



Research Article

Child marriage debates during British India: Age of consent to age of marriage

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ABSTRACT

The social reformers continuously attacked the custom of child marriage in the mid-nineteenth century, but they could not start an organized campaign for various reasons. Apart from individual feminism, the female voice was also quiet. In the late Nineteenth Century, the reformer's campaign did not attack the religious aspect of child marriage rather focused on its moral and physical elements. Consequently, they restricted their efforts to the sphere of Age of Consent for sexual Consummation of girls only. The Revivalist leaders' massive opposition compelled the British Indian Government not to interfere with its domestic sphere. The various changes in the first half of the twentieth century supplied a favourable environment to reopen child marriage. In this paper, the author will examine those changes and delineate the shift from "Age of Consent to the age of marriage".

KEY WORDS

Marriage, Child, Debates, Legislative, British

Introduction

Eleven years old married, Bingu Bai got frustrated by regularly sending to husband's place and decided to suicide in a well at Narayan Peeth, station road on the G.I.E. railway between Raichur and Wadi. She was married at six years of age to an older Maratha man.¹ The cases like that of Bingu Bai became a natural

phenomenon during the British-India since religious laws and State Legislation were unfavourable for child girls. The British-government adopted the policy of Non-Interference in 1858 when they directly took over the administration of India. According to this, The British-government decided to administer social matters according to existing laws of ².

In the late eighteen and early nineteenth century, state-sponsored Orientalist scholarship studied the Ancient Hindu past through classical language, i.e. Sanskrit. This scholarship did not highlight Caste, Class, and Gender inequalities in the Ancient Hindu past.³ The Utilitarian stream of writing on India, belonging to the early nineteenth century, highlighted these inequalities, especially that of gender, in painting a picture of the abject Degeneration of contemporary Hinduism, which had fallen prey to repeated foreign conquest, and the efficiency of the Indian men.⁴ According to James Mill, the status of women is an indicator of the condition of society.⁵ This colonial ideology was justifying the imperial subjection of the natives and giving the British a sense of superiority in India. In this state of affairs, the British-government and reformers ended the child marriage debates, at least theoretically, with the Enactment of Child marriage restraint Act⁶ of 1929, popularly known as Sarda Act,⁷ also. Thus, this Act was the first Legislation That fixed the Age of marriage, 14 for girls and 18 for boys and penalized early marriages by fine or imprisonment. This Legislation was not a bunch of black scripts inscribed over white papers,

¹ The Hindustan Times, June 26 1926.

² the native population. Tanika Sarkar, Hindu Wife Hindu Nation: Community, Religion, and Cultural Nationalism, (New Delhi, Permanent Black, 2001), pp.226-249.

³ Uma Chakravarti, "Whatever Happened to the Vedic Dasi", in Kumkum Sangari and Sudesh Vaid, (ed) Recasting Women: Essays on Colonial History, (New Delhi, Kali for Women, 1989), pp.27-81.

⁴ Ibid.

⁵ Geraldine Forbes, Women in Modern India, (New York, Cambridge University Press, 1998), pp.1-9.

⁶ Hereafter C.M.R.A.

⁷ Har Bilas Sarda (Ajmer - Marwara) introduced the Child marriage Bill on September 15, 1927, which eventually enacted into C.M.R.A. on October 1, 1929, Sarda Act

rather than reflects the change in the century-long debate.

Sarda conceptualized his ideas with the glorious Hindu past. He reminisced that once India was self-reliant and self-govern. Its population was homogenous and religious tension was absent. With such romanticizing image of the great Hindu past, Sarda alleged that all problems lay with foreign rule. Sarda's views on women, Hinduism, and marriage were revolutionary for his time during the phase of mass nationalism.

The Age of Consent Act: 1891 was the first significant attack on the custom of Infant Marriage in Colonial India but public opinion against this custom had already taken birth. However, on an individual level. The famous social reformer Ishwar Chand Vidyasagar wrote *Balya Bibaher Dosh (EVILS OF CHILD MARRIAGE)*, in 1850 and it is plausible to start the discussion of child marriage debates with this tract.⁸

Sagar connected the custom of child marriage with the absence of companionate conjugality and criticized those parents who marry their daughter at the tender age of 9 or 10 due to religious prescriptions. Moreover, Vidyasagar argues that child marriage increases the number of widows in society, keeps the girl aloof from education. He added that due to this evil custom, the child bride became "Grihparicharika" or an amid servant and groomer the "bread earner".

Vidyasagar could not start any organized crusade favouring raising the Age of marriage due to certain peculiarities in colonial legal policy and the absence of Organized Female Voice in India.⁹

The foundation of the Indian Penal Code¹⁰ In 1860 fixed the Minimum Age of Consent for the girls at ten years of Age. It prescribed that the punishment for the husband might extend up to transportation for life. Thus, marriage debates begin with the Age of Consent's fixation for girls and punishment for the husband if he violates the law. Even though it might not have touched upon the institution of child marriage yet, it stood for a departure from earlier social Legislation in two ways. First, it introduced the concept of marital rape, and secondly, it made premature Consummation in child marriage a crime in the eyes of the law.

I.P.C. had problematized the crucial area of Hindu conjugality, particularly in the system of Non-Consensual, indissoluble Infant Marriage, Where "the main bases of Hindu Conjugality was the absolutism of Husbands and the total subordination of Wives."¹¹ furious debates opened a crucial area of Hindu

conjugality, particularly in the custom of child marriage, whose ties were considered to remain binding upon women even after the death of the husband¹². It exposed the controversial aspect of child Marriage, uncovered the problems of Consent within Hindu Marriages.

The girl from lowly Carpenter class Rakhma Bai's parents married her at 11, but she never consummated her marriage. She refused to go to her uneducated and diseased husband by 22. However, the British Government had passed the law of restitution of conjugal rights¹³ supported this law. This law entitled the husband to send his wife to prison on her refusal to cohabit with him. Bombay High Court passed a decree in favour of her husband with whom she had refused to go.¹⁴ Rakhma Bai exhibited that in enforcing the marital rights of the husband, the English civil law as it stood, went far beyond the Ancient Hindu law and even modern caste usage¹⁵. This issue foregrounded the problems of Consent very forcefully in dissolubility within the Hindu marriage.

Historians have traced the rise of individual Feminism in India, argues that The Rakhma Bai case towards the close of the Nineteenth-century was a "grand act of defiance" that challenged the basic patriarchal notion of the inferiority of a Woman since now Woman dares to oppose a Man's Right over her, and her position of subordination to him. She, moreover, breached the notion of the sanctity of Hindu Marriage and the role of a wife therein.¹⁶

As the print culture in English and vernacular language developed, the news of sexual abuse of infant wives by their husbands surfaced. Dacca Prakash, in 1857 reported that an elderly husband beat his infant wife to death when she refused to go to bed with him, and the jury had let off the husband from a life sentence.¹⁷ Such cases could be multiplied. The fact was that the girl's Consent had no meaning in any general discussion of Hindu marriages—the controversy for the right Age of Consent connected morality, childbearing, and family interests with eugenics.¹⁸

The famous case of Phulmonee Dasi was the culmination point in the cases of sexual abuse of infant wives. She was a 10-11-year-old child bride whose 35 years old husband raped her to death. Under article 375 of (I.P.C.), her husband was not guilty of rape since she was within the statutory age limit of 10 years. Hence, Phulmonee Dasi's family could not prove the charge of rape and murder before the law.¹⁹

⁸ Gopal Haldar, ed. Vidyasagar Rachnabali, Volume II, Calcutta, 1972

⁹ Sumit Sarkar, *Writing Social History*, (New Delhi, Oxford University Press, 1997), pp.216-281.

¹⁰ Hereafter I.P.C.

¹¹ Tanika Sarkar, *Hindu Wife Hindu Nation*, Op.cit, pp.191-225.

¹² Ibid.

¹³ to tighten the hold of marriage bonds In 1877. *The Hindu orthodoxy*

¹⁴ Sudhir Chandra, *Enslaved Daughters: Colonialism, Law, and Women's Rights*, (New Delhi, Oxford University Press, 1998.)

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ *Education Gazette*, May 1873 quoted in Tanika Sarkar, *Hindu Wife Hindu Nation*, op. Cit. pp.191-225.

¹⁸ Ibid.

¹⁹ Ibid.

These two cases were intimately related to the law of Consent. They had been admittedly sorted out by the Legislature but never gave the pledge that it would not interfere to prevent the commission of offences or to lessen the rigour. Of its sanctions and was entirely free to amend or repeal what it had at first ordained.²⁰ The case of Phulmonee Dasi was not alone of its kind. Dr Jevours's investigation mentioned at least 14 cases of pre-pubertal child co-habitation.²¹ The reformists' press collected and published such accounts of sexual abuse of child bride. For instance, 44 women doctors brought about a long list of cases in which elderly husbands had raped their child brides. The child marriage debates shifted the attention of a colonial government and the social reformers to Infant girls' life and the safety of the Infant girls²².

The famous Parsi social reformer of late-nineteenth-century B M Malabari added enormous weight and urgency for raising the Age of Consent on humanitarian grounds. He tried to pull the Government's attention and secured its support for a reform law through his writings, published as "Notes on Infant Marriage and Enforced Widowhood". He believed that both practices were related to each other.²³

On March 9, 1891, the law member of British India Andrew Scobell introduced the Bill in the Legislative council, and on March 18, 1891, Viceroy Lansdowne approved this Bill the Age of Consent Act came into existence. The Act's provisions raised the Age of Consent for sexual intercourse with Indian girls from 10 to 12 years. The Act defined sexual intercourse with married and unmarried Indian girls below 12 years of Age as rape which was punishable by ten years of imprisonment or by transportation for life.

Dayaram Gidumal argued²⁴ That Malabari knew the pros and cons of the Act because he was in the centre of this Bill.

Meera Kosambi²⁵ Accepts the firm foundation of Patriarchal ideology, which underpinned the Nineteenth-century Indian society and locked its Women into the life-long wife-mother role, based on Hindu, legal and religious expositions. She argues that the controversy was not a conflict between the proponents and opponents of the patriarchal ideology since both the sections were manifesting harsh and extreme Patriarchal norms rather than challenging it all together; the difference was that of degree. Hence, the Act did not interfere with Child Marriage's institution, but the

Premature Consummation within Child Marriage custom only.

The Age of Consent Act was an important event that brought together and reenergized debates on Hindu domestic norms and above the need for Legislative reforms. Principally, the state had decided not to interfere in the social norms of native people because child marriage was not only customary but recommended by religious laws also. However, the considerable controversy on this issue compelled the Government to take Legislative initiatives.

Tanika Sarkar viewed that Indian representation was inconsequential in provincial Legislative bodies neither the reformers nor the Government consulted the women on this issue of marriage. Women organizations had not come into existence yet. Only individual women like Rakhmabai had expressed an opinion. Therefore, the Age of Consent Act proved to be a dead letter, and much more progressive reform was needed. An organized female voice could be acknowledged in the third decade of the twentieth century only. She adds that in this Act, the main question was whether the women could act politically and legally as a person or not.²⁶

Sarkar finds five levels of discourse around the Age of Consent Act:

Death of Phoolmani Dasi; Medical opinion primarily from Europeans; Report by Administrators on child marriage and premature co-habitation; statements of Indian administrators; The person of importance whose opinion was solicited by the Government before the new law was drafted²⁷

The agitation against this Bill inaugurated a new phase of nationalism in India. Colonial Masculinity's politics serves to conceptualize the impact of agitation against the consent Act on elite nationalist policies in India, which supplied the context for the nationalist policies of the defence of orthodox Hindu patriarchy. Fascinatingly, Vidyasagar, who presented the first critique of the evils of child Marriage, opposed this legislation in its existing form,²⁸ Advocated for garbhadan" Consummation of Marriage at once after the attainment of puberty, alternatively suggested making Consummation before first Menses.²⁹

Mrinalini Sinha said that The Age of Consent Act did not touch the institution of child marriage; it increased the Age for premature sexual intercourse within this institution.³⁰ The most striking feature of this Act was the massive opposition that followed it. The entire

²⁰ Dayaram Gidumal, Behramji Malabari: A Biographical Sketch (London, 1902).

²¹ Tanika Sarkar, Op.cit.

²² Ibid.

²³ Dayaram Gidumal, Op.Cit.

²⁴ Ibid.,

²⁵ Meera Kosambi, Girl Brides and Socio-Legal Change: Age of Consent Bill (1891) Controversy, E.P.W., Vol.26, No 31/32,(August 3-10, 1991, pp.1857-1868

²⁶ Tanika Sarkar, Hindu Wife Hindu Nation, Op.cit.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Sumit Sarkar, Writing Social History, Op.cit, pp.216-281.

³⁰ Mrinalini Sinha, Colonial Masculinity: The manly Englishman and the 'Effeminate' Bengali in the late nineteenth century, (New Delhi, Kali for Women, 1997).

country was sharply divided over this measure. The limited nature of this Act was itself a compromise with indigenous upper cast patriarchal norms and practices. The Colonial government was so stunned by agitations against the Act that it did not start any significant social reform Legislation in India until the enactment of the Sarda Act in 1929³¹.

In the following section of the paper, the author shall discuss the significant changes in the first quarter of the twentieth century when child marriage debates reopened.

the new generation of Indian legislators able to enter in Legislative Assembly learned how to debate and enact the social Legislations directly concerned to their society through the Government of India Act: 1919³². Indeed, this change contrasted with the debates on the Age of Consent Act: 1891 Legislative council, where Indian representation and voice were inconsequential.

Another pathbreaking change in the second decade of the twentieth century was the emergence of All India women's organizations in the first world war (1914-18), significantly different from nineteenth-century reform movements. This feminist consciousness found expression through several organizations like Women India Associations, National Council of Indian women, and all India Women Conference.³³ The women's campaign against child marriage in the 1920s strengthened their participation in public life.

Vir Bharat Talwar tells "like the burgeoning numbers of peasants and workers organizations all over the country, women's organizations developed as the part of Anti-imperialists movement. These were led by women and raised issues from the standpoint of women rather than that of men."³⁴

Indian women voiced through prominent journals of the time, in which few were *Stree - Darpan*, *Stree -Dharma*, and *Chand* published in 1909, 1917, and 1922 respectively.³⁵ . The *Stree-Dharma* was an official voice of the Women India Association, published from Madras in English. *Stree -Darpan* and *Chand* were published in Hindi from Allahabad Press Journal. Allahabad was the centre of nationalism in the United Provinces. These Journals published articles, stories, poems, book reviews related to women's issues for spreading consciousness. *Stree-Darpan* carried book reviews and recent women's problems, particularly the most numbers of articles on widows' suffering than any other Journal. *Chand* brought out special issues on the sufferings of widows and the

evil custom of child marriage at the inception of its publication in 1922. Above all, these Journals asked for reforms specifically for the destructive social practices like child marriage³⁶

The emergence of Gandhi was the next significant change, which initiated the mass national movement in India.³⁷ He expressed views on the custom of child marriage in his autobiography and wrote it was painful for him to describe his marriage because he was married at 14 years. He further talked about the exciting aspect of child marriage. Since the European girls and boys found it bizarre that Indians were marry in his teen and sometimes before it, Gandhi lied about his marriage when he was flirting with English girls.³⁸

Like nineteenth-century reformers, Gandhi presented the moral and physical aspect of child marriage.³⁹ He believed that the Legislation of 1891 was inadequate to cure the custom of child marriage. Although he was in favour of Legislation but stressed the cultivation of public opinion against the evils of child marriage and suggested 18 as the preferable Age of marriage for girls⁴⁰. To reply to religious injunctions on the Age of marriage for girls, Gandhi argued, it is irreligiousness to give religious sanction to a ruthless custom .he added that our saints could not write inspiring verses on self-restraint and encouraging the brute in Man at the same time and by the same pen. Gandhi rejected those text as interpolations.⁴¹ According to Gandhi, the parents should arrange the remarriage of their widowed daughter because the daughter did not understand the meaning of marriage and widowhood⁴².

A significant political development in 1923 was The formation of the Swaraj Party under the leadership of Mr Motilal Nehru and Mr Chittaranjan Das. On the eve of the 1926 election, Mr Madan Mohan formed an independent Congress Party in Alliance with Lala Lajpat Rai with a program that combined political moderation with inhibited Hindu communalism. The rivalry between Motilal and Malviya moved around the conflict on introducing modern ideas in every sphere of life and the conservation of ancient Hindu ideals. This rivalry was noticeable when the Legislative Assembly was debating Sarda's child marriage Bill.

Katherine Mayo, An American Journalist, published *Mother India*, in which she⁴³Wrote that the leading cause of India's economic and political backwardness was the sexual organization and women's degraded status in the Hindu families. She argued that the Government had

³¹ Ibid.

³² Montague- Chelmsford Reforms proposed partial self-governance or responsible Government in India.

³³ Vir Bharat Talwar, "Feminist Consciousness in Women's Journal in Hindi: 1910-20", in K. Sangari and S. Vaid eds. *Recasting Women: Essays on Colonial History*, (New Delhi, Kali for Women, 1989) pp. 204-232.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Sumit Sarkar, *Modern India:1885-1947*, (Delhi, Macmillan, 1983), pp. 165-253.

³⁸ Mahatma Gandhi, *The Story of My Experiment with Truth*, (Ahmedabad, Navjeevan, 1925)

³⁹ *Young India*, 26-08-1926, Collected Works of Mahatma Gandhi [Hereafter C.W.M.G.], Vol. XXXI, pp. 329-30.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² C W M G, Vol. XXIII, pp. 523-27

⁴³ Katherine Mayo, *Mother India*, (New York, 1927).

tried to bring reforms in 1891 by raising the Age of Consent but the Hindu orthodoxy opposed the Act which compelled the Government not to take further initiative. Mayo's arguments reminded of Utilitarian writings in the nineteenth century when these writers related the women's condition and the societies development.

International conventions on "trafficking in women" put pressure on the Indian Legislature to amend the Age of Consent Act: 1891. in Geneva on September 12, the international convention for suppressing the circulation of obscene publication and traffic signed. As per the terms of this convention, the Indian Legislature duly amended (I.P.C.) and the code of criminal procedure. this amendment set penalties for "whoever sells, lets to hire, distribute, exhibits, conveys ... receives profit from any obscene object, book, representation or figure." ⁴⁴.

Imperialistic cultural understanding of the Indian conjugality provided a space for an alliance between the nationalist movement and the newly emerging organized female voice. ⁴⁵. In such social and political unrest, the public sphere and central Legislative Assembly debated child marriage. The issue of raising the legal Age of Consent surfaced in the Indian Legislative Assembly in 1922. Rai Bahadur Sohan Lal Bakshi proposed that the Age of Consent should be raised from 12 to 14 years; unfortunately, Assembly rejected his amendment in the Age of consent Act 1891 Act. ⁴⁶.

In 1924, Sir Hari Singh Gour, a Barrister from the Central Provinces, introduced to raise minimum Age of Consent from 12 years to 14 years, both inside and outside of marriage. The Select Committee passed the Bill twice, which finally reported raising the Age of Consent 13 years within the marriage and 14 years outside the marriage. In the ensuing debates, however, the Legislative Assembly adopted a motion to raise the 14 years inside the marriage and 16 years outside the marriage. Nevertheless, in the final voting, the Assembly rejected the Bill. Consequently, an official Bill to raise the ages inside and outside of marriage to 13 and 14 years respectively, as per the recommendations of the select committee that examined Sir Hari Singh Gour's Bill, was introduced and passed in the session of March 1925 to be placed on the statutes book as Act XXIX of 1925 this Act also amended Section 376 of the Penal Code, which laid down the punishment for the offence of rape in Section 375, by imposing a minor punishment up to 2 years, or fine, or both, if the wife is between 12 and 13 years of age.

This enactment differentiated in the magnitude of offences within or without the marriage so that the same punishment was needed out to an offender when the girl is below 14, as to an offender when the victim is below 12 but happens to be his wife. In this, a partial

separation of categories of rape and marriage, messily linked together in the Penal code of 1860 and responsible for the debates that exceeded. Raising the Age of Consent outside marriage did not meet as much native opposition - In fact, was not an issue at all in the debates on Age of Consent - as raising the Age within the marriage was, and which was something this amendment avoided.

Legislative Assembly members further extended Child marriage debates by 1927. in comparison, Indian legislators shifted their attention from the age of Consent to the Age of marriage. Rai Sahib Har Bilas Sarada presented the Hindu child marriage Bill in the Legislative Assembly To reduce the number of child widows among Hindus in 1927. He proposed to fix the legal Age for Hindu girls at 12 and Hindu boys at 15. If the District Magistrate granted permission to the girl's guardians, only then exemption that the marriage of a girl between 11 and 12 was valid. In the Assembly session of September 1927, the Government referred the moved Bill to a Select committee, which also considered suggestions of the Government of British India, formulated after consultation with the local governments, which decided to substitute a new Bill entitled the Child Marriage Restraint Bill, applicable to all communities. The Assembly accepted the accommodations of the Select committee in March 1928. when the Government's council resubmitted the Bill to the Select Committee after consulting with the local governments. Individual orthodox Hindu and Muslim quarters began to express strong opposition to the Bill. When Sarada moved for consideration of the Bill in January 1929 against Government's council, the Legislative Assembly differed Bill's consideration until the report of Age of Consent Committee would present its report in June 1928.

The Government of British India appointed the 10-member Age of Consent committee⁴⁷, to investigate the status of the current law on Age of Consent and to propose necessary changes under the headship of a late home member of the executive council of the Governor of the central provinces, Moropant Vishwanath Joshi B.A., L.L.B. the Rest of the nine members were:

Late Judge of Allahabad high court, Rai Bahadur Kanhaiya Lal, (B.A., L.L.B.), Lately the member of Madras Legislative council, A. Ramashwami Mudaliyar (B.A., B.L.), Advocate in Calcutta high court, Satyendra Chandra Mitra, (M.A., B.L., M.L.A.), Advocate, High Court, Lahore, Pandit Thakur Das Bhargava, (M.A., L.L.B., M.L.A.), Maulvi Muhammad Yakub, Mian Muhammad Shahnawaz, Khan Bahadur Mahbub, Mian Imam Baksh Kadri. Superintendent, Victoria government hospital, Madras, English Medical Dr M. O' Brien

⁴⁴ Mrinalini Sinha, ed. Selections from "Mother India": Katherine(Kali for Women, Delhi, 1998), pp. 1-65. Mayo

⁴⁵ Ibid.

⁴⁶ Sumita Mukherjee, 'Using the Legislative Assembly for Social Reform: The Sarada Act 1929', (South Asia Research, 26, 3, November 2006) pp. 219- 233.

⁴⁷ Hereafter, Joshi Report.

(M.B.B.S., London, L.S.A.) The Secretary of Joshi Committee, Rameshwari Nehru

The Joshi committee revealed the extent and prevalence of child marriage both among Hindus and Muslims. To prevent the evils of domestic and social concern of large communities especially those involving socio-religious customs, the remedy should be left to propaganda, appealing to the good sense of the communities concern. However, it is not possible to argue that Legislations, in such matters, may never be to for eradicating such social evils. Sati abolition Act, widow remarriage act, the removal of the ban on inheritance by converts Act, and Civil marriage law were some of the instances where the Legislation had encroached on the custom and religious injunctions.⁴⁸. The Joshi Report submitted the following recommendations to the home department on July 1, 1929:

The Joshi Report recommends that Government should increase the Age of Consent within marriage up to 15 years of age; but that only a minor punishment of imprisonment up to a year, or fine, or both, should be imposed if the wife was between 12 and 15 years of age, i.e. the Age under which intercourse within marriage is of the same degree as rape, and would punish accordingly is retained at the existing Age of 12, and, also, transportation for life for the offence of rape is no longer recommended.⁴⁹.

Intercourse by a husband with his wife, even under 15 years of age, should not be termed 'rape' at all, but 'marital misbehaviour'. it should be removed from (I.P.C.) Sections that dealt with rape, and be placed in chapter XX of (I.P.C.) - Offences relating to marriage and should, unlike rape, be made a bailable offence, respective the Age of the wife⁵⁰. The Joshi report proposed to abolish the offence of rape within married relation and substitute the lesser offence. it "lets off the delinquent husband more lightly in some respects than under the present law", so, Pandit Kanhaiya Lal, in his minute, which wins the support of the committee, suggested that "the maximum punishment for the offence of marital misbehaviour causing death to be fixed at the imprisonment of either description for seven years or fine."⁵¹.

Interestingly, despite such regressive recommendations, the Joshi report also recommended as its most crucial proposal "fixation of the age of marriage" (14 for girls and 18 for boys by Legislation) it supports Har Bilas Sardas's Marriage Bill so much. Hence, the committee urged immediate consideration of the Bill in the next

session of the Legislative Assembly. The resolutions of the Age of consent issue seemed to be offered in the question "whether the Age of consent within marriage tie should be the same as the Age of marriage or not" while marriage and rape were proposed to be separated and marriage and Consent were sought to be equivocated.⁵².

The recommendations of Joshi's report were radical and supporting Sardas's Bill. Even if one needs to study Sardas's argument in the Assembly separately before entering the depth of Sardas's argument, it would be fair to know about Sardas's life.

Har Bilas Sardas was born in Ajmer, on June 3, 1867. His father, Sriyut Harnaryan Sardas, was a Sanskrit and English scholar and was the librarian in the Government's college, Ajmer. Har Bilas Sardas completed his intermediate from the Ajmer government college, Ajmer, and graduated in English Honors from the Calcutta University in 1888⁵³.

The government college, Ajmer, appointed Sardas as a senior teacher. He was transferred to the judicial department of the British province of Ajmer- Marwara in 1892. he was placed on special duty to revise the Ajmer regulation book, a compendium of laws and regulations for Ajmer - Marwara. Later, Sardas served for the judicial department of Ajmer -Marwara till his retirement from government service in 1922⁵⁴.

Har Bilas Sardas was the author of works illustrating "Hindu" valour and potency such as "Maharana Kumbha" (published in 1915), "Maharana Sanga" (1918), "Hammer of Ranthambhore" (1912), Paper on Prithviraj Vijaya, published in the Journal of the Asiatic Society, Great Britain, and Ireland. Finally, he wrote the book "Hindu Superiority", which confirmed his strong belief in the Hindu's glorious past.⁵⁵.

Except for serving in judicial and education department under British administration, Sardas was elected for central Legislative Assembly Ajmer -Marwara seat, from Nationalist party, in 1926⁵⁶. He proposed the famous Child marriage Bill, which was eventually enacted into Child Marriage Restraint Act:1929, popularly known by his name, in October 1929. I, in the following section of my paper, shall explain Har Bilas Sardas's arguments on the issue of child marriage in details⁵⁷.

Sardas pointed out that Indian women, those affected by this religious custom, want a change, that the "women of India do not talk of [Shastras], as they do not bother themselves about the effect of marriage on their prospects in the next world. They are practical and think

⁴⁸ Joshi Report 1928-29, (Calcutta, 1929)

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid.

⁵³ A short Life Sketch of Har Bilas Sardas, List of Har Bilas Sardas's Private Papers (Miscellaneous Papers).

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Sardas's speech delivered in the Legislative Assembly at Shimla on September 15, 1927; a speech delivered in Legislative Assembly at New Delhi in January 1929; Presidential Address provided at the 42nd session of Indian National Social Conference held at Lahore on December 26, 1929, as published in Speeches and Writings Har Bilas Sardas, Ajmer, pp.1-68.

of this world, and they want, that their sufferings in this world should come to an end”, and that “if there were women members in this house, the Bill would not have taken three months to enact instead of 3 years”. In speeches, elsewhere, he critiques the double standard that applies to women and men in several Hindu customs, by using Manu again to establish a radical notion of equality of the sexes within marriage.

As he acknowledges, His worry is for the child widow of India, for the sanctity of childhood, in the light of which, for him, "child marriage is a grave crime “irrespective of what “antediluvian notions” and “worn out dead ideas” may have to say. He advises Indians to live in the present.

Addressing himself to those “to whom nothing matters but the political emancipation of the country,” he says that political emancipation of the country depends on social reform and that “so long as these evils exist in the country, we will neither have the strength of arm nor the strength of character to win freedom”. As Sarada foresees it, India had to be able to hold its own in the “the international conflict or interests, the clash of colour, and the struggle for life that is raging furiously in the world “. It necessarily had to uproot and discard it is through customs, i.e., the political life in the present contemporary necessities such as weeding out of customs that applied to an earlier era.

Sarda addressed the argument of political nationalism that refused to negotiate and collaborate with the Colonial state - the political enemy in a matter of advancement, and which held, therefore, political reform must proceed social reform. This is essentially an argument characteristic of the period under study, i.e. late nineteenth and early twentieth century - when political nationalism was gaining momentum. This was the patriotic/nationalist content of the debate advocating the prevention of early marriage and Consummation. Katherine Mayo, in her book *Mother India*, repeated the same argument that the continued political subjection of the Indians is due to their being a degenerate race.⁵⁸Owing to the custom of child marriage, which makes the mother of young girls and brings in the world children who are barely able to survive, if at all, and that, to such a race, British rule is a blessing. A concern for the Degeneration of the race is expressed by the Sarada in the Legislative Assembly on September 15, 1927 when he said, “Shall we stand by and see the race sink below the point when regeneration and resuscitation become impossible”.

Har Bilas Sarada, in his presidential address at the December 1929 session of the Indian Social Conference, says that “We all know that India had glorious past and her achievements in the various domains of the human

activity were great” and speaks up be fissiparous nature of caste in contemporary society as making the “nation impotent to protect itself from foreign inroads”.

Those native central characters of the society who were advocating reform to abolish the custom of child marriage wanted this Bill. Sarada, for instance, points to the support of this measure contained his Bill, expressed by many of the different local governments in India, of the high courts, of the judicial commissioners, by the support extended by ‘District and Provincial Ladies Conference and by “Ladies associations and sabhas “representing various communities. He cited the examples of “three All India and Provincial Ladies Conferences in different parts of the country” where they supported Sarada’s Bill. He also, refers to the support extended to his Bill by such organizations as the Indian National Social Conference and various All India Caste Conferences.

According to Sarada, other nations of the world like England and America were also watching India’s progress on the matter particularly the publication of Katherine Mayo’s *Mother India* in 1927. Some protagonists who advocated reform accuse the Government of India of holding back the Legislation. Sarada justifies his proposals to seek the Orthodox section of the society and the British-Indian Government by citing the Manu Smritis and Dhanwantri’s *Sushruta Samhita*, which had laid down the Age of marriage for girls at least at 16 years of age. He went from this to assert the argument of religion is no excuse, when in the name of religion, it is being perpetrated against someone or when religion is practised at someone else’s expense.⁵⁹

Moreover, the census of 1921 exhibited that the custom of child marriage was extensively prevalent in the country. Census data documented that India has 382 married and 17 widowed girls in every 1000 girls between 10 and 15 years of age.⁶⁰furthermore, data shows that the practice of child marriage was ubiquitous in every religious community in India with regional disparity.⁶¹. The senses also explained that child marriage was not exclusively a Hindu custom or of Hindus Who were most addicted to it. Besides, data also reported that Out of every 1000 girls in the age range of between 5 and 10, 10 and 15, there were 111 and 437 Hindu girls, and 50 and 344 Muslim girls.⁶²

Because of the Alliance between organized female voice, and national movement, and census data of 1921, and increasing international pressure, and Government of India Act:1919 forced the British Government to shift its earlier policy towards child marriage. Home member James Crerar, in Legislative Assembly, stated, “this measure which has emerged with the consultation of the public opinion and the deliberation of the select

⁵⁸ Mayo considered the custom of child marriage and premature Consummation for this Degeneration.

⁵⁹ Sarada’s speech delivered in the Legislative Assembly at Shimla on September 15, 1927

⁶⁰ Sumita Mukherjee, Op. Cit., 219- 233.

⁶¹ Ibid.

⁶² Ibid.

committee is considerable with accordance with a significant majority.⁶³ He further added, "a tremendous weight of the opinion which has been received from the local governments and the various bodies and individuals they consulted.⁶⁴ Therefore, this Bill was "indeed of great significance.⁶⁵"

The debate between Hindu and Muslim leaders was the chief characteristic of Sarada's child marriage Bill that reflected the tension in their relationship. Muslims did not want to be a part of this Bill and regarded that their community should not be brought into the purview of this Bill since it was exclusively for Hindus. In short, Muslim opponents of the Bill wanted the exemptions of their community from the Bill.

Legislative Assembly member M K Acharya (South Arcot cum Chinglipoot: Non-Mohammedan rural) inaugurated the debate on this Bill. He proposed a dilatory⁶⁶ motion and said that the Assembly should postpone the consideration of the Bill because of the late publication of the Joshi report and the desirability of assessing, with the help of adequate evidence, the real value of that portion of the report, which deals with the marriage laws and customs obtaining among Indian communities. He said that the data provided in the Joshi report was not sufficient to discuss the issue of child marriage in India. The members were not competent to discuss the Bill, and the Government's positive attitude was the interference with the religious practices of India. Assembly members comprehensively debated Acharya's motion and defeated in Assembly on September 11, 1929.⁶⁷

Hindu and Muslim opponents of the Bill offered diverse opinions on the discussion of Sarada's child marriage Bill. Hindu opponents arguments moved around Scriptures; sacrament/contract; the competence of Government to interfere with the social matters of Hindus; the cost of marriage; composition of Legislative Assembly; female sexuality; morality/immorality. The reformers and the women organizations, and Hindu Legislative Assembly members viewed that the Government must introduce reforms through education and propaganda. Sarada's colleague Malaviya said that reform should come in child marriage, but the Age of marriage for girls must not surpass 12 years of Age. Muslim members regarded that Sarada's Bill was exclusively for

Hindus; child marriage among Muslims occurred due to corruption through Hindus interaction. Muslims opposed state intervention.

Moreover, Muslims believed that Islam's law was the rule of Allah (God); therefore, social Legislation should not interfere in such matters. After the extensive debate, the Sarada Act came into existence on October 1, 1929, and came into force on April 1, 1930. it was the first

piece of social Legislation that uniformly applied over the whole of India. The legislative Assembly debate was so exhaustive that it should take a separate paper. Nevertheless, child marriage debates in British India came to an end with the enactment of this Act. This Act proved the clear-cut departure from the "Age of consent" to the "Age of marriage".

⁶³ Legislative Assembly Debate, March 22, 1928.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Legislative Assembly Debate, September 4, 1929, p.240.

⁶⁷ Ibid.