

The Struggle Against Child Marriage: The Sarda Act (Act XIX) of 1929

Dr. Yuthika Mishra
Associate Professor
Delhi University

Child marriage was a widely prevalent custom in India among all castes across the country. It was usual to get girls married off before they attained puberty and it was rare to find a girl above the age of 11 or 12 unmarried. This custom was criticized by Christian missionaries and commented upon by British administrators and scholars. The Sarda Act also famous as the Child Marriage Restraint Act (CMRA) was a pioneering legislation when it was enacted in 1929 with the enormous efforts of Rai Sahib Har Bilas Sarda. However this was not the first attempt at banishing the evil from the face of humanity. The movement against early marriage began with the socio religious reform movements of the nineteenth century. The first piece of legislation against early marriage was the Civil Marriage Act or Act III of 1872 initiated by Keshub Chandra Sen and the Brahmo Samaj in Bengal, which recommended 14 and 18 as the minimum age in which girls and boys can get married.¹ But this Act had its own limitations and was not applicable uniformly to all religions. Later on in the twentieth century, several amendments took place in this Act, under pressure from the orthodoxy, and its purpose of restricting the marriage age was lost.

The Issue of Child Marriage: Liberals vs. Orthodoxy

The need for a legal injunction to curb the menace of child marriage in India, popular even in the twenty first century amongst some sections of society, was felt as early as 1860 when an act was passed specifying the age of consent at ten. Around mid-nineteenth century, a concern for fixing the minimum age for marriage of boys and girls legally, was voiced by the noted reformers Ishwar Chandra Vidyasagar and Keshub Chandra Sen. In his article in 1850 Vidyasagar argued that child marriage was detrimental to the health of women and consequently detrimental to the health of the nation. This argument was repeated since the time of Raja Ram Mohun Roy as an explanation for the 'debilitation of the race' that had led to colonial rule.² It is also generally observed that while the Widow Remarriage Act discussions mobilized and unified the reformers at the national level, the Age of Consent controversy brought out the divide between the liberal and orthodox opinions.³

The demand for ending child marriages was raised again in 1884 by Behramji Malabari, a journalist, author and social reformer from Maharashtra. In his 'Notes on Infant Marriage and Enforced Widowhood', grounded on statistics emerging from the census, he mainly contended for the formulation of rules for the age of consent.⁴ He was joined in this crusade by, amongst others, M.G. Ranade, a prominent jurist, author and reformer who comprehensively quoted from the scriptures so as to remove all doubts about the proposed reform.

While the 1857 holocaust and the subsequent 1858 proclamation, denying all state initiative or rather interference in matters of Hindu law, were a bit of a dampener, two cases of the period drew national attention to the need for reform. The death of a ten year old child bride, Phulmoni Das, involving her 35 year old husband Hari Mohan Maity, which was the first case that drew a lot of ire and so did the denial of Rukhmabai to live with her uneducated, unwaged husband, Dadaji Bhikaji, which became the second case.

¹. David Kopf, *British Orientalism and Bengal Renaissance: The Dynamics of Indian Modernization, 1773-1835*, University of California Press 1969, pp. 5-11.

². Radha Kumar, *History of Doing, Kali for Women*, New Delhi 1993, p. 24-25.

³. Janki Nair, *Women and Law in Colonial India*, Kali for Women, New Delhi 1996, p.72.

⁴. Geraldine Forbes, *Women and Modernity: The Issue of Child Marriage in India in Women's Studies International Quarterly* 1979, pp.407-419.

This was also the occasion when the opponents of reform like B.G.Tilak perceived Indian tradition as a bulwark against imperialism and were ready to trade reform with independence. But while family law became a 'no entry zone', especially when it resulted in betterment of conditions of women, the orthodoxy did not bat an eyelid while invoking colonial law to strengthen patriarchy, as in the case of law on restitution of conjugal rights (Act XV of 1877) under which Rukhambai was tried and sentenced.⁵

After the racial, cultural and medical arguments were exhausted and all the efforts of Malabari and his followers were made, finally in 1891 the Age of Consent Act was enacted raising the age limit from ten to only twelve years. Moreover, only consummation was prohibited, while the performance of marriage remaining unrestricted, rendering the Act rather useless. While the struggle for increase in age of consent from 12 to 14 years continued, the need for a more effective step to prevent early marriages was felt. Success was achieved finally with the 1925 amendment initiated by Sir Hari Singh Gour. The initiative in the case of restricting age of child marriage was taken by Har Bilas Sarada who introduced a bill in Legislative Assembly in 1927.

The Child Marriage Restraint Act also popularly known as the Sarada Act (Act XIX) of 1929, prescribed the marriage age of boys as 18 and that of girls as 14 years. As the nomenclature itself suggests it prescribed restraint on the part of parents or guardians in order not to get their children married. It did not prohibit child marriage by using the force of law.⁶

The ramification quite clearly was that the marriage of minors was neither void nor voidable. On the contrary it was perfectly valid. Precisely because of this reason the gravitation against early marriage continued even after 1930.

Beginning of Twentieth Century: Changed Circumstances

After a silence of about thirty years of the passing of the Age of Consent Act in 1891, during which time two significant trends emerged, battle against the malevolent practice of child marriage got activated again in the Indian legislature. The first trend showed that the Women's Question i.e. change of the position of women's legal status became subordinate on the nationalist program after 1891. Second development was the crystallization of government policy of neutrality on issues affecting the social and religious beliefs of the people. This is very well demonstrated by the remarks of the secretary and joint-secretary of the Home Department in January 1921 when he was responding to the question raised by Lala Girdhari Lal Aggarwala in the Legislative Assembly, questioning the government if it will undertake legislation to stop early marriages. The very fact that the government reiterated the 8th October 1886 resolution on its policy following Malabari's proposal of stopping infant marriages in 1884, by quoting it even in 1921 and emphasised that "reforms effecting social customs of various races should be left to improving influences of time and education" shows that the government wanted to lay stress on the earlier policy.⁶ While answering in the negative the government reinforced that "under present conditions in a matter of this kind which intimately concerns the social customs and religious beliefs of the people it is preferable that the initiative should be taken by non-officials (members) rather than by the Government."⁷

A similar attitude was obvious and was laid down in writing, relating to the passing of the Anand Marriage Act 1909 of Sikhs, Mr.B.N.Basu's Special Marriage Bill and Mr.V.J.Patel's Hindu Marriages Bill.⁸ The same tone was maintained when the question of increasing the marriage age arose during the

⁵. Janki Nair, op.cit, p.74.

⁶. Child Marriage Restraint Act, Act (XIX) of 1929, NAI, HJ, 570/1929 & KW, also known as the Sarada Act.

⁶. National Archives of India (NAI), Home Dept., Judicial Branch-A (HJ), March 1921, Nos.52-54, p.1.

⁷. NAI, HJ-B, March 1921, Nos.52-54.

⁸. NAI, Legislative Dept.-A(LD), Nov.1909, nos.9-101; LD-A, March 1912, nos.113-157 and HJ-A, Sept.1918, nos.18-22 respectively.

passage of the Fiji Marriage Law in 1918-1919.⁹ The need arose in Fiji for registration of Indian immigrants' marriages and their validity to be upheld by enacting a law for the Indians. A proposal was also put forth to raise the marriageable age (clause 41 of the Bill) from 15 and 12 years to 16 and 13 for males and females respectively. However, marriages below the prescribed age limit were not debarred if "permitted by personal law." The Fiji Marriage Ordinance number 5 of 1918 was subsequently passed along with the clause on marriage age (fn.11). However a subsequent suggestion of Mr. Badri Maharaj that the marriageable age of both male and female Indians should be raised to 18 and 15 respectively, was overruled on the ground that it was opposed to the Indian customs and should not be proceeded with unless there is a general feeling in its favour among the Indian immigrants residing in Fiji. The Secretary to the Indian Government in the Department of Commerce and Industry in a note dated 28th May 1919 to the Colonial Secretary of Fiji stated that a Bill to further raise marriageable age of boys and girls would meet with great disapproval from the Indian public.¹⁰

Meantime another interesting proposal to put a ban on child marriages came up in Bengal with the initiative of Mr.D.P.Khaitan, member Bengal Legislative Council. Known as the Hindu Child Marriage Prevention Bill of Bengal, it brought out at least three issues of dispute in the field of social legislation. First the subject was the concern of whole of India and not only of Bengal, so center-state jurisdiction had to be kept in mind despite the fact that circumstances in different provinces differed. This also was the chief reason why sanction to it was refused by the local government. This Bill related to the central subject of civil law. So it had to be clarified as to which legislation should be provincial and which should be central.¹¹ Second, reduced marriage age was definitely recognized as a "social evil" which needed to be combatted. But since the said Bill had no proposal to limit the age of marriage for girls but intended only to prevent the marriage of Hindu boys in Bengal under 18 years of age, so it offered a very incomplete remedy. Finally, in direct contradiction to the above point, it was objected that such legislation would be "undesirable" from the standpoint of public policy, the Hindu orthodox opinion would be strongly opposed to it, and that "this matter is not one which is susceptible of remedy by legislation".¹²

The matter, before sanction, was sent for the comments of Sir B. Narasimha Sarma (a member of the Viceroy's Executive Council, a lawyer and a freedom fighter) by Sri A.P. Muddiman (Home Member) on 17th February 1924. His advice depicted the duality of approach, which was so characteristic of the administrators of yore. While favouring the proposed reform "in principle" he opposed the grant of sanction to the Bill "mainly from a political standpoint". Not questioning the usefulness of social legislation provided there was a "strong public demand for it", he commented that the Bill in question was "far in advance of Hindu public opinion and the Government should not allow itself to be dragged into opposition to the vast mass of the Hindu population who would resent interference in their marriage customs. The time is not opportune and especially so in Bengal".¹³ He also observed that child marriages were so prevalent in India that it cuts across class and community lines.

Sarda's Bill

About the same time as Mr.R.L. Jajodia's Bill another Bill to regulate marriages of children among the Hindus was planned by Rai Sahib Harbilas Sarda in 1924. Although the matter of both the Bills was the same, Sarda's Bill substantially differed from Mr. R.L. Jajodia's Bill and therefore the question of its previous sanction by the Governor General was given due consideration.¹⁴The main difference between the two Bills was that this Bill proposed to prescribe the minimum ages for the marriage of Hindu boys and

⁹. NAI,HJ-B,March1918,nos.139-40,pp.2,3.

¹⁰.NAI,Dept. of Commerce and Industry,Progs.A,Emigration,1919,Jan-Dec.,nos.32-34.

¹¹.NAI,HJ,Part B,782/1924,p.3.

¹². Ibid.pp.4-5.

¹³.Ibid.p.6.

¹⁴.NAI,HJ,534/1925.

girls and to enact that all marriages of children below those ages would be *invalid*. Jajodia's Bill did not talk of invalidating any marriages. At the same time Diwan Chaman Lal's proposal came in after barely two months of Sarada's proposal. It appeared to be a copy of Rai Sahib Har Bilas Sarada's Bill. The only difference here was that Lal's Bill had altered the marriageable age of girls from 12 to 13 years. So essentially all these six Bills appeared to be concerned with the same issue except for a few alterations here and there. And this was also not the end of the line.

During the next three years the Governor General was inundated by many more such proposals for sanction, especially from the provincial legislatures. To almost all of these proposals sanction for introduction in the provincial councils was denied on one pretext or the other. Significant amongst these proposals were those of Mr. B. V. Jadhav from Bombay in 1927 and Dr. Muthulakshmi Reddi from Madras in 1928.¹⁵ Mr. Jadhav's Bill aimed to regulate marriages of all classes. According to him the marriageable age of girls was to be fixed at 12 and of boys at 15. The main reason for such a measure, which would lead to a penal sanction of Rs.400, if not adhered to, was that early marriages led to more adolescent or young widows. In several communities widowhood was enforced by preventing widow marriages and making lives of young widows miserable. Early marriage also implied physical deterioration of the persons concerned and was much more prevalent amongst the illiterate masses rather than amongst the educated towns people. The extent of the evil was obvious from a glance at the 1921 census which was extensively quoted by Mr. Jadhav. According to this source the total number of married children under 5 years of age were over 74,000 out of which 3574 were widowed. Another shocking figure was that 1869 boys and 2909 girls were married even before they completed their first year of life. Similarly 111 boys had become widowers and 201 girls had lost their husbands before they had turned one year old. The total number of married children between the ages of 5 and 10 was 3,37,028 and the number of widowed children was 17352 i.e. about 2% of children in this age group were married. In the next age group i.e. from 6 to 10 years about 14% of girls were married. Another fact that was highlighted by Mr. Jadhav was that while this evil practice was highest amongst Hindus, the other communities like the Muslims, Christians and Parsis also were not free from it.¹⁶

Mr. B.V.Jadhav also highlighted the role of Indian Native States who had realised the necessity of checking this evil and passed laws to prevent infant/child marriage. As early as 1894 Mysore State passed a regulation prohibiting marriages of girls under 8 years of age. Similarly the Maharaja of Baroda in 1904 banned marriage of girls under 12 and boys under 16. In 1903 Maharaja of Kolhapur followed suite.¹⁷

In the same proposal of Mr. B. V. Jadhav there was also a provision prohibiting unequal marriages i.e. those between men over 50 years of age and girls under 16 years. For this offence a penal sanction of imprisonment upto 3 months and a fine upto Rs.1000 were to be imposed.¹⁸ This clause was going to be the trendsetter for many more such Bills to come.

The chief argument put forth by the Secretary, Legislative Department, Government of India, Mr. L. Graham, advising refusal of sanction to this Bill to the Governor General dated 3.12.27 was that a Bill of a related nature was introduced on the 1st February 1927 by Harbilas Sarada in the Legislative Assembly. This was referred to a Select Committee of the Indian Legislature on the 15th September 1927 and was still there. The main difference between the two Bills being that Mr. Jadhav's Bill applied to all classes while Sarada's Bill applied to Hindu's only. Similarly the Home Department, in view of the fact that legislation on the subject was already under discussion in the Indian legislature, considered it undesirable that discussion on the same subject dealing with widely divergent lines should proceed concurrently in the provincial Legislative Council. They also stressed that the course of events in the Indian legislature should be awaited.

¹⁵.NAL,HJ,1139/27 and 155/28 respectively.

¹⁶.NAL,HJ,1139/27,pp.2,14-15.

¹⁷.Ibid.p.15.

¹⁸.Ibid.p.2.

Care was also taken to specify that sanction was being refused to Mr. Jadhav's Bill not on its merit but because there was already a similar Bill before the Central Legislature.¹⁹

The Shimla session of the Legislative Assembly witnessed a series of lively debates beginning 15th September 1927 in which Sarada's Child Marriage Restraint Bill was discussed from all angles. Sarada emphatically stressed the need for legislation in this matter and identified the primary and secondary aims of the Bill as well as the reasons why it should get the maximum support of the maximum people. The main purpose of the Bill was to end child widowhood.

"No country in the world except this unhappy land presents the sorry spectacle of having in its population child widows who according to the customs of the country cannot remarry...The secondary aim of the Bill is to remove the principal impediment to the physical and mental growth of the youth of both sexes and the chief cause of their premature decay and death. The measure I propose will help to remove the causes which lead to heavy mortality amongst Hindu married girls. The very high percentage of deaths among them is due to the fact that they are quite immature and are utterly unfit to begin married life when they actually do so... I think the Bill deserves the support even of those to whom nothing matters but the political emancipation of the country...progress is unity, and if we are to make any advance, and the country is to come into line with ...the progressive countries of the West or to be completely free from their domination, a programme of social reform of a thorough going character, of which the abolition of child marriage will be a principal item, must be taken in hand along with the pursuit of political reform."

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Expounding on the efficacy of the measure, Sarada said:

"that the Bill if passed, will give a real and effective protection to girls, which the Age of Consent does not do...The law of age of consent, so far as marital relations are concerned, is a dead letter, and has done little practical good except the slight educative effect which it has had on certain classes of people."²¹

While the law regarding the age of consent had been in existence for a long time the figures in the Census Report showed little evidence of the practice of infant marriage dying out.

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¹⁹.Ibid.pp.4-5.

²⁰. NAI, HJ,1024/1926, pp.83-84.

²¹. Ibid.