

AGE OF CONSENT AT 12: BENGAL - A HOT PLATE OF PUBLIC DEBATE

S. Yasodhamani¹

Abstract

This article examines the British colonial administration's attempt in Bengal in 1891 to fix the age of consent which attracted considerable debate and opposition among the people. The Age of Consent Bill introduced in January 1891 sought to amend parts of the Indian Penal Code and the Code of Criminal Procedure to make the consummation of marriage before a girl reached the age of 12 a criminal offence. This was an effort by the British administration indirectly to raise the age of marriage in conservative Bengal society. The prescribed punishment for the offence was a fine and a prison sentence of ten years. The punishment could be enhanced to life imprisonment if the offence was deemed more serious. This article shows that while this was part of a broader effort at social reform, the haste with which the Bill was introduced in the legislative council and carried through filled the minds of a large section of the Bengalis with alarm over its impact on their socio-cultural values and norms and resulted in an outcry.

Keywords: age of consent, Bengal, child marriage, British colonialism

An indirect attempt to raise the marriageable age of Indian girls that the colonial government took by fixing the age of consent for consummation of marriage at 12 caused a great commotion among the people of Bengal during the first quarter of 1891. By introducing the Age of Consent Bill in January 1891 the government proposed to amend portions of the Indian Penal Code and the Code of Criminal Procedure. The offence of consummation of marriage before a girl reached 12 was to be regarded as 'rape.'² The penalty prescribed was fine and imprisonment for ten years. On the gravity of the offence, the sentence could be enhanced to life imprisonment. On the face of it there was no foreign interference on the traditional Indian custom of child marriage, only an attempt to ensure that adult husbands did not misuse their marital rights. Bengalis, barring a few, feared that the foreign rulers were trying to impose a social reform on the local people in disguise, violating the religious beliefs and social usages. This article attempts to offer a balanced examination of the issue by analysing the public response to this controversial issue.

The Census Report of the Bengal Presidency of 1881 shows that out of a total number of 2,236,058 girls in the age group 0–9 the number of married girls was about 245,388 (11%), which included 11,928 widows (about 5%).³ Advocates for child marriage defended their action by arguing that selection of brides, if left to youths eager for marriage, the choice might be guided by some transitory emotional considerations. If, on the other hand, the guardians selected the brides they could apply their mature experience and make the choice in a judicious manner.⁴ Economic considerations were definitely evident. The Hindu Law of Succession of that time did not allow a daughter to inherit paternal property if she had a brother. In case the father died before the girl's marriage she had to live entirely on the mercy of her brother. To avoid this situation, the father usually considered it wise to bind daughters in wedlock as early as possible.⁵ Similarly, as Kedareshwar Roy, a judge of small causes court, Calcutta, observed, in case a man died leaving his minor son, the widowed mother often sought to get her son married so that the boy could be brought up by his father-in-law. Sometimes the father, unable to bear the expenses of his son, preferred to adopt this policy. Thus

families could use child marriage as means to gain financial ties with wealthier people ensuring their successions. At times some girls were sold to old infirm or otherwise unsuitable men who could pay a high bride price.⁶

Moreover a belief was common among the Hindus that the *Sastras* required every married man to perform *garvadhana* (formal impregnation of the wife) within 16 days after she had her first sign of puberty.⁷ Another popularly held view in Bengal was that if a son was born of a woman in whose case *garvadhana* was not formally performed, the son would not be entitled to offer *pindas* (symbolic food) to his ancestor.⁸ The major objective of marriage being procreation of legitimate offspring, marriage of a girl before puberty was considered obligatory. Furthermore the elderly women preferred child marriage for another reason. Accustomed to live within the four walls of the house leading a dull and monotonous life of dreary drudgery the females could enjoy their participation in preparing a sumptuous feast and enjoy the company of a newly married couple for a few short weeks until familiarity diminished curiosity.⁹

A good section of the Bengalis nevertheless found a number of ills associated with the practice. Adolescent obsession with sex could divert attention from study. Premature cohabitation often caused grievous suffering to child wives. The possibility of birth of sickly children from immature mothers and the need of feeding too many mouths sometimes made the household disorganized. Widowhood at a tender age was another serious consequence attached to the system of child marriage. Child marriage impeded education of girls and growth of superstitious mind. Ignorance and superstition were followed by illness in a married state. Indolence made the females quarrelsome especially in joint families. In fact the bond which very often held a Bengali couple was a bond of necessity and not of love.¹⁰

The venality of child bride abuse by aged husbands finds ample corroboration from some of the acute cases recorded in a petition submitted to the Viceroy by some female doctors during the age of consent controversy. Several concrete examples were cited. A wife aged nine was so completely ravished as to be almost beyond surgical aid. Another nine year old had her lower limbs paralysed. A wife aged ten with pitiable condition was hospitalised. After one day the husband demanded her release as he said for his 'lawful use.' A wife, also aged ten, crawled to hospital on her hands and knees as she was unable to stand erect since her marriage to an adult.¹¹ Sterility was the tragic outcome of child marriage involving both the boy husband and girl wife as was revealed by Mrs. Pechey Phipson in her speech at the Prarthana Samaj Hall, Bombay, in 11 October 1890.¹²

In Bengal, the question of eradicating the evils of child marriage, did not merely crop up suddenly in the late nineteenth century as a result of initiatives by the foreign lawmakers. A movement in fact had started as early as in the 1850s.¹³ In August 1850, Iswar Chandra Vidyasagar wrote an article, *Balyabibaher Dos* (Evils of child marriage), in *Sarbaswoakari Patrika*.¹⁴ It was primarily at Vidyasagar's instance that the Age of Consent Act was passed in 1860 which fixed ten as the age of the girl below which consummation of marriage was illegal.¹⁵ The Act was ultimately incorporated in the Indian Penal of 1860 with a penal provision, the offending husband would be punished for 'rape.'¹⁶

The inadequacy of protection given to child wives by this Act was raised by the Parsi social reformer Behramji Merbanji Malabari in his 'Note on Infant Marriage and Enforced Widowhood,' published on 15 August 1884. Malabari urged the passing of a civil law prohibiting child marriage altogether.¹⁷ The Note made a tremendous impact on the minds of Indians but the foreign rulers preferred to proceed with caution. The official policy of the British Government after the assumption of the administration of India by the Crown in 1858 was one of *laissez faire* in socio-religious affairs of the local people.¹⁸

On 9 January, 1891 Sir Andrew Scoble, the Law member of the Viceroy's Council, took a cue from the suggestion of Dayaram Gidamul, an Assistant Judge of Ahmedabad and an ardent supporter of Malabari that the marriageable age of Indian girls should be raised to twelve and placed the Age of Consent (Amendment) Bill in the Legislature. The objects of the Bill were two-fold. One was to protect female children from premature cohabitation and secondly protecting them from the chances of immature prostitution.¹⁹ The Medico Legal Returns submitted by the Civil Surgeons of Bengal indicated that during 1868-1869, the year being taken as a sample, there were 48 cases of 'rape' by husbands in about half of which the victims were below ten. In two cases actually children defiled were five years of age and in 17 cases between six and ten years.²⁰

Dr Jagabandhu Bose, a noted gynaecologist, refused to accept the data as satisfactory. Urban or semi-urban families alone were taken as representing the whole population of Bengal. Bose could put more reliance on the statistics if they were supplied by local medical practitioners instead of European surgeons.²¹ The Law Member strengthened his argument by citing a much publicised case of those days, the Hari Maiti case, which happened in Calcutta in 1889. It showed the danger of premature consummation by an adult husband, 35 years old, which ended in the tragic death of Fulmani, a girl only nine and half years old. The jury of which seven members were Indians, five Hindus and two Muslims, unanimously declared Hari guilty of causing death of Fulmani. But since the girl had crossed the age which

at that time was the Age of Consent, Hari could not be adequately punished, he was sentenced only to one year's imprisonment.²²

One more factor is believed to be the precursor for the passage of this legislation. In 1880, Rukmabai, a 22-year-old woman was taken to Bombay High Court by her husband Dadaji as she refused to recognise the marriage rights. She was married as a child to him and argued that the marriage was not binding after 11 years of separate living. She eventually lost the case.²³ A compromise was reached out of court. She paid Dadaji Rs.2000. In return, her husband agreed not to press for the execution of the decree for the restitution of conjugal rights. Thus, she was saved from having to go to prison for six months.²⁴

The present essay tries to see how the Bengali Public reached to a penal legislation with a social reform touch. Was the entire Bengali population against the contemplated legislation? Did the Bengalis smell a rat at the official manner to effect a social reform in an indirect manner? Was the opposition more against the hasty promulgation of the law than the law itself? Was there any reasonable ground to fear that the Age of Consent was only a prelude to further encroachment by an alien government upon the religious liberty and social independence of the local people?

An idea of the opinion of the Bengali elite society may be discernable from the study of the proceedings of various public bodies of Bengal. The British Indian Association opposed the Bill very strongly. Raja Peary Mohan Mukherji reminded the Government, on 8 October 1886, of the resolution, adopted earlier, that in the competition between legislation, on the one hand, and caste and custom, on the other, the condition of success was that the legislation should keep within its natural boundaries and should not place itself in direct antagonism to social opinion.²⁵ Lord Landsowne, the viceroy (1884-1894) had his answer to this point: "In all cases where demands preferred in the name of religion would lead to practices inconsistent with individual safety and the public peace and condemned by every system of law and morality in the world, it is religion and not morality which must give way."²⁶

Rajkumar Sarvadhikari, the Association's Secretary remarked that to avoid the danger of premature maternity the young couples, if forced to avoid each other's company, would be exposed to serious consequences. A person, if he was rich, would not usually agree to keep his son's wife in the family of her comparatively poorer father. What was most important, Sarvadhikari pointed out, if the child wife unfortunately lost her parents she would not be able to go to her husband because she had not crossed the proposed Age of Consent.²⁷

The Indian Association supported the Bill but with reservations. Surendranath Banerjee urged the Government to reconsider if cohabitation with an immature wife could be regarded as heinous an offence as 'rape.' Rape so far as a woman was concerned, meant a social stigma and life-long ignominy.²⁸ Conservative Muslims in Bengal felt concerned, Syed Amir Hussain, Secretary of the Central National Muhammedan Association while supporting the Bill in principle expressed worried about possible police excesses.²⁹ Nawab Bahadur Abdul Latif Khan of Muhammedan Literary Society observed that the Islamic Law sanctioned consummation only when the wife had reached puberty and had also attained such physical development which rendered her fit to cohabit with her husband.³⁰ Moulvi Abdul Jabbar, a Deputy Magistrate agreed with the above view but he expressed his fear that in particular instances the amendment might affect the interest of married Muslim girls. In the absence of consummation the wife, if divorced, would not be entitled to alimony, the subsistence allowance. The larger section of the Muslim community, especially the poorer section who, out of indigence, were impelled to marry their daughters early, was apprehensive of the impact of the Bill.³¹ *Ahmadi*, a fortnightly journal of Tangail observed on 12 February 1891 that the Bill went against the precepts of Islam.

Opinion of the Hindus regarding the efficacy of the Bill differed from person to person. Ramesh Chandra Dutta of the Indian Civil Service favoured the Bill. These were a large number of instances of consummation of girls before they attained puberty, hence raising the age of consent was, according to Dutta, necessary.³² Raja Durga Charan Laha of the Suvarnabanik Community also supported the Bill. Kulin Brahmins often kept their daughters unmarried up to a good old age, the Raja found no reason why other sections of the society could not follow their example.³³ Aswini Kumar Datta of Barisal was however opposed to any sort of Legislative interference with conjugal relationship of the local people.³⁴ Poet Nabin Chandra Sen, then a Deputy Magistrate at Feni (Chittagong) observed that the practice of infant marriage had been receiving a check but he considered that it was due not so much to the influence of the West but for difficulty in finding suitable matches easily.³⁵

To Manomohan Ghose, a celebrated barrister, the practice of permitting marriage to happen at any age and to stigmatise an important marital relation between husband and wife as 'rape' was anomalous indeed. Manomohan was by no means an advocate of child marriage but he saw no reason why an Indian husband was liable to be punished with transportation for life while an Englishman in England was liable to be punished with hard labour for the same offence. Incidentally, the Criminal Law Amendment Act (1885) in England raised the age of felonious assault from 12 to 13 and the 'age of consent' from 15 to 16.³⁶

Justice Sir Ramesh Chandra Mitra opposed the Bill. Ramesh was no orthodox person who had the habit of criticising every British attempt of social reform. He had liberal views about overseas travel of the Hindus and curtailment of marriage expenditure. He emphasized that in Bengal because of its climatic conditions, signs of puberty often appeared in girls before they reached twelve. So fixing the age of consent at 12 would mean unwarranted interference with domestic concerns.³⁷

The flame of passion for social reform was ever bright in Iswar Chandra Vidyasagar. He was lying seriously ill when the government sought his views on the consent Bill. From his death bed he supported the spirit of the Bill in so far as it tried to protect the child wives. But Vidyasagar did not approve that the 'age of consent' should be arbitrarily set at 12.³⁸ He pointed out that the punishment prescribed for non-observance of the rite of *garvadhana* was merely of a spiritual character, there was no Sastric injunction in favour of the practice. Vidyasagar categorically maintained that it should be an offence for a man to consummate marriage before his wife had her first menses,³⁹ and thus amend the earlier wrong done in 1860 of fixing the 'age of consent' at 10.

The Brahma Samaj, in general, gave support to the Bill. Keshab Chandra Sen suggested 14 as the minimum marriageable age of girls. He wanted to leave it in the hands of time to develop the reform into maturity.⁴⁰ In 1873, long before the present Bill was introduced, a batch of young men, under the leadership of Nabakanta Chatterji, formed a league to oppose child marriage. They issued a tract called 'Mahapap Balya Bibaba.'⁴¹ Pratap Chandra Majumdar wondered if the educated Bengalis were genuinely opposing the Bill on any religious ground or that they were just showing their power of agitation against the Raj.⁴² Brahma leaders like Krishna Kumar Mitra and Heramba Chandra Maitra were of opinion that the evils of child marriage could not be removed by simply enacting a law raising the 'age of consent' by two years.⁴³ In fact, the enlightened section of the Bengali community was not unconscious of the ills associated with child marriage but it was not convinced that a mere amendment of the penal law would serve the desired effect.

The general middle class Bengali population was mostly apprehensive about the move, *Dainik Samachar Chandrika* on 30 March 1891 wrote that the three decades of 'peaceful rule' after 1857 had made the rulers feel strong and confident of their power to go back on their pledge which they had diplomatically given in 1858.⁴⁴ Popular indignation was so intense that some agitational programmes were planned. One Gopal Chandra Mukhopadhyay from Sovabazar Raj Bati appealed to the people "whoever thinks that such a law ought not to pass, should whether he be a Hindu or a Mussalman, educated or uneducated Zamindar or trader, Mahajan or employed in service write out and send up a petition without delay."⁴⁵ *Dacca Prakas* on 6 January 1891 commented that the Government's professed solicitude for delaying marriage was taken as a deliberate step to tempt girls for an unchaste life and thus prepare the ground for further legislation to usher in western pattern of sexual morals.⁴⁶ The Age of Consent Bill also coincided with the decennial census operations of 1891. The questioning of parents about the number of children was attributed to the motive to reduce India's millions to such proportions as could be effectively controlled by available men of the ruling race.⁴⁷

Public concern came to be expressed through mass meetings in Calcutta as well as in different mufassal centres. A 'graduates' meeting, as reported in the *Indian Nation* on 26 January 1891, was convened at the Albert Hall, Calcutta, on 21 January where views for and against the move were offered.⁴⁸ On the same evening, as *The Statesman* on 23 January 1891 reported, a meeting was held at the residence of Nandalal Bose at 65, Bagbazar Street, where the Bill was opposed vigorously.⁴⁹ At the meeting held at the Sovabazar residence of Raja Kamal Krishna Bahadur it was resolved that reforms, to be really useful, should come from within and not forced upon by the existing legislative set up.⁵⁰ On 15 February a meeting in favour of the Bill was held at the Wellington Square residence of Hem Chandra Malik. There was, however, a rumour, as suggested in the *Indian Nation* on 26 January, 1891, that this meeting was actually sponsored by Sir Andrew Scoble to garner support for the Bill.⁵¹

Hemendra Prasad Ghose, the famous journalist gave in his Diary a pen picture of a mass meeting at the Calcutta Race Course Maidan held on 25 February. On 24th a hackney carriage paraded the streets with placards. A man dressed in a 'cadavarous bandman's dress was put on the top of the carriage. It was an unusual attempt to attract men to attend the meeting.⁵² People, Bengalis, Marwari, Marathi, Punjabi formed, as the *Sudhakar*, a journal reported on 27 February 1891, 'one sea of heads.' The meeting resolved to appeal to Her Majesty for withdrawal of the Bill.⁵³ Young Hemendra Prasad, then only 15, however, felt extremely sad to see all these things.⁵⁴ The local press had played a distinct role in this popular upsurge. The *Bangabasi* was prosecuted for publishing articles entitled, 'A Revealed Form of English Rule'; 'An Outspoken Policy is the Best for Uncivilised Persons'; 'The most important and the First Idea for Uncivilised Persons'; and 'What is to be End.'⁵⁵

Opponents of the Bill tried another means to focus their antipathy. In 1891, a satirical play, *Ain Bibhrat*, was published. Harendralal Mitra its author, showed that the provisions of the Bill appeared as engines of oppression with

chances of implicating innocent husbands in false cases and that greedy and unscrupulous policemen were likely to exploit the situation.⁵⁶ Amritlal Basu's play, *Sammati Sankat* was a satire on the pseudo reformers among the local public of the day.⁵⁷

Though women were not usually consulted for determining the effect of child marriage the womenfolk of Bengal, as *The Statesman* reported on 19 March 1891, showed their reaction. A memorandum, signed by some hundred and fifty Hindu, Muslim, Buddhist, Brahmo and Christian ladies of Calcutta was submitted to the viceroy. The Government was lauded for its attempt to protect the persons of immature girls but a concern was expressed of fixing the age at 12. Fourteen was considered the proper age when a girl became competent physically and mentally to discharge the obligation of a wife. Knowing the feelings of the country women the petitioners were sure that a girl would prefer suffering grievous hurt to practically becoming a widow for life by letting her husband face transportation for life.⁵⁸ Incidentally, Pandita Ramabai and Rukhmabai, in the Bombay Presidency also made a case for the ban on child marriage in their magazines and social reform organisations. Anandi Gopal Joshi, a Maharastrian lady doctor advocated for interference of the British Government in child marriage.⁵⁹

A number of meetings were held at mufassal centres. Some three hundred assembled at the Krishna Nagar Rajbati on 21 January where most of the voices was against the move but some persons supported the attempt.⁶⁰ Another crowded meeting was held at Berhampur on 25 January. One gentleman tried to speak in support of the Bill but the audience hissed him out of the platform.⁶¹ About the meeting at Mymensingh on 29 January, curiously enough two versions appeared in *The Statesman* on the same day, 30 January. One was that a handful of persons favoured the Bill but owing to strong public protest the meeting proved a flop. The other version gave a reverse picture.⁶² The meeting at the Serampore Vernacular School on 15 February, under the chairmanship of Zamindar Nandalal Goswami also supported the Bill. Nevertheless a memorandum was prepared suggesting that a sub-clause should be added to Section 375 of the Indian Penal Code so that in case a girl attained puberty before twelve consummation of marriage with her should not be considered 'rape'.⁶³ The Bali Sadharan Sabha organized a meeting on 18 January at Bali Rivers Thompson School. Opinion was expressed that girls for whose protection the husbands would be transported or sent to jail would have their lot in life made unmistakably bitter. Attempts would be made to prove girls really above 12 to be under that age and conversely girls really under 12 would be made out to be over 12 and this would be only too easy in a country where there was no registration of birth. A resolution was taken that the Bill was a clear infringement, both in letter and spirit of the 'gracious' proclamation of 1858. Such momentous social changes could only be the effect of a gradual change of public opinion and not of a fiat of the legislature. The attempt to hasten social reform by legislative pressure could produce an unhealthy reaction and prevent the orthodox and advanced parties from gradually coming to an agreement in the direction of reforms.⁶⁴ The meeting at Khurrut (Howrah) on 18 January at Chittagong and Burdwan both on 31 January and at Khardah on 1 February, all protested against the move, as we find in *The Statesman* on 3 February 1891.⁶⁵

Public protests did not go absolutely unheeded. A Select Committee of the Legislative Council was set up on 23 January with the idea of consulting public opinion.⁶⁶ It appears from the Note of the Chief Secretary of Bengal at least two important modifications of the Bill were suggested even by those who supported the Bill. Firstly, premature consummation should not be treated as 'rape' since it was confined to husband and wife. Secondly, no police officer should investigate any offence under the new law. The Select Committee only partially met the second suggestion, no police officer below the rank of Inspector should investigate the offence and that only Presidency Magistrate or District Magistrates would be entitled to direct an enquiry on an allegation of 'rape'.⁶⁷ The Presidency or District Magistrates, since they were mostly Europeans, the *Bengalee* commented on 14 March 1891, it was a danger to allow them, men of a different cultural background, exclusive power to try an offence of this nature.⁶⁸

Unable to change the official attitude by means of persuasion the agitators of Bengal invoked the blessings of goddess Kali by performing a *Mahapuja a Kalighat* on 25 March. Among the thousands who gathered there were no doubt, some ardent devotees, but perhaps many were drawn from motives other than religion. Amidst beating of drums they shouted from a song composed by Amritlal Basu:

Raj bidhi kare Raja
Sukhe jate rahe praja
E ain je diner saja
Rajay Sabai bujhaina

(King promulgates law for the sake of peace of the subjects. This law will punish the poor, let us all make the king realise.)

The song was sung by the artistes of the Star Theatre. The goddess was impleaded through this song to make the authorities understand the serious implications of the Bill. The song had also a hint that the 'benevolent' British Government had been misled about the evils of early consummation by interested persons who had debased themselves by slavish imitation of the west.⁶⁹ A section of the crowd did not remain as sober as becoming men participating in a solemn religious programme. They threw brickbats and uttered abusive languages to passengers travelling in public vehicles.⁷⁰

All hopes that the foreign government might give some weight to local public opinion and modify the Bill accordingly were dashed when on 19 March the Age of Consent Bill was passed into law hurriedly. Sir Ramesh Chandra Mitter who had been a member of the Select Committee to scrutinise the Bill, being disgusted and embarrassed by his official position, absented himself from the Council deliberations on the second reading of the Bill, on complaint of illness.⁷¹ Incidentally, a case of death of a girl of eleven because of pre-puberty consummation was published in the *Englishman* on 18 March.⁷² Since the victim had crossed ten the Sessions Judge of Murshidabad could not punish the accused Enayet Sheikh adequately. The *Amrita Bazar Patrika* found a sinister motive behind the publicity of the case. The case was decided only two days before the Consent Bill was passed and portions of the judgement were wired and published in the *Englishman* before the records which had been sent to the High Court had even reached the hands of the justices.⁷³

The agitated public of Bengal, however, drew some comfort from the declaration of Sir Charles Elliot, the Lieutenant Governor of Bengal, that no prosecution could be instituted on an information of anybody who might have been a private enemy of the accused or his family or a retailer of gossip. The Magistrates of Bengal were directed to entrust the charge of investigation of these cases to no police officer but only to Indian Deputy Magistrates.⁷⁴

The Age of Consent controversy of 1891 did indeed create a deep impact on the people of Bengal. It was clear to them that the origin of the project had its roots in a desire of social reform. But the genesis of the measure, the haste with which the Bill was introduced in the Council and carried through it, all these factors filled the minds of a large section of the Bengalis with alarm, hence the outcry. What hurt the popular sentiment most was the uncalled for speed with which the Bill was passed. Popular protest might have annoyed the social reformers but what was really protested against was the indirect and arbitrary manner of enforcing a social reform under the threat of punishment without going deep into the problem of infant marriage.

Opposition was not against the idea of modification of marriage laws. The government was urged to follow the line adopted by the Hindu and Islamic lawmakers who prohibited consummation before puberty without arbitrarily fixing an age. The laws of nature being superior to those of civil society, the husband, as many believed, had no right to exercise his marital right except in accordance with the laws of nature. Mere legislation to govern people's social customs was no real solution. The best remedy for the evil was to be found out and applied only by the social leaders of the people themselves.

The Government, as pointed out at the Bali Sadharan Sabha, could put more faith in the potency of education, which slowly but surely could eradicate the real evils in Indian society. Already in the educated society the age of marriage had gradually been raised considerably.⁷⁵ The Bengalis indeed were not entirely swayed by emotions alone, their criticism was not wholly irrational. In fact, a penal legislation could be effective only when no other deterrent were found to stop an evil. They wondered if such a necessity actually arose. The real need was the passing of a civil law invalidating all marriage before a certain minimum age. Such a law came into effect not until 23 September 1929 when the Child Marriage Restraint Act (Act XIX of 1929) better known as Sarda Act was passed. It put the minimum age for girls and boys to marry respectively at 15 and 18 years. Despite that, as the Census figures would bear out, the practice still continuous. According to UNICEF 'State of the World Children – 2009 Report,' 47% of India's women aged 20-24 were married before the legal age and 56 % of these were in rural areas. The report also shows that 40% of the world's child marriages occur in India.⁷⁶

Notes

¹Dr .S. Yasodhamani is an Assistant Professor of History at Government Arts College (Autonomous), Karur, Tamil Nadu, India.

- ²Rape is the act of having carnal Knowledge (gratification of sexual desires) of a women without her conscious permission" (If the permission is extorted by force of fear of immediate bodily harm or by fraud it is not 'conscious permission'). Stephen, JF 1950 (9th Edition). *A Digest of Criminal Law*, MacMillan, London, p. 262.
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- ⁵Ibid., Ch.II, Causes of Infant Marriage, Sec.III, p.70.
- ⁶Ibid., p. 69, Views of Kedareshwar Roy, Judge, Small Causes Court, Calcutta.
- ⁷Sarkar, Tanika, 'A Prehistory of Rights: The Age of Consent Debate Colonial Bengal,' *Feminist Studies*, Sept. 22, 2000.
- ⁸*Dainik O Samachar Chandrika* (Calcutta), 11 Jan. 1891.
- ⁹*Saturday Herald* (ed. Sarat Chandra Roy), Calcutta Weekly, 2 Aug. 1890, Legislative Proceedings, no. 5, April 1891, Government of India.
- ¹⁰Quarterly Series of the Friend of India 1821, Vol. I, No. 2, Article on The State of Female Society in India, noted in Dutta, Abhijit 1992, *Nineteenth Century Bengal Society*, Minerva, London, pp. 122-123.
- ¹¹Dutta, Abhijit 1992, *Child Marriage: An Adult Obsession*, Minerva, London , pp. 39 - 40.
- ¹²Ibid., pp.43 - 44.
- ¹³Tripathi, Amales 1974, *Vidyasagar:The Traditional Moderniser*, Orient Longman, Bombay, p. 68.
- ¹⁴Vidyasagar, Iswar Chandra, 'Balyabibhaer Das' in Vidyasagar Rachana Sangraha, 1972, Vol. II, pp. 3- 9.
- ¹⁵Tripathi, op.cit., p. 69.
- ¹⁶Section 375 and Section 376 Indian Penal Code, 1860.
- ¹⁷Gidumal, Dayaram, *Life and Life work of Behramji M.Malabari*, Bombay: Education Society Press, 1888, pp. 1-5.
- ¹⁸"..... in framing and administering the Law due regard be paid to the ancient rights usages and customs of India". Proclamation under Her Majesty's Command, 1 Nov. 1858 by the Governor-General of India, Home (Public), Proceedings, Government of India, No. 2, 5 Nov. 1858.
- ¹⁹Scoble, Sir Andrew, Law Member of the Viceroy's Council, 9 Jan. 1891. Proceedings of the Legislative Council of the Governor General of India, Vol. XXX, p. 9.
- ²⁰Simmons, WI, Secretary, Public Health Society, Calcutta to Chief Secretary, Bengal, 1 Sept. 1890, Judicial Proceedings,(Bengal), No. 105, June 1893.
- ²¹Bose, Jagabandhu, to Secretary, British Indian Association dated 9 March 1891. Publications of the British Indian Association, Vol. VI, pp. 385 - 387.
- ²²Bandyopadhyay, Sekhar 2004, *From Plassey to Partition: A History of Modern India*, Orient Longman, New Delhi, pp. 237-238.
- ²³Ibid.
- ²⁴Sagade, Jaya 2005, *Child Marriage in India*, Oxford University Press, New Delhi, p. 40.
- ²⁵Mukherji, Raja Peary Mohan, to Chief Secretary, Bengal, dated 26 Jan. 1891, Judicial Proceedings (Bengal) no. 124, June 1893.
- ²⁶Quoted in the Report of the Age of Consent Committee 1928 -29, Chairman Sir Morepant Viswanath Joshi, p. 103.
- ²⁷Sarvadhikari, Rajkumar , Secretary British Indian Association to Chief Secretary, Bengal, 9 July 1891, Publications of the British Indian Association, Vol. VI, p. 547.

- ²⁸Banerjee, Surendranath, Secretary of the Indian Association to Chief Secretary, Bengal, 6 Feb. 1891, Judicial Proceedings, (Bengal), No. 168, June 1893.
- ²⁹Syed Amir Hussain, Secretary Central National Muhammedan Association to Chief Secretary, Bengal, Judicial Proceedings, (Bengal), No. 135, June 1893.
- ³⁰*The Bengalee*, 21 Feb. 1891.
- ³¹Maulvi Abdul Jabbar, Deputy Magistrate, Alipore, to Chief Secretary, Bengal, 30 Jan. 1891, Judicial Proceedings, (Bengal), No. 31, June 1893.
- ³²Dutt, RC, Collector, Burdwan, to Commissioner, Burdwan Division, 22 Sept. 1890, Judicial Proceedings, (Bengal), No. 110, June 1893.
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