

**ATTITUDES TOWARDS THE SOCIAL CONDITION OF WOMEN :
A Study of the Child Marriage Restraint Act, 1929.**

Dissertation submitted to the Jawaharlal Nehru University
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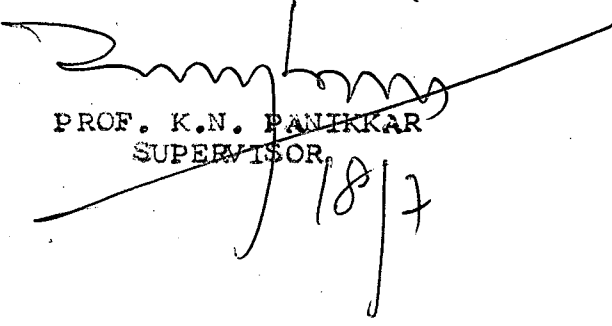


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DECLARATION

It is certified that the dissertation entitled,
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STUDY OF THE CHILD MARRIAGE RESTRAINT ACT, 1929",
submitted by RAJSHREE DHALI in fulfilment of eight
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Philosophy of the University, is, to the best of our
knowledge, a bonafide and original work and may be
placed before the examiners for evaluation.


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Dhali

- RAJSHREE DHALI

CHAPTER - I

INTRODUCTION

The oppression of women through a number of social institutions and efforts to end this oppression by reform movements is not an unfamiliar phenomenon in the Indian society. The social reform movements for the emancipation of women which began in the early 19th century are still continuing in one form or the other. The movements which began more than a century ago went through different phases. These reform movements were mainly directed to eradicate socio-religious customs which resulted in the misery of women. From time to time these reform movements led to legislations. Child Marriage Restraint Act (popularly known as Sarda Act) was one such legislation enacted in 1929 to stop child marriages in India.

The Child Marriage Restraint Act which acted as a landmark in the history of social reform movements is the subject of this research work. The literature consulted for this subject can be divided into two categories. The first category mainly concentrates on the works of social reformers. It takes into account activities of the social reformers to improve the socio-religious conditions of the 19th century India & particularly of women. Some of these

books are Modern Religious Movement in India by J.N. Farquhar, Arya Dharm: Hindu Consciousness in 19th Century Punjab by Kenneth W. Jones, Indian Social Reform by Y. Chintamani, Indian Nationalism and Hindu Reform Movement by Charles Heimsath, A Century of Social Reform in India by S.Natarajan, and Bengal Renaissance and other Essays by Susobhan Sarkar. The authors of these books examine the reform movements, religious associations and analyse the ongoing attempts to reform the socio-religious custom. There are authors who have concentrated on the endeavours of a particular reformer or of movement. This type of literature deals with the activities of the reformers or movements as well as their success and failure. The literature of this type include the works of Ashok Sen, Iswar Chandra Vidyasagar and his elusive milestone, P.J. Jagirdar, Mahadeo Govind Ranade, Benoy Bhusan Roy, Socio-Economic Impact of Sati in Bengal and the Role of Ram Mohan Roy. The literature mentioned above throws light on the rigidities of conservative Indian society and the attempts of social reformers to fight the evil customs individually or by forming associations. This literature brings out a true picture of the then existing Indian society.

The second category of literature include mainly the work on women. The literature on women emphasize women's condition in the 19th century and their participation in the Indian National Movement. Some of the books are Women in Modern India by Neera Desai, Condition of Bengal Women by Usha Chakorborty, Nationalism, Social Reform and Indian Women by R.K. Sharma.

These two types of literature throws light on the activities of the social reformers and the condition of women. In this type of literature, mentioned above, hardly any attempt has been made to study the level of consciousness of and about women. This research work is an endeavour to departure from the earlier works and to study how society treated women's issues and how women themselves looked at their problems. Through the casestudy of "Child Marriage Restraint Act", an attempt has been made to study the conditions and circumstances which led to the rise in the level of consciousness.

This dissertation has been divided into three chapters. The first chapter provides a background to the Child Marriage Restraint Act. It examines the position of women and their oppression through different digits like family, marriage, widowhood etc. It analyses the attitude of social reformers

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towards the women's issues. Their attempts to eradicate the social customs, averse to the interest of women, previous to the Sarda Act, have been taken into account. Along with this, general sense of women's consciousness has also been analysed.

The second chapter deals with the process of making of Sarda Act. It takes into account, the factors responsible for the rejection of B.M. Malabari's suggestion to stop infant marriages. The role played by the British government and the level of consciousness has been looked into. It deals with the ongoing attempts to stop child marriages, even after the rejection of B.M. Malabari's suggestions, which resulted in the formation of Age of Consent Committee. Finally, it deals with the introduction of Sarda bill in the Legislative Assembly, attempts to amend its provisions and the formation of the Act.

The third and main chapter of this dissertation takes into account the debate generated due to the Sarda Act, inside and outside the Legislative Assembly. It deals in detail the responses and reactions of Legislative members and other sections of the society to the bill. The nature of arguments put forth to oppose and support the bill throws light on the level of consciousness of and about women which forms an

important aspect of this chapter. Different forms of protest against the bill and methods of demonstrating support, shows the beginning of a new social thinking which came into being during this period. The unanimity of women in supporting the bill, reaction of different professional groups, social and religious organisations and attitude of the British government are some of the important aspects of this chapter.

The primary as well as secondary sources have been consulted to complete this research work. The primary sources include Home Department files of government of India, the Legislative Assembly debates and the Council of States debates. Apart from these, the Age of Consent Committee Report, and All India Women's Conference papers have also been consulted. Daily and Weekly Newspapers also proved helpful to complete this research work.

Home Department files of both public and judicial branches contain resolutions, memoranda and pamphlets of various caste and community associations. These associations used to send their resolutions to the government of India to influence its decision. Some files even contain memoranda furnished with pamphlets in support of one's opinion. Replies to the governments enquiries, by these associations,

are also kept in these files. The judicial files also carry various bills intending to amend the Sarda Act. These bills throw light on the motives of the caste associations who wanted their castes to be excluded from the provisions of the Act.

Queries of the members of the Assembly either about the bill or about the steps taken by the government to implement the Act also form a part of these files.

The Legislative Assembly and Council of State debates provide insight to understand the level of consciousness of the members of the Legislative Assembly as they contain the arguments for and against the bill.

The Newspapers published at various places contain articles for and against the bill. The events, speeches, resolutions, memoranda and interviews of prominent personalities were published from time to time which throw light on the public opinion. The Newspapers talked about demonstrative support of women to the bill and carried news about violating the Act. The Newspapers examined for this purpose are Hindustan Times, Statesman, Aaj, Vishwamitra, Indian Social Reformer and Modern Review. Apart from these, Native newspapers of North-West provinces, ^{and} Central provinces ~~and~~ have also been examined.

The Age of Consent Committee Report contains interviews of the common people to know their reaction to the raising of Age of Consent and marriage. The papers of All India Women's Conference give an account of the issues raised by women. It also provides informations regarding women's activities to support the Child Marriage Restraint Bill. Apart from the abovementioned primary sources, a number of books, journals and articles have also been examined. These secondary sources were of emense help to complete the work.

CHAPTER -II

ATTITUDE TOWARDS WOMEN'S ISSUES IN THE 19TH CENTURY

The social conditions in India during the 19th century were marked by a number of evils. These evils, prevalent in the form of social customs made the life of women miserable.

The prominent among these customs were child marriage, enforced celibacy and ascetism of widows, sati, polygamy and female infanticide. The Hindu religion sanctioned and legitimised these evil customs and prepared the Indian society for their uncritical acceptance.

Women were discriminated within as well as outside the family. The very birth of a girl was looked upon as an unfortunate and unpleasant event. The female child after her birth generally received a cold welcome and was brought up in relative neglect. Among some section of the Hindus, particularly among the Rajputs, infanticide was very common. Whenever a girl was born, she was killed either soon after her birth or during her infancy.¹ Another event which affected the position of women adversely was their marriage at early stage. In the Hindu society marriage primarily was not considered an union between two partners to raise up a new family, but as social institution to serve the husband's household. The

1. Ila Mukherjee; Social Status of North Indian Women (1526-1707 A.D.), 1972, p.2.

situation of the bride was similar to a piece of property passing from one family to another.² Girls were married at such a young age that they hardly realised what marriage was. Divorce was not permitted under the traditional Hindu law and marriage was a life long affair. The Purdah system in upper class society made the women's position worse as they had little opportunity to see the outer world to broaden their minds.³

The evils like polygamy not only deprived women of equal status but unleashed repression on them. Polygamy was a common practice in different sections of Hindu society. Among the Brahmins particularly, this custom was more prevalent.⁴ It was found that 33 kulin Brahmins of Hoogly district married to 2151 wives. These kulin Brahmins did not of course live with their wives, nor did they maintain them.⁵ Most of the wives were not given any share in their husbands property. Many of them lived on either with their paternal relatives even after their fathers death or of course had a raw deal.

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2. Usha Chakorborty; Condition of Bengal Women around the 2nd half of the 19th Century, Calcutta, 1963, p.5.
 3. Ibid.
 4. R.K. Sharma; Nationalism, Social Reform and Indian Women, p. 17.
 5. Usha Chakorborty; op.cit., p.17.

Many such unfortunate wives were driven by the pressure of circumstances or their unsatisfied inclinations to prostitution or suicide. The Chief Magistrate of Calcutta reported in 1853, that in the metropolis of 4 lacs, there were about 10,000 Hindu prostitutes including several kulin Brahmin wives.⁶

Another evil which inflicted misery on women was sati. In the beginning of the 19th century, upper caste Hindu widows were persuaded to burn themselves on the funeral pyres of their husbands. The number of sati performed in Bengal between 1815 and, 1827 was 5,888⁷. Even after the Act of 1829 which abolished sati, the condition of Hindu widows in orthodox society was miserable. Widows were not allowed to remarry, even if they were childless young girls. Widows hardly had any money personally and were entitled to only a meagre maintenance allowance when they were allowed to stay on in the husband's house. The dowry which was paid by her father was also not meant for her. The financial position of a widow was very bad. This led many of them to prostitution for their maintenance. The poor women were in worse situation. When the toiler had no surplus for the future,

6. Ibid., p.9.

7. Benoy Bhushan Roy; Socio-Economic Impact of Sati in Bengal and Role of Raja Ram Mohan, p.37.

periodical famines forced hungry parents, even to sell their unmarried daughters. Stealthily such girls ended up as prostitutes.⁸

Another mean of discrimination was denying education to women. The common notion was that education was sinful for women and that educated women were likely to be widowed.⁹ Marriage at childhood was another reason for their handicap in the field of education. The discrimination of women and the denial to allow education perpetuated male domination in society and prevented women from attaining a position in which they could fight the oppression.

The necessity that the reform in social customs were urgent and especially the improvement of women's condition was essential for the country's progress, was realized by some individuals. The 19th century witnessed the beginning of an attempt to introduce certain reforms in the society. The traditional as well as western intellectuals shared a common conviction about reforming the social and religious beliefs. Although social and religious reforms were not a new phenomena in Hinduism, yet the 19th century reform movement were distinguished from previous reforms by many new

8. Usha Chakorborty; op.cit., p.3.

9. Ibid.

characteristics.¹⁰ The 19th century reform movements became an integral part of political movement and subsequently sought intervention of the government. The social reformers influenced the state authorities and demanded the abolition of these customs through legislations, which was not the case previously.

The ardent endeavour to reform the society embraced almost the whole of India, and most of the reformers considered the improvement of women's position as their foremost task. Since these customs were sanctioned by religion, the reformers' crusade against women's oppression had to confront the fundamental issues which made their task difficult. The widespread fear of facing disgrace, reaction of the conservatives and reluctance to over-ride caste or shastric injunctions forced the reformers to compromise with their principles and though, temporarily withheld the process of reform.

There were three forces which posed as the main obstacles to the reformers - the social conservatives, the British government and the Christian missionaries. Although the whole society was conservative but some among them were more so as they regarded any effort to change as an attack on the social order and hence fought back to maintain the existing practices.

10. A.L. Basham; edf, A Cultural History of India -
J.T.F. Jordan; "Hindu Religious and Social
Reform in British India", p. 364.

The British government acted as a mild force against the social reformers due to their own political and economic interests. They lent their support willingly at times and hesitantly at another through passing laws to suppress some pernicious customs. It did not wish to risk of popular resistance, therefore, ignored the caste hierarchy and never cared much for social reform in terms of changing the system as a whole. The aim of Christian missionaries was to convert people to Christianity. At every opportunity they pointed out the defects and faults of Hindu customs, which helped the Britishers to create their cultural hegemony.

It was in this background that the women's issues were taken up by the social reformers during the 19th century. The attempts of the social reformers to do away with these customs was met with strong opposition from the Hindu conservative society. In spite of a number of problems faced by the reformers from time to time, the women's issues were taken up regularly. The steps were taken to mobilize the progressive sections of the society, especially the intellectuals in support of the women's cause. It was realized that in a conservative society, like India no reform could succeed without the help of administrative measures. The pressure on the government, thus, resulted into the prevention of heinous customs like sati through legislations.

Section - I

WOMEN'S ISSUES TAKEN UP IN THE 19TH CENTURY

The crusade against women's oppression by the reformers began with the abolition of sati - a practice of burning Hindu widows on the funeral pyre of their husbands. This pernicious custom was given legitimacy by religion. In 1805 Lord Wellesly, the Governor General of India, had formally asked the Court of Nizam Adalat whether sati could be abolished, and women who were not capable of judging for themselves be rescued. He was told that the practice of sati was founded on the religious tenets of the Hindus but there were certain circumstances in which the women could not commit sati. They were, if she was pregnant, prepubescent, the mother of an infant, and in a state of uncleanness. The most important of all was that sati had to be entirely voluntary.¹¹ The distinction was thus made between legal and illegal sati on the basis of these conditions. The government directed its officers to remain present at sites and prevent illegal satis from taking place. The new directions of the government did not meet any spectacular success. It was estimated that during 1813-1816 only 10 illegal satis were prevented out of the total 400.¹² Though the minds of Britishers was perturbed by this obnoxious

11. Dhagamwar Vasuda; "Saint, Victim or Criminal", Seminar, Feb. 1988, No. 342, p. 34.

12. Ibid.

practice, nevertheless they adopted the policy of non-interference with the religious and social customs.

The social reformers like Ram Mohan Roy and Mr. Itanajaya Vidyalankar maintained that it did not carry the sanction of the vedas and was not enjoined by the shastras.¹³ Ram Mohan Roy's main instrument to launch attack on this pernicious custom was through journals. From 1818, he began to publish pamphlets against the custom of sati and also carried on ceaseless struggle against it through his journal, "Sambandh Kaumudi".¹⁴ With his zealous efforts and cooperation, Lord William Bentinck declared the practice of sati as illegal and a punishable offence in November 1829. Ram Mohan Roy's humanitarian efforts met with resistance at the hands of the orthodox sections of the Hindu community, who had organised themselves in a body called Dharma Sabha.¹⁵ The orthodox Hindus went to the extent of making an appeal to the Privy Council against the measure of the government. Ram Mohan went to England, made every effort to get the appeal rejected and finally succeeded. The attitude of the social reformers towards the practice of sati was not welcomed by the people

13. Romila Thapar; "In History", Seminar, No. 342, Feb. 1988, p. 14.

14. Neera Desai; Women in Modern India, p. 63.

15. Ram Mohan Roy's Writings, p. 122.

initially and they resisted any change in the customs. In his own village home, Ram Mohan Roy was ostracized by neighbours and relatives turned against him so that he found life in Calcutta more congenial and spent most of his time in metropolis.¹⁶

In this sphere of sati abolition, one finds Ram Mohan Roy as the main propagator along with the Christian missionaries, though all the later reformers also condemned this practice.

The attempts of the reformers did not confine to the abolition of the practice of sati alone. Once the widows were saved from self-immolation, attempts were made to liberate them from the wrath of imposed celibacy and ascetism, by helping to legalize widow remarriages. Vidyasagar was the main exponent of this crusade followed by many others in different parts of the country.

The propaganda to gather support for widow remarriage, like in the case of sati, was unleashed in the educated section, through pamphlets and writing books. The cause of widow remarriage unlike sati generated sympathy in a substantial

16. Sarkar Susobhan; Bengal Renaissance and other Essays, p. 17.

section of the society. The justification of widow re-marriage within the framework of vedas and shastras by the reformers could have been a reason for the support. Vidyasagar gathered immense material in support of widow re-marriage and used it for preparing a book called, "Widow Remarriage" which was published in 1853. The Act legalizing the marriage of Hindu widows was promulgated on 26th July 1856.¹⁷ However, it was the zealous and courageous initiatives of Vidyasagar and his supporters which elicited social response among the general people. The supporters of widow remarriage did not shy away from the public reaction but defended their position in the public. Associations were formed to organise and publicise the widow remarriages.

A number of widow remarriage associations were established. The first such association was founded in the year 1866, and many educated natives enlisted themselves as its members. The first public celebration of widow remarriage took place on 15th June, 1869 frustrating all efforts of infuriated opponents.¹⁸ Although the first widow remarriage under the Act took place

17. R.K. Sharma; op.cit., p. 34.

18. C.Y. Chintamani; Indian Social Reform, p. 300.

in early Dec. 1856 at the residence of Raj Krishna Bannerjee, a close associate of Vidyasagar, it was attended by a few people of their own.

It seems that towns and cities took lead in widow remarriages and reaction against them was not as harsh as it was seen in the villages. Those who married widows, or participated in the ceremony were victims in different ways in the village society. The widow remarriage associations or the individual reformers had to bear the expenses of the marriage ceremony and look after the problem of victimization. One estimate puts Vidyasagar's total expenditure at Rs.82,000 for 60 marriages.¹⁹

In Bengal another very active reformer was Shashipada Bannerjee of Baranagar. His own widowed niece was remarried on 28th November, 1868. His house became a refuge for widows and about 40 widow remarriages took place under its roof.²⁰ It was not an easy task as they had to face the most crude and bitter opposition from relatives and parents. Many a widow had literally been stolen from their parents. It was

19. Ashok Sen; Vidyasagar and his elusive milestone, p.60.

20. R.K. Sharma; op.cit., p. 24.

to settle the legal validity of such reformed marriage that the Civil Marriage Act was promulgated in 1872.

The movement for widow remarriage in Maharashtra was strengthened by Jyotiba Phule, Karandas Mujli, Hari Deshmukh, M.C. Ranade, D.K. Karve and Vishnu Shastri Pandit. Dhando Keshave Karve founded the Hindu Widows Home Association on the 14th June 1896, he also established three institutes for the welfare of Hindu women. They were Anath Balika Ashram (widow's home), Mahila Vidyalaya and Nishkam Karma Math (selfless work mission).

The formation of these institutions for the welfare of the widows generated a stir in the then existing society. The orthodox section saw these reforms as an attempt to undermine the Hindu religion and formed organisations to defend it. These groups representing two different streams of thought indulged in debate and discussions on the issue of widow remarriage. These debates bring out in the focus the trauma which the reformers had to undergo and shows how difficult it was to bring about even a slight change in the deep rooted customs of Hindu society. In the face of hostility from the orthodox sections, many reformers compromised with their principles and withdrew from the movement.

Vishnu Shastri Pandit started Vidhvavivaha Uttej Mandal (society for the encouragement of widow remarriage) in the year 1865.²¹ The Mandal held the position that widow marriage was sanctioned by the Hindu shastras, and that the interpretation current among the Brahmin shastras was wrong. The orthodox Shastris held the widow remarriage society to be a menace to religion and formed Hindu Dharma Vyavasthapak Sabha, or the society to establish order in the Hindu religion.²² A battle of ideas through debate and discussions between the two organisations started in Bombay and other cities in Maharashtra. Both the sides quoted passages from shastras to justify their position. The antagonism intensified when a public invitation was issued for the marriage of a widow. The invitation bore signatures of seven persons.²³ This outraged the orthodox group, which issued numerous threatenings and warnings to the reformers about burning their press and marriage pandal. In spite of all threatenings, the marriage was celebrated with full

21. P.J. Jagirdar; Mahadeo Govind Ranade; p. 37.

22. Ibid.

23. The signatories of the invitation were, Gopal Hari Deshmukh, Vishnu Shastri Pandit, M.G. Ranade, Janardhan Sakharam Gadgil, Vishnu Parashuram Ranade, Shrikrishna Shastri Talekar and V.N. Bhide.

fanfare. The marriage was the last straw for the opponents. To mobilise public opinion against widow remarriages, the orthodox section approached Shankaracharya who was considered as exponent of Hindu shastras. On behalf of Shankaracharya orders were issued to all members of the Hindu community not to have any contact with the seven signatories, the married couple and the two brothers of the bride.

Vishnu Shastri Pandit claimed that shastras supported widow marriage. He was challenged to have a debate on shastras by a person known as Vittobha Anna Dapatardar.²⁴ The debate took place in Poona in 1870 in the presence of a board of judges, the Panches, consisting of persons proposed by both sides. The spectators of this debate had come from outside Poona, including far off places like Banaras, Gwalior, Nagpur and Sangli. The debate lasted for full nine days. The bench of judges by a majority reached a decision against the reformers. The guilty persons were asked to perform a penance or Prayashchitta. About 175 person in the reform party performed the penance. The seven signatories did not yield, hence faced the punishment of social boycott.²⁵

24. P.J. Jagirdar; op.cit., p. 41.

25. Ibid.



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A detailed study of this episode was felt important to evaluate the relentless war between the reformers and opponents. The social pressure at times proved very forceful. Even Gopal Hari Deshmukh had to yield since his daughter's mother-in-law threatened to turn out his daughter from the house if he didn't perform Prayashchitta. Under similar circumstances four others also yielded. One finds that champions of the women's cause had to undergo great hardship, which acted as a catalyst for the whole movement since many reformers compromised with their principles.

It is true that hardships faced by the social reformers due to hostility of the orthodox sections forced them to compromise with their principles and withdraw from the movement. The best results of the reformers about whatever they did can be located by ignoring the response which the reformer got from the people in his own days and instead analysing the shape of the movement which formed later. While assessing the reform movement the inherent contradictions in some reformers have to be taken into account. Contradiction in terms of their ultimate yielding to the pressures of the society or committing the same mistake which they were to improve, were evident. Keshab Chandra was campaigning against child marriage, but ultimately married off his daughter when

she was a minor herself.²⁶ Ranade succumbed to his family pressure and married an eleven years old girl, and accepted his fathers ban on Vishnu Shastri Pandit (who married a widow) to his own house for dinner.²⁷ Gopal Hari Deshmukh also performed Prayaschitta for his active participation in widow marriages.²⁸ K.T. Telang himself celebrated the marriage of his two daughters aged ten and eight respectively.²⁹ It was very difficult to bear the mental torture by the reformers and many of them yielded to the pressures of the conservative society.

But all this could not stall the process of change. Ups and downs dictated by the circumstances did affect the pace of the reform movements, but could not stop them. The process to mould the trends of social thinking of the people continued in one form or the other. The crusade of reform was carried on till the 20th century, and the widow remarriage once begun, continued to take place.

26. Susobhan Sarkar; op.cit., p. 44.

27. Vina Majumdar; "The Social Reform Movement in India, From Ranade to Nehru", in B.R. Nanda; ed., Indian Women from Purdah to Modernity, p.44.

28. P.J. Jagirdar; op.cit., p. 41.

29. Amiya Sen; "Hindu Revivalism in Action, The Age of Consent Bill Agitation in Bengal", Indian Historical Review, Vol. VII, July 1980- Jan. 1981.

It is believed by some scholars that neither the Act of 1856 nor the lifelong efforts of Vidyasagar achieved little success in his subject of promoting marriages of Hindu widows.³⁰ Evidences on the other hand show that those who had married widows threatened to desert their wives unless Vidyasagar met their unreasonable demands for money.³¹

It is difficult to agree with the abovementioned formulation. It is true that the legislation for widow remarriage and attempts of Vidyasagar to introduce progressive element in the consciousness of the people could not bring any fundamental change in the position of women, but Vidyasagar's contribution cannot be considered insignificant as he was successful in raising the issue of widow remarriage and generating a debate in the 19th century society. It was the continuation of this debate which made people aware of women's sufferings and brought into focus other issues relating them. Attempts of Vidyasagar and other reformers, no doubt, paved way for a new social thinking in late 19th century and early 20th century. Along with the process of social rethinking a large number of widows were benefited by the efforts of

30. Ashok Sen; op.cit., p.61.

31. Ibid., p.60.

Vidyasagar and other reformers. A large number of association which came into existence during this period took the task of organising widow remarriages. In Punjab alone twelve marriages had taken place in the year of 1915, thirteen in the year of 1916, forty in the year of 1918, ninety and two hundred and twenty two in the years of 1919 and 1920 respectively.³²

The campaign for women's welfare was not limited to these two issues. Other related issues were also raised. Other ventures of reformes were Polygamy, Purdah, Right of inheritance, Age of Consent and child marriage. Although from early 19th century onwards, the reformers were advocating against child marriages, it was in 1929 that an Act was passed banning child marriages.

A common feature of the reforms, from sati to banning of child marriage, was that they were resisted by the orthodox sections on the plea of religion. Since these reforms were opposed on religious grounds it generated a debate among the reformers as well. A section of reformers felt that intervention of the British government was necessary

32. R.K. Sharma; op.cit., p. 25.

and banning of these customs through law would facilitate their task. Other section of reformers was of the opinion that people will not welcome the intervention by the government. Thus the reforms, they believed, should come from within the Hindu society. When B.M. Malabari demanded of legally banning the child marriages, it created a strong opposition.³³

Another aspect of great importance which was taken up was women's education. The intentions of the reformers regarding women's education has been questioned. Doubts have been raised whether it was to make women self-dependent or to make them better wives and mothers. It has been felt that the purpose of educating the women was not to make them independent, but to train them to perform their functions as makers of home.³⁴ And with the exception of Agarkar, no other reformer had seriously thought of educating women for employment and professions.³⁵ The abovementioned contention seems to be a fact to a great extent. Even the resolutions

33. Charles Heimsath; Indian Nationalism and Hindu Social Reform Movement, p. 151.

34. Vina Majumdar; op.cit., p. 53.

35. Ibid.

of All India Women's Conference speaks of advocating mostly home science and other similar subjects for women.³⁶ Due to many faults inherent in reformers method, mass of women remained untouched. However, inspite of such training one finds many educated women becoming great scholars and political activists of the national movement.

As discussed about the two other issues earlier, here too in the field of education one should see the efforts made by the 19th century reformers in the midst of the storm of opposition. The very fact that going to school and colleges brought a new phenomena in the life of women. They came out of the four walls of their house, studied along with men, travelled independently which broadened their vision. The 19th century prevailing social norms were such that women were looked down if they learned English. The fear was that women after learning English would mix freely with men and stop doing domestic work. Though the number of reformers were very few they attempted that women should not be kept shut off from education. The strictly limited mental horizon of the women created cultural disparity between the educated husband and herself which some reformers felt important to remove.

36. All India Women's Conference Papers, 1929 to 1930.

In the beginning, due to lack of support from the society, schools were opened with the direct or indirect help of British officials only. Vidyasagar promoted female education and with the help of Bethune (member of Viceroy's Executive Council) succeeded in founding the first school in May 1849. The school, Hindu Balika Vidyalaya, was meant for the girls of high caste families and later it was called as Bethune school. In addition to this, 40 girls schools between 1855 and 1858 were established when Vidyasagar was working as an inspector of schools. He did not charge any fees, moreover he supplied all material for study, so that there might not be any financial obstacle preventing the girls from attending schools.³⁷

With the help of William Wedden Burn (Collector of Poona) who donated Rs.1000/-, with which as a nucleus, Ranade, collected a few thousand rupees. Then Ranade, W.A. Modak, R.G. Bhandarkar and Shankar Pandurang took a deputation to the government, and obtained an assurance of help. The government gave them the site of Huzur Paga for opening a girls school. Thus, in 1882 a female high school popularly known as Huzur Pagar school was started.³⁸

37. Neera Desai; op.cit., p. 75.

38. P.J. Jagirdar; op.cit., p. 111.

These efforts of social reformers did not go smoothly. Along with the orthodox sections, newspapers and a section of educated people opposed these measures on different grounds. Most of the newspaper which admitted that women should be educated, questioned the urgency of starting a school at the level higher than primary. Not only this, Tilak's paper "Kesari" propagated criticism about the courses of study and methods of teaching in female high school. The objection of these papers was that in this school the girls were taught the western etiquette at an impressionable age, which would threaten the Indian value system.³⁹

With the similar kind of accusation by orthodox section that English education was anglicizing the girls, the attempts by a lady, Pandita Ramabai to promote education was discouraged successfully by the orthodox sections. Pandita Ramabai's parents had died when she was 16, then her only brother passed away. Without flinching Ramabai pursued her studies and scholarship.⁴⁰ She also delivered lectures in Calcutta on the higher status of women in ancient India and advocated women's right to education, to freedom to mix with men and marry late.

39. Ibid.

40. Pratima Asthana; Women's Movement in India, p. 42.

When she arrived in Poona in 1882, she was given a great welcome by the reformers as a great asset to their cause of education and upliftment of women. The orthodox reformers though impressed by her eloquence, and ready wit, had open suspicion about her. Ramabai started an assembly of women called the Arya Mahila Samaj which used to meet on Saturdays. She even wrote a book Stridharmaniti, or women's duties and Religion. She felt that Hindu shastras had nothing but contempt and scorn for women. She along with her daughter adopted Christian religion.⁴¹

In 1889, she started an institution named Sharada Sadan, at Bombay, mainly to provide a home and school for widows. Pandita Ramabai's conversion to Christianity did not deter her from educating girls. But those who did not want reforms could not tolerate it. Tilak in his paper urged that it was not right to leave the education of Hindu women to the care of a Christian lady. Ultimately Kesari found and published evidences to show that proselytising activities were being carried on behind the scene. This was not tolerated by the reformers. Thus, Ranade, Bhandarkar, Agarkar and others

41. P.J. Jagirdar; op.cit., p. 112.

severed their connection with the institution and gradually Ramabai's enthusiasm died off.⁴²

One finds almost all issues taken up by the social reformers related to the upper caste of the society. As far as the mass of Indian women concerned, much of the issues hardly touched them except for child marriage. The other problems taken by the reform movements did not mean much to them. One of the reasons for this lacuna could be the caste affiliations of the reformers. Since most of the reformers belonged to the higher castes, they could perceive the problem of upper castes women only. The fact that the message of the reformers did not reach the mass of women shows either the lack of communication or faulty methods adopted by the reformers.

Section - II

GENERAL SENSE OF EMANCIPATION OF WOMEN AMONG THE REFORMERS

The question of emancipation of women in India was raised and animated by the reformers of 19th century. The efforts were commenced by Raja. Ram Mohan Roy by raising the issue

42. Ibid., p. 113.

of abolition of sati. Then the movement was further developed by Iswarchandra Vidyasagar, Vishnu Shastri Pandit and B.M. Malabari, who were the exponents of widow remarriage. Dayanand tried to revive the free and equal society of the vedic period and further tried to remove the problem of education from the scope of individual endeavour and made its solution dependent upon planned and institutional efforts.⁴³ The movement was further accentuated by Keshab Chandra, M.G. Ranade, Karve, Vivekanand and others who advocated for providing equal access to education to women.

By the late 19th century, the pilots of the reform movement felt the need for a broad nationwide movement, since the local efforts were isolated without the support from outside. They realised the need for an organised movement which would link the local units throughout the country. Therefore, in 1885 when the Indian National Congress was formed, M.G. Ranade declared that social question should be deliberated upon at the session of a separate section of the Congress. But when it was realized that many did not feel interested in the social question, a separate organization for the purpose was formed and in 1887 at Madras under the name of Indian National

43. Neera Desai; op.cit., p. 106.

Social Conference.⁴⁴ The main architect of this organisation was Ranade and it dealt with social issues.

To get a better picture of Indian National Social Conference a set of resolution passed in its conference held in Allahabad in Dec. 1910 can be examined. Some of the resolutions recommended that the greater and more persistent efforts should be made by the educated community to promote the education of women. With a view to give effect to this recommendation, the conference was of the opinion that a larger number of schools should be opened in towns. The other recommendations were that every effort should be made to persuade parents not to marry their boys before the age of 25 and their girls before 16. The resolution included abolition of purdah system and improvement of the condition of widows.⁴⁵

The Indian National Social Conference was followed by other provincial organisations for ameliorating the social condition. The Bombay Presidency and Madras Hindu Social Reform Association arose in 1897 followed by Bengal. But the zeal of social reform was not shared by all the nationalist

44. Ibid., p. 123.

45. J.N. Farquhar; Modern Religious Movements in India, p. 391.

leaders, as some of them gave primary importance to political reform. However, the conference carried on extensive social reform work till 1917 and thereafter its significance in the national life rapidly declined.

In the end of 19th and early 20th century, the Indian womenhood was becoming conscious of its role in the society. In 1916, the women of India were stirred with indignation at the internment of Mrs. Annie Beasant, held many protest meetings and walked in processions to the temples to pray for her release.⁴⁶ During the non-cooperation movement in 1920-1922, the women came out in large numbers from their Purdah, led processions and attended meetings. The women not only attended meetings and led processions but they bravely faced the police brutalities. They bore many suffering and humility and welcomed even imprisonment. The women helped Gandhiji in the implementation of his constructive programme of using Khadis and took to spinning.⁴⁷

The particular historical circumstances prevailing at the time, when the first wave of women organisation developed, were such that women question was closely associated with the issue of India's freedom from British subordination. The

46. Neera Desai; op.cit., p.138.

47. R.K. Sharma; op.cit., p. 61.

ground work done by the 19th century reformers, in fact led to the sprouting of numerous women organisations in the early 20th century. The early 20th century saw the intensification of both the national and women's movement. The Women's Indian Association (WIA) was formed in the year of 1917. The National Council of Indian Conference in 1927. These organisation to a great extent reflected the ambivalence with the social reform movement and the new emphasis emerging from the freedom movement.

Many of the leaders of the reform movement were staunch nationalist and were active participants of Indian National Movement. That's why in 1917 immediately after the demand for adult franchise the demand for women's suffrage was articulated for the first time.⁴⁸

The participation of women in Indian National Movement made them aware of their problems and rights. Many a women's organisations which raised women's issues from time to time expressed solidarity with the on-going national movement. Male leaders and activists of the national movement saw women as their ally in their struggle against the British government and thus adopted a sympathetic view towards women's

48. Neera Desai; Women in Modern India, p. 148.

problems. Women were active in numerous national, provincial and regional organisations which proved that the opportunity had been created for the emancipation of women in the society.

But the issue of women's emancipation was full of unresolved dichotomy. In 1829 that sati was abolished nevertheless, after a century in 1929 the question of raising the age of marriage created an unprecedented opposition. Again in 1934, when the demand for personal law such as marriage, divorce and inheritance came about, it witnessed opposition not only from the conservative society but also from the Congressmen too. This highlighted the contradiction amongst the nationalist leaders and activists. They supported the principle of sexual equality and its implementation through women suffrage which would have undermined British position of powers, but opposed any reform which would encroach upon their freedom.⁴⁹

The explanations might be sought in the fact that the most prominent failure of the reform movement lay in its inability to expose the nature of oppression that affected women in different layers of the society. Almost all reformers raised certain issues but the whole Hindu system as such was

49. Joana Liddle and Rama Joshi; Daughters of Independence, Gender Caste and Class in India, p. 40.

never questioned with an intention to root out the main platform, where all the pillars of different evils were constructed. The whole movement was confined to its urban middle class roots and it never got absorbed in the larger movement for the elimination of all inequalities and oppression in society.

The explanation for marginal reforms and not questioning the Hindu system as such is given by Kumari Jayawardana. The reformers, she believes felt that the middle class family structure was threatened by the prevailing social evils. One of the common fear was that some high caste widows who had been ill treated and prevented from remarriage, had turned to prostitution. Social rigidity, child marriage with its necessary consequence of child widows, all combined created a new class of women whom we are prone to call fallen. This led to the disintegration of family life of both the English educated and traditional intelligentsia.⁵⁰

The explanation given by Kumari Jayawardana does not sound convincing. It is true that no fundamental change was brought into Hindu system as such, but attempts were made to

50. K. Jayawardana, Feminism and Nationalism in the third world in the 19th and early 20th century, p. 81.

do so. Debate on merits and demerits of Hindu religion and foundation of a number of association to work for reform should be seen as a step in that direction. Though the social reformers did not succeed in revolutionizing the Hindu society, they certainly brought fundamental issues in focus.

The general sense of women emancipation was gathering scope and speed, though in a very slow manner. It is right that the issues tackled by the reformers were problems of a certain strata of the society. But surely one had to remove them since the upper caste women along with other several problems were overburdened with the obnoxious customs imposed on them to maintain the particular system. Another point of great importance is that all customs of upper castes percolates down to the lower castes like child marriage was very much prevalent among the general people.

Among other few cases the Rukhmabai Defence Committee Case in 1884 created a debate on the question of womens emancipation. It gained wide publicity and its social implications were discussed in public lectures and press. Rukhmabai was married at the age of thirteen. Even after marriage she continued to live with her parents who educated her,

while her husband remained illiterate and uncultured, suffered from consumption. On attaining majority, she normally should have gone to live with her husband. But the cultural difference between the couple was so much that she didn't like him. Hence a legal suit was instituted by her husband, the court verdict went in favour of the plaintiff. The case engaged the attention of both the government and the press on two accounts. Firstly, it exposed a serious anomaly that arose from enforcing of English civil law upon Hindu marriage customs. Secondly, the husband could enforce his marital right over his child-wife on grounds of both law and custom. But the wife was left literally helpless, without the slightest knowledge of the implications of the law. It was felt that since it was the government itself that had created this anomaly, it was bound morally and otherwise to rectify the law.⁵¹ Principal Wordsworth of the Elphinstone College, who took genuine interest in Indians and their problems, formed the Rukhmabai Defence Committee, consisting of Ranade, Telang and others. Its object was to find a way by which both the possible calamities might be averted. The question involved were, should law force a cultured lady to live as wife with a poor illiterate

51. Amiya Sen; op.cit., p. 166.

uncultured consumptive husband? Were her own feelings to be entirely brushed aside? On the other hand, if marriage was to depend on the will of the woman, could marriage as an institution survive, would divorce be consistent with Hindu culture.⁵²

In Bengal the case provoked an overwhelming protest. The Bombay government's circular (1887), which contemplated passing of a measure allowing either adult spouse to obtain a dissolution of marriage if so desired, came under serious assault. It was felt, that questions affecting Hindu society could not be discussed with reference to the manners and customs of the low caste to which Rukhmabai belonged. The prospect of the government wresting the initiative not only alarmed the orthodox but also pushed some "liberal" elements into the opposition group. Some of the initial supporters of marriage reform were now so unnerved that they hastened to switch ends with amazing alacrity. This controversy forced Rukhmabai to go back to her husband, thereby immortalizing the traditions of Hindu female chastity.⁵³

52. Amiya Sen; op.cit., p. 166.

53. Ibid., p. 147.

The above case was mentioned with a view to show implicitly what was the level of consciousness in the late 19th century. How the socio-religious struggle suffered due to cultural struggle against Britishers. The factor of government's interference gave a powerful weapon in the hands of orthodoxy to weaken the reform movement.

A phenomenon which was a great enemy to progressive movement was that the struggle against colonial hegemony brought with it a negative approach in patriotism. Patriotism took the form of admiring almost everything without discrimination everything Indian and looking down on almost everything western. With the starting of a powerful Marathi monthly journal, Nibandhamala in 1874. Social conservatism of Maharashtra received a new impetus. Its editor, Vishnu Krishna Chiplunkar was a powerful writer. The western literature and history had a different kind of effect on him. Far from creating an admiration for the western thought, they fanned in him the pride of his own country, religion and language. The journal became immediately popular because it satisfied the ego of the majority. It started a new era of cultural nationalism, inspiring a determination to rid the country of the foreign rule. Tilak became its foremost leader.⁵⁴ It minimised the need of social reform and thus

54. P.J. Jagirdar; op.cit., p. 109.

obtained the support of social conservatives.

One finds that the need of emancipation was felt by the reformers. But it was lacking support and encountered opposition at the hands of conservative society, thus most of them yielded to their pressures. Most of the reformers had little objection on education but when it came to improve customs effecting family like ban on child marriage and raising the Age of Consent law, objection was maximum.

The response towards a particular reform was always felt later. The change in the degree of social acceptance was visible in the issues taken during the 20th century.

CHAPTER - III

MAKING OF THE SARDA ACT

This chapter deals with the attempts made to fight the evil of child marriage before the introduction of the bill by H.B. Sarda and the passage of the bill in the Assembly. It tries to examine the background of the Act and the stages through which it went through before taking its final shape.

The law banning child marriage introduced by Harbilas Sarda in Legislative Assembly in 1927 was not the first attempt to root out this practice. The first serious and forceful endeavour was made by B.M. Malabari (a social reformer from Bombay). Although he couldn't achieve what he had aimed at, but his efforts were not totally futile. His crusade was further carried on by H.B. Sarda and concluded with the "Child Marriage Restraint Act".

The Child Marriage Restraint Act is commonly known as Sarda Act, since the person who introduced it was Harbilas Sarda. After a strong agitation by the conservative section of the society and lengthy investigation by Select Committee and Age of Consent Committee also known as Joshi Report of Consent Committee after the name of the Chairman,

Moropant Joshi (which were formed to furnish information about the prevailing Age of Consent and built public opinion about the proposed bill), the bill was passed with the full approval of the government of India. It was an Act to restrain solemnisation of child marriages. Under the Act, males under 18 and females under 14 years of age meant a child. Provisions were made in the bill to punish persons responsible for solemnising child marriages. From the time it was introduced in February, 1927 in the Legislative Assembly to September 1929, when it was passed as an Act, the bill was discussed in different organisations, communities and legal bodies. In fact, to a great extent, the debate created by this Act reflected the social consciousness of the society of the 19th and early 20th century.

MALABARI'S CRUSADE AND THE AGE OF CONSENT BILL

The 19th and the 20th century reformers who fought against women's oppression along with other social evils were critical of and opposed to the child marriage, but could not do anything substantial to erase it. Child marriage, like the practice of sati and enforced widowhood, was maintained on the basis of religious sanction. The Indian Penal Code,

enacted in 1860, included rape under offence and prescribed a punishment which might extend to transportation for life for husband who consummated the marriage when his wife was below 10 years of age.¹

After a long time in 1884, a controversy over child marriage was generated by B.M. Malabari's Notes on infant marriage and enforced widowhood. In the words of Heimsath, these 'Notes' which were circulated among officials and private persons, British and Indian, marked the beginning of the All India social reform movement.² Malabari's note on infant marriage was a forceful attack on the evil custom of child marriage. He considered child marriage a more serious evil than infanticide. He believed that child marriage was the cause of many of our social grievances including enforced widowhood, entailing life long misery to either or both parties. He also took into account, problems resulting from early consummation. His notes stressed on the abolition of child marriage through government efforts.

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1. R.K. Sharma; Nationalism, Social Reform and Indian Women, p. 187.
Eleanor Rathbone; Child Marriage: Indian Minotaur, p. 17.
 2. C. Heimsath; Indian Nationalism and Hindu Reform Movement, p. 151.

The most remarkable feature of his notes was the solution which he had suggested. His proposal to check this pernicious custom was that university graduates and others should form themselves into an association and take a pledge not to marry under a certain age. He also suggested that the university authorities may prefer unmarried candidates to the married, all other qualifications being equal. Then again, the educational department may give a few chapters in its school books describing the evil in its various forms. The state may offer indirect inducements to students remaining unmarried upto a certain age. He felt that there were ways in which the executive could do a great deal towards the mitigation of social martyrdom without invoking the aid of the legislature.³

Copies of Mr. Malabari's Notes were forwarded to local governments and administration, since it was a matter of social well-being of the masses. It is very interesting to examine the approach of the government towards a deep rooted social issue at a time when national movement was gaining strength in many parts of the country. While regarding with sympathy, all the local governments exhibited

3. Home Dept.(Public), File No. 81-82, 1884.

complete unanimity of opinion against legislation and imposition of the executive disqualification which Mr. Malabari advocated. The government felt that dealing with such subjects as those raised in Mr. Malabari's Notes, the British government has usually been guided by certain general principles. For instance, when caste or custom enjoins a practice which involves a breach of the ordinary criminal law, the State will enforce the law. When caste or custom lays down a rule which is by its nature enforceable in the civil courts but is clearly opposed to morality or public policy, the State will decline to enforce it. When caste or custom lays down a rule which deals with such matters as are usually left to the option of citizens and which does not need the aid of civil or criminal courts for its enforcement, State interference is not considered either desirable or expedient.⁴

It seems that the reasons behind the rejection of Malabari's suggestion were somewhat different. Firstly, the government, as mentioned in the previous chapter, was not willing to face the mass antagonism and thus become unpopular. Secondly, given the level of consciousness of

4. Hope Dept.(Public), File No. 131-138E, 1886.

the people, any legislative action on the notes of Malabari, would have inevitably invited mass opposition. Thus, the government, to avoid any unpleasant situation, preferred controversial issues to be decided by public opinion, thereby absolving itself of the duty to educate the people. In this case too, the government invited opinions of leading public personalities like, V.N. Mandlik, M.G. Ranade, V.T. Telang and R.C. Dutt. They had differences of opinion about the Malabari's Notes, but broadly they agreed on the nature of the problem. A large meeting was organised in Bombay in 1885 presided over by V.N. Mandlik. It passed a resolution that the government should not interfere in social matters. Similar meetings in other places demonstrated that public opinion generally did not support the legal amendment and the proposal was eventually dropped in 1886.⁵

The then existing level of consciousness, to a large extent, was tempered and influenced by the orthodox section of the society and could not accept the proposed changes in the customs. Influence of the teachings of reformers of that period could not transcend a small section whereby not generating sufficient support for Malabari's suggestions. In spite of their failure to influence the public

5. P.J. Jagirdar; Mahadeo Govind Ranade, p. 153.

opinion at large, the social reformers continued their movement for legislative action zealously through different forms. Thus, without getting disheartened Malabari carried on the struggle through writings in Journals and close door debates and discussions on the issue, with the likeminded people. This method and course adopted by these reformers proved to be slow. But they believed that any other course recommended by the Malabari's 'Notes' can be nothing other than slow.⁶

To pressurise the British government to enact legislation on this issue, attempts were made to mobilise public opinions outside the country as well. Malabari undertook a trip to Europe in 1890 to carry on with his unflinching efforts. He published a pamphlet in a form of appeal on behalf of the daughters of India. He also wrote letters to the 'Times' and other leading journals about the situation of women in India, followed by discriminating criticisms of an eminent authority such as Sir William Hunter. This attempt of Malabari drew public attention to the existing anomalies of the Indian laws and the position of child wives and child widows in India.⁷ The response of the English press

6. Writings and Speeches of Telang, p. 153.

7. Dayaram Gidumal; A Biographical Sketch of Behramji Malabari, pp. 230-31.

was sympathetic to the cause advocated by Malabari. A small meeting was organised in London to discuss some of his proposals. In the course of the meeting some resolutions were discussed and adopted to be submitted to the Secretary of State for India and the Indian government. The resolutions suggested to raise the Age of Consent to twelve and provision be made for enabling infant marriages to be set aside, unless ratified by consent within a reasonable time of the proper age. That the suit for restitution of conjugal rights, which was founded upon ecclesiastical law and had been repudiated in its coercive form in all countries of Europe, was not to be introduced in India, as it would produce injustice and hence required reconsideration. Lastly any legal obstacle that still stood in the way of the remarriage of widows should be removed.⁸ These resolutions were in due course sent to the authorities. Thus, a public opinion was created in England against the child marriage custom.

Child marriage had become an issue of debate among a section of the masses in India also due to the consistent efforts of Malabari. A number of incidents of atrocities and sufferings resulting from child marriage helped the

8. Ibid., p. 232.

growing awareness against this social evil. In 1891, public attention was aroused by a shocking incident in which a tender girl of 11 years died due to forced intercourse.⁹ Incidents of this nature placed the social reformers on strong footings to demand the legislation. The National Social Conference also passed a resolution requesting the government to give protection to girls below 12 years, both married as well as unmarried, by amending the Penal Code.

The reformers tried to appease the orthodox opposition by assuring them that this reform will not bring about any fundamental change in the Hindu society as delayed consummation of marriage is a reform from 'within' Hindu society, and not imposed from without.¹⁰ Some of the reformers like, K.T. Telang, N.G. Chandavarkar, Bhandarkar and Zaverilal Uma Shankar did their utmost to strengthen the hands of the government when Andrew Scoble, an official member of the Legislative Assembly introduced the bill to raise the protected age of 12 in 1891.¹¹ Introduction of the bill generated heated debate

9. Neera Desai; Women in Modern India, p. 78.

10. Charles Heimsath; op.cit., p. 152.

11. Dayaram Gidumal; op.cit., pp. 248-249
 Neera Desai; op.cit., p. 170 -
 E. Rathbone; Child Marriage: Indian Minotaur, p. 17.

within and outside the Assembly. The opposition had galvanized itself into action. Protest meetings were organised in different parts of the country by the religious bodies. Mahapuja's were organised a few days before the passing of the bill in Calcutta.¹² Among the nationalist leaders, B.G. Tilak was the leading man in opposing the bill. Tilak's stand in substance was for social reform, there should be no legislation which would cover all people willing and unwilling. Yet, law could be enforced only on those who had expressed their willingness to adopt a particular practice of social reform.¹³ Interestingly, Tilak's vehement opposition helped the reformers to get the support of government in a smooth manner. It so happened that a section of nationalists wanted social reform to precede political reform, whereas the other section wanted political reform first. B.G. Tilak of the extremist wing of Indian National Congress was for political reforms and was against Age of Consent bill on the ground of state interference in social matters. Watching the

12. Aniya Sen deals in detail about the protest meetings in Calcutta in his work "Hindu Revivalism in Action, The Age of Consent bill agitation in Bengal, Indian Historical Review, July 1980.

13. Jagirdar; op.cit., p. 157.

whole game, the British government took the side of moderates and passed the Age of Consent bill, thus proving itself a benevolent authority.

The controversy set out by Malabari on the issue of infant marriage created a movement from 1884 to 1891. Forces of orthodoxy as well as social reformers were stimulated and activated for some time, but it again went off to sleep for many years. Although the reformers from the time of Ram Mohan Roy were fighting against the social degeneration of the society, it was moving in a slow pace. The time gap between the attempts of Malabari and introduction of Sarda bill provided enough opportunity to orthodox section to strengthen itself. The reform at the same time was also moving inch by inch making space for further changes to be accepted.

It was on 18th Feb., 1922, Rai Bahadur Baksh Sohanlal, M.L.A. moved for leave to introduce a bill in the Assembly to amend Section 375 of Indian Penal Code by raising the Age of Consent in both marital and extra-marital cases to 14. The Assembly carried a motion to circulate the bill for the purpose of eliciting public opinion from various provincial governments. Most of them did not favour the bill to be

referred to a Select Committee, it was negatived by 41 votes to 29, the government remaining neutral.¹⁴ Therefore, the attempt to raise the Age of Consent was a failure. Nevertheless, the crusade was started again by Sir Hari Singh Gour, who introduced a bill in 1924 to raise the Age of Consent from 12 to 14, in both marital and extra-marital cases. This bill was referred twice to Select Committee which made certain modifications and an amended bill fixed 13 years within the marital state and 14 years outside marriage. An amendment raising the age to 16 in extra-marital cases was carried by 65 members voting for and 22 against it. The government was opposed to this amendment. Another amendment raising the age in marital cases to 14, thus restoring the original provision of the bill, was carried by a narrow majority of 2 votes, 45 voting for and 43 against the amendment. But due to the unfavourable attitude of the British government, the motion was defeated by 54 votes to 36.¹⁵ It was the government which did not want to raise the Age of Consent more than 14 outside marriage, in view of the strong opposition from the people.

14. Report of the Age of Consent Committee, 1928-1929, p.11.

15. Home Dept.(Judicial), File No. 562/1929, p.1.
R.K. Sharma; op.cit., p. 187.

In 1925 the government introduced a bill of their own, raising the age within the marriage tie to 13 and outside it to 14 years. This bill was passed as an Act XXIX of 1925.¹⁶ After the Age of Consent bill was passed in 1891, the amendment came only in 1925 after a gap of 34 years. It increased the pace of social reform marginally as it raised the Age of Consent from 12 to 13 years within marriage and 14 years outside it. This state of affair did not satisfy Hari Singh Gour who had introduced an amendment in 1924, for raising the age to 14 years within and outside marriage, but it was dropped. Thus, in 1927 in March, Sir Hari Singh Gour introduced a bill with an objective of raising the age of consummation outside the marital relationship from 14 to 16 years and creating a new offence of illicit intercourse within the marital relationship between 13 to 14 years punishable with imprisonment upto two years and also omitting provision of the minor punishment for raping a wife between 12 and 13 years.¹⁷ The British government did not seem to approve of the bill. Hari Singh Gour's bill met the same fate as his amendment, introduced in 1924. The problem was that the composition of the Legislative Assembly was a determining factor in passing any bill. Legislative Assembly was comprised of

16. Home Dept.(Judicial), File No. 782/1930.

17. Ibid., File No. 562/1929.

Indians, known as non-official and Britishers as official members. Since the official members constituted the majority in the Assembly, and a strong section of it was against the reformers, it was very difficult to get any bill passed without their support. The composition of the Assembly led to the rejection of the bill introduced by Hari Singh Gour. The official members felt that before taking any action on the bill, they should watch the effects of 1925 Act. By watching the effects of 1925 Act, the government to avoid any trouble, wanted to gauge the mood of the people before acting upon the introduced bill. The local governments in this regard were addressed in 1927, calling for a detailed report on the effects of 1925 amendments, and what further advance was practicable in the near future.¹⁸

In June 1928, a Committee was appointed by the government of India to examine the state of the law relating to the Age of Consent as contained in Sections 375 and 376 of the Indian Penal Code, specially with regard to its suitability to conditions in India and also to enquire into the effect of the amendment made by the Indian Penal Code (Amendment) Act XXIX of 1925, and to report whether any further

18. Home Dept.(Judicial), File No. 782/1930.

amendment of the law was necessary and, if so, what changes were necessary with regard to the offence (a) without, and (b) within the marital state.¹⁹

The Committee proved to be a very important report since the Age of Consent was closely linked with the age of marriage. The fate of the legislation about child marriage depended on the recommendation of this Committee. Meanwhile a strong opinion had grown up for a more effective and easily enforced step of prohibiting the very celebration of child marriage. A bill for preventing child marriage was introduced by Rai Sahib Harbilas Sarda in February, 1927.

A long drawn battle against the custom of child marriage was fought before the bill was introduced by Sarda and passed as legislation by the Assembly in 1929. An effort by B.M. Malabari and reformers like, Ranade, K.T. Telang and Dayaram Gidumal to stop infant marriage had fallen through in the face of the strong resistance from the orthodox sections of the society. Realizing the low level of consciousness among the masses to opt for reforms of this nature and ideological hegemony of the orthodox sections, the battle was shifted

19. Home Dept.(Judicial), File No.562/1929.

from child marriage to Age of Consent. Social reformers by their consistent effort did succeed in generating a debate on the issue. Efforts were made to mobilise public opinion through writings and public meetings in and outside the country. The issue no longer remained alien to the public and the government. The government was forced to debate the issue in the Assembly. Consequently, a law enacted to fix the Age of Consent as 12 years within marriage as well as without marriage in 1891, was changed in 1925 to increase the Age of Consent to 13 and 14 years respectively. But with this change, the debate on child marriage did not subside. The movement grew further and gave rise to the demand for restraining child marriage, culminating in the form of a bill introduced by H.B. Sarda in the year of 1927.

PASSAGE OF THE BILL

Rai Sahib Harbilas Sarda introduced a bill in the Legislative Assembly, to regulate the marriage of children among Hindus on 15 Sept., 1927. The bill went through a long process of debate and modification before it could be enacted as a legislation. The primary objective of introducing the bill was to put a stop to the sufferings of the Hindu girls married

in their childhood. According to the statistics provided to support the bill, mortality rate among the children had remained highest in the society. This produced a large number of child widows, whom religion did not permit to re-marry. The bill intended to remove principle expedient of the physical and mental growth of the youth of both sexes, the main cause of premature decay and death amongst the Hindu married girls. Among other reasons for bringing the measure was to give a real and effective protection to girls which the Age of Consent Act failed to do. The law of Age of Consent he felt was a dead letter as far as marital relations were concerned and it had done little good except to educate a small section of the people.

However, H.B. Sarda introduced the bill to regulate marriages of children among the Hindus in the Legislative Assembly which consisted of the following features. The main point of the original bill was to invalidate all marriages of a Hindu girl under 12 and of a Hindu boy under 15 years. One clause was that marriage of a Hindu girl, who is under 12 years of age shall be valid if her guardians obtains before marriages a licence for the performance of such marriages. Such licences were obtained from the Magistrate of the district in which the girl ordinarily

resided. Along with it, the next clause was that the Magistrate of the district shall grant a licence for the marriage of a Hindu girl to her guardian who files a written application for the grant of such licence with an affidavit swearing to the fact that the girl has completed her 11 years and that the guardian conscientiously believes that the tenets of the religion which the girl professes enjoins that the girl should not be kept unmarried any longer. The bill proposed by H.B. Sarada was only for Hindus which included Jains, Sikhs, Brahmos, Arya Samajists and Buddhists.²⁰

This bill, when introduced in the Assembly, met with mixed opinion. The orthodox sections vehemently protested since it interfered with the marriage custom which was considered a religious sacrament and any interference in Shastras was not tolerated by the orthodox. Then there were members who wanted a legal action against child marriage, yet were very sceptical about public reaction. Thus, to be more cautious they proposed circulation of the bill for public opinion. Some wanted the bill to be passed without delay. Ultimately, amendment was passed to refer it to a Select Committee, though the British officials opposed the motion

20. Home Dept.(Judicial), File No. 868/1930.

and had pressed for circulation for the purpose of eliciting opinion.²¹ The government of India, however, circulated the bill by executive orders to local governments. On 22nd March 1928, H.B. Sarada presented the report of the Select Committee on the bill. One finds that a strong body of opinion was received against the principle of invalidation involved in the bill on the grounds of religion. It was felt objectionable to interfere with the validity of a marriage which had been performed by religious sanction. It was pointed out that one of the possible results would be a considerable increase in bastardization. It was also pointed out that with the uncertainty in the registration of births, vexatious litigation might arise (where property was involved). Another point of great disagreement was that the bill conflicted with the cardinal principle of Hindu religion that marriage was a sacrament and therefore, civil law could not validate or invalidate it on the basis of such points.²² The bill changed by the Select Committee was a new bill to a great extent. Instead of Hindu marriages the title was given as Child Marriage Restraint Act, thus including all communities.

21. Home Dept.(Judicial), File No.1024/1928.

22. Ibid., File No.868/1930.

Then instead of invalidification, it was made punishable, if the girls under 14 years and boys under 18 years were married. Male below 21 years if contracted a marriage was to be punished with fine of Rs.1000.²³

The point of great interest that one finds is that very conveniently under the garb of religion, the main point of the original bill, i.e. invalidation of the marriages, was done away with and this left a space for marriages to take place although with punishment. This proved to be a major weakness of the Act, since illegal marriages were not invalidated after the event.

It seems that the very purpose was lost by softening the bill to appease to the public opinion, mainly the orthodox opinion. Despite this moderation, the bill was again circulated for the purpose of eliciting opinion. Since the common fear among the local governments was that steps should be taken to avoid the danger of vexatious litigation which could not be implemented.²⁴ Within the Legislative Assembly also some members were agitated at the age limit which was

23. Ibid.

24. Home Dept.(Judicial), File No.1024/1928.

changed from 12 to 14. Even some members of the Select Committee, like Madan Mohan Malaviya and Ganganand Sinha felt that 14 was too high a limit. M.M. Malaviya opined that it would rightly rouse much opposition among the large body of orthodox Hindus. The age should be fixed 11 years, so that a law might be passed with the unanimous support of all sections of the community.²⁵ Muslims also were annoyed since they were included in the bill, according to the Select Committee. Due to the dissatisfaction outside and inside the Assembly, the bill was again recommitted to the Select Committee. Keeping the main principle of restraining child marriage, it brought small changes regarding the punishment like whoever performs, conducts or directs any child marriage shall be punishable with simple imprisonment, which may extend to three months and shall also be liable to fine. To this clause a sentence was added, "unless he proves that he had reason to believe that the marriage was not a child marriage". Another addition was made in a clause which said where a minor contracts a child marriage any person having charge of the minor whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or

25. Legislative Assembly Debates, 15 Sept., 1927.

permits it to be solemnised or negligently fails to prevent it from being solemnised, shall be punishable with simple imprisonment which may extend to three months and shall also be liable to fine. The addition to this was, "provided that no women shall be punished with imprisonment".²⁶ Thus, one finds that heavy pressure from within and outside the Assembly was making the bill softer. Even after this heavy alteration brought by the two Select Committees, the opposition was still strong against the bill. Numerous amendments were made by the Assembly members during the debate to exclude certain castes, primarily Brahmins, from the bill. Many amendments were proposed to reduce the age limit which they felt was very high. Very common amendment from some Muslims were to exclude them since child marriage was not prevalent among them. Some repeals were made to postpone the implementation of the Act which was supposed to be from 1st April 1930, till the public consciousness was raised.²⁷ Outside the Assembly, movement was going on supporting for and protesting against the

26. Home Dept., The India Code: Ministry of Law, Vol. III; "The Child Marriage Restraint Act", No. 19, 1929, 1956.

27. Home Dept. (Judicial), File No. 9/1931.
 Simla Records - 2, File No. 1100/1929.
 Delhi Records - I, File Nos. 169/1933, 1119/1930, 946/1929,
 103/1930, 1104/1928.

proposed bill. Many deputations of orthodox people as well as reformers met the Viceroy. Numerous national, provincial and regional associations of different communities and women were holding meetings and passing resolutions supporting or opposing it.²⁸ All these factors made the government quite hesitant to lend its support even after investigation by two Select Committees. Therefore, the government suggested to H.B. Sarda to postpone his motion to take the bill into consideration after the conference of representatives of different parties which was being convened with a view to arrive at some agreement. When Sarda refused to agree and moved his bill on 29th January 1928, an amendment with the help of the government was passed that the discussion on the bill should be postponed till the report of the Age of Consent Committee was published.²⁹ There was close connection between the subject matter of the bill and of the Age of Consent Committee. The Age of Consent Committee report had substantial documents of more than 350 pages, consisting of 11 chapters in which Age of Consent and marriage was discussed. The Committee had worked for one year with great thoroughness, travelling

28. Home Dept.(Judicial), File Nos. 131/1929, 793/1932, 1243/1933, 1118/1929, 561/1929.

29. Legislative Assembly Debates, 29th January, 1928.

all over India, interviewing four hundred witnesses.³⁰ After the publication of the report, it was discussed in the Assembly. The reformers saw it as a commendable work but on the other hand the very validity of the report was questioned by the orthodox sections. They felt that none of the members of the Committee was authorised enough in Hindu Shastras to decide about marriage age. Another main objection was that the orthodox opinion was not represented at all. However, by this time a recognizable section of the society was bent upon passing the bill, especially the women organisations relentlessly appealed to the public as well as to British authority. Moreover, the British government did not find any reason to postpone or modify the bill any more, since the arguments from orthodox sections were very unreasonable. Therefore, ultimately the bill was passed on 23rd Sept. 1929, by 67 votes for and 14 against it.³¹ It was approved in the Council of States also.³² Thus, with the assent of the Governor General, it became an Act on 1st Oct. 1929, and was to be implemented from 1st April, 1930.

30. Age of Consent Committee Report. E. Rathbone; op.cit. p. 3.

31. Legislative Assembly Debates, 23rd Sept., 1929.

32. Council of States Debates, 27th Sept., 1929.

The role played by the government from the time of the introduction of the bill was very dubious. After the agitation of the Age of Consent, the government was indirectly refusing to bring about any changes in the field of social welfare. The then Home member Sir Alexander Muddiman had declared that at each stage after the bill's introduction, he would oppose the bill. He did not oppose the bill at the introductory stage because of the convention.³³ His successor Sir James Crerar also followed the same policy at least for some time. It was behaving in a manner as if the government had never passed any law affecting socio-religious practices. The modern review observed that the government has grown more timid than before, because it had passed various repressive and other law in the teeth of vehement popular agitations.³⁴ One finds that during the making of the Act and processing it through Select Committees, the Act was softened so much that it deleted the cardinal point, i.e. invalidation of child marriages. Although it would have definitely met unprecedented opposition but then this would have been a proper solution to the custom which was legitimised by Hindu religion.

33. Legislative Assembly Debates, 15th Sept., 1927.

34. Modern Review, Oct. 1927, p. 487.

The repeated postponement as well as the overwhelming support by the government reflects the contradiction inherent in a colonial government. On the one hand, it was apprehensive about popular uprisings but on the other hand, it had to support one section of the nationalists to prevent them from uniting against the colonial government. Also it had to prove itself a benevolent government.

The Britishers claiming their country being the most advanced country in the world in the development of justice and freedom, really had upset the Indian reformers.³⁵ Nevertheless, one can without doubt claim that the zealous endeavour of the reformers brought gradual increase in the level of consciousness of the society. On the basis of the overall development which has been attempted to show in this chapter proved that though the pace of social reform movement was slow and halting, yet it brought reforms as well as created an intellectual environment which paved the way for further reforms in the subsequent years.

35. Hindustan Times, Indian Social Reformer, Modern Review, 1928.

CHAPTER - IVATTITUDES TOWARDS THE BILL

The making of the Sarda Act serves as an index of the level of consciousness of the 19th and early 20th century society. The debate on this issue reflects not only people's responses and reaction to the bill, but also consciousness of and about women. Along with the question of child marriage the debate generated by the bill gave an opportunity to the people to articulate their opinions about other social issues also.

Although the delay in passing the bill and the changes introduced by the Select Committees minimised its effects, it forced the society to rethink about the existing social customs.

From the time the bill was introduced in 1927 in the Legislative Assembly to September 1929 till it was passed as an Act, the bill was discussed in different organisations, communities and legal bodies. In this chapter, reaction and responses of the different sections of the society to the bill would be examined. The paucity of the source material makes it difficult to identify and focus on the consciousness of all sections of the society with regard to the bill. This chapter has been divided into three sections on the basis of

opinions supporting the bill, opposing the bill, and those who extended conditional support.

Section - I

IN SUPPORT OF THE BILL

Immediately after the bill was introduced, debate, discussions and agitations were built up supporting the Child Marriage Restraint Act. In spite of the resistance put forth by the orthodox sections of the society arguments were advanced supporting the bill inside the Legislative Assembly and throughout the country. Different groups, organisations and legal bodies, including some women organisations, became active and took up the task of mobilising public opinion in favour of the bill.¹ The members of Legislative Assembly played a vital role by initiating the debate inside the Assembly and then passing the bill into an Act.²

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1. Home Dept.(Judicial), File No. 878/1927, 36/XIV/1935. All India Women's Conference Papers, 1929 to 1931.
 2. Legislative Assembly Debates, 1927 to 1929.

The main objective of the bill as given by H.B. Sarda who introduced the bill was to put a stop to child widowhood. The bill was also intended to remove the principal impediment to the physical and mental growth of the youth of both sexes and the chief cause of their premature decay and death. To substantiate his arguments, H.B. Sarda furnished the 1921 Census Report to show the numerous instances of young widows and even of few months old. He also placed statistics of the mortality and diseases of the young couples before the Legislative Assembly, which proved the pathetic condition due to child marriage.³ This aspect was considered to be very important for bringing about the legislation. Most of the members who were supporting the legislation saw it as a pivotal reason and even questioned the Hindu Scriptures and Smritis for this.

Some members of the Legislative Assembly went to the extent of condemning the customs as being made by man for his own interests, like Lala Lajpat Rai who was a prominent member of the Indian National Congress believed that Hindus had always been changing their social laws according to the needs of the time, and such customs had their origin in

3. Ibid., 15 Sept., 1927.

certain political and economic causes, not in the religion. If legislative sanction, he believed, was not given to these reformative steps, opposition to them would continue.⁴

Similarly, Srinivas Iyengar, another member of the Legislative Assembly, felt that due to economic causes and disturbed state of society, this practice came into existence in medieval and post medieval times and had nothing to do with the Hindu religion.⁵ Same notion was shared by Iswar Saran who felt that if Shastras had any injunction in such a reform then Shastras had no use to them. He felt that essence of Hinduism was progressive and not opposed to reform, it should be given up.⁶ This feeling was more vociferously expressed by a Muslim member of Legislative Assembly, M. Shah Nawaz, who was also a member of the Age of Consent Committee. He remarked that men had no right to keep women in such a state and sacrifice them for the sake of the customs.⁷

4. Legislative Assembly Debates, 15 Sept., 1927.

5. Ibid.

6. Aaj, 28th March, 1928 - Legislative Assembly Debates, 15 September, 1927.

7. Legislative Assembly Debates, 11 Sept., 1929; Hindustan Times, 25 September, 1929; Age of Consent Committee Report.

It was not just condemning the custom but some members of the Legislative Assembly were impatient with the society for lagging behind in social progress. For example, Mr. Jayakar, a member of Legislative Assembly, felt that when the social fabric was on fire, one was asked to have "caution" to find out whether public opinion demands that fire should be put out. He complained against the overdose of such caution (as some members thought one should be cautious while legislating religious matter). To him it was ridiculous to require the ascertainment of public opinion about obvious truth that the proper place for a child below 12 is the nursery and not the marriage bed.⁸

There was another section of members who supported the measure within the framework of Mantras from Hindu Shastras and tried to convince the opposition that religion also talks about post puberty marriages. Muktiar Singh, a member of Legislative Assembly, quoted a Mantra recited at the time of marriage which meant that both the partners know what marriage was & knowingly they entered into the contract, which implied that both had to be mature. Muktiar Singh quoted the Sushrutta and Baghatta,

8. Legislative Assembly Debates, 15 Sept., 1927.

the great authorities of Ayurved, who held that the minimum age should be 16 and laid down that if there happened to be pregnancy before the age of 16, miscarriage would take place, if the a child was born, it would not live long. Even if it lived it remains very weak. He challenged the members opposing the bill on the basis of religious injunctions that at the time of marriage one should be a Snatak.⁹ Given that young girls were not so, was it intended that the girls were not to have education at all, he asked.¹⁰

A Muslim member of the Assembly, M.A. Jinnah, said that the bill in no way militated against the rule of civil law applicable to marriages amongst Mussalmans. He believed that there could not be a divine sanction for such evil practices and, if any was there, it should be stopped immediately. He further argued that there was nothing in Quran or in Islam which prevented the destroying of this evil.¹¹ These were the main arguments in the Legislative Assembly¹²

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9. Snatak; One who has finished his educational career and read at least one Veda according to Manu.
10. Legislative Assembly Debates; 16 Sept., 1929.
11. Ibid., 11 Sept., 1929.
12. Ibid., 16 Sept., 1929.

around which the discussion for supporting the bill revolved. These arguments were raised to convince the other Assembly members about the appalling condition of the girls health and their education and for the development of healthy India to bring back Swaraj.

Thus, it is clear that a section of Legislative Assembly was in favour of removing the evil of child marriage. Showing their concern to the sorry state of child widows, they supported the legislation on medical, social and religious grounds. Not only did they try to justify the enacting of legislation for preventing child marriages, within religious framework, but also advocated the rejection of religious scriptures which opposed social reforms. This shows a drastic change in the nature of consciousness in the early 20th century. The growing rational element is evident in the consciousness of the 20th century society.

The favourable response for enacting the legislation was no longer confined to the Legislative Assembly. The individual groups and social organisations outside the Assembly, had come in the open and raised their voices in support of the legislation. They boldly opposed this social evil and attacked the orthodox section of the society who

opposed the legislation. They made it loud and clear that social evils like child marriages are institutionalized and sanctioned by the orthodox people for their selfish ends. Demonstrative attitude was displayed by the people in general, specially the women. Representatives of different communities and associations passed resolutions and took deputations to the government to express their support.

The debate within and outside the Legislative Assembly raised the level of consciousness of the society and consequently thoughts of the people did not remain confined to the isolated issue of child marriage. The issue of child marriage was viewed in a broader perspective and related issues, like position of women in the society and faults in the marriage as an institution as a whole were questioned, Uma Charan Rai wrote in Vishwamitra that marriages were arranged without the consent of girls as if God had given the responsibility to the parents. He felt that the Indian marriage system was at fault. To him marriage was the bond of love and it could only happen when boy and girl matures and get married. He also wrote about the implication of child marriages. He pointed out that when a poor boy get married and if his father died after one or two years, the whole responsibility fall on him which became impossible

for him to carry. Instead of studies, he get preoccupied about household problems. By the time he get a job, his children were of eight-ten years old and ready to get married. Responsibilities like this made the life of male partner miserable.¹³

This was written in a newspaper which was read by general people and an attempt to educate people was made during the debate. This opinion suggests that western education and reformers attitude had made some people realise the fault with marriage system of India.

The Arya Samaj, a reputed society for social reforms supported the bill and helped to generate favourable public opinion. In different provinces, the Arya Samaj passed resolutions supporting the bill. They believed that upto the present, the propaganda had been of great educative value to the public in general and could lay claim to have made them conscious of the evil which was sapping the vitality of the Indian State.¹⁴ In the anniversary of Arya Samaj,

13. Vishwamitra, 22 May, 1934.

14. Home Dept.(Judicial), File No. 996, 1932.

J.N. Sahni, editor of Hindustan Times opposed the bill on a different ground. He said about 75 years back, founder of Arya Samaj, Swami Dayanand had urged 25 and 16 years as the marriageable age for boys and girls respectively. It was ridiculous that after 75 years, it should be 14 and 18 years. He felt that it was a insult to Arya Samaj, and the country to go back rather than to progress.¹⁵ Similar opinion was voiced by many members of the Legislative Assembly and general public. Shyama Charan wrote in Hindustan Times that Select Committees had given importance to the views of the orthodox class and kept the age low.¹⁶

The bill generated the support cutting across class and caste barriers. Even the Muslims came forward and raised their voice. The Muslim witnesses for Age of Consent Committee Dr. Mahmood, Mr. Asaf Ali, Barrister Maulanaji Dawad Gaznabi and Mr. Tasad Ahmed Sherwani supported the bill and said, "In the name of religion these people who are spoiling the aspiration of the Muslim, they should be tackled harshly".¹⁷

15. Hindustan Times, 28th August, 1929.

16. Ibid., 19th Sept., 1929.

17. Ibid., 23rd Sept., 1929.

Din Mohammed from Qudian in his interview to Age of Consent Committee argued that the Quran did not lay any tenets regarding the age of marriage or consent. It only declared that when girls were grown up, they should be married.¹⁸ Like the Muslim, the Jains also gave its support. A representative from Brahmachari Seta Parishad told the press representative that he was convinced that child marriage was a sin and had no religious sanction behind it. He further held that time was ripe to make child marriages illegal.¹⁹ Thus, cutting across the community lines, the bill got favourable response from Hindu, Muslim and other communities.

Since the individuals, belonging to middle class or higher castes were at the forefront in mobilising public opinion for the bill, our source contains information mainly about them. Views of lower class and castes are rarely mentioned or recorded. But this do not suggest that people belonging to the poor strata and lower castes were untouched with the ongoing debate. From one rare report, it is known that the debate might have reached the lower castes.²⁰ Barbar

18. Indian Social Reformer, 13 Oct., 1928.

19. Hindustan Times, 8th April, 1928.

20. Vishwamitra, 17 July, 1934.

and Sundiyas of Behrampur took vows against child marriage and felt that when efforts were being made to stop the evil why the highly religious people were against it.²¹ It seems that five Panches in Behrampur resigned from their post of Punch Sabha since they did not want to participate in the child marriage. The Sundiyas felt that this incidence should open the eyes of higher caste people.²² Little more information is found in the letter of Dr. B.R. Ambedkar, Chairman, Council of Management, Depressed Classes Institute, Bombay (Bahistikrit Hitkarni Sabha) to the government, dated 6th Dec., 1927. According to him, the Institute was entirely in agreement with the principle that the minimum age for boys and girls for the purposes of marriage should be laid down by law. The Institute had no sympathy with the policy of non-intervention in the social and religious affairs of the people, adopted by the government since the 70's of the last century. He and his Institution felt that Hindus were a law abiding people and they would abide by the law once it has been passed.²³

21. Ibid.

22. Ibid.

23. Home Dept.(Judicial), File No. 1024, 1927.

The bill received support from many regional and national associations as well. Resolutions were passed by many organisations. Some of them are, The Indian National Social Conference, The Arya Conference of the Arya Samajist of Indian Bureau, The All India Khatriya Conference, All India Gour Mahasabha Banaras, The All India Namdeo Samajist Conference, All India Agnihotri Mahasabha, The All India Marwari Sammelan, Bombay, The U.P. Arya Pratinidhi Sabha, The All India Jat Mahasabha, The All India Khandelwal Mahasabha, The All India Jadhav Mahasabha, The All India Kurma Kshetriya Conference, The All India Shinchare Mahasabha, All India Tyagi Brahmin Mahasabha, The Executive Committee of the Shiromani Gurudwara Prabandhak Committee, Bengal Provincial Hindu Sabha, The Marwari Chamber of Commerce, League of Emancipated Lahore, Rajput Sthania Sabha, The Bombay Presidency Social Reform Association, Women's Indian Association, Sindhi Ladies Conference, Women Conference Kanpur and Banaras, The Bombay Women Conference, and Gujarati Hindu Stree Mandal.²⁴

It was not only through resolutions and letters that support was expressed for the bill. Processions were also

24. Hindustan Times, 1927, 1928. Indian Social Reformer, 1928. Aaj, 1928. Home Dept.(Judicial), File No.868/1930.

taken out in the streets to show solidarity. For example, Delhi witnessed an unusual incident when those opposing the Sarda bill organised a demonstration in the name of Sanatans of Delhi. Supporters of the Sarda Act captured the meeting with overwhelming majority and accorded their unanimous support to the bill. Pro-bill people overshadowed the anti-bill people. About two dozen Pundits and other opponents of the bill followed by some 30 to 40 boys of the Sanatan Dharam organisation carrying black paper flags and placards condemning the Sarda bill started from the clock tower reached Satnarain temple. They received a very poor reception at the hands of general public and were welcomed by slogans like 'Sarda Bill Ki Jai'. Another set of people in favour of the bill organised a counter demonstration and paraded in the streets and slogans like "Down with Child marriage, victory to Sarda Bill".

In another case Rai Bahadur Captain Ram Rakha Mal Bhandari congratulated the government for the bill. He also blessed all supporters of the bill, for saving sisters from ruination by atrocities on minors and remitted Rs.500/- for erecting a marble column in Assembly premises in Delhi with favourable and unfavourable voter list inscribed on it.²⁵

25. Home Dept.(Judicial), File No. 1118/1929.

More than anything the support given by women's organisations were striking and unique. Around the year 1929, many women organisations had mushroomed and they were taking about the problems of child marriage to the general public in a very organised fashion. They regularly held meetings, took deputations to government, and sent representations to international conferences. One remarkable point was that for the first time women came out in such large numbers and were vocal. The means for propagation adopted by them were demonstrations, writings, speeches, resolutions and meetings.²⁶

The debate about the bill provide perceptions of women who were not active earlier. The bill provided them an opportunity to articulate their understanding about their own sex. In one meeting of women in Bombay, D.N. Sirur condemned in strong terms the pernicious customs of child marriage, the mental and physical deterioration resulting from them. She challenged those who opposed legislation on the ground that Hindu marriage was sacrament. She observed that one wife for a man and one husband for a woman was the ideal condition of married life. How a man has the

26. Hindustan Times, 6 Sept., 1929.
All India Women Conference Papers, 1928-29.

liberty to marry as many times and discard as many wives? She felt that religious injunctions are cited by the opponents to set up a dead wall against social progress which effects the material progress of the community.²⁷ It is really interesting that in the midst of the orthodox society, women were condemning the dominant religious institutions for their suppression. Mrs. Rama Rau of All India Women's Conference in her interview mentioned that an old orthodox lady said, "Don't you think you are planning the age too low?, we don't want it to be 14 but 18".²⁸ Another lady felt that law should be passed to make child marriage illegal. In the absence of law, it was not possible to stand out against the laws of society but once the government passes such a law the society law would break.

Another aspect which comes out in the forefront is that women leaders saw the problem in the light of national development. Most of the meetings conducted by AIWC, Women India Association and other women organisations stressed the education of women. Hansa Mehta in a journal, "Social Services Quarterly" pointed out that early marriage, apart

27. Indian Social Reformer, 30 June, 1928.

28. Hindustan Times, 17 April, 1929.

from being a social evil, is a great factor in hindering the progress of education. As soon as the girls got married they were forced to leave the school and without even primary education their life was bound to be miserable.²⁹ Similar opinion was expressed by Rani of Mandi who felt that educational reform amongst the women of India was handicapped because of child marriage and such actions must be legislated. Without legislations of this kind, India cannot be fit to take her place in the community of civilized nations.³⁰ The attitude of women gives the clear picture that women were able to link India's struggle for freedom with women's freedom from suppression. All India Women Conference took many deputations to the Viceroy, to the Europeans and Indian officials from 1927 onwards in this regard. The annual conference and different meetings of AIWC were held in different constituencies all over India and passed resolutions supporting Sarda bill.³¹

Women did not limit themselves to writing speeches but they organised demonstration as well. Demonstrations

29. Modern Review, June 1927, p. 731.

30. Hindustan Times, 12 Feb., 1928.

31. All India Women Conference Papers, 1929.

were organised at Assembly entrances to influence the members before making the decisions. Groups of young girls and women displayed placards of slogans like "Support Sarda Bill", "To amend Sarda Bill is like killing it", "If you oppose Sarda Bill, the World will laugh at you", "Prepuberty marriage is a heinous crime". Young girls and old women, educated as well as uneducated, stood before the entrance of the Assembly saying in chorus "Support Sarda Bill". In the lobbies ladies canvassed every member as he arrived and begged of him to support the bill. The women demonstration served as an excellent counterblast to the orthodox propaganda. One banner was particularly effective which said, "Have any women opposed the Sarda Bill? None".³² These incidences reflect the intensity of women's movements. The women in a very organised fashion tried to pressurize the government members and also tried to take the issue systematically among the women.

Issues were even debated outside India. Mrs. Kamala Devi Chattopadhyay attended several social and educational conferences in Europe as a representative of India, and said that the International Women's Conference at Berlin discussed

32. Hindustan Times, 6 Sept., 1929.

the proposition of the age of 16.³³ However, a small section of women would have been educated in the process of ongoing debate. The distinguished feature is the changing nature and level of their consciousness. It is interesting to note that in the male dominated early 20th century society, where woman was not considered more than an object, their effort to organize themselves for their rights is an unique feature of that time. Women not only organised themselves or extended support to the Sarda Act through passing resolutions, but demonstrated in the streets. They took up the issue of child marriage in a broader prospective raising number of other issues related to the position of women in the society. This undoubtedly indicates the rising level of consciousness among the women. But the activities of women's associations gradually shifted its concentration to national movement and finally got merged with it.³⁴

Another section who came out in open to support the bill consisted of doctors. They were able to give an accurate report on medical ground, that when the girls should marry and could have children. They informed that

33. Hindustan Times, 22 Sept., 1929.

34. All India Women Conference Papers, 1929-34.

child birth at an early age caused numerous diseases like tuberculosis, insanity hysteria and melancholia. They could give an estimate from which community maximum number of child marriage cases came. They suggested to maintain birth registers where age of mother and child should be recorded. They also felt that puberty was not a sufficient indication of physical maturity for justifying consummation.³⁵ This attitude of doctors really helped to rally people in support of the bill on medical qualification.

Other than these efforts, passing of laws banning the child marriage by some states helped in the movement and they were welcomed by other states and cited as an example. An Act called "The Mandi Child Marriage Prevention Act" was passed by Raja Sahib of Mandi to ban this practice. The age fixed was 13 years for girls and 18 years for boys. Age was kept low because matters had a certain amount of religious sanction behind them and a reformer must proceed with caution.³⁶ Then an ordinance was promulgated in Kota

35. Age of Consent Committee Report.

36. Hindustan Times, 5 April, 1928; Indian Social Reformer, 5 May, 1928; Home Dept. (Judicial), File No. 245/1930.

state penalising marriages under 12 in the case of girls and under 16 in the case of boys. Similar laws were passed in Jammu, Baroda, Ajmer, Gwalior, Tehri Garhwal, Indore and Datia.

Bills similar to Sarda Act was brought into by other members. Mrs. Muthulakshi introduced a bill for preventing infant marriage but since Sarda's bill was in discussion her bill was dismissed.³⁷ The government of Bombay proposed to undertake legislation in local Legislative Council for the prevention of unequal marriage in Bombay. The object of the bill was to penalise a marriage between a man of more than 45 years of age and a girl less than 18 years of age.³⁸ Similar bill known as "The old man's marriage with young girls restraint bill" by Pandit Thakur Das Bhargava was introduced in the Legislative Assembly although it lapsed.³⁹ Another bill known as "Sind Hindu Marriage Bill" was introduced by Durgadas B. Advani to enable the Hindus of the province of Sind to restrict themselves to monogamous marriages.⁴⁰

37. Home Dept.(Judicial), File No. 155/1928.

38. Ibid., File No. 536/1928.

39. Ibid., File No. 77/1930.

40. Ibid., File No. 775/1924.

The Child Marriage Restraint Act was passed under the pressure of the public opinion and could prove educative for the society. But the government apparatus lacked the will to implement it. Members of the Legislative Assembly and some associations like Aggarwal Mahasabha alerted the government from time to time but the marriages violating the legislation, continued to take place in the native states. Complaint from time to time were made against the violation of the legislation but the government turned a blind eye to them and dimmed the charges. A dozen or more cases of child marriages, violating the Sarda Act, were cited by the supporters of the legislation to substantiate their charges.⁴¹ Mr. Lalchand Navalrai, member of the Legislative Assembly, enquired whether the government was aware of the widespread demand of several sections of the Indian people to check-mate the violation of Sarda Act or not.⁴² Another very worried member was Eleanor Rathbone who again and again questioned the Assembly as to what steps, if any, had been taken by the provincial governments to carry out the administrative measures recommended by the Joshi Committee as

41. Home Dept.(Judicial), File No. 840/1933.

42. Ibid., File No. 19/10/1937.

essential to the effective working of any legislation for the prevention of child marriage.⁴³ Since the Act was not being very effective and was not implemented properly some members introduced amendments to make it more practiceable. Mr. B. Das introduced a bill to amend the Act by three provisions aimed at facilitating the more effective enforcement of the Act. Firstly, by putting it beyond question that the courts empowered to take proceedings under the Act may at their discretion issue an injunction prohibiting a marriage arranged in contravention of the Act. Secondly, by permitting the Court to take proceedings under the Act upon its own motion, without requiring the execution of a bond or taking security. Thirdly, by enabling the Court to require the husband a child wife (or if he is a minor, his guardian) to make provision for the separate custody and maintenance of the child wife and to refrain from consummating the marriage until she reaches the legal age for marriage, or until a later date if it thinks necessary.⁴⁴ Mr. B. Das continued to ask time to time about the amendments.

43. Ibid., File No. 532/1933, Delhi Record 2.

44. Home Dept.(Judicial), File No. 36/XIV/1935.

Mr. Rhys Davies asked the Secretary of State whether the government of India had considered the question of empowering Magistrates to issue injunction to stop unlawful marriage under the Sarda Act.⁴⁵

The support given to the bill by different sections was very significant. It reflected that it was not only support to the particular bill, but through this support a section of the society was able to sow the seeds of progressive beliefs in the society. The different perceptions of the people supporting it whole-heartedly percolated down to the whole society, which have its effect till today. Although the Act was not implemented properly and its provisions were violated, it gave impetus to further reform movements aimed at the improvement of the condition of women.

45. Ibid., File Nos. 300/1933; 595/1933.

Section - IIIN OPPOSITION TO THE BILL

The opposition to the bill was as vocal as the support. The orthodox section dominating the society tried their best to oppose the bill. Unable to do this, they pressurized the government to minimise its effect and after its passing they continued to pressurize the government to exempt certain castes from its application. The opposition to the bill was voiced in the Legislative Assembly itself. The bill was introduced at a juncture when Indian National Congress was very disappointed with the British government. Its constitutional demands were ignored and at the time of the bill implementation, in 1930, Gandhiji had launched the second civil disobedience movement. Due to this a section was against the Act, since it was coming from the British government. But one finds that maximum and vehement opposition came from orthodox sections and religious bodies which maintained that no law should encroach upon matters of domestic and social nature and that the proposed reform should be left to the community concerned.

In the Legislative Assembly the main arguments opposing the measure were on religious grounds. Mr. M.K. Acharya and Sessa Ayyangar, member of Legislative Assembly,

held that State ought not penalise the views of thousands who honestly believed that the custom was in consonance with the tenets of their religion.⁴⁶

The conservative members of the Legislative Assembly rejected H.B. Sarda's argument that child marriage affects the health of the couple adversely. They based their defence on the time gap between the marriage ceremony and the consummation. Marriage in Hindu society, they argued, was divided into two parts. First and most important was the sacred ceremony of betrothal or Kanyadan which is also known as Vivaha Sanskara. Second ceremony as known as Garbadan or ceremony of consummation. Betrothal ceremony performed at the early age was divorced from the consummation ceremony. The consummation ceremony was performed only when the girl attained the puberty and was ready for consummation. Thus, they felt that question of early consummation affecting the health of the couple adversely did not arise.⁴⁷

Mr. Acharya and Sessa Ayyangar opined that the bill would come as a great blow to the religious beliefs of the

46. Legislative Assembly Debates, 6 March, 1928.

47. Ibid., 16 Sept., 1929.

people. Sesha Ayyangar quoted from the Age of Consent Report, which gave information about the age of fourteen different areas.⁴⁸ In Punjab, they found the age of puberty from 12 to 16 years, in the North West frontier from 13 to 15 years, in Delhi from 12 to 13 years, in Ajmer Merwara 13 or 14 years, in Bombay from 12 to 15 years, in Deccan and Karnatak from 12 to 15 years, in Gujarat 12 to 14 years, in Sind 13 to 15 years, in Madras 12 to 14 years, in Assam 12 to 14 years, in Bengal 11 to 13 years, and in Bihar and Orissa 12 to 14 years. As a result of this information, Sesha Ayyangar argued that the lowest age at which puberty takes place in girls is 11 years in Bengal and highest is in Punjab where it extends to 16 years. He stressed that with such a variation, the government was trying to legislate for the whole of India.⁴⁹ The opposition block was maintaining that the legislation was forced through the peoples throat.

Mr. Sesha Ayyangar felt that it would create a revolution in the existing social order and Amarnath Dutt, also a member of Legislative Assembly, felt that the people considered

48. Age of Consent Committee was constituted to look into the actual condition of girls regarding their consummation age, marriage age and their mortality and miseries.

49. Legislative Assembly Debates, 16 Sept., 1929.

such legislations as unwarranted interference with their social customs.⁵⁰ Mr. Acharya added that what was winning was not the logic of the reformers but the logic of the government and European group. He believed that due to this bill maternity would come before marriage, undermining the foundation of the society. Society would be corrupted with more divorces and loose sexual living. The orthodox society was trying to prove to the illiterate mass that post puberty would be resulting in loose morality of the people and would destroy domestic life. Mr. Sessa Ayyangar in defence of their stand quoted western sociologists, J. Tyssal Davis and Frederick Pincott who appreciated Indian marriage system. They opined that Hindu rules of marriage were, in the ordinary sense of happiness and any introduction among them of modern crude ideas, would only result in mischief and tend to bring the Hindus to the same chaotic scramble of an antagonistic interest which is the characteristic of Europe's disgraced social muddle.⁵¹ Same reasoning was given by D.K. Lahiri Choudhary, Legislative Assembly member from Bengal

50. Ibid.

51. Legislative Assembly Debates, 16 Sept., 1929.

and Landholders representative. He not only supported Indian marriage system but advocated child marriages on biological grounds. He quoted one Dr. Beasant and Mr. Lyon in support of child marriages. According to Dr. Beasant early marriage is best, both physically and morally, it guards purity, softens the affections, trains the heart and preserves physical health. The children that spring from such marriages, while not following each other too rapidly, are more vigorous and healthy than those born of middle aged parents. Mr. Lyon gave his medical opinion as "the first menstruation is the usual sign that a girl has become capable of conception and child bearing". Another interesting quote was from Mr. Ellen key that "it is evident to every thoughtful person that a real sexual morality is almost impossible without early marriage, for simply to refer the young to abstinence as the true solution of the problem is, as we have already maintained, a crime against the young and against the race, a crime which makes the primitive force of nature, the fire of life into destructive elements".⁵² The examination of these opinions reflects that the orthodox section was well equipped to defend the custom, on religious as well as on moral and medical grounds.

52. Legislative Assembly Debates, 11 Sept., 1929.

Madan Mohan Malaviya, a member of Legislative Assembly and a prominent member of Indian National Congress, believed that reformers were not justified in forcing, by law, their own ideas of social reform down the throats of a larger section of the people. He further opined that people believe that their marriage law is something personal and inherited since generations. Thus, removing one evil through law would perpetuate other.⁵³ It was just not through discussion that they showed their disliking for the proposed bill. Many members opposing the bill, introduced amendments to change the provisions of the bill.

The members of the Legislative Assembly who were opposing the bill realized that rejection of the bill was not possible. Keeping this in view, they demanded amendments to exempt the Brahmin community from its application.⁵⁴ A number of arguments were also extended in support of their demand. Brahmins and other twice born communities, they felt, should be exempted from the bill's application because betrothal ties in the communities was irrevocable. The Garbadhanam

53. Legislative Assembly Debates, 15 Sept., 1929.

54. Home Dept.(Judicial), File Nos. 9/1931, 221/1930, 269/1931, 103/1930, 169/1933. Pt. Satyendranath, Raja Bahadur G. Krishnamachair, Mr. N.R. Gujal, K.V. Rangswami Ayyangar and B.N. Misra introduced bill in the Legislative Assembly to amend the C.M. R. Act to exempt Brahmins.

or consummation ceremony, which performed at a stage when the girl and the boy began to live as husband and wife, was a distinct Sanskara and it could only be performed after the attainment of puberty by the girl. The Shastras prohibited post puberty marriage (betrothal) in the case of the Dwijas, and provided that it was essential that marriages of girls should be between the ages of eight and ten. Hence the Act was a direct interference with the religious beliefs and observances of the Hindus, and was a clear violation of the solemn pledges of noninterference with religion made for over a hundred years.⁵⁵

Another reason put forth was that crown of the government of India, had recognised religion as a personal law and therefore, should not interfere. With similar kind of objects and reasons, B.N. Misra introduced the bill on the 9th March, 1931. He held that Brahmins no doubt occupied the foremost position in Hindu society and had tried their best to follow the shastraic principles and injunctions in their social life, usages and custom. This Act, therefore, was regarded as a great invasion on immemorial customs and a severe shock

55. Ibid.

to their sentiments and religion.⁵⁶ The amendment introduced by Satyendranath Acharya also asked for same exemption.⁵⁷ The demand for the exemptions of Brahmins shows that the upper class in particular was against the discontinuation of their age old customs.

Another amendment was introduced in the Council of State by Mr. Surpat Singh to amend Sarda Act, to exempt the marriage of children contracted with the permission of district judge.⁵⁸ One finds that every nature of attempt was made to nullify the Act.

The opposition to the bill came from Muslim quarters as well. In the Legislative Assembly, Maulvi Mohd. Yakub introduced a bill to exclude Nikkah ceremony from the scope of the Sarda Act, provided it is not at once followed by consummation.⁵⁹ Other members A.H. Ghuznavi, Dr. A. Suhrawardy Khan, Bahadur Haji Wajihuddin, Mr. Anwas-ul-Azims, Nawab Naharsingji, Ishwar Singji, and M. Maswood Ahmed also

56. Home Dept.(Judicial), File No. 169/1933.

57. Ibid., File Nos. 269/1931, 946/1929.

58. Ibid., File No. 221/1930.

59. Home Dept.(Judicial), File Nos.691/1928, 221/1930.

introduced bills to amend the child marriage Act.⁶⁰ The main theme of their amendment bill was that the Muslims had their own codified law, given by the creator himself and it was beyond man's power to enforce laws contrary to his will. Marriage under the Islamic law was not only a civil contract but a sacrament like the Hindus. They also opined that the government was the defender of the faith and the policy of the British government had been one of non-interference in matters of religion and personal law. They, like the Hindu opposers, believed that social reform must be brought by the society itself. It is most undesirable to force it through legislation.⁶¹

The amendments by various Legislative members was given strength by the support of common man, like representatives from the Mitahid of the Deoband College met the Viceroy of India. They wanted the exclusion of Muslims from the operation of the Act. They mentioned about huge Muslim mass meetings and processions against Sarda Act. Deputation of Ulemas also met the Viceroy to pressurize the government to consider the amendments introduced by the

60. Ibid., File Nos. 135/1931, 269/1931, 1100/1929, 165/1930.

61. Ibid., File Nos. 135/1931, 1100/1929.

members of the Legislative Assembly.⁶² Raja Bahadur C. Krishnamacharia placed resolutions in the Legislative Assembly regarding religious freedom in which he recommended absolute freedom of religion, faith and religious practices. He demanded that freedom of religion should be considered as a fundamental and inalienable right to every citizen and to all distinctive groups and communities. Muslim and Hindu throughout wanted to know from the government about the number of people agitating against the Act and advised them to repeal the Act.

Pandit Satyendra Nath Sen wanted to know the number of people who were against the passing of the Act, and whether the government was aware that marriage was an essential part of religion among Hindus as well as Muhammedans. How was it that the government did venture to interfere with that practice and acted contrary to the Queen's proclamation.⁶³ The question and resolutions in the Legislative Assembly by various members opposing the bill were based on the ground of religious injunctions and interference in religion through legal methods.

62. Home Dept.(Public), File No. 2/11/1931.

63. Home Dept.(Judicial), File No. 66/1931.

Outside the Assembly, some organisations and social groups did object to the passing of the bill. The arguments extended to oppose the bill by members of the Legislative Assembly and these groups were almost similar in nature with some exceptions.

The deputation of All India Brahmana Sabha and the Madras orthodox people led by Maharajadhiraja of Darbanga submitted a memorandum where they stated their objections to the Sarda Act. Along with the memorandum they had sent two booklets propagating child marriage. One booklet, "A few remark on the child marriage bill", by Charu Chandra, Attorney at Law (Calcutta) opined that if the bill was passed it would destroy the very foundations of Hindu society. Child marriage was one of such foundations and with it, were indissolubly connected the two other institutions, family and caste system, the outstanding distinguishing features of Hindu Society. The whole structures of the Hindu society, they believed rested upon these foundations. According to Charu Chandra, a grown up women could not be transplated into a joint family and one could/ prevent grown up men and /not women of different castes from falling in love and marrying each other. Therefore, such type of social legislations were wholly revolutionary in character and subversive to

the whole structure of Hindu Society. All the Smrities and Shastras insisted upon the marriage of girls before puberty and threatened loathsome punishment upon guardians who left their female wards unmarried after puberty.⁶⁴

One finds that Brahmin caste which was dominating the society legitimised child marriage for the maintenance of the family and caste system. The caste system was made rigid through the instruments of various customs. More than the family and caste system, they stressed on purity of the girl, who symbolised the purity of the whole family. In one of the memorandum objection was raised because the consequences of such legislation would strike at the very root of the Vedic conception and ideal of womenhood. Therefore, the opponents of the bill feared the extinction of Pativratya Dharma which signified much more than what was generally understood by the word chastity.⁶⁵

The deputations were sent by Sringeri, Kumbakonam, Ahobilam and Pushpagiri Mutts of Southern India. The Tamil, Telugu and Malabar Distrcts were also duly represented in

64. Home Dept.(Judicial), File No. 131/1929.

65. Ibid.

these deputations. Some of the members represented Sourashtras, Vishwabrahmanas and non-Brahman communities who observed the custom of early marriage.⁶⁶

Since the British government was willing to endorse the bill, attempts were made to create a division between Europeans and Hindus of India. The bill was projected as one of their tricks against Hindus and their religion. It was said that since the leaders of the doctors were all European, it was natural on their part to believe that the customs of Europeans were superior to those of Indians. Being the ruler, they looked down the Indians.

In a number of memoranda, attention was drawn to the drawbacks of the western customs. They emphasised that divorce on the pattern of British society was not feasible in India. The position of women in British nuclear family system was pathetic as woman alone was responsible for bringing up the children. On the other hand, according to the Mitakshara law of joint family, which governed majority of Hindus and a considerable portion of Mohameddians, the children of girl mothers were in fact brought up by the more senior female members of the joint family.⁶⁷

66. Ibid.

67. Home Dept. (Judicial), File No. 131/1929.

Many associations wrote letters to the government to express their opposition to the bill. Marwari Association of Calcutta in its letter conveyed that the bill was extremely obnoxious and was against the doctrines of Hindu religion. Therefore, it would not be permitted. The letter further argued that the existing system of marriage had been in vogue in the Hindu society from time immemorial. The degeneration must be due to a cause or causes other than the Hindu marriage system.⁶⁸ Similarly, Sree Vaidika Dharma Samvardhani Sabha of Bezwada also felt that Sarda Act was the most offensive piece of legislation that had ever been undertaken in the Indian Legislatures. This legislation was an attempt of so-called social reformers who felt despaired of convincing the opponents of the legislation through Shastras. It was felt that the superior claims of post-puberty marriage was a cause of worry for the Brahmins and Vaisya communities, who were hit hardest by the Act.⁶⁹

A systematic attempt was made by the orthodox section to counter the pro-bill arguments. Though the bill was opposed on medical ground, the stress was laid on religious

68. Home Dept.(Judicial), File No. 36/XIV/1935.

69. Ibid.

scriptures and Hindu Shastras. Interestingly, the orthodox sections was led by the Brahmins which shows the domination of Brahminical ideology. The Brahmins vehemently resented the change in the statusquo and did not hesitate in exploiting religious sentiments of the people to garner support for themselves. The fact that people from lower castes did support the Brahmins led orthodox section to oppose the bill, shows the wide acceptance of the Brahmanical ideology.

The methods of campaigning against the bill did not confine to the meeting and speeches etc., but carried out aggressively which often took violent turn. In Bhiwani, Indian National Congress leaders supporting the bill were assaulted by Pandits at a meeting of Sanathan Dharma, Pandit Radha Krishna Misra, a prominent leader of Sanathan Dharma declared that no Sanathanists who were in favour of the bill could take part in their meeting.⁷⁰ This meeting was in the city of Bhiwani and attended by over 20,000 people. Strong words were used for the prominent Nationalist leaders, like Mahatma Gandhi and Pandit Motilal Nehru, reformers and the government. Then in another development, partial strike was observed in Banaras led by the Sanathanists Mahamopadhya

70. Hindustan Times, 1 Oct., 1929.

Hiraman Sastri and Panchanam Taekarentna.⁷¹ Mahamahopadhyay Anant Vasudeo alias Bhan Shastri Vaza, a popular Sanatanist, renounced the title, conferred on him in emphatic protest against the Sarda Act.⁷²

The religious leaders of both Hindu and Muslim communities were up in arms against the bill. Posters were put up by religious leaders of both the communities, reading "Religion in danger", and "Islam in danger".⁷³ Regular campaign was done by a section of Muslim Mullahs and other factions of Sanathanists against the Sarda Act. Maulana asked the Muslims to be ready in lakhs to fight the army of Sarda. One of their poster alleged that the Arya member of the Assembly had passed the bill by their strength.⁷⁴

The opposition was expressed by the newspapers as well. Surya from United Provinces; Agra and Oudh, said that the 1st April, 1930 was fatal for the religion of Hindus.⁷⁵ The newspapers presented the passing of Sarda Act as a heinous

71. Ibid., 14 Oct., 1929.

72. Ibid., 3 Oct., 1929.

73. Ibid.

74. Ibid.

75. Report on Native Newspapers, North-West, and Central Provinces, 12 April, 1930.

crime against the Hindu religion and society. The fire of criticism was directed more towards the social reformers than to the government. The newspapers called the reformers no better than beasts and demons disguised as human beings. To keep the old culture, of Rishis and Manis, alive physical elimination of the reformers was advocated.⁷⁶

The vehement opposition of the Sarda Act, by the newspaper and propagation of violent methods did help the orthodox section in mobilising the public opinion against the Act. It seems that the then existing media was thoroughly controlled by the orthodox sections of both Hindu and Muslim communities. A number of Hindu as well as Muslim controlled newspapers went to the extent of preaching civil disobedience to oppose the Sarda Act.⁷⁷

In the newspaper Bharatvasi, it was felt that as a result of the Act, corruption would spread in every village and house. The number of abortion cases would increase. The girls would be abducted by goondas and coming generation would be composed of only bastards. It further asked the

76. Ibid.

77. Report on Native Newspapers, 5th April, 1930.

people to pressurize the government to pass the amendment proposed by Acharya about excluding Brahmins and twice born caste from the Act. It said, "Let us make it clear that if the Act is not amended, we will not obey it as long as there is life left in us".⁷⁸ The newspapers, it seems, undoubtedly helped the orthodox section in sending their message across the country. Even after enacting the Act, it seems, the people in general did not accept it and child marriages continued to be performed. Whenever it became difficult to celebrate the child marriage in the British government State, people migrated to the native states where law banning child marriage had not come into force. The government of Madras brought to the notice of the Government of India that in order to avoid the Act, a number of child marriages were performed in the Indian States, French and other territories bordering British India, in contravention to Child Marriage Restraint Act. The Government of Madras had stated that number of marriages which took place at Yanam in the French territories in violation of Child Marriage Restraint Act was about 2 to 300, if not more.⁷⁹ In Bengal,

78. Report on Native Newspapers, 15th Feb., 1930.

79. Home Dept.(Judicial), File No. 908/1934.

the evasion was practised to some extent in the French possession of Chandernagore, mostly by Marwaris from the Rajputana States settled in Calcutta.⁸⁰

The Child Marriage Restraint Act failed to change the beliefs of the majority of the people, but it must have reduced the number of child marriages. This is evident from the migration to the native states to celebrate child marriages. The very thought of implementation of the Act created fear in the minds of the people. Fearing penalisation, there was a spurt of child marriages before the Act was actually implemented.

According to a newspaper, not less than 7000 marriages were celebrated in the city of Ahmedabad before the Child Marriage Restraint Act came into force.⁸¹ It was even reported that children of one or two years were married before the operation of the said Act. Main reasons attributed for such deeds were that the illiterate who formed the majority of people in India were under the impression that the marriage of a girl after attainment of puberty is a sin. The reason they feared was that there would be undue

80. Ibid.

81. Statesman, 8th Dec., 1929.

interference with marriage by the police which was not popular in India.⁸² The community who had not taken kindly to the new legislation had been hunting for brides and bridegrooms of tender age for immediate marriage. Exorbitant demands for dowries had been made and the moneylenders in the countryside in Gujarat were doing roaring business.⁸³

The period of six months interval between the passing of the Act and its coming into force had led to enormous increase in child marriages. The people married off months old babies before the Act came into force, and some people went to native states and French colonies to celebrate the marriages.

The exact increase in the child marriages has been worked out from the Census Reports of Bihar, Bengal, Madras, Orissa and Assam in the table given below. The table also shows the increase in the number of child widows from 1921 to 1931.⁸⁴

82. Ibid.

83. Statesman, 29 November, 1929.

84. Home Dept.(Judicial), File No. 818/1931.

Age	Child Wives		Child Widows	
	1921	1931	1921	1931
0-1	2,144	21,330	197	594
1-5	82,860	3,77,983	6,536	13,196
5-10	8,26,483	20,19,675	46,275	54,475
10-15	27,69,585	33,33,957	1,36,509	98,326
	36,81,072	57,52,945	1,89,517	1,66,591

The opposition to the child marriages, as given in the table shows the panic reaction of the people who did not welcome the Act. The opposition, when failed, resorted to child marriages to escape the penalisation. For the orthodox section of the society, the bill was an attack on the Hindu religion, they could mobilise a large section of the people against it. The press remained on the forefront in building an anti-bill opinion.

The fact, that child marriage was an inherent part of the family and caste system and was closely associated with the Hindu religion, formed the basis for opposing the bill.

The Brahmins saw the change in the society as a threat to their ideology, thus did everything to oppose this reform.

Section - III

THE CONDITIONAL SUPPORT AND THE GOVERNMENT

In the Legislative Assembly as well as among public, there was a section of people who believed child marriage to be a menace but were against any sort of legal action or wanted reduction in the age to pacify the orthodox section.

In the Legislative Assembly some members were against the child marriages, but wanted the age limit to be low. For example, Kumar Ganganand Sinha felt that he had come across nothing that could justify the child marriage. He found child marriage a source of increasing the number of young widows who could not remarry and constantly cast a gloom on the family by reminding, the other family members, the death of her husband. He even talked in detail about the death of child mothers who conceived at a tender age and produced sickly babies.⁸⁵ In spite of such understanding,

85. Legislative Assembly Debates, 15 Sept., 1927.

Kumar Ganganand Sinha wanted the minimum age limit for the marriage of the girl to be 12 years.⁸⁶ According to him, a policy of least resistance should be followed. It was of no use putting an age which would not be acceptable to a large number of people on various grounds, such as the ground of religion, the ground of existing custom, handed down from generation to generation for thousands of years.⁸⁷ Some members were generally very cautious about implementing such a measure in a society when the custom of child marriage was practised. Their opinion was that the lesser number of the people who would oppose the measure, the greater would be the success of this legislation.

Outside the Legislative Assembly, those who understood the implication of the bill were quite apprehensive. In a letter to the Government of India, the Secretary to the Govt. of Madras, Diwan Bahadur J. Venkatanarayan Nayudu Garu gave the opinions of the judges of the High Court of judicature, Madras. Among the judges some appreciated the bill but others were too cautious. Justice Ramesem opined that laws ought to be more enabling and less compelling. He believed

86. Ibid., 16 Sept., 1929.

87. Ibid.

that a law which enabled the reformer to carry out his ideals of reform and also enabled the orthodox man to carry out his mere conservative principles, provided they did not offend against the fundamental principles of natural justice, was the ideal law, according to him.⁸⁸

This section had realised the importance of public opinion. Mr. D.C. Ghose who addressed a meeting of the Presidency Council of Women in Calcutta conceded that mere legislation would not be of any use unless it was backed up by strong public opinion. What was essential was to arouse the social conscience of the people by propaganda.⁸⁹ This section was emphasizing on public propaganda to erase the evil of child marriage. Public opinion was definitely needed for a social measure as Child Marriage Prevention Act. But one finds that they were being too cautious and gave a lot of consideration to the orthodox sections. In a way they were nullifying the Act by calling it coercive and uncalled for. They were demanding reduction in age and punishment which would have made the Sarda Act irrelevant.

88. Home Dept.(Judicial), File No. 868/1930, p. 87.

89. Statesman, 20 November, 1929.

GOVERNMENT'S ATTITUDE:-

After the revolt of 1857, the British government in India had adopted a non-interference attitude towards the social issues of the country. Unlike the attitude towards sati, they adopted a very cautious attitude to the bill on child marriage. At the time of introducing the bill on child marriage, the government insisted on circulation of the bill for public opinion. It was on the insistence of Indian members in the Legislative Assembly, the bill was referred to Select Committee.⁹⁰ The attitude of the government was such as if the government had never passed any law affecting socio-religious practices.⁹¹

It looked as if the British government had grown more timid than before, because it had passed various repressive and other law in the teeth of vehement popular agitation and oppression.⁹² Though the government was sympathetic towards the measures but when the Act was passed, the government didn't fully penalise the convicts and gave minimal punishments.

90. Legislative Assembly Debates, 15 Sept., 1929.

91. Modern Review, Oct., 1927, p. 487.

92. Ibid.

In Vizakapatanam a convict was freed after being fined Rs.300.⁹³ In another case, Magistrate charged Rs.700 from boy and Rs.400 from girl's parents,⁹⁴ whereas according to the provisions of the Act the penalty was Rs.1000 and a month's jail. Then Shri Y. Jatubhai of Sabarmati Harijan Ashram reported a case of three Harijans who got a ten years girl married. All of them were let off after paying a fine of Rs.20 each.⁹⁵

According to a news published in a newspaper, the Tribune Lahore, it seems on receiving the news of the conviction and sentence of a Muslim under the Act, the Punjab government instructed the Deputy Commissioner to remit the sentence and release the convicted person.⁹⁶

The government was not only inactive regarding punishment of the convicts, it didn't do anything to educate the people. The British government even preferred to ignore the steps to propagate against child marriages recommended in the Age of Consent Committee Report. The recommendations

93. Vishwamitra, 8 May, 1934.

94. Ibid., 12 June, 1934.

95. Ibid.

96. Home Dept.(Judicial), File No. 637/1930.

advocated wide publicity for the provisions of the marriage and consent laws, and education. The women's associations were to be utilised for such propaganda and aided with money grants. But these recommendations were never taken into account. Neither an accurate marriage register in a prescribed form was kept through an administrative department of the government, containing details of age etc., nor the compulsory notification of births including the child's name, was enforced. At some places it was tried but proved unsuccessful due to lack of cooperation from the local people. The government also failed in providing birth and marriage certificates free of cost to the parties concerned.⁹⁷

The role of the government concerning the Sarda Act was confirmed to the making of law. The government lacked will in doing anything beyond it. In spite of the fact that the government was reminded by different organisations and individuals, no steps were taken to implement the recommendations of the Age of Consent Committee.

Miss Eleanor Rathbone, member of Legislative Assembly, reminded the government to instruct the provincial governments to enforce the Sarda Act. When enquired as to what

97. Home Dept.(Judicial), File No. 818/1931.

steps the government or provincial government had proposed to educate public opinion against the evil of child marriage. the government did not have anything in reply. Miss Rathbone took active interest in finding out whether the report of the Age of Consent Committee had been translated into any language and if so, in what languages. But the Secretary to the government did not have any information.⁹⁸ When asked whether the report would be kept in House of Commons Library, the government gave an ambiguous reply that "step were being taken".⁹⁹

The government, on the one hand, did not want to antagonise the people by interfering in religion and on the other, wanted to please the nationalist leaders and the progressive sections. Therefore, the government neither obstructed nor propagated for the measure.

The debate generated by the Sarda Act in the early 20th century brings out to focus the rigidity of the social institutions of Hindu society, like family and marriage. The conflicting trends, for and against the Act, throws light on the level of the social consciousness in the society. The passing of the bill could be possible only because the

98. Home Dept. (Judicial), File Nos.728/1931, 357/1931.

99. Ibid., File No. 1154/1933.

Hindu society was not unanimous in opposing it. An interesting phenomenon which came to limelight was that women were unanimous in supporting the bill. H.B. Sarda challenged in the Legislative Assembly that not a single public meeting of women protested against the bill. Women all over the country had unanimously demanded that this bill be passed without delay.¹⁰⁰ From the evidences, one observes that with this particular bill the women leaders were able to rally common women behind them and helped them to articulate their problems.

One finds the opposition equally active and overwhelming. After the bill was passed in the Legislative Assembly, one doesn't come across any propaganda by the government or the reformers for public education of the measures. The interval of six months between the passing and enforcing of the Act was not used for educating the people, instead those opposing it used it for their own motives. After the passing of the Act, the government didn't implement its provision and the child marriages were taking place.

100. Home Dept. (Judicial), File No. 245/1930.



In spite of repeated demands made by the members of the Legislative Assembly, the government failed to stop the child marriages immediately after the passing of the bill. The spurt in the child marriages before the Act came into force, was not to protest against the Act, but to escape from its implementation.

CONCLUSION

The battle against the oppression of women through different institutes like family, and marriage and social customs like Sati had begun in the nineteenth century. This battle was fought by the social reformers at two levels. Firstly, by raising the level of consciousness of the people through debates and discussions and secondly by forcing the British government to enact laws to prevent the customs responsible for the miseries of women. Although social and religious reforms were not a new phenomenon in Indian society, yet the 19th century reform movements were distinguished from previous reforms by many a new characteristic. The 19th century reform movements became an integral part of the political movement and subsequently sought intervention of the British government.

The efforts of the social reformers ^{to} mobilise public opinion against such customs and to pressurise the British government ultimately resulted in the enacting of legislations, prominent among them was the Child Marriage Restraint Act, popularly known as the Sarda Act, passed in the year of 1929.

Almost a century long struggle of social reformers which resulted in a legislation against the child marriages went through different phases of ups and downs. Since the

custom had religious sanction, the reformer's task was made difficult. The widespread fear of facing disgrace, reaction of the conservatives and their reluctance to override caste and shastric injunctions forced the reformers, a number of times, to compromise with their principles and though, temporarily, withheld the process of reform.

In a situation, when social reformers were unleashing the process of a new social thinking the British government, afraid of public reaction, played a dubious role. For example, when the controversy over child marriage was generated by B.M. Malabari's notes in the year of 1884 the British and other local governments exhibited complete unanimity of opinions against legislation and imposition of the executive disqualifications which Mr. Malabari advocated. The British government, though sympathetic to the cause of the reformers, refused to enforce the law against the rules laid down by the customs which by its nature enforceable in the civil courts but were clearly opposed to the morality or public policy. The British government favoured the legislation against customs only when it was sure of support from a section of the public. In the case of Sarda Act, the British officials circulated Child Marriage Restraint Bill for the purpose of eliciting opinion.

The debate generated on the issue of child marriage with the introduction of Malabari's Notes in 1884 onwards throws light on the changing nature and level of consciousness of different sections of society. It exposes the orthodox beliefs of the conservative section and shows the strength of their ideological hegemony over the society. The hold of conservative section over the society is evident from the fact that efforts by Malabari and other reformers to stop infant marriage fell through in the face of strong resistance from the orthodox sections of the society. Even in the case of Sarda Act, it was under the pressure of orthodox section inside and outside the Assembly that the bill was referred to the Select Committee twice and its provisions were softened. Numerous amendments were also made during the debate to exclude certain castes, primarily Brahmans, from the bill.

The Sarda Act, though opposed by the orthodox section, generated support among a substantial section of the society. The debate generated during the course of the making of the Act, throws light on the consciousness of and about women. A section of Legislative Assembly, the individual groups and social organisations had come in open, raised their voices in support of women's cause.

They boldly opposed the oppression of women and criticised the orthodox sections of the society.

The rise in the level of consciousness of the people in general and women in particular was explicit in the debate inside and outside the Legislative Assembly. The thoughts of the people did not remain confined to the isolated issue of child marriage. The issue of child marriage was viewed in a broader perspective and related issues, like position of women in the society and faults in the marriage as an institution as a whole were questioned. The level of women's consciousness was reflected in their vocal support extended to the bill. Many women's organisations had mushroomed and they were taking the problems of child marriage to the general public in a very organized fashion. Though the women were unanimous in supporting the bill, their movement for emancipation ultimately merged with ongoing freedom movement which overshadowed women's issues.

The legislation against the child marriage could not bring any fundamental change in the position of women and child marriages continued to take place. Due to the lack of administrative will, the government failed to

check the child marriages. In spite of this, the process, which led to the making of Sarda Act, introduced a new element in the social thinking. People did realize the need for change in the women's position and made women conscious of their problems. This gave a boost to the ongoing struggle for emancipation of women.

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