāna* to Consent: The Making of Marriageable Age in Hindu Law

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Abstract: *This article reconstructs how "marriageable age" in Hindu law was made across doctrinal, institutional, and evidentiary registers. It traces the shift from a guardianship-centred kanyādāna framework, where puberty and household competence acted as proxies, to a modern regime organised around consent and statutory majority. Colonial change proved pivotal: the fabrication of "Anglo-Hindu law", the move from paṇḍit-assisted adjudication to High Court precedent, and proof rules under the Indian Evidence Act 1872 together made age a justiciable fact. Criminal-law overlays, including the marital rape exception and the Age of Consent Acts 1891 and 1925, were stress-tested in litigation and fed into the civil age conditions of the Sarda/Child Marriage Restraint Act. Contemporary trajectories in India, Nepal, Pakistan, Sri Lanka, and Bangladesh expose the structural effects of registration design and "special-circumstances" waivers. The article concludes with a proportionate reform template and a research agenda grounded in registries, court files, and enforcement records.*

Keywords: *Anglo-Hindu law; age of consent; child marriage; marital exception; evidentiary verification; Bangladesh.*

1. Introduction

The question of "marriageable age" is not a technical curiosity at the edges of family law; it is a hinge on which multiple legal regimes turn. Doctrinally, it demarcates validity from invalidity (or, in many systems, voidability): whether a union is a legal nullity, capable of being avoided at the minor's instance, or fully effective ab initio. It also activates a criminal overlay: the same chronological threshold that validates a marriage may, if crossed in the other direction, convert sex into statutory rape.[1] Institutionally, age limits reverberate through registration offices, evidentiary rules, and enforcement practice: who may register, what proof of age suffices, and which agency acts when an offence is alleged. Normatively, the stakes are still higher. Age-of-marriage rules distribute power across the life-course and the household, mediate the relationship between parental authority and adolescent agency, and are increasingly tested against equality jurisprudence, welfare considerations, and evolving understandings of bodily autonomy. The core claim is that, over an extended historical period, Hindu law shifted from a guardianship-centred

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[1] Bharatiya Nyaya Sanhita, 2023, **s 63,** exception 2 (India); Protection of Children from Sexual Offences (POCSO) Act, 2012, ss 2(d) and 3 (India).

paradigm, in which *kanyādāna* and allied tutelary logics dominate, to a personhood-centred model grounded in consent and statutory majority. This trajectory is punctuated, sometimes redirected, by colonial criminal-law interventions and only unevenly consolidated in post-colonial codifications. The fissures are visible: statutory exceptions, gaps in verification and registration, and forum shopping across personal, special, and criminal jurisdictions persist. In Bangladesh, these fault-lines are acutely shaped by an optional registration regime for Hindu marriages and by a "special provision" that permits judicially sanctioned departures from the minimum age.[2]

The term "Hindu law", used in this article, refers to a layered field rather than a single code: *śāstric* prescriptions and commentaries; lived custom; the Anglo-Hindu constructions precipitated in the colonial courts; and post-independence legislation and case law. That layering matters because doctrinal contests about age have always been mediated by the forum and the form of law applied - textual exegesis, custom proof, case-law analogies, or statute. The colonial turn is especially salient: in the nineteenth century, Anglo-Hindu law crystallised through translations, treatise-writing, and judicial method, generating categories, such as the familiar void–voidable distinction, that do not map neatly onto *śāstric* discourse, yet continue to structure modern adjudication.[3] The analysis is anchored primarily in India, not least because the pivotal colonial enactments and many post-1950 Supreme Court decisions emanate there, but Bangladesh receives separate, sustained treatment, both because of its distinctive statutory architecture and because it exposes the institutional consequences of optional registration for Hindu marriages. Calibrated references to Pakistan, Nepal, and Sri Lanka supply comparative texture where they help to clarify doctrinal structure or policy design.

Terminological care is essential. Consent is not capacity: a fifteen-year-old may express volition without possessing legal capacity to marry. Numerical age must be distinguished from puberty proxies: much of the pre-statutory law relied on biological or ritual markers, later recoded into numbers. Finally, two questions must be kept apart: whether an underage marriage is efficacious (as marriage) in private law, and whether its solemnisation or consummation attracts penal consequences. In India, for example, the law renders a child marriage voidable at the option of the contracting party who was a child at the time, even as criminal law polices sexual conduct with

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2 Registration of Hindu Marriage Act, 2012 s 3(2) (Bangladesh); Child Marriage Restraint Act, 2017 (CMRA 2017), s 19 (Bangladesh).

3 JDM Derrett, 'The Administration of Hindu Law by the British' (1961) 4(1) *Comparative Studies in Society and History* 10, 11–12, 31; Hindu Marriage Act, 1955, ss 11–12 (India).

minors.[4] In contemporary India, the Supreme Court has read down the marital-rape exception to align the criminal law with an 18-year age floor, thereby closing one notorious gap for girls aged fifteen to eighteen; this development will be a recurring reference point for the article's proportionality analysis.[5]

The inquiry draws on three families of sources and interlocks methods accordingly. First, early textual materials - Vedic and *Gṛhya-sūtra* prescriptions, *Dharma-sūtra*/*Dharmaśāstra* treatises, and classical commentaries - are used to reconstruct the tutelary frame in which *kanyādāna* operated. Second, colonial commissions, statutes, and reported decisions are examined to trace the emergence of age-thresholds in criminal and matrimonial law, and to identify the doctrinal "imports" of Anglo-Hindu adjudication (categories, burdens, evidentiary habits).[6] Third, post-colonial statutes, judicial decisions, and administrative circulars are read against registration and prosecution data to assess enforcement and evasion: how age is proved (or not), who brings actions, and where state capacity falters. The method is doctrinal and historical, but socio-legal in spirit: archival traces of practice (police files, registrar records, and programme evaluations) are used to triangulate prescriptive claims. Throughout, the article employs proportionality as a decision-rule to calibrate protective aims (preventing coerced/early marriage and sexual exploitation) with emerging commitments to adolescent agency, recognising that blunt criminalisation can, in certain settings, unintentionally victimise the putative beneficiaries.

Two cautions shape the evidentiary strategy. First, text–practice gaps are endemic. Dating and authorship controversies in early materials, regional heterogeneity, and the long-run circulation of commentarial glosses complicate any straightforward reading of *śāstra* as social fact. Second, age proof is a chronic institutional weakness: under-registration of births and reliance on medical estimation generate uncertainty at precisely the moment when criminal consequences or matrimonial status turn on chronological thresholds.[7] Here, the article treats "puberty" as a historically contingent proxy rather than a trans-historical rule, and foregrounds the evidentiary frameworks that have developed around official records and expert testimony in both India and Bangladesh.[8] Bangladesh merits a dedicated section because its present statutory configuration crystallises the

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4 Prohibition of Child Marriage Act, 2006, s 3 (India).

5 *Independent Thought v Union of India* (2017) 10 SCC 800 [1], [87]– [88].

6 Derrett, 'The Administration of Hindu Law by the British' (n 3) 11–12.

7 *Jaya Mala v Home Secretary, Government of Jammu & Kashmir* (1982) 2 SCC 538 [9]; *Alamelu v State* (2011) 2 SCC 385 [40].

8 Indian Evidence Act, 1872, s 35 (India); CMRA 2017 (Bangladesh) (n 2) s 12.

tensions animating this field: Hindu marriage registration is optional (which means non-registration does not vitiate validity), yet child marriage triggers penal law; moreover, a "special provision" permits court-authorised departures from the age floor "in the best interests" of the minor, a formulation that raises hard questions about standards, safeguards, and the risk of instrumentalising "welfare" to launder predation or economic pressure.[9]

The article proceeds in five movements. It begins by excavating the early doctrinal frameworks around guardianship, gift, and marital capacity. It then turns to the colonial reconfiguration, structured around the criminal law's age-of-consent interventions and the matrimonial law's emerging age thresholds, with close attention to case-law that both reflected and redirected social controversy. A third part offers a jurisdiction-specific study of Bangladesh: the optional Hindu marriage registration regime, proof-of-age rules, and the practical operation of penal provisions. A fourth part broadens to South Asia to assess the extent of post-colonial consolidation and continuing dissonances across systems. The final part addresses contemporary conflicts of law and policy design, asking what combination of registration reform, evidentiary rules, and proportionate criminal law best advances equality, welfare, and adolescent agency - benchmarked, where appropriate, against international standards that proscribe child marriage and require free and full consent.[10]

2. Early Frameworks: Vedic and *Gṛhya-sūtra* Worlds

In the earliest strata, marriage is framed less as a bilateral contract than as a sacramental hinge between ritual competence and the making of a household. The nuptial rite installs the domestic fire, inaugurates a rhythm of shared offerings, and thereby qualifies the couple to discharge duties that are constitutive of juridical personality within this world. In such a setting, "capacity" is read through ritual fitness: to be married is to be fit to perform, and performance in turn founds standing within the order of dharma.[11] The

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[9] Registration of Hindu Marriage Act, 2012 (Bangladesh) (n 2) s 3 (1)– (2); CMRA 2017 (Bangladesh) (n 2) s 19.

[10] Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A (III), art 16(2); Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (opened for signature 10 December 1962, entered into force 9 December 1964) 521 UNTS 231, arts 1–3; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, art 16(2); Convention on the Rights of the Child (CRC) (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, arts 1, 24(3).

[11] Stephanie W Jamison, 'Marriage and the Householder: vivāha, gṛhastha' in Patrick Olivelle and Donald R Davis Jr (eds), *Hindu Law: A New History of Dharmaśāstra* (OUP 2018) 145–147.

*Gṛhya-sūtra*s thus bind household formation to the sacrament; the fire is to be kept constantly, and the spouses are yoked in a liturgy that makes them co-agents of prescribed acts.[12]

Age, in this normative world, is rarely numerically fixed. The texts speak instead through markers (*bālā*, *kanyā*, *yuvatī*) and through functional proxies such as puberty or readiness for ritual co-performance. Kane's synoptic reading is clear: in the older *sūtra* materials, girls "were married about the time of puberty," the point being less biological than juridical, a threshold at which the rites could be meaningfully borne.[13] Later scholastic verses try to stabilise the lexicon, distinguishing, for example, *gaurī*, *rohiṇī*, and *kanyā* by approximate stages, yet these remain classificatory gestures rather than statutory ages; they operate as signals to guardians and ritualists, not as codified numbers.[14]

Forms of union and transfer are articulated through the juridical logic of *kanyādāna*: the maiden is "given," under guardianship, to a qualified groom, with variations in purpose and consideration that yield the canonical typology of marriage forms. Already in the *Gṛhya-sūtra* and *Dharmaśāstra* corpora, we encounter the celebrated enumeration - *brāhma*, *daiva*, *ārṣa*, *prajāpatya*, *gāndharva*, *āsura*, *rākṣasa*, *paiśāca* - together with rival abridgements that omit some forms or rearrange their sequence.[15] The hierarchy of guardianship is presupposed throughout: the father is the primary donor; agnatic kin succeed him; and the normative apparatus regulates disclosure of defects and the finality of the gift, underscoring that *kanyādāna* is a jurally serious transfer even where the ritual idiom dominates.[16]

Two interpretive cautions follow. First, these are prescriptive liturgical texts, not reportage of social practice. Their authority derives from the grammar of dharma rather than the positivist apparatus of courts and codes, and they vary by school, region, and commentator. The result is a textured but non-uniform map in which the ritual defines ideals, not necessarily frequencies, and in which the same rite may carry different implications across textual families.[17] Secondly, precisely because the sacramental frame bundles capacity into ritual competence, age talk remains oblique: it

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[12] Hermann Oldenberg and Friedrich Max Müller (trs), *The Gṛhya Sūtras, Part II* (Sacred Books of the East vol 30, Clarendon Press 1892) 194–95.

[13] P V Kane, *History of Dharmaśāstra*, vol 2, pt 1 (Bhandarkar Oriental Research Institute 1941) 439.

[14] ibid 441–42.

[15] ibid 517–21.

[16] ibid 521.

[17] Jamison, 'Marriage and the Householder' (n 11) 145–146.

tracks ritual readiness and the management of sexuality within a household economy more than it articulates public-law thresholds.

Even so, the materials acknowledge tension. On one side stand exhortations that urge guardians to give the girl before puberty, sometimes in emphatic moral language. On the other sits a mitigatory strand that, where guardians default, allows a "marriageable" girl to act after a brief interval marked by her menses, an acknowledgement that agency cannot be indefinitely suppressed by custodial inaction. Read together, these strands confirm the underlying point of the early record: the Vedic and *Gṛhya-sūtra* worlds build marriage as a sacrament that authorises a household; they imply age through capacity-proxies and status-markers rather than numbers; and they embed *kanyādāna* within guardianship hierarchies while leaving space—however narrow—for corrective agency where those hierarchies fail. The later scholastic drive to enumerate, fix, and police would come, but the earliest system rests on ritual competence as the principal juridical sieve through which marriageable age is understood.

3. *Dharma-sūtra* and *Dharmaśāstra* Systematisation

The *Dharma-sūtra*s and the later *Dharmaśāstra* literature transform a dispersed repertoire of customary rites into prescriptive legal doctrine. What had earlier been performed as household practice and regional observance is systematically rationalised, given normative hierarchy, and articulated through categories - authority (śruti/smṛti), status, incapacity, impediment, and remedy - that read unmistakably like law. In this movement from practice to prescription, juristic technique becomes visible: authors abstract rules from ritual scripts, align them with a theory of sources, and organise them into decision-rules capable of resolving conflict.[18]

Within this systematisation, guardianship defaults are framed with striking clarity. The kanya, literally the maiden, often imagined as pre- or peri-pubescent, is rendered a legal object of transfer under *kanyādāna*, but the power to "give" her is tiered. Texts set out an order of kin: father first, then paternal grandfather, brother, and other agnates, with certain formulations also naming the maternal grandfather and, in some lists, the mother; disqualification follows lunacy or comparable incapacity. The doctrinal point is twofold. First, guardianship is not an open field but a ranked office; secondly, the office is functional, lapsing or passing over a relative whose defect vitiates consent. A minority strand also recognises an eventual reversion to the girl's own choice: if guardians delay beyond a specified

[18] Patrick Olivelle (tr), *The Dharmasūtras: The Law Codes of Āpastamba, Gautama, Baudhāyana, and Vasiṣṭha* (OUP 1999) 39–41.

period after puberty, the maiden may select for herself, sometimes with royal permission.[19]

Puberty thus operates as a juridical proxy long before modern age-of-majority statutes. It signifies biological capacity to cohabit and to bear children, and, for some authors, a threshold at which guardianship becomes increasingly conditional. The canons do not converge on a single number; yet they do offer numeric counsel in the idiom of propriety. One widely cited formulation recommends that a man of thirty marry a girl of twelve (or one of twenty-four a girl of eight), a counsel that ties nuptial ideal to asymmetry of age and to premarital virginity. These are not enforceable thresholds but normative yardsticks: they shape adjudication indirectly, by structuring presumptions about fitness and by colouring evaluations of delay or haste, while leaving room, in hard cases, for remedial accommodation.[20]

Impediments elaborate equally with the provisions of prohibited degrees (*sapinda* and *sagotra*), ritual disabilities, and defects that either bar a union altogether or render it voidable. The literature distinguishes intrinsically invalid unions (for example, within specified degrees) from those that attract penance, restitution, or conditional recognition. This pairing of impediment with remedy conjoins two registers of normativity, ritual pollution and legal consequence, and permits differentiated responses. The juristic habit is to weigh form (proper giving, witnesses, rites) against substance (capacity, consent in its limited classical sense, freedom from bar), then to calibrate sanction accordingly: penance and gift in some cases, annulment in others, and, across the range, status consequences for offspring and property.

That property regime matters particularly for the *kanyā* once married. *Strīdhan*, women's property, sits at the intersection of capacity and remedy. On the one hand, it recognises a domain of female holding (received at marriage or thereafter) insulated, at least in principle, from agnatic appropriation; on the other, its control may be qualified by guardianship during minority or by the husband's household claims, generating a recurrent tension between exhortation (honour and protect women's gifts) and enforceable entitlement. Later scholastic debates turn precisely on this fault line: whether the textual veneration of women's property is an ethical surplus or a legal shield. In doctrinal practice, *strīdhan* operates both as a compensatory tool, mitigating the disabilities of guardianship, and as a site where those disabilities are reproduced through management and consent rules.

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[19] Kane, *History of Dharmaśāstra* (n 13) 505–07.

[20] ibid 439.

The remedial repertoire is correspondingly varied. Where a marriage is tainted by a curable defect - minor ritual omission, uncertain witness, or improper gift - the texts prescribe *prāyaścitta* (penance), additional gifts, or supplementary rites. Where a decisive bar exists - close-kin impediment, deceit about status, or incapacity - some authors contemplate dissolution or non-recognition, while others prefer status downgrading (exclusion from sacrificial roles) without severing the union. The effect is to produce a scale of invalidity in which moral gravity, ritual order, and social stability are jointly weighed, and in which the position of the girl is mediated through her guardian's acts unless the post-puberty escape hatch is reached.

Across these doctrines, the age of marriage is treated as a normative concern with legal implications rather than as a statutory rule. The texts seek to prevent two dangers: premature sexualisation of the pre-pubescent body and the social disorder thought to attend delayed guardianship. Puberty marks the pivot. Before it, the idiom is sacramental and custodial; after it, delay triggers a shift towards the maiden's agency, whether conditional (exercisable with or after official permission) or residual (exercisable only upon guardian default). Read together, the *sūtra-smṛti* archive yields a coherent picture: a guardianship-centred law of marriage consolidating custom into rule, qualifying office by capacity, and using puberty, and sometimes numerical counsel, as proxies for majority, while keeping remedies flexible enough to sustain order when ideals fail.

4. Commentarial Variance and Regional Schools

The classical "schools" conventionally styled *Mitākṣarā* and *Dāyabhāga* were not mere scholastic badges; they embodied rival juristic grammars whose centre of gravity lay in inheritance, yet whose assumptions spilled over into questions of marital capacity and guardianship. On the *Mitākṣarā* reading, coparcenary arises by birth, such that a son's proprietary personality is activated ab initio; that premise tends to construe paternal powers (including consent-giving in *kanyādāna*) as fiduciary rather than absolute. By contrast, the *Dāyabhāga* defers proprietary acquisition until the father's death, reasoning from the spiritual economy of obsequies; guardianship is correspondingly cast as a stronger proprietary stewardship during the father's lifetime, with sharper insistence on the guardian's role as the effective surrogate for consent in arranging a minor's marriage.[21]

These divergent inheritances fostered distinct emphases in marital doctrine. *Mitākṣarā*-oriented writers, leaning on coparcenary by birth, tended to qualify paternal discretion by situating it within a wider web of joint-family

[21] JDM Derrett, *Introduction to Modern Hindu Law* (OUP 1963) 23; Robert Lingat, *The Classical Law of India* (University of California Press 1973) 172–174.

interests; *Dāyabhāga*-side authors, stressing post-mortem vesting, more readily centred the father (or agnatic guardian) as the decisive juridical agent for a *kanyā*. The point is not that either school legislated a numerical "age of marriage"; they did not, but that each supplied a conceptual pathway for treating non-major brides: through guardianship defaults, consent surrogates, and the retrospective regularisation of imperfect unions.[22]

Scholastic techniques mattered. Commentators across regions mobilised *Mīmāṃsā*-derived canons to resolve tensions among sources and to sustain the validity of acts performed by competent guardians on behalf of juridical minors. The dialectic is visible in the way exegetes, *Mitākṣarā* and *Dāyabhāga* alike, deploy canons of construction and analogical reasoning to stabilise transactions, often favouring the fait accompli (*factum valet*) where the foundational text was ambiguous. The jurisprudential craft here is not ad hoc reasoning; it reflects a disciplined method for reconciling prescriptive ideals with social practice, particularly in domains such as marriage, adoption, and partition, where agency may be exercised by others for those below full capacity.[23]

Translation from scholastic authority to governance occurred through layered institutions. Caste councils, lineage bodies, and urban guilds functioned as fora of norm-application, drawing selectively on the prestige of commentaries while giving primacy to locally intelligible arrangements. Their "conventions" lacked the form of legislative acts, yet they operated with real regulative force: they orchestrated remedies, oversaw registral practices of a rudimentary kind, and mediated disputes concerning guardianship and marital arrangements. As Lingat shows, custom both counterbalanced and, at points, prevailed over scholastic rule, without dissolving the latter's authority; the logic of the system privileged authority rather than modern legality.[24]

Placed together, these features explain why "age" materialises in the scholastic record less as a fixed arithmetic threshold than as a bundle of proxies. Puberty served as one such proxy, signalling bodily capacity, yet its juridical effect was filtered through guardianship hierarchies, and consent surrogates anchored in *kanyādāna*. In *Mitākṣarā* settings, the joint interests of the family could narrow unilateral paternal action; in *Dāyabhāga* regions, the father's consolidated stewardship before succession tended to enlarge the ambit of guardian-led decision. Neither trajectory produced a uniform rule. What they did produce were regionally

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22 ibid 172–174.

23 ibid 150–152.

24 ibid 226–229, 176, 180, 196, 200, 258.

resilient styles of legal reasoning by which underage marriages, if effected by putative guardians, were disciplined, regularised, or, in harder cases, unpicked, always to reconcile textual authority, ritual propriety, and community practice.[25]

5. Medieval and Early-Modern Pluralisms

Across the medieval and early-modern centuries, the marital landscape of the subcontinent did not present a single Brahmanical template but a patchwork of regionally embedded customs whose juridical effects were real, even when they sat awkwardly with scholastic ideals. Nowhere was this clearer than in the matrilineal pockets of the south-west. Under *marumakkattāyam*,[26] descent and property were organised through the mother's line; the authority of the senior male of the lineage (the *kāraṇavan*) structured household governance, while conjugal ties operated with a degree of flexibility unknown to patrilineal regions. *Sambandham*-type unions, often contracted post-puberty and dissolvable without elaborate rites, located legitimacy in the matrilineal group rather than in a sacramental transfer from a father to a husband. This architecture shifted the practical loci of "capacity" and "consent": it was less a matter of paternal guardianship at the point of *kanyādāna*, more a matter of a woman's incorporation within, and protection by, her *taravād*.[27] The age at which unions were formed, therefore, tracked local ideas of maturity and

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[25] ibid 172–174; 150–152; 226–229.

[26] ***Marumakkattāyam* is a** matrilineal system formerly prevalent among Nair and allied communities in Kerala, under which descent and inheritance followed the female line. Property was held corporately by the matrilineal joint family, managed by the ***kāraṇavan***, the senior male of the line. Individual members enjoyed maintenance and residence rather than absolute shares. Marriage commonly took the form of ***sambandham***, a relatively flexible union formed after puberty, with the children belonging to the mother's line. Colonial codification modified aspects of the regime, for example, the Madras *Marumakkattayam* Act 1932 and cognate Travancore and Cochin statutes, and the system was effectively dismantled by the Kerala Joint Hindu Family System (Abolition) Act, 1975, which converted communal holdings into individual property and aligned succession with general Hindu law.

[27] ***Taravād* is the** basic matrilineal joint family unit in *marumakkattāyam*. It comprised a founding ancestress and her descendants through women, living in one or more interconnected households. The *taravād*'s property was inalienable save for necessity, administered by the *kāraṇavan* for the collective benefit. Sub-branches, known as **tāvāzhi**, could crystallise as the female descendants of a particular woman and, in certain circumstances, take separated property on partition. Membership determined rights of residence, maintenance, and ritual affiliation, while legal capacity in matters such as guardianship and marriage was often mediated through the *taravād*'s corporate authority rather than vested in a single patriarchal household head.

household competence rather than a numerically fixed threshold, with puberty functioning as a frequent, though not universal, proxy.[28]

In eastern India, meanwhile, hypergamous arrangements, most famously the Kulin[29] complexes, generated their own economies of marriage. The juridical consequences were double-edged: families pursued status-enhancing matches, sometimes at the cost of proliferating asymmetrical unions and long separations between spouses, while village and caste forums evolved pragmatic techniques for maintenance, repudiation, and remarriage. Here, too, "marriageable age" was less an abstract number than a moving boundary negotiated through kin strategy, dowry capacity, and local sanction; it could be pressed downwards to secure alliances or allowed to rise where female labour and education within the natal household were prized.

Plural jurisdictional sites mediated these practices. Panchayats, temple bodies, caste *sabhās*, and, in some regions, overlapping sultanate or *nāyaka* authorities heard disputes, recorded settlements, and enforced sanctions. Adjudication was often iterative and transactional: questions of guardianship, capacity, and restitution were resolved in terms of lineage membership, property control, and reputation rather than through a single code-like rule.[30] Crucially, the evidentiary record that survives, inscriptions noting gifts linked to marriage alliances; copper-plate or temple records that identify guardians or consent-givers; and later palm-leaf transactional notes, captures age in relational language: *bālā*, *yuvatī*, or terms signalling ritual competence, rather than precise numerals. Where numbers appear, they tend to be contextual (linked to initiation rites, coming-of-age ceremonies, or inheritance milestones) and are used as corroboration rather than as constitutive legality.

These pluralisms matter for the present inquiry because they show that "marriageable age" historically functioned as a gatekeeping concept

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[28] K Saradamoni, *Matriliny Transformed: Family, Law and Ideology in Twentieth Century Travancore* (SAGE Publications 1999) 66–70.

[29] "*Kulin*" denoted elite Bengal lineages, chiefly among Brahmins and some *Kayasthas*, whose prestige fuelled an upward-marriage market. Lower-rank families sought Kulin grooms to raise status, encouraging polygyny, serial marriages, and prolonged separations, with wives often left in natal homes on scant maintenance. Caste forums improvised rules on subsistence, repudiation, and remarriage, but enforcement was patchy. Nineteenth-century reformers, notably *Ishwar Chandra Vidyasagar*, criticised these practices, and later statutory controls on age and registration hastened their decline. The system's historical imprint on marriage strategies and litigation in eastern India nonetheless persisted.

[30] Donald R Davis Jr, 'A Historical Overview of Hindu Law' in Timothy Lubin, Donald R Davis Jr and Jayanth K Krishnan (eds), *Hinduism and Law: An Introduction* (CUP 2010) 21.

embedded in household economy and forum-specific adjudication, not as a universal statutory limit. In matrilineal zones, post-puberty unions and the prominence of the maternal lineage treated sexual maturity and capacity to manage conjugal obligations as the operative criteria; in hypergamous regimes, the temporalities of alliance frequently trumped uniform thresholds. Any modern codification that purports to replace this mosaic with a single age rule must therefore reckon with the deep historical fact that age served as a culturally mediated proxy for competence, guardianship, and social protection, and that forums enforced those proxies pragmatically rather than arithmetically.

6. Colonial Interventions and the Age-of-Consent Controversies

The colonial age–of–consent controversies unfolded within a legal order that was itself being constructed. Early attempts to produce an "Anglo-Hindu law", from Halhed's translation of the "Gentoo" code[31] to Colebrooke's digest,[32] were paired with pundit-assisted adjudication and then steadily displaced by case-law and the supervisory authority of the Judicial Committee of the Privy Council. The institutional frame shifted from Company-era Sadr Adalats to the post-1861 High Courts; with codification, the Indian Evidence Act 1872 supplied common rules of proof that mattered intensely for questions of age and capacity. Two provisions were pivotal: section 35 recognised the evidentiary relevance of entries in public records (including, as practice developed, school and registrar entries for date of birth), while section 45 admitted expert opinions in "science or art", enabling courts to hear medical testimony - autopsies,

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[31] **"Gentoo" Code was p**ublished in 1776 as *A Code of Gentoo Laws*. Nathaniel Brassey Halhed's translation rendered into English a Persian version of a Sanskrit compilation prepared by Company-commissioned paṇḍits in Bengal. Intended to supply uniform rules for the Company's courts, it presented prescriptive extracts on marriage, inheritance, and guardianship as settled "Hindu law". Its authority was fragile. The text filtered regional and scholastic variation through a chain of translation, Persian to English, and it flattened commentarial debate. Even so, it shaped early adjudication, offering judges a quasi-statutory reference point and reinforcing the practice of consulting court paṇḍits on disputed points.

[32] Henry Thomas Colebrooke's *Digest of Hindu Law on Contracts and Successions* (1798–1801) translated and systematised materials chiefly from *Jagannātha Tarkapañchānana*'s Sanskrit digest, compiled for the East India Company. With extensive notes and cross-references to leading schools, it supplied the courts a more technical map of doctrine than Halhed's volume, especially for property and succession. The work advanced the idea of a single, text-anchored "Anglo-Hindu" law, yet it too carried limitations, selective sourcing, a Bengal-centred lens, and the mediation of *paṇḍit* opinion. It nevertheless became a staple in colonial judicial reasoning and a bridge to later case-law synthesis.

clinical examination, and, in time, skeletal or "ossification" assessments - when documentary proof was thin.[33]

The criminal law sat uneasily with the personal-law status of marriage. Section 375 of the Indian Penal Code 1860 defined rape but, through an Exception, insulated non-forcible intercourse within marriage when the wife was above a stipulated age; section 376 supplied the punishment. Civil-marriage experiments, via the Special Marriage Act 1872 (Act III of 1872), demonstrated a nascent exit from religious personal law for a limited class willing to comply with the renunciatory conditions of the Act; the Native Converts' Marriage Dissolution Act 1866 (Act XXI of 1866) cautiously created an exit path where conversion ruptured a pre-existing union.[34]

Litigation in the 1880s exposed the conceptual pressure points around consent, status, and adolescent agency. In Bombay, the *Rukhmabai* suits (1885–1888)[35] tested whether a decree of restitution of conjugal rights could compel cohabitation where a woman married in childhood refused, as an adult, to enter her husband's household. At first instance, Pinhey J declined relief; on appeal, the court took a more orthodox view of marital duty, but the controversy, saturated with medical testimony about the risks of forced consummation reframed "consent" in a regime that otherwise conceptualised marriage as status.[36]

In Calcutta, the *Phulmoni Dasi* prosecution (1890–1891)[37] displayed the tragic edge of the marital Exception. A ten-year-old wife died following

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[33] Indian Evidence Act, 1872 (India) (n 8) ss 35 and 45.

[34] Indian Penal Code, 1860, ss 375 (exception) and 376 (India) (now repealed); Special Marriage Act, 1872 (India); Native Converts' Marriage Dissolution Act, 1866 (India).

[35] ***Rukhmabai* suits (1885–1888) was b**rought in Bombay as an action for restitution of conjugal rights by a husband to whom *Rukhmabai* had been married in childhood. The litigation became a focal point for contesting the boundaries of consent, status, and bodily integrity within Hindu marriage. At first instance, the court refused to compel cohabitation, emphasising the injustice of forcing an adult woman, who had never cohabited, into her husband's household. On appeal, a more orthodox view prevailed and a decree was indicated, but the proceedings were saturated with medical evidence about the harms of non-consensual consummation and with public debate over women's autonomy. The case ultimately ended not with enforced cohabitation but with a negotiated settlement that allowed separation, and it helped refract the age-of-consent controversy through the lens of health, capacity, and the limits of status-based remedies.

[36] *Dadaji Bhikaji v Rukhmabai* (1885) 9 ILR Bom 529; *Dadaji Bhikaji v Rukhmabai* (1886) 10 ILR Bom 301; See also Kanika Sharma, 'Withholding Consent to Conjugal Relations within Child Marriages in Colonial India: *Rukhmabai*'s Fight' (2020) 38(1) Law and History Review 151–175.

[37] Tried in Calcutta, the case exposed the brutality of the then marital Exception to rape. *Phulmoni Dasi*, a ten-year-old wife, died following intercourse, because the exception insulated marital relations with a wife "not under ten". The husband was acquitted of

intercourse; her husband escaped conviction for rape because the Exception then insulated marital intercourse with a wife "not under ten", though he was convicted of a lesser offence. The case became a national scandal and a touchstone in the ensuing reform campaign.[38]

Public argument raged across reformist and conservative presses. Behramji Malabari's widely circulated Notes on Infant Marriage and Enforced Widowhood[39] mobilised a new, trans-provincial print public, while nationalist ambivalence, backed by a familiar rhetoric of "religion in danger", sought to resist state intervention even when reform was privately conceded.[40]

Legislative change followed quickly. The Age of Consent Act 1891 (Act X of 1891) raised the floor of consent to intercourse to twelve, irrespective of marital status, altering the Exception to section 375 and transforming the line between status and crime. Early High Court constructions concentrated on the familiar triptych of proof (penetration, consent, and crucially, age) requiring the courts to evaluate medical and documentary evidence with new care.[41]

By the 1920s, evidentiary practice had thickened. Courts considered school registers (invoking section 35 of the Evidence Act) as corroborative proof of age, even as they acknowledged their limits where primary material was lacking; where registers or certificates were absent or doubtful, medical examination—eventually including ossification tests, was admitted under

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rape and convicted only of a lesser offence. The proceedings, widely reported, galvanised reformers and medical opinion, reframing "consent" and bodily harm within status-based marriage. The political fallout was immediate: Parliament enacted the Age of Consent Act, 1891, raising the threshold in the exception from ten to twelve and marking a decisive step toward age-based protection.

38 *Queen-Empress v Hurree Mohun Mythee* (1891) 18 ILR Cal 49; see also Ishita Pande, '*Phulmoni*'s body: the autopsy, the inquest and the humanitarian narrative on child rape in India' (2013) 4(1) South Asian History and Culture 9, 9–15.

39 A Parsi reformer based in Bombay, *Malabari* issued his *Notes* in the mid-1880s as a polemical pamphlet against infant marriage and the coercive disciplining of widows. Circulating through English and vernacular presses, reprinted in multiple editions, and paired with petitions to colonial officials and Indian elites, the tract fused moral argument with medical testimony and case reportage to depict the harms borne by girls and young widows. It helped knit a trans-provincial reform public, gave organisers a shared vocabulary for age and consent, and fed directly into the debates that culminated in the Age of Consent Act, 1891, even as nationalist and conservative critics invoked "religion in danger" to resist legislative intervention.

40 Behramji M Malabari, *Notes on Infant Marriage and Enforced Widowhood in India* (Bombay 1884) as reproduced in *Papers Relating to Infant Marriage and Enforced Widowhood in India* (Government of India 1884) 1–4.

41 Age of Consent Act, 1891 (India); It amended Indian Penal Code, 1860 (India) (n 34) s 375; Charles H Heimsath, 'The Origin and Enactment of the Indian Age of Consent Bill, 1891' (1962) 21(4) *Journal of Asian Studies* 491, 491–504.

section 45. The Criminal Law (Amendment) Act 1925 (Act XVIII of 1925) raised the age of consent again (in a differentiated fashion for married and unmarried girls), while keeping the marital Exception structurally intact.[42]

The problem of identification and registration persisted. General civil registration under the Births, Deaths and Marriages Registration Act 1886 was permissive rather than mandatory; local marriage-registration initiatives were patchy, and many communities remained outside any effective scheme. The evidentiary consequences were predictable: poor birth registration weakened age-proof, enforcement capacity, and the credibility of prosecution in age-of-consent trials.[43]

The political trajectory then pivoted from criminal consent floors to civil age conditions. The Age of Consent Committee (1928–29), after sifting oral and documentary evidence province-by-province, recommended a broader policy turn; its report fed directly into the Child Marriage Restraint Act 1929 (the Sarda Act), which for the first time placed general statutory conditions on the solemnisation of marriage itself (with penalties and cognisance rules that reveal both ambition and caution). The move did not erase the criminal-law architecture; rather, it layered civil restraints upon a criminal substrate still organised around the marital Exception.[44]

Two emblematic case-lines framed the doctrinal development of the period for any later comparative table. First, the *Rukhmabai* litigation, which forced courts to articulate the limits of restitution as an equitable remedy when set against bodily integrity and the maturing personhood of a woman married in childhood. Secondly, the Calcutta prosecutions in the wake of *Phulmoni Dasi*, including Queen-Empress v Hurree Mohun Mythee, where judges were compelled to parse the Exception's reach while still giving meaning to the newly raised consent floor. Both lines—together with sedition proceedings such as Queen-Empress v Jogendra Chunder Bose (arising from the press's denunciation of the 1891 reform) - demonstrate how criminal, civil, and constitutional idioms collided in the long 1890s.[45]

By the time the Sarda Act was passed, the state had learned two lessons that would reverberate into the twentieth century. First, criminalisation without reliable age-verification induces evidentiary fragility; hence the

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[42] Indian Evidence Act, 1872 (India) (n 8) ss 35 and 45; Criminal Law (Amendment) Act, 1925 (India).

[43] Births, Deaths and Marriages Registration Act, 1886 (India).

[44] Age of Consent Committee India, *Report of the Age of Consent Committee, 1928-1929* (Calcutta: Government of India, Central Publication Branch 1929) 9; Child Marriage Restraint Act, 1929 (India).

[45] *Queen-Empress v Jogendra Chunder Bose* (1892) 19 ILR Cal 35; *Queen-Empress v Hurree Mohun Mythee* (n 38).

strategic reliance on registers, certificates, and expert evidence under the Evidence Act. Secondly, the politics of consent was never only about intercourse; it was also about capacity, exit, and the institutional availability of non-religious marriage and dissolution. The contradictions were never wholly resolved, but the trajectory is clear: from pundit-mediated status to codified proof; from a marital Exception that neutralised the criminal law to a layered regime that combined criminal floors with civil age conditions, leaving enforcement to founder or succeed on the quality of registration and evidence.

7. Late-Colonial Codification: Sarda/ Child Marriage Restraint Act (CMRA) 1929 and After

The late-colonial settlement translated a century of agitation into a penal restraint that left the legal status of under-age unions largely intact. The Child Marriage Restraint Act 1929 (the "Sarda Act") criminalised the conduct of specific actors rather than the marriage itself: adult males who contracted a child marriage; priests or other officiants who performed it; and parents or guardians who promoted, permitted, or negligently failed to prevent it. Age thresholds were numerical and sex-differentiated, eighteen for males and fourteen for females, and the Act added a modest power to enjoin impending ceremonies, while leaving solemnised unions efficacious in private law.[46] In short, the statute detached punishment from validity: a design choice that would long condition the terrain of remedies, proof, and evasion.[47]

Amendment and administration then did the bulk of the work. In 1938 Parliament extended the Act extraterritorially to British subjects and persons domiciled in India, an assertion of jurisdiction without any doctrinal shift in validity.[48] A further round of late-colonial revision raised aligned ages across the criminal and marriage codes by 1940, increasing the Sarda floor for girls to fifteen and the Penal Code's marital-exception age to fifteen, even as the general age of consent moved to sixteen. The overall pattern, incremental increases coupled with steady refusal to nullify the union, was explicit in official tabulations at the time.[49] On the ground,

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[46] Child Marriage Restraint Act, 1929 (India) (n 44) ss 3–6, 12.

[47] Shireen J Jejeebhoy and Ranjana S Pradhan, *Child Marriage and the Law in India* (Centre for Enquiry into Health and Allied Themes 2005) 5.

[48] Child Marriage Restraint (Amendment) Act, 1938, s 1 (India).

[49] Law Commission of India, *Eighty-Fourth Report on Rape and Allied Offences: Some Questions of Substantive Law, Procedure and Evidence* (Report No 84, 1980) 31–32.

police and magistrates navigated evidentiary circulars and short limitation periods; prosecutions were few, and conviction rates lower still.[50]

Case-law under the Sarda Act confirmed the compromise. Courts treated child marriages as punishable events yet operative statuses, entertaining abetment charges against guardians and officiants while declining to unravel completed unions. The burden of age-proof generated familiar difficulties: courts oscillated between documentary surrogates (school registers or municipal entries) and medical testimony, including early iterations of bone "ossification" estimates, neither conclusive and both vulnerable to fabrication or error in rural settings.[51] The enforcement cartography that resulted, sporadic urban action, and thin rural coverage, mirrored the institutional limits of registration and identification.

These continuities and breaks can be seen against the longer arc of criminal-law overlay. From the outset the Indian Penal Code 1860 (IPC) recognised a marital exception to rape: sexual intercourse with one's own wife was not rape if she was above the specified age, initially set at ten. The Age of Consent Act 1891 responded to the *Phulmoni Dasi* scandal by raising that floor to twelve "irrespective of marital status", while leaving the exception intact; in 1925 the general age of consent rose again to fourteen and the marital exception to thirteen. By 1940 the general and marital ages were sixteen and fifteen respectively.[52] Civil-marriage experiments supplied a counterpoint. The Special Marriage Act 1872 fixed minimum ages (eighteen for men, fourteen for women) and required guardian consent under twenty-one, sketching an alternative capacity regime outside community law.[53] The Native Converts' Marriage Dissolution Act 1866, in turn, created a narrow exit route where conversion fractured the conjugal bond, a reminder that "capacity" and "exit" were being legislated piecemeal rather than systemically.[54]

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[50] Law Commission of India, *Proposal to Amend the Prohibition of Child Marriage Act, 2006 and Other Allied Laws* (*Report No 205*, 2008) 32–33.

[51] Law Commission of India, *Eighty-Fourth Report on Rape and Allied Offences* (n 49) 31–33; cf Ishita Pande, 'Sorting Boys and Men: Unlawful Intercourse, Boy Protection and the Child Marriage Restraint Act in Colonial India' (2013) 6(2) The Journal of the History of Childhood and Youth 332–358.

[52] Indian Penal Code, 1860 (India) (n 34) s 375 (as originally enacted: Exception—wife not under 10); Indian Criminal Law Amendment Act, 1891 (India) (n 41); Indian Penal Code (Amendment) Act, 1925 (India); Law Commission of India (n 49) 31–32.

[53] Special Marriage Act, 1872 (India) (n 34) s 2 (2)–(3).

[54] Native Converts' Marriage Dissolution Act, 1866 (India) (n 34) ss 4–5.

8. Bangladesh: Historical Trajectory and Contemporary Regime

The trajectory of Bangladesh is distinctive yet intimately entangled with the Bengal-centred genealogy of "age" in the late colonial reform archive. The *Phulmoni Dasi* prosecution in Calcutta (1890–91) made Bengal the emblematic theatre in which the violence licensed by the marital exception was laid bare and, politically, where colonial criminal law briefly reoriented the debate from guardianship and custom to bodily harm and adolescent vulnerability. That episode fed directly into the 1891 Age of Consent Act and, later, into programmatic talk of "restraint" rather than "annulment" as the lever of reform. In Bengal, the Sarda/Child Marriage Restraint Act 1929 would be implemented with the familiar contradictions of the era: the marriage of minors remained efficacious in private law, while criminal law targeted adult males, guardians and officiants; police and magistrates struggled with proof of age and with the evidentiary authority of school registers versus medical opinions; and enforcement was often sharpest in urban sites, least visible in rural ones. The evidentiary anxieties of the provincial administration, how to ascertain age, how to distinguish coerced unions from elopements, shadowed proceedings under the 1929 statute right up to 1947, and they did not disappear with Partition.

East Pakistan continued on the Sarda architecture, with limited effect from the Muslim Family Laws Ordinance 1961 (largely irrelevant to Hindus). The legal practice of the period suggests continuity in the two structural problems that Bengal had bequeathed to Pakistan and thence to Bangladesh: first, uncertainty in age proof; and secondly, the uneasy coordination between criminal prohibitions and the law's simultaneous recognition (or at least non-annulment) of underage unions in civil fora. Those continuities would shape the independent state's choices after 1971.

Following independence, the normative architecture of the 1972 Constitution provided a recalibrated frame. Equality before law and non-discrimination (Articles 27–29), and the guarantees of protection of law and personal liberty (Articles 31–32), set the textual horizon for any regime that purports to regulate capacity, consent, and status across communities. In practice, they ground proportionality review when criminal laws (and their exceptions) impinge on bodily integrity and adolescent agency; and they discipline administrative discretion in the registration, investigation, and prosecution chain. While constitutional litigation on "marriageable age" remains sparse, these provisions supply the doctrinal baseline for future challenges to exceptions or differential treatment that disproportionately burden Hindu girls or adolescents.

The contemporary statutory landscape for Hindus is marked by four interlocking pillars. First, the Hindu Marriage Registration Act 2012 created, for the first time in Bangladesh, a formal pathway to documentary

recognition of Hindu marriages, yet it did so by framing registration as optional. Section 3(1) authorises registration "for the purpose of preserving documentary evidence" of Hindu marriages, while section 3(2) maintains that non-registration does not impair the validity of a marriage solemnised according to *śāstric* rites; the effect is to respect status as formed in custom, but without guaranteeing a paper trail that can be relied on in subsequent civil or criminal proceedings.[55] Second, the Child Marriage Restraint Act 2017 (CMRA) modernised the offence structure and penalties (including liability for adult parties, guardians, and officiants), but introduced the most controversial device in contemporary South Asian child-marriage law: a "special-circumstances" exception by which a court may authorise a marriage below the statutory thresholds if satisfied that doing so is in the "best interests of the minor," with parental/guardian consent.[56] The core offence provisions (including punishments for contracting, promoting, or solemnising) are stringent on paper,[57] yet section 19 creates an escape-valve that, unless tightly circumscribed, risks normalising child marriage through exceptionalism and transferring the costs to the young bride.[58] Third, the Births and Deaths Registration Act 2004 furnishes the backbone of age proof: section 18(1) stipulates multiple legal uses for a birth certificate, including marriage registration and access to public services, and designates the certificate as a primary proof instrument across administrative interfaces.[59] That legislative design operates in tandem with section 35 of the Evidence Act 1872, which recognises entries in public records made in the discharge of official duties as relevant facts, thereby permitting civil and criminal courts to rely on Civil Registration and Vital Statistics (CRVS) records as evidence of age, subject to challenges to authenticity and accuracy.[60] Fourth, although not specific to Hindus, the Family Courts regime (now consolidated by the Family Courts Act 2023, replacing the earlier ordinance practice) and the Guardians and Wards Act 1890 configure the custody/guardianship arena in which adolescent agency, welfare and parental claims are actually adjudicated. Section 17 of the 1890 Act entrenches the "welfare of the minor" as the guiding consideration in appointing a guardian and directs courts to have regard to age, sex, religion, the character and capacity of the proposed guardian, and

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55 Registration of Hindu Marriage Act, 2012 (Bangladesh) (n 2) s 3(1)–(2).

56 CMRA 2017 (Bangladesh) (n 2) s 19.

57 ibid ss 7–11.

58 ibid s 19 read with Child Marriage Restraint Rules, 2018, r 17 (procedure for applications in "special circumstances"); See also Center for Reproductive Rights, *Ending Impunity for Child Marriage in Bangladesh: Normative and Implementation Gaps* (2018) 20–22.

59 Births and Deaths Registration Act, 2004, s 18(1) (Bangladesh).

60 Evidence Act, 1872, s 35 (Bangladesh).

(where mature enough) the minor's intelligent preference; section 25 structures custody returns.[61] This statutory welfare logic has long oriented Bangladeshi appellate doctrine, with the courts treating personal-law rules as relevant considerations but not as rigid constraints when welfare points the other way.[62]

Courts and administration have been called to navigate the friction between paper and practice. On the civil side, guardianship and custody litigation before the High Court Division routinely uses the welfare standard to mediate parental conflict, to weigh adolescent preferences (especially in cases of elopement), and to police the line between protection and overreach. On the criminal side, prosecutions linked to underage unions turn on the rigour of age proof and on whether police, prosecutors and magistrates read the CMRA 2017 as a general prohibition with narrow derogations or as a broad policy of tolerance hedged by public-order concerns. Evidence practice has slowly converged on a hierarchy that privileges birth certificates where available (and not impeached), with school registers and medical ossification tests supplying residual proof, but the variation across districts remains wide, and courts still record doubts about retrospective registration, late entries, and inconsistent documentation. The 2017 Act envisages institutional supports, most notably child-marriage prevention committees, but the operational detail and resourcing have been uneven, impeding standardised referral pathways to social services.[63]

For Hindu communities, the optionality of marriage registration is the single greatest legal impediment to a coherent age-of-marriage regime.[64] It depresses incentives to register at the point of marriage, particularly where dowry or cross-caste dynamics make publicity unattractive), and it complicates both civil claims (maintenance, succession, guardianship, and criminal enforcement (where proof of age and status is pivotal). While the 2012 Act's respect for ritual validity is understandable in pluralist terms, it externalises risk to the very persons the age thresholds are designed to protect, adolescent girls negotiating asymmetric power inside families and community forums. A mandatory regime, phased in with fee waivers,

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61 Guardians and Wards Act, 1890, ss 17 and 25 (Bangladesh).

62 *Md Abu Baker Siddique v S M A Bakar* (1986) 38 DLR 106 (AD); Taslima Yasmin, 'Judicial Trends in Child Custody Cases in Bangladesh: Traditional Islamic Law Rules versus Welfare Considerations' (2017) 12(2) Asian Journal of Comparative Law 233.

63 CMRA 2017 (Bangladesh) (n 2) s 3.

64 Registration of Hindu Marriage Act, 2012 (Bangladesh) (n 2) s 5 (providing that a Hindu man under 21 years of age or a Hindu woman under 18 years of age is not eligible for registration, so that marriages involving minors, while capable of being valid under śāstric law, fall outside the statutory registration framework and further fragment the age-of-marriage regime).

mobile registration in rural and peri-urban areas, and robust grievance redress for registrar misconduct, would significantly strengthen the evidentiary infrastructure without altering the underlying personal-law norms on formation, consent, or divorce.

The 2017 "special-circumstances" clause has generated predictable controversy. In principle, a judicial waiver trained on the best interests of the child, with independent child representation and recorded, reviewable reasons, can serve as a narrow safety-valve in genuinely exceptional cases (for example, where a mature adolescent's welfare would be demonstrably worsened by prohibiting a union she coherently seeks). In practice, the open-textured language invites forum shopping and ex post rationalisations of pressure marriages, especially where pregnancy, family honour, or local political economy supply strong incentives. The interaction of the clause with the marital exception under the Penal Code 1860 compounds the risk: section 375 still excludes sexual intercourse by a man with his wife (if she is not under thirteen) from the definition of rape, leaving a zone of non-consensual sex beyond the reach of the general offence.[65] As long as a judicially authorised child marriage remains possible and a marital exception survives, adolescent girls sit at the intersection of two derogations, each of which weakens the protective aims of the age-of-marriage regime.

9. Post-Colonial Regimes in Other Jurisdictions

Across the post-colonial landscape of South Asia, the legal architecture of "marriageable age" has been forged at the intersection of codified personal law, criminal-law overlays, and administrative techniques of registration and proof. India, Pakistan, Nepal, and Sri Lanka display a broad movement towards higher age thresholds and formal consent, yet they do so unevenly, with pockets of exception and conflict that expose the continuing tension between protective policy and plural legal orders.

India: In India's codified Hindu and secular frameworks, age operates as a threshold condition of capacity. The Hindu Marriage Act 1955 (HMA) sets the age precondition at twenty-one for the bridegroom and eighteen for the bride, embedding it within the validity conditions of marriage; the Special Marriage Act 1954 (SMA), applicable inter-religiously and to civil marriages, mirrors this scheme.[66] These age floors were subsequently reinforced by the Prohibition of Child Marriage Act 2006 (PCMA), which defines a "child" as a male under twenty-one and a female under eighteen, and renders such marriages voidable at the instance of the minor, while

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[65] Penal Code, 1860, s 375 (Bangladesh) (exception: wife not under thirteen).

[66] Prohibition of Child Marriage Act, 2006 (India) (n 4) ss 2(a), 3, 12.

declaring certain aggravated child marriages void ab initio and attaching penal sanctions.[67] Parallelly, the Protection of Children from Sexual Offences Act 2012 (POCSO) defines a "child" as any person under eighteen; by doing so, it supplies an absolute bar to treating sexual activity with a minor as consensual.[68] The Supreme Court's decision in *Independent Thought v Union of India* read down the marital "exception" in Exception 2 to section 375 of the Penal Code from fifteen to eighteen, aligning the criminal-law floor with POCSO's definition and with the PCMA policy.[69]

Regulatory practice has been made to do significant work alongside statutes. The Supreme Court in *Seema v Ashwani Kumar* directed States to make marriage registration compulsory, identifying registration as a secular, uniform measure to prevent child marriage and facilitate age verification; the Court underscored that compulsory registration would serve the "interests of society" and reduce disputes about status.[70] State-level rules now require production of age-proof documents (birth certificate, school certificate, and related records) to register marriages, institutionalising administrative checks alongside the statutory floors.[71] Special-statutory initiatives—including child-protection policing under POCSO—have also prompted cross-reporting and prosecution where underage unions are discovered, even when parties claim social recognition under personal law.

Pakistan: The federal-provincial settlement of Pakistan produces a patchwork. The colonial-era Child Marriage Restraint Act 1929 (CMRA) (still the federal baseline) fixes the age at eighteen for males and sixteen for females and criminalises facilitation, though with light penalties; its continued application places Pakistan out of step with the regional move to eighteen across the board.[72] A distinct line of regulation flows from the Muslim Family Laws Ordinance 1961 (MFLO), which, inter alia, mandates registration of Muslim marriages through licensed Nikah Registrars and union councils, an institutional mechanism with implications for age-screening in practice.[73] Post-Eighteenth Amendment provincial competences have generated divergence: Sindh enacted the Sindh Child

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67 ibid.

68 POCSO Act, 2012 (India) (n 1) s 2(d).

69 *Independent Thought v Union of India* (n 5) [197].

70 *Seema v Ashwani Kumar* (2006) 2 SCC 578 [18]–[19].

71 UNFPA, 'Marriage Registration Across India: Current Issues and Way Forward' (*UNFPA India*, 2017) 3–4 <https://india.unfpa.org/sites/default/files/pub-pdf/unfpa_note_-_registration_of_marriages_formatted2.pdf> accessed 26 November 2025.

72 Child Marriage Restraint Act, 1929, s 2 (Pakistan).

73 Muslim Family Laws Ordinance, 1961, s 5 (Pakistan).

Marriage Restraint Act 2013, raising the minimum age to eighteen for both sexes and strengthening penalties; Punjab amended the CMRA mainly to enhance sanctions while leaving the female age at sixteen; Khyber Pakhtunkhwa and Balochistan similarly retain the lower female age.[74] At the federal-territory level, the Islamabad Capital Territory now has a dedicated Child Marriage Restraint Act (2025) fixing eighteen years for both spouses, signalling movement towards convergence within the federation.[75] For religious minorities, the Sindh Hindu Marriage (Amendment) Act 2018 and the Hindu Marriage Act 2017, applicable to certain other provinces, set eighteen as the minimum for both parties and require registration, tightening the interface between minority personal laws and child-protection policy.[76]

Nepal: Nepal has adopted the most categorical approach in the region. The Muluki Criminal Code 2017 criminalises child marriage with a *higher* marriageable-age floor of twenty years, rendering such marriages void and attaching custodial penalties; related provisions invalidate marriages concluded without consent and those within prohibited degrees, thereby aligning matrimonial capacity, consent, and kin impediments within a single criminal-law chapter.[77] These criminal norms are complemented by civil-law provisions in the 2017 Civil Code, which systematise the conditions for a valid marriage around age, consent, and prohibited relationships; in prosecutorial practice, local authorities have increasingly invoked the criminal provisions to intervene pre-emptively, using administrative records (birth registration, school enrolment) to evidence minority.[78]

Sri Lanka: Sri Lanka's general law raised the minimum age to eighteen through amendments in the mid-1990s to the Marriage Registration

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74 National Commission for Human Rights, Pakistan, 'Alternative Submission to the UN Committee on the Rights of the Child (CRC) on Pakistan's combined sixth and seventh periodic reports on compliance with the Convention on the Rights of the Child' (*NCHR*, 2025) 6 <https://nchr.gov.pk/wp-content/uploads/2025/04/NCHR-Submission-on-CRC-2025.pdf> accessed 26 November 2025.

75 Islamabad Capital Territory Child Marriage Restraint Act, 2025.

76 Sindh Hindu Marriage (Amendment) Act, 2018, s 3(a) (Pakistan); Hindu Marriage Act, 2017, s 4 (Pakistan).

77 Muluki Criminal Code, 2074 (The National Penal (Criminal) Code, 2074 (2017)), ss 171 and 173 (Nepal).

78 **United Nations Population Fund & Ministry of Women, Children and Social Welfare (Nepal),** *Ending Impunity for Child Marriage in Nepal* **(UNFPA, 2016)** https://nepal.unfpa.org/sites/default/files/pub-pdf/Ending%20Impunity%20for%20Child%20marriage%28final%29_25Nov16.pdf accessed 4 December 2025 (discussing enforcement practice and evidentiary use of civil registration and school records).

Ordinance, establishing a uniform floor with compulsory registration under the civil regime.[79] The long-standing outlier is the Muslim Marriage and Divorce Act (MMDA), which historically has lacked a fixed minimum age and has permitted the marriage of a girl below twelve with the authorisation of a Quazi. This feature has drawn sustained criticism from women's groups and international bodies.[80] Debates over MMDA reform, which have touched on the introduction of an absolute age of eighteen, consent standards, and procedures, have been recurrent. As of 2025, authoritative civil-society commentary reports that comprehensive reform had not yet been enacted, despite cabinet-level initiatives and draft bills.[81]

10. Contemporary Synthesis: Consent, Capacity, Majority

A contemporary synthesis of marriageability in South Asia must hold together three axes: numerical age, decisional capacity, and evidentiary verification. First, a minimum age is the primary safeguard against coercion. Indian law sets the threshold by defining a "child" as a male under twenty-one and a female under eighteen for purposes of marriage prohibition; this bright line is reinforced (for sexual autonomy) by a parallel framework that treats all sexual activity with persons under eighteen as offences under a child-protection code with express overriding force in case of conflict with any other law.[82] Secondly, decisional capacity, understood as the ability to comprehend and genuinely consent to the burdens of marriage, cannot be presumed merely from bodily maturity or the existence of a ceremonial union; the Supreme Court has explicitly read the marital-rape exception down to ensure that a husband has no immunity where the "wife" is under eighteen, aligning the law of consent across the statute book.[83] Thirdly, evidentiary verification, how the legal system determines whether a putative spouse has crossed the relevant threshold, must be administrable and reliable. The current approach prioritises documentary proof (school and birth registration) and turns to medical opinion only residually, thereby reducing room for manipulation ex post.[84]

These axes expose the continuing tensions between personal-law narratives and child-protection statutes. In India, the non-derogation and overriding

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79 **Marriage Registration (Amendment) Act, No. 18 of 1995 (Sri Lanka) s 15** https://www.commonlii.org/lk/legis/num_act/mra18o1995354/s2.html accessed 4 December 2025

80 Muslim Marriage and Divorce Act 1951, s 23 (Sri Lanka).

81 Women and Media Collective (n 79) 3.

82 Prohibition of Child Marriage Act, 2006 (India) (n 4) s 2(a); POCSO Act, 2012 (India) (n 1) s 42A.

83 *Independent Thought v Union of India* (n 5) [79.2]– [79.3], [107].

84 Juvenile Justice (Care and Protection of Children) Act, 2015, s 94 (India).

clauses of the child-protection code preclude any resort to religious or customary law that would dilute the minimum-age or consent standards, and the Court's harmonising method underscores that message.[85] By contrast, the 2017 Act of Bangladesh, while preserving 21/18 as the general minimum ages, creates a "special circumstances" gateway permitting judicially authorised marriages below the threshold, an exception criticised for indeterminacy and the risk of normalising child marriage through parental and local-administrative surrogates for consent.[86]

International norms exert a harmonising pressure that points in one direction. CEDAW insists that child marriage has "no legal effect" and requires specification of a minimum age; the CRC defines the child as every human being below eighteen and, through General Comment No 20, reaffirms eighteen as the minimum age for marriage, coupled with birth registration to secure proof.[87] The 2030 Agenda's SDG 5.3, committing states to eliminate child, early and forced marriage, provides a programmatic backbone against which domestic exceptions must be justified, if at all, with exceptional rigour.[88] A proportionate template for any residual carve-outs would demand (i) a compelling, non-patriarchal aim; (ii) strict necessity, with no less-restrictive alternative to protect the minor; (iii) robust, child-centred judicial scrutiny with independent representation; and (iv) verifiable evidence of age and best interests recorded contemporaneously. Anything less re-creates the very asymmetries that the modern law of consent, capacity, and majority was designed to eradicate.

11. Drivers of Change in the Twenty-First Century

The contemporary reconfiguration of "marriageable age" in South Asia is propelled by mutually reinforcing social, legal, and economic dynamics. Four drivers are especially salient.

First, the expansion of schooling and changing labour markets has recalibrated household calculations about the timing of marriage. Where credible prospects of non-farm employment for young women have emerged, parents and adolescents alike defer marriage to accumulate education and skills. Experimental evidence from rural India shows that an exogenous increase in service-sector job opportunities for young women

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85 POCSO Act, 2012 (India) (n 1) s 42A; *Independent Thought v Union of India* (n 5) [76].

86 CMRA 2017 (Bangladesh) (n 2) s 19.

87 CEDAW (n 10) art 16(2); CRC (n 10) art 1; Committee on the Rights of the Child, 'General comment No 20 on the implementation of the rights of the child during adolescence' (2016) UN Doc CRC/C/GC/20 para 40.

88 UNGA, 'Transforming our world: the 2030 Agenda for Sustainable Development' (21 October 2015) UN Doc A/RES/70/1 target 5.3.

reduced the probability of marriage and first birth over three years, a behavioural response mediated by higher enrolment and training take-up, and altered aspirations about post-marital work.[89] In Bangladesh, long-running female-stipend programmes generated sizable gains in secondary schooling and postponed marriage, indicating that even modest, well-targeted transfers can shift the marriage–schooling frontier.[90] Supply-side innovations matter too: reducing the physical costs of secondary schooling, exemplified by the Bihar bicycle programme, substantially increased girls' enrolment and exam participation, thereby extending the window before marriage.[91]

Secondly, women's movements and strategic litigation have altered the normative and legal terrain. The Supreme Court's decision in *Independent Thought* read down Exception 2 to Section earlier 375 IPC, holding that intercourse with a wife below eighteen constitutes rape, thus harmonising the criminal law with the child-protection framework and articulating a constitutional vocabulary of bodily integrity for married adolescents.[92] The judgment's reasoning owes much to sustained advocacy that refused the insulation of "marital status" from the grammar of consent.

Thirdly, the "child-protection turn" has entrenched a criminal-law architecture whose default presumption is incapacity under eighteen. The Protection of Children from Sexual Offences Act 2012 defines a "child" as under eighteen and criminalises sexual activity with minors irrespective of ostensible consent; mandatory-reporting duties amplify the criminal system's reach into adolescent intimacy.[93] High courts have cautioned against the carceral overshoot that follows when consensual relationships are swept into the penal net, urging age-proximity carve-outs and legislative recalibration.[94] Empirically, so-called "romantic cases" constitute a significant share of POCSO dockets and record very high

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89 Robert Jensen, 'Do Labor Market Opportunities Affect Young Women's Work and Family Decisions? Experimental Evidence from India' (2012) 127(2) *Quarterly Journal of Economics* 753, 756.

90 Youjin Hahn and others, 'Education, Marriage, and Fertility: Long-Term Evidence from a Female Stipend Program in Bangladesh' (2018) 66(2) *Economic Development and Cultural Change* 383, 383–384; Shahidur R Khandker, Mark R Pitt and Nobuhiko Fuwa, 'Subsidy to Promote Girls' Secondary Education: The Female Stipend Program in Bangladesh' (2003) 3–4, 19–21.

91 Karthik Muralidharan and Nishith Prakash, 'Cycling to School: Increasing Secondary School Enrollment for Girls in India' (2017) 9(3) *American Economic Journal: Applied Economics* 321, 321–323.

92 ibid.

93 POCSO Act, 2012 (India) (n 1) ss 2(d), 3, 4, 19, 21.

94 *Sabari @ Sabarinathan v Inspector of Police* (Criminal Appeal No 490 of 2018, Madras High Court, 26 April 2019) [21], [26].

acquittal rates, reflecting difficulties in age proof, victim non-support, and the friction between status offences and adolescent agency.[95]

12. Policy Options and Reform Pathways

A credible reform pathway must begin by fixing the threshold question: what ages, for what legal effects, and with what carefully cabined exceptions. A bright-line minimum of 18 for all parties, across personal-law systems and forms of solemnisation (religious or civil), should be the default legal condition for a valid marriage; departure from that default, if permitted at all, must be tightly controlled through a judicial waiver operating ex ante, on recorded "best interests" reasons assessed by an independent court-appointed child's lawyer, with mandatory notice to child protection services and a right of appeal. The waiver should be exceptional, time-limited, and contingent on demonstrable capacity, voluntariness, and the absence of exploitation; it should never authorise a union with a power-imbalanced adult or a relationship under investigation for abuse. International law supplies the frame: CEDAW requires that "the betrothal and the marriage of a child shall have no legal effect," and that states "specify a minimum age for marriage," while the CRC's best-interests principle guides the calibration of any protective exception.[96]

The corresponding criminal-law architecture should eliminate marital-status carve-outs wherever the complainant is under 18, aligning sexual-offence law with child-protection statutes. The Supreme Court of India has already read down the marital exception for 15–18-year-old wives in Independent Thought; a parallel consolidation, without lacunae or contrary presumptions, ought to be an explicit design criterion for reform in the region.[97] Civil consequences should likewise be harmonised: where any underage marriage slips through, it should be void (or at least voidable at the minor's option) with automatic access to maintenance, custody, and residence orders protecting the child spouse, drawing on the Indian PCMA model but removing residual inconsistencies that now invite forum shopping.[98]

Durable prevention depends on reliable proof of age. Universal, digital and auditable civil registration of vital events (birth first, marriage next) should

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[95] Shruthi Ramakrishnan and Swagata Raha, '"Romantic" Cases under the POCSO Act: An Analysis of Judgments of Special Courts in Assam, Maharashtra & West Bengal' (Enfold Proactive Health Trust 7 June 2022) 36 <https://www.girlsnotbrides.org/documents/1951/Romantic-cases-under-the-POCSO-Act_wUNsbKC.pdf> accessed 26 November 2025.

[96] CEDAW (n 10) art 16(2); CRC (n 10) art 3(1).

[97] CEDAW (n 10) art 16(2); CRC (n 10) art 3(1).

[98] Prohibition of Child Marriage Act, 2006 (India) (n 4) ss 3, 12, 15.

therefore be understood as core child-protection infrastructure rather than a matter of routine record-keeping. Recent reforms in Bangladesh on civil registration, vital statistics and identity management illustrate both the promise and the gaps: digitised registration of births and deaths exists and is being integrated with the health system (for example through electronic health-information platforms), yet an integrated life-cycle register that also captures marriage and divorce has not yet been constructed or made fully interoperable. In policy terms, this implies mandatory birth registration before a child enters formal education and at key points of service delivery, the allocation of a unique personal identifier that is linked to marriage registration, and periodic external audits designed to detect anomalies such as age heaping, duplicate identities and retroactive insertions.

Protection must be systemic, not episodic. Police, prosecutors, child-welfare officials, and social workers need shared protocols for risk assessment, emergency protection orders, safe shelter, psychosocial care, and confidentiality. Global public-health evidence endorses this multi-sector coordination and the rigorous enforcement of laws as two of the most effective strategies to reduce violence against children; it also stresses the value of routine monitoring and evaluation.[99] The procedural side matters no less than substance: confidential reporting channels; child-sensitive interviewing; exclusion of degrading cross-examination; in-camera hearings; and secure data-handling rules that protect victims from secondary harm. Bangladesh's specialised tribunals for violence against women and children already provide useful procedural templates (special forums, publication bans, in-camera trial authority) that can be adapted to child-marriage proceedings to minimise trauma and increase uptake.[100]

13. Conclusion

This article has traced a long arc: from *kanyādāna* and guardianship proxies, through the colonial hinge that re-imagined "protection" in penal and evidentiary terms, to contemporary regimes that centre consent and majority. The late-nineteenth-century controversies in Bengal, crystallised

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[99] World Health Organization and others, *INSPIRE: Seven Strategies for Ending Violence Against Children* (WHO 2016) 30, 75, 78–81 <https://iris.who.int/server/api/core/bitstreams/55d8366c-91e9-4afd-8a05-538a0f08ad57/content> accessed 26 November 2025; **United Nations Children's Fund & United Nations Population Fund,** *Addressing Child Marriage in Humanitarian Settings: Technical Guide for Staff and Partners of the UNFPA–UNICEF Global Programme to End Child Marriage* **(February 2021)** https://www.unicef.org/media/92821/file/Child-marriage-humanitarian-settings-technical-guide-2021.pdf **accessed** 26 November 2025**.**

[100] The Women and Children Repression Prevention Act, 2000, ss 14 and 20(6) (Bangladesh).

in the *Phulmoni Dasi* agitation, signalled a shift in the very grammar of marital capacity—one that exposed the limits of ritual guardianship as a proxy for consent and helped to seed later statutory architectures on age and proof.[101] In present-day Bangladesh, that history meets two design choices with outsized stakes for Hindu girls and adolescents: the optionality of Hindu marriage registration and the "special-circumstances" exception in the child-marriage code. Optional registration preserves ritual validity yet attenuates documentary proof of age and status; the exception, by contrast, risks turning a bright-line floor into a negotiable permission, mediated by guardians and courts.[102]

Normatively, the direction of travel is clear. Protection must be robust, but it cannot erase adolescent agency. Constitutional guarantees of equality and non-discrimination (Articles 27–29), together with protection of law and personal liberty (Articles 31–32), supply the decisional yardstick. Any restriction on youthful choice should satisfy a proportionate, evidence-sensitive test that treats the child's best interests as primary while refusing to instrumentalise the adolescent as a mere object of guardianship.[103] International law points in the same direction: the CRC elevates best interests as a primary consideration; CEDAW demands free and full consent to marriage as an equality commitment rather than a discretionary indulgence.[104]

A Bangladesh-centred research agenda can now proceed on firmer ground. Three tasks are urgent. First, recover the administrative grain of enforcement and evasion through provincial gazettes, police and magistracy registers, and High Court Division files, reading these alongside Hindu registrar logs to chart how optional registration shapes civil remedies and criminal proof. Secondly, conduct mixed-methods studies - docket analysis, matched-district designs, and qualitative interviews with registrars, social workers, and adolescent litigants - to identify where the "special-circumstances" clause is invoked, by whom, and with what consequences. Thirdly, build interoperable datasets (CRVS, school registers, court records) to evaluate whether targeted reforms, mandatory registration with transitional waivers, a narrowly tailored judicial-waiver standard with recorded reasons, and independent child representation, advance equality without entrenching carceral reflexes. The constitutional promise is not merely to police minimum ages, but to constitute young

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[101] Tanika Sarkar, 'A Prehistory of Rights: The Age of Consent Debate in Colonial Bengal' (2000) 26(3) *Feminist Studies* 601–622, 601–604.

[102] Registration of Hindu Marriage Act, 2012 (Bangladesh) (n 2) s 3 (1) – (2), 5; CMRA 2017 (Bangladesh) (n 2) s 19.

[103] Constitution of the People's Republic of Bangladesh, 1972, arts 27–29, 31–32.

[104] ibid arts 27–29, 31–32.

persons as rights-bearers whose consent, capacity, and welfare are taken seriously in law and in institutional practice.[105]

[105] ibid, Convention on Consent to Marriage (n 10) art 1(1); CEDAW (n 10) art 16(1)(b).