Chapter Three

Historicizing Pleasure and Pain, Consent and Unconsent in 19th century British India and Mysore: Rape and Child Marriage
The idiom of pain and pleasure is significant to a study of rape because rape and consent are often translated into that idiom in many discourses, especially in the courtroom. Rape has to be established as the negation of pleasure in courtroom litigations, to the point of absolute and undoubted exclusion, as the case of Gungamma illustrates. I had argued, in the previous chapter, that Gungamma—or the rape victim in a courtroom trial—is more intelligible as a sexual agent-in-pleasure, who is also a victim-in-pain, rather than solely as one or the other.

There is a discernible movement between the universal and the particular in the two chapters that have gone before. Chapter 1 particularised rape to a specific historical context. It deconstructed large teleologies of gender and of rape. The second chapter, on the other hand, examined the constructions of Woman and of pleasure and pain in contemporary feminist theoretical discussions, and offered a perspective. In this chapter, which follows the discussion of the case and the perspective, I therefore ask whether pleasure and pain are universal, pre-discursive categories of experience or historical-discursive phenomena.

As a historian of rape laws and trials in colonial India, I grapple with the possibility of historicizing both pain and pleasure, of understanding sexual pleasure and pain as historically constituted discourses, rather than as ahistorical, almost natural experiences. In this chapter, I attempt to historicize pleasure and pain, rape and consent, in colonial India. I do this by re-visiting certain gendered debates that fraught 19th-20th century colonial India, and have since informed much contemporary postcolonial feminist history-writing. Through the debates on sati, widow re-marriage and child marriage may be traced a recurring motif of sexual pleasure and pain in the representations of the Hindu woman/ wife. The imagery of pleasure and pain recurred in the 19th century debates from sati to widow re-marriage to infant marriage, thereby creating a reiterated discourse of a sexuality that was uniquely, and monolithically, Hindu-Indian. Since this discourse was located on the site of Hindu-Indian wives, it also negotiated a uniquely Hindu-Indian conjugal sexuality. Possibilities of female consent and unconsent came to be bounded by this discourse of Hindu-Indian conjugal sexuality and the imaginations of pleasure and
pain contained therein, thereby indicating that pleasure and pain are not ahistorical phenomena, but discursive experiences.

Rape forms an interesting limit to this discourse of conjugal sexuality, because in most social and legal discourses, rape is the Other of marriage. Rape is also the Other of consent, and marriage, on the other hand, is consent. Yet in 19th century colonial India, the clear distinction between rape and marriage was blurred under the category of child marriage, in ways that I will examine shortly. By examining the inter-penetration of the categories of rape and premature consummation in child marriage, I try to contextualize the discourses of pleasure and pain, consent and unconsent in colonial India.

Section I. Pleasure and Pain: The pre-languages of universal human experience or the languages of cultures?

As I said before, as a historian of rape laws and trials in colonial India, I grapple with the possibility of historicizing pleasure and pain, of understanding sexual pleasure and pain as historically constituted categories, rather than as ahistorical, almost natural experiences. How does one historicize pleasure and pain? Physical pain, Elaine Scarry says, is a state of consciousness that, across cultures, is resistant to language. Language, which can convey (the merest whim of a schoolgirl) most other interior states, is shattered when it encounters the rigidity of physical pain. The person in pain is reduced to a primal, pre-linguistic state of cries and groans. Bereft of language, the person suffers an experience that is unsharable. It is, thus, possible for other persons to be in the presence of someone who is in great pain, and yet not know it. The difference between “having pain” and “hearing about pain” in such cases becomes almost the fundamental difference between having certainty and having doubt.1 It may be added that pleasure, which is the Other of pain, perhaps also causes a reversion to a pre-language of cries and moans.

How does one take on the daunting task of historicizing these interior states that resist an entry into language itself? Perhaps one possibility of historicization lies in examining
how these “radically private experiences” enter the realm of public discourse. Elaine Scarry refers to those persons who, themselves not being in pain, speak on behalf of those who are. She identifies four contexts in which a language is invented to express the pain of others: medicine, law, the work of institutions like the Amnesty International, and art. In each of these contexts, pain is forced into language, given a vocabulary and thereby enters public discourse.

In the context of colonial India, who were those who spoke on behalf of others’ pain? This inquiry would perhaps enable us to question whether pleasure and pain are in fact anterior, pre-linguistic states, or whether they enter the languages of cultures to determine who can and cannot feel pain/pleasure, and who speaks for those who do. It would enable us to historicize pain in colonial India along the following trajectories: on whose bodies was pain inflicted, how was pain erased in cultural discourses about those bodies, and how was it represented and made visible by others who spoke on behalf of the body in pain?

Consider sati. Sati was the practice by which a woman who had lost her husband immolated herself upon his funeral pyre. While the sati burnt alive on her dead husband’s funeral pyre, throngs of people stood and watched. Through this spectacular event, the “radically private” experiences of pain and death were enacted in the public realm, and witnessed by crowds of onlookers. How was it that the crowds on the other side of the flames were unknowing of the pain of the woman burning on the pyre? Do we attribute this unknowingness of the people who watched the sati within feet of her con cremation, to the inexpressibility and unshareability of physical pain? Or is there another explanation involved here: that the watching crowds were desensitized to the pain of the sati, because con cremation was culturally sanctioned, it was part of a cultural script.

The latter possibility enables ways of understanding the inexpressibility of pain, apart from its resistance to language. It illustrates that within different cultural languages or scripts, the experience of pain is always-already erased from certain bodies. These bodies are, in such languages, not entitled to the privilege of feeling pain. The experience of
pain, therefore, does not exist anterior to language, but is configured within its cultural possibilities/validations. The privileged body is the one whose pain is possible within the cultural script of language. Power thus comes into play in determining who is the privileged subject in pain, and conversely, who is not, just as it also determines who are the subjects who will speak for the pain of other subjects.

The sati burning on her husband’s funeral pyre is a subject who does not enter the cultural language of pain. In the cultural script, she is, instead, a figure of awe and reverence. For, through her voluntary death, she expiates the sins of her natal and husband’s families.

When the British proposed the abolition of the practice of sati, native male opinion was split into those who opposed the abolition and those who supported it. In the arguments of both camps, however, the sati did not figure as a subject-in-pain. The debates centred instead around the scriptural sanction, or lack thereof, validating the practice. Feminist theorists like Lata Mani have critiqued this tenor of the debate among the elite native men, for reducing the sati to a mere site on which tradition was debated. According to Lata Mani, the gendered dimension of the debate, i.e. the subjectivity of the woman, was only incidental to the debate on tradition.

I would like to argue instead that it was perhaps inevitable that the debate on sati should be one of contentious traditions. And also that the debate on contentious traditions was inextricably a debate on the subjectivity of the sati. For, in the cultural script, the sati was the woman-subject who originated in the shastraic scriptures, the subject who brought spiritual benefits to her ancestors, and saved herself from being reborn as a woman, through her act of self-immolation. The debate on sati discussed these cultural subjectivities of the sati. In the cultural script, the sati was not the subject in pain. It was, therefore, perhaps inevitable that the sati’s subjectivity as a woman in pain and suffering should not enter the language of the debate.
However, the sati debate was not entirely one of contentious traditions. The sati did enter the reformers’ arguments as a woman-subject in pain. Rammohun Roy, who crusaded for the abolition of sati in Bengal, wrote thus regarding the insensitivity of the populace to the pain of the sati:

“That in other cases you show charitable dispositions is acknowledged. But by witnessing from your youth the voluntary burning of women amongst your elder relatives, your neighbours and the inhabitants of the surrounding villages, and by observing the indifference at the time when the women are writhing under the torture of the flames, habits of insensibility are produced. For the same reason, when men or women are suffering the pains of death, you feel for them no sense of compassion, like worshippers of female deities who, witnessing from their infancy the slaughter of kids and buffaloes, feel no compassion for them in the time of their suffering and death.”

Rammohun Roy makes the interesting point that the sati did not enter the language of pain in Hindu society because she was culturally debarred from it. The fact that Roy felt a sympathy for the sati as a subject –in–pain that exceeded the cultural script and her subjectivity therein, is read by certain post-structuralist historians as a sign of his being influenced by Enlightenment Rationalism. Dipesh Chakrabarty, for instance, reads Roy’s words as an appeal to the natural human sympathy of the Hindus, which was blocked by habits of insensitivity. Chakrabarty traces this notion of a natural human sympathy to similar notions of a transcendental universal human nature in the works of Enlightenment thinkers.

Dipesh Chakrabarty’s reading of Roy is deeply problematic because it ascribes any dissensions from the cultural script, any critique that transcends cultural imaginations, such as Roy’s representation of the sati as a woman in pain, to the influence of Enlightenment Rationalism. At best, Chakrabarty’s argument posits a determinism of cultural discourses, which negates the possibility of any agency, any critical capacity in subjects within cultural discourse. At its worst, it [an argument like Chakrabarty’s] essentializes and Orientalizes the East: it also irrationalizes it. It thereby reinforces the false anti-thesis of the Western universal and the coloured- cultural, which I will discuss in the next section.
Those Indians who opposed the abolition, or supported the practice, of sati also debated her scriptural subjectivities: her origins in the shastras, her willing surrender to the flames in the hope of spiritual benefits. However, the sati also appeared in their arguments as a subject in pleasure, and in this representation, she was the transcendental natural Woman, a universal and essential female subject, whose pleasures were ahistorical and timeless. In an essay where Rammohun Roy imagined an exchange between an advocate of sati, and an opponent, the advocate spoke:

"...Women are by nature of inferior understanding, without resolution, unworthy of trust, subject to passions, and void of virtuous knowledge...therefore, if she does not perform concremation, it is probable that she may be guilty of such acts as may bring disgrace upon her paternal and maternal relations, and those that may be connected with her husband. Under these circumstances, we instruct them from their early life in the idea of concremation, holding out to them heavenly enjoyments in company with their husbands. ...From this many of them, on the death of their husbands, become desirous of accompanying them." 5

This argument moves from enumerating the natural faults and passions of Woman, to describing how culture works on this debased nature to produce the sati—the woman whose desires are channeled towards one man, her husband. The sati as an agent-in-pleasure in this argument therefore stood at the precipice of both nature and culture. She was both the woman whose nature could lead her astray if she lived, and the woman who was culturally conditioned to desire her husband and join him in death in the hope of heavenly enjoyments in his company. The sati ascending her husband’s funeral pyre was thus both the cultural subject whose pleasures were enacted in her voluntary self-immolation, and the transcendental woman, whose natural passions would burn to death in the consuming flames. She was both the wife, tethered yet to the pleasures of her husband’s bed or pyre, and the widow, unclaimed, unpossessed and unharnessed by culture yet again.

Thus, the arguments of the advocates of sati turned on the volition and pleasure of the sati as a desiring subject-agent. In other words, they hinged on a notion of consent. The
arguments of the opponents of sati, on the other hand, emphasized the aspects of force and murder, the denial and destruction of both subject and agency: the tying down to the pyre, the pressing down with bamboo, the writhing under the torture of the flames, and the most "heinous crime of woman-murder". Pleasure and pain translated into consent and unconsent in the idiom of the debate. And all the while, the sati continued to burn, unable to tell of either her pleasure or her pain, muted and unable to speak simply because she did not come back from the flames to represent herself. The sati, as subaltern woman, could not speak, because she was quite literally dead.

The idiom of pleasure and pain, however, survived the sati debate and recurred in the 19th century time and again, in other debates, other cultural imaginings of the gendered subject. From sati to widow re-marriage to infant marriage, images of pleasure and pain were repeated in the 19th century debates on gender. As this motif of love and force, pleasure and pain was reiterated in the century, it took the form of a discourse about a sexuality that was uniquely, and essentially, Hindu-Indian. This discourse was located, moreover, on the site of the Hindu wife. After sati, the Hindu wife became yet again the site representing love or violence, consent or unconsent in debates on widow re-marriage and infant marriage. As this motif was continuously imagined on the site of the Hindu wife, the discourse that resulted was also one of a Hindu-Indian conjugal sexuality. This discourse of pleasure and pain constituted the sexual dimension of what Tanika Sarkar identifies as the discursive site of Hindu conjugality.6 Possibilities of pleasure and pain, consent and unconsent, came to be bounded by the discursive imaginings of this Hindu-Indian conjugal sexuality.

Section II: Rape within Marriage and Child Marriage in 19th Century British India.

In this section, I will examine the contours of this discourse as they took shape in the 19th century, through the discussion of two sexual categories: rape and infant marriage. My choice of these categories is informed by the logic of their inter-penetration. As I indicated in introducing this chapter, rape and marriage are generally antithetical in most legal and social discourses, especially in the 19th century. The distinction hinges on
consent, as rape is the lack of consent. All intercourse within marriage, on the other hand, is equated with consent. Yet in colonial India, this clear distinction was blurred due to the British government’s introduction of an age of consent in the rape law.

One of the clauses of the rape law enacted in 1860 was that which introduced an age of consent in colonial India. Under the provisions of the age of consent clause, intercourse with girl-children under a certain age (10 years, in the I.P.C. 1860) became rape, irrespective of the consent or unconsent of the under-age girl. Keeping in view the Indian custom of child marriage, the colonial law-makers extended the protection of the age of consent to married girl-children as well. This extension meant that intercourse by a husband with his wife, which was otherwise an exception to rape, would be deemed rape if the wife was under ten years of age.

Through this extension, the legal category of rape within marriage, albeit with under-age wives, was introduced in the colony, while it was non-existent in the British law of the same time. The native response to the notion that Indian girl-wives could be raped by their husbands, again discursively negotiated the idiom of pleasure and pain in Hindu-Indian conjugal sexuality, as I will examine in this section.

The age of consent in colonial India as laid down by the I.P.C. 1860 was 10 years. This was the age under which intercourse with a girl, “with or without her consent” became rape. In contemporaneous Britain, on the other hand, the age of consent introduced by the Offences Against the Person Act 1861 was 12 years, as discussed in the introduction.

The history of age of consent legislation in colonial India, however, pre-dates the enactment of the Penal Code in 1860. The earliest statute in evidence on the matter of the age of consent can be traced back to 1828, to Section LXV of the statute 9 Geo. IV, c. 74, which made the “carnal knowledge” of a girl under the age of eight a felony punishable with death, and of a girl between 8 and 10 years of age a misdemeanour punishable with imprisonment for such a term as was awarded by the court. Rape, however, was covered under a separate section in the statute. The preceding section, Section LXIV, made rape a
felony punishable with death, i.e. an offence of the same magnitude as the carnal knowledge of a girl under eight years of age.7

The next stage in age of consent legislation in colonial India is significant for the disruption it caused in the social-structural discourses of marriage, rape and childhood in colonial India. On 14th October 1837, the Indian Law Commissioners presented a draft Penal Code, which incorporated the age of consent in the section on rape. The draft Section 359 defined intercourse by a man with a woman as constituting rape under five kinds of circumstances, the fifth of which was “with or without her consent, when she was under nine years of age.” The age of consent in the draft Code of 1837 was, therefore, nine years. While the draft Code thereby linked age and rape, it separated rape and marriage: The exception to all five circumstances described as constituting rape, was intercourse by a man with his wife.

The Indian Law Commissioners made no remarks on this section. However, when the Government of India invited opinions on the draft Code, doubts were expressed about the exception of marital intercourse in the Section 359, in light of the peculiar circumstances of the country, where child marriages were contracted, giving the Indian husband conjugal rights over his legally-wedded child-wife.8 The final Indian Penal Code that was enacted in 1860 incorporated this objection and modified the exception in the section on rape. It also raised the age of consent to from the suggested nine years in the draft Code of 1837 to ten years. As a consequence of these modifications, the Section 375 in the Indian Penal Code, 1860 read:

“A man is said to commit “rape”, who except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:

... Fithly—With or without her consent, when she is under ten years of age.

Exception: Sexual intercourse by a man with his own wife, the wife not being under ten years of age, is not rape.”9
Thus, the startling notion was introduced that a man could rape his own wife, if she was under a certain age. The Indian responses to the notion of rape within marriage were mobilized around a range of positions—progressive, conservative, nationalist and imperialist. These responses have been studied in great detail by historians from the perspective of cultural nationalism and masculinity. My own approach to these responses would be to examine how discourses of child sexuality and sexual agency were configured and appropriated to varying and opposing political effects in them. It is interesting to explore how discourses of child sexual agency were configured in each of them, for this exploration would illustrate that, if such agency is mediated by social structure, so are discourses of political mobilization.

That discourses of political mobilization are mediated by social structure is also evidenced in the differing trajectory of the age of consent debate in 19th century Britain and India. In Britain, the age of consent was raised from 12 to 16 between 1861 and 1922, as I have discussed in the introduction. This increase was a result of morality campaigns by the Social Purity Movement and their highly repressive attitudes towards sexuality. In colonial India too, the age of consent introduced by the British, rose from 10 to 12 years between 1860 and 1891. However, the increase in the age of consent in 19th century colonial India was the result of a highly polarized mobilization wherein 'conservative' and 'progressive' positions on child sexual pleasure/agency and pain/victimization were reversed in comparison with Britain. This indicates that discourses of political mobilization and their 'conservative' or 'regressive' potential are as specific to time and space, as are discourses of rape/consent.

To elaborate, in 19th century colonial India, the age of consent was increased in response to the efforts of progressive social groups and their feminist agendas. Since the issue of age of consent was entangled in the connotations of rape within the cultural institution of child marriage, the drive to increase the age of consent was a feminist response to the consent/unconsent of child-wives.
Dr. Mahendra Lal Sircar, for instance, expressing his support to the Age of Consent Bill of 1891, wrote in a letter to the Chief Secretary to the Government of Bengal:

"… the Hindus, for centuries, in the exercise of marital rights and under the sanction of so-called religion, have been committing the gravest and most brutal outrages on immature female children."

The sense of immature female children being outraged is conveyed in Dr. Sircar’s views. This articulation of the violation of childhood and immaturity in reformist stances, led the discussion to questions of when Indian girls attained maturity: Physiological maturity was equated with a readiness for sexual relations, marriage and motherhood. The age of consent was sought to be laid down at the age of maturity. K.C. Sen, for instance, directed this query in 1871, to medical professionals, both Indian and European, in order to ascertain the age of menarche in Indian girls.

In response, it is interesting to note, some Indian doctors cited the dictates of ancient Indian authorities such as Susruta or Manu. Recent research in Western medicine was also invoked to indicate that ovulation may either precede or follow upon menstruation—that the onset of menstruation was merely a symptom of a process that was underway, and not of its completion. Some of the European doctors consulted also pointed out that laying down a universal age of menstruation was impossible, and that there would always be exceptions to the age thus fixed, which would make the resulting law unsuitable in cases when puberty was reached later.

Evidently, there was in late 19th century colonial India, a new preoccupation with concepts of childhood, puberty and sexual / reproductive maturity, in the wake of the age of consent legislation. The age of consent legislation, in turn, reflected 19th century Britain’s newfound concerns about childhood. Jeffrey Weeks draws upon Philippe Aries’s famous work, *Centuries of Childhood*, to show that prior to the 19th century, there were no representations of a separate state of childhood: “Children were dressed as miniature adults, complete with all the external manifestations of masculinity and
femininity." They were also exposed to the "social aspects of adult sexuality earlier than modern children", which probably made it easier for them to cope with their own biological changes.\textsuperscript{14}

From this lack of an "idea of childhood"\textsuperscript{15} in pre-industrial, medieval society, the nineteenth century witnessed a separation of the state of childhood: "Whatever its origins",\textsuperscript{16} there was in industrial Britain, an emotional investment with children and their needs. This conceptualisation of the "separateness of children" was accompanied by a "socially felt need to protect their purity and innocence",\textsuperscript{17} i.e. to keep them safe from sexual awareness. Children, Weeks says, "became a form of property to be admired and cuddled, to be cared for and above all protected."\textsuperscript{18} This construction of childhood as a distinct state, as opposed to medieval distinctions of merely states of dependence and independence in youth, was a particularly middle class phenomenon. It was as bourgeois a development, and as much a marker of middle class status, as the site of the non-working middle class woman. The middle-class child lived in a longer state of dependence due to "sharper divides in primary and secondary education and at upper levels ... stricter matriculation standards."\textsuperscript{19} Anxieties about child sexuality in this sentimentalized construct of the bourgeois home were symptomatic of "middle class obsessions themselves."\textsuperscript{20}

And what of 19\textsuperscript{th} and pre-19\textsuperscript{th} century India? There are no sustained researches into the changing concepts of childhood in Indian historiography. Age of consent has been approached from the perspective of masculinity, rape and cultural nationalism. But the issues of age of consent and rape within child marriage are also strongly informed by discourses of childhood and child sexuality, which may help us historicize changing notions of childhood in Indian history. This section on child marriage and rape does not presume to be a detailed examination of these issues, but it is an effort to understand some of the evolving concepts of childhood and child sexuality in this period, and locate the co-ordinates of rape and consent therein.
As discussed above, late 19th century colonial India witnessed a new concern with issues of childhood, sexual maturity and puberty. The disruption that brought these issues to the fore was the introduction of an age of consent in the rape law in 1860. Prior to this period, childhood perhaps was not clearly marked as a separate phase, for reasons, not of class as in pre-industrial Britain, but of custom and religion. The Shastras ordained child marriage, and *garbhadan*, i.e. the ritual for the co-habitation of the girl on her first menstruation. While the scriptures ordained this for the upper castes, working class, lower caste groups followed this practice as well through processes of Sanskritisation. The widespread prevalence of the practice will be illustrated in greater detail in the next chapter through statistical analyses, and also in the succeeding section on infant marriage in Mysore. Economic considerations were not absent in perpetuating this custom. The Report of the Age of Consent Committee observed in 1929 that early marriage shifted the burden of a girl’s upkeep from her parents to the husband or his parents. Among the working classes, the girl-child was a working member of the family and therefore not a burden to be transferred, yet there was a high incidence of child marriage even among these classes. This was due to cultural reasons: the influence of upper caste behaviour in regions where they were in a majority and the motivation to protect the chastity of outdoorsy, rural, working class girls.  

Apart from the discussion of age of menarche and the biological fitness of young girls for intercourse, marriage and motherhood, there was also an anxiety about the sexuality of pubescent children, both male and female. B.M. Malabari, who campaigned tirelessly for the increase in the age of consent to 12 years, wrote about the detrimental effects that early exposure to sexuality had on the psyche and health of young boys.

On the contrary, those who opposed the reform, i.e. those who argued that the age of consent should not be raised, expressed concerns about sexual morality, especially of girls, if their pubescent desires were not harnessed in marriage. This argument surfaced even in 1929, when the Hindu Child Marriage Bill was being discussed in the Legislative Assembly. Mr. Sesha Ayyangar, for example, cited Ellen Key, whom he called a
“prominent leader of the feminine movement, advocating free love, free divorce and motherhood without marriage”, to this effect:

“Sexual morality is impossible without early marriage. Postponement leads to prostitution, spread of venereal disease and the evils of self-abuse and abstinence. In early marriage only, the highest form of love is possible.”

Thus, marriage and consummation was advocated by anti-reformers as a safe outlet for the sexuality of children, to keep them from going astray, and as an alternative to all the evils that a lack of such a vent for their desires would breed: everything from prostitution, masturbation, to the spread of venereal disease. While the sexual desires and pleasure of female children figured so prominently in anti-reformist, conservative positions, reformers were forced to erase all sexual awareness from the female child whom they sought to protect from premature consummation and rape. In response to the suggestion that female children kept unmarried would be led astray by their desires, Dr. Mahedra Lal Sircar countered:

“The development of the sexual instinct in the human subject is not immediately consequent on the development of the physical signs of puberty. That development is, to a great extent, dependent upon moral training or education, and may be delayed or hastened for a considerable time after or before the menstrual function declares itself.”

Dr. Sircar’s argument counters the opposite camp’s decontextualized notions of a natural sexual instinct that manifests itself on puberty and needs to be harnessed in marriage, by speaking of the sociological construction of sexuality. Or, in opposition to naturalistic notions of sexual desire, or pleasure, Dr. Sircar emphasizes the sociological and constructed character of the same. Thus, he differentiates sexual subjectivity in the human subject as constructed, and malleable by moral training and education. He goes on to say:

“We have seen children, who have been born and bred in scenes of sexual immorality, manifest the instinct at an age long anterior to the first menstruation, and we have seen grown-up females,
who have been born of parents jealous of their children's morals, remain unconscious of it long after the attainment of physical puberty.\textsuperscript{25}

In this discussion of whether sexual subjectivity — pleasure and pain — is natural / essential or constructed / sociological, larger dimensions of the debate were sidelined: the structural inequalities that child marriage perpetuates by denying young girls a chance to education, employment, a life outside the home and family, own finances and the mobility and self-determination that go with them. (These concerns were raised a few decades later, as we shall see.) Child marriage was the denial of all these choices; it was also compulsory heterosexuality.

However, perhaps the most pressing concern of the Age of Consent Bill 1891 was the forced consummation of marriage with girl-children, often by much older men. Irrespective of the onset of menstruation or not, Dr. Sircar said, "it is not possible (for reasons better imagined) in the majority of the cases to enforce the Shastraic injunction (admitting, which I do not, that the injunction is shastraic) without actual force, that is, without rape in the literal sense of the term."\textsuperscript{26}

Dr. Chevers’ \textit{Indian Medical Jurisprudence}, on which the reformer K.T. Telang drew to make his arguments, was replete with statistics of rape, some attended with death, of immature child-wives.\textsuperscript{27} Dr. Chevers’ work was based on the Criminal Reports of the North-Western provinces and Bengal, between 1855 and 1876. This text gives details of “nearly 20 cases of death of married girls resulting from injuries caused by premature intercourse with their husbands” and of these 20 cases, 15 are of girls above 10 years, “in many of which the husbands stood charged with murder, or burning of parts, or strangulation, in addition to the other violence committed.”\textsuperscript{28}

Criminal reports do not always present a faithful picture of the incidence of rapes by husbands, for rapes that occur within homes do not often get reported. Telang observes that “for every case reported, there must be many where the death or violence is not reported to the police.”\textsuperscript{29} Perhaps a truer picture can be obtained by medico-legal returns
and these present far more gruesome statistics for Bengal alone. These are returns submitted to the Inspector-General of Hospitals by the Civil Surgeons in Bengal Presidency; the report for 1868–9 was prepared by Dr. Kenneth McLeod and spoke of 48 cases of rape, in about half of which the victims were under 10 years of age, two being 5 years old and seventeen being between 6 and 10 years of age. It was reported in some of these cases that the "parts gave evidence of habitual and repeated intercourse." For the years 1870, 71 and 72, the report was prepared by Dr. Robert Harvey and included 372 cases of rape, of which 265 were considered certain. In 51 per cent of the cases where the age was given, the female children were under 10 years of age, and 89 per cent under 15 years. One case was of a child of two years, another of a child of two and a half, another of a three-year old, three cases of children of four years, five cases of five-year-old children, nine cases of six-year-olds, an equal number involving children of seven years, eighteen cases where the girls are of 8 years and twenty-one cases where they are 9 years of age.

Yet, the moral abhorrence of the concept of intra-marital rape persisted through all these arguments. It is present in Dr. Sircar’s suggestions:

"To constitute intercourse between husband and wife rape under any circumstances looks like an absurdity and an anomaly, subversive of the very sacred character of marriage itself, at least jars upon common sense and aesthetics .... As, except for the peculiar circumstances of the country, the enactment which constitutes intercourse between husband and wife is an anomaly, the punishment, unless the intercourse is attended with personal injuries, should be much lighter than in the case of ordinary rape. It should ... in no case be imprisonment. In other words, it should be so provided that the punishment should never be such as to be calculated to embitter the future relationship of the married couples."

Although Dr. Sircar recommends raising the age of consent in the circumstances, he does so in the face of "no other alternative". The solution he really supports is the fixing of the marriage age. He says:
“As genuine Hindus mindful of their religion, I had expected that my countrymen should have taken this opportunity to pray for the raising of the minimum marriageable age, and thus win the honour and credit of removing an anomaly from the Penal Code.”

Likewise, in 1929, the Age of Consent Committee would also recommend that a marriage age be fixed, on similar grounds. Although the Age of Consent Committee was appointed to inquire into the state of the existing law on the age of consent and to propose any changes if necessary, it recommended as its “most important proposal”, the laying down of a marriage age (14) by legislation. It, therefore, lent its support to Har Bilas Sarda’s Bill, which will be discussed in the next chapter. The Committee, in fact, urged the immediate consideration of the Bill in the following session of the Assembly, even suggesting that “there seemed no need to consult Local Governments”, whereas on the issue of age of consent, its suggestion was to “introduce a Bill ... when the replies of the Local Governments are received” — in other words, that there was no need to take up age of consent legislation in the following session of the Assembly.

The resolution of the age of consent issue proffered by the Committee is contained in the question, “whether the age of consent within the marriage tie should not be the same as the marriage age.” However, given that no such marriage age existed, the Committee recommended that the age of consent within marriage should be raised to 15 years, with the rider that only a minor punishment of imprisonment (simple or rigorous) up to a year, or fine or both, should be imposed if the wife is between 12 and 15 years of age. In effect, this meant that the age under which consummation of a marriage would be an offence of the magnitude of rape was retained at 12, although the Committee recommended removing transportation as a punishment even for this offence.

The punishment that the Committee recommended for intercourse with a wife who was between 12 and 15 years of age was lighter than that prescribed under the existing law: Existing law laid down imprisonment for a term up to two years for consummation of a marriage when the wife was between 12 and 13 years of age. This amendment had come about in 1925, when a distinction had been made in the age of consent within and
without marriage, the former being raised to 13 years and the latter to 14. Thus, the age of consent, which had remained the same for intra- and extra-martial cases since 1860 was modified in 1925. Thereby, a partial separation of the categories of rape and marriage that had been coalesced in 1860 was achieved. The recommendations of the Age of Consent Committee sought to make this separation complete.

The Committee’s recommendations, in fact, represented several steps backward in age of consent laws. One recommendation was that intercourse by a husband with his own wife, even when she was under 15 years of age, should not be termed ‘rape’ at all, but ‘marital misbehaviour’. That it should be removed from the penal section on rape and placed in Chapter XX of the Indian Penal Code — offences relating to marriage — and be made a bailable offence, unlike rape, irrespective of the age of the wife.

In its report, the Age of Consent Committee effectively proposed “to abolish the offence of rape within the married relation and substitute a lesser offence” and “let off the delinquent husband … more lightly in some respects than under the present law”. One of the members of the Committee, Pandit Kanhayyalal, went as far as to suggest in his individual minute that “the maximum punishment for the offence of marital misbehaviour, causing death, be fixed at imprisonment of either description for seven years and fine whereas under existing law, the delinquent husband would be liable, under such circumstances, to be charged with culpable homicide or even murder.

However, the Age of Consent Committee also made a host of arguments that reflected a greater right to a woman’s self-determination: her right to celebrate the “freedom and joy of girlhood”, to obtain an education and gain employment. The need for education and employment were located within the discourse of the family and a wife’s place therein, in the Committee’s report. While the report, for instance, said that “a girl must have acquired before marriage a capacity to earn”, such capacity was seen as important to ensure that her husband had a greater recognition of her role in running a home. Although this sense of a woman’s place is located in the structure of the family, it indicates that the discourse and contours of the family itself were changing. The joint family was disintegrating, as the Committee pointed out, and the emergence of the
nuclear family entailed a new role for the wife. Her education was necessary to make her a companionable and responsive mate to her educated husband. Moreover, with the absence of elders who would traditionally train a girl-wife in her duties in the old order of a joint family, a period of education in her girlhood was also needed to equip her to discharge her domestic responsibilities as a wife and mother effectively.\textsuperscript{44}

The co-ordinates of a young girl’s self-determination, or worth, were not restricted to domesticity alone. The Committee recognised another change in the social milieu, outside of the discourse of the family: Women were now active in the public sphere outside the home and their ambitions spanned various professions. “Women are now members of local Corporations, and Provincial Councils and as education is advancing amongst them, they are gradually entering the learned professions. They are seeking equal opportunities with men”, the Committee observed.\textsuperscript{45} Therefore, an even longer period of education was necessary “for girls who aspired to anything beyond the ordinary routine of family life.”\textsuperscript{46} These socio-economic changes at the turn of the 20\textsuperscript{th} century were, in effect, creating new discourses of “girlhood” and were thus re-defining concepts of childhood in the evolving middle class urban family.

Section III: The Mysore Infant Marriages Prevention Regulation 1894.

Whilst 19th century British India witnessed such engagements with changing concepts of childhood and the intra-marital rape of girl-children, what was the situation in Mysore? Gungamma, whose rape trial we have visited in chapter 1, was unmarried at the age of 16 years and her chastity as a nubile young unmarried woman was jealously guarded: she was left at home when her family was out on a jathra. Ironically, she was raped at home by the relative who was left in charge of it. So, how prevalent was the custom of child marriage in Mysore and what was the parallel trajectory of the age of consent debate in Mysore, if any? It is interesting that while British India was reluctant about raising the age of consent and positively uncompromising about fixing the marriage age, Mysore enacted a legislation to prescribe an age of marriage in 1894.
How are we to understand this difference? Historians such as Tanika Sarkar have argued that in the late 19th century in Bengal, a pessimism had set in regarding the potential of the public sphere as an “arena for the test of manhood”\textsuperscript{47} for the Western educated Bengali male. For, possibilities within this sphere had proved to be little more than mechanical chores within a clerical existence, or petty landlordism. Consequently, the private sphere of the home emerged as the last pure uncolonised space of autonomy left to the Bengali male, as the supposed willing surrender and subordination of the Hindu wife to her husband therein represented a contrast to his forced dispossesssion and colonization in the public sphere. Tanika Sarkar argues that this sense of dispossession produced, as a reaction, a certain male nationalist vigour, which revitalized and revived itself around the resistance it expressed to colonial legislation that sought to encroach upon this last male bastion of home and conjugality. One such colonial legislation in the late 19th century Bengal was the age of consent legislation, which proposed to increase the age of consent of child-wives, thereby criminalizing the consummation of infant marriages. The “revivalist- nationalist” formation in late 19th century Bengal, which chose Hindu conjugality as the rallying point of its patriotic project, therefore, focused its energies around preserving infant marriage—which it identified with conjugality—against reformist legislation by the colonial state.\textsuperscript{48}

The historical processes that characterized late 19th century Mysore provide an interesting contrast to those that are indicated for British India during the same period. In post-Rendition Mysore, contrarily to Bengal, the public sphere was just emerging as an arena for the “test of manhood” for Western-educated men. The state had been rendered back to the native administration in 1881 and subsequent to this Rendition, posts in all rungs of the native administration were available to Western-educated native men. The difference between a British province, such as Bengal, and a princely state like Mysore was this: that, post-1868 and the Queen’s Proclamation, there was, in the princely states, a possibility of increasing the scope of autonomous action in the internal administration of the state. Thus, while pessimism and disillusionment had set in in Bengal, greater possibilities of action in the public sphere had only just opened up in Mysore. The resulting optimism motivated the increased participation in the public sphere and the
initiative of enacting proactive legislation such as the Mysore Infant Marriages Prevention Regulation. The Mysore Infant Marriages Prevention Regulation of 1894 crystallizes the difference between British India and Mysore during the late 19\textsuperscript{th} century. For, while the revivalist-nationalist formation in late 19\textsuperscript{th} century Bengal pegged its patriotic project on the site of the child-wife and resisted colonial legislation on child marriage, Mysore, on the contrary, enacted a legislation to \textit{prevent} infant marriages during precisely the same period, more specifically in 1894.

This difference in context between British India and a native state was, in fact, articulated as a validation for enacting a law to prescribe the marriage age for girls in Mysore. When the draft Regulation to prevent infant marriages was debated in the Mysore Representative Assembly in 1893, one speaker, a coffee planter from Chikmagalur municipality, countered the argument that such a measure was an interference with social matters as follows:

The objection that Government should not interfere in social matters holds only in those cases in which the Government is an alien Government. But a Native Government can legislate for the Native community in such matters. Did not the British Government make a law to say that change of religion did not involve change in the Civil Rights in family property, & c.? In Christian communities, did not Government legislate on the marriage with a deceased wife's sister? Similar instances might be multiplied.\textsuperscript{49}

Yet, despite this distinction between an alien government and a native government and the greater justification of the latter in making laws to interfere with social custom — or the greater right of brown men to save their own women — the Dewan had opposed a law to prohibit early consummation of marriages, when such a proposal was sought to be discussed in the Assembly.\textsuperscript{50} The Indian Penal Code was applied to Mysore by the British Commission in 1861, as we have seen in chapter 1. Therefore, when the amendment to section 375 of the Penal Code, commonly known as the Age of Consent Act, was passed in British India in 1891, members of the Mysore Representative Assembly suggested that this amendment be extended to Mysore as well. Or else a man who had committed an act (consummated a marriage with a girl-wife under 12 years of age) that was not an offence
in Mysore would be punishable if he entered British Indian territory. They said that although marriage was not consummated before the girl was 12 years old, there could be cases where consummation took place earlier and in those cases complications would arise if there was a lack of uniformity. The Dewan responded that it was doubtful whether such a law was required in Mysore and that it would be advisable to see how it worked elsewhere. He considered that Mysore did not need such an amendment since he was not aware of any case of consummation of marriage before the age of 12. Instead, he proposed the enactment of a law to prevent the early marriages of girls and the marriages of old men to young girls. And this is how the proposed Regulation to prevent infant marriages was born, as a response to the Age of Consent Act of British India.

In many of its provisions, the Mysore regulation anticipated the British Indian child marriage legislation of 1929, which will be discussed in the next chapter. A comparison of the provisions would indicate the correspondence. Passed as Regulation X of 1894, on 5 October of that year, the MIMPR defined an “infant girl” as one who had not completed 8 years of age. The CMRA, 35 years later, defined a “child” as a person who, if male, was under 18 years of age, and if female, under 14 years, and a “child marriage” as one in which either of the contracting parties, i.e. either the bride or the groom, was a “child”. Thus, the definition of a ‘child’ was gender-neutral in the CMRA, whereas the Mysore regulation applied only to the marriages of infant girls.

Both legislations identified similar categories of offenders. The Mysore regulation indicted any person who caused an infant marriage, or who knowingly aided and abetted the same. It, therefore, punished the parents of the bride and of the groom, and the officiating priest. The bridegroom, if he was above 18 years of age, was also liable to punishment. The punishment laid down for any of these classes of offenders was simple imprisonment for a maximum term of six months, or fine or both. In addition to punishing an adult groom of 18 years or more who married an infant girl of less than 8 years, the regulation also penalized a man who, having completed 50 years of age, married a girl who was under 14, with imprisonment of either description (simple or
rigorous) for a maximum term of two years, or with fine, or with both. Anyone who caused such a marriage, or who aided or abetted it, was also made punishable.

The CMRA too identified these three categories of offenders: (a) the parents or guardians of a minor (i.e. a person of either sex who was below 18 years of age) who contracted a child marriage, (b) any person who performed or solemnized such a marriage and (c) an adult bridegroom (above 18 years of age). The sentence laid down, however, differed for the various categories of offenders. It also differed from that mentioned in the MIMPR. For the parents and guardians who contracted a child marriage, the sentence was simple imprisonment for one month, or a fine of one thousand rupees, or both, with the proviso that no woman should be punished with imprisonment. There was a similar sentence for any person who performed or solemnized such a marriage and for an adult bridegroom who was above 21 years of age. If the bridegroom was, however, between 18 and 21 years of age, the punishment was to be a fine, which might extend to a maximum of a thousand rupees.

The MIMPR applied only to the Hindus in Mysore, whereas the CMRA was a Civil Act, i.e. it applied equally to all communities. However, neither of these legislations nullified a child marriage. They merely imposed penalties on the offending parties, subsequent on the detection of a child marriage, and the prosecution and conviction of the accused. In other words, these legislations merely instituted criminal procedure and conviction in cases of child marriage, without declaring such marriages themselves null and void.

The MIMPR defined an “infant girl” as on who had not completed 8 years of age. How did this definition negotiate with existing notions of childhood, or lack thereof, in late 19th century Mysore? Existing notions of childhood may be excavated in the cultural discourses about the Shastras and the family that informed the debate in the Representative Assembly. When the proposed regulation was first discussed in the Representative Assembly, the Dewan had proposed eight years to begin with, with the rider that the age may be revised and increased with time. Progressive sections in the Representative Assembly held that 8 was “unsuitable and too early; 10 was the limit fixed
by the Shastras. Others pointed out that “the Shastras did not allow marriage before Garbhastama, 8th year from conception, so the proposal was not against the Shastras.”

Clearly, the appropriateness for an “infant” girl to assume what in modern discourse would be “adult” roles of marriage and motherhood was defined by the Shastras. Conservative members rejected the imposition of any limit at all on the marriage of girls: They argued that the Shastras “placed no such restriction as that now under discussion and to ask for such a restriction was to ask for a law not in accordance with the Shastras.” There was apparently no age under which a girl was an “infant” or a “child.”

Evidently, the debate on the Shastras was as much a part of the discussion on infant marriage in Mysore as it was of the age of consent issue in British India, and of other issues related to gender such as sati and widow-remarriage in the 19th century or the Child Marriage Restraint Act 1929. Some representative members who agreed that the limit of age for marriage should be 8 or 10 for girls, were opposed to the proposal to prohibit men over 40 years from marrying, on the grounds that it was un-Shastraic. Mr. Narasimhiaiy, who opined thus, said that such a measure “had never been heard of or anywhere mentioned in the Shastras or Puranas.”

In fact, the millenarianism of anti-reform arguments that Tanika Sarkar observes during the age of consent debate in Bengal of 1891 was echoed in the concerns of some anti-reformers in Mysore as well. They differentiated the proposed Regulation on infant marriage as distinct and unique from all previous legislations on social reform. The Regulation was seen as the first violation of the Shastraic injunctions: Previous reforms, such as the sati legislation, had apparently not defied the Shastras as these texts did not prescribe the practice of sati for Kaliyuga anyway.

With so much dispute about what the Shastras prescribed or did not, it was decided that the matter be referred to the religious heads in the Matts. A year later in 1892, the Dewan informed the Representative Assembly that, after consultation with the Matts, there was an agreement that the practice of infant marriage, under certain limits of age, was opposed to the Shastras. A draft Regulation was published “with the view of affording
the fullest opportunity for discussion and criticism.\textsuperscript{62} The draft regulation, with a set of objects and reasons attached, was then placed before the Assembly for discussion the next year, in 1893.

The debate on the Shastras was re-visited in the Assembly then with some anti-reformers protesting the regulation on the limits of its Shastraic basis. They argued that although the Shastras were cited as stating that a girl in her 10\textsuperscript{th} year was \textit{Kanya}, the Regulation allowed the marriage of a girl in her 8\textsuperscript{th} and 9\textsuperscript{th} years. Likewise the justification that the Shastras prohibited the marriage of a man over 50 years of age was incommensurable with the Regulation's permission of such marriage if the bride was of 14 years or more.\textsuperscript{63} Even Mr. Amble Annaiya Pandit, who in 1891 had suggested that the age limit be fixed at 10 and not 8, thought that penal provisions were harsh and that punishment for infant marriages should be left to the heads of the various sects.\textsuperscript{64} Another representative member thought that the matter should be left entirely in the hands of the spiritual heads of the various castes.\textsuperscript{65} To this, the Dewan quite succinctly replied that it was because "spiritual authority could not cope with the evil in question that the state had to interfere in the manner proposed."\textsuperscript{66}

The Shastras were also invoked to question the prohibition that disallowed a 50 year-old man to wed a girl who was under 14 years of age. It was argued that this restriction amounted to a total prohibition as girls were not kept unmarried so long. According to the scriptures, a man needed a consort to perform obligatory bráhminical rites (agnihotra).\textsuperscript{67} Also, they said, a man needed a son to attain heaven. A 50-year old widower may seek to marry again if he had no sons by his first wife. Due to the prohibition, he would be forced to die sonless for want of a second wife, and go to hell.\textsuperscript{68} Another representative member took a rather fatalistic view of the entire matter, saying that whether a man or woman was to marry once or oftener was a matter of his or her fate and it was not for legislation to interfere in the cosmic destiny that created a man and woman for each other.\textsuperscript{69} In this discussion of a man's right to re-marry (at the age of 50 and to an infant girl) and a girl-widow's to suffer her fate, the question is not raised about whether a girl, widowed and
childless, had a right to marry again, at the age of 9 or 10, if not 50, and beget children so as to attain heaven.

Even the approval of the Matts, which the Government had adduced in support of the measure, was rendered suspect, with the contention that the Matts were amenable to the influence of Government and that they could not alter the Shastras in any case. Girls were required to be married before the onset of puberty according to the Shastras and the fixing of an age limit at 8 would give parents two years (i.e. by the time the girl was 10) before tradition and social pressure bore down on them to find grooms for their girls. If puberty set in during this time, Shastraic injunctions would be violated. Even the approval of the Matts, which the Government had adduced in support of the measure, was rendered suspect, with the contention that the Matts were amenable to the influence of Government and that they could not alter the Shastras in any case. Girls were required to be married before the onset of puberty according to the Shastras and the fixing of an age limit at 8 would give parents two years (i.e. by the time the girl was 10) before tradition and social pressure bore down on them to find grooms for their girls. If puberty set in during this time, Shastraic injunctions would be violated. The Dewan's response to this also drew upon the Shastras: "The Shastra declares the signs of puberty at such an early period to be signs of disease and not maturity. Rajas is after the 10th year." In this debate of the Shastras and men's rights therein, was the infant girl reduced to a mere site on which tradition was contended? Not quite, for some representative members made trenchant critiques of the Shastras and their disregard for women. Mr. Srinivasa Rao, a coffee planter from Chikmagalur, for instance, responded in 1891 that the necessity of an old Brahmin to marry for the sake of agnihotra was no reason to destroy the happiness of a girl and that it was a most selfish consideration. In 1893, Mr. Sadasiva Rao, a pleader from Dodballapur Municipality, said:

There has been a great deal too much said about the Shastras. To say that an old man can get to heaven only by inflicting lifelong misery on a youthful girl is equally absurd and selfish. ... The 50 year old widower must find a substitute for Agnihotra. The old man sonless cannot beget a son, but should adopt one.

Earlier in the proceedings, Mr. Sadashiva Rao had said in response to another member's objections:

Mr. Garudachar has viewed the question entirely from the view of males. There is another aspect of the question, viz., that of females and Government has to protect the interests of both sexes.
Likewise, Mr. Nadig Sivappa, a land-holder from Sorab Taluk, observed that laws were made by men and therefore disadvantaged women:

Hindu women have long suffered under various disabilities because men are legislators and administrators of law. Men are selfish. The pain and sorrows of women are peculiar to them. 75

Another representative spoke against the clause in the Regulation that allowed a 50 year-old man to marry a girl of 14 or over by saying that it was against nature, which made youthful girls desire youthful husbands. This was perhaps the only instance where a representative spoke of a girl’s desire or agency in making sexual choices, however subtly:

The Shastras enjoin the marriage of a girl before 14 and before she attains her puberty. But the proposed Regulation not only goes counter to the Shastras in permitting a man of 50 and more to marry a girl of 14 or more, but is against nature which induces a youthful girl to prefer a youthful husband. 76

Apart from the scriptural sanction, or lack thereof, of infant marriage, other factors went into constructing the female “child-wife”: the discourses of family, parenting, and of societal control, i.e. the opinion of neighbours and co-religionists in the matter. It was argued that an age-limit of 10 years was too high as parents may be advanced in years and wish to perform their daughters’ marriages in their life-times. Or that a wealthy husband was available at the moment and may be unavailable if the marriage was postponed. 77 In addition to men’s Shastraic rights, the rights of parents to find good matches for their children during their life-times was stressed in this notion of familial ideology. Parents were to be the best judges of what was right for girl-children: “Government cannot be a better judge of the welfare of minors than their own parents and guardians”, as Mr. Gaus Sheriff Saib, a merchant from Shimoga Taluk observed. 78 Neighbours and co-religionists could disapprove too, if a girl was kept unmarried until her tenth year. 79
This ideology of the family tied in with a cultural discourse of Hindu conjugality to justify infant marriages and produce the girl as a miniature ‘adult’, performing adult roles. Early marriage, it was argued, instructed the girl-wife in her duties as a wife in her husband’s family. It cultivated “early attachment and devotion to the husband selected by parents or guardians.” In Hindu conjugality, both the husband and the wife began to love each other early and that is why such marriages were sustained, and there were “so (sic) rare cases of husband and wife being irreconcilable among Hindu families.”

To counter such a cultural – discursive argument, Mr. Sadashiva Rao relied on biomedical epistemologies: He asserted that the notion that early marriage would make a girl and boy like each other was mere fancy, and that tempers and dispositions did not begin to form before the 8th or 9th year.

Of course, anxieties over the sexuality or morality of girl-children were not absent in the discussion either. The fear was expressed that a girl kept unmarried until her tenth year may be raped or tempted to stray. The morality of men was discussed too, but only to buttress the right of old men to marry young girls. Mr. Malhar Rao, Representative Member from Chamrajnagar Taluk, for instance, said that he saw “no reason why a strong and healthy man should not marry if he were even more than 40 years old.” European men married when they were 50. If a strong and healthy old man was prohibited from marrying, immorality would result, he opined. Reformers pointed out that European men of that age did not marry infant girls.

So far in this discussion of infant marriage in Mysore, the concerns of premature consummation and rape within marriage have been absent. The issue of premature consummation did receive mention in the arguments of the reformers. When a representative member commented that he could not fathom the harm in early marriages and none was explained, Mr. D. Venkataramaiya, a representative from the Bangalore Taluk, responded by citing an instance in the Kolar district in which a 65 year old man — a pensioned official — had married a seven-year-old girl 15 years before. The harm in such cases, he said, could be more easily imagined than described. Likewise, when the provisions of the draft Regulation were discussed in the Representative Assembly in
1893, our firebrand feminist representative, Mr. Srinivasa Rao, the coffee planter from Chikmagalur, spoke with clarity about how marriages were consummated with infant girls who had not even attained puberty:

The ritual for Kanyadana is different from that for the consummation of marriage. But priestcraft and considerations of convenience had concentrated both these rituals into the four days of marriage ceremonial, so that although a girl has not attained maturity and is but an infant, the ceremony of consummation of marriage is gone through in the course of those four days.\(^{87}\)

Apart from premature consummation, two other issues concerning women were raised as social problems, outside of the discourse of the Shastras and related to the practice of infant marriage: widowhood and the procreation of weak progeny. On the first of these points, it was observed that early marriage led to enforced widowhood in certain cases, which in turn led to immorality (among widows) and crimes. Mr. M. Venkatakrishnaiya who made this observation suggested that the best course would be to “prohibit all marriage and all consummation of marriage before the girl was 18 years of age.”\(^{88}\) It is interesting that some reformers used arguments of the sexual morality of widows to advance the cause of reform in the infant marriage debate in Mysore.\(^{89}\)

U.R. Anathamoorthy's novel, *Samskara*, talks of this issue: It is the story of a young Brahmin widow, made to renounce her sexuality — tonsure her head, curb her physical attractiveness, repress the desires of her body by disciplining it through the rigours of ascetic widowhood — who has an affair with a low caste man. The affair results in a pregnancy, which the lover makes her terminate, and social ostracism for her family. The story is told sensitively through the narrative of a young Brahmin boy-child, a friend of the widow, who questions the standards of his society. However, would the boy eventually grow up to take his place among the men of his caste, who violently evicted the girl: the social guardians of good conduct, or *Samaskara*?

Taking widowhood as the point of departure, certain Muhammadan representatives in the Assembly sought that their community be excluded from the ambit of the Regulation, on
the grounds that widow remarriage was allowed within their community. Mr. Hafizullah Khan, a hakim from Bangalore City Municipality, made this observation as if to imply that widowhood was the only reason for preventing infant marriages:

The evils arising from Infant marriages do not exist among Muhammadans as they do among Hindus, because the former have a system of widow re-marriage among them, so that to Muhammadans the proposed law is unnecessary.90

Mr M. Venkatakriishnaiyaya makes the same observation in an earlier speech when he says, “The evil results of Infant marriages exist chiefly among Brahmans and Vaisyas as they can marry their young girls only once, whereas among other classes including Muhammadans, girls are married later in life and the miseries of early widowhood are obviated by liberty to marry more than once.”91

Weak offspring were seen as being born of marriages of young girls with old men.92 In addition to these arguments and counter-arguments about the effects of a law preventing infant marriages, there was an engagement with the site of the law itself. Extra-legal methods of bringing about the social change desired were suggested by some. Gaus Sheriff Saib opined that it would be better to rely on the permeation of education to all classes of society rather than enact a law.93 Also, keeping in view the peculiar location of Mysore as a princely state, it was argued that the law could be transgressed by crossing the border from Mysore and performing the marriage in British India.94 Even representatives who believed in state intervention through reform suggested kinder punishments out of regard for “the feelings of people”. Thus, M. Venkatakriishnaiyaya suggested that imprisonment be done away with, and only fines retained.95

To each of these concerns, Mr. Srinivasa Rao, the coffee planter from Chikmagalur Municipality responded with his usual clear-eyed perspicacity. On extra-legal methods — on the constant refrain of “Rely upon the effects of education”, “Rely upon the good sense, convictions and wise resolutions of parents” — he cited the example of British India, where even “Babu Keshub Chandrasen and Mr. Telang ... had to marry their
daughters contrary to their convictions". Evidently mere education and conviction were not enough, given the social structures, the weight of "habit and custom" that mediated people's individual agency or good sense. On the reduction of penalties to fines only, he said that such punishment would press unequally upon the rich and the poor. The rich would be willing to pay fines and flout the law with impunity. As for those who would cross the boundaries of the state and solemnize marriages in British India, he said that "such men as would leave the country to break the laws of the country would be considered too bad for any reckoning." Moreover, he said, if Mysore enacted such a law, other states in British India would follow suit. How well the law worked could, in any case, only be determined after its enactment. 96

The reference to British India did not end with the delineation of Mysore's distinctive political character. Some representative members used British India as an example and made allusions to the social reform issues that had engaged the colonial state. They supported the Infant Marriage Prevention Regulation with the argument that the state's intervention was needed to protect the interests of the citizen-subjects, especially minors. Reference was made to such intervention in British India on the issues of sati, the suppression of Thuggi and human sacrifices to Kali, Durgi, etc. 97

Counter-arguments stressed that state should not infringe into the domestic space of the home. That citizens should be free of the state's intervention. It is interesting that many contemporary movements of sexual liberation, such as those for homosexual rights, also demand that the state should not invade the privacy of the bedroom. Mr. Garudachar, an advocate from Shimoga and a Representative Member remarked:

The proposed law is an undue interference with public freedom and is unnecessary. Penal Laws and other Legislation hitherto were confined to matters outside our homes. The proposed law invades the privacy of our domestic relations. 98

Srinivasa Rao also spoke of another thread in the objections to legal intervention — that, contrary to reformist assertion that the law was desired by a "considerable body of
Representatives and pronounced public opinion"\textsuperscript{99} it was in fact advocated by a small minority of people, whereas the vast majority was against it. Of such majoritarian attitudes, Rao said, “great reforms were inaugurated and prosecuted by a few. ... It was only a small minority that brought about the suppression of the slave trade.” Thus, to say that only a minority were in favour of the reform was no disparagement.\textsuperscript{100}

Although some representatives were anxious that the proposed law would mainly affect the Brahmins — who were “physically the weakest in the social system”\textsuperscript{101} — it was evident from the Census statistics that the prevalence of infant marriage was too widespread to be restricted only to the Brahmin caste. The Dewan opened the discussion on the draft Regulation in 1893, a year after it had been “published with the view of affording the fullest opportunity for discussion and criticism”\textsuperscript{102} by citing the Census figures. The number of married girls under 9 in 1891 was 18,000 as compared to only 12,000 in 1881. The increase was 50 per cent, whereas the increase in population during the same period of ten years was only 18 per cent. The Census also showed that out of the total 971,500 married women in Mysore in 1891, 11,157 had been married at or before the age of four as follows: 74 in the first year, 349 in the second, 2347 in the third and 8387 in the fourth year. 181,000 women had been married between the ages of five and nine. Thus, a total of 192,157 (i.e. 11,157 + 181,000) women had been married before the age of nine. Of these, 3560 had become widows by the time they reached the age of nine.\textsuperscript{103}

The benchmark of nine was considered because the draft Regulation had laid down 8 years as the marriage age for girls. Of course the overwhelming majority of married women in the state in 1891, 779,343 of them (971,500 minus 192,157), who had evidently been married after the age of nine — and the number of widows among them — were not considered in prescribing this rather low marriage age for girls. The Dewan acknowledged that this low age limit would not find favour with the progressive sections in the Representative Assembly and that the age could be revised in course of time,\textsuperscript{104} although it never was.
Since 14 years was fixed as the age limit for boys, the corresponding Census figures for boys were considered too. The Dewan cited the Census of 1891 to reveal that 512 boys had been married before the age of four, 8173 between 4 and 9, and 72,831 between 10 and 14, thus making a total of 81,516 boys all married before the age of 14. The comparison of these statistics with those mentioned for girls indicates that there was a substantial disparity between the ages of brides and grooms.

The Mysore Government did pass the Regulation X of 1894 as the Infant Marriages Prevention Regulation, although C. Mallari Raw (Mr. Channagiri Malhari Rao, the pleader from Shimoga whose regressive stances have been studied in detail above) and 167 other members of the Representative Assembly signed and addressed a petition to the Dewan, Sir K. Seshadri Iyer, praying that the draft Regulation for the prevention of infant marriages may not be passed. The 167 petitioners included 81 brahmins, 19 Vaisyas, 2 Rajputs, 1 Mudaliar, 28 Sivachars (i.e. Lingayats), 3 Jains, 1 Ursoo (the caste to which the Maharaja belonged, Arasu in Kannada means 'king' or 'ruler'), 21 Shudras and 8 Muhammadans, making a total of 164: 4 signatures were not to be found in the list of Representative Members.

How well did the Regulation translate into practice; were all the failings that anti-reformers had anticipated and prophesied about its efficacy realized? Quite on the contrary, the police records of Mysore are replete with cases of investigation of infant marriages. In fact, in the decades following the passing of the MIMPR, these cases are found to constitute the bulk of the police files. An examination of these cases indicates how such cases were detected, who were the parties penalized, the ages at which girls were married, and the prevalence of the custom of infant marriage across castes.

Consider the infant marriage case of 26 December 1901 at Bogenahalli, Gundibanda sub-taluq. In this case, Thavali Venkatappa, the father of the bride, gave his daughter, aged 7 years, in marriage to the bridegroom, Venkatappa, aged 23 and son of Chandoor Ramanna. He gave his daughter in exchange for the bridegroom’s sister, a girl aged 14 years, whom he took as his own wife. Thavali Venkatappa was aged 45. He justified his
marriage on the grounds that, having lost his own wife, he was put to much inconvenience for food, and therefore needed a new wife.

As a result of the prosecution, Thavali Venkatappa was sentenced on 18 June 1902 to undergo 20 days’ simple imprisonment and to pay a fine of Rs.10, or, in default, to suffer 10 days’ additional imprisonment. Chandoor Ramanna was fined Rs.10, in default to undergo one week’s simple imprisonment. Purohit Subba Bhatta, who officiated at both marriages, was fined Rs.5, in default to suffer five days’ simple imprisonment. The bridegroom Venkatappa died on 23 May, 1902 and thus escaped his sentence.\textsuperscript{107}

In some cases, the child-bride is as young as 3 years of age. For instance, in Beechagondanahalli, Kolar Taluk, Chowdi (aged 3 years, 2 months and 20 days) was married to Kempa, aged 10, on 6 January 1897. The parties were Balagai by caste. On hearing of the maniage, the Patel of the village tried ineffectually to dissuade the bridegroom’s father from proceeding with it. The case was tried by the District Magistrate of Kolar on 10 November 1897. The fathers of the bride and groom were sentenced to undergo 15 days’ simple imprisonment and to pay a fine of Rs.5 each.\textsuperscript{108}

Another three-year-old girl, Gangi was married to a 25 year-old man named Runga in Somasethihalli, Goribidnore Taluk.\textsuperscript{109} They were of the Vokkaliga caste. While in Chowdi’s case, the Patel of the village had tried to dissuade the groom’s father from proceeding with the marriage, in Gangi’s case, the Patel of Somasethihalli was one of the five accused in the prosecution for infant marriage. The other four accused were the bride’s father, the bridegroom, the officiating priest and Putta Narase Gowda, the man who arranged the marriage on behalf of the bridegroom, who was an orphan. The Patel was related to both Putta Narase Gowda and the groom, and was charged with aiding and abetting the celebration of the marriage.

This case came to light because two petitions were made by residents of Goribidnore taluk alleging the celebration of the infant marriage on 17 August 1895. A certain co-sharer called Ramayya of Jodi Arudi village addressed his petition dated 16 October 1895
to the taluk authorities. The other petitioner was Jodidar Ramachandra Sastry, who addressed his petition dated 10 November 1895 to the Dewan of Mysore himself. Thirty-one witnesses were examined in the investigation, six by the Jamedar and 25 by the Police Inspector. A prime facie case was made and the record submitted to the Assistant Superintendent of Police. While both the Assistant Superintendent and the Inspector-General of Police pressed for prosecution in the case, the Government ordered that prosecution be dropped since there was a conflict in evidence as to the date of marriage. If the marriage had occurred in February 1895, as some witnesses testified, the provisions of the MIMPR would not be applicable since the regulation, although passed on 5 October 1894, was brought into effect on 12 April 1895 in all the territories of Mysore.

Gangi's case exemplifies the criminal procedure that was followed upon the reporting of a case of infant marriage in Mysore: When such a case was reported to the police, the Jamedar of the sub-taluk conducted an inquiry. The results of the Jamedar's inquiry along with the vernacular records were forwarded to the Assistant Superintendent of Police of the district, who would then conduct his own inquiry. Following upon the Assistant Superintendent's investigation, a prima facie case of infringement of Regulation X of 1894 could be made. The police investigation generally sought to unearth the relevant facts — the month and year of the celebration of the marriage, the names and ages of the bride and groom, the identities of the parents and of the officiating priest.

The report of the Assistant Superintendent together with the records was then forwarded to the Inspector-General of Police in Mysore, through the Deputy Commissioner of the district. The Inspector-General then forwarded the records to the Secretary to the Government of Mysore, General and Revenue Departments, seeking the sanction of the government to prosecute the parties concerned in the infant marriage case. The prior sanction of the government for instituting prosecution under this regulation was made necessary by Section 8 of the MIMPR:

No prosecution under this Regulation shall be instituted without the previous written sanction of the Government accorded after such enquiry as the Government may deem fit to make.
On receiving the Inspector-General’s request for the government’s sanction to prosecute the accused parties, the government might, if satisfied, grant the sanction. Gangi’s case is an example of a case where the government does not sanction prosecution. There are also cases where the Superintendent and Inspector-General of Police themselves recommend that prosecution is undesirable.

This is exemplified in the case of 2 December 1895, of Hulikal village, Arkalgud, Hassan district. A resident of the village puts in a written complaint to the Deputy Commissioner of the district, stating that two persons of the village had performed the marriages of their infant daughters contrary to the provisions of the Regulation of 1894. One of these cases had occurred as early as 14 April 1895, i.e. only three days after the Regulation came in force, and the other in May 1895. Although the facts were ascertained in both cases, the Superintendent of Police opined that both the marriages having taken place “so long ago ... no useful purpose will be served in prosecuting the parties at this late hour.” Thus, in these two cases the Superintendent of Police himself requested that the prosecution be dropped. The government concurred.

Likewise, there was a case of infant marriage that occurred on 14 February 1901, in the Nagarkere village of Mandya taluk (French Rocks Sub-Division). In this case too, the Superintendent and Inspector-General of Police recommended that the prosecution be dropped. The reasons were that three years had elapsed since the marriage took place, that the bride was nearly 8, and that widow-remarriage was allowed in her caste. The bride was 7 years, 10 months and 26 days on the date of the marriage. The Patel of the village reported the marriage to the police two weeks after its occurrence, on 28 February 1901. Despite this early detection, three years elapsed as follows. The jamedar conducted his inquiry after a delay of four months, in July 1901 and submitted his report to the Assistant Superintendent, Mr. Zahiruddin Meccai, who conducted his inquiry after a further delay of 8 months, in June 1902. Moreover, Meccai merely examined the witnesses who had already been examined by the taluk police. Mr. G. Krishna Rao, who succeeded Meccai found the records in April of the next year, i.e. in 1903, and submitted
his report after a further 7 months. Considering that the bride had nearly completed 8 years at the time of marriage, Mr. Krishna Rao recommended that the prosecution be dropped. The Inspector-General supported this recommendation not merely because the girl was nearly 8 and belonged to the Vokkaliga caste where widow re-marriage was allowed, but chiefly because of the delay caused in the investigation by the sub-division police. Government concurred with the Inspector-General, expressing displeasure at the inordinate delay in investigation.

So far, I have commented on the ages of the bride and groom, the prevalence of the custom of infant marriage across castes (there are cases among the Brahmin, Balagai, Vokkaliga, Igal and Kurubar castes,\textsuperscript{115} among others), the criminal procedure adopted upon the reporting of cases of infant marriage, and the outcome of reported cases (in conviction, or lack thereof, and penalties imposed). This still leaves the question unanswered, of how such cases were detected. When the draft Regulation for the prevention of infant marriages was being discussed in the Representative Assembly, members had expressed the fear that complaints under this law would be made by enemies: "...who will complain under the proposed law", Mr. K. Rangiengar had asked, "Not the parents, nor the relations, nor the priests nor the guests who attend, but the enemies who are in search of opportunities to satisfy a grudge, thus leading parties to unnecessary trouble and vexation, and such legal proceedings instituted by enmity, will be considered as bad omens."\textsuperscript{116}

Similar anxieties had been echoed in the petition signed by C. Mallari Row and 167 other Representative Members (four of whose names could not be found in the list of Representative Members); "The Regulation will give wicked men the means of annoying and harassing quiet and good people and of making illegal exactions by lodging false complaints against them."\textsuperscript{117} Further on the note of false complaints, these Representative Members had said that such false cases would, in turn, breed a spiraling increase in (a) crime and (b) poverty. How would these dire consequences result? Apparently, "owing to the impossibility of determining the age of children, forgery, false evidence and other crimes (would) increase."\textsuperscript{118} On the breeding of poverty, it was pointed out to the Dewan
that about 50 per cent of the complaints under the several penal laws in force (those would be the various sections of the Indian Penal Code) were false. The natives of Mysore had been reduced to penury in defending themselves against such false complaints. Under such circumstances, the “extension of the penal law in a religious, social and domestic matter (would) tend to increase the poverty of the people.”

So how were cases of infant marriage detected, who complained, when the dreaded law was enforced? Three of the cases discussed above, i.e. the two cases of Hulikal village, Hassan district, and Gangi’s case of Somasethihalli, Goribidnore Taluk, were detected because of complaints made by other villagers. Apart from the intervention of other villagers in reporting infant marriages, the vigilance of the Patel in also observed in reporting one case above: the case of 14 February 1901 at Nagarkere village, Mandya Taluk. The Patels were, in fact, bound to report the occurrence of infant marriages in their villages to the Amildar.

There were instances where the Patels not only omitted to report cases, but were, in fact, party to the offence, as has been discussed above. In some cases where the Patel did not report the offence, the police themselves discovered cases of infant marriage. In 1901, for instance, the Deputy Amildar of Hosdrug, in the course of his routine census work, found an infant girl in the village of Jantigolalu, who was already married. He reported this, and the case was transferred to the Jamedar of the sub-taluk for investigation. The investigation revealed the relevant facts: that the marriage was solemnized in the month of Jesta (May-June) 1900 in Siromanahalli and that the bride and groom were 4 and 12 years old respectively. In most cases of investigation, the Register of Births and Deaths was relied upon to ascertain the ages of the bride and groom. The maintenance of this register greatly facilitated inquiry into cases of infant marriage. The register was required to be available with the Patel of the village and / or in the records of the sub-taluk. In this particular case, since the Register of Births for the year in which the girl was stated to have been born was unavailable, the testimonials of the parents, the priest and of the Patel of village as to the age of the girl were taken.
The two Patels of Siromanahalli, who were supposed to have reported the occurrence of the infant marriage to the Amildar, themselves testified as to her age in the course of the investigation. They pleaded ignorance of the regulation in explaining their omission to report the offence. The parents of the bride and groom too pleaded ignorance of the Regulation.

In this case, due to the omission of the Patel in reporting the infant marriage, the Government's sanction for prosecution came nearly a year and a half after the marriage had been solemnized. The case was reported, upon detection by the Deputy Amildar or Hosdrug, on January 22 1901, many months after its solemnization in May or June 1900. After the inquiry, the report of the Assistant-Superintendent of Chitaldrug district was dispatched to the Inspector-General of Police in Mysore, through the Deputy Commissioner of the district, on 4 September 1901. The inspector-General's request to government for sanction to institute prosecution is dated 11 September 1901, and the government order thereon, sanctioning prosecution is issued on 5 October 1901.121

To close this section, it may be observed that the abundance of infant marriage cases in the police records of Mysore proves that the marriage of girl-children under the age of 8 years was not as uncommon an occurrence in parts of India as the anti-reformers contended when the age of consent legislation was being debated in British India in 1891.

NOTES:


7 From the response to the inquiry of the Secretary, Age of Consent Committee, about the earliest statutory law in force in India relating to the age of consent. The inquiry was addressed to the Secretary to the Government of India, Legislative Department, and dated 25 April, 1929.


9 Indian Penal Code 1860, Chapter XXI: Of Offences Affecting the Human Body, Section 375 — Of Rape.


14 Ibid.
15 Ibid.

16 Ibid.

17 Ibid.

18 Ibid.

19 Ibid., p. 49.

20 Ibid., p. 52.


22 See Mr. Sesha Ayyangar's speech in the Legislative Assembly Debates, 4th September 1929, p. 272.

23 Ibid.


25 Ibid.

26 C.Y. Chintamani, p. 254.

27 See K.T. Telang's report of the third National Social Conference held in Bombay on 29 December 1889, dated August 1890 and addressed to the Secretary to the Government of India, Legislative Department.

28 Ibid.

29 Ibid.

30 I derive these statistics from the official despatch of the Honorary Secretary, Public Health Society of Calcutta, to the Chief Secretary to the Government of Bengal, dated September 1, 1890.

32 Ibid., p. 254.

33 Ibid.


36 Ibid., p. 124.

37 Ibid., p. 123

38 Ibid.


40 See Home Department, Judicial Branch, File No. 593/29 (National Archives of India, New Delhi)


42 Ibid., p. 169.

43 Ibid., p. 171.

44 Ibid., p. 170.


46 Ibid., p. 170.


49 These are the words of Mr. Srinivas Rao, a coffee planter from Chikmagalur Municipality. PMRA 1893, p. 45.

50 Mr. Malhar Rao, a pleader from Shimoga Municipality, makes this observation. He points out the Dewan had expressed disapproval of a legislation to prohibit early consummation of marriages on grounds that applied to infant marriages as well. See Proceedings of the Mysore Representative Assembly (PMRA) 1893, p. 48.

51 PMRA 1891, p.36.

52 Ibid.

53 PMRA 1891, p. 38.

54 I have sourced the Regulation from the Mysore Code Volume II [containing the Regulations introduced into Mysore from the Rendition (1881) to 1901], Bangalore: Government Press, 1932, pp. 276-277.

55 A Bill to Restrain the Solemnisation of Child Marriage, as passed by the Indian Legislature, Home Department, Judicial 1929, File No. 570 / 1929.

56 Mr. Amble Annaiya Pandit, PMRA 1891, p. 36.

57 Mr. Srinivasa Rao, PMRA 1891, p. 38.

58 Mr. Chanappa, Representative Member from Chintamani, PMRA 1891, p. 36.

59 Mr. Narasimhaiya, Representative Member from Chamrajnagar Taluk, PMRA 1891, p. 37.

60 See supra note xxvi.

61 This point is made by Mr. Malhar Rao, Pledger from Shimoga district, PMRA 1893, p. 48.

62 These are the words of the Dewan, Sir K. Seshadri Iyer, on 23 October 1893, PMRA 1893, p. 21.
63 Mr. B. Garudachar, Advocate, Shimoga, PMRA 1893, p. 47.

64 PMRA 1893, p. 46.

65 Mr. Nandagudi Ramanna, PMRA 1893, p. 46.

66 PMRA 1893, p. 46.

67 Mr. Rangaiengar expressed these views. See PMRA 1891, p. 37.

68 See Mr. K. Chandrasekharaiya's speech in the PMRA 1893, p. 49. Mr. Chandrasekharaiya is an advocate from the Rate Payers' Association of Mysore. Another representative member, Mr. Sadasiva Rao, from Dodballapur Municipality, expressed the same sentiments in 1891, saying that a man often sought a second marriage if he had no children by the first marriage and children were necessary for attaining heaven. He, therefore, suggested that a restriction prohibiting men of 40 years and more from marrying may be confined only to those cases in which the man had children from the previous marriage. (PMRA 1891, p. 37)

69 This is the view taken by Mr. Sitaramaiya, Representative Member from Chintamani Taluk, Kolar District. PMRA 1891, p. 37.

70 These views are also expressed in Mr. K. Chandrasekharaiya's speech. See PMRA 1893, pp. 49 – 50.

71 PMRA 1893, p. 50.

72 PMRA 1891, p. 38.

73 PMRA 1893, p. 50. Also, Mr. Yedahalli Bhanappa, during the debate in 1891, had said that in the case of a man who had had no children by his first marriage, chances were the second would be fruitless too. Mr. Bhanappa was a Representative Member from the Yedahalli Sub-Taluk, Kadur District and although he expressed this view on the question of allowing issueless widowers to remarry, on the larger question of preventing infant marriages, he opined that the "Shastras laid down by our ancestors should be our guide." (PMRA 1891, p. 37)

74 PMRA 1893, p. 47.

75 PMRA 1893, p. 45

77 Mr. Amble Annaiya Pandit makes these points in the proceedings of 1891. See PMRA 1891, p. 36. Mr. Chanappa, Representative Member from Chintamani, makes similar observations in the proceedings of that year. (PMRA 1891, pp. 36 – 7)

78 PMRA 1893, p. 45.

79 PMRA 1891, p. 37. This view is part of Mr. Chanappa’s repertoire of objections to the proposed Regulation preventing infant marriages.

80 This argument is made by Mr. Yedahalli Bhanappa, Representative Member from Yedahalli Sub-Taluk, Kadur District. (PMRA 1891, pp. 37-8)

81 PMRA 1893, p. 50.

82 PMRA 1891, p. 37.

83 Ibid.

84 Mr. Srinivasa Rao points this out. PMRA 1891, p. 38.

85 Mr. Sadasiva Rao, Representative Member from Dodballapur Municipality, made this remark in the debate of 1891 (PMRA 1891, p. 37). It is interesting that Sadasiva Rao, who takes such an antagonistic posture to the prevention of infant marriage in 1891, seeing no harm in the practice, goes on to make radical feminist statements about how representatives are viewing the question entirely from a male point of view (PMRA 1893, p. 47) and how “a great deal too much (has been) said about the Shastras” (PMRA 1893, p. 50) in 1893.

86 PMRA 1891, p. 38.

87 PMRA 1893, pp. 45 – 6.

88 PMRA 1893, p. 44.

89 Similar arguments had been made in the British Indian campaign to allow widow re-marriage in the years leading up to 1856.
90 PMRA 1893, p. 45.

91 PMRA 1893, p. 44.

92 See the summary of Mr. Amble Annaiya Pandit’s speech, PMRA1891, p. 36.

93 PMRA 1893, p. 45.

94 Ibid.

95 PMRA 1893, p. 44.

96 All these insights and quotations are from Mr. Srinivasa Rao’s speech in the Representative Assembly.
PMRA 1893, p. 46.

97 See the speech of Mr. M. Venkatakrishnaiaya, PMRA 1893, p. 44.

98 PMRA 1893, p. 47

99 See the speech of Mr. Sadasiva Rao, PMRA 1893, p. 47.

100 See supra n. lxxiv.

101 So says the very regressive Mr. Malhar Rao, the Pleader from Shimoga Municipality. PMRA 1893, p. 48.

102 From the Dewan’ speech to the Representative Assembly on 23 October 1893. PMRA 1893, p. 21

103 Ibid.

104 From the Dewan, Sir K. Seshadri Iyer’s address to the Representative Assembly on 4 October 1892. PMRA 1892, p. 24.

105 See supra n. lxxviii.

The facts of this case are derived from Police / File No. 1 of 1901-02/ Serial Nos. 1 to 4, Karnataka State Archives (henceforth KSA), Bangalore.

Police/ File No. 31 of 1897/ Serial Nos. 9, 12, 25 and 28, KSA.

The facts are derived from Police/ File No. 53 of 1896/ Serial No. 4, KSA.

The criminal procedure detailed in the Child Marriage Restraint Act 1929 was different. Investigation of cases of child marriage depended on a complaint being made to court within a year of the solemnization of the marriage. On receiving such a complaint, the court could either dismiss it, or initiate an inquiry itself, or direct a Magistrate of the first class, subordinate to it, to make such inquiry. The court was also empowered to take security from the complainant, towards the payment of compensation to the accused, if the charge was proved false. If such security was not furnished within such time as the court may fix, the complaint could be dismissed. (As per Section 250, Code of Criminal Procedure, 1878.)

This procedure is seen to be followed in all the cases studied.

Police / File No. 47 of 1895 / Serial No. 30, KSA. The details of the two cases are as follows: On 14 April 19895, in Hulikal village, Arkalgud taluk, Hassan district, Savitri alias Seetamma, aged about 7 years, was given in marriage to Krishniengar, aged 14 years. The parties were Brahmins, of the sub-caste, Iyengar. In the other case, Janamma, aged below 7, was married to Ramaswami, aged 14, in in Hulikal village, Arkalgud taluk, Hassan district in May 1895. Their caste was Brahmin, Iyengar as well.

Ibid., p. 3.

Police 1903-04 / File No. 19 / Serial Nos. 1-2, KSA.

For instance, there is the infant marriage celebrated on 28 August 1902 at Haladanahalli, Malur Taluk. The bride Muni was aged 7 years, 5 months and 16 days. The bridegroom was above 18 years of age. The parties belonged to the caste of Kurubars. On 7 April 1903, the District Magistrate of Kolar convicted the father of the bride, the bridegroom, his mother and the officiating priest. Each of them was sentenced to pay a fine of Rs.5 each, in default to undergo seven days' simple imprisonment. (Police / File No. 42 of 1902 / Serial Nos. 1 to 3, KSA). An instance of the occurrence of infant marriage among the Igal caste is the case of 17 May 1900 at Itgihalli, Jagalur Taluk, Chitaldroog district. In this case, Basavi, aged 5 years, 7 months and 27 days, was married to Chinna Basava. The groom's age is not mentioned, but we may assume that he was under 18, as he was not one of the accused. The parties belonged, as mentioned before, to the Igal
caste, where the marriage is conducted without an officiating priest or "Iyya". A delay of 8 months occurred in investigation. The conviction of the fathers of the bride and groom is reported on 7 October 1901. The sentence was a fine of Rs.5 each. (Police / File No. 73 of 1900-01 / Serial Nos. 1 to 5, KSA)

116 PMRA 1893, p. 49.

117 Appendix B 2, PMRA 1893, p. 187. See paragraph 5 of the petition.

118 Ibid. Paragraph 6 of the petition.

119 Ibid. Paragraph 7 of the petition.

120 This is observed in the Siromanahalli infant marriage case discussed in the text. The records of the Sirmomanahalli case also reveal that the Register of Births and Deaths is required to be available with the Patel of the village and/or in the records of the sub-taluk. (Police / File No. 38 of 1901-02 / Serial Nos. 1 to 2, KSA.)

121 These facts are derived from Police / File No. 38 of 1901-02 / Serial Nos. 1 to 2, KSA.