CHAPTER V
Marriage

Marriage, an eternal bond that binds the relationship between man and woman, is the foundation of society. It is a difficult task to trace the origin of the institution of marriage in the primitive society in the absence of reliable evidence. In India, Adiparva Chapter 122 of the epic Mahabharata mentions that Svetaketu, son of Rishi Uddalaka, introduced the existing system of marriage. He formulated rules and regulations for the marriage.

Vedic Period

In India, there is no documentation traceable regarding the system of marriage that prevailed before the Vedic period. The Rig Veda contains the first authentic information about marriage and its rituals. But Vedic Texts lay down no specific age for marriage. The object of marriage was to secure performance of dharma or religious ceremonies and continuance of the family line. The ritual of marriage contains various indications that the girl to be married in those days was not an

1 Sexual promiscuity was the rule of the primitive society. Every one could have sex with any one. It was the sage Svetaketu, whose mother was invited for carnal knowledge by a Brahmin guest, protested promiscuity for the first time. Father informed him that it was the custom that had prevailed from time immemorial. As he could not tolerate this practice, he introduced rules and regulations for the relationship of man and woman resulting the origin of the institution of marriage. Kodungallur Kunjikutth Thampuran, Sree Mahabharatham, Vol.1 (1995), pp. 366-367.

2 The Rig Veda X, Hymn LXXXV, 26-27,
immature girl, but a youthful maiden, capable of bearing an offspring. Thus, Vedic literature in general, and Vedic marriage in particular presuppose adult marriage.

Women of the Vedic period had equal opportunities along with men for intellectual, moral, spiritual and cultural development. They actively participated with men in debates, religious ceremonies and social life. On festival occasions like ‘samana’ young girls appeared in all their gaiety to choose their husband. Each enjoyed decisive freedom in selecting her husband. They were even allowed to remain unmarried. Women by virtue


3 See the Rig Veda X, Hymn CLXXXIII, 2, Ibid.

4 “The Vedic ideal represents man and women entering on married life as fully mature as having been equally well educated as having equally well studied the Veda and observed Vedic ritual, as fully competent to discharge their respective duties pertaining to married life”. See A. Mahadeva Sastri, Emancipation of Women – The Vedic Law of Marriage (1988), p. 19. See also A.L. Basham, The Wonder That was India (1989), p.167.

5 Samana was a festival or tournament where maidens try to find out husbands. See Usha M Apte, The Sacrement of Marriage in Hindu Society from Vedic to Dharma Sastras (1978), p.10.

6 The Rig Veda, II, Hymn XVII, 7. The unmarried daughter who lived all her life with her parents was called Amuja and is often given a share of ancestral property for maintenance. See Mac Donell Keith Vedic Index Vol.I pp. 474,475. See also Dr.Shakambari Jayal, The Status of Women in the Epics (1966), p.40.
of their education and religious status had a voice in shaping their future and marriage was not necessarily indispensable for them. Besides, the existence of a social atmosphere in which young people could meet with a view to having matrimony proves that she was a mature and efficient person trained in domestic duties. In short there is no data to rebut the force of evidence to convince that marriage in Vedic age took place when the parties were fully grown up.

**Sutra Period**

The Grihya Sutras\(^7\) describe in detail the marriage ceremony. It prescribes that the bride should be a ‘nagnika’\(^8\) at the time of marriage. The mantras chanted at the time speak constantly of the approaching physical union and the bride’s mastery over her new household. The rituals\(^9\) also show that the marriage was generally arranged after the girl had attained puberty.

---

\(^7\) Grihya Sutra deals with domestic sacrifices and rituals or the performance of several ceremonies or *samskaras* from conception to cremation. See Alladi Kuppuswami (Ed.), *Mayne’s Hindu Law and Usage* (1998), p. 17.

\(^8\) Astavakra, the commentator of Manava Grihya Sutra explains ‘nagnika’ as one who has not yet experienced the impulses and emotions of youth or one who looks pretty even without proper dresses. *Man.Gr* 1.78. Grihya Samgraha explains ‘nagnika’ as one who has not yet reached puberty. *Grihya Samgraha on Gobhila Grihya* 111.46. Mahabharata describes a bride of sixteen as nagnika. One Grihya Sutra lays down ‘nagnika’ bride should also be a virgin at the time of marriage. The requirement of virginity is possible only in the case of grown up girl. As pointed out by Mantrudatta, another commentator, the term refers to a woman who is competent to welcome her husband in privacy immediately after marriage. See Madan Mohan Singh, *Life in Northern India in Pre Mayuran Times (600 B.C -325 B.C)* (1967), pp. 47, 48. See also Nilakshi Sen Gupta, *Evolution of Hindu Marriage 1000 B.C - A.D 500* (1965), pp. 111,112..

\(^9\) The rituals consist of *panigraha*, where the groom holds the bride by the hand and leads her thrice around the fire reciting the appropriate verses. Oblations are offered to deities. The parties touch each other’s heart, and pray that they may be one in heart and mind, though two in bodies. After the *Saptapadi*, the newly wed pray that their married life be full of love, brilliance, prosperity, bliss, progeny and holiness. The ceremony concludes with a prayer that the noble union be indissoluble. See Paras Diwan, *The Law of Marriage and Divorce* (1997), pp. 147-157.
The Grihya Sutras further lay down that the fourth day is suitable for consummation of marriage which is known as *chathurthikarma*.\(^{10}\) They advocate that the bride and bridegroom have to guard their chastity and approach each other with a treasure of celibacy.\(^{11}\) A slight purification ceremony is also prescribed if the bride has her monthly recourse during the marriage ceremony.\(^{12}\)

In epics, like the Mahabharata and the Ramayana the description of brides also supports the view that girls were grown up at the time of their marriage.\(^{13}\) Instances of marriage between Dushyanth and Shakuntala, Sathyavan and Savitri, Arjuna and Subadra, Krishna and Rukmani, Nala and Damayanthi show that the maidens, out of love, married the men of their own choice. The practice of ‘Swayamvara’\(^{14}\) in the epics also gave due emphasis to the post puberty marriages.\(^{15}\)

Vatsayana’s Kama Sutra insists that the marriage of a man should take place only after the completion of his Vedic studies and the bride must be younger by at least three years.\(^{16}\)

---


\(^{11}\) Parasara Grihya Sutra prescribes that the couple should not have intercourse for a period of one year, six months or twelve weeks or three nights in the last resort. Parashara Grihya Sutra. 1.8.21 cited in A.S. Altekar, *op.cit.* at p.51.


\(^{13}\) Maidens have been often described as full of beauty and youth – ‘Roopa Youvana Sampanna’. See Dr. Shakambari Jayal, *op. cit* at p.42.

\(^{14}\) It is a form of marriage, where bride selects her groom.


He opined that Gandharva Vivaha\textsuperscript{17} was the best form of marriage and it indicates that both parties have attained the age of puberty. The consummation of Gandharva marriage is impossible before the couple could feel mutual love.\textsuperscript{18} However instances\textsuperscript{19} of pre-puberty marriages are also referred to in Kama Sutra. Hence the Kama Sutra presupposes the existence of both pre-puberty and post puberty marriages.\textsuperscript{20} No uniformity can be observed regarding the marriageable age of the boy and the girl during that time.

Women, during the later Sutra period were denied their right to Vedic education and the right to participate in religious ceremonies along with their husbands. The status and position of women lowered showing a trend towards pre puberty marriages.\textsuperscript{21} The Dharma Sutra writers like Goutma, Baudhayana and Vasishtha during the period recommend that the girl should be given in marriage before she attains puberty.\textsuperscript{22} Baudhayana goes to the extreme in insisting that the girl should be given even to a man who is destitute of good qualities rather than be kept at

\begin{flushleft}
\textsuperscript{17} Gandharva Vivaha is a form of marriage where the girl and her lover join with each other in sexual union because, they want to, out of desire. See Manu III – 32, The Laws of Manu (trs.) Wendy Doniger with Brian K. Smith (1991), p. 46.

\textsuperscript{18} Supra, n.16 at p. 125.

\textsuperscript{19} Reference about the courtship of a girl of tender years and a wife who is of tender years with one of the advanced youths reveals the prevalence of pre puberty marriage at that time. Ibid.

\textsuperscript{20} A.S. Alteker, op. cit. at p.55.

\textsuperscript{21} Dr. Vijaya G. Babras, The Position of Women During the Yadava Period (1000 AD – 1350 AD), 1996, p.24.

\end{flushleft}
her father’s house after she has attained puberty.\textsuperscript{23} The traditional post puberty marriages in Vedic and early Grihya Sutra period gradually disappeared and a tendency of pre puberty marriage slowly emerged in the later Grihya Sutra period.\textsuperscript{24}

**Smriti Period**

Beginning of the Smriti period shows an increase in pre-puberty marriages. Scholars during Smriti period recommend the marriage of girls before they reached the age of puberty. They began to encourage pre puberty marriage owing to the fear that there was a danger of crossing the fateful line of puberty if the marriage is postponed to the last moment. They generally expect that the girl should be married before she attains womanhood. Gobhila, one of the famous law givers recommends an infant girl as best for marriage.\textsuperscript{25} But he forbids consummation of marriage till the girl has developed signs of maturity.\textsuperscript{26} Gautama advocates marriage before puberty and condemns the father who fails to do so.\textsuperscript{27} If it is not possible he insists that marriage must be celebrated at least within three months of the time of puberty. The prime duty of the father at all events, is to give his daughter a suitor of an equal caste and superior qualities. In such a contingency the question whether a girl at the time of marriage should be mature or not could be considered as negligible. Marriage even


\textsuperscript{25} Altekar, *op.cit.* at p. 54.

\textsuperscript{26} *Ibid.*

\textsuperscript{27} *Ibid.*
before puberty is recommended if a suitable husband is at hand.\(^{28}\) Manu also says, reprehensible is the father who does not give his daughter in marriage at the proper time.\(^{29}\) Manu specifies “let a girl, when she has reached maturity remain till death in the house of the father rather than one should ever give her to a husband lacking the high qualifications.”\(^{30}\) He further proposes that if a father has neglected to conduct the marriage of his daughter for three years after attaining puberty, the girl has a right to select a husband for herself.\(^{31}\) The duty imposed on a father to give his daughter in marriage at the proper time, preferably at the age of eight and the marriage of even an immature girl if suitable match is available clearly reveal his inclination to early pre-puberty marriages.

Yagnyavalkya, another Smriti writer insists on pre-puberty marriages. He considers the father a sinner if he does not give his daughter in marriage, even after she attained puberty. According to Yama, the parents and the eldest brother will be doomed to go to hell if they happen to behold a maiden in her menses period.\(^{32}\) In the words of Parasara parents and other members of the family who fail in giving the girls in marriage before the attainment of puberty will be visited with the sin of

---

\(^{28}\) Manu IX. 88 – says that A man should give his daughter, in accordance with the rules, to a distinguished, handsome suitor who is like her, even if she has not reached the right age. See *The Laws of Manu* (trs.) op.cit. at p.208.


\(^{31}\) Manu IX. 90. *Ibid.*

destruction of embryo at every time of her menses.33 But Manu was silent about the sin attached to the father in relation to the rule of the pre puberty marriages.

The later Smriti writers considered the failure of the parents to give their daughter in marriage before attaining puberty as a great sin. According to them a person who marries such a girl, should be considered degraded and unfit to be spoken to or dine with. The Smriti literature as a whole emphasizes the desirability of marrying a young girl before puberty. But it is hardly in consonance with the practice of adult marriage recognized during the Vedic period and early Sutra period.

With the spread of Buddhism, norms and values of the society began to change. The life of the house holder was denounced. Undue religious stress was laid on a life devoted to meditation and renunciation of worldly pleasures. The importance of leading a celebate life as a means to an end caught increasing attention. The people including women from all walks of life attracted by the ideas and ideals of Budhism adopted a life of premature renunciation of worldly pleasures. The country was flooded with monks and nuns. In such a situation, the embarrassed parents urged to get the marriage of their sons and daughters solemnised as early as possible, denying them the possibility to adopt premature renunciation. This in a way led to the spread of the practice of early marriages even in the post Buddha period.34 Foreign invasions of the earlier period also added to the causes of growth of child marriage during that period. Invasion by the Greeks, the Bactrians, the Parthian and the

33 Ibid.
Scythians during the 3\textsuperscript{rd} and 4\textsuperscript{th} B.C. had direct impact on the status and position of women in India. She was regarded as an article for enjoyment and her position and status were degraded. There was utter disregard for chastity and morality. The invaders refused to give due respect to Indian women. Under the changed circumstances, fathers preferred to get the marriage of their daughters performed even in childhood in order to protect the chastity of the girl. At the same time, the encouraging attitude of the patriarchal society played no less significant role in the growth of child marriages among the higher castes. Gradually it grew by leaps and bounds and took its deep roots in the whole Hindu community.\textsuperscript{35}

During the Gupta period, pre-puberty marriages became the order of the day and consequently adult marriage became an exception and the girls had hardly any voice in the deciding of their marriages.\textsuperscript{36}

**Medieval Period**

In medieval period, the Hindu culture faced opposing trends from the Muslim or Islamic culture. The Muslim rule in India accelerated certain undesirable tendencies that had already manifested themselves in the Hindu society on the eve of the Muslim conquest. The birth of a girl child was looked upon as an inauspicious event.\textsuperscript{37} Consequently female infanticide spread widely among the Hindus. This was


also a measure to save the female from the risk of losing the chastity at the hands of the Muslims. Many Hindu chiefs and aristocratic men were compelled to give their daughters in marriage to Muslims. The Muslim rulers and high officials quite often kidnapped beautiful Hindu girls. Under these circumstances the Hindu parents thought it desirable to turn to the practice of early marriage in order to save their daughters. The instability and insecurity of the period had created much anxiety in the parents and that led to the practice of child marriage at a faster rate. Generally the girls were married at an early age of seven or eight years even before they reached the age of puberty. Sometimes the betrothal took place even before the actual birth of the child.

The status of woman was at its lowest ebb during the Mughal period. The condition of women worsened and the attitude of the Muslims towards women resulted in the spreading of social evils. It is pertinent to note that as an exception among the Mughal emperors, Akbar endeavoured to restrict child marriages and fix the age of marriage as 16 and 14 years for boys and girls respectively. Despite his

---

38 The practice of killing girls was common among the Kshatriyas at the time of birth for the fear of becoming a prey to the Muslim invaders. See S.C. Raychoudhary, Social, Cultural and Economic History of India (Modern Times) (1985), p. 39.


40 Elizabeth Bumiller, May You be the Mother of Hundred Sons - A Journey Among the Women of India (1991), p.70.

41 R.C. Majumdar (Ed.), History and Culture of Indian People Vol.7 (1994), pp. 138, 171, 540, 541.
efforts, the age of marriage continued to be considered eight or nine and remained the same during the British rule.

As a general rule, the girls were married at an early age during the Mughal period. Generally they were married at the age of seven or eight. The bride and the bridegroom were selected by parents and the practice of “seeing” the girl before marriage hardly existed during that time.42

The Hindu religion had played an important role in the Indian life even during the Mughal period. The lawless and cruel behavior of the Muslim intruders created many social problems in India.43 Thus the Hindu priests overemphasized the rigid religious practices44 of the Hindu society for upholding the significance of the Hindu religion. The continuance of these practices as a sign of high respectability in society made the condition of the women more miserable and pitiable. They were destined to lead a secluded life. The status and position of women worsened and reached the ‘lowest depth of degradation.’ Women were considered objects of sexual pleasure rather than human beings. The Hindu society never upheld the dignity and individuality of women in its anxiety to protect and save the women from the

43 Female infanticide, sati and child marriages were considered to be the results of the Muslim invasion. Parents belonging to Hindu religion prepared to resort to any of these practices in order to save the chastity of Hindu girl – See S.C. Raychoudhary op. cit. at p. 126.
outsiders in the 18th century. The religious rules to be observed by women, especially
the child wives, and widows, caused more miseries and sufferings to them.

The huge responsibilities and the inhumane restrictions imposed on the child
wives were shocking to human conscience. The cruel treatment often led to
physical and psychological problems for her. "Mortified and distressed they seek to
console themselves by shedding bitter tears in silence." The pathetic conditions of
the child widows became worse during this time. Secluded from the society they
were compelled to live a life of infamy and shame. Many of the child widows, most
of whom were virgins, had to lead a life of desolation throughout their life, relying
upon the mercy of others. They were considered as 'inauspicious' and were
prevented from participating in the domestic and social functions. In addition to this,
they were always looked upon with suspicion. Sometimes the family even abandoned
them at pilgrim centres. The widows at that time either committed suicide or adopted
'sati' as a means to escape from their cursed life.

45 For instance many restrictions were imposed on women in their social interactions. They were
prohibited from talking or laughing loudly and also from speaking freely with her father or elder
members or any other distant male relatives of her husband unless commanded to do so. See Ibid.
See also Mrs. Marcus B. Fuller, The Wrongs to Indian Womanhood (1984), pp. 35-36.

46 The mothers-in-law employ their daughters-in-law in all kinds of works in order to give, thorough
knowledge of domestic duties. The children of nine and ten years of age find it irksome to work
hard. Moreover, she had to obey the orders of her husband. Pandita Ramabai, The High Caste

47 Ibid., p.46.
Social Movements

The miseries and sufferings of the child wives and child widows never touched the conscience of the society during the 18th century. Gradually the impact of British rule, English education, and the spread of Christianity created an awareness about the social evils prevailing in India. The awareness resulted in the launching of a number of movements for social and religious reforms. The most important of the movements which developed in the Hindu society were the Brahma Samaj, Prarthana Samaj, and Arya Samaj. Emphasizing many kinds of reforms they fought against certain social practices like child marriage, and many kind of social inequalities to which women were subjected. Under the able guidance of Kesava Chandra Sen, Brahma Samaj attempted to improve the position and status of women. Education facilities and assistance were provided at home. Inter caste marriage which was solemnized under the auspices of the Samaj urged the passing of the Native

---

48 See Marcus B. Fuller, op. cit. at p. 42. He affirms, “She has no choice in it as she is usually married before she knows what marriage is. Her husband may ill treat her, beat her, almost kill her but she can get no divorce from him or from a contract that she never was a party to.” See also supra, n.46.

49 The Brahma Samaj was founded by Raja Ram Mohan Roy in 1825. It opposed the dogmatic spirit of religious traditions and attempted to remove certain restrictions and prejudices against women rooted in religious traditions. The Samaj tried to abolish child marriage, polygamy and emphasized the need for educating women. See for details Dr. Amita Mukherje, “The Brahma Samaj Movement and its Social Challenge” in S.P. Sen (Ed), Social Contents and Religious Movements (1978), p. 272.

50 The Prarthana Samaj was founded in 1867 by Dr. Atmaram Pandu Ranga. Eminent persons like Tefang, Bhandarkar and Chandravarkar tried to improve the status of women by giving education. Their main achievement was the founding of National Social Conference in 1887 with a specific purpose of bringing together annually the representatives of various associations in woman’s cause. J.V. Naik, “The Prarthana Samaj” in S.P. Sen, op. cit. at p.304.

51 The Arya Samaj was founded in 1875 by Dayananda Saraswathi with the object of reforming the caste system and raising the status of women. It emphasized compulsory education to both men
Marriage Act, 1872 (Civil Marriage Act). The Act prescribed 18 and 14 as the minimum marriage age for boys and girls respectively.⁵²

Prarthana Samaj made a forceful effort to improve the position of women. Arya Samaj, a dissident religious movement rejected the then prevailing social evils and the post Vedic caste society. It advocated the revival of the old Vedic society in its pristine form. They acted as a motivating force in preventing child marriage through law and in promoting remarriage of the child widows. It disapproved child marriages and fixed 16 years as the minimum age of marriage for girls and 25 years for men.⁵³ Various leaders of social reforms tried to put an end to traditional religious menace. Iswara Chandra Vidya Sagar paid special attention to take all measures to build up social awareness about this evil custom. He organized and stimulated propaganda to raise the marriage age.⁵⁴

Similar movements to improve the position of women in the Muslim and other communities also originated. In the beginning of the 19th century, many reform movements for the education of women were started.

Realizing the grave consequences and gross abuses of the custom of child marriage, Behramaji Malabari, a noted Parsee Social Reformer started his struggle

---

⁵² At the request of Keshab Chandra Sen, a Special Marriage Act, 1872 known as Civil Marriage Act, 1872 was enacted. Minimum age of marriage was fixed as 18 and 14 for bridegroom and bride. See for details R.C. Majumdar (Ed.), History and Culture of the Indian People, Vol. X, British Paramountary and Indian Renaissance (1991), p.104.

⁵³ Dr. Sri. Rama Sharma, op. cit. at p. 350.

⁵⁴ He took a pledge that he would not allow his son to marry before he was eighteen or his daughter before she was eleven. See K.M. Kapadia, op. cit. at pp. 138-166.
against this evil. According to him physical and mental deterioration of the spouses, giving up of the studies, early consummation leading to early pregnancy, premature birth of children, birth of sickly children, necessity of feeding too many mouths, poverty, dependence, disorganized unhappy household and enforced widowhood were the consequences of child marriages. Apart from this the inability of the girl child to give free consent to the marriage was one of the main drawbacks of the custom.

Another obnoxious aspect of child marriage was the marriage of 12 or 13 year old girl with a boy of eight or ten years. Marriage was usually brought about by the father or an elder brother of the boy. If the guardian of the boy was a widower, one can guess the evil intention behind such marriages. Malabari rightly pointed out the misuse of custom and tradition. He prepared notes on the adverse impact of child marriage and circulated these notes among intellectuals, administrators, reformists, and senior-most physicians and collected opinion from them and published, “Infant Marriage and Enforced Widowhood.” The Government of India did not pay much attention to the attempts of Malabari. However it created a wide spread awareness of the evil consequences of child marriage. He had indeed done a genuine attempt to eradicate this evil social custom.

55 Ibid., pp.150-151.
The Theosophical Society\textsuperscript{57} also rendered remarkable service in generating awareness about the abolition of child marriage. Pandita Ramabai\textsuperscript{58}, the crusader against inequalities of the women had played a key role in creating awareness about such social evils.\textsuperscript{59} She observed:

"Many women put an end to their early sufferings by committing suicide. Yet suits at law between husbands and wife are remarkable for their rarity in the British courts in India, owing to the ever submissive conduct of women who suffer silently knowing that gods and justice always favour the men."\textsuperscript{60}

Thus the campaign against child marriage was strengthened by many social movements. But the reformers were not unanimous in their views to repudiate the custom. Malabari spearheaded a campaign to raise the age of consent from 10 years and a fierce political controversy erupted. Balagangadhara Tilak was totally against pre puberty marriage but did not believe that legislation was an appropriate or

\textsuperscript{57} The Theosophical Society was founded by Madam Blavatsky with the object of attaining unity of all religions. They also aimed to the upliftment of woman through education and to fight against social evils like child marriage and purdha system. See S.C. Raychoudhary, \textit{op. cit.} at p. 134.

\textsuperscript{58} Pandita Ramabai who completed her education abroad was a gifted woman social worker. With a view to improving the degraded condition of the Indian woman she formed a society known as the Arya Mahila Samaj whose object was the promotion of education among women and discouragement of child marriage. She got her education from England and America. She also started a boarding school for child widows. She thundered against all the evil customs against women. See S Natarajan, \textit{A Century of Social Reforms in India} (1962), pp.86-87.

\textsuperscript{59} Her book ‘\textit{High Caste Hindu Women}’ clearly gives the picture of the harassments and sufferings of the child wives and child widows. She fought against the social evils and appealed to the Governments to improve the conditions of women through giving education. She started schools and centres for widows with the help of foreigners. See Pandita Ramabai, \textit{op. cit.} at p. 64.

\textsuperscript{60} \textit{Ibid.}
effective method for eliminating child marriage. According to him only education and awareness could bring a social change.\textsuperscript{61}

Towards the end of the 18th century two historically important cases accelerated the campaign against child marriage and created a widespread awareness even among the laymen. The first was the case of Rukhma Bai\textsuperscript{62} who refused to go with her husband saying that she was not bound to obligate a marriage solemnized at an age at which she was incapable of giving a valid consent. Consequently Dadaji, her husband, filed a suit for restitution of conjugal rights. The trial judge Pinhey observed in his judgment, “It seems to me that it would be barbarous, a cruel, and a revolting thing to do to compel a young lady under those circumstances to go to a man whom she dislikes, in order that he may cohabit with her against her will.”\textsuperscript{63} He also noted that “When the plaintiff found that the young lady was unwilling to share his home he should not have tried to recover her person as if she has been a horse or a bullock.”\textsuperscript{64} With these observations he dismissed the case. The judgment was criticized as sentimental one by Hindu fundamentalists.

\textsuperscript{61} Within the colonial context, law was seen as an instrument by which the British intended to legitimised their rules. Tilak and other nationalists rejected the legitimacy of the colonial regime and were dead against the law reforms. See Ratna Kapur Brinda Cossman, \textit{Subversive Ties} (1996), p. 48.

\textsuperscript{62} Rukhma Bai was betrothed to Dadaji at the age of 11 years. As per the agreement, the husband had to stay in her house and to continue his education. Any way, Dadaji refused to continue the education and left the house after some time. Meanwhile the girl got well educated. When Dadaji claimed her as wife she refused to go with him. See Sudhir Chandra, \textit{Enslaved Daughters, Colonialism, Law and Women} (1998), pp.15-20.

\textsuperscript{63} As cited in \textit{Ibid.}, p.

\textsuperscript{64} \textit{Ibid.}
On appeal the decision of Pinhey was reversed. The judges remanded the case for a decision on merits. However Justice Farren decided that she was Dadaji’s wife and ordered her to go to his house or else to go to prison. She informed the court, with due deference that rather than accepting a verdict that directed her to live with Dadaji, she would submit herself to the maximum penalty admissible under the law. Her readiness to bear the consequences of her defiance - six months in jail or attachment of property or both roused the conscience of the public. Social reformers like Malabari and Telang had actively supported her. With a view to helping her, her supporters organized a powerful Rukhma Bai Defence Committee. An appeal against the order of Justice Farren was filed before the Bombay High Court. The whole of India was moved by the decision of Justice Farren of awarding imprisonment to the young woman rebel.

The colonial government was also shaken by the embarrassing prospects of the imprisonment of Rukhma Bai. They were very much cautious about it. The leaders of the organized orthodox tried to compromise the case and achieved success and the case ended without punishment.

---

65 Chief Justice Sargent and Bayley reversed the judgment and remanded the case to division court for a decision on merits after hearing the case. See Sudhir Chandra, *op. cit.* at pp. 96-104.

66 See *Times of India*, 4 March 1887 cited in Sudhir Chandra, *op. cit.* at p. 110.


68 As per the compromise she had to pay an amount of Rs. 2000/- to her husband with which he could marry another woman and she had to bear the cost of trial also. Mrs. Marcus. B. Fuller, *op. cit.* at pp. 39-40.
The trial, judgment and appeal everything connected with Rukhma Bai’s case caught the attention of the public. Both orthodox religious people and reformists were quite interested in the case. The public were also motivated by the case and a general awareness about the religious and social injustice against women was created.

The second case, though a different issue, revealed the more pathetic, tragic and horrifying situation of Indian woman. Phulmoni, a girl of about 10 or 11 years was raped by a 35 year old husband. She died of the injuries sustained during the forcible intercourse. Since the girl was above 10 years the husband could not be found guilty of rape, he was charged with murder, but got a punishment of imprisonment only for one year. Phulmoni’s episode galvanized public support for social and legal reforms in connection with the child marriage. These two decisions highlighted the need for reform. All these developments gave a shock treatment to the cold blooded attitude of the colonial Government and there were attempts to raise the age of marriages at governmental level.

69 Queen Empress v. Huree Mohan Mythree, I.L.R.(1890) 18 Cal.49.
70 See Ibid.
71 Death of Phulmoni impelled the women doctors to give a memorandum to the Viceroy requesting him to stop child marriage of girls below 14 years of age. See Kiran Devendra, Status and Position of Women in India (1985), p. 6.
Legislative Measures

In ancient law, there was no provision prohibiting intercourse of a man with his wife on the basis of age. However under the Hindu \(^72\) and the Muslim law \(^73\) consummation of marriage before puberty was forbidden. Still the law commissioners who drafted the Indian Penal Code made it an offence to make intercourse between husband and wife below a prescribed age. The Indian Penal Code imposed penal sanction against consummation of marriages, where the brides were below 10 years. Marital rape was an offence with a punishment which may extend to the transportation for life of the husband who consummated marriage when his wife was below the age of 10 years.\(^74\) Even though the provision seemed to be ineffective it paved the way for fixing the age of marriage at a higher age. This provision in the Indian Penal Code posed for the first time the problem of child marriage in its grim reality and gave momentum to the next phase of social movement against child marriage.

As public attention had been aroused by the reported cases of suffering of child wives, deaths of the child wives caused by premature cohabitation, the age of consent was raised from 10 to 12 years. In 1890 Sir Andrew Scobe proposed a Bill to raise the lowest age of permissible cohabitation to 12 years. Even though there was a

\(^72\) Under the Hindu law wedding ceremony took place at any time during a girl’s child hood and Garbhadharanam or consummation ceremony took place within 16 days after girl’s first menstruation. Ratna Kapur Brenda Cossman, *op. cit.* at p. 48.


\(^74\) Section 375 of the Indian Penal Code, 1860.
strong public opinion against the Bill, the Government of India took a firm stand and enacted the proposal by means of an amendment to the Indian Penal Code.\textsuperscript{75} Unfortunately the Government had made no systematic attempt to enforce the amendment or to make its existence in the legal system. This law was practically unknown throughout the country. A knowledge of it was confined to a few Judges, lawyers and a few educated men who might have read newspapers or were in touch with the courts of law.\textsuperscript{76} After the amendment effected in 1891, public opinion seemed to be silent for about 30 years.

The statistics of the child brides and child widows of 1921 Census\textsuperscript{77} shocked the social conscience of the country as it revealed that more than half of the widows were under the age of fifteen. The table given below reveals the actual position of the child widows which compelled the colonial government to rethink about its policy of non-interference with religious matters.

There were 8.5 million girls below the age of 15 in the married state and out of this 0.4 million were widows. Realising the intensity and gravity of the problem of child marriage, social reformers tried to prevent it by creating awareness about the impact of child marriages.

\textsuperscript{75} The Indian Penal Code (Amendment Act) 1890.
\textsuperscript{76} See the Report of The Age of Consent Committee 1929, p. 11, infra, n.96.
\textsuperscript{77} See Appendix C.
They also realized the folly of allowing the men to marry female infants and denying them the freedom of consummation. From the Census Report 1921 it was proved that raising the age of consent had no effect in improving the pathetic conditions of the child wives.

In 1922 a bill to amend Section 375 of the IPC by raising the age of consent in both marital and extra marital cases was introduced, but negated. In 1924, Hari Singh Gour introduced another bill with the same object. The bill was referred to a select committee which reduced the proposed age for consummation of marriage of girls from 14 to 13 and the Assembly refused to accept the reduction. As the Government strongly opposed, the bill was defeated. In 1925 a new bill in the same line was introduced by the Government official Alexander Muddiman and it was passed and enacted in the form of another amendment in the penal code raising the girl's age for legal consummation of marriage to 13.78

Mahatma Gandhi took keen interest in countering the grievous evil. His observation that “The custom of child marriage is a moral as well as a physical evil”79 reveals his outlook. He blamed child marriage as conferring legality to an immoral and inhuman act. Fully aware of the impact of child marriage, he emphasized the need for reform. Even though he was not against legislation, he laid more emphasis

78 The Indian Penal Code Amendment Act, 1925.
on amassing public opinion against the evil custom. He raised his voice in support of the movement against child marriage.

Several influential people belonging to all communities joined the movement. The facts and figures of child wives and widows as in 1921 census report and the increasing awareness of the evils of child marriage among the people led to a demand for taking effective steps to curb this unholy system.

**Mother India Controversy**

The notorious Mother India controversy in 1927 also accelerated the reform movements in connection with child marriage. Miss Katherine Mayo in her book *Mother India* courageously exposed the fatal consequences of the child marriage. She gave a pretty ugly picture of India in her book and it aroused a storm of protest in India and abroad. However, the facts exposed in Mayo’s book were accepted as true and accurate. Her thesis that the child marriage was the major cause for the lower position of woman in India was accepted. Her work has to be appreciated that she had taken up such a grave issue and drawn attention of the whole world which helped

---

80 According to him the Sanskrit texts are of doubtful authority cannot be invoked to sanctify a practice which is immoral. He observed that ruin of health of mothers and child and enforced widowhood are the main evil consequences of the child marriage. See “Enforced Widowhood” in *Young India* 5 August 1926, cited in Pushpa Joshi *op.cit.* at p. 131.

81 Along with Malabari, Ranade, Telang, Chandravarkar and Reghunatha Rau, leaders and workers of all the Samajas like the Brahma Samaj, the Arya Samaj and the Theosophical Society participated in the reform movements. See S. Natarajan, *op. cit.* at pp. 85-89.

the people to realise the realities of the problem and to take measures to quicken the much needed reform.

**Legislative measures at the Provincial Level**

Realising the adverse impact of child marriage, the native states in India tried to prevent it by enacting legislations. Mysore Infant Marriage Prevention Act, 1894 is the first penal law in India on marriage age. It prescribed the minimum marriage age for male and female and provided punishment for negation of age rule and abetment for the offence.\(^8^3\) Marriage of a young girl with an elderly man was also prohibited.

Similar legislations\(^8^4\) were enacted by states like, Kota, Rajkot, Indore, Mandi, Baroda and Kashmir. Kochi state also had enacted a similar legislation in 1941.\(^8^5\) Minimum marriageable age was prescribed in these acts and varied in different legislations.\(^8^6\) The violation of the age rule was made punishable under these legislations.

---

\(^8^3\) Marriage age was 18 and 8 years for boys and girls respectively. Whoever aided or abetted the commission of the offence was also made punishable. *Marriage of girl below the age of 14 years with a man above forty was also prohibited.* See sections 2-8 of the Mysore Infant Marriage Prevention Act. See also Tahir Mohmmad, "Marriage Age In India and Abroad", 22 JIIJ pp. 45-46 (1986).

\(^8^4\) See for more details *Ibid.*

\(^8^5\) See Appendix D.

\(^8^6\) The minimum age was altered to 8-14 for girls and 12-19 for boys through these legislative measures. See Tahir Mohammed *supra*, n.83 at pp. 45-46.
However, in exceptional cases the court could permit relaxation of age rules, provided that the girl was below a prescribed age.\textsuperscript{87} A common feature of these legislations is that marriage of a young girl with an elderly man above 45 or 50 was made an offence. Abetment of the offence was also made punishable.

These legislations of native states outside British India and awareness about the impact of the child marriage due to modern education and work of social reformers including women compelled the colonial government to change their attitude towards the legislation preventing child marriage.

**Central Level**

In 1927, Dr. Hari Singh Gour introduced another bill to amend Section 375 of the Indian Penal Code in order to raise the age of consent in marital cases to 14 years and in extramarital cases to 16 years. The government stated that the detailed reports were being called for from the local governments on the operation of the law amended in 1925. During the course of the debate the government declared its intention to appoint a committee to conduct a comprehensive survey to assess the dimensions of the problem and to take necessary steps to prevent child marriage. Hence the bill could not be passed.

\textsuperscript{87} The Rajkot law provided that if the girl is below the age of 13, in exceptional cases the courts could permit the relaxation of the rules relating to the age. The exceptional circumstances are (a) where the parents were too ill to survive till the girl attained puberty, (b) where there was no such person fit to act as the girls guardian, (c) where there is a likelihood that parties would lose all chances of marriage, (d) other unavoidable difficulties. Similar provisions were provided in the legislations of Indore and Mandia dealing with child marriages. See \textit{Ibid.}
In the same year 1927 Rai Sahib Harbilas Sarda introduced a bill\(^8\) in the Legislative Assembly to restrain the solemnization of child marriages among Hindus by declaring such marriages invalid. The marriage of a Hindu girl below twelve years and a boy below fifteen years was declared invalid as per Sections 3\(^8\) and 4\(^9\) of the Bill. Section 5 conferred validity to marriage on production of a proper licence from the Magistrate.\(^9\) A written application from the guardian with an affidavit was required for granting the licence.\(^9\) But no such licence could be granted where the girl was under eleven years of age.\(^9\) The principle embodied in the Bill, favoured a legislative check on early marriage system. But declaring such marriages to be invalid naturally aroused a storm of oppositions throughout India. As far as the Hindus were concerned, the invalid marriage was against the basic notion of their religion. The bill was circulated for opinion and a considerable section of the people were against the proposal to invalidate such marriages. The bill was referred to a Select Committee. Considering the strong opposition\(^9\) of the people of various

---

\(^8\) See Appendix E.

\(^9\) Section 3 reads, “Notwithstanding any provision to the contrary existing anywhere, no marriage of a Hindu girl, except as provided in section 5, shall be valid, unless she has, on the day of her marriage, completed her twelfth year.”

\(^9\) Section 4 reads, “No marriage of a Hindu boy shall be valid unless he has, on the day of his marriage, completed his fifteenth year.”

\(^9\) Section 5 reads, “The marriage of a Hindu girl who is under twelve years of age shall be valid if her guardian obtains, before such marriage, a licence for the performance of such marriage from the Magistrate of the District in which the girl ordinarily resides, authorizing or permitting such marriage.”

\(^9\) See section 6.

\(^9\) See Proviso to Section 5.

\(^9\) It was argued that the Hindu marriage was a sacrament and indissoluble and if a child marriage was invalidated it would give rise to endless disputes relating to legitimacy and inheritance of offspring. See Eleanor F. Rathbone, Child Marriage -- The Indian Minotaur (1934), p.51.
sections, the Select Committee recommended imposition of penal liability instead of invalidating the marriage. In this context the observation of the first select committee is relevant.

“The Bill has been circulated under the orders of the Government and has elicited a strong expression of feeling that it is objectionable, both on religious and legal grounds, to interfere with the validity of a marriage which have been performed. In our opinion, these objections are insuperable, and we have accordingly acted upon a suggestion, which have been widely made, that the Bill should effect its purpose of restraining child marriage, not by declaring such marriages to be invalid, but by imposing punishments upon those who participate in them.”95

The modifications96 suggested by the Select Committee also aroused serious criticisms. When it came up before the assembly the second time, it was again referred to a Second Select Committee. After making certain small changes, the Bill came before the Legislative Assembly.

While these two bills were pending before the Assembly on 25th June 1928 the Government of India appointed an Age of Consent Committee to examine and report the entire perspective of Gour’s Penal Code (Amendment) Bill. At the same time it postponed further consideration of Sarda’s Bill till the Committee submitted its report.


96 Two modifications suggested by the Committee were proposition of punishment for solemnization of child marriage and extension of applicability of the Act to all the communities within the British India.
The Age of Consent Committee, popularly known as Joshi Committee was constituted with Sir Moroplant Joshi as Chairman, and nine other members.97 The Committee started working from the end of June 1928. The body went deep into the matters referred. Even though the question of age of marriage was not specifically included in the terms of references, the Committee found it impossible to delink the question of marriage age from the matter referred to specifically. It collected evidence about it and made recommendations in respect of issues of age of marriage.98 It did its work with great thoroughness, travelling all over India and interviewing four hundred witnesses and issuing eight thousand questionnaires. Hindu organizations like the Arya Samaj, the Brahma Samaj, the Deva Samaj and other social organizations gave active support to the committee and pressed before it the need for legal sanctions against child marriage. Moreover, many eminent Hindu scholars99, expressed the view that there was nothing in Dharmasastra’s enjoining child marriage. However, there were Hindu witnesses who opposed the legislation saying that such law would amount to interference in the religious matters of the Hindus.100

97 They being Rai Bahadur Pandit Kanhaiya Lal, Ramaswamy Mudaliar, Khan Bahadur I.B. Kadric, Dr. Mrs. O’Brien Beaden, Mrs. Briyilal Nehru, Moulvi Mohammed Yaquub, Satendra Mitra, Pandit Thakur Das and Mian Shahanwaz.

98 The Committee after careful examination of the Census Report of 1921 pointed out that over 42 percent of girls of India were married before 15 years. The community-wise percentage of the marriage below the age of 15 years was disgusting. 48.4 for Hindus and 37.01 for Muslims established the fact that both communities practiced the marriage of girls under 15 years.


Prominent Muslims also supported the legislation preventing child marriage.\textsuperscript{101} Maulana Syed Sulaiman of Shible Academy at Azangrah in Utter Pradesh opined that legislation prohibiting child marriage would be permissible to curb the evil practice of early marriage, provided, that such marriages were not declared void and the civil rights of the spouses and children remained unaffected. On the other hand, Muslim religious leaders like, Maulana Ahammad Saeed and Mufti Kifayakullah opposed the legislation with the argument that it would amount to interference with law and religion of Muslims.\textsuperscript{102} Out of the 400 witnesses orally examined by Joshi Committee 134 strongly opposed legislation on the age of marriage on religious, legal and constitutional basis.\textsuperscript{103} The report of the Joshi Committee was submitted and published in 1929.\textsuperscript{104} The Joshi Committee pointed out that words were inadequate to express the pathetic state of child wives and child widows.

“Early maternity is an evil of great magnitude. It contributes very largely to maternal and infantile mortality, in many cases wrecks the physical system of the girl and generally leads to degeneracy in the physique of the races... In the case of early maternity, however, the evil is widespread and affects such a large number of women, both among

\textsuperscript{101} Aga Haidar, Malik Feroz Khan Noon, Mrs. Hamed Ali, Khawaja Husan Nizami. See Ibid., pp. 92-97.

\textsuperscript{102} Ibid., p.281.

\textsuperscript{103} The first ground of opposition was that the Bill interfered with the religious laws of the natives and thus it violated the proclamations of the Queen. Secondly, it was opposed on the ground that the legislature did not represent the people of India, and hence it had no power to make legislation affecting social and religious customs of any particular community. It was also objected on the ground that delaying of marriage would lead to immoral sexual practices. Tahir Mohammad. “Marriage Age in India and Abroad - A Comparative Conspectus” (1980) JILI V 22:1 pp.43-44.

\textsuperscript{104} The facts and evidences were recorded in nine printed volumes of evidence and was summed up in a substantial report.
Hindus and Muslims as to necessitate redress. It is so extensive as to affect the whole frame work of the society. After going through the ordeal if a women survives, she in many cases will be like an old woman, almost a shadow of her former self. Her life is a long lingering misery and she is sacrificed at the altar of custom. The evil is so insidious in all the manifold aspects of social life that the people have ceased to think of its shocking impact on the whole of social fabric.  

The Joshi committee felt that they were unable to find words strong enough to convey the feeling they came across in their detailed study. One of the members described the evidence as a relentless story of cruelty and selfishness.  

The Joshi Committee suggested that the age of consent under the Indian Penal Code be raised to 15 and observed that a legislation penalizing marriage below a certain age was essential for the satisfactory working of the law of consent. It came to the conclusion that it was easier to postpone the marriage of a minor than to prevent consummation. It was felt that as the marriage was an act publicly known, people have a chance to know the age of the couple. The chances of detection would itself have a deterrent effect against violation of a penal law - in this case the age of marriage.

---

105 The Joshi Committee Report, p. 102.
106 Legislative Assembly Debates 11th September 1929, pp. 667-68.
107 Ibid., pp. 144, 174.
Experiences of the Indian Penal Code Amendment Act 1891, showed that the raising of the age of consent had no effect in actual practice. The Committee was of the opinion that law on marriage may antagonize the orthodox people in the beginning but they would prefer it to the far more serious risk of perpetual annoyance caused by a rigorous enforcement of the law of consent. It was noted that the legislation on marriage age in a way could solve the problem of widowhood.

The Committee finally came to the conclusion that a law had to be enacted fixing the minimum age of marriage of girls as 14 years, for effectively preventing the evils of early marriage and early consummation and recommended the same. It firmly recommended that no exemption should be granted on the grounds of religion and conscientious objection in implementing the law. The Committee emphasized the need for a legislation on the lines of the proposed Sarda Bill. It favoured only penalizing marriage below certain age without affecting the validity of the marriage.

The observation of the Joshi Committee reflects their attitude:

“Among the Hindus marriage is held to be a sacrament, sacred and irrevocable. Any challenge to the sacred character of that tie would be a direct attack on religion which is sure to be resented. Among muslims also a marriage contract is a highly meritorious act. According to their

---

108 According to the Committee, private character of the offence, difficulty in ascertaining the age of the girl due to the illiteracy of witnesses, imperfect registration of birth, inadequacy of medical tests and the reluctance of both wives and parents to complain were the main reasons for the ineffectiveness of age of consent.

109 Ibid., p.174.

110 Ibid., at pp.179-180.
religion and general law declaring marriages below a certain age to be invalid would be equally resented."

The Committee convinced the Government that there existed a grave and corroding evil in the country which was clamouring for remedy. After the publication of the Joshi Committee Report and the Select Committee Report, the Sarda Bill was introduced in the Legislative Assembly. The discussions in the Assembly over the Bill revealed the conflict between orthodox religious people and social reformers. The orthodox opposed the bill on the ground that the legislature had no business to interfere with religion. According to them, it is 'seismic interference' with an age long practice. The social reformers on the other hand favoured the Bill saying that it was a significant social legislation aiming at the destruction of child marriage which had been sapping the life blood of society. The heinous practices connected with child marriage, consequent manufacture of child widows and the gruesome tale of infanticide demanded urgent steps for reform. Sir Harbilas Sarda rightly observed:

\[\text{111}\]

\[\text{112}\]

\[\text{113}\]

---

112 The Legislative Assembly Debates, 4th September 1929.
“The tears of child widows, the woes of child widows and the suffering of the victims of this evil call for justice.”

Finally, the attempts of the social reformers culminated in the enactment of the Child Marriage Restraint Act, 1929, which came into force on 1st April 1930. The Act shows a deviation from the basic concept of original Sarda Bill. It does not invalidate child marriage but only restrains the solemnization of child marriage.

\[114\] Ibid., p.100.