

Legislative Reforms Concerning Child Marriage In Colonial India

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Abstract: Child marriage was the first legislative reform enacted by the British in India. While many bills were introduced in the legislative assembly to regulate the age of marriage of boys and girls, Hari Bilas Sarda's bill introduced in 1927 contained an additional provision of invalidating any marriage below the prescribed minimum age. Women's organizations led by the All India Women's Conference actively supported Sarda's bill by forming vigilance committees and petitioning the government to wipe out the social evil of child marriage. The Sarda Act was passed in 1929 and its provisions were made more stringent in the year 1938. Collective will was required to execute this legislation.

The first piece of legislation in the colonial period was against the practice of child marriage. Child marriage was widely prevalent in India among people of all castes. The movement against child marriage began with the socio religious reform movements of nineteenth century. Keshub Chandra Sen, the radical leader of the Brahma Samaj was the force behind the first piece of legislation against early marriages, which came in the form of Civil Marriage Act or Act 111 of 1872 which prescribed 14 and 18 as the minimum marriageable age for girls and boys. The issue of child marriages was raised in 1884 by Behramji Malabari, a journalist and publicist from Maharashtra. In his 'Notes on Infant Marriage and Enforced Widowhood', he strongly argued for the regulation of the age of consent. M.G.Ranade, a prominent theist and social reformer, worked in close association with Malabari and quoted extensively from the scriptures to prove that child marriage had no scriptural sanction.

Two cases in this period further fuelled the need for regulation of child marriages. First, was the death of a ten year old child bride, Phulmoni Das, married to Hari Mohan Maity who was thirty five year old and second was the refusal of Rukhmani Bai to live with her uneducated and unemployed husband, Dadaji Bhikaji. The exhaustive efforts of Behramji Malabari and his supporters bore fruit. The Age of Consent Act of 1891 was enacted thereby raising the minimum age for marriage from ten to twelve years. However, only consummation of marriage was prohibited while the performance of marriage remained unrestricted. Issues concerning women's reform became secondary on the nationalist agenda after 1891. The British government too

adopted a policy of non interference on matters affecting the social customs and religious beliefs of the people. This is amply clear from the correspondence of secretary and joint secretary of the home department on the question raised by Lala Girdhari Lal Aggarwal in the Legislative Assembly in January 1921, enquiring whether government will undertake legislation to prevent early marriages. The government quoted the 8th October 1886 resolution on its policy and enforced that "reforms effecting social customs of various races should be left to the improving influence of time and education." This showed that government wanted to remain neutral on the issue of social reform. The Bengal Hindu Child Marriage Prevention Bill and Mr. R A Kanitkar's Bill preventing child marriage were refused sanction by the Governor General. These appeared to be mere pretexts for not touching upon subject of socio religious reform because of the threat of opposition not only from orthodoxy but also from vast mass of Hindu population who would resist interference in their marriage customs. But as pressure from the reformers mounted, the Britishers assumed a milder tone within a span of a few months. This is clearly manifested by the British official statement on a bill proposed by Mr Rang Lal Jajodia on increasing the age of marriage. "The present bill of course is not quite so objectionable in view of the lower age" (lowered from 18 to 16 years, a difference of only 2 years). The British government decided to not oppose the bill at its introductory stage. But the British policy in the long term was of being essentially non committal on this sensitive issue. Though this bill could not be introduced in the 1926, it did spark interest, on the issue of child marriage.

In 1927, Rai Saheb Har Bilas Sarada introduced the Hindu Child Marriage Bill which, he claimed, struck at the heart of the problem of child marriage. Debating the bill in the Legislative Assembly, Sarada stressed that there was an urgent need of legislation to curb the social practice of child marriage and urged people to support it:

"The primary objective of the bill is to put a stop to 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 principle 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 that I propose will help to remove the causes which lead to heavy mortality among 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 of even those to whom nothing matters but the political emancipation of the country. 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 principle item, must be taken in hand along with the pursuit of political reform." Elaborating on the unity of the measure, Sarada said "that the bill, if passed, will give real and effective protection to girls, which the Age of Consent does not. The law of age of consent, as far as marital relations are concerned, is a dead letter, and has done little practical good except the slight educative effect which it had on certain classes of people."

Observing that the government abolished Sati but was reluctant to effectively curb child marriage, Sarada quoted from an article entitled "Indian Social Reformers, etc" in the Modern Review of September 1927:

"The abolition of child marriage and child mortality and the raising of the age of consent within and outside marital relations would tend to make Indians a physically, intellectually and morally fitter nation. But British bureaucrats have all along been very unwilling to help Indian social reformers in effecting these reforms by direct and indirect legislation. They had no objection to abolish Sati, probably because it was mainly a question of humanity, the abolition of Sati was not expected to promote the building of a stalwart nation. But the abolition of child marriage etc., is indirectly and almost directly a political as well as a social remedy. So in these matters our British bureaucratic friends fall back upon the cant of neutrality and non interference in religious and socio-religious matters. As if Sati, hook swinging were not such things which the British Government have stopped by legislation."

The role of women's organizations and associations, and through them the opinion of women generated showed keen interest of Indian womanhood in molding this bill. The All India Women's Conference was the most significant women's organization, mobilizing public opinion along with the rise of the Anjuman (All India Muslim Ladies Conference) in 1914, the Women's India Association (WIA) in 1917 and the National Council of Women in India (NCWI) in 1925.

Dr.(Mrs.) Muthulakshmi Reddy, a nominated non official member of the Madras Legislative Council and a prominent member of the All India Women's Conference, proposed the Age of Hindu Marriage Bill in 1927. Her proposal was based on health issues and gender inequality that emanated from early marriage of girls. Dr. Reddy stated:

"Such marriages result in first of all the premature motherhood with all its attendant disabilities, and the production of a race physically and mentally unfit to stand the struggles of life. The saddest consequence of all is the large number of virgin widows who for no fault of their own, are made to undergo many hardships in our society. The system of early marriage is also responsible for the large percentage of illiteracy and the slow spread of higher education among our women. At an age when our girls are too young to understand the true significance of a married life when they are too young to discharge those functions to satisfaction, the heavy burden and responsibility of wifehood and motherhood are most pitilessly forced upon them, which is the primary cause not only of ill-developed physique, ill health and a high maternal and infantile mortality among the higher class Hindu, but also of our very slow national progress." All India Women's Conference member Maharani Chimanbai said "On the reform of our marriage system will, I believe, rest the success or otherwise of our educational programme."

It is well observed that the second decade of the twentieth century marked the growth of women's organizations at the national level. Women whole-heartedly plunged into the national struggle for independence and actively participated in the Gandhian movements like Non Cooperation, Civil Disobedience and the Khilafat. The participation of women in the freedom struggle gave them the strength to fight against social evils and thus they intensified their campaign against child marriage.

While the subject matter of Sarada's Bill was the same as the other bills introduced to regulate the age of marriage of boys and girls, it contained an additional provision of invalidating any marriage below the prescribed minimum age. This bill and the one on age of consent by Hari Singh Gour, which proposed to raise the age of consent from 13 to 14 in case of married girls and from 14 to 16 in case of unmarried girls, were both referred to a committee which, in its report to the assembly in 1929, recommended that 15 years be the minimum age for marriage and 21 the age of consent outside marriage. The final bill which culminated into the Child Marriage Restraint Act, popularly known as the Sarada Act (Act XIX of 1929) prescribed the minimum age for marriage of boys as 18 and that of girls as 14 years.

The All India Women's Conference held its first session from January, 5th to 8th, 1927 at Poona, at a time when the issue of child marriage was being vigorously debated in the country. The age of consent controversy had also come up when in 1926, in Madras, a girl of 13 years was married to a man of 26 years and subsequently she committed suicide due to the misbehavior of her husband. The two issues namely, the age of marriage and the age of consent were inextricably linked to each other and any attempt to redress one would inevitably affect the other. It was felt that educated public opinion would play a vital role in passing stringent legislations addressing both these issues. Speaking on the issue of age of

consent at the Poona session in 1927, the President Maharani Chinnabai told the delegates of the All India Women's Conference:

"The age of consent should be made by law a minimum of 16. Many of the constituent conferences have done well in placing this question in the forefront of their deliberations. It is also now known that Sir Hari Singh Gour, to whom the women of India owe a great debt of gratitude for his very valuable services, is going to bring the question of raising the age of consent inside and outside marriage to 16 in the next assembly. We have not merely to pass a resolution giving our whole-hearted support to the proposed resolution of Sir Hari Singh, but we have to organize a regular campaign of propaganda throughout the country in favor of the resolution with a view to getting it accepted both by the assembly and the Government of India. I cannot urge you too strongly to advocate this by every means in your power, by persuading individuals, by holding public meetings in the provinces, from which you have come, by the formation of societies pledged to the cause of this and other allied reforms, and by urging your representatives in the Councils to take all necessary steps in this matter, to bring such a law into being with proper safeguards to see that it is enforced. On the reform in our marriage system, will, I believe, rest the success or otherwise of our educational programme, and it is therefore that I recommend the Conference to make this a live question in its deliberations."

The All India Women's Conference, whole-heartedly supported Gour's Bill and resolved to send a deputation to the Legislative Assembly to convey to its members the demands of women on this vital subject. The All India Women's Conference in the same session, passed the following resolution:

"This conference deplores the effect of early marriage on education and urges the government to pass legislation to make marriage below the age of 16 a penal offence. It demands that the age of consent be raised to 16."

At its second session held in Delhi in 1928, the Begum of Bhopal, in her Presidential address, held child marriage responsible for the lack of education among girls and for retarding their physical, mental and moral growth. The Rani of Mandi proposed a resolution deeply deploring the effect of child marriage on education which was passed unanimously. Resolutions relating to the Sarda Bill for the restraint of early marriage were passed and old resolutions were reaffirmed.

At both these sessions members deplored the effect of early marriage on education and condemned the custom of allowing immature boys and girls to become parents and called upon the central government and the provincial legislatures to follow the precedent set-up by the states of Baroda, Mysore, Rajkot, Kashmir, Gondal, Limbdi, and Mandi which had raised the legal age of marriage. They demanded that the legal age for girls and boys should be prescribed at 16 and 21 years respectively. They pointed to the sheer inequity of child marriage, its terrible effects on girl's health; the tragedy of premature widowhood; the bearing of unfit children by immature and uneducated girls; and, finally, the utter impossibility of affecting any successful far-reaching plans of education as long as girls were to be claimed, at an

early age, by marriage. Child marriage had no sanction in the shastras and hence it was, in fact, a negation of the sacred laws. The members suggested:

- ✓ The conference should elect a small standing committee to watch and report on the progress of the Child Marriage Bill, to coordinate and direct the activities of the provincial committees and to urge their views upon the legislatures.
 - ✓ The delegates should urge their provincial constituent bodies to form similar provincial and local committees to carry on an intensive educational campaign against child marriage and to bring their views urgently and constantly to the attention of the provincial and central legislative bodies.
- Suggestions for the campaign included:
- ✓ Propaganda meetings and lectures;
 - ✓ Writing literature and posters;
 - ✓ Petitions;
 - ✓ Postcard campaign urging people to sign postcards or write to their representatives in the legislative assembly demanding passage of the Child Marriage Bill; and
 - ✓ Allocation of some part of the finances for this purpose and seeking of special donations to the campaign fund.

A deputation on behalf of the All India Women's Conference waited on the Age of Consent Committee on 8 January, 1929 at Patna. It began by stating that the All India Women's Conference wished to emphasize the fact that it had, at each of its three conferences, recorded its support to the Age of Consent Bill with the proviso that the age of consent within marriage should be 16 years and outside marriage 18. It had also strongly supported the bill to raise the age of marriage and recommended the ages of 16 and 21 for girls and boy respectively. The All India Women's Conference was of the firm opinion that it was ineffective to raise the age of consent without fixing the age of marriage. As for orthodox men and women who opposed the bill, the deputation members held that many parents were perhaps afraid of social ostracism, and might welcome the change if it came as a law. To the argument that raising the age may lead to immorality, members of the deputation said that young girls would be looked after as young widows were being looked after. They added that child marriage was not sanctioned by the shastras. Raising the age of marriage ensured that guardianship of the girl remained in the hands of the parents, which would not be so if, only the age of consent was raised.

The All India Women's Conference members persisted in their demand for legislation and refused to let religion intervene. After the act was passed, it was hailed by the reformist opinion throughout the land. Many of the princely states, realizing the importance of such an Act, took up the task of introducing similar legislation within their boundaries. Baroda and Kotah had already passed acts prohibiting child marriage. But there were conservative and unprogressive sections among Hindus and Muslims who were opposed to the act. The All India Women's Conference urged that Muslims and other communities should also be brought under the purview of the Child Marriage Act. On February 11, 1928, a deputation of the All India Women's Conference representing ladies from almost every province of India met the Viceroy

and leaders of various political parties to urge them to curb the practice of child marriage through legislation immediately. The Rani of Mandi and Mrs. S.R. Das led the 19 member deputation. They presented to the viceroy, resolutions passed by the All India Women's Conference condemning child marriage and represented the unity of Indian womanhood irrespective of caste, race and creed. They reiterated their view that only a strong legislation can curb the practice of child marriage. The representation read the following:

"In response to the intense feeling shown by the delegates this conference decided upon an organized national conference for the abolition of child marriage. It further considered that such an act must be legislative. It is the burning desire of the women of India to remove from their path of progress until the abolition of child marriage is brought by legislative act, India cannot fit herself to take her proper place in the comity of civilized nations."

A second deputation led by Indira Bhagwat met the non-official European members of the Imperial Legislative Assembly and leaders of political parties including Mohammed Ali Jinnah, Pandit Madan Mohan Malaviya, Motilal Nehru, Srinivas Iyengar, Lajpat Rai, M.R. Jayakar and the Raja of Mahmudabad. A third deputation consisting of Sushma Sen, Kamaladevi Chattopadhyaya, Srirangamma and others met the Age of Consent Committee to press their views and counter the arguments raised by the opponents of the bill based on grounds of religion and popular sentiment.

Some leaders expressed happiness on the idea of women themselves taking the initiative whereas others did not appreciate the idea of women emphasizing on such dramatic changes for which society was not ready. By this time, a lot of public opinion had been generated in favour of the issue as increasing number of women's organizations realized that the Sarda Bill when passed would become a major instrument in achieving women's empowerment. Thereby, Sarda's case grew strong with the avid support displayed by women's organizations. To cite the case of Bombay Presidency, there were about 90 petitions signed by almost 2,700 women to curb child marriages among Hindus. The Rajputana Provincial Ladies Conference, composed majorly of Marwari women, met on 19th November 1928, and strongly demanded the immediate passing of the bill. The opinions received by the government were also favorable i.e. out of a total of 167 opinions recorded 128 were in favor of the bill.

Mahatma Gandhi too gave his opinion on this issue of social reform. He was of the view that before large scale reform took place, the mentality of the educated needed to be transformed. Replying to Dr. S. Muthulakshmi Reddi's letter written in 1929 regarding the disabilities of women, Gandhiji expressed his disappointment on the role of the few educated women in India who he said "will have to descend from their western heights and come down to India's plains. Men who undoubtedly are to be blamed for their neglect, have to do adequate penance but those women who have shed their superstition and have become conscious of the wrong, have to do the constructive work of reform."

As soon as the Sarda Bill was introduced in the Legislative Assembly, the All India Women's Conference started mobilizing support for its passage. All through 1929-30, branches of the All India Women's Conference formed

small committees to watch and prevent child marriages by persuasion and pressure; by propaganda through press and platform; by means of magic lantern lectures, popular songs and holding protest meetings. When the Sarda Act was passed, women leaders claimed it as their victory and felt that their victory was a firm evidence of nationalist support for women's rights. It became operational in 1930. However, the celebrations turned out to be premature. The Act was largely ignored after it was passed.

The All India Women's Conference and other women's organizations, concerned about it formed vigilance committees and petitioned the government to amend the Act so that it would be easier to prosecute offenders. Unfortunately, despite their efforts, there were few prosecutions. The Sarda Act's greatest lesson, ironically, was perhaps to show women who supported it how powerless they were when it came to actually effecting social change through legislation.

An examination of the views of the All India Women's Conference on the Sarda Act (1929) provides an example of an issue where women stood united in the face of communal disputes between men. In opposing the legislation, a section of Muslim men had argued that the Act should not apply to them as child marriage was not common among Muslims and it would interfere with their personal law. In contrast, Muslim women members of All India Women's Conference were staunchly in favour of such legislation. Prominent among these were Johan Begum of Bhopal, president of the second session of All India Women's Conference held in 1928, Lady Abdul Qadir, president of the 8th Session of the All India Women's Conference and Shareefa Hamid Ali, president of the 14th session of the All India Women's Conference. In a speech at the All India Women's Conference session in 1928, the Begum of Bhopal condemned child marriage, saying that it was 'incumbent upon us to stop this evil, as far as possible'. The All India Women's Conference position was that, the religion of the child was irrelevant. It had been shown that child marriage was prevalent among all communities; all communities should fall within the purview of the Act.

When in 1929, Muslim male legislators were pressing for the exemption of Muslims from the Act, the All India Women's Conference sent a petition to the Viceroy protesting against this:

"We, speaking on behalf of the Muslim women of India, assert that it is only a small section of Muslim men who have been approaching your Excellency and demanding exemption from the Act. The Act affects girls and women far more than it affects men and we deny their right to speak on our behalf."

A resolution to keep the Sarda Act intact and applicable to all communities was passed and the various women present denied men the right to legislate on a women's issue. Significantly, the resolution was supported by Muslim women members as well. But the battle was far from over. A number of influential Muslim members presented a petition to the Viceroy against the proposal to exempt Muslims from the purview of the Sarda Act. The All India Women's Conference passed a resolution in 1931 urging the government to keep the Act intact and to enforce it strictly. It urged all its branches, the youth, women social reform associations and others to educate public opinion and persuade individuals to obey the law and to report cases of violation of the Act. Protest

meetings were held in practically every constituency and telegrams were sent by them to the Viceroy, the Home Member and the Secretary to the Legislative Assembly.

The Child Marriage Restraint (Amendment) Bill was steered by B.Das in 1938 to amend the 1929 Sarda Act in order to make its provisions more stringent by giving extended powers to the courts in certain respects, affecting religion or religious rights and usages of British subjects in India. The subject of the bill was to make the Sarda Act a more effective weapon against child marriage. This was done by (i) giving the courts power to prohibit marriages, (ii) giving the court power to initiate proceedings without taking security, and (iii) giving the court power to require the husband of a child wife to make provisions for her separate maintenance and to refrain from intercourse with her, until she reaches the legal age.

In the post-independence set up, another attempt was made to streamline the Act and make its provisions more effective. Pandit Thakurdas Bhargava who initiated the Child Marriage Restraint (Amendment) Bill of 1949 felt that there was a need to make the law tougher. He brought out the defects of previous bills and emphasized the necessity for an amendment, without which the Act would remain a dead letter. As a remedy, to make the Act more effective, he prescribed punishment by way of imprisonment. This would "have a deterrent effect and perhaps effectively check-mate the evil." It combined three provisions into one, namely, the question of age limit, the issue of coercion into marrying and the prescribed time from when the law would be effective. After its enactment, the provisions of the new law laid down the minimum age for marriage of girls as between 14 and 15 years and for boys as 18 years. Secondly, marrying children below the prescribed age was equivalent to kidnapping and was a cognizable offence. Finally, the public would be given sufficient time to adjust to the changes.

It was indeed an arduous task for the British government to sort out the age-old custom of child marriage. A few observations can be made in this aspect. First, the mass protests came mostly from the women's groups and organizations that represented the interests of the women and children. Secondly, looking at the magnitude of protests, it appears that the majority were orthodox conservatives. The conservative reaction during the making of Sarda Act of 1929

was far more vigorous in contrast to the controversies aroused by the ban on Sati, the law permitting widow remarriage, and the 1891 Age of Consent Act. Collective will was required to put the legislation into practice.

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