

**THE MAKING OF SARDA ACT OF 1929:
CHILD MARRIAGE RESTRAINT ACT**

*Dissertation submitted to Jawaharlal Nehru University
in partial fulfilment of the requirements
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MASTER OF PHILOSOPHY

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CERTIFICATE

This is certify that this dissertation entitled, "**The Making of Sarda Act of 1929: Child Marriage Restraint Act**" submitted in partial fulfilment of the requirements for the award of the Degree of Master of Philosophy has not been previously submitted for any other degree of this university or any other university and is my original work.

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We recommend that this dissertation may be placed before the examiners for evaluation.

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This work is dedicated to my mother

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INTRODUCTION

THE QUESTION OF WOMEN AND CHILD MARRIAGE REFORMS IN COLONIAL PERIOD: A HISTORIOGRAPHICAL SURVEY

Sarda Act is the popular name for the *Child Marriage Restraint Act* (CMRA) that was enacted on October 1, 1929 and came into effect from April 1930. It fixed the age of marriage at 14 and 18 for girls and boys respectively and penalized early marriages with imprisonment or fine or both. The Act was passed as the result of the combined efforts of reformist Hindus and women's organizations and it illustrated that Indians were deeply concerned with and anxious to change certain social practices.

Geraldine Forbes has argued that reformers tried to accomplish social change through the emancipation of women and especially through the issue of raising the age of marriage.¹ It was the first major social reform legislation vis-à-vis the age of marriage in the 20th century and the last in the colonial period. It was the first time that women themselves through several organizations at the provincial and national levels played a significant role in the passing of such a legislation. This Act was so important that it secured the attention of prominent personalities of the time like Mahatma Gandhi, Rabindranath Tagore, Motilal Nehru, Jawaharlal Nehru, Sardar Patel, E.R. Rathbone (English Feminist), Winston Churchill, Katherine Mayo (journalist from USA) and others.

Pointing out the connection between marriage and the status of women, the architect of this Act, Harbilas Sarda argued² that marriage affects the life of women, more vitally and much more fully than that of a man because it affects the girls' whole future life as well as removes her completely from her pre-married life. The social reform programmes in colonial India moved around the issue of marriage which was closely related to the larger question of the womens' status in society.

Historians have not paid adequate attention to the Sarda Act. Probably their focus on the advancement of freedom struggle against British rule has been the main cause for this negligence. I undertake the task of writing about the process of making of the Sarda Act as part of the broad trend of social reforms during the colonial period.

Since, I have not come across much historical work specifically about this Act and because it was directly connected with the larger question of women, therefore, along with available historiography of the Act, the study of writing on the question of women becomes indispensable.

Studies of gender issues have advanced consistently and acquired a prominent place in history writing in the past thirty years or so. Almost everywhere the preliminary writing on this issue narrated stories of women of different local levels and historical times. This kind of work was important till the

1970's. This then evolved into much deeper questions. Gender issues include not the history of women only but the history of men as well. Feminist writing on the nature of relationship between women, men and the ideology that informed the relations. Simultaneously, there were studies "images" and "self-images", not only of women but also of men. Thus the construction of 'femininity' is integrally bound with 'masculinity' which means both evolve together. Most often such images appear to be the natural order. However, history compels us to ask uncomfortable questions whenever something is to be considered natural.

The radical breakthrough of feminism was the assertion that inequality between man and woman is social and not natural. After 1975 a lot of feminist writings began to broaden out into investigation into gender. In these years the role of women in the Indian National Movement and in the women's organization have become the vital themes of gender studies. Although, the custom of *Sati* was abolished in 1829, Roop Kanwar of Rajasthan was burnt on the funeral of her husband in 1987. This intensified the writings on gender.

The intense preoccupation with gender relations could be traced back to the 19th century, when the Indian social reformers were engaged in a convoluted critical exercise³. This exercise involved interrogating power relationships within indigenous customs and traditions, especially in gender norms. The first

generation of reformers faced the acute problem of conjugal adjustment.⁴ Young men who were now moving into the cities, were married in their infancy. Normally brides were illiterate. Within smaller urban family units, problems such as widow burning, women's education, seclusion, arranged marriage, child marriage, polygamy and the prohibition of widow remarriage would be under their eyes everyday and hour of their existence. These in addition, were problems which the 19th century intelligentsia would have thought to be within their reach and remediable unlike say, foreign rule which they did not touch prior to the rise of effective middle class led nationalism.

The debates on the question of women in the first half of the 19th century moved around the authenticity of traditions, mentioned in the ancient texts. Traditions were reconstituted under colonial rule in different ways. Women and Brahmanical scriptures become interlocking grounds for this re-articulation argued Lata Mani⁵ In other words, workings of the traditions were reviewed largely through debating the rights and status of women in society. Women were emblematic of traditions.

Vidyasagar's essay on the evils of child marriage in 1850 (this is discussed in Chapter 1 of this dissertation) marked the total absence of textual exegesis. However, he could not demand the raising the age of marriage due to colonial legal policy. Nevertheless, his humanitarian ideas on the issue of child marriage and gender

relations are still relevant, since in our present time wives are regularly burnt for dowry, a lower caste women activist is raped for campaigning against child marriage. Moreover, imperialism also used the question of women for justifying its own locations in India on moral grounds. In James Mill's *History of British India* (1817), the practices found among particular groups and in particular religious of India, such as the self immolation of widows (Sati), female infanticide, the veiling of women (Purdah), child marriage and enforced widowhood were treated as emblematic of all India and of Indian culture as a whole. Mill argued that position of women could be used an indicator of society's advancement. The formula was simple "among the rude people, the women are generally degraded; among civilized people they are exalted". He also explained that as societies advanced. The criticism of such practices did not only justify the civilizing mission of the imperialist West in India but also provide arguments about the barbarity of Indian culture.

Mrinalini Sinha has argued that the framing of women's question in these terms, created a negative climate for social reforms for women in India.⁶ By focusing on Indian cultural practices this conveniently ignored any negative impact that the colonial state had on the condition of women in India. And on the other hand, it provoked defensive Indian responses by conveying specific reforms for women into occasions for an overall criticism of

Indian culture. After the rebellion of 1857, the British government adopted a policy of 'non-interference' to secure the support of orthodox sections of Indian society. Yet despite the ambivalent record of the colonial government on reforms for women in India, the question of women remained an important pillar in the ideological justification of British imperialism in India. The growth of nationalist sentiments was the major feature in the last four decades of nineteenth century. The question of women was not only the ideological battleground for the imperialist but for the emerging proto-nationalism and nationalism also. The figure of the 'Aryan Woman' of the ancient past was defined as superior to the figure of the Western woman as well as to the lower caste woman in India. This proposition has long occupied central place in cultural nationalist projects of reconstruction. A golden past was imagined from which contemporary Indian society had allegedly fallen.⁷ In other words, the figure of this ideal 'Aryan woman' was used alternatively by Indian reformers to argue for the reforms in contemporary Indian society and by the opponents of reform to resist any change in the status-quo.

Furthermore, as Partha Chatterjee has suggested, the figure of the Indian woman was also invested as the sight of Indian autonomy as the result of 'derivatives' nature of official nationalist project.⁸ For Indian nationalism sought to overcome its derivativeness vis-à-vis the west through a convenient ideological spirit where by it acknowledged Indian inferiority to the west in the

material realm and located Indian autonomy in an alternative 'spiritual' realm supposedly untouched by the west. Hence both the tremendous nationalist investment in the figure of Indian women, who as the traditional guardian of the 'spiritual' realm, became the very embodiment of Indians and exaggerated nationalist claims about the superiority of Indian spirituality over western materialism. Recent historical studies situate the question of women in the heart of the militant nationalism of the last part of the nineteenth century nationalism. Particularly the last four decades of nineteenth century witnessed the emergence of distinct political formation which could be loosely called 'revivalist Nationalist'. This was the group of newspaper proprietors, Pandits and Modern educated urban intellectuals. These people used nationalist rhetoric against any form of Colonial intervention in the Hindu domestic sphere.

Tanika Sarkar observes that the question of women was based upon the 'absolute' power of husband and the subordination of wife.⁹ The Indian woman was bounded within *Shastric* injunctions and 'indissoluble infant marriage. She further argues that the liberal reformers in the late nineteenth century had been deeply self critical about the bondage of woman within the household.

Apart from these developments in the last part of nineteenth century, the development in the biomedical sciences cannot be ignored while studying the question of women in India. Radha

Kumar argues that the rapidly growing natural sciences gave rise to new biological theories which paid attention to the development of human body.¹⁰

The study of genetic determination and environmental influences contributed to the formation of an ideology of racial superiority, which asserted that British rule was ordained by nature and Indians were not fit for the 'self-rule'. These kind of arguments were advanced in an aggressive language by Katherine Mayo and other imperialists in ineteenth twenties.

Radha Kumar argues that two campaigns in eighteen eighties contemplate the development of such ideas of racial superiority and inferiority: the campaign for a law to improve the condition of industrial workers and a campaign against the custom of child marriage.

Forbes has argued that child marriage had long been a *thorny* topic in British India. British missionaries and officials expressed their horror of *per-puberty marriage* which many Indian explained as only the first marriage to be followed by the *garbhadhan* (consummation) ceremony immediately on the attainment of puberty.¹¹

The movement against child marriage is directly relevant for my work. This custom began to be discussed in the reformist and government quarters from the mid-nineteenth century. Several initiatives both on individual and organizational levels were taken against the custom of child marriage. Finally in 1891 the age of

Consent Act was enacted raised the age of consummation for from 10 to 12 for Indian girls.

Forbes argues that the controversy around the Age of Consent Act diverted the attention from the helplessness of female child to whether the government should interfere or not in the social affairs of Indians.

Charles Heimsath viewed the Age of Consent Act in terms of the nationalist movement.¹² He argued that the controversy provided social reforms with in the national attention and henceforth the social reform question would become inescapably a part of the nationalist ideology.

Partha Chatterjee argues that towards the end of 19th century the question of women was disappeared from agenda of public debates in view of the rise of nationalism.¹³ He argues that the “question regarding the position of women in society did not arise the same degree of passion and acrimony as they did only a few decades before. The overwhelming issues now are directly political ones concerning the politics of nationalism.

Sumit Sarkar has argued that the inability of nationalist ideology in pushing forward a campaign for liberal and *egalitarian* social change which could not be seen as a retrogression¹⁴ from an earlier radical reformist phase. Those limitations were in fact present in the earlier phase as well. Further he added that the reformers were highly selective in their acceptance of liberal ideas from Europe. “Fundamental elements of social conservatism such

as the maintenance of caste distinctions and patriarchal forms of authority in the family, acceptance of the sanctity of the Shastra (ancient scriptures)", preference for symbolic rather than substantive change in social practices all of them were conspicuous in the reform movements of the early and mid-nineteenth century. Amiya Sen has argued that the nationalist investment in actual reforms for women was ambiguous at best. It provided a patriotic language to the Hindu revivalist especially in the second half of the nineteenth century through which they could articulate their patriarchal resistance to legislative initiatives aimed at improving the condition of women for instance. Hindu revivalism was in action against the age of Consent Act of 1891.¹⁵

However, certain kinds of gender reforms began to acquire acceptance even from many of the leading Hindu revivalists of the late nineteenth and early twentieth centuries, albeit within strictly nationalist parameters. In the early twentieth century, nationalists approved of the increased participation of middle class women in education and profession through women's organizations. Judy Whitehead has argued that it could be possible by promoting the nationalist symbol of motherhood with biomedical argument by the Hindu reformers of Arya Samaj.¹⁶ She further adds that the image of motherhood symbolized that the woman was the protector of the home and embodied secret powers. The ironic representation of the nation were renegotiated during the 1920s, and the urban middle class blended the modernist ideas of nationalist and scientific

progress with the private practices of the home and child teasing. Whitehead argues that in the nineteen twenties various evils of society were challenged like *pardah*, *devdasi* system and lack of women's education and last but not the least child marriage, which reflected the *Habitus* of middleclass national reformers.³¹ She defines '*habitus*' as a habitual bodily practice relating to decorum, dress, hygiene, sexuality and state that reformed gender and class identity. She goes on to add that the *habitus* of the post-Victorian middle class and of upper caste Hinduism had many similarities. Both post-Victorian and Brahmanical traditions equated high status of mental labour, masculinity with specific regimes of bodily practices. These distinctions were validated by "*Dharmashashtra*" in *Brahmanical traditions* and in the English case. It was highly regulated by moral and eugenic values. Therefore, relative status of the family was dependent on the wives and the 'conduct of mothers'. In other words, upper class women in those traditions were viewed as a keeper of the family status and honor.

Geraldine Forbes has observed the beginning of 20th century as the rise of 'social feminism' in India. She argues that the educational experiments of the late nineteenth and early twentieth centuries produced a "new woman" with interests that went beyond the household who would organize the women for raising the question of women by themselves.

Forbes has traced the history of the question of women from nineteenth century. She looks at the question of women in nineteenth century as a response by Indian men to utilitarian writings. The British used the question of women's status in Hindu religion to indicate a moral superiority over Indians and to explain India's lack of military might. Therefore Forbes sees the efforts at "reform" in the 19th century as expressions of Indian men's understanding of how women should be modernized.

Forbes has argued about the Sarda Act in which the reformers imagined they would bring modernity through raising the age of marriage but it was not necessarily meant to modifying the social position of women.

Moreover, the Sarda Act has been discussed by Mrinalini Sinha also. She situates the Sarda Act in view of Mayo's *Mother India* controversy and argues that the CMRA was the product of an alliance between new emerging feminist movements and the nationalism because revivalist nationalists joined the feminist movement and women's organizations to secure the support for their purpose to eradicate the British since the feminist movement was in its 'childhood' in India, therefore, it needed the support of nationalist leaders particularly to respond to Mayo's *Mother India*.

In the 1920s the entry of Gandhi in the field of mass struggle provided a new dimension to the question of women. Gandhi could also be kept in the category of social reformers, though his views regarding social affairs particularly the status of women was

different to his predecessors. Gandhi considered Western civilization as the main enemy of the Indian society.¹⁷

B.R. Nanda has argued that to English educated elite class, Gandhi's views on non-violence, industrialization, sex and marriage were odd and old fashioned.¹⁸ So far as the status of women was concerned Gandhi's views were radical rather than liberal. According to Gandhi the question of women should not be contextualized on the basis of ancient texts, because no book was sacred. Therefore ancient texts could not be understood within the framework of a single interpretation since the meaning and the significance of the text, was not independent of time and space. Not only did Gandhi call upon women to break all the hurdles and join the freedom struggle, he had advanced ideas above marriage and motherhood. He equated modern women with ancient women icons like Sita, Damayanti and others. But he insisted that women should be treated as individual in their own rights and not merely as sex symbols.

In the twentieth century the women's question was used for the imperialist justification which was reflected in Katherine Mayo's *Mother India*. The attitude of the orthodox community moved around the authenticity of religious text and women were the carriers of cultural practices. However, the most important change in nineteen twenties was the advancement of mass nationalism and the growth of an organized female voice.

I have chosen the Sarda Act of 1929 since it has not been much studied from the historical point of view; therefore it provides space for new work in this field. Moreover my personal inclination towards the issue of marriage and question of women and other social affairs has inspired me to do work on this Act. In recent days the issue of marriage and the conjugal relations has attracted the attention of cinema, television, popular magazines and newspapers. Different aspects of conjugal relations and family life are shown in the popular T.V. serials. Sexual relations between husband and wife or the consent of wife in the family life have been the focus of attention of recent popular Hindi films like *Astitva*, *Saathiya*, *Chalte Chalte* and *Jism* and others. Many of these problems were discussed 150 years back by the Iswarchand Vidyasagar and other social reformers, which reveal the vitality of issue of Marriage in the social system. Besides, more strikingly newspapers and magazines are still reporting on child marriages and female infanticide. Therefore I intent to study this issue with special reference to *The Child Marriage Restraint Act of 1929*.

Having discussed the marriage debates and women's voice, I will focus on the process of enacting the law inside the assembly through debates and discussions, and amendments, which were introduced by the members of the Legislative Assembly. These debates reflect the contemporary public opinion as well. Besides, it is exciting to study the marriage reform Act against the context of birth of both nationalist consciousness and feminism in India.

I would grapple with certain themes. For instance, with the state's competence to interfere with social affairs. Shifts in thinking are reflected in the differences between age of consent of 1891 and the Sarda Act of 1929. The shift from age of consent to age of marriage is also interesting. The attitude of middle class women movement towards the issue of child marriage and the Sarda Act as well as relationship the relationship with nationalism will be an important theme. The cause of their compromise with Sarda's proposal ; the attitude of newly emerged female voice towards the imperialist propaganda against the social practices of Indians; public opinion. Can the question of women be tackled only through legislation? Does legislation really symbolize the elements of modernity?

This work is divided into three chapters. Chapter one *The Marriage Debates* deals with various debates on the issue of marriage. I have begun with Ishwarchand Vidyasagar's denunciation of the evils of child marriage in 1850, and the enactment of the Indian Penal Code in 1860. Following from that, I shall look at earlier legislations regarding marriage and the 1920s. I will discuss initiatives in the 1920s, to raise the age of consent. In the end I will come to Sarda's proposal for restraining the child marriage in 1927. This chapter ends with a debate on Sarda's amended bill in September 1929. These marriage debates represent the shift from the age of consent to age of marriage.

Chapter two on *The Female Voice* discusses the emergence of women's organizations in India around the First World War, the views among the women's movements about the customs of child marriage and the attitude of Muslim women towards the marriage reforms. Moreover, I will discuss the confrontation between the newly emergent women's movement of India with the western feminist trends and at the end I will study the relationship between the women's organisations and women of royal houses on the issue of child marriage and Sarda's bill.

Chapter three, *The Making of Sarda Act* deals with the process of Legislative exercise and their reflection in the public opinion of Hindu and Muslim orthodox leaders. Although the aftermath of Sarda Act does not come within my area of research yet, in the conclusion I shall briefly discuss the scenario after the passing of *Sarda Act*.

I have used government documents, private and organizational papers, the Age of Consent Committee Report 1928-29, and papers of women's organization as well, contemporary publications and most importantly the Legislative Assembly debates of 1928 and 1929.

NOTES

- 1 Geraldine Forbes, "Women and Modernity: the Issue of Child Marriage in India," *Women's Studies International Quarterly* 2, 1979, pp.407-409
- 2 *Legislative Assembly Debates* on the Child Marriage Restraint Bill, 29th January, 1929, Government of India Press, Delhi, 1929, pp.191-204
- 3 Sumit Sarkar, *Writing Social History*, New Delhi, Oxford University Press, 1997, pp.281
- 4 Tanika Sarkar *Hindu wife, Hindu Nation: Community, Religion and Cultural Nationalism*, New Delhi, Permanent Black, 2001, pp.23-52
- 5 Lata Mani, 'Contentious Traditions: The Debate on Sati in Colonial India,' in Sangari and Vaid eds. *Recasting Women: Essays in Colonial History*, New Delhi, Kali for Women, 1989, pp.88-126.
- 6 Mrinalini Sinha ed., *Selections from Mother India, Katherine Mayo*, New Delhi, Kali for Women, 1998, pp.29.
- 7 Uma Chakravati, 'Whatever to the Vedic Dasi? Orientalism, Nationalism and a Script for the Past,' in *Recasting Women...* op.cit, pp.27-87.
- 8 Partha Chatterjee, "Nationalist Resolution of Women's Question", *Recasting Women...*, op.cit, pp.233-253.
- 9 Tanika Sarkar, *Hindu Wife, Hindu Nation...* op.cit pp.191-225
- 10 Radha Kumar, *A History of Doing : Illustrated Account of Movements for Women's Rights and Feminism in India 1800-1990*, New Delhi, Kali for Women, 1993, pp.84.
- 11 Forbes, op.cit
- 12 Charles Heimsath, *Hindu Social Reform and Indian Nationalism*, Princeton, Princeton University Press, 1964.
- 13 Partha Chatterjee...op.cit.
- 14 Sumit Sarkar, "Women's Question in 19th century Bengal" *Critique of Colonial India*, Calcutta, Paparus, 1985, pp.84-90
- 15 Amiya Sen, "Hindu Revivalism in Action: The Age of Consent Bill Agitation in Bengal", *Indian Historical Review* 7, nos. 1-2 (July 1980-January 1981)
- 16 Judy Whitehead, "Modernizing the Motherhood Archetype: Public Health Models and the Child Marriage Restraint Act of 1929" in Patricia Oberoi (ed.) *Social Reform, Sexuality and the State*, Delhi, Sage, 1996, pp.187-210.
- 17 M..K. Gandhi, *Hind Swaraj*, Navjeevan, Ahmedabad, 1909
- 18 B.R.Nanda, ed. *Indian Women; Pardah to Modernity*, New Delhi, Radiation, 1990, p.2

CHAPTER 1

MARRIAGE DEBATES

“The sad story of a young married Maratha girl, 11 years old Bhingu Bai drowned herself in a well at Narayan Peeth, Station Road on the G.I.P. railway between Raichur and Wadi, while being sent by her father to husband’s place at Shahabad.” Bhingu Bai was married at 6 years of age to one Luxman. In accordance with custom, she was sent to her husband’s house two months after the marriage. She returned from her husband’s house within two months. This process of going and returning happened several times. Ultimately, she decided to commit suicide at the G.I.P. railway station since she was been forced to go back to her husband’s home.¹

Almost all human relations are structured by power and the scope of choice is negligible. In reality neither the girl nor the boy enjoys the liberty of choosing their life partners. Above all, the girl’s consent is not at all given adequate respect in Indian families both before and after the marriage.² The status of married women was worse in the colonial period.

The question of women and the issue of marriage were the central themes of the social reform programmes of colonial India. Cases similar to Bhingu Bai’s had become routine in the social life

¹ *The Hindustan Times*, 23 June, 1926.

² Exceptions can be mentioned but cannot be generalized.

of Indians and shaped nationalism in its struggle against foreign rule. The question of child marriage was so contentious that social reformers and the colonial government were sensitive towards this issue. Legislative initiative could not be taken successfully till the enactment of the Child Marriage Restrain Act³ of 1929. This Act fixed the marriageable age at 14 for females and at 18 for males.⁴ The main characteristic of the Child Marriage Restrain Act (CMRA) was that it penalized early marriages through fine or imprisonment or both.

The Bill of CMRA was introduced in the Assembly by Harbilas Sarda (Ajmer, Marwara General Seat) on 15th September, 1927. That is why this Act is popularly known as Sarda Act.

The imperialistic cultural understanding of the conjugal life of Indians provided a space for an alliance between the nationalist movement and the newly emerging organized 'female voice'.⁵ In the context of such political and social turmoil, the issue of marriage—precisely the child marriage—was debated both in the public sphere and in the Legislative Assembly.

The most influential development in this respect was the emergence of women's organizations at the national level around the time of First World War (1914-18), which were significantly different from the 19th century reform movements. These were led

³ CMRA hence forth.

⁴ The State determined the age at which couples would begin conjugal life.

⁵ Mrinalini Sinha, ed., *Selections from 'Mother India'*: Katherine Mayo, Delhi,,Kali for Women, 1998, Editor's Introduction, pp. 1-65.

by women and raised issues from the stand point of women rather than that of men. This feminist consciousness found expression through several organizations like Women India Association, National Council of Indian Women and All India Women Conference.⁶

Vir Bharat Talwar has argued, "Like the burgeoning number of peasants and workers organizations all over the country, women's own organizations developed as part of the anti-imperialist movement."⁷

The participation of women in public life intensified the campaign against the custom of child marriage. The female voice could be heard in the prominent journals of the time like *Stree Darpan*, *Stree Dharma* and *Chand*, which were first published in 1909, 1917 and 1922 respectively. The *Stree Dharma* was the official journal of Women's India Association. It was published from Madras in English. *Stree Darpan* and *Chand* were published in Hindi from Allahabad Press Journal. Allahabad which was the center of middle class nationalism in the region.⁸

These journals published articles, poems, stories etc related to women's issues for spreading consciousness among them. *Chand* carried articles on women's health. *Stree Darpan* carried book

⁶ Vir Bharat Talwar, "Feminist Consciousness in Women's Journal in Hindi: 1910-20", in K. Sangari and S.Vaid eds. *Recasting Women: Essays in Colonial History*, New Delhi, Kali for Women, 1989, pp. 204-232.

⁷ Ibid.

⁸ Ibid.

reviews and commentaries on recent women's problems. It also carried most number of articles on the suffering of widows than any other journal. *Chand* brought out special issues on the suffering of widows and on child marriage at the inception of its publication in 1922. Similarly, *Stree Dharma* discussed several women's problems, suggested remedies and reported about and commented on women's movement. Above all, these journals discussed the evils of child marriage and asked for reforms.⁹

Since the issue of child marriage and the CMRA or Sarda Act are being focused here, therefore it is necessary to discuss previous Legislative initiatives which had attacked the custom of child marriage and the attitude of social reformers and colonial government. For this social reform programmes of the 19th century are to be considered.

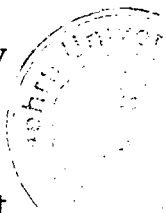
The first time the custom of child marriage was attacked, it was by Ishwar Chandra Vidyasagar in 1850 through his tract *Balya Bibaheh Dosh* (The Evils of Child Marriage).¹⁰ He connects the custom of child marriage with the absence of companionate conjugality and criticizes those parents who marry their daughter at the tender age of 8, 9 or 10 due to religious prescriptions. Moreover, Vidyasagar argues that child marriage increases the number of widows, keeps the girl aloof from education. He added that due to this evil custom the child bride became "Grihparicharika" or a

⁹ Ibid..

¹⁰ Gopal Halder, ed., *Vidyasagar Rachnabali*, Volume II, Calcutta, 1972.



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amid servant and groom the “bread earner”. The child bride had to serve her in-law’s to be called “Grihalaxmi” or the goddess of the household. However, Vidyasagar could not initiate any organized campaign in favour of raising the age of marriage due to certain peculiarities in colonial law.

Warren Hastings had laid down the policy of non-interference according to which East India Company decided not to interfere in the social affairs of the native population like inheritance, religion, marriage and so on. Not only this, he decided to govern Hindus and Muslims according to Dharmashastras and Shariyat respectively.¹¹

Even though the colonial government had decided to follow the policy of non-interference in the social affairs of Indians yet, the administrators recognized that the state needed to think through the grave evil of child marriage. Moreover, intercourse between the husband and the wife below a certain age had been illegal under the Indian Penal Code whose first draft appeared in 1837. This culminated in the fixation of minimum age of consent for the girls at ten years of age when the Indian Penal Code was enacted in 1860. Besides, it prescribed that the punishment for the husband might extend up to transportation for life.¹² Thus marriage debates begin with the fixation of age of consent for girls and punishment

¹¹ Sumit Sarkar, “Vidyasagar and Brahmanical Society” in *Writing Social History*, Delhi, Oxford University Press, , 1998, pp.

¹² This information has been taken from E.R. Rathbone, *Child Marriage: The Indian Minotaur* London, George Allen and Unwin, , 1934. She was the first British feminist and a Member of Parliament.

for the husband if he violates the law. Even though it might not have touched upon the institution of child marriage yet, it represented a departure from earlier social legislation in two ways. First it introduced the concept of marital rape and secondly it made premature consummation in child marriage a crime in the eyes of the law.

The controversial legislative activities pertaining to Hindu marriage in the late 19th century constituted in the discursive field. The Native Marriage Act III of 1872 was an extremely radical package which prohibited polygamy, legalized divorce and laid down a fairly high minimum age of marriage. Moreover, it ruled out caste or religious barriers to marriage. Predictably the proposed Bill raised a storm of controversy. The jurisdiction was eventually narrowed down to such people who declared themselves to be non-Hindus, non-Christians, Non-Jains, non-Buddhists and non-Sikhs. In a nutshell, the proposed Bill was applicable to Brahmos alone. The campaign for this Act was initiated under the leadership of Keshav Chandra Sen.¹³ The provisions of this Legislation of 1872 anticipated the age related agitation and the Sarda Act.

Subsequently, furious debates opened up a crucial area of Hindu conjugality, in particular the custom of child marriage whose ties were considered to remain binding upon women even after the death of the husbands. The famous case of Rakhmabai (1884-1886)

¹³ Tanika Sarkar, *Hindu Wife- Hindu Nation*, New Delhi, Permanent Black, 2001, pp. 191-224.

revealed the polemical aspect of the marriage debates in the late 19th century. She belonged to lowly carpenter class and was married at the age off at the age of 11 but her marriage was never consummated. Rakhmabai refused to go to her uneducated and diseased husband when she became 22 years of age. Under the law of Restitution of Conjugal Rights¹⁴, the husband was entitled to send his wife for prison on her refusal to cohabit with him. The Bombay High court passed a decree in favour of her husband with whom she had refused to go.¹⁵ Rukhmabai showed that in enforcing marital rights of the husband, the English civil law as it stood, went far beyond the ancient Hindu law and even modern caste usage.¹⁶

This issue fore grounded very forcefully the problems of consent in dissolubility within the Hindu marriage. With the development of the print culture in English and vernacular language, the news of sexual abuse of infant wives were coming to the surface. *Dacca Prakash* in 1857 reported that an elderly man has beaten his infant wife to death when she refused to go to bed with him and neighbours tried to cover it up as suicide, when the murder charge was eventually proved. The Jury had let off the husband from a life sentence. Similarly, a mature husband of a girl aged 11 years of age was dragged out by the hair and beaten to

¹⁴ This law was passed in 1877 to tighten the hold of marriage bond and supported by Hindu orthodoxy.

¹⁵ Sudhir Chandra, *Enslaved Daughters: Colonialism, Law and Women's Rights*, New Delhi, Oxford University Press, 1998.

¹⁶ Ibid.

death. He was also let off from the life sentence.⁸⁴ Such instances could be multiplied. By and large, the fact was that the girls consent had no meaning in any general discussion of Hindu marriages. The controversy for the right age of consent connected the issues of morality, child bearing and family interest with eugenics. The famous case of Phoolmani Dasi was the culmination point in the cases of sexual abuse of infant wives. She was a 10-11 year old child bride who was raped by her 35 years old husband. Under the Penal Code Phoolmani Dasi's husband was not guilty of rape since Phoolmani was within the statutory age limit of ten years. Thus, the charge of rape and murder could not be proved before the law.¹⁸

These two cases were directly related to Law of Age of Consent. They had been admittedly dealt with by Legislature but it never gave a pledge that it would not interfere to prevent the commission of offences, or to lessen the rigour of its own sanctions and was perfectly free to amend or repeal what it had at first ordained.¹⁹

Phoolmani Dasi's case was not isolated. Dr. Jevours's investigation²⁰ mentioned at least 14 cases of prepubertal child cohabitation. The reformist press collected and published such

¹⁷ Education Gazette, May 1873. Quoted in Tanika Sarkar "Conjugality and Nationalism" in *Hindu wife Hindu Nation*, New Delhi, Permanent Black, 2001, pp. 191-224.

¹⁸ Ibid.

¹⁹ Dayaram Gidumal, *Behramji Malabari: A Biographical Sketch*, London, 1902

²⁰ 1857

accounts of sexual abuse of child bride. For instance, 44 women doctors brought about a long list of cases in which the child bride was raped. The debate on the marriage shifted the attention of the colonial Government and the social reformers to life and safety of the Hindu wife.²¹ Above all, the famous Parsi social reformer B.M. Malabari's campaign against the custom of child marriage added enormous weight and urgency for raising the age of consent. His constant efforts bore fruits in March 1891 with the enactment of the Age of consent Act, 1891. Dayaram Gidumal has argued that Malabari was the center of the "Age of Consent Act" and was aware of every pro and con of this Bill. He further added that Malabari denounced the custom of infant marriage by focusing on the physical and moral aspects of it.²² Malabari was in favour of strict monogamy for both the sexes. According to him it was pathetic that widowhood was enforced on a girl who does not know meaning of marriage.²³

Malabari discussed the "horror of infant marriage." A girl was betrothed by his father in her infancy due to religious discipline and for the sake of the family honour. The girl had never seen her husband or her husband's home before her marriage. Later on, the husband might turn out to be worthless and diseased. Malabari

²¹ Tanika Sarkar, *Hindu Wife Hindu Nation*, op cit.

²² Dayaram Gidumal, op cit.

²³ Ibid.

questioned how a child bride could spend her whole life in total unhappiness caused by the life which had been inflicted on her.²⁴

Furthermore, Malabari argued that the segregation of a girl in marriage was “neither logical nor correct” from the girl’s point of view and it was more inhuman to control the sexual desire of a girl on the name of “honour of the family and religious laws.”²⁵ And, the evil custom of infant marriage and enforced widowhood were related to each other.²⁶

Instead of building up any organization, Malabari tried to pull the attention of government and secure its support for a reformed law through the numerous articles. He subsequently published *Notes on the Infant Marriage and Enforced Widowhood*.²⁷

Finally, on 9th January 1891, the Law Member of India, Andrew Scoble introduced the Bill in the Legislative Council, raising the age of consent for sexual intercourse with Indian girls from 10 to 12 years. The Bill proposed to define sexual intercourse with married and unmarried Indian girls below the age of 12 as rape which was punishable by 10 years of imprisonment or by transportation for life. This proposal did not interfere with the institution of child marriage in India but only with premature

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

consummation within child marriage. This Bill was signed by Viceroy Lansdowne on 19th March 1891.²⁸

The most striking feature of the Age of Consent Act of 1891 was the massive opposition that followed it. The country was sharply divided over this measure.²⁹ The limited nature of this act was in itself a compromise with indigenous upper caste patriarchal norms and practices. The colonial government was so impressed by the agitation against the Bill that it did not initiate any major social reform legislation in India until the passage of the CMRA in 1929.³⁰

The agitation against this Bill inaugurated anew phase elite nationalism in India. The politics of colonial masculinity, “however, serves to conceptualize the impact of agitation against the consent Bill on elite nationalist policies in India”, which provided the context for nationalist policies for the defence of orthodox Hindu patriarchy.³¹

Hindu men were actually aware that they had been colonized by an alien culture and education and the Hindu women’s body became a deeply politicized matter, which signified past freedom and future autonomy of the nation. The Hindu women’s body

²⁸ Mrinalini Sinha, *Colonial Masculinity: The ‘Manly’ Englishman and the ‘Effeminate’ Bengali in the late Nineteenth Century*, Manchester, Manchester university press, , 1995.

²⁹ Numerous Public meeting were held in both its support and opposition in the different part of the country.

³⁰ Mrinalini Sinha, *Colonial Masculinity*, op cit.

³¹ Ibid.

became doubly tied to shastric and custom-based rules of non-consensual and indissoluble infant marriage.

The Age of Consent Act was a crucial event which brought together and reenergized debates on Hindu domestic norms and above the need for Legislative reform. Basically, the state was not of the view to interfere in the social norms of native people because the child marriage was not only customary but recommended by religious laws. However, the huge controversy on this issue compelled government to take Legislative initiative.³²

The great reform campaigns of the 19th century was revolved one way or another over the question of women's death. The Sati-Abolition Act in 1829 and the Age of Consent Act in 1891 were related to violent destruction of her physical body and the Widow Remarriage Act in 1856 was centered on the sexual death. Tanika Sarkar argues that the question was not really whether the community and state could have the power to talk about the death of women, but whether she was could act legally or politically as a person. Moreover, she identifies five levels of discourse around the age of consent. First and immediate, was the case of Phoolmani Dasi's death; second, medical opinion largely from Europeans; third, the report by administrators on child marriage and premature co-habitation; fourth, statements of Indian administrators and fifth, the persons of importance whose opinion

³² Tanika Sarkar, *Hindu Wife, Hindu Nation*, op cit.

was solicited by the government before the new law was drafted.³³ Moreover, provincial Legislative bodies had no Indian representatives. The most striking fact was that neither the government nor the reformers consulted the women on this issue of marriage and women's organizations had not come in the existence yet. Only individual women like Rakhmabai had expressed an opinion.³⁴ Therefore the Age of Consent Act proved to be a 'dead letter' and much more advanced reform was required in the third decade of 20th century in which organized women actively participated.

By the turn of the 19th century many other struggles over identity like gender equality, caste or communal rights emerged along with the development of nationalist struggle against foreign rule. Yet the issue of marriage did not lose its prominence. Although the custom of child marriage and the Age of Consent were reopened in 1920s but the other aspects of marriage were discussed in the first two decades of 20th century. This time the issue of marriage was influenced by anti-caste movements and increasing tension between Hindus and Muslims. In 1910, Bhupendranath Basu brought forward a Bill to legalized inter-communal and inter-caste marriage, but the attempt was unsuccessful. Subsequently, V.S.

³³ Ibid.

³⁴ Ibid.

Patel came forward with a new Bill aiming at inter-caste marriage. This Bill was called the Hindu Marriage Validity Act, section II.³⁵

Patel's Bill says, "No marriage among Hindu shall be invalid by reason that the parties does not belong to the same caste, any custom or interruption of Hindu law to the century not withstanding."³⁶ However, Patel's Bill could not be enacted in spite of the fact that marriages across different castes and communities were not legal. This is still a major bone of contention in Indian families. Marriages between Hindu and Brahmos were, however, permitted. In Rabindra Nath Tagore's famous novel *Gora* a Hindu man and Brahmo woman defied their family restrictions to get married.³⁷ Patel's Bill caused great disturbance though it had some support from progressive quarters of society. Orthodox and sanatani Hindus severely opposed it,³⁸ while those who supported inter-caste marriage gathered material from ancient examples. In an edition of *Stree Darpan*, Rameshwari Nehru wrote that this Bill should extensively be discussed.³⁹

In the same issue of *Stree Darpan*, an article was published "Patel Bill Aur Parivartan Ka Niyam" (Patel's Bill and the Law of Change) which carried an argument that change is an inevitable law

³⁵ Speech of C.L. Mathur, Bar- at- law, at the annual sessions of Jat-Pat Todak Samiti, *Jayakar's Private Paper*, File 385, NAI, New Delhi.

³⁶ Ibid. ,

³⁷ Rabindra Nath Tagore, *Gora* (translated into English by Sujit Mukherjee), New Delhi,,Sahitya Academy, 1997.

³⁸ *Stree Darpan*, Part 22, Vol IV, April 1920 Editorial, Allahabad, Law Press Journal.

³⁹ Ibid.

of nature which could not be stopped. Therefore, all those who were opposing Patel's Bill might have been successful for a while but in the long run their failures lead to change. So sooner or later society has to accept inter- caste marriage.⁴⁰

In 1922 'Special Marriage Amendment Bill' was introduced to legalize inter-caste and the inter-communal marriages by Hari Singh Gaur of Central Province. This Bill was introduced in view of the fact that the marriage was considered an important medium to normalize the tensions among different castes and communities. Intercommunity marriages may help to reduce communal tension. Both orthodox Hindus and Muslims opposed this Bill. However, this Bill was passed into law in 1923.⁴²

Apart from legalizing inter-communal marriages Gaur's Bill proposed to break the restriction, which was mentioned, in earlier Child Marriage Bill. Now, the Hindu man did not have to declare himself as a non-Hindu if he married a girl outside his caste. However, he had to loose the right on his ancestor's property. Nevertheless, the main advantage of this measure was the legalization of such marriages.⁴³

Constitutional development in the colonial period in India made the marriage debates acquire a wider range. On the one hand, Indian representation in the Legislature had been negligible in

⁴⁰ Ibid.

⁴² Speech from C.L. Mathur, bar- at- law at the annual session of Jat-Pat Todak conference in Lahore in 1924. *Jayakar Private Papers*, op cit.

⁴³ *Chand* Part 1, Vol. III, April 1923, p. 530.

1891. The Indian Council Act of 1909 allowed greater powers of budget discussion for Indian members of legislature, for putting questions or for sponsoring a resolution to the members of Legislative Council, and for the first time it formally introduced the principle of elections. There was a provision for the representation of the different social groups through separate electorates, for instance landholders, Muslims, European and Indian commences.⁴⁴

The separate electorate given to Muslims was the effort of newly formed political party, the Muslim League (1906). Moreover, the British Government tried to encash on the tension between Hindus and Muslims within the broad paradigm of its policy of "Divide and Rule". The Indian Council Act of 1909 was revised in as the Government of India Act of 1919.⁴⁵

In the Government of India Act, 1919, it was proposed to give partial self-governance to Indians. Dyarchy was the salient feature of the Act through which provincial autonomy was given, representation of Indian members in legislative council was extended and ministers were made more accountable to the Legislative Council, particularly in the care of health education, agriculture and in social affairs.⁴⁶ This made it possible for Indian Council members to debate the issue of marriage independently.

⁴⁴ Sumit Sarkar, *Modern India (1885-1947)*, New Delhi, Mac. Millan, , 1983.

⁴⁵ Ibid.

⁴⁶ Ibid.

The next major change in the 1920's was the emergence of Mahatma Gandhi as the leader of the Indian freedom struggle against British rule. Under the leadership of Gandhi, the Indian National Congress was reorganized and an unprecedented Hindu-Muslim unity was seen in the form of Non-Co-operation-Khilafat Movement in 1920-22. However, this unity between Hindu and Muslim could not survive and the problem of communalism took a new shape in this decade.⁴⁷

At this time, Katherine Mayo, an American journalist published *Mother India* in 1927 ⁴⁸ in which she wrote about the backwardness of Indian people and argued that the sexual organization of Hindu society and the degraded status of women in family matters were the main cause of economic and political backwardness of India. She argued that the Government had tried to bring reforms in 1891 by raising the age of consent but the opposition of Hindu orthodoxy had compelled the Government not to take any further initiative.

International conventions on "trafficking in women" put the pressure on Indian Legislature to reform the Age of Consent Act of 1891. According to the terms of International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications that was signed in Geneva on September 12, 1923, the Indian Legislature duly amended the Indian Penal Code and Code of

⁴⁷ Ibid.

⁴⁸ Katherine Mayo, *Mother India* New York, Resscode Press, , 1927

Criminal Procedure. This amendment set penalties for “whoever sells, lets to hire, distributes exhibits...conveys...or receives profit from any obscene object, book, representation or figure”.⁴⁹

The issue of raising the legal age of consent did surface again in the Legislative Assembly in 1924, when Sir Hari Singh Gour introduced a Bill in the Assembly to raise the minimum age from 12 to 14, both inside and outside of marriage. The Bill passed twice through the hands of Select Committees, which finally reported in favour of raising the age of consent to 13 years within marriage and 14 years without. In the ensuing debates, however, a motion was adopted to raise the age to 14 years inside of marriage and to 16 outside of it, but when the Assembly voted as a whole on the final Bill, it was defeated.

Finally, an official Bill to raise the ages inside and outside of marriage to 13 and 14 years respectively, as per the recommendations of the Select Committee that examined Sir Hari Singh Gour’s Bill, was introduced and passed in the session of March, 1925 to be placed on the statute Book as Act XXIX of 1925. This Act also amended section 376 of the Penal Code, which laid down the punishment for the offence of rape in section 375, by imposing a minor punishment up to two years, or fine, or both, if the wife is between 12 and 13 years of age.

⁴⁹ Indian Penal Code, Act No VIII of 1925, Section 292

This enactment differentiated in the magnitude of offences within and without marriage, so that the same punishment was meted out to an offender when the girl is below 14, as to an offender when the victim is below 12, but happens to be his wife. In this, a partial separation of the categories of rape and marriage, messily linked together in the Penal Code of 1860 and responsible for the debates that exceeded, was regained. Raising the age of consent outside marriage did not meet with as much native opposition — in fact, was not an issue at all in the debates on age of consent — as raising the age within marriage was, and which was something this amendment avoided.

In 1927, Rai Sahib Harbilas Sarda, introduced a Bill, as a non-official member, in the Legislative Assembly, called the Hindu Child Marriage Bill, which proposed to fix a legal age of marriage for Hindu girls at 12, and for Hindu boys at 15, subject to the exemption that the marriage of a girl between 11 and 12 was to be considered valid if permission for the marriage had been granted to the girl's guardian by the Magistrate of the District.

In the session of September 1927, the Bill was moved to be referred to a Select Committee, which considered also the suggestions of the Government of India, formulated after consultation with the Local Governments, which decided to substitute a fresh Bill entitled the Child Marriage Restraint Act Bill, applicable to all communities. The accommodations of the select committee were accepted by the Assembly in March 1928. When the

Bill was re-submitted to the Select Committee after further opinions had been elicited by the Local Governments, strong opposition began to be expressed to the Bill by certain orthodox Hindu and Muslim quarters, so that when Sarda moved for consideration of the Bill in January 1929 against Government's Council, a motion was adopted that the consideration of the Bill be deferred until such time as the report of the Age of Consent Committee, appointed by the Government of India, in June 1928, was received.

The Age of Consent Committee was appointed by the British Government to enquire into the state of the existing law on the age of consent, and to propose any changes, if necessary. This committee was constituted of ten members, headed by Moropant Vishwanath Joshi B.A, L.L.B., Kt. K.C.I.E., late Home Member of the Executive Council of the Governor of the Central Province⁵⁰

The rest of the members were Rai Bahadur Kanhaiya Lal (.BA, L.L.B., late Judge of the Allahabad High Court), A. Ramashwami Mudaliyar (B.A., B.L., lately a member of the Madras Legislative Council), Satyendra Chandra Mitra (M.A., B.L., M.L.A., Advocate High Court Calcutta), Pandit Thakur Das Bhargava (M.A., LL.B., M.L.A., Advocate, High Court, Lahore). The Joshi Report had the representation of Muslim also. Maulvi Muhammad Yakub, Mia Muhammad Shahnawaz and Khan Bahadur Mahbub Mian Imam Baksh Kadri were the Muslim members. Only two women were the

⁵⁰ Hereafter *Joshi Report* will be used for the Age of Consent Committee Report.

members of the Committee. One was English doctor M.O' Brien Beadon (M.B.B.S London, L.S.A., Superintendent, Victoria Government Hospital, Madras) and the second was Rameshwari Nehru. The Secretary of Joshi Committee was M.D. Sagane.⁵¹

The Joshi Report exposed the extent of the custom of child marriage, prevalent in both Hindus and Muslims communities. The report suggested that the ill custom of child marriage was being widely followed in India. The Report suggested that it may be correct to say that in evils of domestic and social concern, especially those involving socio-religious customs of large communities, the remedy for the evils should be left to propaganda, appealing to the good sense of the communities concerned. It is not possible however to argue that Legislation in such matters may never be resorted to for eradicating such evils. The laws of Sati and widow remarriage, the removal of the ban on inheritance by converts and the law of civil marriage are some of the instances in which there has been Legislation and in all these cases the new legislation had encroached on custom and religious injunctions.⁵²

Recommendations of the Joshi Report were submitted to the Home Department on 1st July 1929. The report recommended that the age of consent within marriage should be raised to 15 years of age; but that only a minor punishment of imprisonment (simple/rigorous) upto a year, or fine or both, should be imposed if

⁵¹ *Joshi Report* 1928-29, Calcutta, 1929

⁵² *Ibid.*

the wife was between 12 and 15 years of age, i.e. the age under which intercourse within marriage is of the same degree as rape, and would be punished accordingly, is retained at the existing age of 12, and, in addition, transportation for life for the offence of rape is no longer recommended.⁵³

In fact, it was recommended in the report that intercourse by a husband with his own wife, even under 15 years of age, should not be termed 'rape' at all, but 'marital misbehavior'. It should, in fact, be removed from the Indian Penal Code sections that dealt with rape, and be placed in chapter XX of the Indian Penal Code — offences relating to marriage — and should, unlike rape, be made a bailable offence, irrespective of the age of the wife.⁵⁴

The Joshi report proposed to "abolish the offence of rape within the married relation and substitute a lesser offence ..." It "lets off the delinquent husband...more lightly in some respects than under the present law", so much so that Pandit Kanhaiyyalal, in his individual minute, which wins the support of the secretary of the Committee suggested that "the maximum punishment for the offence of marital misbehavior causing death be fixed at imprisonment of either description for seven years and fine", whereas, under the existing law, the delinquent husband under

⁵³ Ibid.

⁵⁴ Ibid.

such circumstances would be liable to be charged with culpable homicide or even murder, as official observation noted.⁵⁵

Interestingly, despite such regressive recommendations, the Joshi report also recommended as its “most important proposal” the fixation of the age of marriage (14) for girls and 18 for boys by Legislation and lent therefore its support to Har Bilas Sarda’s Bill so much so it urged the immediate consideration of the Bill in the following session of Assembly.⁵⁶ Moreover, Joshi report suggested that “there seems no further need to consult Local Governments”, whereas, on the issue of age of consent, the suggestion was to “introduce a Bill... when the replies of Local Government are received,” i.e. that such Legislation was not needed to consider immediately in succeeding session. The resolution of the age of consent issue seemed to be offered in the question “whether the age of consent within the marriage tie should be the same as the marriage age or not” while marriage and rape were proposed to be separated and marriage and consent were sought to be equivocated.⁵⁷

Although the recommendations of Joshi report were indubitably radical in nature and supporting Sarda’s Bill but Harbilas Sarda’s arguments in Assembly are needed to be studied

⁵⁵ *Ibid.*

⁵⁶ The following session of Assembly was to be taken place in September 1929.

⁵⁷ *Joshi Report.*

separately. Before entering into the depth of Sarda's arguments it would be fair to know about Sarda's life.

Harbilas Sarda was born in Ajmer in June 1867. His father Sriyut Harnaryan Sarda was a Sanskrit and English scholar and was the librarian of the Government College, Ajmer. Sarda completed his intermediate from the Ajmer Government College and graduation in English honors from Calcutta University in 1888 from the Agra College, stood first in that subject in Agra and Oudh.⁵⁸

Harbilas Sarda was appointed senior teacher in Government College, Ajmer. Subsequently he was transferred to the judicial department of British Province of Ajmer, Merwana in 1892. In 1894, he was placed on special duty to revise the Ajmer Regulation Book, a compendium of laws and regulations for Ajmer Merwana. Later on Sarda served for judicial department of the Ajmer-Merwara till his retirement from Government service in 1922.⁵⁹

He was the author of works illustrating "Hindu" valour and potency such as, "Maharana Kumbha"(published 1915), "Maharana Sanga" (1918), "Hammir of Ranthambhor (1912), a paper on Prithviraj Vijaya published in the journal of the Asiatic Society, Great Britain & Ireland. Since he did belong to Arya Samaj therefore

⁵⁸ A Short Life Sketch of Harbilas Sarda, *List of Harbilas Sarda's papers* (miscellaneous papers)

⁵⁹ Ibid.

believed that India had glorious past so much so he wrote the book “Hindu Superiority”.⁶⁰

Apart from serving in the judicial and educational departments in British administration Sarda was elected for central Legislative Assembly from Ajmer Marwara in 1926. Basically his name is known for the famous ‘Child Marriage Restraint Act’. It was proposed by him in 1927 and was passed into law in 1929 October 1st, popularly known as ‘Sarda Act’.⁶¹ His arguments on the issue of Child Marriage will be discussed in the following part of this chapter.⁶²

Since, the orthodox opinion was not in favour of any Legislation regarding the issue of child marriage, therefore, the mover of the Bill Sarda cited the Manu Smiriti and Dhanwantari’s Sushruta Samhita which had laid down the age of marriage at not less than 16 years for girls to justify his proposal. He went from this to assert that the argument of religion is no excuse, when in the name of religion, the offence is being perpetuated against someone, or when religion is practiced at someone else’s expense.

Sarda pointed to the fact that Indian women, those affected by this religious custom want a change, that the “women of India do

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Sarda’s speech delivered in the Legislative Assembly at Simla on 15th September 1927, speech delivered in the Legislative Assembly, New Delhi on 29th January, and from his Presidential address delivered at the Forty-second session of the Indian National Social Conference held at Lahore on 26th December, 1929 as published in *Speeches and Writings, Har Bilas Sarda*, Ajmer, Vedic Yantralaya, 1935, pp. 1-68

not talk of 'Shastras', as they do not bother themselves about the effect of marriage on their prospects in the next world. They are practical and think of this world, and they want, that their sufferings in this world should come to an end", and that "if there were women members in this House, the Bill would not have taken three months to pass instead of three years". In speeches, elsewhere, he critiques the double standards applying to men and women in several Hindu customs, by using Manu again to establish a radical notion of equality of the sexes within marriage.

His concern, as he clearly professes, is for the child widows of India, for the sanctity of childhood, in the light of which, for him "child marriage is a grave crime" irrespective of what "antediluvian notions" and "worn out dead ideas" may have to say. He advises Indians to live in the present.

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

Sarda addressed the argument of political nationalism that refused to negotiate and collaborate with the colonial state – the political enemy in matters of advancement, and which held, therefore, that political reform must precede social reform. This is essentially an argument characteristic of the period under study, i.e. the late 19th and 20th century – when political nationalism was gaining momentum.

This was the patriotic/nationalist content of the debate advocating prevention of early marriage and early consummation, Katherine Mayo in her book *“Mother India”*, repeated the same argument that the continued political subjection of the Indians is due to their being a degenerate race,⁶³ owing to the custom of child marriage, which makes mothers of young girls and brings in the world children who are barely able to survive, if at all, and that, to such a race, British rule is a blessing.

A concern for the degeneration of the race is expressed by Sarda in the Legislative Assembly on 15th September 1927 when he said, “shall we stand by and see the race sink below the point when regeneration and resuscitation become impossible”.

Sarda in his Presidential address at the December 1929 session of the Indian Social Conference says that, “we all know that India had a glorious past and her achievements in the various domains of human activity were great”, and speaks of be fissiparous

⁶³ Mayo considered the custom of child marriage and pre-mature maternity for this degeneration.

nature of caste in contemporary society as making the “nation impotent to protect itself from foreign inroads”.

Those native protagonists who were advocating reform to abolish the custom of child marriage wanted this Bill. Sarada, for instance, points to the support for the measure contained in his Bill, expressed by the majority of the different local governments in India, of the High Courts, of the Judicial Commissioners, by the support extended by ‘District and Provincial Ladies Conference’ and by “Ladies’ Associations and Sabhas” representing different communities. He cited the specific examples of “Three All India Ladies’ Conference in different parts of the country” and the meeting of the Rajputana Provincial Ladies conference on 19th November 1928, where the Sarada Bill was supported. He also refers to the support extended to his Bill by such organizations as the Indian National Social Conference and various All-India Caste Conferences.

According to Sarada other nations of the world like England and America were also watching India’s progress on the matter after the publication of Katherine Mayo’s ‘Mother India’ in 1927. Some protagonist advocated reform, in fact, accused the Government of India of holding back the Legislation.

Thus we see that constant efforts were being made to bring reforms in the institution of marriage, particularly in the age long custom of child marriage from mid 19th century. These efforts were influenced by the social and the political environment of respective

period. Vidyasagar could not ask for legislation against the custom of child marriage from colonial policymakers, and in the absence of public opinion against this system which would develop in last quarter of 19th century, an organized movement could not be initiated. Apart from a few instances, the female voice was silent since few women had the resources as yet to express an opinion in the public sphere. Malabari's campaign focused on the moral and physical aspects of child marriage and did not attack the religious aspect directly. Consequently, the efforts were restricted to the sphere of age of consent. The massive opposition of the revivalist leaders compelled the government not to interfere with the custom of child marriage. The sufferings of female children of tender age and child widowhood and the emergence of organized "female choice" and the freedom struggle against foreign rule opened up this issue again in the 3rd decade of the 20th century.

Interestingly, the question of women was closely closely connected with the issue of child marriage in India. Both the reformers/revivalist and imperial government tried to justify their location in the society through the condition of women in society. The script for the past was first systematically produced for India by European Orientalist scholarship in the late 18th to early 19th century, they referred to "the ancient Indian past" and its literary achievements in the production of texts were made available to the

native elite. The scholarship was neutral to the inequalities of caste, class and gender in the ancient past.⁶⁴

The Utilitarian stream of writing on India, belonging to the early 19th century, highlighted these inequalities, especially that of gender, in painting a picture of the abject degeneracy of contemporary Hinduism which had fallen a prey to repeated foreign conquest, and the efficiency of the Indian men.⁶⁵ According to James Mill, the status of women is an indicator to the condition of society.⁶⁶ This served as a tool in colonial ideology is rationalizing the subjection of the natives as well as in giving the British in India the image of superiority over them.

Sarda also tried to relate his ideas to the this notion of a glorious Hindu past. One thing needs to be kept in mind that Sarda's conceptualization of the ancient past is in terms of a time when the country was self-contained and self-governed, when the population was homogenous and differences of religion were not serious, education was in the hands of the nation and society was not subjected to the impact of foreign influences.⁶⁷ Despite such romanticisation of Hindu greatness and alleging that all problems lay with foreign rule, Sarda's views on marriage, woman, Hinduism

⁶⁴ The arguments are from Uma Chakravarti "Whatever Happened to the Vedic Dasi, Orientalism, Nationalism, and A Script for the past", in Kumkum Sangari and Sudesh Vaid (ed), *Recasting Women: Essays in Colonial History*, New Delhi ,Kali for Women, , 1989, pp. 28-87

⁶⁵ Ibid.

⁶⁶ Geraldine Forbes, *Women in Modern India*, New York, Cambridge University Press, 1998.

⁶⁷ Har Bilas Sarda, *Speeches and Writings*, op cit.

were revolutionary for his times. His arguments become more exciting since these were put forward in the midst of mass nationalism.

The major change in the 3rd decade of 20th century was the emergence of Gandhi as the leader of mass nationalism. The Indian National Congress was reorganized under Gandhi and an unprecedented Hindu-Muslim unity was seen in the form of Non-Co-Operation Khilafat Movement in 1920-22. However, this unity could not survive in the successive years of Indian nationalist politics and communalism took a new shape.⁶⁸

The next movement against the British rule was inaugurated by Gandhi in 1930 with Civil Disobedience. In the period of lull between 1922 and 1930. Gandhi engaged himself with constructive work for the welfare of peasants, untouchables, tribes and women to bring those in to the mainstream of mass nationalism.⁶⁹ The “politicization of gender issue” was the main contribution of Gandhi to the marriage debates of the first half of the 20th century.

Gandhi expressed his views on the marriage and particularly the custom of child marriage. He wrote in his autobiography that it was painful for him to describe his own marriage because he was married at the age of 14 years. He talked about an interesting aspect of child marriage. Since European girls and boys found it

⁶⁸ Sumit Sarkar, *Modern India, 1885-1947*, MacMillan, Delhi, 1983, pp. 165-253

⁶⁹ Ibid.

bizarre that Indians were married in their teens or sometimes before it, he lied about his own marriage when he was flirting with European girls. Gandhi expressed a strong opinion against this pernicious custom.⁷⁰

Gandhi argued that “the custom of child marriage is amoral as well as a physical evil”, which led to moral and physical degeneration in the society. Further he added, “by countenancing such customs we recede from God as well as Swaraj”. Gandhi’s view on Swaraj was that the meaning of Swaraj was not merely political awakening-social, educational, moral, economic and political.⁷¹

The Legislation that was introduced for raising the age of consent in 1891, according to Gandhi, was “it may be good for bringing the minority to book”, but such popular evil, could not be cured through legislation only. Although Gandhi was in favour of legislation he stressed more on the cultivation of public opinion against this evil custom. Gandhi suggested that girl should never be married under the 18 years of age.⁷²

To reply to religious aspect of child marriage, Gandhi argued, “it is irreligion not religion, to give religious sanction to a brutal custom”. The *Smritis* were contradictory. Furthermore, Gandhi’s conclusion was that “the texts that may be contrary to known and accepted morality, more especially, to the moral percept enjoined in

⁷⁰ Mahatma Gandhi, *The Story Of My Experiments With Truth*, Gujarat, Navjeevan, , 1925

⁷¹ *Young India*, 26-8-1926, CWMG, Vol. XXXI, pp. 329-30

⁷² *Ibid.*

the Smritis themselves, must be rejected as interpolations". He, then, added that inspiring verses on self-restraint could not be written at the same time and by the same pen that wrote the verses encouraging the brute in man. Only a man innocent of self-restraint and steeped in vice could call it not a sin to marry a girl before she reached the age of puberty. It should be held sinful to marry a girl for several years even after her periods begin. A girl is not fit to bear children with the onset of menarche than a lad is to procreate as soon as he grows the first down on his upper lip.⁷³

Gandhi defines widowhood as "a widow means the women who at proper age married a person of her choice or was married to him" and the unconsummated wife or the girl of tender age, sacrificed by the parents cannot and must not be included in this definition of widowhood. He formulated several rules for preserving Hinduism in a proper shape

- (1) No father should marry off a daughter under the age of 15.
- (2) If a girl was already married before this age and has become a widow, it's her father's duty to marry her off again.
- (3) If a 15-year-old girl becomes a widow within a year of her marriage, her parent should encourage her to marry again. Every member of the family should look upon the widow with utmost

⁷³ Ibid.

respect. Parents or parents-in-laws must provide her with the means of providing her with knowledge.⁷⁴

Since major reforms were difficult, therefore minor reforms were suggested by Gandhi, "Man, too, like woman should not be remarried after the death of his partner". In order to understand, Hinduism the "rigour of the restraint" which was difficult to practice, should not be reduced.⁷⁵

The child widow could be remarried since she was totally ignorant of any religion and does not understand the meaning of marriage and widowhood. As far as she was concerned, she was unmarried. Her marriage was arranged by her parents. Therefore, she was widow only in the eyes of her parents.

Being the leader of Nation Movement Gandhi had understood that women could not be kept isolated from the mainstream of the society. Therefore, he offered examples of ancient Hindu women like Draupadi, Sita and Damayanti and invoked Indian women to follow these examples for these heroic women had suffered at the hands of men and survived with dignity. It was these heroines Gandhi recalled when he told women to wake up and recognize their essential equality with men. Thus Gandhi deliberately merged the question of women with untouchability and peasants for reforms, since his main aim was to widen the fabric of the freedom struggle

⁷⁴ CWMG , Vol. XXIII, pp. 523-27

⁷⁵ Ibid.

against foreign rule. Therefore, he was sympathetic to the question of women too.

Another major change of the 1920s was the establishment of the Swaraj Party in 1923 led by Motilal Nehru and Chittaranjan Das. Initially, Gandhi was not in favour of any co-operation with the British Government but later on he accepted the demand of those leaders of the Indian National Congress who intended to oppose foreign rule within the administrative apparatus.⁷⁶ Sumit Sarkar, argues that the politics of Council entry was leading to a host of problems and internal division.

Patronage possibilities in the emerging party bureaucracy as well as in local bodies and government offices sharply enhanced factional rivalries. For instance, on the eve of the 1926 election, Motilal's old rival Madan Mohan Malaviya formed an Independent Congress Party in alliance with Lala Lajpat Rai and the Responsivists with a programme which combined political moderation with uninhibited Hindu communalism. The rivalry between Motilal Nehru and Madan Mohan Malviya moved around the conflict between preservation of ancient Hindu ideals and the introduction of modern ideas in every sphere of life. Swarajists were broadly sympathetic to gender issues, which were reflected in the

⁷⁶ Sumit Sarkar, *Modern India*, op cit.

marriage debates of that time. The factional rivalry was reflected in the Legislative Assembly also since Sarda Bill was being debated.⁷⁷

In the 1920s the policy of British government towards the issue of marriage shifted from its earlier policy of non-interference. This change could be seen in February 1928. The representative of British government in the Legislative Assembly, 'Home Member, James Crerar, stated⁷⁸ in Assembly that "This measure (Sarda Bill) which has emerged with the consultation of public opinion and the deliberations of the Select Committee is largely in accordance with a great majority". Furthermore he added "the greatest weight of the opinion which has been received from the local governments and the various bodies and individuals whom they consulted". Therefore this Bill was "certainly of great significance" and he hoped that this Bill will receive the general approval of the house. Though the shift in government attitude was guided by the waves of National Movement the emergent independent women's movement of India played significant role in changing the government's attitude. Moreover the question of women was raised at an international level also in 1920s as the trafficking in women was being tackled by the League of Nations. By and large, the change in the government's attitude proved remarkable in the history of marriage reforms in India.

⁷⁷ Ibid.

⁷⁸ Legislative Assembly Debate, 22nd March, 1928

The debate on Sarda's amended Bill was inaugurated by a Counsel Member, M.K. Acharya (South Arcot, cum Chinglepoot: Non-Mohammedan rural). He proposed an amendment⁷⁹ "that the consideration of the Bill be postponed in view of the late publication of the Report of the Age of consent Committees, and in view of the desirability of assessing, with the help of adequate of adequate evidence, the real value of that portion of the report which deals with the marriage laws and customs obtaining among Indian communities" His motion was supported by Abdul Haye (East Punjab: Muhammadan)⁸⁰. M.K. Acharya argued that the report of Age of ccnsent committee or Joshi report was not sufficient to discuss the issue of child marriage in India Moreover, the members of this committee were not competent for discussing the issue and the support of government to this Bill was the interference with the religious of Indians.⁸¹ Acharya's motion was extensively debated and finally defeated on 11th September 1929.

For the first time in the history of social reforms in India Hindus and Muslims debated together at the common platform for marriage issue particularly the issue of child marriage. The debate between Hindus and Muslims reflected the tensions in relationship. Muslims did not want to be the part of this Bill and regarded that there community should not be brought in the purview of Sarda's

⁷⁹ Legislative Assembly Debate, 4th September 1929, pp. 240-281.

⁸⁰ Ibid.

⁸¹ Ibid.

Bill since it was exclusively for Hindus. In nutshell orthodox Muslims leaders wanted the exemptions of Muslims from this Bill. The problem of communalism was reflected during the debate when the progressive A.H. Gaznavi who belonged to rich landholder family in East Bengal and had always kept himself away from the Hindu-Muslim tensions but opposed to Sarda's Bill only because it was proposed to prevent widowhood among Hindu girls. Besides he opposed Sarda's Bill because his constituency had not given mandate to him for this matter.⁸²

However, the political decibel of conservative Muslim leader Md. Ali (leader of the Khilafat movement) T.A.K. Shervani was in favour of Sarda's Bill and asked Muslim members to support this measure.⁸³ He was trying to harmonize the relationship of Hindus and Muslims and supported the child marriage Bill in Central Assembly to prevent child marriage and openly condemned those Muslims who were opposing Sarda's Bill. According to him, communalism was a bigger enemy to the country than foreign bureaucracy. He said "I assure you with all the emphasis at my command that we cannot win real freedom so long as there is even a tinge of communalism in the country". Communalism starts as an antidote but itself becomes a menace, for communalism in one community tends to awaken communalism and soon becomes an epidemic of the worst type "communalism". He argued that

⁸² Legislative Assembly Debate, 11 September 1929, pp. 647-692

⁸³ Ibid.

communalism in minority community is based on suspicion but it was in majority community due to hatred. He criticized the separatist's attitude of Muslims and added that safeguards could not be the solution for the Muslims in India. Shervani was opposed to the separate electorate to the Muslims and alleged to the advocates of separate electorate that they wanted to widen the insurmountable barriers between Hindus and Muslims ⁸⁴

Conservative Hindu opinion was represented by Madan Mohan Malviya who had faith in ancient Hindu past and considered that there was no need to touch the glory of this past. Moreover, foreign government did not have any right to do so. According to him the age of marriage was also very minimum in European countries similar to that of India, yet those countries were considered civilized. Therefore, the raising of the age of marriage did not have any connection with the civilization. Yet Malviya opposed the custom of child marriage and supported its eradication. In her contribution to the Mahamanya Malaviyaji birth centenary commemoration Volume, 1961, Raj Kumari Amrit Kaur has said "that while Malaviyaji never took food or drank water from the hands of anybody except a Brahmin of his own caste in other matters of social reform he was most progressive and I was specially

⁸⁴ S. P Sen *Dictionary of National Biography* , Calcutta National Institute of Historical Studies, 1972.

drawn to him by his indignation at the many disabilities from which Indian women suffered”⁸⁵.

Malviya’s arguments should be viewed in the contemporary political scenario and his personal belongings. He was from Chaturved sub-division of Shri Gaud Brahmins, and believer in the existence glorious Hindu past. Although he was strong supporter of India National Congress he founded the Hindu Mahasabha in 1916. His supporters claimed that Hindu Mahasabha was established to oppose not the just claims of the Muslim community but the ‘divide and rule’ policy of the British government. However, Hindu Mahasabha was blamed by the Indian female voice for not to raising the issue that enforces widowhood and child marriage. Malviya supported the demand for the grant of full Dominion Status to India put forward by Pandit Motilal Nehru in 1928. But due to his political rivalry his relations with Motilal Nehru were no longer harmonious and they fought on the perseverance Hindu Ideals. All these developments effected his contention on Sarda’s Bill which comprised of glorious Hindu past abolition of child marriage his attitude towards Muslims as well as British rule.

In the 19th century concept of individual rights did not exist and it was difficult for women to articulate themselves to raise their question themselves. However, in the next decade, (20th century) organized women movements came into existence, which gave new

⁸⁵ Ibid.

direction to the debates on the custom of child marriage. Moreover, understanding of Hindu past with the question of women gave rise to development of women's movements. By and large, we can say that the issue of age of consent was shifted to the issue of age of marriage since age of marriage was invisible in 19th century social reforms. The female voice had the prominent role in the shift from the age of consent to age of marriage. Therefore, Indian female voice will be discussed in next chapter with special reference to Sarda's child marriage Bill.

CHAPTER 2

FEMALE VOICES

The early 20th century witnessed the active participation of Indian women in the social and political life of the country through several women's organizations, both at the provincial and national levels this led to the consolidation of female voices. In contrast to the 19th century, these organizations raised the question of women from the standpoint of women and determined the enactment of the Child Marriage Restraint Act or the Sarda Act in 1929. Moreover, the struggle and collaboration with western feminist's interference particularly American and British strengthened the voice of Indian women which began to echo around the First World War (1914-1918). Although, the newly emergent women's movement in India grappled with the various wrongs of Indian womanhood like the Pardah, enforced widowhood, the Devdasi system, women's education and last but not least, the age long custom of child marriage, yet, the passage of Child Marriage Restraint Act or the Sarda Act and its relationship with women's movement has not been fully developed.

I

The Rakhmabai case towards the close of the 19th century was in the words of Sudhir Chandra, a "grand act of defiance"¹ It

¹ Sudhir Chandra, *Enslaved Daughters: Colonialism, Law and Women's Rights*, Delhi, Oxford University Press, 1998, p. 10

challenged the basic patriarchal notion of the inferiority of a woman, since now a woman dared to oppose a man's right over her, and her position of subordination to him. She moreover, breached the notion of the sanctity of Hindu marriage, and the role of a wife therein. She also defied the colonial law of the Restitution of Conjugal Right.

There was some change in the public articulation of such dissent to one of the core institutions of Hindu patriarchy marriage. That produced woman after woman like Rakhmabai, Pandita Ramabai and Rashsundari Devi. By the turn of the 19th century, Pandiata Ramabai was a famous as well as a most controversial woman.² A widow who had never remarried she worked for the cause of women throughout the life. Hence, Ramabai was considered the first representative of Indian female voice. Not only that, she established connections with foreign feminist circles to secure as much as ideological and moral support for her work.

Nevertheless, the female voice took almost 30 years to be organized following the age of Consent Act of 1891. Around the First World War three All India Women's Associations³ endorsed the campaign for child marriage reform. The earliest was the Women's India Association (WIA), which was organized in Madras in 1917 by two British Theosophists, Dorothy Jinarajadasa and Margaret

² Uma Chakravarty, *Rewriting History: Life and Times of Pandita Ramabai*, New Delhi, Kali for Women, 1998.

³ Barbara Ramusack, "Women's Organizations and Social change: The Age of Marriage Issue in India", in Naomi Black and A.B. Cottrell (eds.), *Women and World Change* London: Sage Publication, 1981, pp. 198-216

Cousin. WIA expressed its views for the urgent need of reforms through its official journal '*Stree Dharma*'. The first lady President of the Indian National Congress, Annie Beasant, was the first President of the Women's India Association.

The next advocate was the National Council of Women in India (NCWI)⁴ founded in 1925. This Council was the co-ordinating body for five provincial Councils in Bombay, Bengal, Bihar Orissa, Burma and Delhi,. Basically, the NCWI was based in Bombay and was affiliated to the International Council of Women. Maharani Chimnabai of Barodah was the first President of the NCWI. She emphasized the "need to campaign for a increase of age of marriage and consent until there was a revolution in social practices"⁵ Above all the Sarda Act was reviewed by Maharani Chimnabai in 1929 who considered it as an opportunity to permit better education for women and the greater equality within the family structure.⁶

The third champion was the All India Woman's Conference (AIWC) in which was initially, set up in 1927 by Margaret Cousins to formulate more appropriate educational programmes for women it quickly expanded into a permanent association and addressed educational as well as social goals. The leadership of the AIWC included the elements from NCWI since the Maharani of Barodah was also its first President. Moreover, Dorothy Jinarajadasa, Annie

⁴ Ibid

⁵ NCWI Report Quoted by Barbara Ramusack.op.cit.

⁶ Ibid

Beasant and Margaret Cousins were active in AIWC. Soon, the AIWC emerged as the most active feminist proponent for legislative reform in the age of marriage and identified child marriage, Pardah, and seclusion of women as the major constraint on the education of women.⁷

Thus, with the help of these women organizations and feminist activists, the question of women was redeployed in the 1920's. While studying the redeployment of the question of women with the reference to child marriage reform campaign, it is necessary to discuss imperialist and national policies. The momentous declaration of the Secretary of State for India Montague in 1917 brought a dramatic shift in the imperial ideology. With this declaration, British official policy in India reorganized for the first time at least in principle, the development of self-governing institutions for India. Even though the change and pace were in the government's hands, diehard imperialists expressed their anxiety about the future of the British Government in India because of these constitutional changes.⁸ It is noteworthy that the representation in the Central Legislative Assembly was extended for Indians males. Yet women were allowed to enter in the State Legislative Assembly.

⁷ Barbara Ramusack, "Women's Organizations and Social Change: The Age of Marriage Issues in India", in Naomi Black and A. B. Cottrell (eds.) *Women and World Change*, op.cit., pp. 198-216.

⁸ Sumit Sarkar, *Modern India*, Delhi, Mac Millan, 1983, pp. 165-253.

Gandhi withdrew the Non-Co-operation Khilafat Movement in favour of social reform works or constructive works in 1922. Moreover, Indian leaders were engaged to co-ordinate with the Indian National Congress within the new constitutional frame in the form of Government of India Act 1919. This period also witnessed the consolidation and of various rival forms of politics based on differences of class, caste, religion and region within the broader anti-colonial struggle.⁹

The Indian National Congress appointed its first Indian woman president in 1925 who was Sarojini Naidu. The principle of equality on the basis of sexes was proposed by 'Nehru Report', the all-party constitution in 1928. By the mid nineteen twenties a miniscule part of Indian women secured the right to vote and to be elected to the provincial Legislatures and the number of women Municipal Councillors and Justices of Peace especially in the advanced provinces of Madras and Bombay also steadily rose.¹⁰

Indian female voices were endorsed by the leader of national movement Gandhi through various articles published in "*Young India*" in which Gandhi advocated laws for increasing the age of marriage and the age of consent but emphasized on the cultivation of public opinion against the evil custom of child marriage in favour

⁹ Ibid

¹⁰ This information has been taken from the introduction of Mrinalini Sinha edited *Selections from Mother India*. Katherine Mayo, Delhi, Kali for Women, 1998.

of women's the movement of India. In 1935 he wrote that women themselves should come forward against child marriage.¹¹

Interestingly, the involvement of Indian women in the national life of India significantly attracted the attention of the 'Simon Commission', set up to deliberate on constitutional changes.¹² This commission commented on the development of the female voice in India in its Report, "The beginning of a movement among a certain section of Indian women, is one of the most encouraging signs of India's progress".¹³

Thus the nineteen twenties were an important period for the history of elite women's involvement in the public life of India. The main protagonist of the Indian women's movement and representative of the female voice, Dr. S. Muthulakshmy Reddy became the first women member of the Madras Legislative Council. She was born in 1886, and became first lady deputy-president of Madras Legislative Council for the period of 1926-30. She was a leading medical practitioner who specialized in disease of women and children. Reddy took an interest in women's issues and child welfare and led the Women's India Association and the All India Women's Conference, where she initiated several resolutions for women and children such as the suppression of immoral traffic in girls and women maternity and child welfare education of girls and

¹¹ *Collected Works of Mahatma Gandhi*, Vol 34.

¹² This commission was constituted to revise the government of India Act 1919, since no Indian member was appointed in this commission therefore, it was protested by Indian on large scale.

¹³ Quoted in *Stri Dharma*, October 1933, pp. 628.

women's and children's hospitals. She also interested in health schools, abolition of child marriage and Devdasi system in Hindu temples.¹⁴

Resigning her seat on the Legislative Council as the protest against the imprisonment of Mahatma Gandhi, she joined the National Movement in 1930. She edited '*Stri Dharma*' a popular Women's magazine and the official voice of women's India Association till 1940. Muthulakshmy had close relations with reformers and the government. She was nominated as the member of 'Simon Auxiliary Committee'¹⁵ to promote the cause of education of women.

Reddy had voiced such radical views in an article called 'Who is a Destitute Woman'¹⁶. She considered child marriage as the main cause of the sorrows of Indian women therefore the most urgent reform was needed to prevent from this custom through legislation. Marriage should be restricted to those couples who were able to provide economic safety to their future family. Moreover, marriages should be registered¹⁷.

In the 1920s the women's movement in India denied customary laws and demanded equality between man and woman. Muthulakshmy voiced criticism against unequal laws and unequal moral standards on

¹⁴ Bio-data of S. Muthulakshmy Reddy, Speeches and Writings, Vol-1, part-1, *Muthulakshmys Reddy Papers* Henceforth MRP

¹⁵ Hari Singh Gour's letter to Muthulakshmy Reddy, 3rd June 1928, Nagpur, Speeches and Writings, Vol-II, part-2, MRP

¹⁶ Speeches and Writings Vol 2, Part 2, pp. 691-693, MRP

¹⁷ Ibid.

behalf of the WIA and AIWC. Hindu men were exercising their customary laws or the traditional rights to punish the wife on mere suspicion of immorality. She argued that laws and penalties should be equal to man and woman and both of them must be made equally responsible. Moreover she asked to parents to teach their boys and girl that the virtue of chastity was not only meant for girls but for boys also. Furthermore, she said that the man had to be chaste for expecting chastity in women. Reddy suggested that parents needed to be taught and boys and girls should be given education in gender equality not only at home but in school and colleges also. Moreover, cinema and radio could play a major role to bring awareness to society.¹⁸

Women's Organization in 1920's could not be kept aloof from the waves of freedom struggle against foreign rule. The independent women's movement in India considered that India's freedom cannot be attained by merely criticizing the existing government or by any revolutionary method. Rather by attending to the fundamental problems within society. Hence, women tried to secure support from both imperialists and nationalists¹⁹. The female voice played a major role in the development of arguments in this case against the

¹⁸ Ibid

¹⁹ Ibid

child marriage through political petitioning women learnt about the difficulties of collaborating with apparent well wishers.²⁰

The frustration of the women's movement was represented in Muthulakshmi Reddy's speech at the Indian Social Reforms conference held in Madras in December 1927 titled "The Government's Attitude towards Indian Social Reform". In this speech Reddy said that, "We all know what the government's attitude was when Mr. Sarda's Bill was introduced. Even at this stage, in spite of our meetings, in spite our memorials and petitions, the government member Honorable Crerar brought a dilatory motion to delay such a good and urgent Legislation on the plea of religious neutrality. Can not enlightened the British government follow in the footsteps of the progressive native states even if they do not want to go against the orthodox feelings". Even we women have become discontented and have begun to grumble at the attitude of our government which is indifferent and unsympathetic to social Legislation.²¹

The women's movement warned the British Government that mere abolishment of 'Sati' was not sufficient unless the evils of child marriage were also not eradicated. This view was also expressed in Reddy's speech. She argued that the origin of Sati was centered on the concept of love in which if one of them, died, the other could not

²⁰ Geraldine Forbes, *Women in Modern India*, New York, Cambridge University Press, 1998, pp. 83, and 'Women and Modernity: An Issue of Child Marriage in India, in *Women Studies International Quarterly*, 1979 pp.407-409

²¹ Speeches and Writings Vol. II, Part 2, MRP

bear the separation. In the changed condition the children were married not according to the concept of love but rather for cash and perseverance of custom. Moreover, girls and boys are excluded file in arranging their marriages and this ceremony was performed between the guardians of two families. Therefore she asked for urgent Legislation against this evil custom²². She added that the Sati Abolition Act was not able to improve the status of women in the society. Therefore, Sarda's Bill should be passed because the main of this intention Bill was not only to protect the life of the girl but it aimed to save the life of those who were opposing this Bill (Orthodox section)²³.

The women's movement played a significant role in the passing of the Sarda Bill. Although they could not convince the government to nominate at least two Indian women in the all male Legislative Assembly to participate in a debate over the Sarda Bill, yet they secured the nomination of one of its members, Rameshwari Nehru, to the Age of Consent Committee, appointed by the government to investigate the effects of pre-mature sexual intercourse in and outside the marriage and need to raise the age of consent.²⁴

The Women's India Association and the All India Women's Conference passed resolutions in favour of a higher age of marriage than what was adopted in the Sarda Bill. It disagreed with the Age

²² Ibid.

²³ Ibid

²⁴ G.O.I. Home Department Judicial, File No. 382/27

of Consent committee Report that recommended 14 years as the minimum age of marriage for girls. Despite the disagreement women's organizations took a compromised stand and asked women political leaders to support the Sarda Bill because that was not the proper time for discussing the merits and demerits of the Bill²⁵.

The orthodox section of society also protested the against Sarda Bill. This section viewed this question only from the point view of the perseverance of ancient custom and texts. This view was criticized by the newly emerged women voices. The female voice replied that those who were opposing Sarda's Bill did not discuss this with their own wives, daughter, mothers and sisters, whether they wanted to married at the age of 10 or 12.²⁶ Only women had moral right to decide whether they wanted this Bill or not.²⁷

Muthulakshmy Reddy argued that instead of marrying off the children a tender age it was better to kill off the child, because if the child was killed then clashes with religious laws will not emerge²⁸

The Indian female voice denied accepting the argument of male opponents that education was the only medium to solve the question of women. They claimed that women's experiences were sufficient to grapple with this issue. Moreover, the opinion of women on this matter was fair evidence for government.

²⁵ 'Speeches and Writing' vol. II, part 2, MRP

²⁶ *Stri Dharma*, September 1928, pp.12

²⁷ *Ibid*

²⁸ MRP, op.cit

In answer the orthodox section quitted Book "Shigrabodha" which child marriage says that girls should be married at the age of 10 years otherwise parents and the elder brothers would go to hell. Indian women leaders replied that "no amount of Shastras could restrain early maternity, intercourse with the girls of 10 or 12 years of age and a high rate of infant mortality" Moreover the women protested against the practice of marriage between child bride and old men S. Bhagirathi Ammal argued that the selling of girls for money was equivalent to send the girl in hell. And ironically orthodox men were bothering about hell after death and ignoring the living hell³⁰ tide.

The 1920 were the high tide of legal reforms for women. They marked the first period in which necessity of changes in women's position acquired a reasonable support from national movement Hence, the Sarda Act can be viewed in contrast to controversies around the Sati Act of 1829, the Widow Remarriage Act of 1856, the Age of Consent Act of 1891. This shift in nationalist opinion reflects the entry of women into nationalist organizations³¹, into the political sphere; a change in the class balance in late colonial India increasing the prestige of Biomedical sciences in legal debates and medical jurisprudence. Above all the initiative had come from nationalist block itself.

³⁰ Ibid

³¹ Judy Whitehead "Modernizing the motherhood Archetype: Public Health Models and the Child Marriage Restraint Act of 1929" in Patricia Uberoi (ed) *Social Reform, Sexuality and the State.*, New Delhi, Sage, 1996, pp.187-210.

The medical and moral discourses , surrounding the CMRA, of 1929 revealed the 'modernist contours' of motherhood which signaled for the ideal female citizen of future independent India. The Assembly debates, newspapers, women's magazines, the Report of the Age of Consent Committee revealed the outline of the ideal feminine subject which was being assembled by state legislation during this period. The importance of women's organizations in the debates on Age of Marriage law of the 1920's manifested the way in which women were drawn in the discourse of modernity which tied into the nationalist cause.

Apart from the efforts of these women organizations in the support of the Sarda Act, the intervention from foreign feminist related to the question of women are also relevant for studying the female voice in making of the Sarda Act. These national women organizations also led to the establishment of women's organizations at the provincial level. Moreover, the women's movement of India in 1920's had the close relations with the women of princely states.

II

Although, British feminist activists had been present in India since the 19th century it was in the beginning of the 20th century, that an American lady, Marcus B. Fuller³² reviewed the condition of the women in India and the initiatives taken by the Indian social

³² Marcus B. Fuller, *The Wrongs of Indian Womanhood*, New York, Caxton Press, 1900.

reformers and the British Government. The most significant aspect of Fuller's book was that this book was endorsed and forwarded by the Pandita Ramabai. It shows the connection between Indian women activists with the foreign feminists.

Pandita Ramabai wrote in the Introduction that such books were needed because very few people in India were unaware of the sufferings of women due the age long custom upheld by the religious laws. She blamed social reformers for being ignorant of the real condition of women and also pointed out that Indian women themselves did not realize the depths of degradation they were in. Indian women were reluctant to tell the truth before the world due to the consideration of the honor of the family and the nation.

Though Fuller accepted that she had spent her much of the time in Western India yet the status of women in the society and the family could be generalized for whole of India. Since Fuller was a foreigner and did not know the customs and languages of India, she could have exaggerated the wrongs of Indian womanhood. However, so far as the sources were concerned Fuller clarified that to avoid this charge she had taken most of the information from Indian sources.

Fuller's work can be divided into two parts. In the first part she has discussed various wrongs as Pardah, The Zenana, Devadasis, child marriage, female infanticide etc. In the second part she reviews the initiative taken by the Government and reformers. The most significant part of Fuller's book was the remedies to

grapple with these wrongs. She asked Indian women to be organized against the wrongs.

According to Fuller, if women themselves protest against the wrongs then the problem could be easily solved. She reacted against the missionary activities in view of social reforms related to women "Is it possible for the one hundred and fifty million women of India of this generation to hear the gospel?"³³ Therefore, she says that spread of education was the most effective means for the salvation of the women of India.

Thus, Fuller's book was an attempt to organize Indian women. Even though she was foreigner, she took interest in the question of women of India from a feminist point of view. Although, women's organizations did not emerge at the inception of 20th century, yet all radical women did welcome the book while Mayo's *Mother India* was severely criticized by the organized women's movement of India.

The connection with ladies of royal houses with the Indian women's movement provided a strong base to the campaign for the Sarda Bill. The All India Child Marriage Abolition League was established under the Women's Conference in 1928. Patronized by the Maharani of Mandi, the main object of this League was to build up a public opinion against the institution of child marriage and suggested 16 years as the minimum age of marriage.

³³ Ibid.

Katherine Mayo, a journalist from the U.S.A. wrote *Mother India*³⁴ played a significant role both in the development of women movements in India and in the passage of Sarda Act. Mayo's *Mother India* was the main cause of a broad alliance amongst the reformers, nationalists, revivalists and the Indian women. They denounced the imperialist and racist agenda of Mayo's work, as Mrinalini Sinha reveals. Indian women dismissed Mayo's claims to a genuine concern with the position of women in India. At the same time, women's organizations utilized the renewal of the controversy of child marriage through the paradigm of imperialist ideological justification for colonial rule, to put pressure on Indian male legislators to pursue Sarda's Bill. It led a successful enactment in 1929. She was already well known as the author of several books even before the publication of *Mother India*. The spirit of *Mother India* should be studied in keeping with Mayo's other writings in mind on various domestic and imperial issues. Mayo was, early in her career, a research assistant with liberal political figures like Oswald Garrison Villard, one of the co-founders of the National Advancement for Colored People. Mayo championed very different kinds of political causes through her writings and gained popularity. On the surface, at least, Mayo's writing career shared much with the well-established late 19th and early 20th century American tradition of 'muckraking' which produced the kind of

³⁴ Mrinalini Sinha, *Selections from Mother India*, New Delhi, Kali for Women, 1998(*Mother India* was first published in 1927)

journalistic exposes that had resulted in many a progressive era reform in the U.S.A.³⁵

Mother India was a shift in Mayo's writing writings. Mayo had quickly recognized the potential drawbacks in Indian society particularly in conjugal relations, Hindu-Muslim tension for making her attack against Indian nationalism. In the subsequent editions of *Mother India* she had substituted 'Hindu' for Indian, which shows that the custom of child marriage was the Hindu phenomena only. Mayo also tried to encourage translations of her book into Urdu with a view toward driving a wedge between Hindu and Muslim public opinion on *Mother India*.³⁶

The British feminist, Eleanor Rathbone had been inspired by the book and was a great supporter of *Mother India*. But she could not help rebuking Mayo for having deliberately misinterpreted evidence on child marriage in Volume II.³⁷ The book made her famous as a feminist crusader in the West which was a new image for her. Mayo's work provided the most systematic elaboration for the old imperialist framework, which related to the continued political backwardness of Indians to the condition and treatment of Indian women. Mayo's argument revolved around the twin arguments — benevolence of the British rule and unfitness of Indians for self rule. It was a repetition of various imperialist

³⁵ Ibid

³⁶ Ibid

³⁷ Ibid

writings as James Mill had criticized the condition of women of India in 1817.³⁸

The title *Mother India* alluded both to the nationalist glorification of India and Mayo's own horrific description of sufferings of the child wife during early maternity. Mayo explained her reason for choosing this title in a story "The women of Hindu India", published in her collection "*Slaves of God*". She argued, "the title was chosen with an object. Its purpose was to awaken your intelligent patriotism and the consciousness of your men, by making inescapable the contrast between, on the one hand, florid talk of devotion and 'sacrifice' poured out before an abstract figure, and on the other hand, the consideration actually accorded to the living woman, mother of the race."³⁹

Mayo considered that the backwardness of India stemmed not from political or economic causes but from religious and cultural ones. This served two important purposes, it countered nationalist Indian claims of Indian superiority in the realm of culture and spirituality over the materialist West; and it exempted colonial rule from any responsibility for the social backwardness of India⁴⁰

Katherine Mayo's central argument was that the root of all of India's problems lay in the sexual organization of Hindu society. The whole pyramid of the India's woes "was the result not of any

³⁸ Ibid

³⁹ Ibid

⁴⁰ Ibid

political or economic causes, but of Indian male's manner of getting into this world and his sex life thenceforward"⁴¹

Mayo's further point was that ills of Indian society, unlike anything to be found in the West, were not merely problems that were regrettable and thus subject to correction. Rather the ills of Indian society belonged to the very essence of Hinduism and, as such, were actually condoned by Hindu religion and cultural system. Mayo concluded, that it had left the Hindu men with hands, "too weak, too fluttering ... to hold the reins of Government"⁴². Thus Mayo portrays the deplorable treatment of women, of untouchables, and of animals, which existed due to the hypocrisy and hollowness of educated Indians. Her main target of attack was the new breed of nationalist Indian politicians in the 1920s.

M. Sinha has argued that Mayo's *Mother India* painted a highly sensationalized picture of rampant sexuality and its consequences: masturbation, rape, homosexuality, prostitution, venereal diseases and most important of all, early sexual intercourse and premature maternity.⁴³

Focusing on the custom of child marriage, Mayo argued that the main cause for the degeneration of the Hindu race was the wide prevalence of the custom of child marriage and this custom made

⁴¹ Katherine Mayo, *Mother India*, New York, 1927 p. 83

⁴² Ibid pp 92

⁴³ Mrinaline Sinha ed, *Selections from Mother India*, New Delhi, Kali for Women 1998, p. 3

Indian physically and mentally weak and incapable of holding the responsibility of “self rule”. Thus Mayo argued that Bengal, the seat of bitterest political unrest, the producer of India’s main crop of anarchists, bomb throwers, and assassins because it was also among the most sexually exaggerated regions of India.⁴⁴

Mayo’s work argued that Indians were ignorant about the question of women and therefore she chose the women’s issue for her book. However, the main purpose of Mayo was to attack Indian nationalism in the favour of British imperialism. She overlooked many of other problems in the society and focused upon the sexual degeneracy of Indians. For instance, she said that it was general practice for mothers in India to stimulate their children sexually to keep them from crying. Mayo tried to establish that she had raised the problems of women in India for the first time.⁴⁵ However, Mayo’s claim was dubious because the debates about women in the colonial period had its long history. The social reform programmes of 19th century focused the question of women. The question of women got centrality in the social reform programmes in 19th century. Sati Abolition Act of 1829, Widow Remarriage Act of 1856, abolition of polygamy through Native Marriage Act of 1872 and the Age of consent Act of 1891 can be given as example. Women’s consent was the main issue of these reform measures. Therefore, it

⁴⁴ Katherine Mayo, *Mother India*, New York, 1927, p. 160.

⁴⁵ Ibid

is incorrect to say that the question of women was always pushed under the carpet in the social and national life of Indians.

Mayo's book was published in 1927 since the issue of child marriage was again widely debated. *Mother India* had the detail account of sufferings of child brides, harms of child marriage and pre-mature maternity; therefore, it can be considered that the Mayo's *Mother India* was the main cause for the passing of Sarda Act in 1929. If *Mother India* became an important episode in the history of the woman question in colonial India, that was because of the particular historical moment of its appearance. Because newly emerged women organizations and the nationalist leaders took *Mother India* as slander upon Indian society, which intensified the movement for restraining child marriage.

Mother India had to face severe criticism from both feminist and nationalists. The largest protest meeting was held against Mother India at the Calcutta Town Hall in September in 1927 by leading women politicians of that time. Among those present at the meeting were Sarda Devi Chaudhaini, Latika Basu and Jyotirmoyee Ganguly. Although, the most influential female personality of that time Sarojini Naidu could come but she sent a telegram in the support of this meeting. Sarojini Naidu's telegram was "the months of liars rot and perish with their own lies, but the glory of Indian womanhood shines pure and as the morning star"⁴⁶ Moreover,

⁴⁶ Mrinalini Sinha ed. Selections from *Mother India*, Katherine Mayo, New Delhi, Kali for women, 1998, Introduction, pp.42

several other 'Mahila Samities' and women organizations passed resolution to condemn *Mother India*. *Mother India* was protested not only in public meetings but also through various journals and female magazines in English and vernacular languages in India.⁴⁷

Women organizations used *Mother India* to intensify the female voice. The positions adopted by the women's movement on *Mother India* was a delicate balance between condemnation of the book itself and recognition of the book itself and recognition of the urgent need for reform in the status of Indian women. The biggest women's protest meeting against *Mother India*, under the auspices of the WIA and several other women's organizations in Triplicane in Madras, reflected this sentiment. The resolutions passed at the meeting denied that, "Indian womanhood as a whole is in a state of slavery, superstition, ignorance and degradation as Miss Mayo falsely concludes from individual instances and from statistics unproportioned to other balancing figures". But, at the same time, the conference recognized the existence of several social evils in India, and urged the need for the Legislations that would prohibit child marriage, early parentage, enforced widowhood, dedication of girls to temples, and commercialized immorality.⁴⁸

Among the books written in response to mother India were (only notable examples are being mentioned) Charulata Devi's *The Fair Sex of India*, Chandrevati Lakhampal authored *Mother India ka*

⁴⁷ Ibid

⁴⁸ *Sri Dharma*, October 1927, pp.18

Jawab (The Reply to Mother India), Uma Nehru authored *Mother India Aur Uska Jawab*, Padmabhai Sanjeeva Rau, an active educationist and Theosophist challenged *Mother India* in her book *Women's Views on Indian Problems* (1927). Contrary to Mayo's criticism Cornelia Sorabji wrote a positive review of *Mother India*, which stands out as an exemption to the more common pattern of Indian women's public response to Mayo⁴⁹

The most powerful critique of Mayo's *Mother India* was issued by Dr. S. Muthulakshmy Reddy on behalf of organized female voice of India in *Comment on Miss Mayo's Book About Indians*.⁵⁰ Reddy argued "this book is replete with inaccuracies misstatements and truth perverted", and "the most deplorable feature of book that the questions have been far away from the context to suit her purpose and has been given a quite different colouring of her own"⁵¹ This book was widely read by British and American public and portrayed Indians as "Semi-barbarous" race deserve to be treated as slaves. The views, expressed by Mayo in her book about Indians "will have dangerous effects upon the conducts of westerns towards Indians"⁵² Reddy invoked the Indian Women to engage themselves in the controversy over *Mother India* and added "until we gain strength by our unity there is no hope or salvation for Indians". To those who

⁴⁹ Mrinalini Sinha ed. *Selections from Mother India*, op.cit. p. 43..

⁵⁰ *Speeches and Writings* volume 2, part 1, MRP

⁵¹ *Ibid*

⁵² *Ibid*

had asked not to waste time on this book Reddy replied, “don’t ask Swaraj, be slave for ever and do not communicate with West”⁵³

Nevertheless Reddy admitted that Mayo’s book had certain amount of truth like untouchability, the rigid caste system, evil of early marriage and premature consummation, training of young girls for immoral purpose and more than this emasculation of women in father’s and husband’s property, lack of education among women, however according to Reddy Mayo’s work contains “exaggeration, truths and half truths” though it had validity ⁵⁴

Mother India faced criticism not only from women organizations and individual women but from Indian nationalist also. Nationalist critique of *Mother India* is best represented in “Drain Inspector Report”, written by Gandhi in *Young India* 15th September 1927. Despite his busy schedule, Gandhi reviewed *Mother India* during his tour to South in 1927. He argued that “the book is cleverly and powerfully written the carefully chosen quotations give it the appearance of a truthful book”. But Gandhi’s impression was that this book was a report of “Drain Inspector” send out with the one purpose of opening and examining the drains of country. Gandhi acknowledges her labour but simultaneously put forward the contention that if he writes a book on Britain or America’s social problem his facts will be closed to challenge. Gandhi denied the analysis of facts made by Mayo. Gandhi argued

⁵³ Ibid

⁵⁴ Ibid

that Mayo behaves like both 'Prosecutor' and 'Judge' and preserve the facts perversely. He claimed that his article was for British and American people to warn them against believing this book. Gandhi told every American who comes to visit him "do not believe newspapers and catchy literature you get in America. If want to know anything about India, go to India as students. Study India for yourself. If you cannot go then try to read the literature in for and against India and from your own conclusions." ⁵⁵

Thus nationalist critique of *Mother India* and the female voice against Miss Mayo joined lands and came on one platform from there they asked for urgent Legislations against the evils prevailing in Indian society. Particularly child marriage, which certainly does not need any help of foreign government but of men and women who understand the reality of India. Apart from contrast and collaboration between individual and organized Indian female voice and Western female voice on the question of women in India, some other foreign feminist voiced against the custom of child marriage in India and need for Legislation against this.

In this connection, Eleanor Rathbone, president of the National Union of society for Equal Citizenship (NUSEC), emerged in the wake of the Mother India controversy as the most influential voice in Britain in favour of taking up the imperial responsibility for women of India. Rathbone was inspired by Mayo and she spent the next decade (4th decade of the 20th century) in investigating the

⁵⁵ *Collected Works of Mahatma Gandhi*, Vol. 34, pp539-547.

cause of Indian woman. Rathbone used the revelations in *Mother India* to impress upon women's organizations and the British Parliament the significance of the passage of the Age of Marriage Act or the Sarda Act in Britain as an example to India, which urgently needed the benefits of such as legislative measure⁵⁶

The representatives of Indian female voice maintained the distance not only from the contents of *Mother India* but from Rathbone also because of her (Rathbone's) explicit alliance with Mayo's *Mother India*. For instance, the tension between Indian female voice and Rathbone's efforts to assume responsibility for Indian women in total ignorance of initiatives of Indian women themselves led to Indian female voice which severely opposed Rathbone's stand. This conflict was conspicuous between Rathbone and Dhanwantri Ramarao, active representative of Indian female October 1929 at conference in London.⁵⁷

Above all the Indian women's movement used the platform by other women organizations in Britain to utilize it to strengthen Indian female voice; these women organization in Britain had recognized Indian female voice. For instance- the British Commonwealth League, founded by Australian feminists in Britain, provided representatives of the Indian women's movement in London, like Dorothy Jinarajadasa, Hannah Sen, Dhanvantri Rama

⁵⁶ This information has been taken from the introduction of Mrinalini Sinha ed. Selections from *Mother India*, P. 5

⁵⁷ *Stri Dharma*, December 1929, pp. 1-5

Rao and Mrinalini Sen, a forum for publicizing their position during the *Mother India* controversy.⁵⁸

Rathbone switched over her earlier stand in her book *Child Marriage; the Indian Minotaur* (1935). Though her book shared the notion of causes and effects of child marriage with Mayo's *Mother India* but she neither let the colonial government off the hook for its obstructionist policy towards social reform in India nor failed to acknowledge the contributions of Indians themselves in addressing the problem of child marriage.

Prior to Mayo's and other interventions from the West , the popular women's magazine '*Chand*' carried the article on the evils of ancient customs and the degradation of the Hindu society these articles were written by males in women's magazines. In this series Sri Satyabhakta wrote an article "*Aage Badhne ka Awasar*" (opportunity for progress)⁵⁹in which social reform endeavors regarding women (female education, widow remarriage, eradication of purdah system and others, of late 19th and early 20th century) were the strong evidence of degradation in the Hindu society in the last 500 years. Moreover, it manifests the presence of credulities in Hindu society and Hindus were far aloof from knowledge, true religion and yet to be civilized.⁶⁰

The notion of gender equality was present. A society in which women are considered as the slaves of men and are excluded from

⁵⁸ Introduction in *Selections from Mother India*, op.cit.p. 51

⁵⁹ *Chand* , April 1923, p. 473

⁶⁰ Ibid

social, political and religious rights neither could be taken as civilized nor respectable.

The examples of *Sita* and *Savitri* were repeatedly cited but it is expected from men also to be Ram and Satyavan, so that ideals of *Sita* and *Savitri* could be properly matched. Unfortunately, the Indian males were not ready to accept this fact due to the presence of patriarchal norms. The nature of male domination was the same in both, India and the West. Intensity might be different. Therefore, the Westernization of Indian women cannot be the proper solution for the question of women.

What was needed was the changed perception towards women in the society. It is superfluous to waste hundreds of years for small reform. The condition of women was not similar and varied community-to-community and region-to-region. Therefore, any unequivocal reform was difficult to be made. Yet, the independence or freedom from religious and community boundaries was a key to bring reform in society particularly through economic independence of women.

III

This section will discuss the effort of women's organizations specifically for Sarda Act and the relationship between women's movement with the women in the Princely States. The All India Child Marriage Abolition League was established under the auspices of Maharani of Mandi. This League recommended the age

of marriage as 16 for girls and as 18 for boys, which was higher than the age proposed by Harbilas Sarda.⁶¹

The main object of this League was to arouse and educate the public opinion of India against the institution of child marriage through active propaganda. In order to make League effective an All India Committee was appointed of men and women from each state and state agencies had to form provincial committees. Similarly the provincial committees appointed district committees and urged the necessity of public meetings, lectures at schools, colleges, distributing literature and encouraged boys and girls and similar organizations to go around singing propaganda songs.⁶²

The League was financed by means of donations and membership subscriptions of Rs 3/- per year and life membership of Rs. 100/-. The headquarters of the All India Committee was situated at Delhi and Simla according to seasons.⁶³ League explained the custom of child marriage "child marriage devised like the race by obliging girls and boys to marry at in early age."⁶⁴

All India Child Marriage Abolition League was formed under All India Women Conference, but royal women like Maharani of Mandi and Maharani Chimnabai were active in the League and were playing important role and asserted that League will be led by none outsider. It led to a conflict between the AIWC and AICMAL. The

⁶¹ *Stri Dharma*, September 1928, pp17-18

⁶² *Ibid*

⁶³ During British rule Simla was the capital of India in Summer.

⁶⁴ *Stri Dharma*, December 1928, pp17

suspicion on behalf of the AIWC was mentioned by Kamala Devi Chattopadhyaya in her letter to Maharani of Mandi.⁶⁵

This misunderstanding was soon cleared up by Rajkumari Amrit Kaur. She accepted the importance of AIWC in the formation and action AICMAL “obviously no league could be formed in pursuance of the resolutions passed at the All India women Conference”.⁶⁶ This in understanding between the AIWC and AICMAL was created by a press release which distorted the resolution which was handed out to the press.

In a letter to Kamala Devi Chattopadhyaya, Amrit Kaur raised the following crucial issues.⁶⁷ She asserted that an effective influential body had to be formed to carry and organize national propaganda against child marriage on modern lines. Secondly, that this body would have to make an appeal both to the government so as to gain as much and definite and active support as possible for its work and the public at large; so as to bring not only the ‘extremely advanced’ section but the great mass which was ‘indifferent and moderate’. Thirdly, that this body would further need large sums of money which was to be collected by itself, and, to make its financial position legal, this collected money, would also have to be controlled by itself. This fund could not be transferred to any other body or any other general fund, legally.

⁶⁵ Kamala Devi Chattopadhyaya to Maharani Mandi, 15th April 1928, *AIWC Papers*.

⁶⁶ Raj Kumari Amrit Kaur to Kamala Devi Chattopadhyaya, 1st July 1928, *AIWC Papers*

⁶⁷ *Ibid*

Fourthly that, constitutionally women's organizations were for women alone. This sub-committee as an integral part of AIWC be necessarily feminine also. Therefore, a mixed sub-committee was not possible. Fifthly, that in view of the age question and that of other considerations such as the financial one and that of expediency and effectiveness in working it seemed wiser to her to make the league *practically and independent organization*. She added that the continuity and harmony of principles can be ensured by placing the members of sub-committee on the central committee of the league so that they could exercise control if necessary on such questions. The planned campaign should be inaugurated against the practice of child marriage, which was the basic principle on which it was formed. Personally Raj Kumar Amrit Kaur was in favour of 18 and 21 as minimum marriageable ages and equally convinced of the impracticability of India was the first country in the world which able to attain this ideal.

The physical considerations from the medical point of view that Kaur elaborated, suggested that it was unquestionably better to delay marriage until the parties are physically formed until the purposes of child bearing.

Therefore League decided to fix the minimum age for marriage for time being and which could not be argued against any point of view and which would give time to develop and educate the people up to the ideal standard which was more enlightened . Therefore, 16 for girls and 18 for boys physiologically and morally fit for girls

and boys. League took the compromising stand and recommended minimum rather than desirable age. Educational and economical considerations were bound up together. League, she said, had designed the propaganda not for middle classes rather for poor classes of the population. She was also aware of the problems that the poor section will have to face in keeping their children in schools till 16 or 18 years of age.

Nevertheless some members of league were in favour of 18 and 21. Deewan Bahadur Rangacharya, an activist of the League reached the conclusion that it was difficult to secure the support from orthodox section with 18 and 21. Therefore a compromise with Sarda's Bill was preferred for practical purposes.

The women's organization promoted this legislation at every stage. They generated propaganda against child marriage. They commented on the proposed Bills, they petitioned, met with the Joshi committee, they lobbied to secure passage of the child Marriage Restraint Act, and worked, after its passage, for registrations of births and marriages and other laws to make it a meaningful Act.

Finally the efforts of women's movement bore fruit and Sarda Act was enacted in October 1927. AIWC led the foundation of the committee for dissemination of this Act in the countryside. The women's movement in India was mainly urban based and was not connected to rural areas. Therefore, it was difficult to educate the rural masses against the social evils. Single-issue organizations like

Child Marriage Abolition League might be effective but they could not properly work because of tense relations with the All India Women Conference. So far as the Mayo's contribution to the Sarda's Act was concerned, the architect of CMRA, Harbilas Sarda said that 'a few there are, however, who do not belong to India, and who are unhappy over the abolition of child marriage. Their chief representative is Miss Mayo and they fear that when child marriage disappears their profession of ruling the country on which they flourish shall have gone. By belittling the enormous importance of the new law, they betray their hostility to the advancement of the country.'⁶⁸

Whatever the limitations and shortcomings had been in the women's movement of India particularly in 1920s one thing is clear that organized female voice had played a meaningful role in the passing of Sarda Act. The process of enacting the legislation in the Assembly will be focused in next chapter.

⁶⁸ *Stri Dharma*, January, 1930, pp.77-88.

CHAPTER 3

MAKING OF THE SARDA ACT

“I wish to tender my heartfelt thanks to all the honorable members of the House who have supported the Bill as well as to those who have opposed. To the supporters because they have given me great help in seeing this measure pass into law and to the opponents for the great courtesy they have shown to me. I fully believe, Sir, that those who have opposed the Bill are actuated by the same honesty of purpose, and a *high sense of duty* as those who have supported the Bill. I give them the credit for good intentions in same way as I do to those who have supported the Bill. I must also, Sir, take this opportunity to thank the honorable Mr. Shervani and Mian Shah Nawaz for the great support that they have accorded to this measure on behalf of the community which they, along with other members represent in this House. Sir, I thank Honorable members once more”.¹ With these words, a two year long debate in the Legislative Assembly on Child Marriage Restrain Bill reached its climax and finally, the time came for the enactment of Sarda’s Child Marriage Bill with the rejection of a dilatory motion, proposed by M.K. Acharya.² The attitude of the House towards this Bill could be seen while the dilatory motion was being discussed. Numerous

¹ Harbilas Sarda, , 23rd September 1929, Legislative Assembly Debate, , Hereafter LAD will be used .

² M.K. Acharya, 4th September, 1929, pp.240, LAD

amendments were introduced by the leaders according to their social and mental set up.³ However, one thing was clear that the past did have extreme importance in the affairs of present.⁴

The discussion over Sarda's Bill⁵ shows while amendments were introduced vis-à-vis the definition of Age of Marriage, which shows the contradictions among the members of the legislative Assembly.⁶

Opponents of the Bill brought eight amendments for clause 2, which reflected the primacy of the age of marriage in the members minds.

Clause 2 of the Bill consisted of three sub-clauses and it has been already mentioned above that clause (a) attracted the attention of Assembly most. Clause (a) was like this: *a child means a person, who if a male, is under 18 years of age, and if a female, is less than 14 years of age.*⁸

Amendments introduced for Clause 2 (a) advocated different ages for the definition of child. Two amendments discussed the age for the male.⁹ Otherwise the rest of the amendments in this section of the Clause 2 dealt with the age of Marriage for the female.

³ More than one amendments was introduced by different leaders on same clause.

⁴ Here present has been used for the time, while Legislative Assembly debate was going on, on Child Marriage Bill, 1927-29

⁵ Hereafter CMB

⁶ Clause 2 (a) defines the age of female and male child, eligible for marriage.

⁸ G O I Home Department, Judicial files. 570/29

⁹ Mr. M.K. Acharya asked for 20 years for males.

A different age limits were recommended for girls, for instance 15 by M.K. Acharya,¹⁰ 11 by M.S. Sessa Ayyangar,¹¹ 12 by Kumar Ganga Nand Sinha^{12,13} by D.V. Belvi,¹³ 16 by Muktar Singh(Meerut Division).

Divergent views on the age of marriage of girls were guided by the political motives of the leaders, scientific understandings, and aim to protect Dharamshastras from encroachment by a foreign government, and so on. Above all the girl was the “izzat” (honor) of the family in the minds of those who recommended different ages, as the age of boy does not affect Dharamashastras on which debates and discussions were rife.

Since the making of the Sarada Act on CMRA focuses primarily on the age of marriage, therefore, I discuss clause 2 (a) in detail. M.K. Acharya, who proposed 15 and 20 as the age of maturity for girls and boys, argued that this issue should not be discussed with either *Smriti Shastras*, *Shruties*, *Dhramashastras* or *Shariyat* .¹⁴ Rather, it should be on scientific lines,¹⁵ because marriage is biological, physiological, and partly social.¹⁶ In the absence of a strong contention in favour of his amendment, he argued the that

¹⁰ South Arcatcum-Chinglepoot

¹¹ Madura & Ramnand cum Tinnevelly

¹² Muzaffarpur-cum Champaran Non-Mohammedan

¹³ Bombay Southern Division : Non-Mohammedan

¹⁴ in case of the Muslims

¹⁵ 12th September 1929,pp.647-691,LAD

¹⁶ Ibid

Select Committee had not provided a plausible reason in support of 14 and 18 for the girls and boys respectively.¹⁷

Interestingly, M.K.Acharya had been insisting on pre-puberty marriages because he was advocating for pre-puberty marriages in the *Dialetry* motion of September 4 1929, proposed by Acharaya himself. Sarda opposed and agued that in any case 15 years was above the attainment of age of puberty.¹⁸ The Government also opposed this amendment. Finally, Acharya's motion was defeated.¹⁹

Muhammad Yamin Khan was the first Muslim legislative Assembly member who brought forward an amendment to emphasize the necessity for fixing the age of marriage for boys. His amendment was *the person who is male, if under 18 years of age, is be omitted*. Though his amendment was defeated, it touched on a meaningful aspect of marriage or to be more specific, of child marriage. According to Khan, the discussion on the age of marriage for boys was over shadowed by the issue of age of the marriage of girls.²⁰

Further, he argued that it could be justified to punish the parents of girl, who marry her off below 14 years of age, since the girl did not have a voice to choose her spouse and on the basis of hardship of conjugality and motherhood at an early age. However, to punish the parents of the boy who marry him off below 18 years

¹⁷ Ibid

¹⁸ Sarda, 11th September 1929, pp.686,LAD

¹⁹ Ibid, pp. 686

²⁰ 11 September, 1929, pp. 647-691,LAD

of age, no justification was given in the House.²¹ In contrast, parents of boy should not be punished.

Khan had mentioned in the very beginning of his amendment that he was guided by the criminal law. The girl's sexuality could be controlled through jurisprudence and many other ways, but it was difficult to stop the boy from visiting prostitutes. If the boy could not be stopped through any law then how could be his parents be punished, if they marry him below the age of 18. Khan illustrated this through an hypothetical account. He said that the Legislative council had resolved what to do, if the boy is married at below 18 years of age in order to protect his ancestral property of his widowed mother, then should the mother be punished according to the penal provisions, or not?²²

Pre-Puberty marriages and post-Puberty marriages and their respective status in the Dhramashastras was the main bone of contention to those who advocated 11²³, 12,²⁴ 16²⁵ as age of marriage for the girls. This debate shows that women were the sites only on which scriptures were contested.

Among who brought forward amendments regarding the age of marriage for girls two were in the favour of pre-Puberty marriage and argued that the age of attainment of puberty among the girls

²¹ Ibid, pp.647-691

²² Ibid, pp647-691

²³ Mr. M.S. Sessa Ayyangar

²⁴ Kumar Gangand Sinha

²⁵ Mukhtar Singh

varied.²⁶ Therefore, the age of marriage should be fixed at 11 years. At the most, the age could be fixed at 12 so that orthodox opinion could be reconciled. They argued that to go beyond 12 would be a direct violation of scripture. Besides, marriage and consummation were distinct from each other. The betrothal ceremony reflected the sacramental aspect of marriage and consummation takes place long after the marriage ceremony and that brutality of the husband should not be generalized.²⁷ Another school of thought believed that *Shastras* recommended the age of boys and girls for marriage to be 25 and 16.²⁸ To make his contention more sound. Muktar Singh quoted the Age of consent committee Report, which clearly says that the recommended age of marriage for girls (14) was a compromise to pacify the orthodox section of the society. However, both 14 and 16 were post puberty ages. Moreover, the educated class of Indian women was also in favour of 16 years. If the Census report of 1921 shows that almost 50% of girls below 15 years of age were married, then it means almost 50% girls who were more than 15 years of age were unmarried, which reveals that if we are to legislate on the marriage law, Muktar Singh said that the members

²⁶ LataMani, "Contentions Traditions: The Debate on Sati in Colonial India", in Sudesh Vaid and Kumkum Sangari ed., *Recasting Women: Essay in Colonial History*, Delhi, Kali for Women, 1989, pp88-126

²⁷ *Recasting Women*.....op.cit.pp.11-16

²⁸ 12th September, 1929, pp. 887-915, LAD

of the Assemble ought not to put the age at anything less than 16 years.²⁹

To answer the orthodox section of the House, he argued that in the *Ayurvedas* the greatest authority is *Dhanvantri's Sushruta Samhita* holds that the minimum age of marriage for girls should be 16. Not only this, if the woman conceives before 16 and gives birth to a child then it would be harmful for both mother and child. It was difficult to differentiate between marriage and consummation on the grounds of Shastras as long as the husband has full right, to have sexual relations with the wife after the marriage.³⁰

Like previous amendments, D.V. Belvi's (Bombay Southern Division) proposal to fix the age of marriage for girls at 13 instead of at 14 was defeated.³¹

M. K. Acharya introduced amendment for sub-clause 2 of clause 2. Sub-clause 2 of clause 2 is as that the *child marriage means a marriage in which either of the contracting parties is a child.*

M. K. Acharya proposed that child marriage means the lawful living together under some recognized ceremony or celebrations, as man and wife, by two people of whom either one is a child, as distinct from the consummation the of the marriage of a girl not under 10 years of age.³²

²⁹ Ibid, pp. 887-915

³⁰ Ibid, pp.887-915

³¹ Ibid

³² M.K. Acharya, pp.1043-1098, Ibid.

Since marriage was the most important ritual among Hindus and usually the consummation did not take place after a number of years of performing *Vivaha Samskara* (Marriage ceremony) this Samskara or ritual should not be discussed in law courts, So neither the government nor the house had any right to interfere with the sacramental portion of marriage as performed by the Hindus, Muslims Christians and any other community. Secondly, it was argued according to 'Scientific' opinion early-puberty consummation was healthier for an individual, society, and community as well as more productive. Acharya warned the government that it would have to face the consequences of interfering with the high ideals of the national life of Indians.³³

Since the Legislative Assembly had fixed the age of marriage at 14 and 18 for girls and boys respectively, therefore, it was ambiguous to define what marriage exactly means. The Age of Consent Committee (Joshi Report) reported that pre-puberty consummation was not common in the Madras presidency (M. K. Acharya was from Madras Presidency) But Acharya said that the practice of consummation soon after puberty was however extensively prevalent.³⁴ Finally, the House did not accept Acharya's motion.³⁵

³³ Ibid,pp.1043-1098

³⁴ Joshi Report 1928-29,pp.54, Calcutta, Central Publication.

³⁵ Ibid

M.S. Sesha Ayyangar introduced a new sub-clause for clause 2 that *the affidavits of the parents or the guardians or respectable relations of the child male or female, will be prima facie evidence for the age of the child in question.*³⁶ It should be introduced by the parents or guardians of the children. So far as the first two categories (girl and boy) are concerned they were precluded from being examined on oath under the Criminal Procedure Code. So far as the third category of persons is concerned, if they happen to be far away and outside the jurisdiction of the court, in such cases the affidavits of those persons should be *Prima facie* evidence because it was the essential part of criminal cases.³⁷

M.S. Sesha Ayyangar introduced one more sub-clause for sub-clause 2 that “the solemnization of marriage as distinct from consummation, of any girl below 14 years of age shall not be deemed to be child marriage as defined above”.³⁸

This amendment aimed to reconcile two opposite schools of thought on this question of solemnization of child marriage. Again the controversy between marriage and consummation emerged and a member from the Madras Presidency allege Harbilas Sarda **to promote** the evil custom of early puberty consummation and destruction of the female body.³⁹ Even the Age of Consent

³⁶ pp. 1043-1098,LAD

³⁷ Ibid

³⁸ Ibid

³⁹ Ibid pp.1060

Committee Report (ACC) had supported M.S. Sesha Ayyangar's propositions.⁴⁰

M.S. Sesha Ayyangar said in the House that having fixed the age at 14 it is hoped the House will take to this amendment kindly and allow it to be passed. However, both of the amendments were defeated in the House.

Clause 3 of the Bill talks about the nature of *punishment for male adult below 21 years of age marrying a child girl*. Clause 3 was as follows: *whoever being a male above 18 years of age and below 21 years contracts a child marriage shall be punishable with fine which may extend to 1000 rupees or imprisonment of one month or both*. Several amendments were introduced, directed at different aspect of the clause. M.S.Sesha Ayyangar moved an amendment that in clause the following be substituted *whoever being a male above 18 years of age and below 21 , knowingly contracts marriage (a) with a girl aged less than 10 shall be punishable with fine which may extend to 500 rupees. (b) With a girl aged between 10 and 14 shall be punishable with fine which may extend to 1000 rupees*. He breaks up this amendment into two classes of cases. One is where the girl is aged less than 10 and second was when the girl was married between 10 and 14. Therefore, differential treatment should be given for both categories of cases. He proposed a differential

⁴⁰ Ibid

treatment because the nature and degree of the offence was not similar.

The second amendment for clause 3 was introduced by Amarnath Dutta (Burdwan Division; Non-Mohammedan rival)"that in clause 3 of the Bill, the words 'being a male above 18 years of age and below 21' be omitted".⁴¹

N.C. Kelkar (Bombay, Central Division) came with a different amendment and proposed *that in clause 3 of the Bill after the words '21' the words 'knowingly or having reason to believe* be inserted. Kelkar goes further than Mr. Belvi and provided prosecution with one more chance to do the same thing by proving, circumstantial evidence, that the boy knew that he was contracting a child marriage ⁴². It was the duty of the prosecution that the boy who was contracting child marriage must know in the first instance that he was doing so, Sometimes it was not easy for the prosecution to do so. However, it was not difficult to prove the circumstances by which it can be brought home to the boy.

Kelkar's amendment was opposed by the Government because execution of this proposal was not possible, according to (Home Member James Crerar). The mover of the Bill rejected these amendments and argued that these Bills threw the impossible

⁴¹ Ibid,pp.1062

⁴² Ibid, pp.1063

burden of proving whether the accused “knowingly” did it or whether he had reason to believe it. ⁴³

Amarnath Dutta proposed in his second amendment for clause 3 for the word ‘thousand’ the word ‘hundred’ be substituted. Dutta criticized the mover of the Bill for fixing Rs. 1000 as the fine. He argued that most Indians drew even less than Rs. 100 per month as the salary. Therefore, Rs. 1000 could not be a part of the law.

Kelkar proposed, “that in the words ‘Rs. 250’ be substituted”. Kelkar argued that the maximum punishment should not be as heavy as is prescribed, in Bill and it should be as light as possible. He contended that the man who was to be punished was not earning much and stood at the threshold of his adult life.

All the amendments for clause 3 were defeated and this clause was added to the Bill.⁴⁴ Apart from attacking the custom of child marriage Sarada’s child marriage Bill endeavored to supplant one other form of unequal marriage in which the child bride was married with a man of 21, 30 or 40 years or more. Clause 4 dealt with such cases.

Clause 4 was that *whichever male adult of 21 years of age contracts a child marriage shall be punished by simple imprisonment of one month and fine of Rs. 1000 or both.*⁴⁵

⁴³ Sarada, Ibid

⁴⁴ President, pp.1066

⁴⁵ Ibid, 18 September, 1929.

M. K. Acharya proposed that clause 4 be omitted. According to him, once 18 was fixed for the male adult then it was superfluous to induct a separate clause for punishment of those of more than 21 years, who contract child marriage. If this clause was to be added, the degree of punishment should be higher (Clause 384 prescribed punishment for contracting child marriage but it could not be differentiated on the basis of the degree of punishment). So clause 4 was not desirable for the smooth functioning of the Act (1066-67). However, Acharya's motion was not accepted in the House.

M.S. Sesha Ayyangar brought consecutive amendments. He suggested that whenever a male above 21 years of age contracts a child marriage with a girl of less than 8 he should be imprisoned up to one month and if the marriage was contracted with a girl between 8 to 14 years, he should be punished by fine extending up to Rs. 2000.

He considered marriage with a girl of less than 8 years of age was more heinous than with one between 8 to 14 years of age. However, for a late stage only a fine of Rs. 200 was suggested. Since the entire country was not familiar with the law therefore, the government should undertake the work of its dissemination in the countryside. Thereafter, the degree of punishment could be increased at a later stage. Ayyangar's motion was defeated. Ayyangar proposed in the second amendment that *in clause 4*

simple imprisonment which may be extended to one month be omitted. He argued that the punishment should be accepted of imprisonment, as the Assemble had accepted earlier, but he was not at all in the favour of such a provision from the beginning. However, his motion was rejected.

B. Das (Orissa: Non-Mohammedan Rural) moved a new sub-clause for the edition in clause 4 *whoever being a widower above 40 years of age marries any woman who is not a widow shall be punishable with simple imprisonment which may extend to one month, or with fine may extend to one thousand rupees or, with both.*

B. Das did not put strong contentions in favour of his proposal but two things were conspicuous. First was that the relations between Hindu and Muslim communities were becoming increasingly tensed in 1920's and it was reflected many times during the debate over Sarda's Bill. And secondly the sufferings of widowhood were being surfaced through various women's magazines and women's organizations. Therefore B.Das proposed a punishment for *widowers* of fine and imprisonment or both while discussing the Penal Clauses of Sarda's Bill. Das pointed out a very important aspect of the Sarda's Bill..... He argued that surely Sarda's Bill was in heartfelt effort to put the stop on enforced widowhood and the age of marriage for boys and girls should be raised but Das further added that Sarda's Bill had not suggested

he the direct outcome of child marriage. Therefore, age of marriage should be raised, but he did not suggest any remedy for those widows who were 14 and above that. He was hopeful to get the support of government and reformers. To him his amendment was the acid test of reformers. In the end, his motions were defeated and clause 4 was added into the Bill. Clause 5 of the Bill described the punishment of imprisonment or fine or both for those who perform, conduct and direct the solemnization of child marriage. Clause 5 of the Bill described that whoever performs, conducts or directs any child marriage shall be punishable with simple imprisonment, which may extend to one month, or with fine, which may extend to Rs. 1000, or with both, unless he proves that he had reason to believe that the marriage was not a child marriage.

M.S.Sesha Ayyangar proposed two amendments for clause 5. First he proposed that Clause 5 be omitted but he was defeated. After the rejection of the 1st amendment, he proposed that in clause 5 the words that he had 'reason to believe that the marriage was not a child marriage be omitted'.⁴⁶

Ayyangar contended that the terms used in Clause 5 like perform, conduct and direct were vague which leave a space to the blackmailer who would exploit the clause in his or interest. Furthermore, he argued that the clause as it stands represents an abnormal state for it threw the onus of proof on the accused. Again,

⁴⁶ Ibid

he said that the absurdity of this clause was apparent and hoped that the House would accept his second amendment though the first was already defeated.

Kelkar moved that “whoever knowingly or having reason to believe, performs, conducts or directs any child marriage shall be punishable with a fine which may extend to five hundred rupees.”⁴⁷ He reduced the degree of punishment by omitting imprisonment and lessened the money from Rs. 1000 to Rs. 500. Kelkar supported Ayyangar and contended that unnecessarily the innocent priest would be victimized since he officiated at the marriage.

Thakur Das Bhargava moved “that in clause 5 of the Bill, after the word “whoever the words” knowing or having reason to believe that either of the contracting parties to a marriage is a child” he instituted⁴⁸. He had similar views to that of Mr. Sessa Ayyangar and argued that terms like direct, conduct and perform were not defined in the Bill but that all the persons could not be brought under the operation of the Bill. Since the meanings of these terms were indefinite, therefore, blackmailers would have an opportunity. The original clause encouraged multiple criminal proceedings to those who did not engage in the ceremony knowingly.....

Baraga argued that those persons could not be kept separate who performs , conducts or directs the marriage from the ambit of child Marriage Bill and both should be allowed to go free (in Hindu

⁴⁷ Ibid,pp. 1070

⁴⁸ Ibid

and Muslim, marriages were performed and directed by the priest). So he took a more liberal stand than Kelkar.⁴⁸

Amarnath Dutta proposed “that clause 5 of the Bill for the words; ‘performs’, ‘conducts’ or directs “the words” is actually instrumental in bringing about” be substituted. While proposing his amendment Dutta fought about the ceremonial aspect of marriage. According to him, there were more than a dozen people who conducted, performed and directed the marriage. If all the participants were sent to jail under this law than it would be a mockery of both ceremony and law. He, further, said that special jails would have to be built to house some people who arranged the marriage. Therefore, he emphasized that the clause should be more clear and unambiguous. It is intended to prosecute the people who are responsible for child marriage.⁴⁹

Dutta’s motion was defeated. Thus clause 5 was added to the Bill⁵⁰.

Clause 6 was also widely debated. It talked about the punishment for a parent or a guardian concerned in child marriage.

Clause 6 was like this

- (1) “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,

⁴⁸ Ibid

⁴⁹ Ibid, pp.1072

⁵⁰ President, pp. 1074

who does any Act to promote the marriage or permits it to be solemnized or negligently fails to prevent it from being solemnized, shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to Rs. 1000, or with both. Provided that no women shall be punishable with imprisonment”.

- (II) “For the purpose of this section, it shall be presumed, unless and until the contrary is proved, that where a minor has contracted a child marriage, the person having charge of such minor has negligently failed to prevent the marriage from being solemnize”

Amarnath Dutta proposed that in Sub-clause (I) of clause 6 of the Bill that the ‘negligently fails to prevent it from being solemnized’ be omitted”

Dutta alleged that those words were negligently used, not knowing what would be their consequences by those who are responsible for drafting this Bill. In case of child marriage he argued that the guardian or parents of a minor should surely be punished and people was being punished for words, which are defamatory or seditious. He questioned the select committee and argued that the Act was so clumsily worded that the Select Committe could not be credited for its ‘intelligence’ and ‘common sense’⁵¹

⁵¹ Ibid, pp. 1075

For Clause 6 one more amendment was brought forward by Mr. Dutta: “that in sub-clause (1) of clause 6 of the Bill, the words with simple imprisonment which may extend to one month, be omitted”. This sub-clause was useless because inside the jail Indians will have to suffer from racial discrimination, said Dutta.. Further, he evoked that reformers should not forget to protect the orthodox community in their zeal. Both the motions introduced by Dutta were negatived.⁵²

Sesha Ayyangar proposed that clause 6 (II) be omitted. Ayyangar argued that this clause was so absurd that it could not be accepted. He gave example of a father who stays far away from his son. Eventually the son (minor, 14 years of age) while studying contracts a marriage. He argued that in this case, the father could not be a part of solemnization of the marriage. Then there was no space for punishment to hire.⁵³

Bhargava proposed “that in sub-clause I of clause 6 of the Bill the words ‘negligently fail to prevent it from being solemnized’ be omitted. He was also of the view that parents could not be held responsible entirely for the solemnization of child marriage due to a variety of reasons. So the law should not enmesh a number of persons who may be absolutely innocent.⁵⁴

⁵² Ibid

⁵³ Ibid,pp. 1076

⁵⁴ Ibid,pp. 1077

Amendments, introduced by Dutta, Ayyangar and Bhargava were rejected and Clause 6 was added to the Bill.⁵⁵

It was finalized that imprisonment was not to be awarded for offences under Section-3. 'Not withstanding anything contained in Section 25 of the General Clauses Act 1897, or Section 64 of the Indian Penal Code a court sentencing an offender under section 3 shall not be competent to direct that, in default of payment of the fine imposed, he shall undergo any time of imprisonment'.

No amendment was introduced and this clause was added to the Bill. Clause 8 was also one of the most important clauses. A dealt with the jurisdiction. Clause 8 was as follow: "not withstanding anything contained in section 190 of the code of criminal procedure 1898, no court other than that of a Presidency Magistrate or a District Magistrate shall take cognizance or try any offence under this Act".

Pandit Thakur Das Bhargava moved that in clause 8 of this Bill "for the words Presidency Magistrate or a District Magistrate the words Magistrate first class be substituted". Bhargava surmised that the number of cases under this Act should come in large numbers so it will be difficult for any District Magistrate to cope with the large number of cases. Moreover, under this Act cases would be very simple. Only two questions arise in respect of offence under this Act. The first question would deal with the time of a

⁵⁵ President,pp.1077

marriage, which would not be difficult to prove in any case. Another question would be about the age, which was to be decided. There was no reason to suspect the efficiency of Indian magistrates for tackling such cases.⁵⁶

Bhargava's motion was defeated and clause 8 was added to the Bill.⁵⁷

Clause 9 dealt with the mode of taking cognizance of offences clause is like this.

"No court shall take cognizance of any offence under this Act save upon complaint made within one year of the solemnization of the marriage in respect of which the offence is alleged to have been committed"¹⁰⁷⁸.

The first amendment for Clause 9 of the Bill was introduced by Amarnath Dutta who proposed, "that in clause 9 of the Bill after the word 'complaint' the word 'of the lawful guardian of the child' be inserted." He recommended that parents were only the people who were interested in the welfare of their children. Amarnath Dutta added that anyone could set the criminal law in motion, which was the handle for blackmailing but also for wreaking private vengeance to victimize families of respectable neighbours.⁵⁸ Guardians were the persons who could lodge complaints against this crime of child

⁵⁶ Ibid,pp. 1078

⁵⁷ Ibid,President,pp. 1078

⁵⁸ Ibid,pp.1078-79

marriage, even though after lodging complains they will become a party.

Amarnath Dutta claimed the rejection of this amendment would destroy the peace of orthodox families as well as the purity of the society. The second amendment of Amarnath Dutta was "that in clause 9 of the Bill for the words 'one year' the words 'one month' he substituted ". Both the motions of Amarnath Dutta were defeated in the Assembly.

M.S. Sessa Ayyangar proposed the following passage to be added at the end of clause that "the complainant unless he is a resident of the locality in which the marriage has taken place or he belongs to the sect or sub-sect to which the parties to the marriage belong"⁵⁹

In favour of his proposal M.S. Sessa Ayyangar argued that although the clause restricted the time within which complaints could be lodged, it did not restrict the person who was entitled to complain. Further he added that it was the cardinal rule of criminal law to admit complaints in respect of any offence committed and the criminal Procedure Code had laid down that certain persons were entitled to complain in certain circumstances. For instance, a husband alone was entitled to complain about the adultery of his wife. Sessa Ayyangar, therefore, contended that by adding the

⁵⁹ Ibid,pp.1081

proposed passage he wanted to restrain the classes of person who should be entitled to lodge a false complaint.

Furthermore, M.S. Sesha Ayyangar argued that if he happened to be a resident of that locality there is a fair presumption that he knows something about the ages of the persons contracting the marriage. Moreover, he extended it to a person belonging to the sect a sub-sect to which the parties to his marriage belong.

Nilkanth Das (Orissa Division: Non-Mohammedan) moved “that in clause 9 of the Bill for the words ‘one year’ the words ‘three months’ be substituted”. Nilkanth Das did belong to Bihar and Orissa province where the custom of child marriage was normative. He focused on the need of lodging a complaint against the man who was committed as soon as possible. So that the father and other guardians could be protected from the hands of blackmailers. He opposed the period of one year to lodge the complaints and recommended three months’ time. He further argued that three months would be a better compromise between one month and one year. (One month was suggested by Mr. Amarnath Dutta while proposing his amendment and one year was prescribed in Sarda’s child Marriage Bill).

Amarnath Dutta and Nilkanth Das proposed influential amendments even though the House did not accept them. Consequently, clause 9 was added into the Bill.⁶⁰

⁶⁰ Ibid, President, pp.1082

Clause 10 discusses the preliminary inquiries into offences under this Act. Clause 10 is “the court taking cognizance of an offence under this Act shall, unless it discusses the complaint under section 203 of the code of criminal procedure 1898, either itself make an inquiry under section 202 of that code or direct a Magistrate of the first class subordinate to it to make such inquiry”. Although, Thakur Das Bhargava was about to move the proposal of omission of clause 10 he did not brought forward his amendment Bill. Moreover, no other amendments were proposed for clause 10 and clause 10 was added into the Bill.⁶¹

The next clause dealt with “power to take security from complainant”. The Clause is like this:

(I) At any time after examining the complainant and before issuing process for compelling the attendance of the accused the court shall, except for reasons to be recorded in writing, require the complainant to execute a bond, with or without sureties for a sum not exceeding 1000 rupees as security for the payment of any compensation which the complainant may be directed to pay under section 250 of the code of criminal procedure 1898, and if such security is not furnished within such reasonable time as the court may fix, the complaint shall be dismissed.

⁶¹ Ibid,President,pp.1082

(II) A bond taken under this section shall be deemed a bond taken under the code of criminal procedure 1898, and chapter XLII of that code shall apply accordingly.

Thakur Das Bhargava moved that "clause 11 of the Bill be omitted". He stated that previous sections, section 8 and 10, provided ample safeguards against frivolous or vexatious complaints. Clause 8 has provided that it is only the District Magistrate or the Presidency Magistrate who shall take cognizance of a complaint and section 10 has gone further and made a preliminary inquiry compulsory and only a first class Magistrate was competent to make inquiries. Thus, the District Magistrate would have examined complaints under section 200 subsequently. A preliminary inquiry will take place under either the District Magistrate or the first class Magistrate. Bhargava, therefore stated that the security, which was proposed to be taken from complainant, was an insult and the government should provide a machinery for the success of this Act. (Child Marriage Restrain Act) Further, he added that clause 11 placed obstacles unnecessarily to achieve the goals of restraining the child marriage and even now the provision of section 250 of the criminal procedure Code and sections 102 and 211 of the Indian Penal Code were sufficient in the matter to check against frivolous complaints. Therefore, clause 11 should not be insisted in the Act.

However, Bhargava's motion was defeated and B. Das moved "that in sub-clause I of the clause 11 of the Bill for the words 'at any time after the words 'prior to' shall be substituted". Through his amendments, B. Das tried to simplify the process and the work of District Magistrates, since it was the prevalent view that blackmails will prosper under the Child Marriage Restrain Act. The Governor of Orissa said that main difficulty in the implementation of this law rose from the enemy of the family of either girl or boy.⁶² Moreover, Provincial governments were not consulted while making the Sarda Act, said B. Das⁶³. He concluded that whenever anybody wants to complain against another, he must deposit the money, and before the Magistrate hears the complaints, he should ask him to deposit money.⁶⁴ This motion was negated⁶⁵. Thakur Das Bhargava moved "that in sub-clause I of the clause 11 of the Bill for the words "shall, except for reasons to be recorded in writing" the words 'may for reasons to be rerecorded in writing' be substituted".

There was an attempt to amend sub-clause I of the clause 11 to exempt the complainant from depositing a security. In ordinary cases, the provisions in section 250 come into operation when the court believes or comes to the conclusion that the complainant was

⁶² Ibid, B. Das quoted the Governor of Orissa during Legislative Assembly Debate, 18 September 1929, pp.1084

⁶³ Ibid

⁶⁴ Ibid

⁶⁵ Ibid, President, pp.1085

frivolous or vexations⁶⁶. Therefore, there was no reason for the court should come to an initial conclusion that the complaint laid before it is frivolous or vexations. The motion was defeated. ⁶⁷

Nilakanth Das proposed, “that in sub-clause I of clause 11 of the Bill, the words ‘except for reasons to be recorded in writing’ be omitted”. In opposition to Bhargava, Nilakanth Das argued that nobody should be exempted from depositing money and securities. However, he did not succeed and the motion was negatived⁶⁸. Nilkanth Das moved another amendment “that in sub-clause I of the clause 11 of the Bill for the words” to execute a bond with or without sureties, for a sum not exceeding the words ‘to deposit in cash rupees 250’ be substituted. He argued that Rs. 250 should be demanded from the complainant instead of Rs. 100 so that those could be frightened and punished who come to the court with clandestine intentions. ⁶⁹ This motion was defeated.

B. Das moved his next amendments for sub-clause I of clause 11 that for the words ‘for a sum not exceeding 100 rupees’ the words ‘for any sum which shall not be less than 100 rupees but may extend to 1000 rupees’ be substituted. He warned that the law should not discriminate among complainants (Harbilas Sarada). Every citizen should be equal before the eyes of law and

⁶⁶ Ibid, Bhargava, pp. 1086

⁶⁷ Ibid, President, pp. 1086

⁶⁸ Ibid, President, pp. 1087

⁶⁹ Ibid, pp. 1087

complainants should be punished on the same scale as one who performs a child marriage. . This motion was defeated⁷².

B. Das and Nilkanth Das proposed to add new sub-clauses to clause 11. First B. Das's proposal which was "(III) if the complainant is proved to have lodged false information the trying Magistrate shall forthwith order prosecution of the complainant who shall be punishable with rigorous imprisonment which may extended to one month or with fine which may extend to one thousand rupees or with both⁷³. Following B. Das, Nilkanth Das proposed a new sub-clause to be added ' nothing in this Act shall apply to case of child marriage where the girl married is not below 12 years of age and where any one of the contracting parties or their parents or guardian has obtained the sanction of principal court of civil jurisdiction upon an application made prior to the solemnization of the marriage setting the circumstances under which he is compelled to solemnize the marriage the non-performance of which would mean hardship to the girl or her family.⁷⁴

The proposal of B. Das reflected the high number of blackmailing and false penal cases in Bihar and Orissa province where the custom of child marriage was normative though the Indian Penal Code had prescribed seven years jail while B. Das was

⁷² Ibid,President,pp. 1087

⁷³ Ibid,pp.1087

⁷⁴ Ibid,pp.1108-1110

recommending one month. Therefore, he argued than an addition of new sub-clause in clause 11 was possible. Nilkanth Das aimed to protect the parents and girls from the possible hardships of the child Marriage Bill.

He further suggested that even if a girl were 12 years of age, the parents should be able to apply to the principal court of civil jurisdiction, and get permission to marry that girl under exceptional circumstances. According to Nilkantha Das a poor father could be in a situation that he had to marry his two daughters 15 or 13 together (or 12 and whatever) so the father should be allowed legally to have the privilege of respectable man in the society.

Although, Motilal Nehru was not in favour of the proposed amendment yet it could be taken into consideration from the point of view of child girl he said. Further he agued that since the girl child he did not have the power to choose her life partner and age for marriage therefore girls should not be held responsible if they are married in their childhood. However, Motilal Nehru was ready to think over B. Das's proposal and considered that the solemnization of marriage in infancy technically was the best way and thus save the bitter consequences of a life of shame for the poor girl.⁷⁵

Despite the positive aspect of this amendments it should be opposed, said M. R. Jayakar (Bombay city: Non- Mohammedan Urban). This amendment was not competent to fulfill the exact

⁷⁵ Ibid, Motilal Nehru, pp.1111

purpose of this Bill because it was difficult to do so off hand to provide for all the complexities of the case. Therefore, words should be used carefully in this amendment during its discussion. However, the wording of the present amendment is far too wide for that purpose. Moreover, power given by this amendment was too title for its useful working.

Jaykar examined this amendment word by word. He took up the words "hardships to the girl or her family". According to him, all the cases could not be protected. He proposed a hypothetical case if an I.C.S. husband was available for a girl who had recently returned from abroad who was smart, gentle and no dowry was demanded. The age of girl was 13 years. The boy was in hurry a to marry and surely, it was a desirable choice. The father of that girl argued before the District Magistrate that not to marry her off will be a hardship to the girl or to her family. This sort of example could be multiplied. To cut a long story short the District Judge will be very often persuaded to grant the application because the matter falls within the meaning of the word "hardship"⁷⁶

Finally, both the amendments were rejected. B. Das's amendment was defeated on 18th of September and the amendment of Nilkanth Das on 19th, September 1929. Thus, clause 11 was added into the Bill.⁷⁷

⁷⁶ Ibid, Jayakar, pp. 1114

⁷⁷ Ibid, President, pp. 1108

Thakur Das Bhargava proposed new clause as clause 12 to be added in the Sarda's Bill which said:

- (I) Whenever any person accused of an offence under section 3, 4 and 6 of the Act is convicted and the court is of opinion that it is necessary to prevent the husband from consummating the marriage or cohabiting with the wife before the completion of the statutory age of consent the court may order him to execute a bond with a without sureties for a sum proportionate to his means.
- (II) The bond to be executed shall bind the person convicted under section 3 or 4 of the Act to abstain from consummating the marriage and cohabiting with his wife till the statutory age of consent, and the person convicted under section 6 to be responsible for such abstention by his son or ward as the case may be and to that end impose such conditions as the court considers suitable for instance separate living, custody and maintenance of the wife.
- (III) If any person ordered to execute a bond fails to comply with such order, he shall, unless he is already in prison, be committed to prison and kept imprisoned until such time as he complies with the order or the statutory age of consent of girl wife is reached.
- (IV) Imprisonment for failure to execute a bond shall be simple.

(V) Sections 122, 126, 126-A and 406-A of the Code of Criminal Procedure shall apply as far as may be to sureties of such bonds.

Subsequent to the rejections of his proposed amendments, Thakur Das Bhargava forwarded new clauses to be added after clause 11 of the Bill. ⁷⁸

“The Government shall, for the proper and efficient working of the provision of this Act, make rules or authorize the Local Governments to make rules, providing aiming other matters:”

- (I) For the compulsory registration of marriages enjoining upon the contracting parties in case they are not minors and upon parents and guardians if the contracting parties are minors to report within a prescribed time the factum of such marriages,
- (II) For prescribing the form of registers and reports and particulars to be continued in such reports and registers,
- (III) For issue of marriage certificates free of charge or at nominal charge to the person reporting,
- (IV) For grant copies from such registers and reports, and
- (V) For authorizing officers in charge of such registration to make complaints in suitable cases of infraction of such rules and the provisions of this Act.

Not only this, Thakur Das Bhargava moved “that in section 60 of the Indian Christian Marriage Act (XV of 1872) for the word

⁷⁸ Ibid, Thakur Das Bhargava, pp. 1123

‘thirteen’ the word ‘fourteen’ be substituted”⁷⁹. This amendment was hardly relevant to Sarda’s Child Marriage Bill (James Crerar P; 1129). Therefore, Bhargava decided not to press for his amendment⁸⁰ consequently he was allowed to withdraw his amendment by the house.⁸¹ The object of this amendment was to prevent consummation or cohabitation before the completion of the statutory age of consent. However, if the phrase ‘when the court is of opinion’ was used when it implied that court was authorized to judge the facts and reach a conclusion. Brojindra Mitter (Law Member) argued that since law had defined in the statutory age of consent. Therefore, the phrase ‘when the court is of opinion’ is meaningless⁸².

Furthermore, the law member opposed Mr. Bhargava’s amendment because it unnecessary and meaningless and the court had to order the execution of a bond directing the husband to abstain from consummating the marriage.

The second proposal, introduced by Pt. Thakurdas Bhargava, to be added after clause 11 was influenced by the Age of Consent Committee report, in which marriages were to be registered and empower the registers to make complaints. The proposed clause was like this

⁷⁹ Ibid,pp.1129

⁸⁰ Ibid,Bhargava,pp.1129

⁸¹ Ibid,President,pp.1130

⁸² Ibid,Mitter,pp.1122

- (a) The government shall for the proper and efficient working of this Act make rules or authorize the local government to make rules, providing upon other matters:
- (a) For the compulsory registration of marriages enjoining upon the contracting parties in case they are not minors and upon parents or guardians in case the contracting parties are minor to report within a prescribed time the factum of such marriages.
 - (b) For prescribing the form of registers and reports and particulars to be contained in such reports and registers.
 - (c) For issue of marriage certificate free of charge or at nominal charge to the person reporting.
 - (d) For grants of copies from such registers and reports and
 - (e) For authorizing officers in charge of such registrations to make complaints in suitable cases of infraction of such rules and the provision of this Act.⁸³

Pt. Thakurdas Bhargava quoted the paragraph 329 of Age of consent committee Report in the favour of his new proposed clause. The recommendation of the age of consent committee (ACC report) run as follows. "That an accurate marriage register in a prescribed time be kept, through an administrative department of the government containing details of marriage including the ages of couples, and that it be made obligatory by law on parties and

⁸³ Ibid,pp.1123

guardians of parties to the marriage, either personally or through authorized agents, to report, to report the same to a prescribed local authority”.

That the officer keeping the register of marriages be empowered and also be charged with the duty to complain of any breach of the marriage law, or any omission report a marriage or of a false entry in the details required in the registration of marriages, to the nearest Magistrate having jurisdiction to try such cases, after such preliminary inquiry as he thinks fit to make. We also recommend that the registers of marriage be permanently retained and that certificates of marriage be issued to the parties concerned free of cost, when the marriage is reported.

In support of his proposal Pt. Thakur Das Bhargava cited the example of Baroda state where the marriage law was enacted the first time in India in 1920. In Baroda state registration of marriage was made obligatory and the report of early marriage was considered as complaint. The main purpose of this amendment was the automatic working of Sarda's Bill.

However, both the amendments brought forward by Pt. Thakur Das Bhargava were defeated.

Having discussed all the clauses from number 2 to 11 only clause 1 was left to be discussed in the Assembly. Clause 1 deals with the introduction and scope of Sarda Act, It had 3 sub-clauses.

(1) This Act may be called Child Marriage Restraint Act 1928.

(2) It extends to the whole of British India, including British Baluchistan and Santhal Paragana.

(3) It shall come into force on the 1st April 1930.

Representative of Hindu orthodoxy M.S. Sesha Ayyangar proposed an amendment to exclude Brahmins from the ambit of Sarda's Bill. He moved that '*it does not apply to Brahmins and such other communities in which post-puberty marriages are forbidden by their religion and custom or both*'.⁸⁴

M.S. Sesha Ayyangar, in support of the pre-puberty marriages amongst brahmans, argued that the brahmans could not 'ignore or reject a time-honoured, sanctified and religious attitude towards life'. He stated that the tyranny of the State was intolerable because it had become 'imponderable, intangible and invincible.'

Moreover, M.S. Sesha Ayyangar tried to make his amendments more acceptable by using the report of Age of Consent Committee, which revealed that normally Brahmin girls were married in south between 5 and 12 years of age. (Joshi Report 128, 358 among Kapus, 200 among Telgun Brahmins, 62 among Brahmins per one thousand girls were married). That was why, he explained he used the word carefully in his amendment "forbidden by their religion or custom or both". (Sesha Ayyangar)

⁸⁴ Ibid, President, pp. 1130

A second amendment was introduced by a Muslim of the Assembly after Yamin Khan's amendment. Md. Yamin Khan was followed by Maulvi Md. Shaffee Daoodi (Tirhut Division: Muhammedan). He asked for the exemption of Muslims from the operation of the child marriage bill and moved that after rule sub-clause II of the clause 1 of the Bill the following he added, III, it shall not apply to the Mussalmans. "Daoodi argued that Nikah ceremony does not damage the girl physically because it is distinct from consummation". Therefore evils do not come from the custom of early marriage only. The evil of early consummation could be eradicated though the consummation made by Mrs. Rameshwari Nehru.

The orthodox Muslims opined that any question, which involved religious, social rules or politics, could be discussed and debated in Legislature. Moreover, orthodox opinion was not against the rising of age of consummation because it did not interfere in the religion.

The counterpart of orthodox Muslims opined that marriage was not the matter of religion but it was the matter of religion but it was the matter of society and politics also. Therefore, Muslims were not bounded with the Ulemas.

However, these Muslims who supported the measure contended that if the right of the Nikah based on Shariat could be changed by the Legislature then the Legislature was well enough to

deal this matter. Abdul Quadir Siddiqui reminded Shafee of resolution passed by the Ulemas that no Mohammedan should go to the Councils and the Assembly.⁸⁵

Moreover, Daoodi advocated the consecutive opinion in the House and state that Islam permitted the marriage of the girl at any age. If a law was passed in the House it would be against the principles of Islam. Furthermore, he argued that the girl was not affected physically by the marriage ceremony because it was distinct from consummation. Therefore, evils do not come from early marriage only. Not only this, he held Hindus responsible for the prevalence of child marriage because Muslims had accepted this custom under the influence of Hindus. Apart from the laws, this evil should be eradicated through propaganda and education. Since then, a number of amendments were introduced by Hindus themselves (child marriage Bill was proposed for Hindus only in the very beginning when Harbilas Sarda proposed this Bill first time in 1927). Therefore, the Bill was a 'dead letter'. Finally, the main contention of Shafee Daoodi was to exempt the Muslims from the child Marriage Bill.⁸⁶

Shafee Daoodi was supported by several Muslims who were also representing the conservative class like A.H. Ghazanavi who had argued that Muslims should not be included in this Bill

⁸⁵ Ibid.

⁸⁶ Ibid,pp.1131-1161

because originally this Bill was proposed to prevent early marriage and early widowhood among Hindus. Shervani discussed the marriage laws in different Islamic texts and tried to prove that marriage was not at all bound up with religious injunctions and the consent of girl was suggested in religious text of Muslims, consent with inclination was known as *Tastemara*.

Ghazanavi argued that it was very difficult for a foreign government to understand the religious values and sentiments. He held that the life of Mussalmans from the childhood to the grave was a series of religious performances. Therefore, any foreign element, which interrupts or puts limitations on these performances, cannot be tolerated from the Muslim point of view.⁸⁷

The debate on the marriage Bill within the Muslim community and with Hindus reflects the political scenario in the 3rd decade of 20th century since relation between Hindus and Muslims were tense. Orthodox sections of the Muslim did not want to be a part of this law due to their limited view. The penal provisions of this Act were the main ground of this opposition.⁸⁸

Maulavi Muhammad Shafee Daoodi's motion was defeated and Muslims were covered by the Child Marriage Restrain Act. The debate inside the Assembly was influenced by the public opinion both in for and against the Sarda Act. Orthodox Hindu and Muslim

⁸⁷ Ibid,A.H. Ghazanavi,pp.1115

⁸⁸ Ibid,V.V. Jogiah Voted

religious community expressed their strong opposition in several public meetings.

Shankaracharya of the Advaita Mutt ⁸⁹ viewed that the proposed legislation was clearly against the religious tenets and principles of Brahmins and disturbed the social and religious unity of the community. The Penal proposals of the Bill were unwarranted and unjust and ought not under any circumstances to be permitted to become a law. Sankaracharya of Swamigal Muth was also of the same view and argued that marriage was a sacrament among Hindus and for girls it is a “*Samskar*” enjoined by the Shastras to be performed before the girl attain puberty. The non-performance of ‘Samskara’ is a transgression of religious rule. Further, he said that the social reformers were emphasizing the material prosperity of the country and spiritual prosperity was entirely ignored by them. The spiritual head of Karacharya Swamigal Mutt said that the Bill introduced by Harbilas Sarada was in direct opposition to the sacred principles of Hindu religion as practiced by the orthodox Brahmin community. ⁹⁰Moreover, orthodox Hindu opinion could be seen in various public meetings as opposed to this Bill.⁹¹ In contrast, many public meetings of sanatani Brahmins were held in support of Sarada’s Child Marriage Bill⁹² Interestingly enough orthodox Hindu

⁸⁹ Ibid, Advaita Mutt, 15th February 1929

⁹⁰ Ibid, 4th September 1929, pp.240-281

⁹¹ “Sarada Act and Sanatanis” *Chand*, Part 1 vol. V March 1930

⁹² Bengal Provincial Hindu Sabha supported the Bill

opinion focused only on the age of girls perhaps the age of boys was not regarded important in Dharmashastras.

As similar to that of Hindus orthodox Muslim opinion was not in favour of Sarda's Bill and numerous protest meetings were held to express their anger against Sarda's Bill particularly Muslim males were opposing this Bill.⁹³

Muslim mass meetings presided over by grand Mufti unanimously disapproval of the Sarda Marriage Bill as it contravenes the Mohammedan law. They requested the Government to exempt from the Bill if passed.

Mr. Sarda's final reply to Mr. Kelkar was that, he denied any connection between his ideas in original Bill and the amendment introduced by Mr. Nilkanth Das for clause 6.⁹⁴ Mr. Sarda replied to Mr. Malviya penal legislation was a concession to Hindu orthodox opinion because initially penal clauses were not attached to 8. As far as the other countries were concerned where the marriage laws were declared invalid in the case of fixed marriageable age. Having passed C M B in India marriages of girls of 2, 4 or 8 will remain legal marriage. Therefore, it was superfluous to compare Sarda's C M B with the marriage laws of other countries.⁹⁵ Nevertheless the evil of child marriages was recognized by all the members of Assembly. It was incorrect to say that government should remain

⁹³ G O I Home Department, Judicial, file number 561/29

⁹⁴ Sarda, pp. 1247-1252, LAD

⁹⁵ Ibid

neutral. This was tantamount to the demand that government should not perform its primary functions and it was inevitable for government to interfere after knowing that this evil existed on a large scale.⁹⁶Sarda's C M B was the practical remedy of this problem.⁹⁷ Even the Manu Smiriti suggested that was the duty of state to educate all the boys and girls and they should be married at a proper age.⁹⁸

Mr. Sarda argued that evil of child marriage had not only damaged the past, rather it was dangerous for future generations also. J.C. Chartterjee decribed the sgnificance of Sarda's C M B by saying that it was in national interests.⁹⁹ Public opinion was largely in the favour of this Bill. Since reforms initiative had been unsuccessful, therefore Penal Legislation had become acceptable. Sarda's Bill was not at all the violation of religious laws.¹⁰⁰

The debate over Sarda's C M B showed the struggle between the past and the present. The present has always been viewed in the light of the past and past cannot be changed. However; the present cannot be avoided at all. Therefore, changes are inevitable. In this view, Sarda's Act tried to eradicate age long custom even though his initiative was vehemently opposed. Sarda appealed to

⁹⁶ Ibid

⁹⁷ Ibid,James Heral, 4th September, 1929,pp.240-281

⁹⁸ "Sarda Act and Sanatanis",*Chand*, part I, Vol. V, March 1930

⁹⁹ pp.1240-1351, LAD

¹⁰⁰ *Chand* , op.cit.

the public to make the law a reality a fule of life. It was basically an appeal to women of India.¹⁰¹

Society was indifferent to an Act due to the lack of optimism in the colonial legislative action. Social Legislation should be enforced by society and it was the responsibility of each and every family to follow the legislation. For this spread of education in countryside was needed.¹⁰² Although the aftermath of Sarda's Act is not directly relevant for me at this point yet unfortunately due to variety of reasons Sarda's Act had not been successful. Soon after the Act was passed the country got embroiled in political turmoil and the freedom struggle against British rule absorbed the attention and energy for social reformers.¹⁰³ Nevertheless, Sarda's Bill was the first step to reform the condition of women within marriages.

¹⁰¹ Harbilas Sarda, *Stri Dharm*, 1930, Edyre Library and Reasearch Centre.

¹⁰² Ibid

¹⁰³ Civil Disobedience Movement began in 1930.

CONCLUSION

Legislation was the main instrument for bringing social changes in the social reform programme during colonial period. The question of women can also be viewed in the several legislative initiatives, began with the *Sati Abolition Act* (1829) ended with the *Sarda Act or the Child Marriage Restrain Act of 1929*. These Legislatives initiatives reflected the inclination of reformers, revivalists, nationalists and colonial government towards the question of women. Above all in 1920's the women organizations demonstrated the centrality of women's questions and the issue of marriage precisely child marriage. As we have studied that the first major Legislative initiatives against the custom of child marriage was taken in 1891 in the form of *Age of Consent Act* but the age of marriage was not discussed. The *Sarda Act* can be said the first major attack against the institution of child marriage in which the first time the age of marriage was fixed. Like previous legislative initiatives, *Sarda Act* had been also the matter of public discourse. Over here, the most important question is whether the *Sarda Act* achieved its immediate objective to restrain solemnization of child marriage through its Penal provisions or not.

Curiously enough both the supporters and the opponents of the *Sarda Act* remarked that the *Sarda Act* was a complete failure.¹ The opponents of the Act emphasized on the impracticality of its

¹ *Stir Dharma*, November 1934, pp.5

enforcement and the dangers that would ensue from the determined enforcement of the Act on the large scale. In other words, their main object was to establish that the entire country was hostile to the Act. According to them the society was not prepared for such a legislation, and they considered *Sarda Act* as the violation of private believes and practices. More than this some of the opponents went further and argued that legislature and not have right to enact such a measure.²

The supporters of the Act contended that the indifference of the guardians of the law was making it ineffective.

Their complain was that the government was taking ineffectively with the protests and agitation of vociferous and obstinate minority.³

If the success or failure of the *Sarda Act* is viewed in terms of numbers of infant marriages after the enactment of the law then the answer would be in negative. The numbers of child marriages were drastically increased from the date of enactment to the date of implementation. E.R. Rathbone quoted facts from the census report of 1931 "The member of married males under fifteen has risen by 5 percent and number of married females by 26 percent since 1921, an increase which is undoubtedly due to the enormous number of infant marriages which took place in the six months, interval

² *Stir Dharma*, ibid

³ Ibid

between the passing of the Sarda Act and its coming into operation".⁴

Large numbers of cases were found in Punjab and United Provinces 146 and 110 respectively. In Bengal, where the Joshi committee had found the evil in its worst form to be especially rampant, there were only 41.⁵The large number of cases it was understood that without active propaganda in support of Sarda Act this was difficult to be made it ineffective. Moreover Sarda Act was not at all the interference with the religion, since the main spirit of all the religions in the interest of all round welfare of all mankind and as the effect of child marriage is very sad. Therefore, Child Marriage Restraint Act (CMRA), ought not to be construed as an interference with religion. Actually it was difficult to identify the main accuse and secondly it was also difficult to prove the age of bride and groom which was prescribed in the Act. Therefore, state was suggested to play active role in the smooth working of Sarda Act.⁶

The Attitude of the government was harmonious towards this Act. Home Member Sir James Crerar⁷ declared in the Assembly "*The measure has the most cordial sympathy and strongest support of government*" and further added "*public opinion has very ample opportunity of expressing itself*". Crerar was convinced by the Joshi

⁴ E.R. Rathbone, *Child Marriage: The Indian Minotour*, George Allen and Unwin, London, 1934,pp. 62

⁵ Ibid

⁶ *Chand*, November 1934

⁷ *Legislative Assembly Debates*, September 4, 1929,pp. 240-81

Report and accepted the existence of the custom of child marriage “*there exists a grave and corroding evil in the country which in clamorous for a remedy*”.

However, the contradictory voices were coming from the different levels of the government machinery. The Census Commissioner for Madras remarks “*The six months interval between the passing of the Act and its coming into force was criticized by many of my correspondents. In the words of a Brahman, it ‘did havoc’. More than Act should be taken over, strengthened, and enforced by Government. There seems to be fairly general agreement that as a rather half-and-half effort it is not entitled too much respect*”.⁸

Similarly, the report from Central Provinces say the Sarda Act was “*practically a dead letter*” among the masses. The report from Bihar and Orissa pointed out that the majority of *mofussil* people were not familiar with the Act. Even in town where people were appeal of the Act child marriages were taking place under the very nose of police and executive.⁹

Even though, *Sarda Act* received the support of official block but it cannot be denied that the Act was almost complete failure that it sought to remedy. Rathbone argued that this fact might be used as an argument against future attempts at social legislation.

⁸ Quoted in Rathbone, op.cit,pp..63

⁹ Ibid

Therefore, the facts about this failure and reasons of its failure should be viewed simultaneously.¹⁰

The Penal provisions of the *Sarda Act* were exciting as well as questionable. Between April 1930 to the end of August, there were 473 prosecutions, of which only 167 were successful. Moreover, 207 cases were declared not guilty and 98 cases were in the court till 1934. Of the successful prosecutions only 17 cases were sentenced imprisonment form, wholly or partially. The government tried to reveal the positive aspect of the Act in British Parliament. The member of "House of Commons" and the British feminist Rathbone was not agree with the government's point of view and argued that "*this is a meager harvest*". But the immediate effects -not of the Act itself, but of action taken and of action not taken in connection-with it are staggering.¹¹

Increase in numbers of Child Wives and Widows (All India)				
	1921		1931	
	Wives	Widows	Wives	Widows
0-1	9,066	759	44,082	1,515
1-5	209,397	14,380	757,770	29,365
5-10	2,016,687	102,293	4,200,534	105,482
10-15	6,330,207	279,124	7,269,208	185,339
Total under 15	8,565,357	396,556	12,271,594	321,701
Total Population	318,942,480		352,837,778	

It was hoped that the interval between the date of enactment (1 October, 1929) to the date of implementation would provide the

¹⁰ Ibid

¹¹ Ibid

sufficient time to make the atmosphere in favor of *Sarda Act*, instead of starting any special educational propaganda by the supporters of the *Sarda Act*. Child Marriage were performed at by large scale those who were opposing the Act.

From the figure it appears child marriages were increased in proportion to population, "the number of children hustled into matrimony during the fatal six months was probably not less than three million girls and two million boys".

One of the most significant facts revealed by the census Report of 1931 that the frightful increase in the member of child marriages was greater among Muslims, while the orthodox section was bitterly opposing the orthodox Act. The ratio of Muslim wives under 15 years of age in 1921 was 4 % lower than Hindus. This increase was greatest in some provinces, among wives under ten years old.¹²

Rathbone tried to reveal on the basis if the census report 1931 that number of husbands was enormously increased in contrary to previous Census. For instance 601,244 husbands were declared more than the total number of wives. She added that census Report of 1931 viewed the increasing number of child marriages in the duration of six months in terms of normatively of the custom of child marriage among Hindu, Jains and Muslims.¹³ Moreover, this increase was defined as a reaction of orthodox

¹² Ibid

¹³ Ibid

community towards the *Sarda Act* who had intentionally performed the early marriages of their children to violate the provisions of *Sarda Act*.¹⁴ Therefore, *Sarda Act* might be virtually called a dead letter. It is superfluous to say that *Sarda Act* was the unnecessary interference with the Indian religion. Since, the main spirit of all the religious was on the welfare of human beings and surely child marriage had the detrimental effects on both boys and girls especially girls. *The Child Marriage Restrain Act* ought not to be....¹⁵ considered the interference with the religious laws of society.

The advocates of *Sarda Act* suggested few steps to neutralize the undesirable propaganda of an opponent of the *Sarda Act*.¹⁶ These steps of were

1. Women organizations and other kindered organizations should undertake the task to educate the people in the cause of Indian women and children.
2. The *Sarda Act* Defense Organization should be established in every town to control early marriages and check such marriages in the given locality.
3. The eminent ladies and gentlemen should approach the viceroy and the governors of provinces with the petitions to secure the sanctions and support for a necessary improvement to be made in the provisions of the *Sarda Act*.

¹⁴ *Chand*, November, 1934

¹⁵ *Stri Dharma*, May-June 1934

¹⁶ *Ibid*

To make *Sarda Act* practicable it was suggested by Joshi committee to make active propaganda against the evils of child marriage and the advantage of the Act, but the general agreement was that such propaganda should be left to non-official agencies.¹⁷

The census report of 1931 shows the drastic increase in child marriages. Though the total population increased by 10.6 percent from 1921 but number of married girls fewer than fifteen was roughly estimated 8.5million to 12.5 million and the number of husbands under fifteen from under 3.5 million to over 5.5 million. Rat bone commented that number of child widows were remarkably decreased from 1921 was likely to become a great increase, as a result of the fatal six months.

Though, the Women organizations had played meaningful role in the enactment of *Sarda Act*, not only this it was regarded as the victory by several women organizations. Their assumption was that the boy and girl should undergo a course of healthy education and self discipline for which the *Sarda Act* was the first step,¹⁸and it was also the medium through which national greatness could be attained.

However, soon women organizations realized that to make *Sarda Act* effective the active propaganda was essential. The women India Association decided to start active propaganda particularly in South India through handbooks in vernacular languages setting for

¹⁷ *Joshi Committee Report*, Calcutta, Central Publication House, 1929

¹⁸ *Stri Dharma*, June, 1932 p.p. 434-435

the various kinds of questions providing the immediate need for the rise of age of marriage on eugenics and economic grounds. Moreover numerous articles were written in Tamil, in the issues of *Stri Dharma* from November 1931 to January 1939. In March 1932 Women India Association And all India Women's Conference formed a "*Sarda Act Committee*" to enforce the Act. Two retired lawyers offered their services as "Legal adviser".¹⁹

Women organizations were in favour of prevention of child marriage more than rather than penalization by forcing the parents and endued them by persuasion on the various aspects of matter to put off these marriages till the children are of proper age. Through these efforts women organizations tried to fill up the lacuna which was created by near rising of age of marriage. For this purpose multitude of workers and well organized bodies were required to initiate the campaign for *Sarda Act*.²⁰

Apart from the paradigm of success and failure the *Sarda Act* can also be viewed in terms of the process of its making.

More interesting aspect of the debate's over *Sarda's Bill* was whether the state was competent to interfere with the social affairs of Indians or not. The women India Association and the All India Women's Conference had pointed out that the evils of the custom of child marriage were not only the family matter but the national

¹⁹ Ibid

²⁰ Ibid

problem also.²¹ Though the democracy in India was in its adolescence in nineteen twenties but surely the Legislative Assembly was the representative body of all the Indians, therefore, the Legislature could enact the Law for the family matters of Indians.

However, legislation was not the only medium for bringing social changes. Right from 1829 *Sati Abolition Act* to 1929 *Sarda Act* all the Acts were violated by the orthodox sections of society. *Sarda Act* has been amended in 1978 since the marriageable age was raised at the 18 years and 21 years for girls and boys respectively. Yet the custom of child marriage and female infanticide are still prevalent. Therefore, it is necessary to make environment in favour of legislation through various means.

The women organizations were surely voicing for the educated middle class women of India, but, the women's movement of India in 1920's had certain limitations which stopped its proliferation in the countryside. Because of Colonial rule and the advancement of mass nationalism women's movement was not able to deal with all the issues and aspects of women's problems. But the main contribution of women's movements was the denying of the religious laws, which were mainly for the women only.

In the end *Sarda Act* should not be viewed in terms of complete failure on the basis of its effects which were not favorable but this Act should be seen in terms of time and circumstances of

²¹ *Stri Dharma* May-June 1932 p 436

its making. In the midst of mass nationalism and the massive opposition by the orthodox communities of both Hindus and Muslims. *The Sarda Act* passed which was the first step to reform the marital system in 20th century. Due to several limitations it might have difficult for the architect of the *Child Marriage Restraint Act* to make it more advance.

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